SPECIAL ITEM

Agenda Item # A

AGENDA REPORT SUMMARY

Meeting Date: April 9, 2019

Subject: 40 Main Street Appeal

Prepared by: Jon Biggs, Community Development Director
Approved by: Chris Jordan, City Manager

Attachment(s):
1. SB 35 Application and Submittals
2. Correspondence from City
3. Correspondence from Applicant
4. Appeal and Submittals
5. City of Los Altos Parking Standards Exhibit A

Initiated by:
40 Main Street Offices, LLC - Appellant

Previous Council Consideration:
None

Fiscal Impact:
Undetermined

Environmental Review
The Council's consideration and action on the appeal is exempt from CEQA pursuant to, without limitation, CEQA Guidelines Sections 15270(b) and 15378.

Policy Question(s) for Council Consideration:
- Does the application for a proposed mixed-use project at 40 Main Street qualify for a streamlined ministerial permit under California Government Code Section 65913.4, which is commonly referred to as SB 35?
- Shall the City Council overturn staff's determination and grant the appeal?

Summary
Appellant has submitted an appeal to the City Council of staff's determination that the proposed project is not subject to and does not qualify for streamlined processing pursuant to Government Code Section 65913.4, which is commonly known as SB 35. Appellant asserts the City has violated

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Reviewed By:

City Manager	City Attorney	Finance Director
CJ	CD	SE

law by failing to ministerially approve the application pursuant to SB 35 and the Housing Accountability Act (Gov. Code § 65589.5).

Staff has determined the project does not qualify for SB 35 because (1) the project relies on a density bonus that exceeds that provided for under the State Density Bonus Law and, therefore, is not consistent with objective development standards; (2) the project fails to designate 2/3 of its overall square footage for residential uses; (3) the application does not provide sufficient documentation to enable the City to evaluate whether it can approve density bonus concessions/incentives and waivers necessary to development the project; (4) the project is inconsistent with identified objective standards for parking, ingress/egress and design.

Staff also has determined that the Housing Accountability Act does not apply.

Staff Recommendation
Conduct a public hearing on the appeal. Close the public hearing and after considering the full record before the Council, provide direction to staff to return at the next regular City Council meeting with a resolution granting or denying the appeal and making appropriate findings.

Subject: 40 Main Street Appeal

Purpose
Los Altos Municipal Code Section 1.12.010 provides the opportunity for any interested party to appeal to the City Council his or her objections to the whole or any portion of an administrative decision made by a City official that involves the exercise of administrative discretion or personal judgment. The Council's conduct of the appeal shall be *de novo* (i.e., anew, as if the decision had not been previously rendered) (Los Altos Municipal Code § 1.12.060.). The appeal is appropriate as the appellant is appealing staff's exercise of administrative discretion when it determined the Project as proposed does not qualify for SB35 streamlining.

Background
On November 8, 2018 the appellant submitted an application for streamlined ministerial review of the proposed project under SB 35. The project site, a single parcel, is an interior lot of 6,950 square feet and is improved with a one-story office building containing 2,127 square feet of floor area. The site is bordered by Main Street at the east, commercial buildings to the north and south, and a parking plaza with its travel aisle network to the west. The site is within the City's public parking plaza system in the Downtown.

Appellant has proposed a five-story mixed use building with two levels of underground parking. Uses within the proposed building include office space on the first level and fifteen (15) residential rental units on levels two to five. Two of the fifteen (15) residential rental units are proposed as below market rate (BMR) units. The highest point on the proposed structure is called out as 66'4". Access to the two levels of underground parking are provided by a system that accommodates a single vehicle and is accessed from public parking plaza ten. A total of eighteen (18) parking spaces and various storage areas are provided between the two underground parking levels.

The project seeks streamlined ministerial approval pursuant to Government Code Section 65913.4 and approval of concessions/incentives, waivers, and density bonus units pursuant to the Government Code. Concessions/incentives and waivers include an increase in the permitted height, reduction in rear yard setback, and increase in the allowable coverage of the rooftop area among others. The project includes the removal of existing structures, site improvements, plants, and landscaping.

On December 7, 2018, the City timely responded to the application, finding that the project is not eligible for SB 35. The City response found that the project was ineligible for SB 35, because, among other things, it is inconsistent with objective City development standards for access/egress to the proposed off-street underground parking levels. The City notified the appellant that the application failed to provide necessary materials and specified the additional materials necessary for the City to evaluate the application.

In its review, staff determined that the application failed to provide sufficient information necessary for the City to determine whether the project is consistent with all applicable City objective standards.

For example, the application depends upon the grant of density bonus concessions and waivers to be considered consistent with City development standards. The application, however, fails to include sufficient information to enable staff to determine if the requested density bonus concession/incentives can be granted consistent with state and local laws.

Appellant never has provided the additional information City needed to evaluate the application. Instead, the appellant waited several weeks before writing to the City to assert that the project must be ministerially approved under SB 35. After several exchanges of correspondence, appellant timely appealed to the City Council staff's determination that the proposed project is not subject to streamlined permit processing of a development application provided by SB 35.

Discussion/Analysis

Summary of SB 35
California Government Code Section 65913.4, commonly referred to as SB 35, effective on January 1, 2018, provides a streamlined ministerial approval process for projects that meet specified site and project criteria and objective development standards. The State's standards include that a project be at an infill location (at least 75% of surrounding properties developed) and be proposed on a site whose general plan and zoning designations provide for residential or mixed use. For mixed-use projects, at least two-thirds of the square footage of developments must be designated for residential use. For SB 35 eligible projects, State law removes a City's ability to require a conditional use permit for qualifying developments and limits design review to compliance with objective design standards.

The project must also comply with all "objective" general plan, zoning, and design review standards. Staff's determination following a review of the plans and submittals for the project were that it did not comply with objective standards and that further information was required for staff to continue its evaluation of the project.

SB 35 also establishes strict deadlines for project evaluation and approval. For projects of 150 units, a local jurisdiction must make an initial determination of whether a project is eligible for SB 35 within 60 days of application submittal If the project is eligible, the jurisdiction's design review and public oversight must be completed within 90 days from application submittal This review and oversight is ministerial: i.e., "objective and strictly focused on assessing compliance with [SB 35 criteria], as well as any reasonable objective design standards published and adopted by ordinance or resolution: before submission of the application and "broadly applicable to development within the jurisdiction." (Gov. Code § 65913.4(c)).

Compliance with SB 35 Project Criteria
On its face, the application fails to qualify for SB 35 on two grounds. First, the project does not provide two-thirds of the development's square footage for residential uses. As noted above, this is required for mixed-use projects to qualify for SB 35 (Gov Code §65913.4(a)(2)(C)). Although the application lacks sufficient detail to fully evaluate key project details, when totaling all five floor levels and the two subgrade parking levels, the total development would comprise approximately 42,276 square feet, 22,821 square feet of which would be designated for housing. However, to meet SB 35 requirements, 28,184 square feet of the total project would need be designated for housing in order to comprise two-thirds of total development. As noted in the City's response to the application, the City requested further information regarding the proposed project, including, among other things, the dimensions of driveway parking and loading area and for net floor area calculation diagrams. Nonetheless, on its face, the application fails to present a project comprise two-thirds residential uses as required to qualify for SB 35.

Second, as discussed in the section below, the density bonus request for the project exceeds the maximum 35% mandatory bonus State Density Bonus Law provides. Although the Los Altos density bonus ordinance allows discretionary approval of bonuses in excess of 35%, SB 35 does not authorize or contemplate that such a bonus would be considered as "consistent with objective" development standards as necessary to qualify for streamlined ministerial review and approval.

Density Bonus Request
To assert that the project is consistent with City objective standards, the applicant is seeking density bonus units, concessions/incentives, and waivers for the proposed project. To avail themselves of these, the applicant is claiming that a project conforming to the conditions of the site and all objective development standards will be a three-story mixed-use structure having ground level office space and eight rental units on the two floors above that with one sub-grade parking level having eight parking spaces, space for storage, and elevator access. Applicant proposes that two of the eight rental units in this scheme be reserved for rental at the low-income level or 25% of the eight rental units.

Under SB 35, the City's determination that a project is consistent with objective development standards shall be made "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law [Gov Code] Section 65915." (Gov. Code § 65913.4(a)(5))

In the Downtown Commercial District (General Plan Designation) or the CRS/OAD (Zone District), which governs the subject site, the maximum allowable density is not identified in maximum units per acre; rather, objective density determinations are made based on site conditions such as its width, depth, geometry (shape), or topographic features and compliance with objective zoning standards such as setbacks, height limit, and parking standards.

The application, however, lacks sufficient information to enable a calculation of base density, thereby rendering infeasible any calculation of a percentage-based density bonus. Even assuming applicant's assumptions and calculations are correct, with the proposed mix of low income to market rate rental units, the project would be entitled to a density bonus of 35% per State law and Los Altos density bonus regulations, which would be an additional three units on the project site. This would mean that, for purposes of SB 35 evaluation, a project with a 35% density bonus would be considered consistent with objective maximum densities.

However, even under applicant's calculations, the applicant is seeking an **87.5%** density bonus increase (7/8 = 87.5%): an additional 7 units to be added to the eight of the conforming project for the proposed total of 15 units, which is significantly higher than the 35% density bonus increase required by the City's density bonus regulations and state law. Although the City's local density bonus ordinance provides the City Council with discretion to grant a density bonus higher than 35%., SB 35 does not require nor contemplate that such a discretionary bonus can or should be consistent with objective standards.

To the contrary, this means that, on its face, the application fails to qualify for SB 35. SB 35 specifies that an evaluation of consistency with objective standards shall exclude density "granted pursuant to the [State] Density Bonus Law in [Gov. Code] Section 65915]." (Gov. Code § 65913.4(a)(5). To assume a discretionary density bonus in excess of the State Density Bonus Law would appear to conflict with SB 35, which does not authorize the City to incorporate discretionary density bonus approvals into this consistency determinations.

Concessions/Incentives & Waivers
In addition to an 87.5% density bonus, applicant seeks concessions/incentives, and waivers for the proposed project. These are as follows

Concessions/Incentives
Appellant is seeking to apply the 11' Los Altos Density Bonus regulations-on-menu height increase to the proposed building two times, which would provide an additional 22' height to the building for an additional 22' above the 30' height limit, for a total of 52', with a waiver request for additional 2/3 of a floor to achieve a 56'6" height to the top of the roof deck." Parapets and other structures exceed this height and extend up to a height of 66' 4" at the tallest point on the building.

Additional Waivers
Appellant is also seeking the following waivers for the project

- Parking, compliance with the one space per unit requirement imposed by SB 35, 15 residential units and 18 parking spaces proposed. (Note that since this project site is within the

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Downtown Parking District, floor area equal to 100% of the area of the lot is not required to provide parking; thus, parking is not required for the proposed first floor office space)

- An increase in the area that roof structures may occupy of the building roof from 4% to 4.4%

As noted above, the application does not provide sufficient information for the City determine the project's base density and, therefore, the project's level of eligibility for density bonus benefits. Assuming for purposes of discussion that the appellants' density assumptions are correct, the project would qualify for up to two concessions/incentives under the State Density Bonus Law and the City's density bonus regulations. An unlimited number of waivers are available for density bonus eligible projects to waive or reduce development standards that will have the effect of physically precluding the development so long as the City does not make contrary findings.

SB 35, however, does not purport to abrogate the City's discretion under the State Density Bonus Law and the City's density bonus regulations to deny a concession or incentive if it makes a written finding, based on substantial evidence, of any of the following:

a. The concession or incentive does not result in identifiable and actual cost reductions, consistent with the definition of "concession" or "incentive," to provide for affordable housing costs, as defined in Health & Safety Section 50052.5, or for rents for the targeted units to be set as specified in subsection (I).
b. The concession or incentive would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is 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
c. The concession or incentive would be contrary to state or federal law.

Likewise, the City can deny a requested waiver if it finds the waiver would:

a. Waive or reduce a development standard that would not have the effect of physically precluding the construction of a development meeting the criteria of this section at the densities or with the incentives permitted under this section; or
b. Have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or
c. Have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
d. Be contrary to state or federal law.

The application did not provide staff with sufficient information that would allow it to complete its evaluation of the requested concessions/incentives and waivers. As a result, staff's initial December 7, 2018 response to the application requested additional documentation and information necessary for

the City to reasonably and competently evaluate the project's compliance with objective standards, including density bonus concessions/incentives and waivers.

The requested concessions/incentives and waivers must be granted in order for the project to qualify for SB 35 streamlining. But, the application and the record as a whole does not provide sufficient information for the City reasonably to evaluate or determine whether the density bonus and related benefits, including the discretionary density bonus (i.e., above 35%) could or should be authorized, nor whether the State-sanctioned findings for denial of concessions/incentives or waivers should apply.

Other Objective Development Standards

As noted earlier, a project submitted for SB 35 streamlining must also comply with all "objective" general plan, zoning, and design review standards. Although the application lacked sufficient detail for staff to evaluate consistency with all applicable objective standards, the City's initial review was able to identify the following standards with which the project either conflicts or for which the City requires further information to evaluate:

Off Street Parking Standards

The project does not comply with Municipal Code Section 14.74.200 N., which requires that off-street parking areas be in accordance with the minimum standards shown on the drawing labeled "Parking Standards Exhibit A". There are no provisions in this Parking Standards Exhibit for a vehicle lift system that provides access to subgrade parking levels. Rather a detail of standards for ramps providing access/egress to parking is clearly shown on the last page of this exhibit. Lacking compliance with the standard, staff requested additional information that would be used to analyze this system and identify the proper permitting process where such a system could be considered.

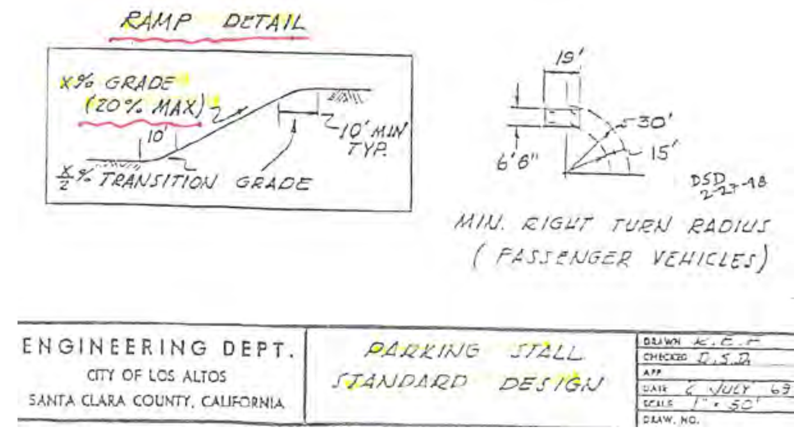
The appellant will need to demonstrate and provide plans and details that subgrade parking designed to meet the objective standards of the code – a ramping system with appropriate grade/slope, transition zones and parking spaces with aisle widths compliant with the objective standards of Parking Standards Exhibit 'A'. Lacking these plans and details, staff cannot confirm that a compliant project would have eight units. Also, staff noted in its notice of incomplete application that complete engineering plan of the vehicle circulation system for the proposed parking and its interaction with circulation in Public Parking Plaza 10 was required so that an appropriate evaluation of this project can be conducted.

Subgrade Parking Access/Egress & Impacts to Circulation at Parking Plaza 10

Appellant proposes a lift system "car elevator" to transport vehicles from the street level to the two underground parking levels where 18 parking spaces are proposed. The lift measures approximately 12' x 24', large enough to accommodate one vehicle at a time. No manufacturer or engineering details on this lift system have been provided. Municipal Code Section 14.74.200 N., which requires that off-street parking areas be in accordance with the minimum standards shown on the drawing labeled

"Parking Standards Exhibit A". Parking Standards Exhibit provides no standards or allowances for a vehicle lift system. Rather a detail of standards for ramps providing access/egress to parking is clearly provided on the last page of this exhibit. It notes that the maximum ramp grade is 20% with shallower grades for the upper and lower transition areas on the ramp. The proposed lift system does not meet these standards and the City in its notice of incomplete application requested further engineering plans and details regarding the circulation at the parking levels and at Public Parking Plaza 10.

Parking Standards Exhibit A – Ramp Detail



Architecture and Building Design
The project also fails to comply with objective design standards found in the Downtown Design Guidelines. Notably staff found a conflict between the project and the following guidelines - 3.2.1 b) Break larger building into smaller components; 3.2.2 b) Relate the façade designs to adjacent structures; and 3.2.7 b) Avoid architectural styles and monumental building elements that do not relate to the small human scale of Downtown Los Altos. In evaluating projects in the Downtown, the Downtown Design Guidelines provide the standards by which a proposed structure is evaluated. In its evaluation of this project – staff found that the proposal did not comply with the following standards:

3.2.1 b) *Break larger building into smaller components*
Proposed building is one large multi-story structure that is uniform in its materials, finishes, and trim and has not been divided up to appear as a series of smaller building forms of individual designs and architectural styles.

3.2.2 b) *Relate the façade designs to adjacent structures*
The proposed structure does not relate well to adjacent structures and rather than respect their scale, bulk, height, and mass introduces a building that is disruptive to those adjacent structures and presents

a façade that is not in harmony with adjacent buildings and the pedestrian nature of this portion of Main Street.

3.2.7 b) *Avoid architectural styles and monumental building elements that do not relate to the small human scale of Downtown Los Altos*
At five stories and a height of 66'4", the project does not relate well to the small human scale of Downtown Los Altos

Housing Accountability Act
The appeal also asserts that the State Housing Accountability Act (Gov. Code Section 65589.5) "requires the City to approve the Project." Similar to SB 35, the Housing Accountability Act establishes requirement for local governments' consideration and approval of housing development based upon objective development standards. In contrast to SB 35, however, under the Housing Accountability Act, a determination of conflicts with objective standards is based on standards in effect at the time a project application is determined or deemed "complete," rather at the time of application submittal under SB 35. Here, the Application has not been determined or deemed complete, so the Housing Accountability Act does not apply.

Conclusion
In staff's opinion, the proposed project does not comply with the requirements of SB35. The project does not meet the criteria of SB 35, because it is inconsistent with objective standards, notably access/egress to the proposed subgrade parking areas. The appellant has not provided sufficient information to enable the City to reasonably evaluate whether the project complies with all objective standards or is eligible for all the requested density bonus benefits. However, even on its face, the project fails to qualify for SB 35 because, it seeks an increase in density bonus units beyond the 35% provided for by State and City regulations. The requested density bonus is entirely within the discretion of the City Council, and SB 35 does not authorize the City to deem a density bonus of this level to be consistent with objective development standards. If the City were to authorize and pursue streamline approval of the Project without the necessary information and process, it would risk violating a host of procedural and substantive requirements, including those found in the Density Bonus Law and the California Environmental Quality Act.

Options

1) Deny Appeal

Advantages: Denies the appeal and upholds staff's determination that the project as proposed does not qualify for SB 35 streamlining.

Disadvantages: Appellant may pursue other paths to obtain entitlements to construct the project

2) Grant appeal

Advantages: Grants the appeal and overturns staff's determination finding the project as proposed does qualify for SB 35 streamlining.

Disadvantages: Forego a standard public review process, including environmental review in accordance with the California Environmental Quality Act, and City consideration of public health and safety and other factors in evaluating and approving a five-story mixed-use structure that inappropriate for its proposed location and may negatively impact physical environment, public health and safety and the surrounding community

Recommendation

Conduct a public hearing on the appeal. Close the public hearing and, after considering the full record before the Council, provide direction to staff to return at the next regular City Council meeting with a resolution granting or denying the appeal and making appropriate findings.

LETTER OF TRANSMITTAL

TO: The City of Los Altos	Date: Nov. 8, 2018	Job: 40 Main St.
Planning Division	From: William Maston: Architect & Associates	
Los Altos City Hall	384 Castro Street, Mountain View, CA 94041	
1 N San Antonio Rd, Los Altos, CA 94022		

WE ARE SENDING YOU ✓ Attached ❑ Under separate cover via pick-up the following items:

❑ Shop drawings ❑ Prints ❑ Plans ❑ Samples ❑ Specifications

❑ Copy of letter ❑ Change order

COPIES	DESCRIPTION
1	General Application Form
1	Introduction & Overview by Rhoades Planning Group
1	Submittal Check List
1	Filing Fee(s)
5	Color and Material Board
5	Architectural Design Plans Full-sets (24"x36") – See attached sheet index
5	Architectural Design Plans Full-sets (12"x18") – See attached sheet index
(included in Arch. Set)	Color Renderings and 3D Model Renderings
1	Construction Management Plan
1	Title Report

THESE ARE TRANSMITTED as checked below:

❑ For approval ❑ Approved as submitted ❑ Resubmit ______ copies for approval
✓ For your use ❑ Approved as noted ❑ Submit ______ copies for distribution
❑ As requested ❑ Returned for corrections ❑ Return ______ corrected prints
❑ For review and comment
❑ FOR BIDS DUE ______________________
❑ PRINTS RETURNED AFTER LOAN TO US

REMARKS:

ATTACHMENT 1

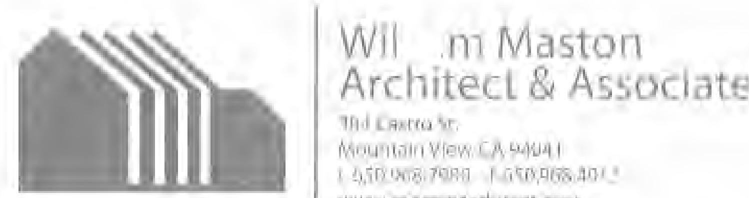
Architectural Design Plans Full-sets Sheet Index

Architectural – 5 Story Proposal

A0.00 Cover Sheet
A0.01 Project Data and Index
A.0.02 Renderings – View from Main St.
A0.03 Renderings – View from San Antonio Rd.
A0.04 Renderings – View from Plaza Ten
A0.05 – Streetscape Elevations
A0.06 Existing Parking Layout
A1.00 (E) Site Plan
A1.01 (N) Site Plan
A1.02 Preliminary Plant Pallet
A2.01 Sublevel 2 Floor Plan
A2.02 Sublevel 1 Floor Plan
A2.03 Level 1 Floor Plan
A2.04 Level 2 Floor Plan
A2.05 Level 3, 4 Floor Plan
A2.06 Level 5 Floor Plan
A2.07 Roof Plan
A3.01 Exterior Elevations
A3.02 Exterior Elevations
A3.03 Exterior Elevations
A4.01 Building Sections
A4.02 Building Sections
A5.01 Details

Architectural – 3 Story Baseline

B0.00 Cover Sheet
B0.01 Project Data and Index
B0.02 Renderings – View from Main St.
B0.03 Renderings – View from San Antonio Rd.
B0.04 Renderings – View from Plaza Ten
B0.05 – Streetscape Elevations
B0.06 Existing Parking Layout
B1.00 (E) Site Plan
B1.01 (N) Site Plan
B1.02 Preliminary Plant Pallet
B2.01 Sublevel 1 Floor Plan
B2.02 Level 1 Floor Plan
B2.03 Level 2 Floor Plan
B2.04 Level 3 Floor Plan
B2.05 Roof Plan
B3.01 Exterior Elevations
B3.02 Exterior Elevations



B3.03 Exterior Elevations
B4.01 Building Sections
B5.01 Details

Civil

C-1.0 Title Sheet
C-2.0 Preliminary Grading, Drainage, Utility Plan

Colors and Materials Board

CM-1 Colors & Materials Board (5F)
CM-2 Colors & Materials Board (3F)

CITY OF LOS ALTOS
GENERAL APPLICATION

Type of Review Requested: ***(Check all boxes that apply)*** **Permit #** 1108545

	One-Story Design Review	X	**Commercial/Multi-Family**		**Environmental Review**
	Two-Story Design Review		**Sign Permit**		**Rezoning**
	Variance	X	**Use Permit**		**R1-S Overlay**
	Lot Line Adjustment		**Tenant Improvement**		**General Plan/Code Amendment**
	Tentative Map/Division of Land		**Sidewalk Display Permit**		**Appeal**
	Historical Review		**Preliminary Project Review**		**Other:**

Project Address/Location: 40 Main Street, Los Altos CA 94022

Project Proposal/Use: Mixed Use / Residential **Current Use of Property:** Office

Assessor Parcel Number(s): 167-38-032 **Site Area:** 6,995

New Sq. Ft.: 29,566 **Altered/Rebuilt Sq. Ft.:** ______ **Existing Sq. Ft. to Remain:** ______

Total Existing Sq. Ft.: 2,050 **Total Proposed Sq. Ft. (including basement):** ______

Applicant's Name: 40 Main Street Offices, LLC
Telephone No.: (650) 924-0418 **Email Address:** ted@gunnmanagement.com
Mailing Address: 40 Main Street
City/State/Zip Code: Los Altos CA 94022

Property Owner's Name: 40 Main Street Offices, LLC
Telephone No.: (650) 924-0418 **Email Address:** ted@gunnmanagement.com
Mailing Address: 40 Main Street
City/State/Zip Code: Los Altos CA 94022

Architect/Designer's Name: William J Maston Architect & Associates
Telephone No.: (650) 968-7900 **Email Address:** billm@mastonarchitect.com
Mailing Address: 384 Castro Street
City/State/Zip Code: Mountain View, CA 94041

*** * * If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finaled prior to obtaining your building permit. Please contact the Building Division for a demolition package. * * ***

(continued on back)

Does your project comply with any Deed Restrictions, Conditions, Covenants, and Restrictions (CC&R's), or any other recorded conditions of the subdivision in which it is located? Examples are restrictions that limit development to one-story height or may require setbacks greater than those required by City Codes. You are responsible for researching your title insurance report to find the CC&R's for your property. If you do not have a copy of the title report, you may obtain the information from a title insurance company or the County Recorder's Office. ☐ **Yes** ☐ **No** ☒ **N/A**

If No, please explain below in what way your project does not comply with the restrictions and why you propose such variations.

N/A

I certify that the above information is true and correct.

Date: 11/8/18

Property Owner/Applicant or Authorized Agent Signature: [signature]

(If signing as an authorized agent, please submit evidence of written authorization)

For City Staff Use Only:

Received by: Eliana / Sean Date: 11/8/18

Department Review Required:

Fire Department	(YES) / NO	Date Notified:
Building Division	(YES) / NO	Date Notified:
Public Works Engineering	(YES) / NO	Date Notified:
City Manager	(YES) / NO	Date Notified:
		Date Notified:
		Date Notified:

Is the submittal package complete? YES / NO (TBD)

If NO, what items still need to be submitted?

ORDER NO. : 0623014451

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of Los Altos, State of California, and is described as follows:

Lot 5, Block 1, as delineated upon that certain map entitled "Map No. 1 of the Town of Los Altos", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on October 25th, 1907 in Book "L" of Maps, at Page 99.

APN: 167-38-032
ARB: A167-38-32

167 ...an Antonio Road, Suite 5
Los ...s, CA 94022
(650) 941-5700 Fax: (650) 403-4009

PRELIMINARY REPORT

Our Order Number 0623014451-KS

ALAIN PINEL REALTORS
167 S. San Antonio Road Suite 1
Los Altos, CA 94022

Attention: GARY HERBERT

When Replying Please Contact:

Kathy Smith
KathyS@ortc.com
(650) 941-5700

Property Address:

40 Main Street, Los Altos, CA 94022

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE COMPANY, as issuing Agent of Old Republic National Title Insurance Company, hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit I attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the Homeowner's Policy of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit I. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit I of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.
It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of October 26, 2018, at 7:30 AM

OLD REPUBLIC TITLE COMPANY
For Exceptions Shown or Referred to, See Attached

The form of policy of title insurance contemplated by this report is:

CLTA Standard Coverage Policy -1990; AND ALTA Loan Policy - 2006. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred or covered by this Report is:

Fee

Title to said estate or interest at the date hereof is vested in:

40 Main Street Offices, LLC, a California limited liability company

The land referred to in this Report is situated in the County of Santa Clara, City of Los Altos, State of California, and is described as follows:

Lot 5, Block 1, as delineated upon that certain map entitled "Map No. 1 of the Town of Los Altos", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on October 25th, 1907 in Book "L" of Maps, at Page 99.

APN: 167-38-032
ARB: A167-38-32

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1. Taxes and assessments, general and special, for the fiscal year 2018 - 2019, as follows:

Assessor's Parcel No	:	167-38-032	
Code No.	:	011-001	
1st Installment	:	$16,203.52	NOT Marked Paid
2nd Installment	:	$16,203.52	NOT Marked Paid
Land Value	:	$2,272,569.00	
Imp. Value	:	$317,920.00	

2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

3. Any special tax which is now a lien and that may be levied within the Library JPA CFD 2013-1 Mello-Roos, a notice(s) for which having been recorded.

   NOTE: Among other things, there are provisions in said Notice for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

   NOTE: The current annual amount levied against this land is $45.44.

4. Covenants, Conditions and Restrictions which do not contain express provision for forfeiture or reversion of title in the event of violation, but omitting any covenants or restriction if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Executed by	:	Altos Land Company, a California corporation
Dated	:	December 14, 1907
Recorded	:	November 9, 1908 in Book 339 of Deeds, Page 50

   NOTE: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

5. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount	:	$1,000,000.00
Trustor/Borrower	:	40 Main Street Offices, LLC, a California limited liability company
Trustee	:	Western Alliance Bank, an Arizona corporation
Beneficiary/Lender	:	Western Alliance Bank, an Arizona corporation
Dated	:	December 21, 2015
Recorded	:	January 27, 2016 in Official Records under Recorder's Serial Number 23206295
Loan No.	:	21878-3
Returned to	:	55 Almaden Boulevard, Suite 100, San Jose, CA 95113

NOTE: In connection therewith, a document as follows:

Entitled	:	Hazardous Substances Certificate and Indemnity Agreement
By	:	40 Main Street Offices, LLC and Western Alliance Bank, an Arizona corporation
Recorded	:	December 27, 2016 in Official Records under Recorder's Serial Number 23206296
Returned to Address	:	55 Almaden Boulevard, Suite 100, San Jose, CA 95113

In Connection therewith, said trustors executed an Assignment of Rents,

Dated	:	December 21, 2015
Recorded	:	January 27, 2016 in Official Records under Recorder's Serial Number 23206297

6. An unrecorded lease upon the terms, covenants, and conditions contained or referred to therein,

Lessor	:	40 Main Street Offices, LLC
Lessee	:	Gunn Management Group, Inc.; Theodore G. Sorensen; Gerald J. Sorensen; and Harry I. Price
Disclosed by	:	Subordination Agreement - Lease
Dated	:	December 21, 2015
Recorded	:	January 27, 2016 in Official Records under Recorder's Serial Number 23206298
Return to Address	:	55 Almaden Boulevard, Suite 100, San Jose, CA 95113

NOTE: Said Lease by the provisions of an agreement

Recorded	:	January 27, 2016 in Official Records under Recorder's Serial Number 23206298

was made subordinate to the Deed of Trust referred to herein as Instrument No. 23206295.

NOTE: The present ownership of said leasehold or leaseholds and other matters affecting the interest of the lessee or lessees are not shown herein.

7. An LLC-1 (Articles of Organization) for 40 Main Street Offices, LLC, a California Limited Liability Company, was recorded May 14, 2007 in Official Records under Recorder's Serial Number 19428429.

   1. Any Certificate of Correction (LLC-11), Certificate of Amendment (LLC-2) or Restatement of Articles of Organization (LLC-10) must be submitted to the Company for review. Certified copies of same should be recorded.

   2. A copy of any management or operating agreements and any amendments thereto, together with a current list of all members of said LLC, must be submitted to the Company for review.

8. Any unrecorded and subsisting leases.

9. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

10. The requirement that this Company be provided with a suitable Owner's Declaration (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Declaration.

11. The requirement that this Company be provided with an opportunity to inspect the land (the Company reserves the right to make additional exceptions and/or requirements upon completion of its inspection).

-------------------- **Informational Notes** --------------------

A. The applicable rate(s) for the policy(s) being offered by this report or commitment appears to be section(s) 1.1 and 2.1.

B. The above numbered report (including any supplements or amendments thereto) is hereby modified and/or supplemented to reflect the following additional items relating to the issuance of an American Land Title Association loan form policy:

NONE

NOTE: Our investigation has been completed and there is located on said land a commercial building known as 40 Main Street, Los Altos, CA 94022.

The ALTA loan policy, when issued, will contain the CLTA 100 Endorsement and 116 series Endorsement.

Unless shown elsewhere in the body of this report, there appear of record no transfers or agreements to transfer the land described herein within the last three years prior to the date hereof, except as follows:

NONE

C. NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument Entitled	:	Grant Deed
By/From	:	Williams & Barber Investments, LLC, a California limited liability company
To	:	40 Main Street Offices, LLC, a California limited liability company
Dated	:	May 4, 2007
Recorded	:	May 14, 2007 in Official Records under Recorder's Serial Number 19428432

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1990
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land Is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments Which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

   Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests, or claims Which are not shown by the public records but which could be ascertained by an inspection of the land which may be asserted by persons in possession thereof,

3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

6. Any lien or right to a lien for services, labor or material not shown by the public records.

AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY OF TITLE INSURANCE - 2006
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

EXCEPTIONS FROM COVERAGE – SCHEDULE B, PART 1, SECTION ONE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

rev. 07/2010

FACTS	WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share

Questions	Go to www.oldrepublictitle.com (*Contact Us*)

Who we are	
Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do	
How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit http://www.OldRepublicTitle.com/newnational/Contact/privacy.
How does Old Republic Title collect my personal information?	We collect your personal information, for example, when you: • Give us your contact information or show your driver's license • Show your government-issued ID or provide your mortgage information • Make a wire transfer We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: • Sharing for affiliates' everyday business purposes - information about your creditworthiness • Affiliates from using your information to market to you • Sharing for non-affiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See the "Other important information" section below for your rights under state law.

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • *Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., Mississippi Valley Title Services Company, and The Title Company of North Carolina.*
Non-affiliates	Companies not related by common ownership or control. They can be financial and non-financial companies. • *Old Republic Title does not share with non-affiliates so they can market to you*
Joint marketing	A formal agreement between non-affiliated financial companies that together market financial products or services to you. • *Old Republic Title doesn't jointly market.*

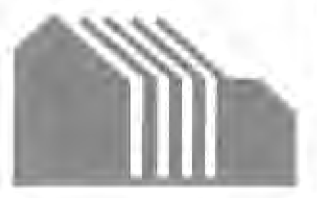
Other Important Information

Oregon residents only: We are providing you this notice under state law. We may share your personal information (described on page one) obtained from you or others with non-affiliate service providers with whom we contract, such as notaries and delivery services, in order to process your transactions. You may see what personal information we have collected about you in connection with your transaction (other than personal information related to a claim or legal proceeding). To see your information, please click on "Contact Us" at www.oldrepublictitle.com and submit your written request to the Legal Department. You may see and copy the information at our office or ask us to mail you a copy for a reasonable fee. If you think any information is wrong, you may submit a written request online to correct or delete it. We will let you know what actions we take. If you do not agree with our actions, you may send us a statement.

Affiliates Who May be Delivering This Notice

American First Abstract, LLC	American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.
eRecording Partners Network, LLC	Genesis Abstract, LLC	Kansas City Management Group, LLC	L.T. Service Corp.	Lenders Inspection Company
Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mara Escrow Company	Mississippi Valley Title Services Company	National Title Agent's Services Company
Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.	Old Republic Exchange Company	Old Republic National Title Insurance Company	Old Republic Title and Escrow of Hawaii, Ltd.
Old Republic Title Co.	Old Republic Title Company of Conroe	Old Republic Title Company of Indiana	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma
Old Republic Title Company of Oregon	Old Republic Title Company of St. Louis	Old Republic Title Company of Tennessee	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.
Old Republic Title, Ltd.	Republic Abstract & Settlement , LLC	Sentry Abstract Company	The Title Company of North Carolina	Title Services, LLC
Trident Land Transfer Company, LLC				

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA
BOOK 167
PAGE 38
BOOK 170
S. SAN ANTONIO RD.
HILLVIEW AVE.
HAWTHORNE AVE.
WHITNEY ST.
STREET
MAIN ST.
STATE ST.
PLAZA
FOURTH ST.
NORTH
THIRD
W. EDITH AVE.
VIEW ST.
BLK. 1
BLK. 2
BLK. 3
BLK. 4
CITY OF LOS ALTOS
2.11 AC.
0.62 AC.
0.54 AC.
5,580sf
R.O.S. 863/20
R.O.S. 154-M-21
R.O.S.158-M-28
MAP NO. 1 OF THE TOWN OF LOS ALTOS
VOL. L MAP PAGE 99
LAWRENCE E. STONE — ASSESSOR
Cadastral map for assessment purposes
Compiled under R. & T. Code, Sec.
Effective Roll Year 2017-2018



William Maston
Architect & Associates
381 Castro St.
Mountain View, CA 94041
t.650.968.7900 f.650.968.4918
www.mastonarchitect.com

Ground Floor Office and 4 Story Residential
40 Main Street, Los Altos, CA 94022
Preliminary Construction Management Plan

1. Cover Sheet
2. Truck Routing and Staging Plan
   - Provide a map that identifies the route to be used to and from site for all truck traffic.
     i. Trucks will be routed onto Foothill Expressway, turn onto Edith, turn onto Fourth Street and a left turn into Plaza Ten behind the project. Trucks will unload immediately behind the building.
   - Provide anticipated hours of truck traffic and material deliveries.
     i. Truck traffic and deliveries are anticipated between the hours of 8:00 AM and 4:00 PM. We will prohibit delivery during the noon to 1:30 Peak Parking hour.
   - Provide details pertaining to where off-site truck staging for material deliveries that require multiple trucks at any one time (concrete, building materials, etc.) will be located.
     i. Trucks and vehicles that require staging will be staged in the Lincoln Ave parking area near the Chamber of Commerce.
   - Provide a traffic control plan designed and maintained by a certified individual qualified in this responsibility.
     i. Traffic and flag control will not be required.
3. Construction Site Parking and Staging Plan
   - One existing and one created parking stall immediately in front of the project on Main will be utilized. Four spots immediately behind the building along the plaza ten sidewalk will also be used. Additional construction parking as required will be directed to available plaza Ten employee parking stalls and on-street stalls along Fourth Street and Edith.
   - Construction workers will walk to the site from their parking locations.
   - Provide location and size of construction trailer and any other mobile offices and/or storage containers that will be required.
     i. Construction offices and containers will be located in the back (plaza 10 side/60 Main street) corner of the site along the proposed paseo and the property at 60 Main Street.

Government Code 65913.4 (SB 35) Submittal for 40 Main Street in Los Altos, California

Table of Contents

This application is being submitted under SB 35 streamlining provisions (Gov. Code § 65913.4). Pursuant to SB 35, the requirement to seek a discretionary permit for this project does not apply. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a). Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). As set forth in Attachment # 1 of the Applicant Statement of this application, the standards for issuance of a use permit, structural alteration permit and parcel map involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.

Nonetheless, for informational purposes, the applicant is voluntarily providing the following documents that are ordinarily required for conditional use permit application.

Cover Letter

1. General Application Form
2. Applicant Statement, with Attachments:
    A. Objective Standards Table
    B. SB 35 Environmental Mapping
    C. Commitment to Prevailing Wage
    D. Density Bonus Report
3. Filing Fees (as applicable)
4. Project Plans
    - Cover Sheet
    - Site Plan
    - Floor Plans
    - Building Elevations
    - Roof Plan
    - Landscape Plan

40 Main Street, Los Altos, California
Government Code Section 65913.4 Project Submittal
November 8, 2018

Applicant Statement – 40 Main Street

INTRODUCTION AND OVERVIEW

This Applicant Statement is submitted on behalf of 40 Main Street Offices, LLC, for a proposed residential mixed-use development project to replace an existing single-story office building located at 40 Main Street in the City of Los Altos ("City"). This is an application for a streamlined ministerial development permit pursuant to Government Code Section 65913.4, otherwise known as Senate Bill 35, as well as Government Code 65915 et seq ("State Density Bonus Law"). The project is also subject to Government Code Section 65589.5, the Housing Accountability Act, because it is consistent with all of the City's objective standards. The project proposes to include 15 for rent apartment units, two of which will be affordable to low-income households (to households earning below 80% of Area Median Income [AMI]). In addition, the project will provide 5,724 square feet of office space on the ground floor and a below-grade parking structure with 18 spaces. The gross project floor area totals 29,566 square feet.

As the State of California Department of Housing and Community Development ("HCD") recently noted, Los Altos is subject to SB 35 streamlining for proposed developments with at least 10% affordability at 80% AMI. Localities are subject to streamlining for projects providing 10% affordability if the jurisdiction "did not submit its latest [annual] production report to the department by the" April 1 deadline "required by Section 65400 [of the Government Code]." Gov. Code § 65913.4(a)(4)(A)(i).

The City has long recognized the development potential for the site, identifying the area in the Downtown Land Use Plan as "establishing a sense of entry into the Downtown". The 2009 adopted plan envisioned larger development in the Commercial Retail Sales district by removing the two-story height limitation and removing the 2.0 maximum Floor Area Ratio requirements. The plan also spoke to a vision of creating continuous building frontage on shopping streets.

The project also includes a density bonus pursuant to Government Code Section 65915, with waivers/modifications and concessions/incentives, as allowed per the statute and the Los Altos density bonus ordinance provisions. Finally, the proposed project is also subject to Government Code Section 65589.5, also known as the Housing Accountability Act. The project's consistency with each of these provisions of State law is discussed in detail below. All three of these Government Code sections are State legislative efforts that recognize the severity of California's housing crisis and the difficulties associated with developing new housing at appropriately zoned, transit-oriented and urbanized locations. The following legislative findings (from Government Code section 65589.5(a)(2)) are instructive of how, and why, the City must interpret and implement these laws:

> California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives...

> The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled...
>
> It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

With those laws and policies in mind, the following sets forth the Applicant Statement. This Statement also includes the following attachments:

A. Attachment A, Objective Standards Table, which demonstrates compliance with City of Los Altos General Plan, Zoning, Subdivision, and Design Standards, as applicable;
B. Attachment B, SB 35 Environmental Mapping, which demonstrates compliance with SB 35 location and environmental criteria;
C. Attachment C, which demonstrates the project proponent's commitment letter to construct the project using prevailing wage labor compensation; and,
D. Attachment D, Density Bonus Report, as required by the City of Los Altos.

SB 35/Government Code Section 65913.4

The legislature enacted SB 35 in 2017 as a response to California's housing crisis and, specifically, the negative impact that the lack of housing production is having on the State's economic vitality, environmental goals and social diversity.

Under SB 35, cities that did not submit their most recent required annual progress report before the April 1 statutory deadline, or who are not on track to meet their Regional Housing Needs Allocation (RHNA) housing production obligations are required to follow a streamlined, ministerial approval process for qualified housing projects. On June 1, 2018, HCD confirmed that Los Altos failed to submit an annual progress report by the April 1 deadline, and so is subject to SB 35 streamlining for projects providing 10% of units affordable to households earning less than 80% AMI threshold.

The SB 35 approval process requires cities to approve projects within 90 days of submittal of an application if they propose 150 or fewer units, and such approval must be based only on whether the project complies with "objective planning standards." To qualify, the project must meet a number of criteria, including providing certain percentages of the units affordable to households with incomes below 80% area median income; paying prevailing wage for construction labor; and meeting all objective zoning and design review standards.

The terms "objective zoning standards" and "objective design review standards" are narrowly defined to mean "standards that involve no personal or subjective judgment by a public official and are 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 prior to submittal." A comprehensive checklist of SB 35 requirements is found in Table 2 below. Because the statute mandates that the process is ministerial and that projects are judged purely on objective standards that do not involve the exercise of

discretion, CEQA does not apply to the SB 35 process. *See* 14 Cal. Code Regs. §15268(a) ("Ministerial projects are exempt from the requirements of CEQA"); *see also* Pub. Res. Code §21080(b)(1).

For the purposes of SB 35, "additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915" may not be considered when assessing the project's compliance with the City's objective standards (Gov. Code § 65914.4(a)(5)). The project qualifies for a density bonus under the State Density Bonus Law, because it will provide 20% of its base project units with rent affordable to households earning 80% of AMI. The benefits afforded under State Density Bonus Law also include waivers/modifications of development standards that would otherwise "physically preclude" the density bonus project and two concessions/incentives as discussed in the Density Bonus Report (Attachment D).

By meeting the provisions of the state density bonus law and SB 35, the proposed base project also exceeds the City of Los Altos affordability requirements under Chapter 14.28 of the City's Zoning Ordinance.

PROJECT DESCRIPTION

Project Uses

The proposed project includes 15 dwelling units, 5,724 square feet of office space on the ground floor, and direct vehicular access to two-levels of below-grade parking via a vehicle elevator. The proposed parking is located within the structure in a secured basement-level garage. Above the ground floor are residential apartments. Two units will be provided at below-market rate rent at 80% AMI. The proposed apartment units, as demonstrated in the attached plans, contain a mix of one-, two-, and three- bedroom units.

Project Residential Affordability

The proposed project is subject to three different residential affordability criteria per the State of California statutes listed above and the Los Altos affordable housing requirements, as follows:

1. SB 35 requires 10% of units in Los Altos to be dedicated affordable units to households with incomes below 80% AMI, see Gov. Code § 65913.4(a)(4)(B)(i), and the project's compliance with that criterion insures that it meets the requirements of the City of Los Altos' Multiple-Family Affordable Housing Law (Chapter 14.26.030.D.2).

2. State Density Bonus Law thresholds require a rental project to provide at least 20% of its units to low income households with incomes of less than 80% AMI to be eligible for a 35% bonus and up to two incentives (*see* LAMC 14.28.040(C)(1)(a)(ii) Table DB 1 and *see* Gov. Code § 65915(d)(2)(B)).

3. City of Los Altos thresholds require 10% of units at 50% AMI (very low income) or 15% of units at 80% AMI (low income).

Density Bonus

The City of Los Altos Implementing Density Bonus Ordinance (Chapter 14.28 of the Los Altos Municipal Code) provides for the standard density bonus language as it appears in GC Sec. 65915, for density bonus

up to 35%. The local ordinance also allows for additional density through the application of a menu of pre-approved concessions/incentives, based on a project's proposed unit affordability. The concessions/incentives that are pre-approved under the ordinance allow for a number of different items that an applicant may select, some of which result in additional floor area, units and density, consistent with Gov. Code § 65915(n).

Pursuant to Government Code Section 65915, and the local ordinance, the proposed project is entitled to a 35% density bonus, and up to two concessions/incentives. The proposed project only seeks to avail itself of one additional concession/incentive—an 11-foot height increase which provides for the 4th story in the 5-story massing proposed. The 5th story is the density bonus floor area. This is discussed in greater detail in the attached density bonus report.

Location

The proposed project at 40 Main Street is located at the northeast corner of the six-block downtown triangle. The project site measures 6,994 square feet.

Downtown Los Altos, the vicinity of the project site, and the surrounding uses supports a pedestrian-oriented shopping district with tree-lined streets and a small town-square ambiance. The project site is located at the north-east corner of the Downtown Core District. Directly adjoining the project site to the south are two single-story buildings housing a religious institution and an office. To the north there is a two-story office building with professional uses. Across Main Street to the east is a boutique hotel. The west face of the project site is a public parking lot.

This corner of the downtown area is zoned CRS/OAD (Commercial Retail Sales/Office-Administrative District). The Zoning Ordinance envisions this zone to provide a full range of retail, office, mixed-use residential, and commercial services while also encouraging a village-like pedestrian atmosphere that creates an entrance to the downtown.

Table 1: Surrounding Uses and Zoning		
Direction	*Use*	*Zoning*
North	Office	CRS/OAD
East	Hotel	CRS/OAD
South	Religious/Office	CRS/OAD
West	Parking	CRS/OAD

Project Design

The project is designed with a clearly defined architectural base, middle, and top. At the ground floor, tan stone, accented by bronze storefront frames, convey the office ground-floor use and set the base of the building. The light-colored stucco facades above are punctuated by recessed balconies and dark metal window frames. The top level is stepped back and contains a variety of roof forms, which break up the building massing and roofline.

Neighborhood Mixed Use Development

The project site is in a pedestrian-oriented environment with connections to transit. The VTA 40-line bus route runs directly from the site to the San Antonio Transit Center and the 52 line bus is located within walking distance and provides a connection to the Mountain View Caltrain station and the Mountain View-Winchester VTA Light Rail line. The surrounding neighborhood supports walkable destinations for residential goods and services. The proposed project will enhance the existing small-scale pedestrian-oriented environment of the Downtown, as envisioned by the Downtown Core Specific Plan, and provide needed new housing.

Project Statistics

The project includes the following major elements:

- Lot Size: 6,995 SF
- Lot Coverage: 6,745 SF
- Commercial Net Floor Area: 5,724 SF
- Gross Project Floor Area: 29,566 SF (not including basement parking areas)

PROJECT COMPLIANCE AND APPLICABILITY OF STANDARDS

Compliance with City of Los Altos Zoning and Design Review Standards

A comprehensive table analyzing the project's consistency with all applicable zoning and design review standards is included as Attachment A of this Applicant Statement. Table 2 identifies key development standards.

Table 2: Zoning Development Standards – Downtown Commercial and CRS/OAD			
Characteristic	*CRS/OAD Standard*	*Base Project*	*Proposed Project*
Residential Units	N/A	8	15
Commercial Floor Area	N/A	5,724	5,724
Maximum Intensity (FAR) [1]	N/A	N/A	4.2
Maximum Building Height (feet)	30	30	56.5 (waiver and incentive)
Minimum First Floor Height	12	12	12
Maximum Stories	N/A	N/A	5
Setbacks (feet)			
Front (Min & Max)	0	0	0
Side (Min & Max)	0	0	0 to 10 (waiver)

Rear (Min.), adjacent to public parking	2 (landscaped)	2	2
Parking[2]			
1 to 3 Bedroom Dwelling Unit	2 spaces/unit	8 (min. 1/unit per SB 35)	18 (min. 1/unit per SB 35) (waiver)
Visitor	1 space/4 units	N/A (per SB35)	N/A (per SB35)
Minimum Ground-Floor Transparency	60%	61%	61%

(1) The Los Altos Zoning Ordinance objective development standards have been used in the consideration of the base project envelope for the proposed project at 40 Main Street, and the zoning ordinance was amended to eliminate the previously imposed FAR limit in this zoning district. There is no inconsistency between the city's zoning and its General Plan on this or any other point. Gov. Code §65319.4(a)(5)(B). The most recently adopted element of the City's General Plan, the Housing Element, explicitly affirms that under the General Plan, there is "no limit" on FAR in this district. (City of Los Altos 2015 Housing Element, at p. 89.) HCD certified the City's current Housing Element based on this representation, the City Council has approved several projects downtown based on an unlimited FAR, after finding that they conform with the General Plan. See, e.g., 240 Third Street 3/13/18 and 4/22/08 Staff Reports; 45 Main Street 4/22/08 Staff Report.

(2) Based on participation in the public parking district, no parking is required for 100% of the lot area (i.e., 6,994 square feet). This standard exempts all of the office floor area (5,724 square feet) from the parking requirement and a portion of the residential requirement (1,271 square feet), which equates to one unit.

Attachment A identifies objective standards in the Zoning Ordinance and Downtown Design Guidelines.

Compliance with City of Los Altos General Plan and Downtown Core Area Plan

The project site is located within the Los Altos Downtown Area Plan. The project's General Plan land use designation is Downtown Commercial. Both the Los Altos Downtown Urban Design Plan and the General Plan land use designation support intensive mixed-use development at this location. The operative zoning for the site is CRS/OAD (Commercial). Since Los Altos is a general law City, its General Plan and Zoning Ordinance must be consistent with one another or the City's land use decision-making authority for all discretionary projects is compromised. When the Council adopted the zoning ordinances applicable to the project site, the City Council determined that those zoning ordinances complied with the General Plan, as required by State law—and it has continuously re-affirmed that determination when approving other projects in the same zoning district.

Environmental Review

SB 35 specifies that the approval process is "ministerial" and approval will be granted if the project complies with "objective standards," meaning standards for which no subjective judgment is exercised. Since CEQA does not apply to ministerial approvals such as this, environmental review is not required for the project.

PROJECT COMPLIANCE WITH ALL APPLICABLE LAWS

1. SB 35: Government Code Section 65913.4 (SB 35) Review and Approval Criteria

As shown Table 2, the submittal complies with the SB 35 eligibility requirements. The following table lists the criteria for a project's consideration per the Government Code, as demonstrated below and confirms that the project complies.

	Table 2: Government Code Section 65913.4 Eligibility Requirement	Requirement satisfied?
1.	**Is the project a multifamily housing development with 2 or more units? Subd. (a)(1).** The project is mixed use multifamily housing development with 15 units.	Yes
2.	**Is the project located in an area designated by the U.S. Census Bureau as an urbanized area? Subd. (a)(2)(A).** The project is located in the City of Los Altos, which is entirely within a U.S. Census urbanized area boundary. *See also:* https://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua78904_san_francisco--oakland_ca/DC10UA78904.pdf	Yes
3.	**Is more than 75% of the project site's perimeter developed with urban uses? Subds. (a)(2)(B), (h)(8).** SB 35 defines "urban uses" as "any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." Based on these standards, the entirety of the Project site's perimeter is developed with urban uses.	Yes
4.	**Does the site have either a zoning or a general plan designation that allows for residential use or residential mixed-use development, with at least two-thirds of the square footage designated for residential use? Subd. (a)(2)(C).** The General Plan land use designation for the site is "Downtown Commercial" within the "Core" special planning area of Downtown, which is characterized by general retail and service uses as well as "higher density residential uses...in the Core and Periphery areas." The site is located in the CRS/OAD Commercial Retail Sales/Office zoning district which allows housing above the ground floor. The gross building area is approximately 29,566 sq. ft., of which 23,842 sq. ft., (approximately 80%) is designated for residential use.	Yes

	Table 2: Government Code Section 65913.4 Eligibility Requirement	Requirement satisfied?
5.	**Has the Department of Housing and Community Development (HCD) determined that the local jurisdiction is subject to SB 35? Gov't Code Sec. 65913.4(a)(4)(A).** On June 1, 2018, HCD issued a revised determination regarding which jurisdictions throughout the State are subject to streamlined housing development under SB 35. The City of Los Altos is subject to SB 35 because it did not submit a 2017 Annual Progress Report by the required due date. Therefore projects are eligible for streamlining under SB 35 for proposed developments with at least 10% affordable units. See also: http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary.pdf	Yes
6.	**Will the project include the required percentage of below market rate housing units? Subd. (a)(3) and (a)(4)(B)** Los Altos is subject to streamlining for 10% affordable projects because "[t]he locality did not submit its latest production report to the department by the time period required by Section 65400 [of the Government Code]." Gov. Code § 65913.4(a)(4)(B)(i). The project meets the required 10% of below-market rate housing units since the project includes two units, which will be available to low income households (up to 80% AMI) thereby exceeding the 10% threshold at 80% of AMI (as well as entitling the project to a 35% density bonus).	Yes
7.	**Is the project consistent with "objective zoning standards" and "objective design review standards?" Subd. (a)(5)** The Project will comply with all applicable objective standards, except where the project is entitled to waivers/modifications and concessions/incentives pursuant to State Density Bonus Law, as permitted by SB 35. SB 35 defines "objective planning standards" narrowly: "standards that involve no personal or subjective judgment by a public official and are 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 prior to submittal." See Attachment A for a complete list of objective zoning and design review standards associated with this project.	Yes

8.	**Is the project located outside of all types of areas exempted from SB 35? Subd. (a)(6-7), (10).**
	
	The project site is not located within any of the below exempt areas.
	
	Subd.(a)(6) exempt areas:
	- Coastal zone
	- Prime farmland or farmland of statewide importance
	- Wetlands
	- High or very high fire hazard severity zones
	- Hazardous waste sites
	- Earthquake fault zone (unless the development complies with applicable seismic protection building code standards)
	- Floodplain or floodway designated by FEMA
	- Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan
	- Habitat for a state or federally protected species
	- Land under a conservation easement
	
	The project site is not located on any of the above areas. See Attachment B for detailed mapping.
	
	Subd. (a)(7) exempt areas:
	- A development that would require the demolition of housing that:
	    - Is subject to recorded rent restrictions
	    - Is subject to rent or price control
	    - Was occupied by tenants within the last 10 years
	- A site that previously contained housing occupied by tenants within past 10 years
	- A development that would require the demolition of a historic structure on a national, state, or local register
	- The property contains housing units that are occupied by tenants, and units at the property are/were offered for sale to the general public by the subdivider or subsequent owner of the property.
	
	There have been no dwelling units on the property at any point during the last ten years, and the project would not require the demolition of any residential or historic structures.
	
	Subd. (a)(10) exempt areas:
	- Land governed under the Mobilehome Residency Law
	- Land governed by the Recreational Vehicle Park Occupancy Law
	- Land governed by the Mobilehome Parks Act
	- Land governed by the Special Occupancy Parks Act
		Yes

	Table 2: Government Code Section 65913.4 Eligibility Requirement	Requirement satisfied?
	Response: The project site is not located on land governed by any of the above laws.	
9.	**If the Project is not a public work, has the proponent certified that all construction workers employed in the development project be paid prevailing wages? Subd. (a)(8)(A).** As detailed in Attachment C, the applicant certifies that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages.	**Yes**
10.	**Has the applicant made the required "skilled and trained workforce" certification, to the extent applicable? Subd. (a)(8)(B).** The "skilled and trained workforce" certification requirement is inapplicable because the Project proposes fewer than 75 units. Gov. Code § 65913.4(a)(8)(B)(i)(I).	**Not Applicable.**
11.	**If the project involves a subdivision, are the criteria in subd. (a)(9) satisfied?** The Project does not involve a subdivision.	**Not Applicable.**

2. Density Bonus: Government Code Section 65915, Affordable Housing Compliance and Density Bonus Entitlement

The project is a rental project, so the provisions of GC Sec. 65915(b)(1)(A), 65915(d)(2)(B), and 65915(f)(1) apply with respect to levels of affordability and percentages of units as do the commensurate levels of density bonus and concessions/incentives. In the case of the proposed project, 25% of base project units will be provided at 80% AMI, allowing for up to a 35% density bonus, even though the SB 35 application would only require 10% of all units to be affordable at less than 80% AMI. It also provides that the project is allowed up to two concessions/incentives. The project has chosen to avail itself to only one concession/incentive from the approved list. See Attachment D for the Density Bonus Report, which includes a broader discussion of waivers/modifications and concessions/incentives.

3. Housing Accountability Act

As set forth in this Applicant Statement, the project is entitled to streamlined ministerial approval under SB 35. In addition, the Housing Accountability Act also requires the City of Los Altos to approve the project, and prohibits the city from reducing its requested density or imposing any conditions that have the same effect or impact on the ability of the project to provide housing Gov. Code § 65589.5(i), (j).

The project is protected under the Housing Accountability Act since it consists of at least two-thirds residential uses, and because it complies with the City's objective standards and criteria, as demonstrated in Attachment A of this application statement. The City is only permitted to reject a project under these

circumstances if it can make findings based on a preponderance of evidence that the project would have a significant, unavoidable, and quantifiable impact on "objective, identified written public health or safety standards, policies, or conditions." Gov. Code §65589.5(j). The Legislature recently affirmed its expectation that these types of conditions "arise infrequently." Ch. 243, Stats. 2018, § 1 (adding subdivision (a)(3) to Gov. Code § 65585.5). Here, there is no evidence, let alone a preponderance of evidence, that the project would have any impact on public health and safety that cannot be feasibly mitigated.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5(k). As recently reformed in the 2017 legislative session, the act makes attorney's fees and costs of suit presumptively available to prevailing plaintiffs, requires a minimum fine of $10,000 per housing unit for jurisdictions that fail to comply with the act, and authorizes fines to be multiplied by five times if a court concludes that a local jurisdiction acted in bad faith when rejecting a housing development. *Id.*

Applicant Statement, Attachment A
Objective Standards Table – 40 Main Street

Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5).

Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).

See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	**Applicability**	**Compliance**
Section 14.54.030 - Permitted uses (CRS/OAD).		
The following uses shall be permitted in the CRS/OAD District: a) Business, professional, and trade schools located above the ground floor; b) Office-administrative services; c) Parking spaces and loading areas incidental to a permitted use; d) Personal services; e) Private clubs, lodges, or fraternal organizations located above the ground floor; f) Restaurants, excluding drive-through services; g) Retail; and h) Uses which are determined by the city planner to be of the same general character.	Applicable objective criteria.	The project's proposes office-administrative services on the ground floor, consistent with the permitted uses.
Section 14.54.040 – Conditional uses and structures (CRS/OAD).		

Upon the granting of a use permit in accordance with the provisions of Chapter 14.80 of this title, the following uses shall be permitted in the CRS/OAD District: A. Any new building that has an area greater than seven thousand (7,000) gross square feet, and any addition to an existing building which would result in the total building area exceeding seven thousand (7,000) gross square feet, including additions to buildings which presently exceed seven thousand (7,000) gross square feet in area; B. Cocktail lounges; C. Commercial recreation; D. Hotels; E. Housing located above the ground floor; F. Medical and dental clinics; G. Medical and dental offices that are five thousand (5,000) gross square feet or more; and H. Uses which are determined by the planning commission to be of the same general character.	The project proposes a building of 29,566 square feet, including housing located above the ground floor. However, the requirement to seek a conditional use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a); *see also* HCD's SB 35 Streamlined Ministerial Approval Draft Guidelines (9/28/18), § 300(b)(2). Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). As set forth below in Chapter 14.80 of the Los Altos Municipal Code, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
14.54.050 - Required conditions (CRS/OAD)		
A. All businesses, services, and processes shall be conducted within a completely enclosed structure, except for parking and loading spaces, incidental sales and display of plant materials and garden supplies occupying no more than one thousand five hundred (1,500) square feet of exterior sales and display area, outdoor eating areas operated incidental to permitted eating and drinking services, and as otherwise allowed upon the issuance of an outdoor display permit. Exterior storage is prohibited.	Applicable objective criteria.	All business would be conducted inside the proposed building. The project does not propose any business uses outside the enclosed structure nor exterior storage.
B. No use shall be permitted and no process, equipment, or materials shall be employed which are found to be objectionable by reason of odor, dust, noise, vibration, illumination, glare, unsightliness or electrical disturbances which are manifested beyond the premises in which the permitted use is located.	Not an objective standard. Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). The conditions imposed by Chapter 14.54.050 (B) involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.	Not applicable. However, the project does not propose uses associated with the impacts listed in subsection B.

C. No property owner, business owner and/or tenant shall permit or allow operation of a business which violates the required conditions of this chapter, including the following general criteria: 1. Refuse collection. Every development, including applications for tenant improvements, shall provide suitable space for solid waste separation, collection, and storage and shall provide sites for such that are located so as to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way. Refuse collection areas are encouraged to be shared, centralized, facilities whenever possible. 2. Lighting. Lighting within any lot that unnecessarily illuminates any other lot and/or substantially interferes with the use or enjoyment of such other lot is prohibited. Lighting unnecessarily illuminates another lot if (i) it clearly exceeds the minimum illumination necessary to provide for security of property and the safety of persons using such roads, driveways, sidewalks, parking lots, and other common areas and facilities, or (ii) if the illumination could reasonably be achieved in a manner that would not substantially interfere with the use or enjoyment of neighboring properties. 3. Air pollution. Any use that emits any "air contaminant" as defined by the Bay Area air quality management district shall comply	C.1 Is not an objective standard. C.2 is not an objective standard. C.3 the project does not propose any use that emits any of the Bay Area Air Quality Management District defined air contaminants. C.4 Is not an objective standard. C.5 Is not an objective standard. C.6 the project does not propose any uses in conflict with 'Chapter 6.16 Noise Control'	Subsections C.1, C.2, C.4, C.5, and C.6 are not applicable. However, the project intends to provide refuse collection, lighting, and maintenance services, and does not propose to create unreasonable odors or noise. Subsection C.3 applies. The project does not propose to emit substantial air contaminants, as listed by the Air District (https://www.arb.ca.gov/toxics/id/taclist.htm) and would comply with all required state standards concerning air pollution that are applicable to a mixed use residential/office project.

with applicable state standards concerning air pollution. 4. Maintenance of common areas, improvements, and facilities. Maintenance of all common areas, improvements, facilities, and public sidewalks adjacent to the subject property shall be required. In the case of public sidewalks, maintenance shall be limited to keeping the sidewalk clean and free of debris, markings, and food and drink stains by means of sweeping, cleaning with water and/or steam cleaning. 5. Odors. No use may generate any odor that may be found reasonably objectionable as determined by an appropriate agency such as the Santa Clara County health department and the Bay Area air quality management district beyond the boundary occupied by the enterprise generating the odor. 6. Noise. No person shall operate, or cause to be operated, any source of sound at any location within the city or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level when measured on any other property either incorporated or unincorporated, to exceed standards as set forth in Chapter 6.16 of the Los Altos Municipal Code. In order to attenuate noise associated with commercial development, walls up to twelve (12) feet in height may be required at a commercial/residential interface. Other		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
conditions may be applied such as, but not limited to, muffling of exterior air conditioning facilities.		
Section 14.54.060 – Front yard (CRS/OAD)		
With the exception of landscaping, all development in the CRS/OAD District must be built to the back of the sidewalk.	Applicable objective criteria. The front and rear yards front onto sidewalks; the side yards do not. The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. *See* Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").	As shown on Sheet B1.01, the base project is built to the back of sidewalk along the front elevation. Along the rear elevation, which fronts a public parking lot (see subsection 14.54.080.A, below), the building is setback with landscaping between the building and sidewalk. The proposed project would have a setback of 0 feet in the front yard and a minimum of 2 feet in the rear yard. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback requirements because the setbacks, if applied, would physically preclude the density bonus project.
Section 14.54.070 – Side yard (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
No side yards shall be required, and none shall be allowed, except where the side property line of a site abuts a public parking plaza, the minimum width of the side yard shall be two feet which shall be landscaped. A required side yard may be used for parking except for the area required to be landscaped.	Applicable objective criteria. There is no proposed side yard and the side property lines do not abut the public parking plaza. The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. *See* Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").	As shown on Sheet B1.01, the base project has a side yard setback of 0 feet, in compliance with the minimum and maximum required setback. The proposed project would have a side yard of 0 to 10' feet. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback requirements because the setbacks, if applied, would physically preclude the density bonus project.
Section 14.54.080 – Rear yard (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
No rear yard shall be required except as follows: A. Where the rear property line of a site abuts a public parking plaza, the minimum depth of the rear yard shall be two feet, which shall be landscaped.	Applicable objective criteria. The rear property line abuts a public parking plaza. The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. *See* Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").	As shown on Sheet B1.01, the base project has a rear yard setback minimum of 2 feet, which is landscaped, in compliance with this requirement. The proposed project would have a rear yard setback of 2 feet which is landscaped with planter boxes. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback landscaping requirements because the setbacks, if applied, would physically preclude the density bonus project.
B. Where the rear property line of a site abuts an existing alley, the minimum depth of the rear yard shall be ten (10) feet, of which the rear two feet shall be landscaped. A required rear yard may be used for parking, except for the area required to be landscaped.	Not applicable to the project. The proposed project site does not abut an existing alley.	Not applicable.
Section 14.54.090 – Off-street parking (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
Parking facilities shall be provided in accordance with Chapter 14.74 of this title. In addition, parking facilities shall: A. Reduce the visual impact of parking structures and parking lots by locating them at the rear or interior portions of building sites	The requirements of Chapter 14.74 are discussed below. Subdivision (a) is an applicable standard.	The project complies by proposing interior parking in a two-level below-grade basement.
B. Minimize the street frontage of the lot or structure by placing its shortest horizontal edge along the street;	Applicable objective standard.	The project complies by proposing interior parking in a below-grade basement.
C. When parking structures must be located at street frontage because other locations are proven infeasible, the ground level frontage shall either be used for commercial space or shall provide a landscaped area not less than five feet in width between the parking area and the public right-of-way;	Does not apply pursuant to SB 35 – non-objective standard.	Not applicable. However, the project complies by proposing interior parking in a two-level below-grade basement.
D. Not be accessed from state or Main Streets unless no other access is feasible, in which case the number of direct entrances to parking facilities from streets shall be kept to a minimum;	The entrance to the parking garage is from the rear of the building and not from State or Main Streets.	Not applicable.
E. Provide a landscaped buffer not less than five feet in width between a parking lot or structure and street frontage or buildings. Where the landscaped strip adjoins a public street or pedestrian walkway, the landscaped strip may be required to include a fence, wall, berm, or equivalent feature;	The project does not propose a parking lot or structure, since parking is provided below-grade.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
F. Provide a minimum of interior landscaping for unenclosed parking facilities as follows: where the total parking provided is located on one site and is fourteen thousand nine hundred ninety-nine (14,999) square feet or less, five percent of total parking area; where the parking is fifteen thousand (15,000) through twenty-nine thousand nine hundred ninety-nine (29,999) square feet, seven and one-half percent of total parking area; and where the facility is thirty thousand (30,000) square feet or greater, ten (10) percent of total parking area;	The project does not propose unenclosed parking.	Not applicable.
G. Trees in reasonable number shall be provided; ground cover alone is not acceptable. Interior landscaping shall be distributed throughout the paved area as evenly as possible. Provision shall be made for automatically irrigating all planted area. All landscaping shall be protected with concrete curbs or other acceptable barriers. All landscaping shall be continuously maintained.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.
14.54.110 – Off-street loading and refuse collection (CRS/OAD).		
A. Where buildings are served by alleys, all service-delivery entrances, loading docks, and refuse collection facilities shall be located to be accessed from the alley. No loading area shall be located at the street frontage or building facade.	The building is not served by an alley and no loading zones are proposed along the Main Street frontage.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	**Applicability**	**Compliance**
B. A minimum of thirty-two (32) square feet of covered refuse collection area shall be provided and shall not be located in any front or street side yard. Where an alley exists, the refuse collection area shall be accessed from the alley. Refuse collection areas shall be on site, but are encouraged to be shared, centralized, facilities whenever possible.	Applicable objective zoning standard.	Sheet B2.02 identifies the 184-square foot "Garbage/Recycle" room on the ground floor. The room opens onto the rear sidewalk, adjacent to the public parking plaza.
C. On sites not served by an alley, service areas shall be located to the rear, side, or at an internal location where visibility from public streets, public parking plazas and neighboring properties will be minimized.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. However, the project complies by locating the service area adjacent to the rear of the building where visibility is minimized.
D. Refuse collection areas shall be enclosed by a screen wall of durable material and planting as necessary to screen views from streets, public parking plazas and neighboring properties.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. However, the refuse collection area is located within the building.
14.54.120 – Height of structures (CRS/OAD).		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
No structure shall exceed thirty (30) feet in height. The first story shall have a minimum interior ceiling height of twelve (12) feet to accommodate retail use, and the floor level of the first story shall be no more than one foot above sidewalk level.	Applicable objective criteria. Under SB35, consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915". *See* Gov. Code § 65913.4(a)(5) Accordingly, the project's conformity with the height requirement is judged based on the "base project" and not on the plans that incorporate density bonus law modifications.	As shown on Sheet B4.01, the base project has a building height of 30 feet and a first-floor height of 12 feet and is therefore compliant with the district standards. Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the height restriction for the partial 5th story because the height limit, if applied, would physically preclude the density bonus project. In addition to granting the density bonus, the City must also grant the Project up to two incentives or concessions pursuant to GC Sec. 65915(d)(1) because more than 10% of the "base density" units will be affordable to very low-income households. The City is required to grant the incentive for the 4th story, insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts. As shown on Sheet A4.01, the proposed project would have a maximum height of 56'-6" and a first floor height of 12 feet.
14.54.130 – Design control (CRS/OAD).		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
A. No structure shall be built or altered including exterior changes in color, materials, and signage in the CRS/OAD District except upon approval of the city planner or as prescribed in Chapter 14.78 of this title	Does not apply pursuant to SB 35 – non-objective standards. See discussion of Chapter 14.78 below.	Not applicable.
B. Reduction of apparent size and bulk: 1. As a general principle, building surfaces should be relieved with a change of wall plane that provides strong shadow and visual interest. 2. Every building over twenty-five (25) feet wide shall have its perceived height and bulk reduced by dividing the building mass into smaller-scale components by: i. A change of plane; ii. A projection or recess; iii. Varying cornice or roof lines; iv. Providing at least one entrance for every twenty-five (25) feet of building frontage; or v. Other similar means. 3. The proportions of building elements, especially those at ground level, should be kept intimate and close to human size by using recesses, courtyards, entries, or outdoor spaces along the perimeter of the building to define the underlying twenty-five (25) foot lot frontage.	In general, these provisions are not objective standards and therefore do not apply pursuant to SB 35. To the extent subsection B.2.i - iv are "objective," the project complies.	B.2.i - iv: The proposed project incorporates the design features as stated in this section. It includes changes of plane, projections and recesses, varied cornice and roof lines, and the base project's frontage along Main Street contains three entrances at less than 25-foot intervals, as shown in Sheet B2.02. Item B.2.v is not an objective standard, so it does not apply. The remaining provisions of section B. are not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
C. The primary access to the ground floor for all buildings shall be directly to the street or parking plazas, with the exception of arcade or interior courtyard spaces.	Applicable objective criteria.	The project complies because the ground floor entrances from Main Street consist of two entrances to the ground floor offices and an entrance to the residential lobby to access the units above.
D. Consideration should be given to the relationship of the project and its location in the downtown to the implementation of goals and objectives of the downtown urban design plan. Evaluation of design approval shall consider one or more of the following factors: 1. The project location as an entry, edge, or core site; 2. The ability to contribute to the creation of open space on-site or in designated areas; 3. Enhancement of the pedestrian environment through the use of pathways, plantings, trees, paving, benches, outdoor dining areas or other amenities; 4. Building facade improvements including, paint, signage, service areas, windows and other features; 5. On- or off-site improvements; and/or 6. Public or private landscape improvements.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
E. Opaque, reflective, or dark tinted glass should not be used on the ground floor elevation. Sixty (60) percent of the ground floor elevation should be transparent window surface.	Applicable objective standards.	As shown on Sheet B3.01, the base project complies by providing 61% transparency on the ground-floor elevation and does not propose dark tinted glass at the ground floor level. As shown on Sheet A3.01, the proposed project also complies with this standard.
F. Courtyards should be partially visible from the street or linked to the street by a clear circulation element such as an open passage or covered arcade.	This is not an Objective standard.	Not applicable.
G. Rooftop mechanical, venting, and/or exhausting equipment must be within the height limit and screened architecturally from public view, including views from adjacent buildings located at the same level.	The height limit provision represents an applicable objective standard.	Rooftop mechanical, venting, and/or exhausting equipment is screened from public view. The height limit is subject to the density bonus waiver and incentive already requested for height.
14.66.240 - Height limitations—Exceptions		
E. Cupolas, chimneys, tanks, or electrical or mechanical equipment required to operate and maintain the building, solar thermal and photovoltaic panels, parapet walls and skylights may project not more than twelve (12) feet above the roof and the permitted building height, provided the combined area of all roof structures, excluding solar thermal and photovoltaic panels, does not exceed four percent of the gross area of the building roof.	Applicable objective standards.	As shown on Sheet B3.01, the base project complies since the parapet height extends just 9 feet about the permitted building height and the mechanical equipment represents 98 square feet (2%) of 6,156 square feet, and therefore does not exceed 4% of the gross area of the building roof. The proposed project has a ratio of 4.4% and therefore requests a waiver from this requirement. As noted above, for the proposed project, the height limit is subject to the density bonus waiver and the incentive for building height that are already requested.

Table 2: Chapter 14.74 – Off-Street Parking And Loading		
14.74.080: Residential uses in CN, DC, CD/R3, CRS/OAD, CRS and CT Districts		
For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required as follows for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking district: A. There shall be two off-street parking spaces for each dwelling unit in a multiple-family dwelling or apartment house having two rooms or more in addition to the kitchens and bathrooms. B. There shall be one and one-half off-street parking spaces for each dwelling unit in a multiple-family dwelling or apartment house having less than two rooms in addition to the kitchens and bathrooms. C. One on-site visitor space shall be required for every four multiple-family residential dwelling units or fraction thereof. Mixed use projects may substitute nonresidential parking spaces for visitor use in-lieu of providing dedicated visitor parking spaces, subject to approval of the commission and council.	These standards do not apply pursuant to SB 35. Local governments "shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." Gov. Code § 65913.4(d)(2).	Consistent with SB35 parking requirements, the base project provides 8 spaces for 8 units. The proposed project provides 18 spaces for 15 units, thereby meeting the SB35 standard.
14.74.100 - Office uses in CRS/OAD, OA, CN, CD, CD/R3, CRS and CT Districts.		

For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.	Applicable objective standard.	The project site participates in the public parking district and therefore qualifies for parking exemptions for the 5,724-square foot office area and 1,271-square foot residential floor area, given the lot area of 6,995 square feet. Therefore no parking is required or provided for the office component, and no parking is required for one of the base project units, since several units are less than 1,271 square feet. Still, as noted above, consistent with SB35 parking requirements, the base project provides 8 spaces for 8 units. The proposed project provides 18 spaces for 15 units.
14.74.200 - Development standards for off-street parking and truck loading spaces		
A. Off-street parking facilities shall conform to the following standards: 1. Perpendicular parking space size. Each standard parking space shall consist of an area not less than nine feet wide by eighteen (18) feet long, except as noted on the drawing labeled "Parking Standards Exhibit A" on file in the office of the planning department.	Applicable objective standard.	As shown on Sheets A2.01 and A2.02, parking stalls measure a minimum of 9 x 18 feet.
2. Handicapped persons perpendicular parking space size. Parking stalls for the use of the physically handicapped shall comply with the requirements set forth in Part 2 of Title 24 of the California Administrative Code and Chapter 9 of Division 11 of the Vehicle Code of the state.	Applicable objective standard.	Project will comply with Title 24 ADA requirements for parking.

3. Truck loading space size. Truck loading spaces shall not be less than ten (10) feet wide by twenty-five (25) feet long.	No truck loading is required or provided.	Not applicable.
4. Clearance. Standard and compact parking spaces shall have a vertical clearance of at least seven feet over the entire area. In addition, the spaces shall be clear horizontally (for example, pillars in a basement or parking structure shall not be located in required parking spaces). Truck loading spaces shall have a vertical clearance of at least fourteen (14) feet.	Applicable objective standard.	As shown on Sheet A4.01, the parking areas have a vertical clearance of 11'-6", therefore complying with this standard. No loading spaces are required.
B. Each parking and loading space shall be accessible from a public street or alley.	Applicable objective standard.	Parking is accessible from the public parking lot and public access aisle at the rear of the building.
C. The parking and loading area shall be paved with an all-weather asphaltic concrete or Portland cement concrete pavement and marked in accordance with the city engineering standards (not applicable for single-family dwellings).	Applicable objective standard.	The parking garage will be paved with concrete per City Engineering standards.
D. Concrete bumper guards or wheel stops shall be provided for all parking spaces, except as provided in this section. The concrete curb around a perimeter landscaped area shall not be used as a bumper stop unless approved by the commission and the council. In such cases, the commission and the council may allow a parking space length to be reduced by two feet.	Applicable objective standard.	Wheel stops are provided for all parking spaces.
E. Lighting shall be deflected downward and away from any residential property.	Applicable objective standard.	All exterior lighting shall be deflected downward. No residential properties are adjacent to the site.
F. No advertising or sign, other than identification or direction signs, shall be permitted in the parking or loading area.	Applicable objective standard.	No advertising or signs, other than identification or direction signs, are proposed in the parking garage.

G. No repair or servicing of vehicles shall be permitted in the parking or loading area.	Applicable objective standard.	No vehicle repair or servicing is proposed.
H. No area which lies within the precise plan line for a public street or alley adopted by the council shall be computed as satisfying the parking and loading space requirements of this chapter.	Applicable objective standard.	The proposed project does not propose parking or loading within a public street or alley.
I. A parking area abutting on property in an R District or across a street or an alley from property in an R District shall be screened, subject to the approval of the planning department, by a solid fence or wall or a compact evergreen hedge or other screening not less than six feet high, subject to the provisions of Chapter 14.72 of this title regulating fences (not applicable for single-family dwellings).	The project site is not located in or adjacent to an R district site.	Not applicable.
J. The minimum width of a one-way drive shall be twelve (12) feet.	The project proposes a two-way drive aisle.	Not applicable.
K. The minimum width of a two-way drive shall be eighteen (18) feet.	Applicable objective standard.	As shown on Sheets A2.01 and A2.02, the two-way drive aisle measures 26 feet.
L. Space for turning around on the site shall be provided for parking areas of three or more spaces so that no cars need back into the street (not applicable for single-family dwellings).	Applicable objective standard.	No parking is proposed to back out onto a street.
M. Parallel and acute angle parking shall be designed for one-way traffic only, unless otherwise specified by the commission.	Applicable objective standard.	No angled or parallel parking is proposed for the project.

N. The minimum standards for the design of off-street parking areas shall be in accordance with those shown on the drawing labeled "Parking Standards Exhibit A" on file in the office of the planning department.	Applicable objective standard.	As shown on Sheets A2.01 and A2.02, the parking garage layout shows 9 x 18-foot parking spaces and a minimum back-up distance of 26 feet.
O. If found to be necessary or desirable by the city, the design standards set forth in this section may be waived for public and community facility uses or commercially operated public parking facilities in order to permit attended or supervised parking.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.
P. District requirements resulting in one-half or greater parking space shall be deemed to require a full space.	These standards do not apply pursuant to SB 35. Gov. Code § 65913.4(d)(2).	Not applicable.
Q. For the purposes of this section, "net square footage" shall mean the total horizontal area in square feet on each floor, including basements, but not including the area of inner courts or shaft enclosures.	This provision is a definition, not a substantive requirement.	Noted.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing

Provision	Applicability	Compliance
14.28.030 - General requirements		
The following provisions shall apply to all multiple-family residential projects: A. One (1) to four (4) units. Affordable housing units are not required. B. Five (5) to nine (9) units. Affordable housing units are required. In the event that the developer can demonstrate to the satisfaction of the city council that providing affordable housing units in a project will be	The base project proposes 8 multiple-family residential units and therefore is subject to this subsection.	The base rental project provides 25% of units (2 units) for low income households (up to 80% AMI), thereby exceeding the requirement.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
financially infeasible, the city council may waive the requirement to provide affordable housing units. C. Ten (10) units or more. Affordable housing units are required. D. For multiple-family residential projects where affordable housing units are required, the following minimum percentage of units shall be provided. 1. Rental units. Fifteen (15) percent low income or ten (10) percent very-low income housing. 2. Owner units. Ten (10) percent moderate income housing. E. Notwithstanding Section 14.28.030 (D) in projects containing more than ten (10) units and when more than one (1) affordable unit is required at least one (1) affordable unit must be provided at the low income level.		
F. Unless otherwise approved by the city council, all affordable units in a project shall be constructed concurrently with market rate units, shall be dispersed throughout the project, and shall not be significantly distinguishable by design, construction or materials.	Applicable objective standard.	The BMR units will be constructed concurrently with the market rate units and will not be significantly distinguishable by design, construction or materials. One unit is proposed on the second floor and one unit is proposed on the third floor so the units are "dispersed throughout the project."
G. Any tentative map, use permit, PUD, design application or special development permit approved for multiple-family residential construction projects meeting the foregoing criteria shall contain sufficient conditions of approval to ensure compliance with the provisions of this chapter.	No tentative map is proposed. Additionally, no discretionary use permits are required pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a).	Not applicable.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
14.28.040 - Density bonuses.		
C. Development eligibility, bonus densities, and incentive counts. 1. Eligible developments, bonus densities, and incentive counts. The developments identified in this subsection are eligible for density bonuses and/or incentives as well as parking requirement alterations and waivers. For each development, this section provides levels of density bonus available and the number of incentives available. For applicable standards, see subsections (E) (Density Bonus Standards), (F) (Incentive Standards), (G) (Parking Requirement Alteration Standards), and (H) (Waivers Standards) a. Housing development with low income restricted affordable units, for sale or for rent. A housing development project that includes at least ten (10) percent of the total units of the project for low income households, either in for sale or for rent, shall be granted the following: i. Density bonus. A project that includes ten (10) percent low income housing shall be granted a density bonus of twenty (20) percent. For each one percent increase above the required ten (10) percent low income units, the density bonus shall be increased by one and one-half percent, up to a maximum density bonus of thirty-five (35) percent. See Table DB 1.	Applicable objective standard.	The 8-unit base project includes 2 low income units, which equates to 25% of the base project. Therefore the project qualifies for a 35% bonus.

<table>
<tr><th colspan="3">Table 3: Chapter 14.28 - Multiple-Family Affordable Housing</th></tr>
<tr><td>Table DB 1
<table><tr><th>Percentage Low Income Units</th><th>Percentage Density Bonus</th></tr><tr><td>20 or more</td><td>35.0</td></tr></table></td><td></td><td></td></tr>
<tr><td>ii. Incentives. A project that includes at least ten (10) percent low income units shall be granted one incentive. A project that includes at least twenty (20) percent low income units shall be granted two incentives. A project that includes at least thirty (30) percent low income units shall be granted three incentives. See Table DB 2.
Table DB 2
<table><tr><th>Percentage Low Income Units</th><th>Number of Incentives</th></tr><tr><td>10 or more</td><td>1</td></tr><tr><td>20 or more</td><td>2</td></tr><tr><td>30 or more</td><td>3</td></tr></table></td><td>Applicable objective standard.</td><td>The base project includes 25% low income units. Therefore the project qualifies for two incentives.</td></tr>
<tr><td>D. Application processing and review.
1. Application. An application for a density bonus, incentives, parking requirements alterations, and/or waiver or any other provision in this section shall:
a. Be submitted in conjunction with an applicable development permit application;</td><td>Applicable objective standard.</td><td>See Attachment D for compliance with these standards.</td></tr>
</table>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
b. Be made on a form provided by the community development department; c. Be accompanied by applicable fees; d. Include reasonable documentation, using forms prepared by the city, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing; e. Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the densities authorized under this section or with the concessions and/or incentives requested; and f. Include any other documentation or materials required by this section or by the city for the purpose of density bonus, incentives, parking requirements alterations, and/or waivers or any other provision in this section. 2. Review authority. Applications shall be reviewed by the review authority charged to review the applicable development permit application.		

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
E. Density bonus standards. Developments eligible for density bonuses as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive the density bonuses as provided below: 1. No waiver required. The granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards. 2. Density calculation. The area of any land required to be dedicated for street or alley purposes may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone in which the project is located. 3. Fractional units. All density bonus calculations shall be rounded up to the next whole number including the base density, restricted affordable units, and the number of affordable units required to be eligible for a density bonus. 4. Minimum number of dwelling units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded. 5. Other discretionary approval. Approval of density bonus units shall not, in and of itself,	Applicable objective standard.	See Attachment D for compliance with these standards.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
trigger other discretionary approvals required by this Code. 6. Other affordable housing subsidies. Approval of density bonus units does not, in and of itself, preclude projects from receipt of other government subsidies for affordable housing. 7. Optional density bonuses. Nothing in this section shall be construed to prohibit the city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section. 8. Lesser percentage of density bonus. If elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density, is permissible.		

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
F. Incentive standards. A development eligible for incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives). 1. On-menu incentives. The city council has determined that the on-menu incentives listed below would not have a specific, adverse impact. a. Lot coverage. Up to twenty (20) percent increase in lot coverage limits. b. Lot width. Up to twenty (20) percent decrease from a lot width requirement. c. Floor area ratio. In zone districts with a floor area ratio maximum, an increase in the maximum floor area equal to the floor area of the affordable housing units for the housing development project, up to a thirty-five (35) percent increase in the floor area maximum. d. Height. Up to an eleven (11) foot increase in the allowable height. e. Yard/setback. Up to twenty (20) percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.	Under SB35, consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915". *See* Gov. Code § 65913.4(a)(5). Accordingly, the project's conformity with the height requirement is judged based on the base project and not on the plans that incorporate density bonus modifications.	The proposed project includes one on-menu incentive for an 11-foot increase in building height. The City is required to grant the incentive for the 4th story, insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts. As shown on Sheet A4.01, the proposed project would have a maximum height of 56'-6" and a first floor height of 12 feet.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
f. Open space. Up to twenty (20) percent decrease from an open space requirement, provided that (i) the landscaping for the housing development project is sufficient to qualify for the number of landscape points equivalent to ten (10) percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines "O," and (ii) any such reduction is first applied to open space on any project floor or floors above grade.		
2. Off-menu incentives. An applicant may request an incentive not included in subsection (F)(1) (On-Menu Incentives), so long as such incentive meets the definition under state law. The review authority will determine whether any such requested off-menu incentive may have a specific, adverse impact.	The proposed project does not request any off-menu incentives.	Not applicable.
G. Parking requirement alteration standards. 1. General parking requirement. Developments eligible for density bonuses and/or incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) must comply with the applicable parking provisions of Chapter 14.74 (Off-Street Parking and Loading), unless the development qualifies for a parking requirement alteration as provided in subsections (G)(2) (On-Menu	See discussion of Chapter 14.74, above.	See discussion of Chapter 14.74, above.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
Parking Requirement Alterations) or (G)(3) (Off-Menu Parking Requirement Alterations).		
H. Waiver standards. 1. Waivers or reduction. An applicant may apply for a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development identified in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city to discuss the proposed waiver or reduction. 2. No Change in other incentives. A proposal for the waiver or reduction of development standards described in subsection A shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to this section. 3. Denial of requested waiver. The reviewing authority may deny a request for a waiver under this section if it finds the waiver would: a. Waive or reduce a development standard that would not have the effect of physically precluding the construction of a development meeting the criteria of this section at the densities or with the	Under SB35, consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915". *See* Gov. Code § 65913.4(a)(5). Accordingly, the project's conformity with the height requirement is judged based on the base project and not on the plans that incorporate density bonus modifications.	Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the height restriction for the partial 5th story because the height limit, if applied, would physically preclude the density bonus project.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
incentives permitted under this section; or b. Have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or c. Have an adverse impact on any real property that is listed in the California Register of Historical Resources; or d. Be contrary to state or federal law.		
I. Covenants. 1. Covenant required. Prior to issuance of a building permit for a development identified in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) that qualified for a density bonus, incentive, and/or parking alteration, the developer must record a restrictive covenant against the development as provided in subsection (I)(2) (Covenants for Specific Developments). 2. Covenants for specific developments. a. For rental developments for low or very low income households. For a development that contains rental housing for low or very low income households, a covenant acceptable to the city shall be	Applicable objective standard.	The Project will comply with the requirement to record a covenant as required, prior to issuance of a building permit.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
recorded with the Santa Clara County Recorder, guaranteeing that the affordability criteria will be observed for at least fifty-five (55) years from the issuance of the certificate of occupancy or a longer period of time if required by the construction or mortgage financing assistance program, mortgage assistance program, or rental subsidy program. ... 3. Private right of action. Any covenant described in this section must provide for a private right of enforcement by the city, any tenant, or owner of any building to which a covenant and agreement applies. 4. Conflict of durations. If the duration of affordability covenants provided for in this section conflicts with the duration for any other government requirement, the longest duration shall control. J. State regulations. All other provisions of California Government Code Sections 65915 to 65918, and any amendments thereto, not specified herein are incorporated by reference into this section.		

Table 4: Chapter 14.78 - Design and Transportation Review – Multiple-Family, Public and Community Facilities, Office and Administrative, and Commercial Districts

Provision	Applicability	Compliance
14.78.020 - Requirement for administrative design review.		
A. No building permit shall be issued for any new main or accessory structure, or addition or alteration thereto within an R3, PCF, PUD, PC, OA or C district, until such construction has received administrative design review approval by the community development director or their designee. Window replacements, reroofing and rooftop venting and exhausting equipment, and mechanical equipment are exempt from this requirement. B. Whenever, as determined by the community development director or their designee, the construction, expansion or modification of a main or accessory structure may be in conflict with the design review findings contained in this chapter, the project shall be referred to the planning and transportation commission for action on the design review approval.	Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). Any required "design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction." Gov. Code § 65913(c). Aside from the zoning development standards and objective Downtown Design Guidelines described in this attachment, the city has not adopted any other objective design standards by ordinance or resolution.	Pursuant to SB 35, the proposed project is only subject to "objective" design review standards. The only applicable Downtown Design Guideline standards that qualify as "objective" are listed below. No other objective standards are contained in the guidelines. The project has been designed to conform to both standards. No conflicts with any objective standards are proposed, and any review approval "shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects" and these two objective design standards. Gov. Code § 65913(c).

Table 5: Downtown Design Guidelines

Provision	Applicability	Compliance
Downtown Commercial Core *Most of these adopted design guidelines do not qualify as "objective" under SB 35. Below are the guidelines that could be interpreted as objective standards.*		
3.2.3d: Utilize awnings and canopies at windows and entries ... • Keep the mounting height at a human scale with the valence height not more than 8 feet	Applicable objective standard.	The base project provides awnings across most windows and entries. As shown on Sheets B4.01 and B5.01, the ground floor awning height is at 8 feet above grade.
3.2.4c: Utilize operable windows in traditional styles. Recess windows at least 3 inches from the face of the wall.	Applicable objective standard.	As shown on Sheet B5.01, windows are recessed at least 3 inches from the face of wall.

RhoadesPlanningGroup

Applicant Statement, Attachment B
SB 35 Environmental Mapping – 40 Main Street

Establishing that the project at 40 Main Street is outside certain regulatory zones as required for SB 35 threshold compliance.

- Coastal zone
- Prime farmland or farmland of statewide importance
- Wetlands
- High or very high fire hazard severity zones
- Hazardous waste sites
- Earthquake fault zone (unless the development complies with applicable seismic protection building code standards)
- Floodplain or floodway designated by FEMA
- Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan
- Habitat for a state or federally protected species
- Land under a conservation easement

California Coastal Zone: https://www.coastal.ca.gov/maps/czb/

Map does not extend far enough east to show project site. Coastal zone does not extend past San Francisco.

Prime farmland or farmland of statewide importance:
ftp://ftp.consrv.ca.gov/pub/dlrp/FMMP/pdf/2016/scl16.pdf

PRIME FARMLAND

PRIME FARMLAND HAS THE BEST COMBINATION OF PHYSICAL AND CHEMICAL FEATURES ABLE TO SUSTAIN LONG-TERM AGRICULTURAL PRODUCTION. THIS LAND HAS THE SOIL QUALITY, GROWING SEASON, AND MOISTURE SUPPLY NEEDED TO PRODUCE SUSTAINED HIGH YIELDS. LAND MUST HAVE BEEN USED FOR IRRIGATED AGRICULTURAL PRODUCTION AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.

FARMLAND OF STATEWIDE IMPORTANCE

FARMLAND OF STATEWIDE IMPORTANCE IS SIMILAR TO PRIME FARMLAND BUT WITH MINOR SHORTCOMINGS, SUCH AS GREATER SLOPES OR LESS ABILITY TO STORE SOIL MOISTURE. LAND MUST HAVE BEEN USED FOR IRRIGATED AGRICULTURAL PRODUCTION AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.

UNIQUE FARMLAND

UNIQUE FARMLAND CONSISTS OF LESSER QUALITY SOILS USED FOR THE PRODUCTION OF THE STATE'S LEADING AGRICULTURAL CROPS. THIS LAND IS USUALLY IRRIGATED, BUT MAY INCLUDE NONIRRIGATED ORCHARDS OR VINEYARDS AS FOUND IN SOME CLIMATIC ZONES IN CALIFORNIA. LAND MUST HAVE BEEN CROPPED AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.

FARMLAND OF LOCAL IMPORTANCE

SMALL ORCHARDS AND VINEYARDS PRIMARILY IN THE FOOTHILL AREAS. ALSO LAND CULTIVATED AS DRY CROPLAND FOR GRAINS AND HAY.

GRAZING LAND

GRAZING LAND IS LAND ON WHICH THE EXISTING VEGETATION IS SUITED TO THE GRAZING OF LIVESTOCK.

URBAN AND BUILT-UP LAND

URBAN AND BUILT-UP LAND IS OCCUPIED BY STRUCTURES WITH A BUILDING DENSITY OF AT LEAST 1 UNIT TO 1.5 ACRES, OR APPROXIMATELY 6 STRUCTURES TO A 10-ACRE PARCEL. COMMON EXAMPLES INCLUDE RESIDENTIAL, INDUSTRIAL, COMMERCIAL, INSTITUTIONAL FACILITIES, CEMETERIES, AIRPORTS, GOLF COURSES, SANITARY LANDFILLS, SEWAGE TREATMENT, AND WATER CONTROL STRUCTURES.

OTHER LAND

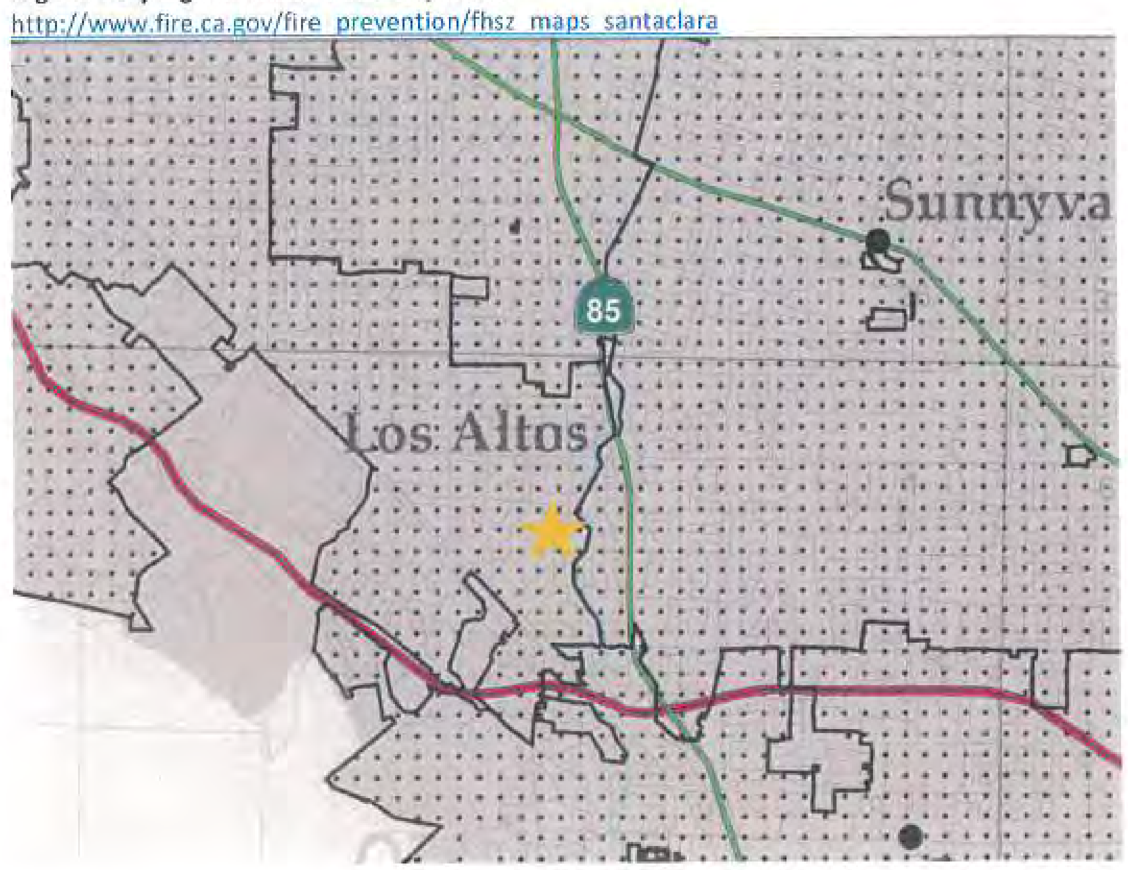
OTHER LAND IS LAND NOT INCLUDED IN ANY OTHER MAPPING CATEGORY. COMMON EXAMPLES INCLUDE LOW DENSITY RURAL DEVELOPMENTS, BRUSH, TIMBER, WETLAND, AND RIPARIAN AREAS NOT SUITABLE FOR LIVESTOCK GRAZING. CONFINED LIVESTOCK, POULTRY, OR AQUACULTURE FACILITIES, STRIP MINES, BORROW PITS, AND WATER BODIES SMALLER THAN 40 ACRES. VACANT AND NONAGRICULTURAL LAND SURROUNDED ON ALL SIDES BY URBAN DEVELOPMENT AND GREATER THAN 40 ACRES IS MAPPED AS OTHER LAND.

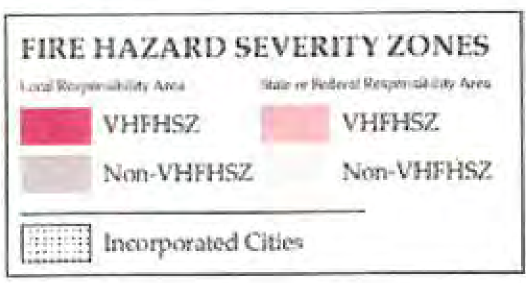
WATER

PERENNIAL WATER BODIES WITH AN EXTENT OF AT LEAST 40 ACRES.

Wetlands - https://map.dfg.ca.gov/bios/?al=ds2630

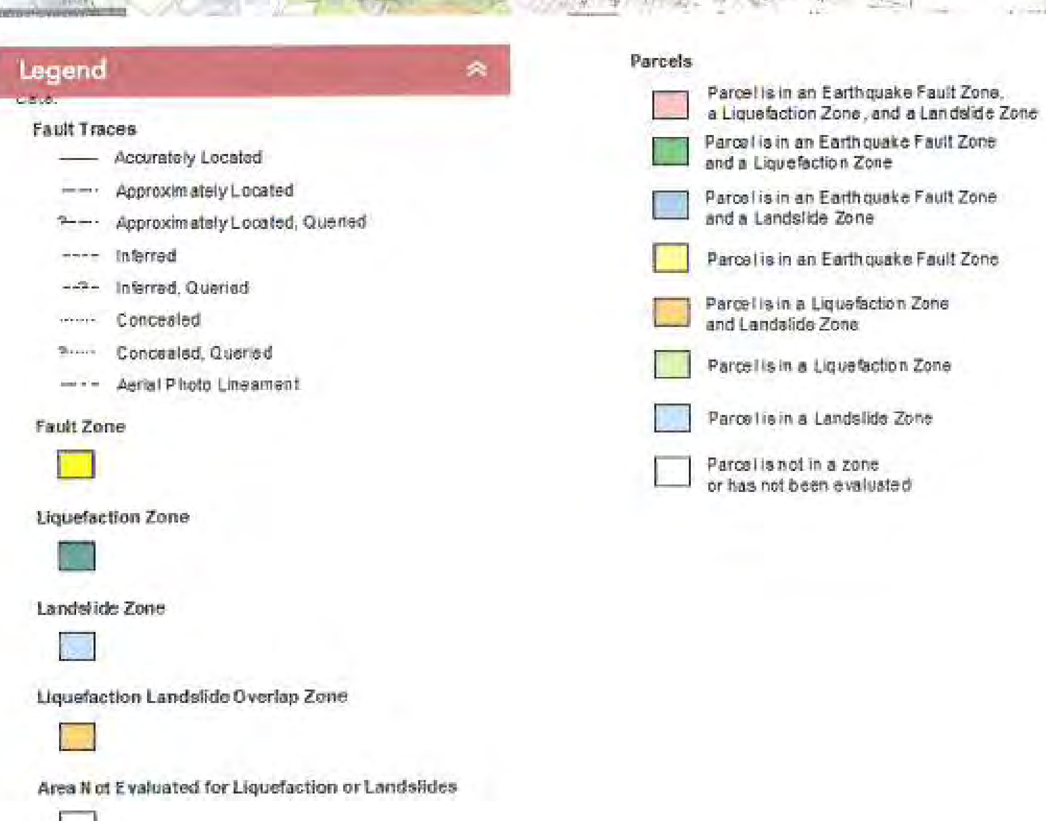
High or very high fire hazard severity zones:
http://www.fire.ca.gov/fire_prevention/fhsz_maps_santaclara





Hazardous waste sites - https://www.envirostor.dtsc.ca.gov/public/map/?assembly=15

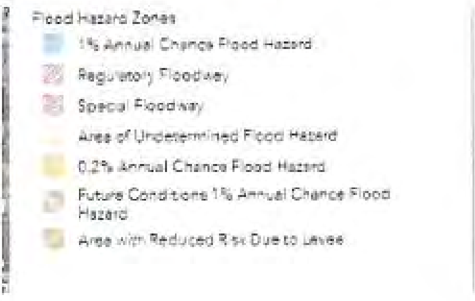
Earthquake fault zone (unless the development complies with applicable seismic protection building code standards) - https://maps.conservation.ca.gov/cgs/EQZApp/app/



Floodplain or floodway designated by FEMA

https://p4.msc.fema.gov/arcgis/rest/directories/arcgisjobs/nfhl_print/nfhlprinttool2_gpserver/j3e95bb95d8e84c8ba35aa1458af56f3d/scratch/FIRMETTE_6139409e-dc95-11e8-a026-001b21b31e35.pdf

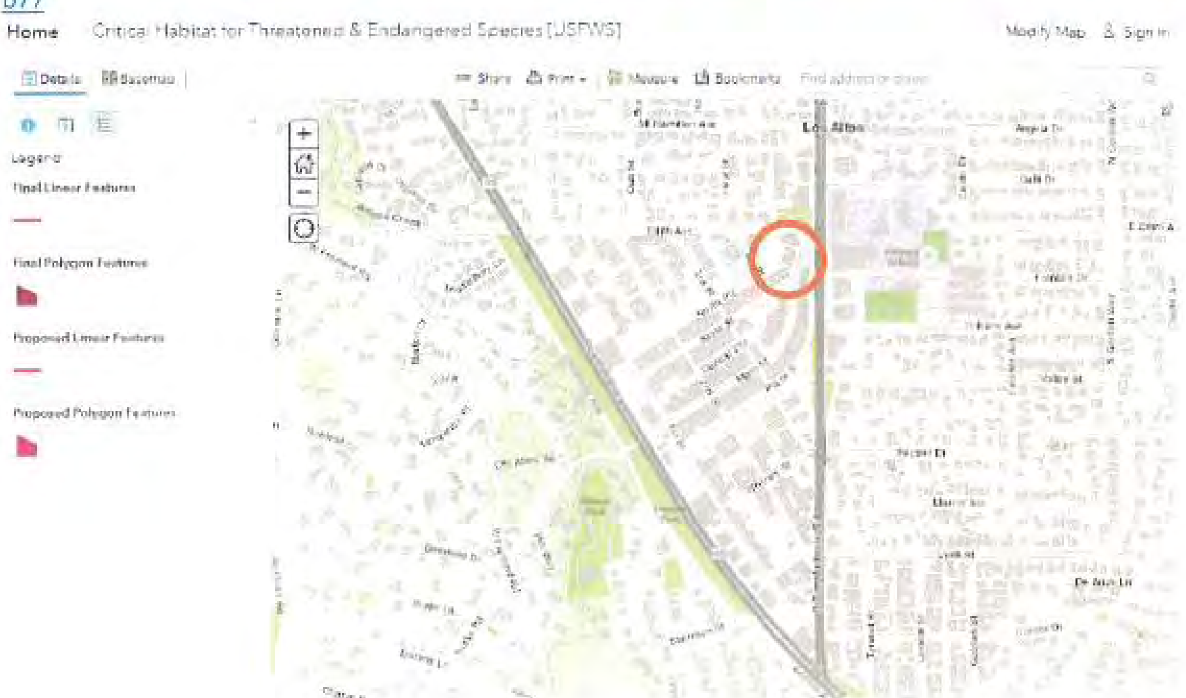
Site is located within Zone X: a 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average flood depth less than one foot or with drainage areas of less than one square mile.



Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan - http://www.calands.org/map

Habitat for a state or federally protected species

Federal:
https://fws.maps.arcgis.com/home/webmap/viewer.html?webmap=9d8de5e265ad4fe09893cf75b8dbfb77



Applicant Statement, Attachment C
SB 35 Prevailing Wage Commitment Letter – 40 Main Street

November 8, 2018

Jon Biggs
Community Development Director
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

Re: Commitment to and Certification of SB 35 Prevailing Wage and Skilled & Trained Workforce Requirements

Dear Mr. Biggs:

By way of this letter, 40 Main Street Offices, LLC (the "Applicant"), the applicant for the 40 Main Street Project ("Project"), certifies that per the requirements of Senate Bill 35, all construction workers will be paid the applicable prevailing wages.

The Applicant hereby certifies that all requirements in California Government Code § 65913.4(a)(8)(A)(ii) will be met. Specifically, all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. The Applicant will ensure that the prevailing wage requirement is included in all contracts for the performance of the work and will ensure that all other requirements contained in Gov. Code § 65913.4(a)(8)(A)(ii) will be satisfied, as applicable.

Sincerely,

Theresa G. Foreman
for [illegible] Management Group, Inc.
its Managing Member

Applicant Statement, Attachment D
Density Bonus Report – 40 Main Street

1. **Requested Density Bonus**
   I. *Minimum Number of Dwelling Units*: the project proposes to build 15 rental units which includes two below market rate units. This exceeds the minimum threshold for the City's ordinance, which is five dwelling units.
   II. *Summary Table of Permitted and Proposed Units*:

Dwelling Unit Summary	
Base project dwelling units permitted by zoning and general plan	N/A – no density standard in Los Altos Zoning Code for CRS/OAD. Based on the development standards for the site, the project is entitled to two floors of residential above the ground floor (see Applicant Statement and Attachment A: Compliance with Objective Zoning Standards), based on the 30-foot height limit. The base project includes 8 units.
Proposed number of affordable units by income level	The project proposes two units affordable to low-income households, defined as earning less than 80% of Area Median Income (AMI).
Proposed bonus percentage	Project proposes eight base units of which two (25% of project) are affordable. The project is therefore entitled to a 35% density bonus.
Number of density bonus units proposed	The project proposes 7 density bonus units.
Total number of dwelling units proposed	A total of 15 units are proposed.
Proposed Density per Acre	Total project is 93 dwelling units per acre. (Site is 6,994 square feet with 15 units.)

   III. *Tentative map and/or preliminary site plan. Must show the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.*

See second floor and third floor plans in attached plan set for the location of the proposed affordable units.

   IV. *Zoning and general plan designations and assessor parcel number.*

Characteristic	**Designation**
Zoning District	CRS/OAD
General Plan Land Use	Downtown Commercial
Assessor's Parcel Number (APN)	167-38-032

V. *Calculation of the maximum number of dwelling units permitted by the City's zoning ordinance and general plan for the housing development, excluding any density bonus units.*

The Los Altos Zoning Ordinance and general plan do not specify a maximum number of dwelling units.

VI. *Number of bedrooms in the proposed market-rate units and the proposed affordable units.*

Floor	Market Rate Units	Below Market Rate Unit
First	N/A	N/A
Second	4 units: • 1 one bedroom • 2 two bedroom • 1 three bedroom	1 two bedroom unit
Third	4 units • 1 one bedroom • 2 two bedroom • 1 three bedroom	1 one bedroom unit
Fourth	4 units • 1 one bedroom • 2 two bedroom • 1 three bedroom	
Fifth	3 units: 3 two bedroom	

VII. *Description of all dwelling units that have existed on the site in the previous five-year period.*

N/A. For at least the past five years, the project has been a commercial property with no housing units.

VIII. *Description of any recorded document applicable to the site that restricted rents.*

N/A. For at least the past five years, the project has been a commercial property with no housing units.

IX. *Land donation density bonus question.*

N/A, no land donation is included as part of this application.

2. *Requested Incentive(s) and Concessions*

The project is entitled to two concessions under LAMC Sec. 14.28.040.C.1.a.ii and GC Sec. 65915. The project proposes to use one 11' height increase, which is an "on-menu" incentive.

3. *Requested waivers*

Development Standard	Proposed Development Standard for Waiver	Rationale for how waiver is required to avoid physically precluding construction
30' Height Limit	Additional 2/3 of a floor	The project proposes a fourth floor of housing as an incentive. A waiver of the 2/3rd of a fifth floor is required to construct the density bonus units. The units cannot be constructed within the first three floors because they are already at the maximum potential floor area/density.
Side Yard	0 to 10' setback	The increased setback is required to construct the density bonus units as proposed in the attached plans.
Parking Regulations	Parking standards per SB35	The parking waiver is required to construct the density bonus units as proposed in the attached plans.
Rooftop Mechanical	4.4% of rooftop area to be occupied by mechanical equipment	A waiver is required to construct the density bonus units as proposed in the attached plans.

4. *Requested parking reduction*

Per SB 35, the project is not subject to local parking requirements that exceed one space per unit.

5. *Childcare facility.*

N/A

6. *Condominium Conversion*

N/A

7. *Other*

N/A

8. *Fee*

The fees for the project will be provided as determined by the City of Los Altos' adopted legal requirements.

Government Code Section 65915, Affordable Housing Compliance and Density Bonus Entitlement

Government Code Section 65915 requires the City grant density bonuses to qualifying affordable housing projects as they are otherwise defined in the statute. GC Sec. 65915(n) allows that a city may grant a greater density bonus than allowed by state law but only if the local agency has a specific ordinance allowing the additional bonus. GC Sec. 65915(n) states:

> If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section. (GC Sec. 65915(n))

The City of Los Altos has a local implementing density bonus ordinance that does include language allowing for a greater density bonus than is otherwise required by State law. The LADBO allowance for additional density bonus is found in Los Altos Municipal Code (LAMC) section 14.28.040.E.7:

> Optional density bonuses. Nothing in this section shall be construed to prohibit the city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section. (LAMC Sec. 14.28.040.E.7)

Density Standard and Bonus

The project is a rental housing project that will provide 25% of its base project units at 80% AMI and is therefore entitled to a 35% density bonus and two concessions/incentives. In the case of the proposed project, at least 20% of base project units must be provided at not greater than low incomes (up to 80% AMI) to allow for a full 35% density bonus, even though the SB 35 application would only require 10% of all units to be affordable at less than 80% AMI. It also provides that the project is allowed up to two concessions/incentives.

Waivers and Modifications

The City must waive any development standards that would have the effect of "physically precluding" the density bonus project, including the concessions discussed below. The height limit standard, if applied, would physically preclude the project and thus must be waived. Further, if there are other development standards that would physically preclude the project with the density bonus units and incentives/concessions, those must also be waived.

Concessions and Incentives

In addition to granting the density bonus, the City must also grant the project up to two incentives or concessions pursuant to GC Sec. 65915(d)(1) because 20% of the "base density" units will be affordable to low-income households. The City is required to grant the concessions/incentives insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts. Although the Project qualifies for two incentives or concessions, the project only requires one as described below.

Los Altos' specific allowance for density increases beyond 35% are found in LAMC Sec. 14.28.040.C.1.a.ii, as follows:

> ii. Incentives. A project that includes at least ten (10) percent low income units shall be granted one incentive. A project that includes at least twenty (20) percent low income units shall be granted two incentives. A project that includes at least thirty (30) percent low income units shall be granted three incentives.

The menu of incentives found in LAMC Sec. 14.28.040.F states:

> F. Incentive standards. A development eligible for incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives).
>
> ...
>
> d. Height. Up to an eleven (11) foot increase in the allowable height.

Given that the project is entitled to two concessions under LAMC Sec. 14.28.040.C.1.a.ii and GC Sec. 65915, it follows that it may avail itself to two 11' height increases. However, the proposed project is only requesting one concession/incentive to allow for an 11-foot increase in building height for the fourth story, in addition to the waiver request for the partial fifth story.

The City would "bear the burden of proof for the denial of a requested concession or incentive," Gov. Code § 65915(d)(4). Effective in 2017, the Legislature amended the Density Bonus Law specifically to eliminate the authority of cities to reject a requested concession or incentive on the grounds that "[t]he concession or incentive is not required in order to provide for affordable housing costs," Stats.2016, ch. 758 (A.B.2501), § 1. The currently operative text of the law only authorizes the City to reject the requested concession if the City demonstrates that "[t]he concession or incentive does not result in identifiable and actual cost reductions," whereas the prior language required that concessions are also "financially sufficient." Id. Here, the concession yields direct savings to the proposed project and the development standard does not impact public health and safety, nor is it required by State or federal

law. The proposed project costs are increased as a podium development that contains two levels of underground parking. The proposed concession offsets the costs of the two proposed below market rate units. The balance of the density bonus and other market rate units must bear the substantial financial burden of paying the costs of the podium construction and underground parking.

40 MAIN OFFICES AND RESIDENCES

40 MAIN ST, LOS ALTOS, CA 94022

#	Rev.	Date

William Maston Architect & Associates

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PRELIMINARY

NOT FOR CONSTRUCTION

GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL

40 MAIN STREET, LOS ALTOS CA 94022

RECEIVED
NOV 08 2018
CITY OF LOS ALTOS
PLANNING

COVERSHEET

Job: WM 2017 316

Date: OCT 31 2018

Drawn By: WMAA

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Scale

ATTACHMENT 1a

MAP

SITE

TEAM

ARCHITECT	PLANNING CONSULTANT	CIVIL ENGINEER	CIVIL ENGINEER
JAN J. MASTON ARCHITECT & ASSOC.	RHOADES PLANNING GROUP	MACLEOD AND ASSOCIATES, INC.	LEA & BRAZE ENGINEERING, INC.
CASTRO STREET	46 SHATTUCK SQUARE	965 CENTER STREET	2495 INDUSTRIAL PARKWAY
MOUNTAIN VIEW, CA 94041	BERKELEY, CA 94704	SAN CARLOS, CA 94070	HAYWARD, CA 94545
CONTACT: BILL MASTON	CONTACT: MARK RHOADES	CONTACT: DANIEL MACLEOD	CONTACT: PETE CARLINO
650.968.7900	PH. 510.545.4341	PH. 650.593.8580	PH. 510.887.4086
650.968.4013	E. mark@rhoadesplanninggroup.com	FX. 650.593.8675	FX. 510.887.3019
bill@mastonarchitect.com		E.	E.

LEGEND

DRAWING INDEX

SYMBOL LEGEND

WALL

DETAIL

CENTERLINE

WINDOW

DOOR

NORTH ARROW

ELEVATION

ROOM AREA

Room name

101

ELEVATION LEVEL

SECTION

VICINITY MAP

SITE

PROJECT DATA

APN	167-38-002
PROPERTY OWNER	40 MAIN STREET OFFICES, LLC
GENERAL PLAN	DOWNTOWN COMMERCIAL
ZONING DISTRICT	CRS/OAD
OCCUPANCY GROUP	B, R
TYPE OF CONSTRUCTION	TYPE 3A (PENDING)
EXISTING USE	COMMERCIAL
PROPOSED USE	COMMERCIAL / RESIDENTIAL
NUMBER OF STORIES	5
CODE COMPLIANCE	2016 CALIFORNIA BUILDING CODE

ZONING

LOT AREA:	8,566 SF	
BUILDING COVERAGE:	6,745 SF	(90% OF SITE)
IMPERVIOUS SURFACE:	250 SF	(EXCLUDING BLDG)
SETBACKS:		
FRONT	0'	(0' REQUIRED)
REAR		(7' MIN REQUIRED)
SIDE	0'	
BLDG. HEIGHT:	66'-0"	
GROSS AREAS:		
FIRST FLOOR	6,746 SF	
SECOND FLOOR	5,286 SF	
THIRD FLOOR	4,187 SF	
FOURTH FLOOR	4,187 SF	
FIFTH FLOOR	4,307 SF	
TOTAL	23,988 SF	(NO MAX)
PARKING:	18 STALLS (18 REQUIRED) 2 HANDICAPPED STALLS PROVIDED	

PROJECT DESCRIPTION

PROPOSED NEW 5 LEVEL BUILDING. PROJECT MEETS OVERALL BUILDING HEIGHTS AND ZONING REQUIREMENTS FOR AN AFFORDABLE HOUSING PROJECT, CONSISTING OF GROUND FLOOR OFFICE AND 4 FLOORS OF APARTMENTS ABOVE WITH 4 UNITS ON LEVELS 2 - 4 AND 3 UNITS ON LEVEL 5. 15 UNITS ARE TO BE PROVIDED AS AN AFFORDABLE HOUSING PROJECT, TWO OF WHICH ARE DESIGNATED AS AFFORDABLE.

#	Rev.	Date

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GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL

40 MAIN STREET, LOS ALTOS CA 94022

PROJECT DATA & INDEX

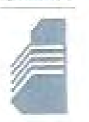
Date: OCT 31 2018

A0.01

Scale: 1/8" = 1'-0"

#	Rev.	Date

William Maston
Architect & Associates



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GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

RENDERINGS - VIEW FROM MAIN ST

Job: WA|2017 302

Date: OCT 31 2018

Drawn By: WMAA

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Scale

#	Rev.	Date

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RENDERINGS - VIEW FROM SAN ANTONIO RD.

Date: OCT 31 2018

Drawn by: WMAA

A0.03

Scale

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RENDERINGS - VIEW FROM PLAZA TEN

Job MA12017.006
Date OCT 31 2018
Drawn By WMAA

A0.04

Scale

#60 (EXISTING) #40 (PROPOSED) #4 (EXISTING)

STREETSCAPE - MAIN STREET

#4 (EXISTING) #40 (PROPOSED) #60 (EXISTING)

STREETSCAPE - PLAZA TEN NORTH

#	Rev.	Date

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40 MAIN STREET, LOS ALTOS CA 94022

STREETSCAPE ELEVATIONS

MA 2017.006
OCT 31 2018
WMAA

A0.05

Scale

Existing Adjacent Parking Layout at 45°

Plaza Ten

"Standard" Stalls:	95
Disabled Access Stalls:	1
Van Accessible Stalls:	1
Total:	97

Street Stalls

Fourth Street:	5
Main Street:	8
Edith Street:	7
Total:	20

Grand Total Parking: 117

Existing parking lot configuration sizes vary from 7' - 0" wide to 9' - 6" wide. Average is 8' - 6"

Level of Service Ratio	49.94
Tree Count	25
Total Landscapable Area	3000 SF

PARKING LAYOUT OPTION EXISTING 1

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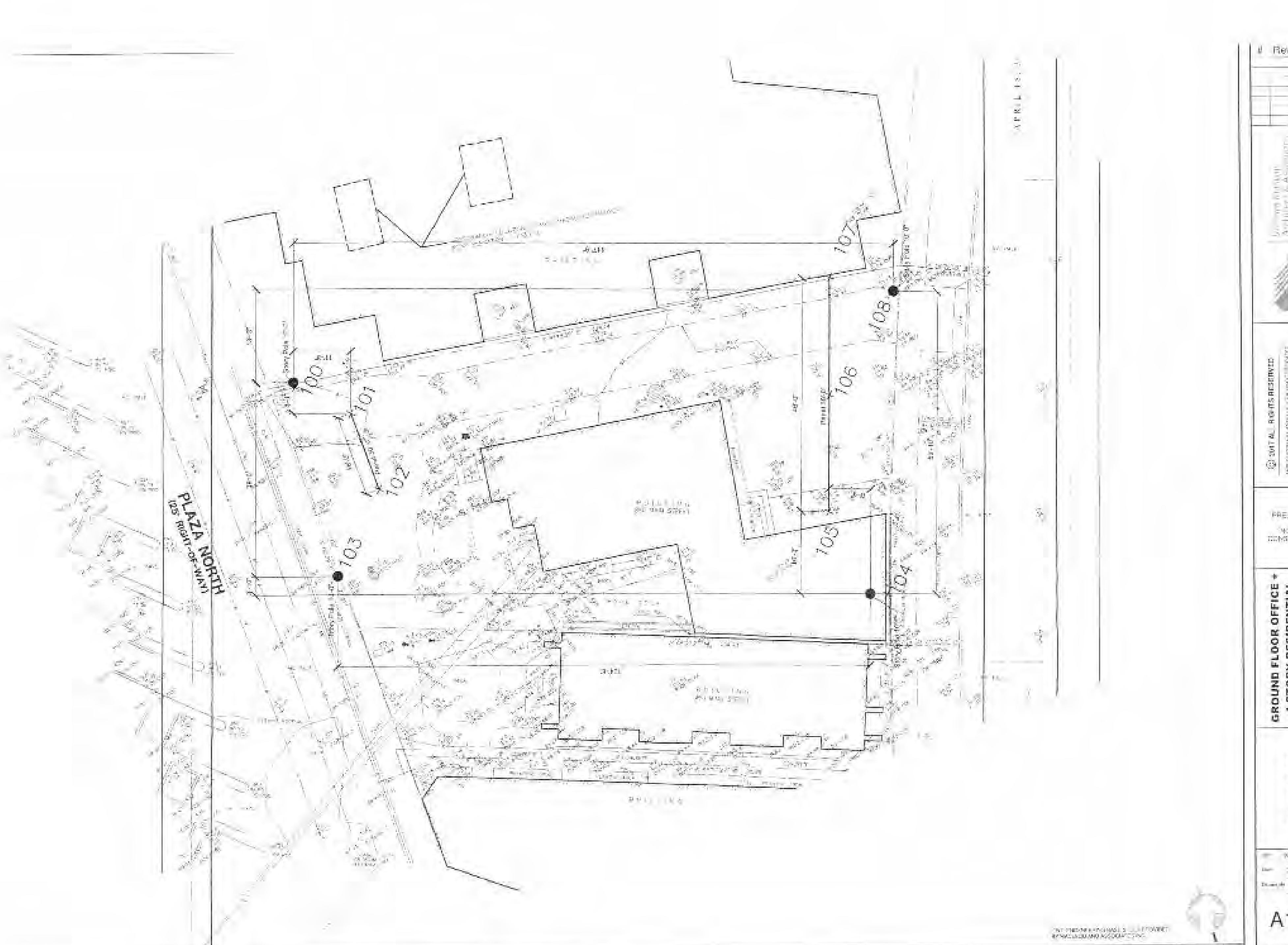
EXISTING PARKING LAYOUT

A0.06



Rev. Date

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GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

(E) SITE PLAN

A1.00

SITE PLAN NOTES
SITE CONTEXT PLAN
2
SITE PLAN LEGEND
(E) OFFICE BLDG
(N) OFFICE & RESIDENTIAL BUILDING
(E) CHRISTIAN SCIENCE READING ROOM
(E) PARKING LOT
MAIN STREET
STREET TREE, TYP.
PRELIMINARY
NOT FOR CONSTRUCTION
GROUND FLOOR OFFICE +
4 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022
(N) SITE PLAN
A1.01
(N) SITE PLAN
1
Rev. Date

PLANT TYPES

STREET TREES

BOTANICAL NAME	COMMON NAME
PISTACIA CHINENSIS	CHINESE PISTACHE

DWARF TREES

BOTANICAL NAME	COMMON NAME
CITRUS SPP	LEMON
LAGERSTROEMIA PETITE RED	DWARF CREPE MYRTLE
LEUCADENDRON 'JESTER'	SUNSHINE CONEBUSH
OLEA EUROPAEA LITTLE OLLIE	DWARF OLIVE

SHRUBS

BOTANICAL NAME	COMMON NAME
AEONIUM ARBOREUM	AEONIUM
ARCTOSTAPHYLOS 'PACIFIC MIST'	LOW MANZANITA
ECHEVERIA IMBRICATA	HENS CHICKS
GERANIUM ODORATA PHEASANT	SCENTED GERANIUM
HEUCHERA DOLCE LAVA WESTON PINK	CORAL BELLS
LOROPETALUM CHINENSE	CHINESE FRINGE FLOWER
MYRSINE AFRICANA	AFRICAN BOXWOOD
PELARGONIUM X HORTORUM	ZONAL GERANIUM
THUJA OCCIDENTALIS 'EMERALD'	AMERICAN ARBORVITAE

VINES

BOTANICAL NAME	COMMON NAME
BOUGAINVILLEA SPP	PAPER FLOWER
CLEMATIS ARMANDII	EVERGREEN CLEMATIS
FICUS PUMILA	CREEPING FIG
HARDENBERGIA VIOLACEA	PURPLE LILAC
JASMINUM POLYANTHUM	PINK JASMINE

GROUNDCOVERS

BOTANICAL NAME	COMMON NAME
ARCTOSTAPHYLOS 'PACIFIC MIST'	LOW MANZANITA
MYOPORUM PARVIFOLIUM	CREEPING MYOPORUM

#	Rev.	Date

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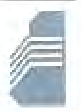

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PRELIMINARY
NOT FOR CONSTRUCTION

GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

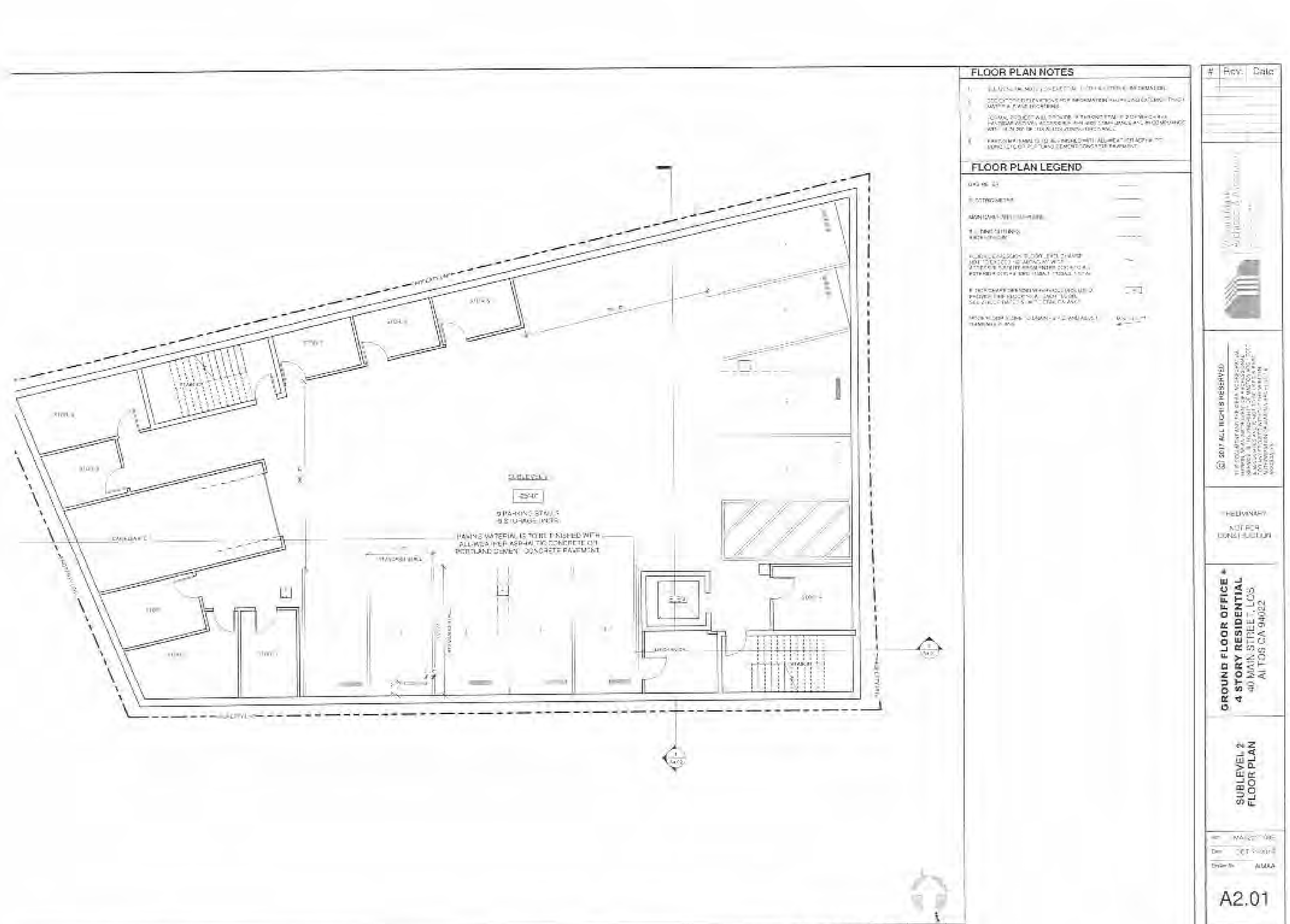
PRELIMINARY PLANT PALLET

Date OCT 31 2018

Drawn By MT

A1.02

Scale 1/8" = 1'-0"



FLOOR PLAN NOTES
FLOOR PLAN LEGEND
Rev. Date
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NOT FOR CONSTRUCTION
GROUND FLOOR OFFICE +
4 STORY RESIDENTIAL
40 MAIN STREET, LOS
ALTOS CA 94022
SUBLEVEL 2
FLOOR PLAN
A2.01
PAVING MATERIAL IS TO BE FINISHED WITH
ALL-WEATHER ASPHALTIC CONCRETE OR
PORTLAND CEMENT CONCRETE PAVEMENT
SUBLEVEL 2 FLOOR PLAN
1

FLOOR PLAN NOTES

FLOOR PLAN LEGEND

SUBLEVEL 1

5 PARKING STALLS
6 STORAGE UNITS

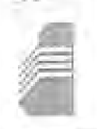
PAVING MATERIALS TO BE FINISHED WITH ALL-WEATHER ASPHALTIC CONCRETE OR PORTLAND CEMENT CONCRETE PAVEMENT

ELEV.

STAIR

SUBLEVEL 1 FLOOR PLAN 1

#	Rev.	Date



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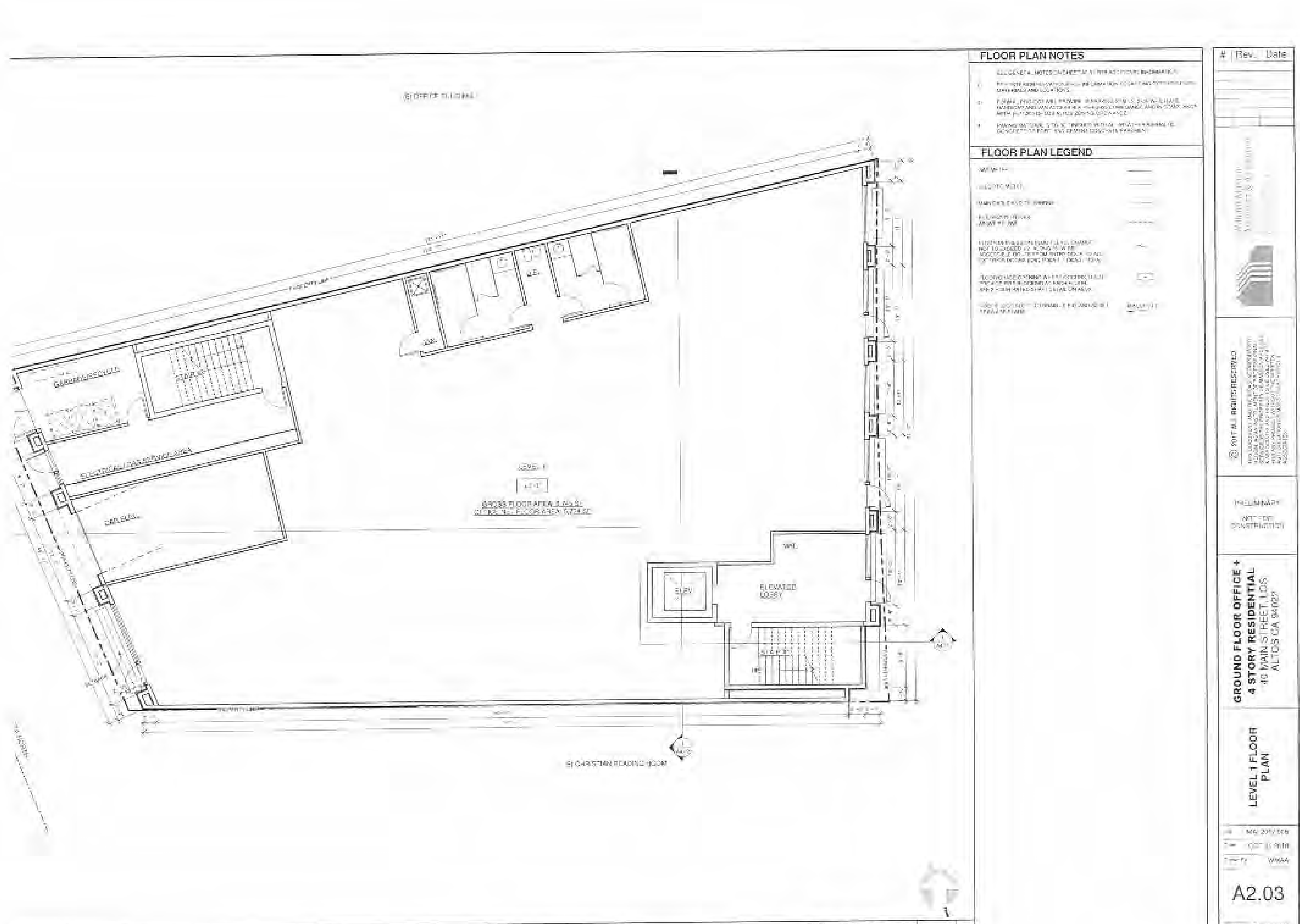
GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

SUBLEVEL 1 FLOOR PLAN

OCT 3, 2018

WMAA

A2.02



FLOOR PLAN NOTES
FLOOR PLAN LEGEND
Rev. Date
GARBAGE/RECYCLE
ELECTRICAL/GAS METER AREA
LEVEL 1
GROSS FLOOR AREA: 8,465 SF
ELEV
ELEVATOR LOBBY
(E) CHRISTIAN READING ROOM
(E) OFFICE BUILDING
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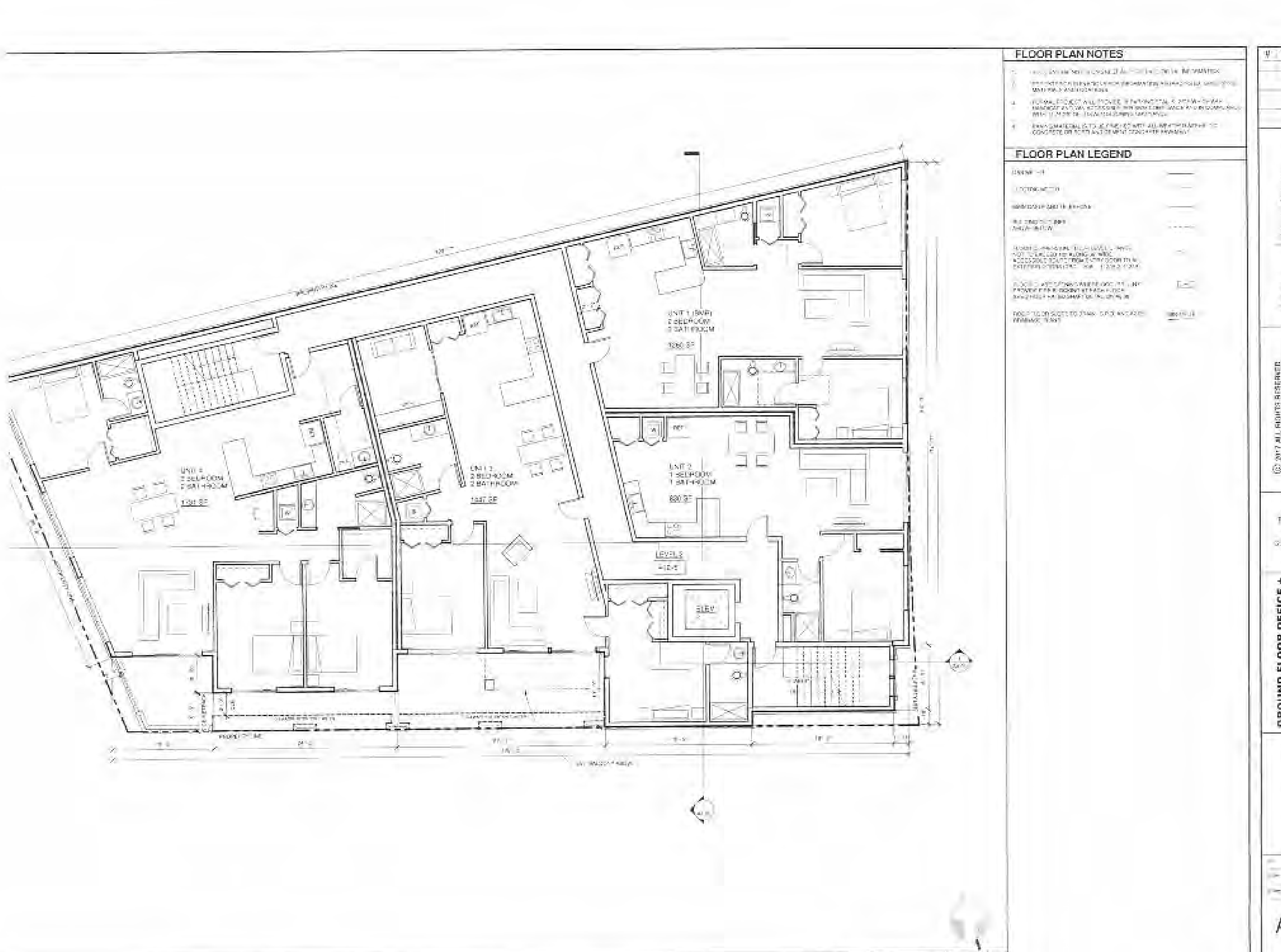
NOT FOR CONSTRUCTION
GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022
LEVEL 1 FLOOR PLAN
A2.03
LEVEL 1 FLOOR PLAN
1



Rev. Date

PRELIMINARY
NOT FOR CONSTRUCTION

GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL
40 MAIN STREET LOS ALTOS CA 94022

LEVEL 2 FLOOR PLAN

A2.04

FLOOR PLAN NOTES

FLOOR PLAN LEGEND

UNIT 5, 9
2 BEDROOM
2 BATHROOM

UNIT 6, 10
2 BEDROOM
2 BATHROOM

UNIT 7, 11
2 BEDROOM
2 BATHROOM

UNIT 8
1 BEDROOM
1 BATHROOM

STAIR

ELEV

STAIR

LEVEL 3, 4 FLOOR PLAN | 1

#	Rev	Date

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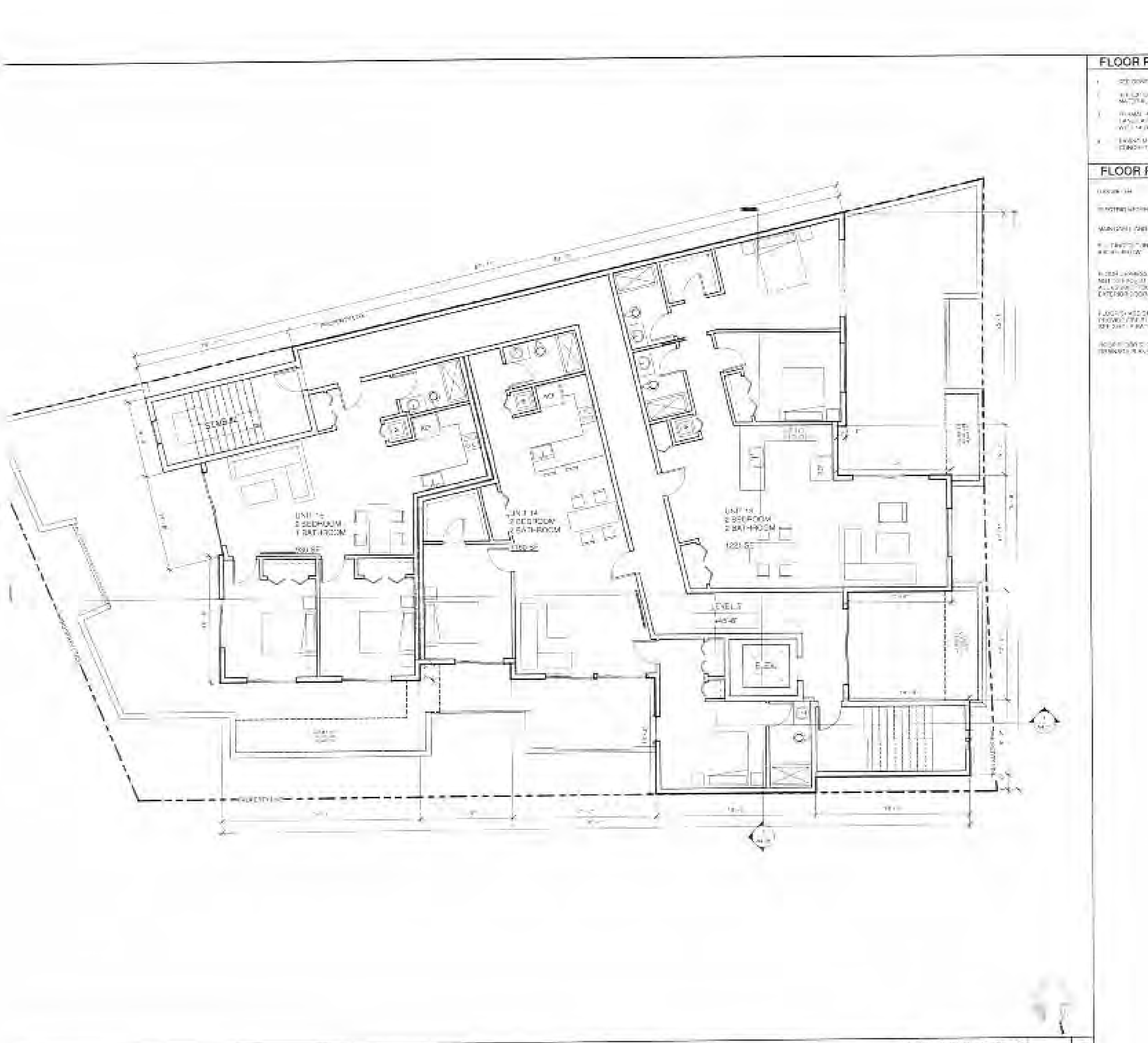
GROUND FLOOR OFFICE +
4 STORY RESIDENTIAL
10 MAIN STREET, LOS ALTOS CA 94022

LEVEL 3, 4
FLOOR PLAN

Scale: As indicated

A2.05



LEVEL 5 FLOOR PLAN

FLOOR PLAN NOTES

FLOOR PLAN LEGEND

#	Rev.	Date

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GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL

40 MAIN STREET, LOS ALTOS CA 94022

LEVEL 5 FLOOR PLAN

A2.06

Scale: As indicated

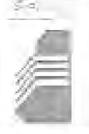
ROOF PLAN NOTES

ROOF ACCESS 1/2" = 1'-0"

MECHANICAL STRUCTURE AREA: 180 SF (4%)

ROOF PLAN 1

#	Rev.	Date



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GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL

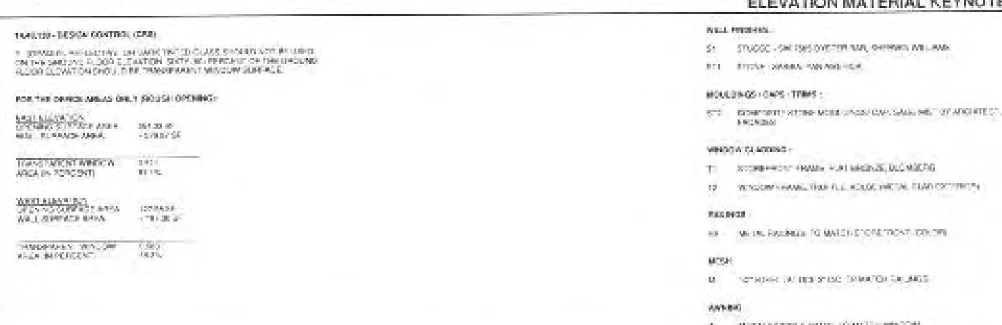
40 MAIN STREET, LOS ALTOS CA 94022

ROOF PLAN

A2.07

Scale As indicated

ELEVATION MATERIAL KEYNOTES



EAST ELEVATION 2

WEST ELEVATION 1

#	Rev.	Date

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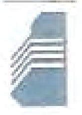

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GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

EXTERIOR ELEVATIONS

Date: OCT 31 2018
Drawn By: WMAA

A3.01

Scale: As indicated

ELEVATION MATERIAL KEYNOTES

WALL FINISHES :

S1 STUCCO - SW [illegible]

ST1 STONE [illegible]

MOULDINGS / CAPS / TRIMS :

ST2 COMPOSITE STONE MOULDINGS [illegible] BY ARCHITECTURAL FACADES

WINDOW CLADDING

T1 STOREFRONT FRAME [illegible]

T2 WINDOW FRAME [illegible] (METAL CLAD EXTERIOR)

RAILINGS :

RA METAL RAILINGS TO MATCH STOREFRONT [illegible]

MESH

M [illegible]

AWNING

A METAL FABRIC & FRAME TO MATCH WINDOW

14.40.150 - DESIGN CONTROL (CRS)

[illegible] GLASS SHOULD NOT BE USED ON THE GROUND FLOOR ELEVATION [illegible] PERCENT OF THE GROUND FLOOR ELEVATION SHOULD BE TRANSPARENT WINDOW SURFACE

FOR THE OFFICE AREAS ONLY (ROUGH OPENING)

EAST ELEVATION
OPENING SURFACE AREA [illegible]
WALL SURFACE AREA [illegible]

TRANSPARENT WINDOW AREA (IN PERCENT) [illegible]

WEST ELEVATION
OPENING SURFACE AREA [illegible]
WALL SURFACE AREA [illegible]

TRANSPARENT WINDOW AREA (IN PERCENT) [illegible]

#	Rev.	Date

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GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

EXTERIOR ELEVATIONS

Job: MA12017 006
Date: OCT 31 2018
Drawn By: WMAA

A3.02

Scale: As indicated

T.O. ROOF
T.O. PARAPET
ROOF DECK
T.O.P. 5TH FLOOR
T.O. 5TH FLOOR
T.O.P. 4TH FLOOR
T.O. 4TH FLOOR
T.O.P. 3RD FLOOR
T.O. 3RD FLOOR
T.O.P. 2ND FLOOR
T.O. 2ND FLOOR
T.O.P. 1ST FLOOR
T.O. 1ST FLOOR

ADJACENT BUILDING

NORTH ELEVATION | 1

ELEVATION MATERIAL KEYNOTES

WALL FINISHES :

MOULDINGS / CAPS / TRIMS :

WINDOW GLAZING :

RAILINGS :

MESH

AWNING

FOR THE OFFICE AREAS ONLY (ROUGH OPENING)

EAST ELEVATION

TRANSPARENT WINDOW AREA (IN PERCENT)

WEST ELEVATION

WALL SURFACE AREA

TRANSPARENT WINDOW AREA (IN PERCENT)

#	Rev.	Date

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GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL

40 MAIN STREET, LOS ALTOS CA 94022

EXTERIOR ELEVATIONS

MA.2017.008

OCT 31 2018

Drawn By WMAA

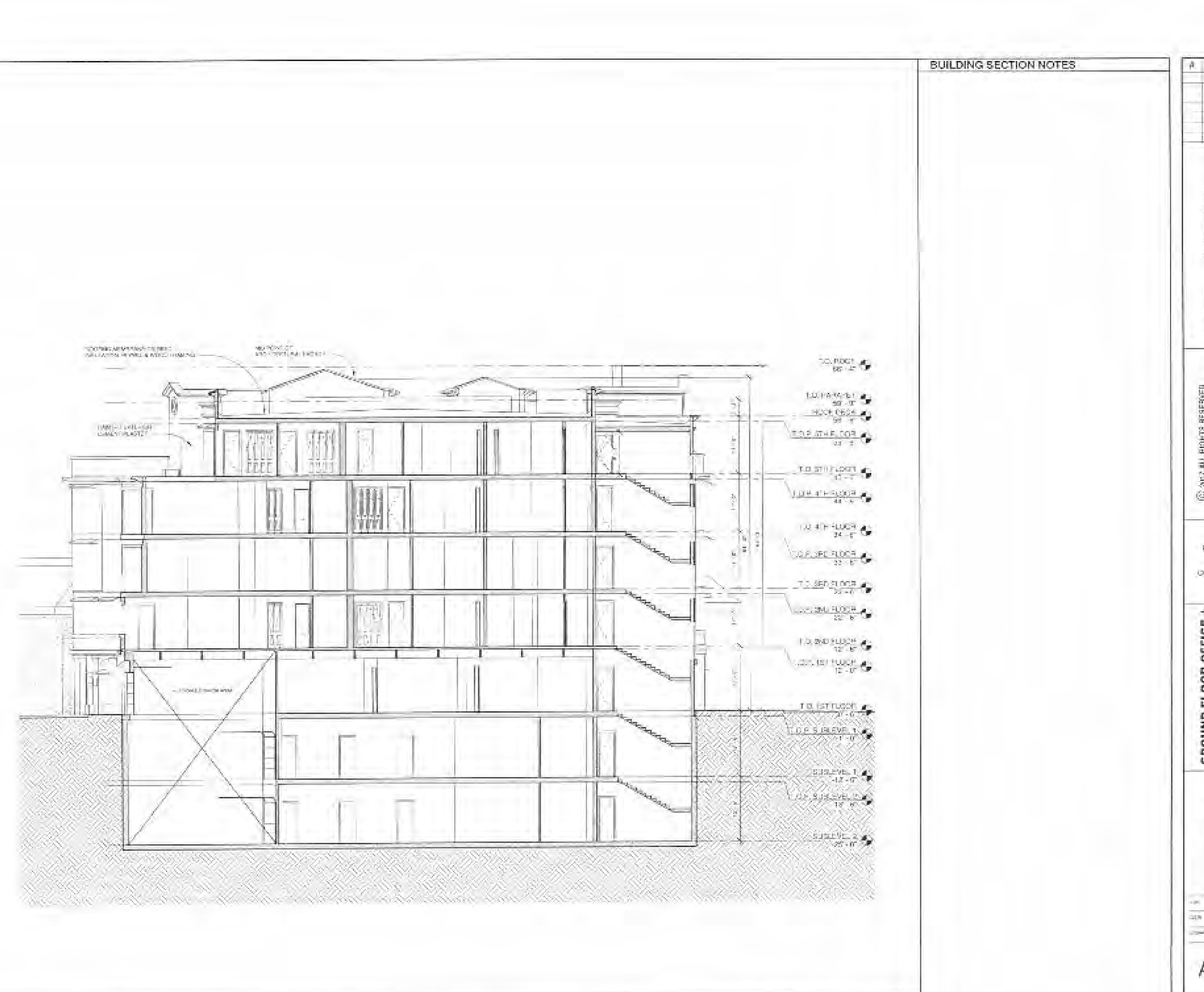
A3.03

Scale As indicated

T.O. ROOF
T.O. PARAPET
ROOF DECK
T.O.P. 5TH FLOOR
T.O. 5TH FLOOR
T.O.P. 4TH FLOOR
T.O. 4TH FLOOR
T.O.P. 3RD FLOOR
T.O. 3RD FLOOR
T.O.P. 2ND FLOOR
T.O. 2ND FLOOR
T.O.P. 1ST FLOOR
T.O. 1ST FLOOR
0' - 0"

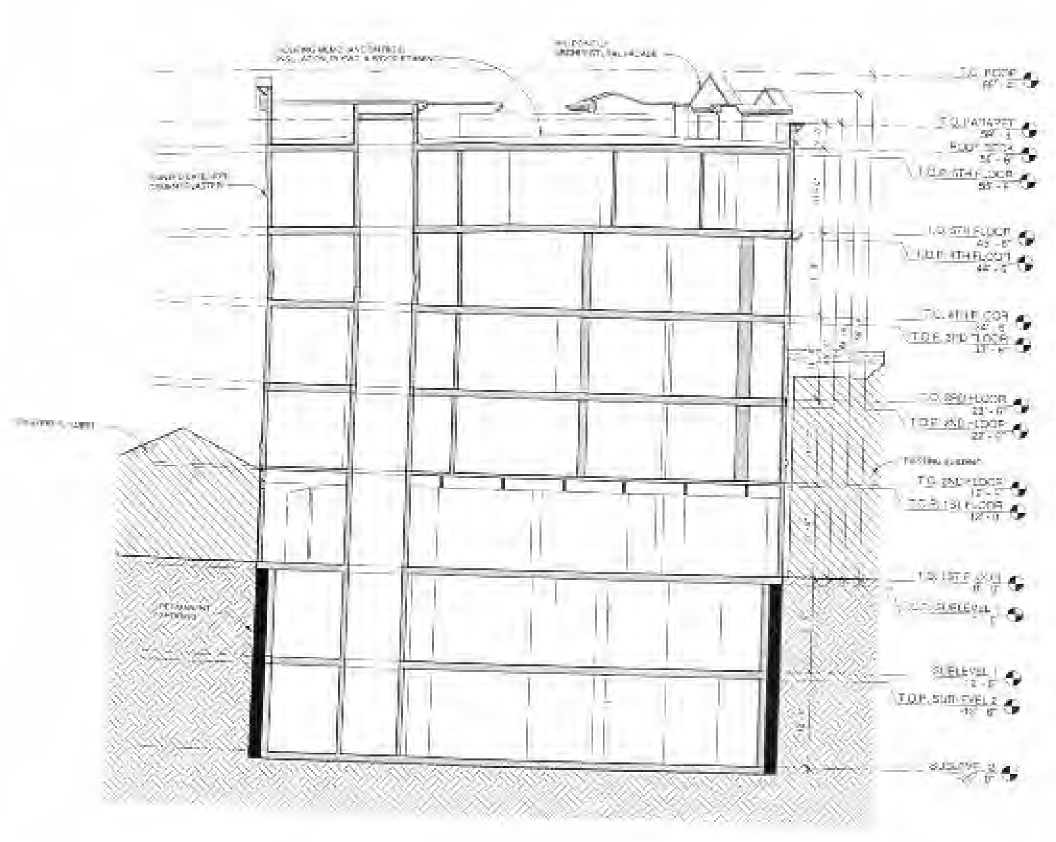
ADJACENT BUILDING

SOUTH ELEVATION 1



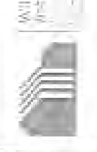
BUILDING SECTION NOTES
Rev Date
PRELIMINARY
NOT FOR CONSTRUCTION
GROUND FLOOR OFFICE +
4 STORY RESIDENTIAL
40 MAIN STREET, LOS
ALTOS CA 94022
BUILDING
SECTIONS
A4.01
LONGITUDINAL SECTION
1

BUILDING SECTION NOTES



TRANSVERSAL SECTION 1

#	Rev.	Date



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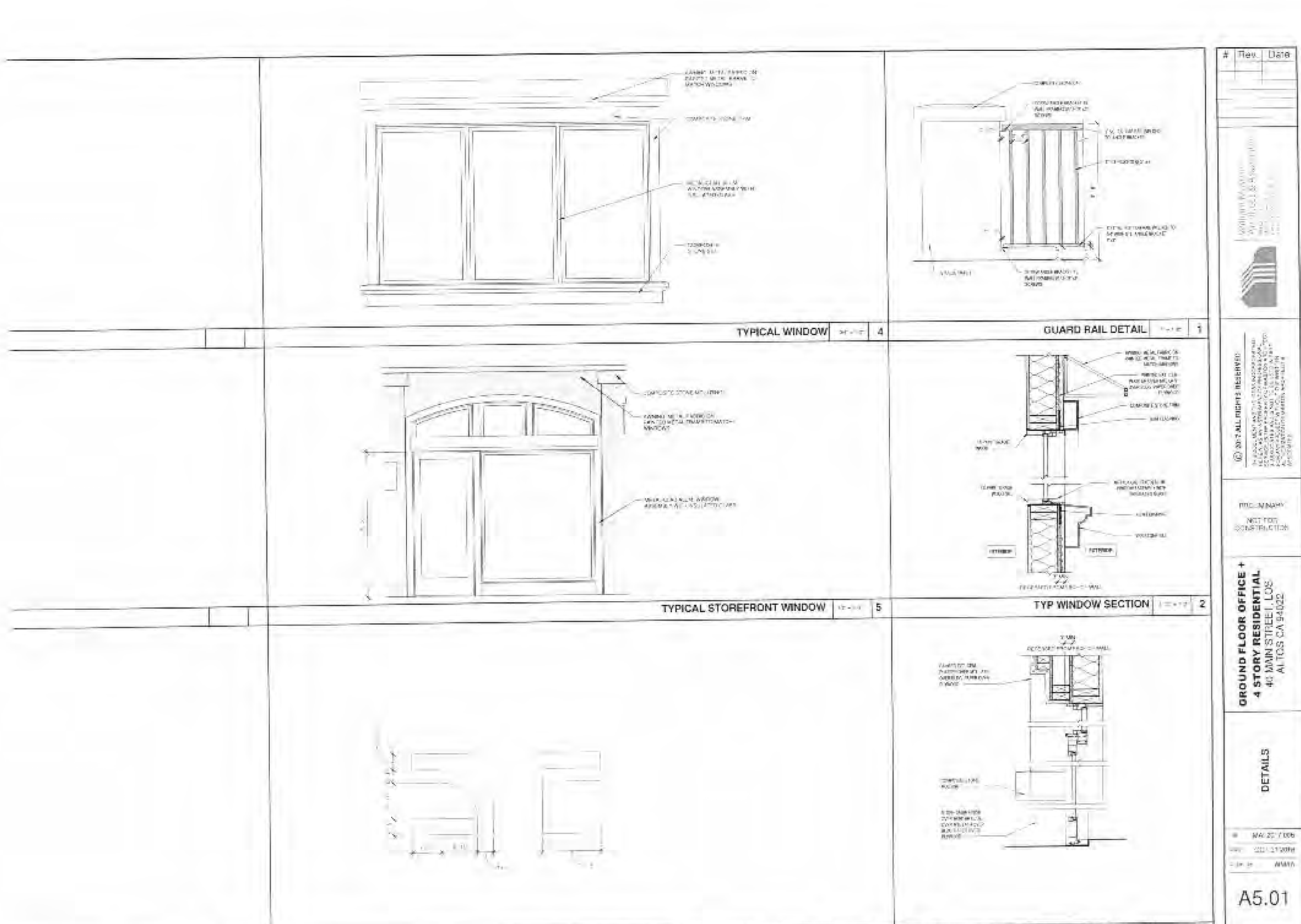
GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL

40 MAIN STREET, LOS ALTOS CA 94022

BUILDING SECTIONS

A4.02

Scale: 1/8" = 1'-0"



TYPICAL WINDOW
4
GUARD RAIL DETAIL
1
TYPICAL STOREFRONT WINDOW
5
TYP WINDOW SECTION
2
COMPOSITE STONE CORBELL
6
TYP RECESSED STOREFRONT WINDOW SECTION
Rev. Date
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PRELIMINARY
NOT FOR CONSTRUCTION
GROUND FLOOR OFFICE +
4 STORY RESIDENTIAL
40 MAIN STREET, LOS
ALTOS CA 94022
DETAILS
A5.01

40 MAIN OFFICES AND RESIDENCES

40 MAIN ST, LOS ALTOS, CA 94022

#	Rev.	Date

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GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL

40 MAIN STREET, LOS ALTOS CA 94022

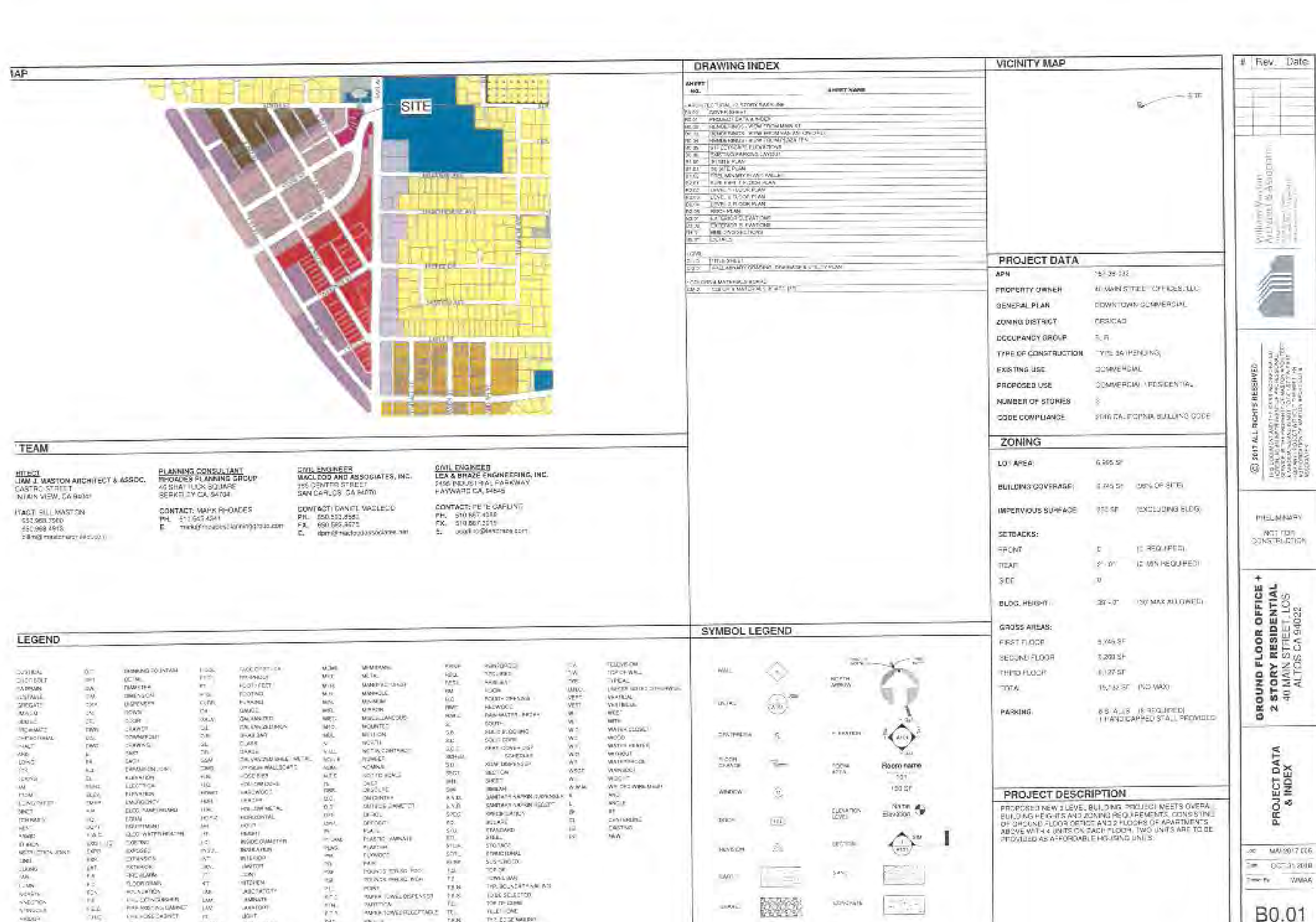
COVER SHEET

Job: MAI 2017.005

Date: OCT 31 2018

Drawn By: WMAA

B0.00



MAP
SITE
DRAWING INDEX
VICINITY MAP
PROJECT DATA
APN
PROPERTY OWNER
GENERAL PLAN
DOWNTOWN COMMERCIAL
ZONING DISTRICT
OCCUPANCY GROUP
TYPE OF CONSTRUCTION
EXISTING USE
COMMERCIAL
PROPOSED USE
NUMBER OF STORIES
CODE COMPLIANCE
ZONING
LOT AREA:
BUILDING COVERAGE:
IMPERVIOUS SURFACE
SETBACKS:
FRONT
REAR
SIDE
BLDG. HEIGHT
GROSS AREAS:
FIRST FLOOR
SECOND FLOOR
THIRD FLOOR
TOTAL
PARKING
PROJECT DESCRIPTION
TEAM
PLANNING CONSULTANT
RHOADES PLANNING GROUP
CONTACT: MARK RHOADES
CIVIL ENGINEER
MACLEOD AND ASSOCIATES, INC.
CIVIL ENGINEER
LEA & BRAZE ENGINEERING, INC.
HAYWARD CA, 94545
LEGEND
SYMBOL LEGEND
Room name
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GROUND FLOOR OFFICE +
2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022
PROJECT DATA & INDEX
B0.01

#	Rev.	Date

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GROUND FLOOR OFFICE +
2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

RENDERINGS - VIEW FROM MAIN ST

Job	MA 2017 006
Date	OCT 31 2018
Drawn by	WMAA

B0.02

Scale

#	Rev.	Date

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GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL

40 MAIN STREET, LOS ALTOS CA 94022

RENDERINGS - VIEW FROM SAN ANTONIO RD.

Job: MA12017.035

Date: OCT 31 2018

Drawn by: WMAA

B0.03

Scale

#	Rev.	Date

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GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

RENDERINGS - VIEW FROM PLAZA TEN

Job	MA 2017.006
Date	OCT 31 2018
Drawn By	WMAA

B0.04

Scale

#	Rev.	Date

STREETSCAPE - MAIN STREET

STREETSCAPE - PLAZA TEN NORTH

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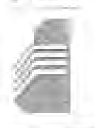
GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

STREETSCAPE ELEVATIONS

Job	MA/2017 006
Date	OCT 31 2018
Drawn by	WMAA

B0.05

Scale



Existing Adjacent Parking Layout at 45°

Plaza Ten

"Standard" Stalls:	95
Disabled Access Stalls:	1
Van Accessible Stalls:	1
Total:	97

Street Stalls

Fourth Street:	5
Main Street:	8
Edith Street:	7
Total:	20

Grand Total Parking: 117

Existing parking lot configuration sizes vary from 7' - 0" wide to 9' - 6" wide. Average is 8' - 6"

Level of Service Ratio	49.94
Tree Count	25
Total Landscapable Area	3000 SF

PARKING LAYOUT OPTION EXISTING 1

#	Rev	Date

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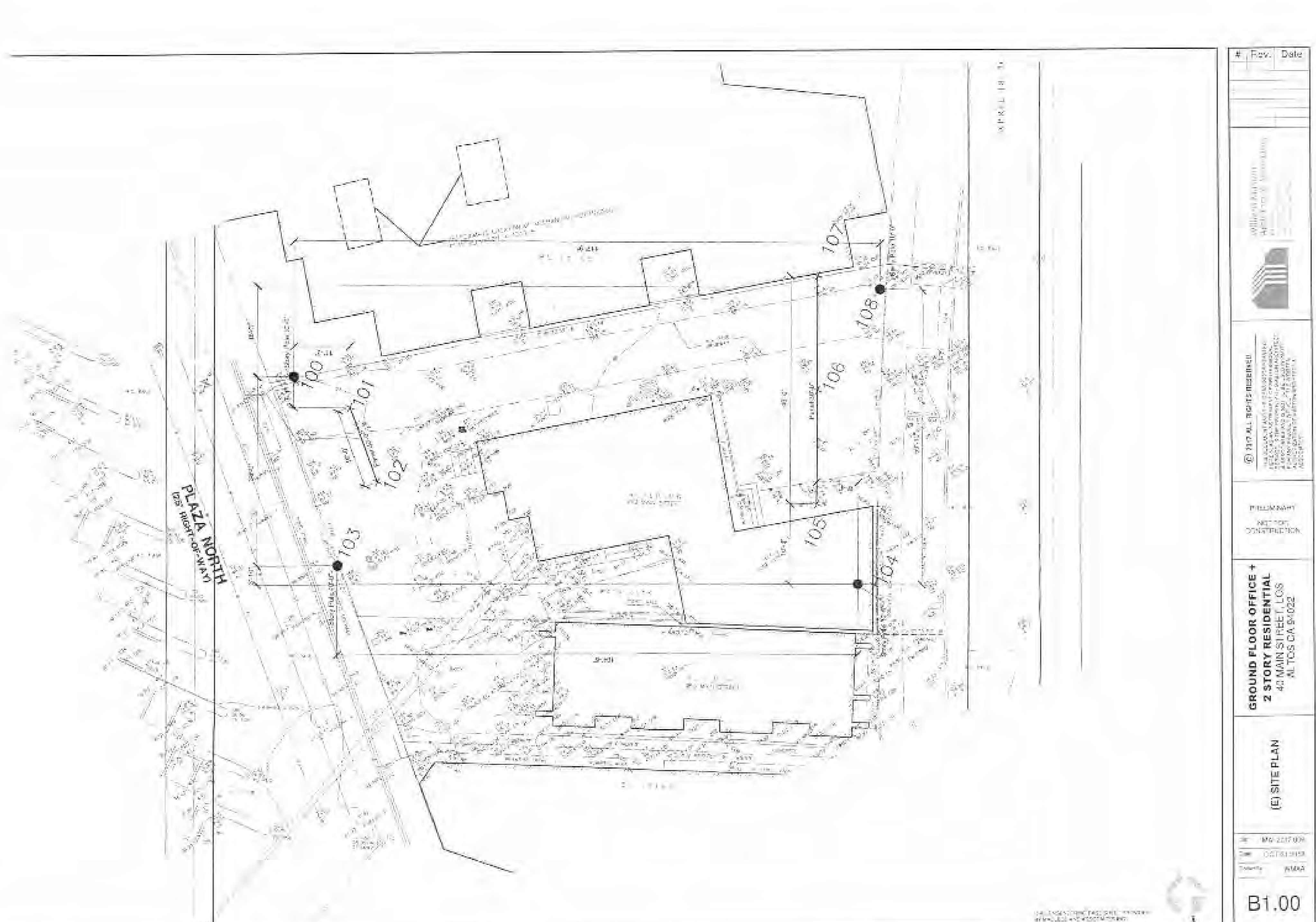
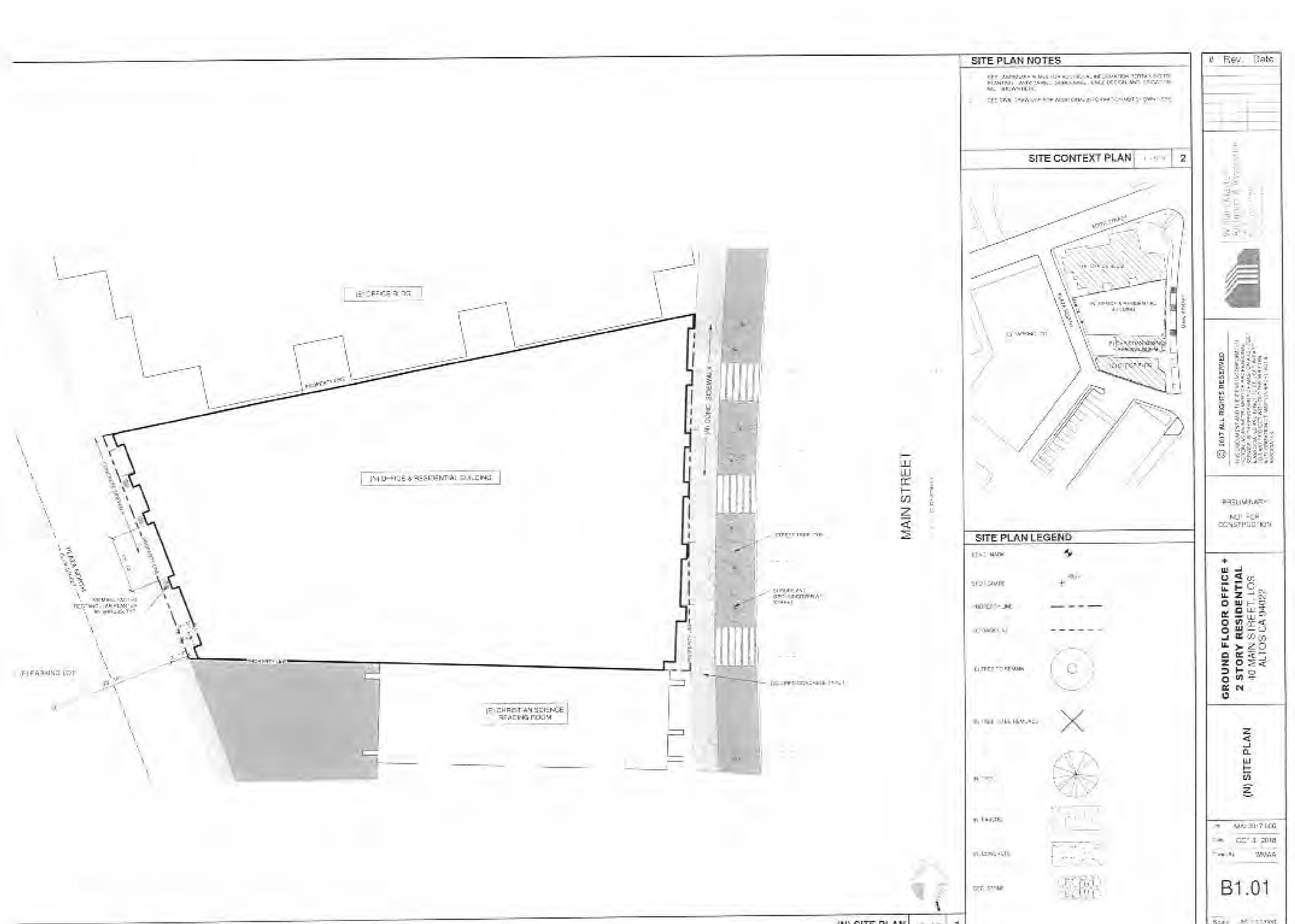
GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

EXISTING PARKING LAYOUT

B0.06



PLAZA NORTH
(25' RIGHT-OF-WAY)
100
101
102
103
104
105
106
107
108
(E) SITE PLAN
1
Rev. Date
GROUND FLOOR OFFICE +
2 STORY RESIDENTIAL
40 MAIN STREET, LOS
ALTOS CA 94022
(E) SITE PLAN
B1.00


SITE PLAN NOTES
SITE CONTEXT PLAN
2
SITE PLAN LEGEND
(E) OFFICE BLDG
(N) OFFICE & RESIDENTIAL BUILDING
(E) CHRISTIAN SCIENCE READING ROOM
(E) PARKING LOT
MAIN STREET
(N) CONC. SIDEWALK
PROPERTY LINE
(N) SITE PLAN
1
Rev. Date
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GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022
(N) SITE PLAN
B1.01

PLANT TYPES

STREET TREES

BOTANICAL NAME	COMMON NAME
PISTACIA CHINENSIS	CHINESE PISTACHE

DWARF TREES

BOTANICAL NAME	COMMON NAME
CITRUS SPP	LEMON
LAGERSTROEMIA 'PETITE PINK'	DWARF CREPE MYRTLE
LEUCADENDRON 'JESTER'	SUNSHINE CONEBUSH
OLEA EUROPEA 'LITTLE OLLIE'	DWARF OLIVE

SHRUBS

BOTANICAL NAME	COMMON NAME
AEONIUM ARBOREUM	AEONIUM
ARCTOSTAPHYLOS 'PACIFIC MIST'	LOW MANZANITA
ECHEVERIA IMBRICATA	HENS CHICKS
GERANIUM ODORATA 'PERSIAN'	SCENTED GERANIUM
HEUCHERA SANGUINEA 'WESTON PINK'	CORAL BELLS
LOROPETALUM CHINENSE	CHINESE FRINGE FLOWER
MYRSINE AFRICANA	AFRICAN BOXWOOD
PELARGONIUM X HORTORUM	ZONAL GERANIUM
THUJA OCCIDENTALIS 'EMERALD'	AMERICAN ARBORVITAE

VINES

BOTANICAL NAME	COMMON NAME
BOUGAINVILLEA SPP	PAPER FLOWER
CLEMATIS ARMANDII	EVERGREEN CLEMATIS
FICUS PUMILA	CREEPING FIG
HARDENBERGIA VIOLACEA	PURPLE LILAC
JASMINUM POLYANTHUM	PINK JASMINE

GROUNDCOVERS

BOTANICAL NAME	COMMON NAME
ARCTOSTAPHYLOS 'PACIFIC MIST'	LOW MANZANITA
MYOPORUM PARVIFOLIUM	CREEPING MYOPORUM

#	Rev.	Date

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NOT FOR CONSTRUCTION

GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

PRELIMINARY PLANT PALLET

MAY 2017 008
OCT 31 2018

B1.02

FLOOR PLAN NOTES

[illegible]

FLOOR PLAN LEGEND

[illegible]

SUBLEVEL 1

[illegible] PARKING STALLS
[illegible] STORAGE UNITS

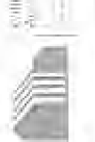
PAVING MATERIALS TO BE FINISHED WITH ALTERNATIVE ASPHALT CONCRETE OR PORTLAND CEMENT CONCRETE PAVEMENT

ELEV

MECHANICAL

SUBLEVEL 1 FLOOR PLAN 1

#	Rev.	Date



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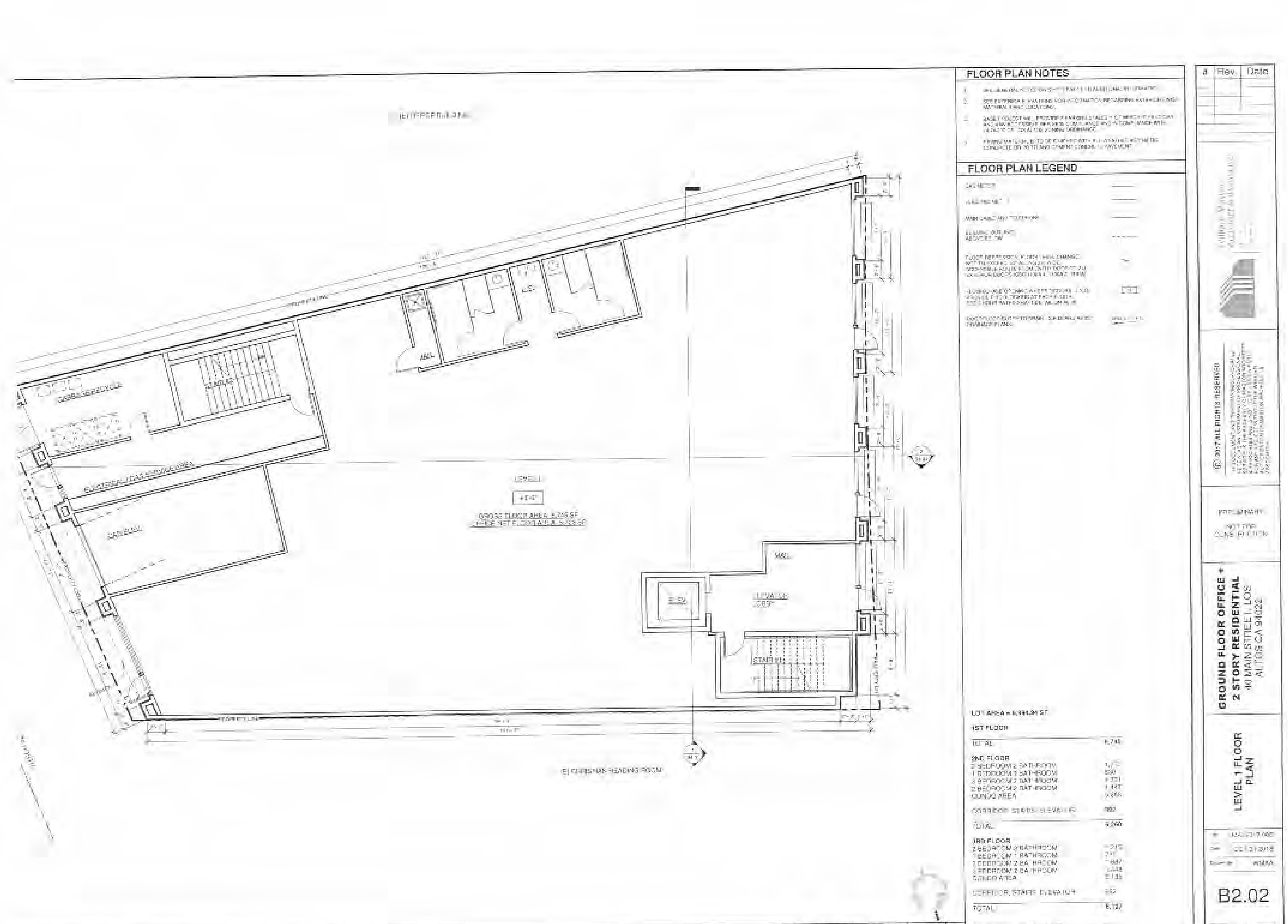
NOT FOR CONSTRUCTION

GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
10 MAIN STREET, LOS ALTOS CA 94022

SUBLEVEL 1 FLOOR PLAN

B2.01



FLOOR PLAN NOTES
FLOOR PLAN LEGEND
Rev. Date
(E) CHRISTIAN READING ROOM
LEVEL 1
STAIR
ELEV.
ELEVATOR
1ST FLOOR
2ND FLOOR
2 BEDROOM 2 BATHROOM
1 BEDROOM 1 BATHROOM
CONDO AREA
CORRIDOR, STAIRS, ELEVATOR
TOTAL
3RD FLOOR
2 BEDROOM 2 BATHROOM
1 BEDROOM 1 BATHROOM
CONDO AREA
CORRIDOR, STAIRS, ELEVATOR
TOTAL
GRAND TOTAL 19,128 SF
PRELIMINARY
NOT FOR CONSTRUCTION
GROUND FLOOR OFFICE +
2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022
LEVEL 1 FLOOR PLAN
B2.02
Scale As indicated
LEVEL 1 FLOOR PLAN
1

FLOOR PLAN NOTES

FLOOR PLAN LEGEND

UNIT 1
2 BEDROOM
2 BATHROOM

UNIT 2
1 BEDROOM
1 BATHROOM

UNIT 3
2 BEDROOM
2 BATHROOM

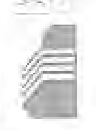
LOT AREA = 5,994.54 SF

1ST FLOOR	
TOTAL	6,745
2ND FLOOR	
2 BEDROOM 2 BATHROOM	1,252
1 BEDROOM 1 BATHROOM	620
2 BEDROOM 2 BATHROOM	1,731
2 BEDROOM 2 BATHROOM	1,445
CONDO AREA	5,[illegible]
CORRIDOR, STAIRS, ELEVATOR	992
TOTAL	6,260
3RD FLOOR	
2 BEDROOM 2 BATHROOM	1,336
1 BEDROOM 1 BATHROOM	[illegible]
2 BEDROOM 2 BATHROOM	1,080
2 BEDROOM 2 BATHROOM	[illegible]
CONDO AREA	3,[illegible]
CORRIDOR, STAIRS, ELEVATOR	[illegible]
TOTAL	4,[illegible]

GRAND TOTAL = 19,132 SF

LEVEL 2 FLOOR PLAN 1

#	Rev.	Date



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PRELIMINARY
NOT FOR CONSTRUCTION

GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

LEVEL 2 FLOOR PLAN

Date: OCT 31 2018

B2.03

FLOOR PLAN NOTES

FLOOR PLAN LEGEND

UNIT 4
3 BEDROOM
2 BATHROOM

UNIT 5
2 BEDROOM
2 BATHROOM

UNIT 6 (BMR)
1 BEDROOM
1 BATHROOM

UNIT 7
3 BEDROOM
2 BATHROOM

LOT AREA = 9,994.94 SF

1ST FLOOR	
TOTAL	6,745
2ND FLOOR	
2 BEDROOM 2 BATHROOM	[illegible]
BEDROOM 1 BATHROOM	[illegible]
3 BEDROOM 2 BATHROOM	[illegible]
3 BEDROOM 2 BATHROOM	[illegible]
CONDO AREA	[illegible]
CORRIDOR, STAIRS, ELEVATOR	[illegible]
TOTAL	6,290
3RD FLOOR	
2 BEDROOM 2 BATHROOM	[illegible]
1 BEDROOM 1 BATHROOM	[illegible]
2 BEDROOM 2 BATHROOM	[illegible]
3 BEDROOM 2 BATHROOM	[illegible]
CONDO AREA	[illegible]
CORRIDOR, STAIRS, ELEVATOR	[illegible]
TOTAL	6,127

GRAND TOTAL [illegible] SF

LEVEL 3 FLOOR PLAN 1

#	Rev.	Date

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40 MAIN STREET, LOS ALTOS CA 94022

LEVEL 3 FLOOR PLAN

B2.04

ROOF PLAN NOTES

#	Rev.	Date

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40 MAIN STREET, LOS ALTOS CA 94022

ROOF PLAN

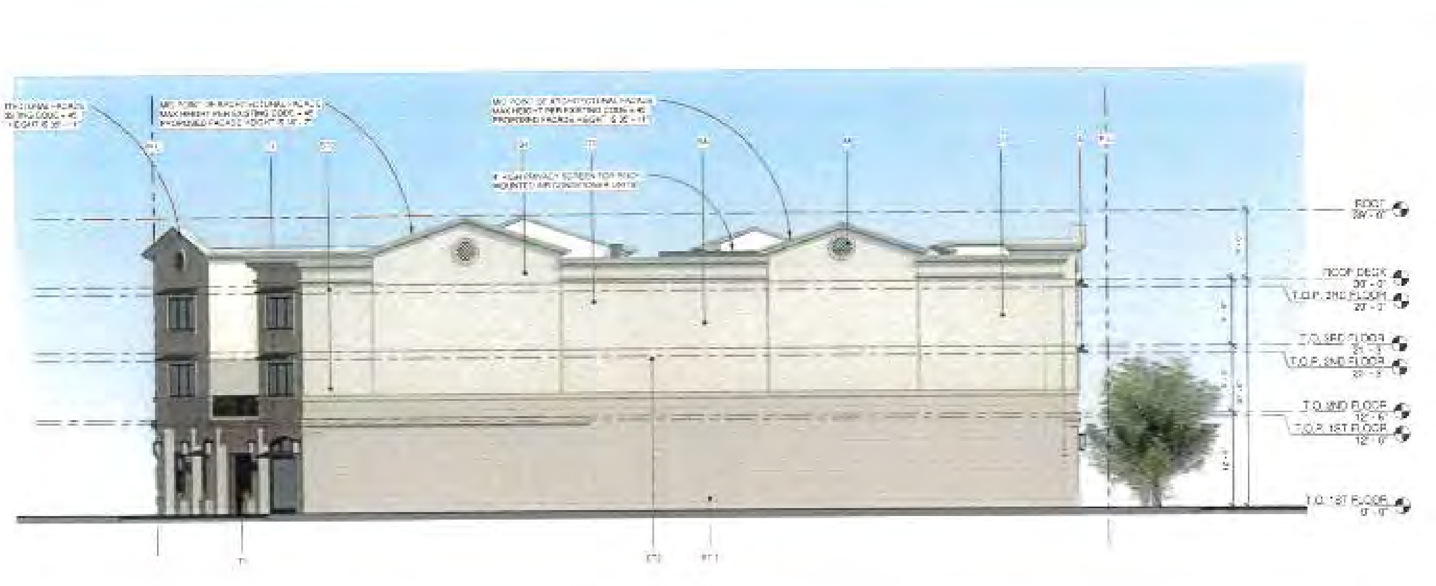
B2.05

Scale: As indicated

ROOF DECK

ROOF DECK AREA: 2,158 SF

ROOF PLAN 1



SOUTH ELEVATION 1

EAST ELEVATION 2

#	Rev.	Date

William Maston Architect & Associates

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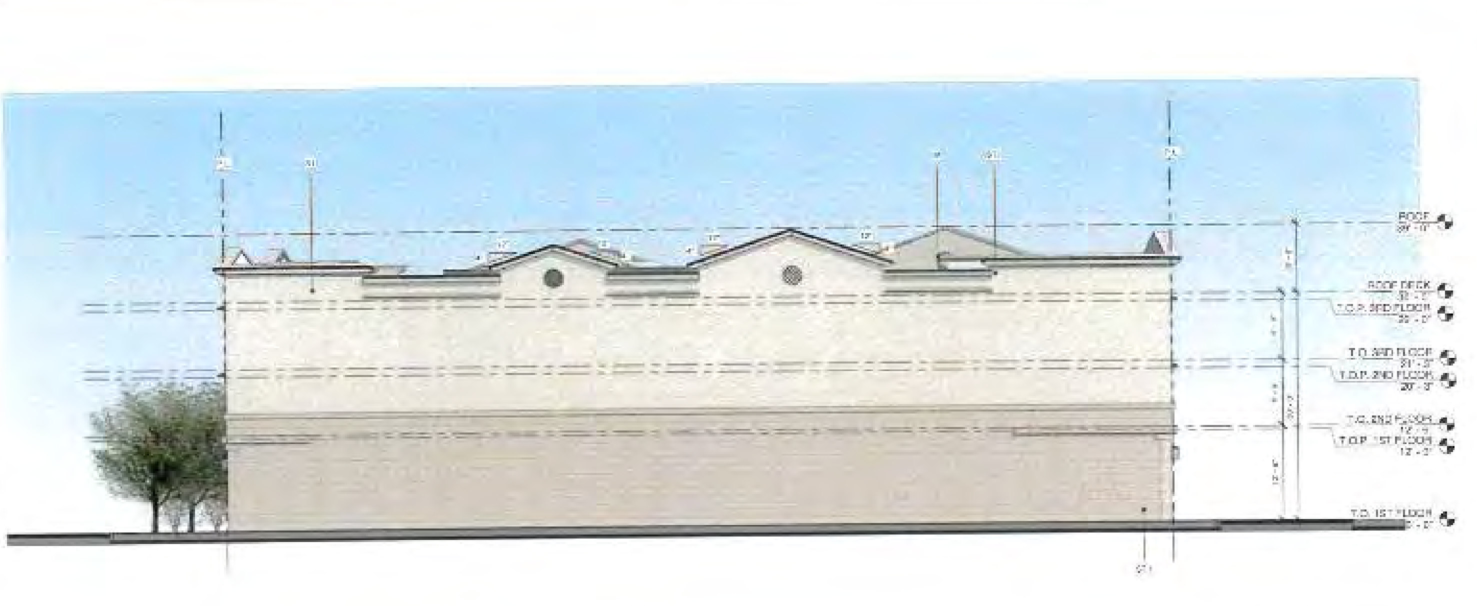
GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

EXTERIOR ELEVATIONS

Drawn By WMAA

B3.01

Scale As indicated



NORTH ELEVATION 1

WEST ELEVATION 2

ELEVATION MATERIAL KEYNOTES

WALL FINISHES

MOULDINGS (CAPS / TRIM)

WINDOW GLAZING

RAILINGS

AWNING

MESH

DESIGN CONTROL (ERS)

FOR THE OFFICE AREAS ONLY (ROUGH OPENING)

EAST ELEVATION

TRANSPARENT WINDOW AREA (IN PERCENT)

WEST ELEVATION

TRANSPARENT WINDOW AREA (IN PERCENT)

#	Rev.	Date

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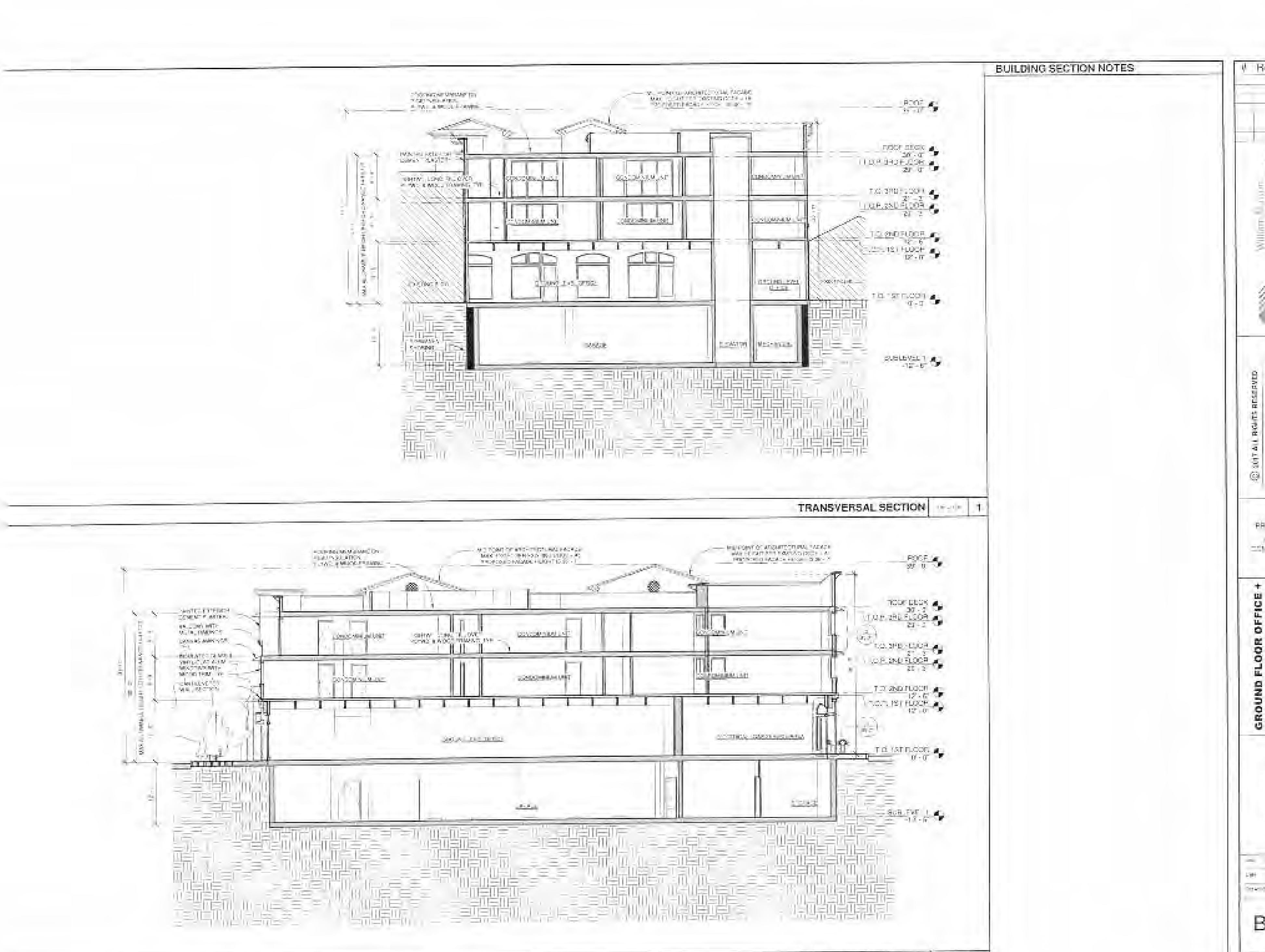
GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

EXTERIOR ELEVATIONS

Drawn By WMAA

B3.02

Scale As indicated



Rev. Date

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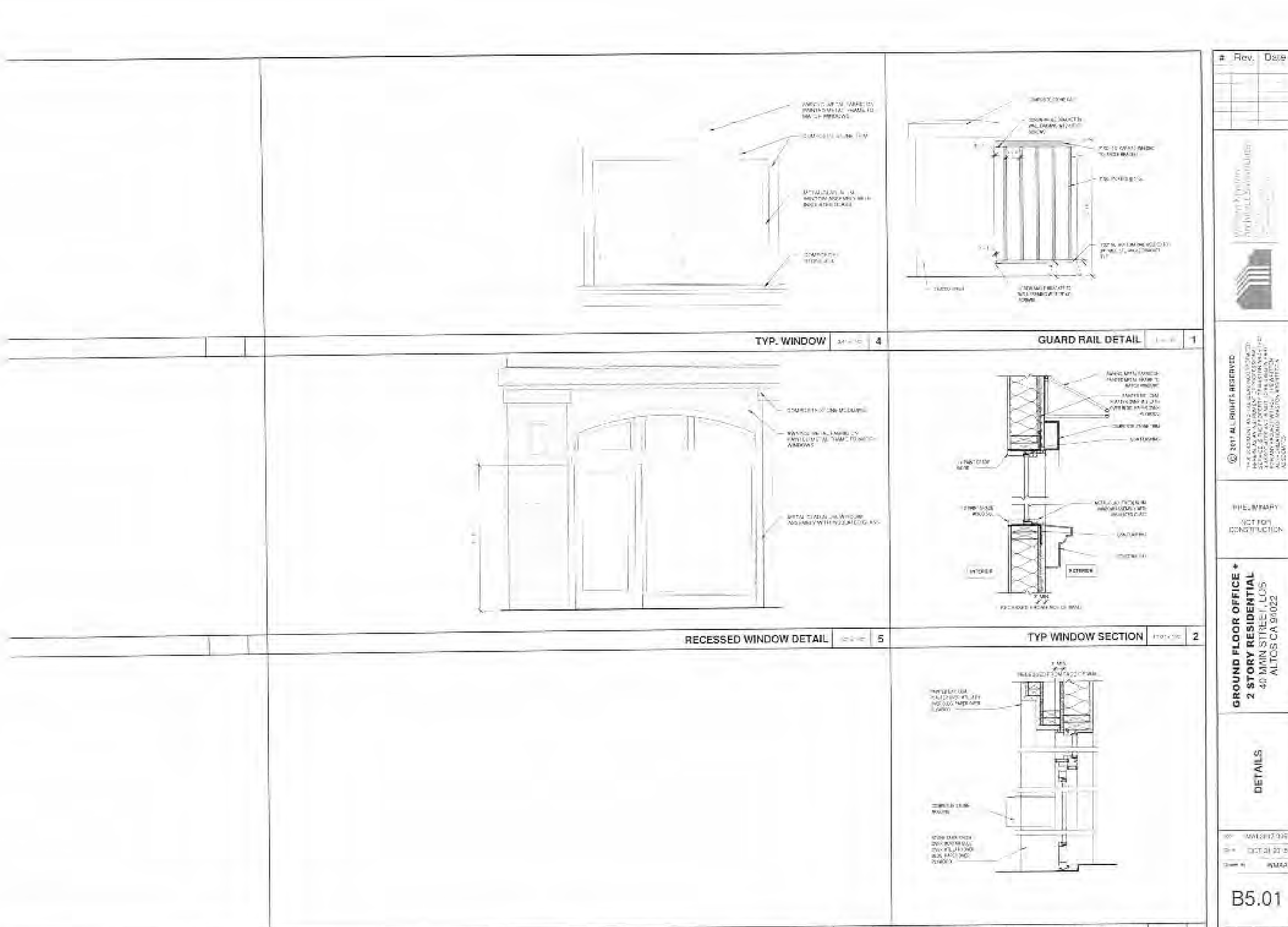
GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL
40 MAIN STREET, LOS ALTOS CA 94022

BUILDING SECTIONS

B4.01



TYP. WINDOW 4
GUARD RAIL DETAIL 1
RECESSED WINDOW DETAIL 5
INTERIOR
EXTERIOR
TYP WINDOW SECTION 2
TYP RECESSED STOREFRONT WINDOW SECTION 3
Rev. Date
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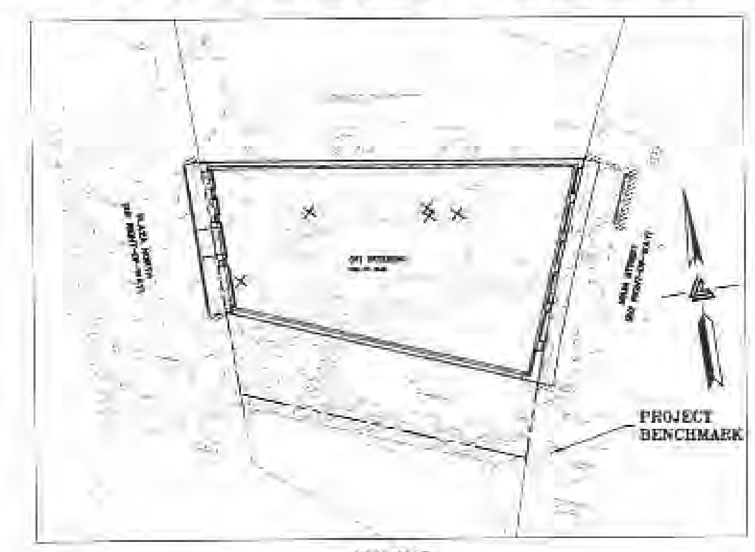
GROUND FLOOR OFFICE +
2 STORY RESIDENTIAL
40 MAIN STREET, LOS
ALTOS CA 94022
DETAILS
B5.01

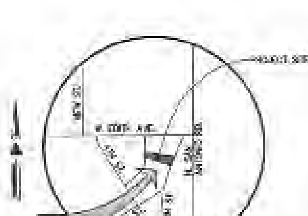
40 MAIN STREET
LOS ALTOS, CALIFORNIA

LEGEND

NO	DESCRIPTION	PROPOSED	DESCRIPTION
			BOUNDARY
			PROPERTY LINE
			RETAINING WALL
			LANDSCAPE RETAINING WALL
		RW	RAINWATER TIGHTLINE
		SUB	SUBDRAIN LINE
		TL	TIGHTLINE
		SD	STORM DRAIN LINE
		SS	SANITARY SEWER LINE
			WATER LINE
			GAS LINE
			PRESSURE LINE
			JOINT TRENCH
			SET BACK LINE
			CONCRETE VALLEY GUTTER
			EARTHEN SWALE
		CB	CATCH BASIN
		JB	JUNCTION BOX
		AD	AREA DRAIN
			CURB INLET
		SDMH	STORM DRAIN MANHOLE
			FIRE HYDRANT
		SSMH	SANITARY SEWER MANHOLE
			STREET SIGN
			SPOT ELEVATION
			FLOW DIRECTION
			DEMOLISH/REMOVE
			BENCHMARK
			CONTOURS
			TREE TO BE REMOVED



KEY MAP
1" = 20'



ABBREVIATIONS

AB	AGGREGATE BASE	LF	LINEAR FEET
AC	ASPHALT CONCRETE	MAX.	MAXIMUM
ACC	ACCESSIBLE	MH	MANHOLE
AD	AREA DRAIN	MIN	MINIMUM
BC	BEGINNING OF CURVE	MON	MONUMENT
B & D	BEARING & DISTANCE	MRO	METERED RELEASE OUTLET
BM	BENCHMARK	(N)	NEW
BUB	BUBBLER BOX	NO.	NUMBER
BW/FG	BOTTOM OF WALL/FINISH GRADE	NTS	NOT TO SCALE
		O.C.	ON CENTER
CB	CATCH BASIN	O/	OVER
C & G	CURB AND GUTTER	(PA)	PLANTING AREA
CL	CENTER LINE	PED	PEDESTRIAN
CPP	CORRUGATED PLASTIC PIPE (SMOOTH INTERIOR)	PIV	POST INDICATOR VALVE
		PSE	PUBLIC SERVICES EASEMENT
CO	CLEANOUT	PL	PROPERTY LINE
COTG	CLEANOUT TO GRADE	PP	POWER POLE
CONC.	CONCRETE	PUE	PUBLIC UTILITY EASEMENT
CONST	CONSTRUCT or -TION	PVC	POLYVINYL CHLORIDE
CONC. COR	CONCRETE CORNER	R	RADIUS
CY	CUBIC YARD	RCP	REINFORCED CONCRETE PIPE
D	DIAMETER	RIM	RIM ELEVATION
DI	DROP INLET	RW	RAINWATER
DIP	DUCTILE IRON PIPE	R/W	RIGHT OF WAY
EA	EACH	S	SLOPE
EC	END OF CURVE	S.A.D.	SEE ARCHITECTURAL DRAWINGS
EG	EXISTING GRADE	SAN	SANITARY
EL	ELEVATIONS	SD	STORM DRAIN
EP	EDGE OF PAVEMENT	SDMH	STORM DRAIN MANHOLE
EQ	EQUIPMENT	SHT	SHEET
EW	EACH WAY	S.L.D.	SEE LANDSCAPE DRAWINGS
EX	EXISTING	SPEC	SPECIFICATION
FC	FACE OF CURB	SS	SANITARY SEWER
FF	FINISHED FLOOR	SSCO	SANITARY SEWER CLEANOUT
FG	FINISHED GRADE	SSMH	SANITARY SEWER MANHOLE
FH	FIRE HYDRANT	ST.	STREET
FL	FLOW LINE	STA	STATION
FS	FINISHED SURFACE	STD	STANDARD
G	GAS	STRUCT	STRUCTURAL
GA	GAGE OR GAUGE	T	TELEPHONE
GB	GRADE BREAK	TC	TOP OF CURB
HDPE	HIGH DENSITY CORRUGATED POLYETHYLENE PIPE	TOW	TOP OF WALL
		TEMP	TEMPORARY
HORIZ	HORIZONTAL	TP	TOP OF PAVEMENT
HI PT	HIGH POINT	TW/FG	TOP OF WALL/FINISH GRADE
H&T	HUB & TACK	TYP	TYPICAL
ID	INSIDE DIAMETER	VC	VERTICAL CURVE
INV	INVERT ELEVATION	VCP	VITRIFIED CLAY PIPE
JB	JUNCTION BOX	VERT	VERTICAL
JT	JOINT TRENCH	W/	WITH
JUP	JOINT UTILITY POLE	W, WL	WATER LINE
L	LENGTH	WM	WATER METER
LNDG	LANDING	WWF	WELDED WIRE FABRIC

PROJECT DATA

TRACT NO.

RECORD OWNER(S)/ SUBDIVIDER(S):	40 MAIN STREET OFFICES, LLC 40 MAIN STREET LOS ALTOS, CA 94022
CIVIL ENGINEER:	LEA & BRAZE ENGINEERING INC. 2495 INDUSTRIAL PARKWAY WEST HAYWARD, CA 94545 (510) 887-4086 CONTACT: PEIF CARLING
GROSS AREAS:	FIRST FLOOR 6,748 SF SECOND FLOOR 6,260 SF THIRD FLOOR 6,127 SF FOURTH FLOOR 6,127 SF FIFTH FLOOR 4,307 SF
ASSESSOR'S PARCEL NO.	167-38-032
UTILITIES SERVICES:	
WATER SUPPLY:	SAN JOSE WATER
SEWAGE DISPOSAL:	WEST VALLEY SANITATION DISTRICT
GAS & ELECTRICAL:	PG&E
TELEPHONE:	AT&T
CABLE:	COMCAST

PROJECT BENCHMARK (FROM SURVEY)

BENCHMARK IS SET NAIL IN TREE AT FRONT OF SITE ALONG MAIN STREET IN FRONT OF THE SITE WITH AN ADDRESS OF 60 MAIN STREET
ELEV: 100.00 (ASSUMED)

UNIT COUNT

TYPE	COUNT
COMMERCIAL UNITS	3
RESIDENTIAL UNITS	15

TREE INVENTORY	
SIZE/DESCRIPTION	STATUS
15"22" TREE	TO BE REMOVED
6"/"10" TREE	TO BE REMOVED
40" TREE	TO BE REMOVED
8" TREE	TO BE REMOVED
5" TREE	TO BE REMOVED

ESTIMATED EARTHWORK QUANTITIES

CUBIC YARDS	WITHIN BUILDING FOOTPRINT	OUTSIDE BUILDING FOOTPRINT	TOTAL CUBIC YARDS
CUT	5,000	0	5,000
FILL	3	0	3
EXPORT/IMPORT			5,000

NOTE:
GRADING QUANTITIES REPRESENT BANK YARDAGE. IT DOES NOT INCLUDE ANY SWELLING OR SHRINKAGE FACTORS AND IS INTENDED TO REPRESENT IN-SITU CONDITIONS. QUANTITIES DO NOT INCLUDE OVER-EXCAVATION, TRENCHING, STRUCTURAL FOUNDATIONS OR PIERS, OR POOL EXCAVATION (IF ANY). NOTE ADDITIONAL EARTHWORKS, SUCH AS KEYWAYS OR BENCHING MAY BE REQUIRED BY THE GEOTECHNICAL ENGINEER IN THE FIELD AT TIME OF CONSTRUCTION. CONTRACTOR TO VERIFY QUANTITIES.

OWNER'S INFORMATION

OWNER/SUBDIVIDER:
40 MAIN STREET OFFICES, LLC
40 MAIN STREET
LOS ALTOS, CA 94022

APN: 167-38-032

REFERENCES

THIS GRADING AND DRAINAGE PLAN IS SUPPLEMENTAL TO:
1. "TOPOGRAPHIC SURVEY BY MAGELLAN & ASSOCIATES ENTITLED: "TOPOGRAPHIC SURVEY"
40 MAIN STREET
LOS ALTOS, CA
DATED: 7-23-07
JOB#: 2840-170

2. SITE PLAN BY WILLIAM MASTON ARCHITECT & ASSOCIATES ENTITLED: "40 MAIN STREET"
LOS ALTOS, CA
DATED: 10-30-15
JOB#: MAI 2017 205

THE CONTRACTOR SHALL REFER TO THE ABOVE NOTED SURVEY AND PLAN, AND SHALL VERIFY BOTH EXISTING AND PROPOSED ITEMS ACCORDING TO THEM.

NOTE:
ANY DAMAGED RIGHT-OF-WAY INFRASTRUCTURES AND OTHERWISE DISPLACED CURB AND GUTTER SHALL BE REMOVED AND REPLACED AS DIRECTED BY THE CITY ENGINEER OR HIS DESIGNEE. CONTRACTOR SHALL COORDINATE WITH PUBLIC WORKS DEPARTMENT AT (650)947-2850.

NOTE:
FOR CONSTRUCTION STAKING SCHEDULING OR QUOTATIONS PLEASE CONTACT ALEX AMAYA AT LEA & BRAZE ENGINEERING (510)887-4086 EXT 116.
aamaya@leabraze.com

* BUILDING PAD NOTE:
ADJUST PAD LEVEL AS REQUIRED. REFER TO STRUCTURAL PLANS FOR SLAB SECTION OR CRAWL SPACE DEPTH TO ESTABLISH PAD LEVEL.

SHEET INDEX

TM-1.0 TITLE SHEET
TM-2.0 PRELIMINARY GRADING, DRAINAGE & UTILITY PLAN

LEA & BRAZE ENGINEERING, INC.

40 MAIN STREET
LOS ALTOS, CALIFORNIA

TITLE SHEET

C-1.0

INSTALL (N) SANITARY SEWER LATERALS. USE 4" PVC (SDR-26) SLOPED AT 2% MINIMUM. CONNECT TO (E) SEWER MAIN AS SHOWN. PROVIDE CLEANOUT TO GRADE AT BUILDING AND BEHIND PROPERTY LINE AND AT MAJOR CHANGES IN DIRECTION AS SHOWN. CONNECT PER DISTRICT STANDARDS.

REMOVE AND REPLACE (E) WALK WITH (N) SIDEWALK WITH FLUSH CURB TRANSITION PER CITY STANDARDS–TYP.

REMOVE AND REPLACE (E) WALK WITH (N) DEPRESSED WAY APPROACH PER CITY STANDARDS.

PLAZA NORTH (25' RIGHT-OF-WAY)

INSTALL (N) DEDICATED FIRE SERVICE LINE WITH BACK FLOW PREVENTION DEVICE PER NFPA 13 STANDARDS.

INSTALL (N) JOINT TRENCH. DESIGN BY OTHERS.

(E) TREE TO BE REMOVED–TYP.

(N) BUILDING

MAIN FF: 98.80

CONNECT (N) WATER SERVICE PER WATER DISTRICT STANDARDS. INSTALL 1" WATER METERS BACK FLOW PREVENTION DEVICES PER WATER DISTRICT STANDARDS AS APPLICABLE.

REMOVE AND REPLACE (E) DRIVEWAY WITH (N) CURB AND GUTTER PER CITY STANDARDS.

MAIN STREET (80' RIGHT-OF-WAY)

REMOVE AND REPLACE (E) SIDEWALK WITH (N) SIDEWALK PER CITY STANDARDS–TYP.

PROJECT BENCHMARK

SCALE: 1" = 10'

FLATWORK

PROVIDE 2% (1% MIN.) SLOPE WITHIN FLAT WORK AND/OR PAVING PER CBC 2304.11.2. SLOPE TOWARDS POSITIVE DRAINAGE AS SHOWN ON PLAN.

(N) CONCRETE DRIVEWAY.

GRIND AC TO TIE (N) AC INTO (E) AC PAVING.

(N) CONCRETE PATIOS/WALKWAYS.

STORM DRAIN

INSTALL (N) ON-SITE STORM DRAIN SYSTEM. USE MINIMUM 6" PVC (SDR 35) OR HDPE (ADS N-12 W/ SMOOTH INTERIOR WALLS). MAINTAIN 24" MINIMUM COVER AND SLOPED AT 1% MINIMUM AT ALL TIMES UNLESS OTHERWISE NOTED. PROVIDE CLEAN OUT TO GRADE AT MAJOR CHANGES IN DIRECTION. AVOID USING 90° BENDS AND INSTEAD USE (2) 45° BENDS AND WYE CONNECTIONS.

CONNECT RAIN WATER DOWNSPOUTS TO 4" PVC (SDR-35) TIGHTLINE, SLOPED AT 1% MINIMUM, DIRECT TO NEAREST STORM DRAIN LINE. PROVIDE CLEAN OUT TO GRADE AT MAJOR CHANGES IN DIRECTION. AVOID USING 90° BENDS AND INSTEAD USE (2) 45° BENDS. TIGHTLINE MAY BE PLACED IN COMMON TRENCH WITH SUBDRAIN LINES. HOWEVER, NOT CONNECT TO SUBDRAIN LINES. CONNECT TO NEAREST STORM DRAIN LINE AS SHOWN ON PLAN.

INSTALL (N) INFILTRATION DEVICE (ID).

UTILITIES

INSTALL (N) SANITARY SEWER LATERALS. USE 4" PVC (SDR-26) SLOPED AT 2% MINIMUM. CONNECT TO (E) SEWER MAIN AS SHOWN. PROVIDE CLEANOUT TO GRADE AT BUILDING AND BEHIND PROPERTY LINE AND AT MAJOR CHANGES IN DIRECTION AS SHOWN. REUSE (E) LATERAL IF POSSIBLE. CONNECT PER DISTRICT STANDARDS.

INSTALL (N) SSCO WITH BACK UP OVERFLOW DEVICE PER CITY STANDARD DETAIL SS-5 & SS-4.

CONNECT (N) WATER SERVICE PER WATER DISTRICT STANDARDS. INSTALL 1" WATER METERS BACK FLOW PREVENTION DEVICES (FINAL SELECTION TO BE COORDINATED WITH WATER COMPANY) PER WATER DISTRICT STANDARDS AS APPLICABLE. INSTALL (N) 1-1/2" MINIMUM SERVICE LINE FOR DOMESTIC SERVICE.

INSTALL (N) DEDICATED FIRE SERVICE LINE WITH BACK FLOW PREVENTION DEVICE PER NFPA 13 STANDARDS. INSTALL (N) UNDERGROUND COMMUNICATIONS CONDUIT FROM THE BACK FLOW PREVENTION DEVICE TO THE FIRE ALARM CONTROL PANEL.

(N) FIRE DEPARTMENT CONNECTION (SEE FIRE PROTECTION PLANS FOR DETAILS).

INSTALL (N) JOINT TRENCH FOR SERVICES INCLUDING GAS, CATV & ELECTRIC FROM NEAREST POINT OF CONNECTION. DESIGN BY OTHERS.

DEMOLITION

DEMOLISH (E) IMPROVEMENTS AS NECESSARY TO ACCOMMODATE (N) CONSTRUCTION. NO DEMOLITION SHALL COMMENCE WITHOUT REQUIRED DEMOLITION PERMITS.

REMOVE (E) TREE. CONTRACTOR SHALL OBTAIN THE PROPER TREE REMOVAL PERMITS AS REQUIRED.

PRELIMINARY CONSTRUCTION PLAN TRAFFIC, PARKING, AND NOISE NOTES

MANAGEMENT

1. CONSTRUCTION HOURS:
   NON HOLIDAYS AND WEEKDAYS 7:00AM–7:00PM
   HEAVY NOISE IMPACT ACTIVITIES 8:00AM–5:00PM
2. TRUCK ROUTES ARE IDENTIFIED ON THE PLAN.
3. NO SIDEWALK CLOSURES ARE NOTED ON THE PLAN.
4. TRANSPORTATION PERMITS FOR OVERSIZED LOADS WILL BE OBTAINED AS REQUIRED.

PARKING

1. CONTRACTORS AND THEIR EMPLOYEES WILL CARPOOL WHENEVER POSSIBLE.
2. CONTRACTORS AND THEIR EMPLOYEES WILL DELIVER TOOLS, EQUIPMENT AND MATERIALS ON SITE BUT PARK OFF SITE TO AVOID NEARBY RESIDENTIAL STREETS AND NEIGHBORHOODS.
3. CONSTRUCTION HEAVY EQUIPMENT, LIFTS, AND TOOLS TO REMAIN ON SITE AND BE STORED ON SITE.
4. CONTRACTOR WILL OBTAIN PERMITS FOR NEARBY PARKING LOTS IF AVAILABLE.
5. NO SPILL OVER PARKING TO RESIDENTIAL STREETS AND NEIGHBORHOODS.
6. CONTRACTORS AND EMPLOYEES ARE TO WALK FROM OFFSITE PARKING TO JOB SITE VIA APPROVED PEDESTRIAN ROUTES.
7. INGRESS AND EGRESS FOR CONSTRUCTION EQUIPMENT IS PER PLAN.

SIGNAGE

1. SIGNAGE TO BE POSTED TO REINFORCE TRUCK DELIVERY ROUTES.
2. SIDEWALK CLOSURE NOTIFICATION SIGNS AND BARRICADES TO BE PLACED AS NEEDED DURING SIDEWALK CLOSURE PERIODS.

PEDESTRIAN/BICYCLE ROUTES

1. CONSTRUCTION SITE TO BE FENCED OFF FROM PEDESTRIAN AND BICYCLES.
2. PEDESTRIAN SIDEWALK ROUTES TO BE SIDE OF STREET OPPOSITE THE CONSTRUCTION SITE.
3. SIDEWALK CLOSURES AND DETOURS TO BE CLEARLY MARKED AT ALL TIMES.
4. SIDEWALK CLOSURE SIGNS TO BE PLACED AND NEAREST CROSSWALKS IN EACH DIRECTION TO DETOUR PEDESTRIAN TRAFFIC.

NOISE REDUCTION

1. COMPLY WITH CITY'S NOISE CONTROL ORDINANCE AS STATED IN CHAPTER 6.16 OF THE MUNICIPAL CODE.
2. AT LEAST 24 HOURS PRIOR TO ANY JACK HAMMERING ACTIVITIES, ALL OCCUPANTS OF THE ADJACENT PROPERTIES WILL BE NOTIFIED.

ROPERTY OWNER SHALL INFORM THE TOWN Y DAMAGE AND SHALL REPAIR ANY BE CAUSED BY THE CONSTRUCTION OF THE CT TO THE PATHWAYS, PRIVATE WAYS, AND PUBLIC AND PRIVATE WAYS, PRIOR TO FINAL INSPECTION AND OR OF OCCUPANCY PERMITS AND SHALL DE THE TOWN WITH PHOTOGRAPHS OF THE NG CONDITIONS OF THE ROADWAYS AND WAYS PRIOR TO ACCEPTANCE OF PLANS BUILDING PLAN CHECK.

RE DEPARTMENT CONNECTION SHALL BE LOCATED MAL TO THE PUBLIC WAY, ON THE PRIMARY SIDE OF THE BUILDING, AS SPECIFIED IN 'S SPECIFICATIONS SP-5 – SPECIFICATION FOR SIGN AND INSTALLATION OF FIRE SPRINKLER MS IN MULTI-UNIT RESIDENTIAL BUILDINGS.

ENCROACHMENT PERMIT FOR CONSTRUCTION IN THE STREET REQUIRED
CONSTRUCTION CONDUCTED IN THE CITY RIGHT-OF-WAY MUST HAVE A "PERMIT FOR CONSTRUCTION IN THE STREET" THAT MUST BE OBTAINED FROM THE PUBLIC WORKS DEPARTMENT PRIOR TO COMMENCEMENT OF WORK. ANY CONSTRUCTION WITHIN THE PUBLIC RIGHT-OF-WAY, EASEMENTS, OR OTHER PROPERTY CONTROLLED BY THE CITY MUST CONFORM TO STANDARDS ESTABLISHED IN THE TOWN STANDARD SPECIFICATIONS FOR THE UTILITIES DEPT. AND THE PUBLIC WORKS DEPT.

CONTRACTOR TO CONTACT USA 48 HOURS PRIOR TO CONSTRUCTION/ EXCAVATION IN THE RIGHT-OF-WAY.

ANY/ALL PUBLIC IMPROVEMENTS THAT ARE DAMAGED BY THE OWNER OR HIS/HER CONTRACTOR WHILE WORKING ON THIS PROJECT WILL BE THE RESPONSIBILITY OF THE OWNER TO REPAIR, RESTORE, OR REPLACE IN KIND. REPLACEMENT, REPAIR, OR RESTORATION WORK MUST BE IN COMPLIANCE WITH THE TOWN STANDARD SPECIFICATIONS FOR CONSTRUCTION IN THE PUBLIC RIGHT-OF-WAY.

** EXISTING UTILITY NOTE:
CONTRACTOR TO VERIFY EXISTING UTILITIES SIZE, LOCATION, AND SLOPE PRIOR TO CONSTRUCTION. NOTIFY LEA & BRAZE ENGINEERING OF DISCREPANCIES.

TREE INVENTORY	
SIZE/DESCRIPTION	STATUS
19"22" TREE	TO BE REMOVED
8"7"10" TREE	TO BE REMOVED
45" TREE	TO BE REMOVED
6" TREE	TO BE REMOVED
6" TREE	TO BE REMOVED

NOTE:
FOR CONSTRUCTION STAKING SCHEDULING OR QUOTATIONS PLEASE CONTACT ALEX ABAYA AT LEA & BRAZE ENGINEERING (510)887-4086 EXT 114. aabaya@leabraze.com

* BUILDING PAD NOTE:
ADJUST PAD LEVEL AS REQUIRED. REFER TO STRUCTURAL PLANS FOR SLAB SECTION OR CRAWL SPACE DEPTH TO ESTABLISH PAD LEVEL.

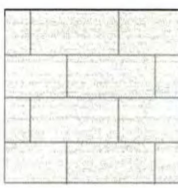
LEA & BRAZE ENGINEERING, INC.
CIVIL ENGINEERS | LAND SURVEYORS

40 MAIN STREET
LOS ALTOS, CALIFORNIA

PRELIMINARY GRADING, DRAINAGE & UTILITY PLAN

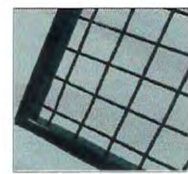
C-2.0

S1 - STUCCO - SW 7565 - OYSTER BAR by SHERWIN WILLIAMS



ST 1 - STONE - SABBIA by PAN AMERICA

ST2 - COMPOSITE STONE MOULDINGS / CAP , SAGE MIST BY ARCHITECTURAL FACADES



M - 1/2" STEEL TUBE 3" C/C, TO MATCH RAILINGS

T1 - STOREFRONT FRAME - FLAT BRONZE by BLOMBERG

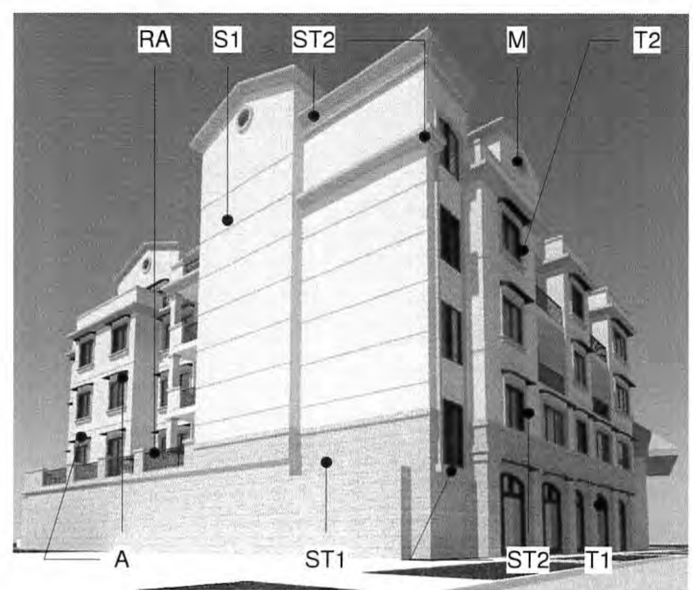
T2 - WINDOW FRAME - TRUFFLE by KOLBE

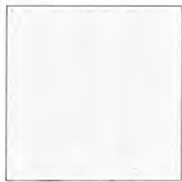
RA - METAL RAILING - FLAT BRONZE by BLOMBERG

A - AWNING - TRUFFLE by KOLBE

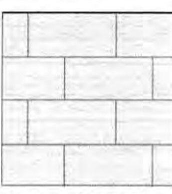
COLOR & MATERIALS BOARD (3F)	**GROUND FLOOR OFFICE + 2 STORY RESIDENTIAL** 40 MAIN STREET, LOS ALTOS CA 94022	© 2016 ALL RIGHTS RESERVED THIS DOCUMENT AND THE IDEAS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF MASTON ARCHITECT & ASSOCIATES AND IS NOT TO BE USED IN PART FOR ANY PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF MASTON ARCHITECT & ASSOCIATES	William Maston Architect & Associates 384 Castro St Mountain View, CA 94041 t.650.968.7900 f.650.968.4913 www.mastonarchitect.com	DATE OCT 31 2018 SCALE N.T.S. DRAWN BY WMAA JOB MAI 2017 006 SHEET **CM-2**

ATTACHMENT 1b



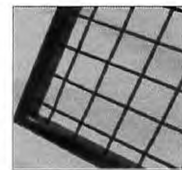


S1 - STUCCO - SW 7565 - OYSTER BAR by SHERWIN WILLIAMS



ST 1 - STONE - SABBIA by PAN AMERICA

ST2 - COMPOSITE STONE MOULDINGS / CAP , SAGE MIST BY ARCHITECTURAL FACADES



M - 1/2" STEEL TUBE 3" C/C, TO MATCH RAILINGS

T1 - STOREFRONT FRAME - FLAT BRONZE by BLOMBERG

T2 - WINDOW FRAME - TRUFFLE by KOLBE

RA - METAL RAILING - FLAT BRONZE by BLOMBERG

A - AWNING - TRUFFLE by KOLBE

COLOR & MATERIALS BOARD (5F)

GROUND FLOOR OFFICE + 4 STORY RESIDENTIAL

40 MAIN STREET, LOS ALTOS CA 94022

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THIS DOCUMENT AND THE IDEAS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF MASTON ARCHITECT & ASSOCIATES AND IS NOT TO BE USED IN PART FOR ANY PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF MASTON ARCHITECT & ASSOCIATES

William Maston Architect & Associates
384 Castro St
Mountain View, CA 94041
t.650.968.7900 f.650.968.4913
www.mastonarchitect.com

DATE	OCT 31 2018
SCALE	N.T.S.
DRAWN BY	WMAA
JOB	MAI 2017 006
SHEET	**CM-1**

Community Development Department
One North San Antonio Road
Los Altos, California 94022

December 7, 2018

40 Main Street Offices, LLC;
c/o Ted Sorensen
40 Main Street
Los Altos, CA 94022,

&

William J. Maston, Architect and Associates
384 Castro Street
Mountain View, CA 94041

Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10; SB 35 DETERMINATION

Dear Mr. Sorensen and Mr. Maston:

This letter provides our decision on the application you have submitted, dated November 8, 2018, for a mixed-use project at 40 Main Street, Los Altos, CA, submitted for consideration under the provisions of SB 35, the California State legislation that provides for streamlined permit processing of projects meeting certain requirements.

Our review of the project indicates that it is not subject to the provisions of SB 35 for the following reasons:

- The project does not provide the percentage of affordable dwelling units required by the State regulations. The SB 35 Statewide Determination Summary list (http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary01312018.pdf) concludes that the City of Los Altos requires 50% of more affordable to take advantage of SB 35. See Government Code Section 65913.4(a)(4)(A) and (B)(ii).

- Per Government Code Section 65913.4(a)(5), the development, excluding any density bonus units, concessions, incentives, or waivers is inconsistent with the City's objective zoning standards. Namely, the plans purporting to demonstrate a consistent project do not provide the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking.

In addition, this application results in two applications that have been submitted for this site. One or the other of the projects must be withdrawn. The City of Los Altos does not have provisions that provide for the concurrent processing of multiple development proposals on the same site.

ATTACHMENT 2

If you elect to pursue other approval/permit avenues for the project that is the subject of this notice, the applications, fees, deposits, studies, and information contained in the attached Notice of Incomplete Application are required to continue an evaluation of the project. A review of any submittals may reveal that other applications, fees, deposits, studies, and information are required to continue an evaluation of the project to determine completeness and processing through the environmental review and public hearing processes.

Sincerely,

Jon Biggs, City of Los Altos
Community Development Director

Attachments:

Notice of Incomplete Application

Community Development Department
One North San Antonio Road
Los Altos, California 94022

NOTICE OF INCOMPLETE APPLICATION

December 7, 2018

40 Main Street Offices, LLC;
c/o Ted Sorensen
40 Main Street
Los Altos, CA 94022

&

William J. Maston, Architect and Associates
384 Castro Street
Mountain View, CA 94041

Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10

Dear Mr. Sorensen and Mr. Maston:

This letter is in response to the Design Review and Use Permit applications submitted on November 8, 2018 for a new mixed-use building at 40 Main Street. The application is **incomplete** for processing. This letter is a list of the items that will need to be addressed or provided for the application to be deemed complete.

Per Zoning Code Section 14.78.050, all necessary plan revisions, documentation and information to address the comments in this letter must be submitted within **180 days** of the date of this letter in order to avoid this application from being deemed expired. This application will be deemed expired on June 6, 2019. If additional time is necessary to fully address the City's comments, you may submit a written request for an extension of up to an additional 180 days. The request should include justification for the extension and outline the circumstances that have caused a delay in the submittal of the required information.

Once the application has been deemed complete, we can discuss the schedule for the required public meetings before the Complete Streets Commission, Planning Commission and the City Council, and the environmental review process as required by the California Environmental Quality Act.

LIST OF COMPLETENESS ITEMS

Planning Division

1. Provide a preliminary lighting plan that provides details and locations of all exterior lighting fixtures.

2. Provide a sign design plan that includes signage details – dimensions, letter size, colors, material, illumination, sign/letter cross sections – for the existing pole sign and all building mounted signage. The sign materials should be high quality and match the style of the project architecture.

3. Update the design of the parking levels to include the following information:
   a. Provide vehicle circulation details such as directional arrows, striping and stop signs;
   b. Show that all parking spaces will be double-striped;
   c. Show the location of all proposed EV charging stations. For the remaining EV reserved spaces, consider alternative locations in the parking lot;
   d. Provide a complete engineering plan of the vehicle circulation system that will provide access to and egress from the underground parking levels of the structure, to include projections for vehicle queuing in public parking plaza 10 and circulation patterns of vehicles traveling through public parking plaza 10.

4. Provide a landscape plan to include the following information:
   a. Show existing and proposed landscaping, trees and improvements within the public right-of-way and details for the landscape plane;
   b. Provide a tree inventory (size and species) of all existing trees on the site and along the property frontage in the public street right-of-way and a report from a certified arborist or forester that details the conditions of the trees.

5. Provide an acoustical analysis that evaluates the proposed rooftop mechanical equipment and noise generated by delivery trucks to ensure that the project is in compliance with the City's General Plan and the Noise Control Regulations.

6. Variance application for an exception to the maximum permitted height and reduction in the required number of off-street parking spaces with the variance application fee of $5,350.

7. Provide a preliminary deposit in the amount of $75,000 to cover the initial cost of environmental evaluation that must be conducted on the project and independent studies and analysis necessary to complete the environmental review.

8. Provide a deposit of $15,000 to cover the cost of the peer review of the density bonus report that is required in order to demonstrate how any concessions and incentives requested result in identifiable and actual cost reductions to provide affordable housing.

9. Provide a deposit of $6,000 to cover the cost of an independent design evaluation of the structure and its conformance with the Los Altos Downtown Design Guidelines.

10. Provide a shadow study depicting how shadows that will be cast by the project throughout the course of the day, for both the winter and summer seasons.

11. Provide complete engineering and/or manufacturers details for the mechanical vehicle lift system that is being proposed

12. Provide a Sketch-Up model of the project so it can be inserted into the Downtown model and evaluated.

13. Provide an address list, in label format, for all commercial tenants within 500 feet of the project.

14. Provide two sets of blank, postage paid postcards. Each set should have enough postcards to cover all property owners and business tenants within 500 feet of the project (80 property owners plus additional commercial tenants).

15. Provide circled items from the Submittal requirements for Commercial or Multi-Family Design Review list (attached).

16. Provide circled items from the Submittal requirements for Conditional Use Permits list (attached).

17. Provide circled items from the Density Bonus Report Submittal Requirements list (attached).

Building Division

See comments listed on the November 15, 2018 Memorandum from the Building Division

Engineering Division

These are preliminary comments supplemental to those additional comments that the Engineering Division may develop as it continues its review of any revised plans submitted for the project. A complete set of conditions of approval will be added to the application prior to consideration of the project by the Planning Commission.

18. The driveway entrance along parking plaza will affect up to 2 parking spaces which is not acceptable.

19. Parking circulation is inadequate. How/where will the vehicles queue while waiting for the mechanical lift system to go into the underground parking area?

20. C3 bioretention areas shall be located in building common areas to allow for bi-annual inspections by City and SCC Vector Control staff.

21. Provide a truck route plan that shows the street routes that delivery trucks will use and include turning templates for the trucks entering and exiting the site. Also, note the size of the trucks and the hours of operation. This information should be included as a plan sheet.

22. The applicant shall contact Mission Trails Company and submit a solid waste disposal plan indicating the type and size of container proposed and the frequency of pick-up service subject to the approval of the Engineering Division. The applicant shall submit evidence that Mission Trails Company has reviewed and approved the size and location of the enclosure for recyclables.

23. The project will be required to submit a Stormwater Management Plan (SWMP) report showing:
    a. That 100 percent of the site is being treated to include the new paving and new sidewalk;
    b. The project is in compliance with the San Francisco Bay Municipal Regional Stormwater NPDES Permit Order R2-2009-0074, NPDES Permit No. CAS612008, October 14, 2009;
    c. That all treatment measures are in accordance with the C.3 Provisions for Low Impact Development (LID) and in compliance with the December 1, 2011 requirements; and
    d. The SWMP shall be reviewed and approved by a City approved third party consultant. The recommendations from the SWMP shall be shown on the building plans.

Santa Clara County Fire Department (Fire Marshall, 408-378-4010)

24. See comments listed on the November 15, 2018 Memorandum from the Fire Department.

To continue the development review process, submit five (5) full sized sets of plans, five (5) half sized sets of plans and two (2) copies of all technical reports and support information required by this notice of incomplete application.

Sincerely,

Jon Biggs, City of Los Altos
Community Development Director

Attachments:

Building Division Memo, Dated November 15, 2018

Santa Clara County Fire Department Memo/Letter, Dated November 15, 2018

Submittal requirements for Commercial or Multi-Family Design Review

Submittal requirements for Conditional Use Permits

Density Bonus Report Submittal Requirements

MEMORANDUM

DATE: 11/15/18

TO:

___ City Manager
X Building Division
___ Fire Department
___ Engineering Division
___ Other ___

FROM: PLANNING DIVISION

RE: **40 Main Street**
18-D-07 & 18-UP-10 – 40 Main Street Offices, LLC/
William J. Maston Architect & Associates

Attached is a copy of an application and/or drawings.

Please return any comments by: Thurs. 11/29/18.

Van Accessible Vertical Clearances?
Kirk B Ballard 12/6/18

CITY OF LOS ALTOS
GENERAL APPLICATION

Type of Review Requested: ***(Check all boxes that apply)*** **Permit #** 1108545

	One-Story Design Review	X	**Commercial/Multi-Family**		**Environmental Review**
	Two-Story Design Review		**Sign Permit**		**Rezoning**
	Variance	X	**Use Permit**		**R1-S Overlay**
	Lot Line Adjustment		**Tenant Improvement**		**General Plan/Code Amendment**
	Tentative Map/Division of Land		**Sidewalk Display Permit**		**Appeal**
	Historical Review		**Preliminary Project Review**		**Other:**

Project Address/Location: 40 Main Street, Los Altos CA 94022

Project Proposal/Use: Mixed Use / Residential **Current Use of Property:** Office

Assessor Parcel Number(s): 167-38-032 **Site Area:** 6,995

New Sq. Ft.: 29,566 **Altered/Rebuilt Sq. Ft.:** ______ **Existing Sq. Ft. to Remain:** ______

Total Existing Sq. Ft.: 2,050 **Total Proposed Sq. Ft. (including basement):** ______

Applicant's Name: 40 Main Street Offices, LLC
Telephone No.: (650) 924-0418 **Email Address:** ted@gunnmanagement.com
Mailing Address: 40 Main Street
City/State/Zip Code: Los Altos CA 94022

Property Owner's Name: 40 Main Street Offices, LLC
Telephone No.: (650) 924-0418 **Email Address:** ted@gunnmanagement.com
Mailing Address: 40 Main Street
City/State/Zip Code: Los Altos CA 94022

Architect/Designer's Name: William J. Maston Architect & Associates.
Telephone No.: (650) 968-7900 **Email Address:** billm@mastonarchitect.com
Mailing Address: 384 Castro Street
City/State/Zip Code: Mountain View, CA 94041

*** * * If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finaled prior to obtaining your building permit. Please contact the Building Division for a demolition package. * * ***

(continued on back)

Does your project comply with any Deed Restrictions, Conditions, Covenants, and Restrictions (CC&R's), or any other recorded conditions of the subdivision in which it is located? Examples are restrictions that limit development to one-story height or may require setbacks greater than those required by City Codes. You are responsible for researching your title insurance report to find the CC&R's for your property. If you do not have a copy of the title report, you may obtain the information from a title insurance company or the County Recorder's Office. ☐ **Yes** ☐ **No** ☒ **N/A**

If No, please explain below in what way your project does not comply with the restrictions and why you propose such variations.

N/A

I certify that the above information is true and correct.

Date: 11/8/18

Property Owner/Applicant or Authorized Agent Signature: [signature]

(If signing as an authorized agent, please submit evidence of written authorization)

<u>For City Staff Use Only:</u>

Received by: Eliana / Sean Date: 11/8/18

Department Review Required:

Department	Required	Date Notified
Fire Department	(YES) / NO	11/15/18
Building Division	(YES) / NO	11/15/18
Public Works Engineering	(YES) / NO	11/15/18
City Manager	(YES) / NO	11/15/18

Is the submittal package <u>complete</u>? YES / NO (TBD)

If NO, what items still need to be submitted?

18-4273

RECEIVED

NOV 16 2018

SA... ...ARA COUNTY
FIRE DEPARTMENT

DRC

MEMORANDUM

DATE: 11/15/18

TO:
___ City Manager
___ Building Division
X Fire Department
___ Engineering Division
___ Other ________

FROM: PLANNING DIVISION

RE: **40 Main Street**
18-D-07 & 18-UP-10 – 40 Main Street Offices, LLC/
William J. Maston Architect & Associates

Attached is a copy of an application and/or drawings.

Please return any comments by: Thurs. 11/29/18.

FIRE DEPARTMENT
SANTA CLARA COUNTY

14700 Winchester Blvd., Los Gatos, CA 95032-1818
(408) 378-4010 •(408) 378-9342 (fax) • www.sccfd.org

PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

Plans and Scope of Review:

This project shall comply with the following:

The California Fire (CFC), Building (CBC) and Residential (CRC) Code, 2016 edition, as adopted by the City of Los Altos Municipal Code (LOSMC), California Code of Regulations (CCR) and Health & Safety Code.

The scope of this project includes the following:

Review of preliminary application for a proposed four-story residential (15 units) over ground floor office (29,566 square foot building) with two levels of underground parking (square footage not provided).

NOTE: Please be advised that the review comments are based on limited information provided on the plans and as the submittal also included a 3-story, a full detailed plan review could not be conducted. Please provide only one building proposal in future plan submittals so that we can provide more clear and accurate comments.

Plan Status:

Plans are **NOT APPROVED.** To prevent plan review and inspection delays, the below noted Developmental Review Conditions shall be addressed on all pending and future plan submittals and any referenced diagrams to be reproduced onto the future plan submittal.

Plan Review Comments:

1. Review of this Developmental proposal is limited to acceptability of site access and water supply as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work the applicant shall make application to, and receive from, the Building Department all applicable construction permits.

City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	ApplicantName	DATE	PAGE
LOS	☒	☐	☒	☐	☒	B/R	pending	William Matson Architect &	11/29/2018	1 OF 4

SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION	PROJECT TYPE OR SYSTEM
5+2pkg	29,566 +		Commercial Development	Design Review

NAME OF PROJECT	LOCATION
40 MAIN OFFICES AND RESIDENCES	40 Main St Los Altos

TABULAR FIRE FLOW	REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY
			Baker, Kathy

FIRE DEPARTMENT
SANTA CLARA COUNTY

14700 Winchester Blvd., Los Gatos, CA 95032-1818
(408) 378-4010 • (408) 378-9342 (fax) • www.sccfd.org

PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

2. **Fire Sprinklers Required:** Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.18 whichever is the more restrictive. For the purposes of this section, firewalls used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations. NOTE: The owner(s), occupant(s) and any contractor(s) or subcontractor(s) are responsible for consulting with the water purveyor of record in order to determine if any modification or upgrade of the existing water service is required. A State of California licensed (C-16) Fire Protection Contractor shall submit plans, calculations, a completed permit application and appropriate fees to this department for review and approval prior to beginning their work. CFC Sec. 903.2 as adopted and amended by LOSMC. **Provide a note in Project Data on Sheet A0.01 indicating that a fire sprinkler system will be provided and installed per NFPA 13 and 13R, 2016 edition standards.**

3. **Water Supply Requirements:** Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2016 CFC Sec. 903.3.5 and Health and Safety Code 13114.7.

4. **Two-way communication system:** Two-way communication systems shall be designed and installed in accordance with NFPA 72 (2016 edition), the California Electrical Code (2013 edition), the California Fire Code (2016 edition), the California Building Code (2016 edition), and the city ordinances where two way system is being installed, policies, and standards. Other standards also contain design/installation criteria for specific life safety related equipment. These other standards are referred to in NFPA 72.

5. **Fire Alarm Requirements:** The building shall be provided with a fire alarm system in accordance with CFC Section 907.

City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	ApplicantName	DATE	PAGE
LOS	☒	☐	☒	☐	☒	B/R	pending	William Matson Architect &	11/29/2018	2 OF 4

SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION	PROJECT TYPE OR SYSTEM
5+2pkg	29,566 +		Commercial Development	Design Review

NAME OF PROJECT	LOCATION
40 MAIN OFFICES AND RESIDENCES	40 Main St Los Altos

TABULAR FIRE FLOW	REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY
			Baker, Kathy

FIRE DEPARTMENT
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14700 Winchester Blvd., Los Gatos, CA 95032-1818
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PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

6. **Public Fire Hydrant(s) Required:** Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be 500 feet, with a minimum single hydrant flow of 500 GPM at 20 psi, residual. Fire hydrants shall be provided along required fire apparatus access roads and adjacent public streets. CFC Sec. 507, and Appendix B and associated Tables, and Appendix C. **Identify on the plans the location of all existing and new fire hydrants as required to comply with above mentioned code section.**

7. **Aerial Fire Apparatus Access Roads:** 1. Where required: Buildings or portions of buildings or facilities exceeding 30 feet (9144 mm) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway. 2. Width: Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925) in the immediate vicinity of any building or portion of building more than 30 feet (9144 mm) in height. 3. Proximity to building: At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572) and a maximum of 30 feet (9144mm) from the building, and shall be positioned parallel to one entire side of the building, as approved by the fire code official. CFC Sec. 503. **Aerial Apparatus Access will be required along the west side of the building, opposite Main Street. Identify this access road as well as all above required measurements on site access sheet.**

8. **Timing of installation:** When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods of protection are provided. Temporary street signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2 CFC Sec. 501.4

9. **Ground ladder access:** Ground-ladder rescue from second and third floor rooms shall be made possible for fire department operations. With the climbing angle of seventy five degrees maintained, an approximate walkway width along either side of the building shall be no less than seven feet clear. Landscaping shall not be allowed to interfere with the required access. CFC Sec. 503 and 1029 NFPA 1932 Sec. 5.1.8 through 5.1.9.2. **Identify the location of ground ladder access on the plans.**

City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	ApplicantName	DATE	PAGE
LOS	☒	☐	☒	☐	☒	B/R	pending	William Matson Architect &	11/29/2018	3 OF 4

SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION	PROJECT TYPE OR SYSTEM
5+2pkg	29,566 +		Commercial Development	Design Review

NAME OF PROJECT	LOCATION
40 MAIN OFFICES AND RESIDENCES	40 Main St Los Altos

TABULAR FIRE FLOW	REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY
			Baker, Kathy

FIRE DEPARTMENT
SANTA CLARA COUNTY

14700 Winchester Blvd., Los Gatos, CA 95032-1818
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PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

10. **Standpipes Required:** Standpipe systems shall be provided in new buildings and structures in accordance with this section. Fire hose threads used in connection with standpipe systems shall be approved and shall be compatible with fire department hose threads. The location of fire department hose connections shall be approved. Standpipes shall be manual wet type. In buildings used for high-piled combustible storage, fire hose protection shall be in accordance with Chapter 32. Standpipe systems shall be installed in accordance with this section and NFPA 14 as amended in Chapter 47. CFC Sec. 905

11. **Emergency Responder Radio Coverage:** Emergency responder radio coverage in new buildings. All new buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communication systems. Refer to CFC Sec. 510 for further requirements

12. **Construction Site Fire Safety:** All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification SI-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. CFC Chp. 33

13. **Address identification:** New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1

This review shall not be construed to be an approval of a violation of the provisions of the California Fire Code or of other laws or regulations of the jurisdiction. A permit presuming to give authority to violate or cancel the provisions of the Fire Code or other such laws or regulations shall not be valid. Any addition to or alteration of approved construction documents shall be approved in advance. [CFC, Ch.1, 105.3.6]

City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	ApplicantName	DATE	PAGE
LOS	☒	☐	☒	☐	☒	B/R	pending	William Matson Architect &	11/29/2018	4 OF 4

SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION	PROJECT TYPE OR SYSTEM
5+2pkg	29,566 +		Commercial Development	Design Review

NAME OF PROJECT	LOCATION
40 MAIN OFFICES AND RESIDENCES	40 Main St Los Altos

TABULAR FIRE FLOW	REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY
			Baker, Kathy

40 MAIN - MIXED USE
- NOV. 8, 2018

City of Los Altos
Planning Division
(650) 947-2750
Planning@losaltosca.gov

Project. No. 2018-1108545

SUBMITTAL REQUIREMENTS
COMMERCIAL OR MULTI-FAMILY DESIGN REVIEW

APPLICATION FORM, FEE & REQUIRED MATERIALS

All items are required at time of submittal. The project will not be scheduled for a public meeting until the application has been reviewed by a planner and is deemed complete.

1. **General Application Form**

2. **Filing Fee(s)**

Application	$________
Environmental Review	$________
Public Notification ($1.00/notice) *	$________
Other:________________	$________
TOTAL	$________

Make checks payable to the City of Los Altos. Fees are not refundable.

** Notices mailed to all properties and business tenants within 500 feet of project site for the Planning Commission and City Council public meetings.*

3. **Materials Board**
   a. Initial submittal: Provide color photos on an 8.5" x 11" sheet showing roofing material, siding, applied materials (e.g. stone, brick), trim, etc., and identify manufacturer and product specifications.
   b. Once application is deemed complete: Provide product samples of proposed materials and colors on an 11" x 17" board and, if necessary, applied material mockups to illustrate the appearance of materials together.

4. **Technical Studies**
   Depending on the nature of the project, technical studies, such as a traffic impact assessment, arborist report or acoustical analysis, may be required.

5. **Climate Action Plan Checklist for New Development**

6. **Color Renderings and 3D Model**
   a. Provide a sufficient number of perspective color renderings of the proposed structure, photo simulated within the existing context of the built and natural surroundings, to represent how all elevations of the building will appear at a pedestrian scale/level.
   b. Provide a digital model (using SketchUp or a similar program) of the proposed development and adjacent buildings within the broader streetscape area that can be presented and manipulated to represent the three dimensional qualities of the proposed building within the existing context of the built and natural surroundings.

7. **Architectural Design Plans** *(see checklist below)*
   a. Initial submittal: Five (5) full-size sets (24" x 36") and five (5) half-size sets (11" x 17").
   b. Once application deemed complete: Additional half-size sets of plans will be required before each public meeting and a digital copy in .pdf format on a CD, a USB data key or emailed to the project planner.

ARCHITECTURAL DESIGN PLANS

1. **Cover Sheet**

- ☑ Vicinity Map (clear and legible)
- ☑ Table of Contents
- ☑ General Project Information (project description, general plan, zoning, property owner, design professionals, etc.)
- ☑ A summary of land development calculations including, but not limited to, site area, lot coverage, setbacks, impervious surfaces, building floor area, parking stalls (required and proposed), and, when appropriate, number of beds, students and/or dining seats
- ☑ Rendering or graphic of proposed project

2. **Site Plan** (⅛" = 1' scale)

- ☑ Subject property showing all property lines and adjacent streets
- ☑ Location of all structures on subject property
- ☐ Location and dimensions of parking, driveway, and loading areas
- ☐ Location, size, type and proposed disposition of all existing trees over four-inches in diameter
- ☐ Landscape areas, walkways, fences, retaining walls, utility areas, and trash facilities

3. **Floor Plans** (¼" = 1' scale) / 3/16" = 1'-0" - ok ✓

- ☐ Show existing and proposed development
- ☑ Identify details such as balconies, roof gardens, cabanas, etc.

  NOTE: Floor plans for single-story buildings may be shown on the site plan.

4. **Floor Area Calculation Diagram** (⅛" = 1' scale)

- ☑ Gross floor area - measured to outside edge of wall and including all space enclosed by walls (habitable space, non-habitable space, accessory structures, basements)
- ☐ Net floor area - excluding all inner courts and/or shaft enclosures (stairwells, elevator shafts, etc)
- ☐ Existing floor area of structures to be removed

5. **Building Elevations** (¼" = 1' scale)

- ☑ Building materials and design details
- ☑ Roof pitch
- ☑ Roof-mounted equipment
- ☑ New signage being proposed
- ☑ Height
- ☐ Color(s) - SAMPLES
- ☒ Fencing NA

6. ✓ **Building Cross-Sections** (¼" = 1' scale)

Provide at least two (2) cross-sections (one perpendicular from the other) taken from the highest ridge, showing existing and proposed grades, finished floor heights, wall plates, and building height measured to existing grade.

7. **Roof Plan** (¼" = 1' scale)

- ☑ Roof pitch
- ☑ Existing roof to remain and new roof area
- ☑ All rooftop mechanical equipment and screening location(s)

8. **Landscape Plan** (¼" = 1' scale)

- ☐ A conceptual planting plan that identifies all existing and proposed trees and plants
- ☐ Hardscape, walkways, fences and retaining walls
- ☐ Utility areas and trash facilities
- ☐ A calculation identifying total area of proposed hardscape and softscape
- ☐ Provide color photos of all proposed trees and evergreen screening species, along with the following information:
  - Common name
  - Anticipated height and spread at maturity
  - Average rate of growth

9. **Grading and Drainage Plan** (⅛" = 1' scale)

NOTE: The Grading and Drainage Plan shall be prepared by a registered civil engineer or a licensed architect.

- ☐ Location and elevation of benchmarks
- ☐ Elevation at street and neighboring property lines
- ☐ Pad elevation
- ☑ Finished floor elevation
- ☑ Tree location(s)
- ☐ Lot drainage pattern
- ☐ Existing and proposed contours
- ☐ Stormwater management measures to retain stormwater on site in accord with the Best Management Practices
- ☐ All existing and proposed utilities (lines, transformers, meters, etc.) and adjacent infrastructure

10. **Construction Management Plan**

Prepare a preliminary construction management plan that identifies anticipated truck routing and staging, construction worker parking plan (on-site and off-site) and pedestrian routing (sidewalk closures, detours, etc.). *See Construction Management Plan handout for more specific direction.*

11. **Streetscape Elevation**

Render proposed structure(s) in relation to buildings/development on adjoining properties. In the case of a corner lot, a streetscape of each street is required.

PUBLIC NOTIFICATION

1. **Mailed Notices** – All properties within 500 feet of the project site will receive a mailed notice of all public meetings 10-14 days before the meeting date. The Planning Division will provide an area map showing all properties within a 500-foot radius of the project site.
   NOTE: For projects in or near commercial areas, notification will also be provided to all commercial tenants within the 500-foot radius area. The applicant is responsible for providing a name and address list of all commercial tenants within the notification area in a label format approved by staff.

2. **On-Site Posting Requirement** – In addition to the mailed notices, a public notice billboard (four feet by six feet) with color renderings of the project will need to be installed at the project site at least 10 days prior to the first public meeting date. *See Public Notice Billboard handout for more specific direction.*

3. **Story Poles** – All new development projects are required to install story poles on the site at least 20 days prior to the first Planning Commission meeting. *See Story Pole handout for more specific direction.*

CITY ACTION

The project will be reviewed at public meetings before the Complete Streets Commission (CSC), the Planning Commission (PC) and the City Council (CC). CSC will hold a public meeting to provide a recommendation regarding the project's transportation amenities (vehicle, bicycle and pedestrian). The PC will hold a public meeting to review and provide a recommendation on all components of the project, and the CC will review and take a final action on the project.

In order to approve the project, the PC and CC must make specific findings on each of the following issues:

1. The proposal meets the goals, policies and objectives of the Los Altos General Plan and any specific plan, design guidelines and ordinance design criteria adopted for the specific district or area.
2. The proposal has architectural integrity and has an appropriate relationship with other structures in the immediate area in terms of height, bulk and design.
3. Building mass is articulated to relate to the human scale, both horizontally and vertically. Building elevations have variation and depth, and avoid large blank wall surfaces. Residential or mixed-use residential projects incorporate elements that signal habitation, such as identifiable entrances, stairs, porches, bays and balconies.
4. Exterior materials and finishes convey high quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, arcades and structural elements. Materials, finishes, and colors have been used in a manner that serves to reduce the perceived appearance of height, bulk and mass, and are harmonious with other structures in the immediate area.
5. Landscaping is generous and inviting, and landscape and hardscape features are designed to complement the building and parking areas, and to be integrated with the building architecture and the surrounding streetscape. Landscaping includes substantial street tree canopy, either in the public right-of-way or within the project frontage.

6. Signage is designed to complement the building architecture in terms of style, materials, colors and proportions.
7. Mechanical equipment is screened from public view and the screening is designed to be consistent with the building architecture in form, material and detailing.
8. Service, trash and utility areas are screened from public view, or are enclosed in structures that are consistent with the building architecture in materials and detailing.

40 MAIN - MIXED USE
NOV. 8, 2018

City of Los Altos
Planning Division

Project No. 2018-1108545

(650) 947-2750
Planning@losaltosca.gov

SUBMITTAL REQUIREMENTS
CONDITIONAL USE PERMIT

APPLICATION FORM, FEE & OTHER REQUIRED MATERIALS

All items are required at time of submittal. The project will not be scheduled for a public meeting until the application has been reviewed by a planner and is deemed complete.

1. **General Application**

2. ✓ **Proposed Use Description**
   Provide a detailed project description of the proposed use that includes all relevant and applicable information related to the proposed use (description of business, number of employees, hours of operation, how building/site will be used, etc.).

3. **Filing Fee(s)**
   - O Application $ VARIANCE - $5,350 -
   - O Environmental Review $ DEPOSIT REQ. - SEE LETTER
   - Public Notification ($1.00/notice) * $_____
   - Other:_____ $_____
   - TOTAL $_____

   Make checks payable to the City of Los Altos. Fees are not refundable.
   ** Notices mailed to all properties and business tenants within 500 feet of project site for the Planning and Transportation Commission and City Council public meetings.*

4. **Project Plans** *(see checklist below)*
   - ✓ a. Initial submittal: Five (5) full-size sets (24" x 36") and five (5) half-size sets (11" x 17").
   - b. Once application is deemed complete: 14 additional half-size sets of plans and a digital copy in .pdf format on a CD, a USB data key or emailed to the project planner.

PROJECT PLANS

1. **Cover Sheet**
   - ☑ Vicinity Map (clear and legible)
   - ☑ Table of Contents (DRAWING INDEX)
   - ☑ General Project Information (project description, general plan, zoning, property owner, design professionals, etc.)
   - ☑ A summary of land development calculations including, but not limited to, site area, lot coverage, setbacks, impervious surfaces, building floor area, parking stalls (required and proposed), and, when appropriate, number of beds, students and/or dining seats

2. **Site Plan** (⅛" = 1' scale) ✔

- ☑ Subject property showing all property lines and adjacent streets
- ☑ Location of all structures on subject property
- ☐ Location and dimensions of parking, driveway, and loading areas (indicate surfacing material)
- ☐ Location, size, type and proposed disposition of all existing trees over four-inches in diameter
- ☐ Landscape areas, walkways, fences, retaining walls, utility areas, and trash facilities. Any special landscape features such as children's play areas must be specified;
- ☑ A summary of land development calculations including site area, lot coverage allowed and proposed, total proposed impervious surface, building area, parking stalls required and proposed, and when appropriate number of beds, students of dining seats

3. **Floor Plans** (¼" = 1' scale) / 3/16" = 1'-0" - OK

- ☐ Show existing and proposed development
- ☑ Identify details such as balconies, roof gardens, cabanas, etc.

NOTE: Floor plans for single-story buildings may be shown on the site plan.

4. **Building Elevations** (¼" = 1' scale)

- ☐ Building materials and design details
- ☑ Roof pitch
- ☑ Roof-mounted equipment
- ☑ New signage being proposed
- ☑ Height
- ☐ Color(s)
- ☑ Fencing NA

5. **Roof Plan** (¼" = 1' scale)

- ☑ Roof pitch
- ☑ ~~Existing roof to remain and~~ new roof area
- ☑ All rooftop mechanical equipment and screening location(s)

6. **Landscape Plan**

- ☐ Existing landscaping and trees to remain
- ☐ Proposed front yard (and exterior side yard) landscaping, street trees and hardscape improvements
- ☐ Any landscaping required for privacy and/or visual screening
- ☐ A calculation showing:
  - Total hardscape area
  - Existing softscape area
  - New softscape area.

  Hardscape area includes house footprint, driveway, swimming pool and other impervious areas

PUBLIC HEARING NOTIFICATION

1. **Mailed Notices** – All properties within 500 feet of the project site will receive a mailed notice of all public meetings 10-14 days before the meeting date. The Planning Division will provide an area map showing all properties within a 500-foot radius of the project site.
   NOTE: For projects in or near commercial areas, notification will also be provided to all commercial tenants within the 500-foot radius area. The applicant is responsible for providing a name and address list of all commercial businesses within the notification area in a label format approved by staff.

2. **On-Site Posting Requirement** – In addition to the mailed notices, a meeting notice will need to be posted at the project site at least 10 days prior to the public hearing date. City staff will provide the notice along with instructions for properly posting it on the project site.

CITY ACTION

The Planning Commission and/or City Council, when required, must make specific findings on each of the following issues when considering a conditional use permit application:

1. Whether the proposed location of the conditional use is desirable or essential to the public health, safety, comfort, convenience, prosperity or welfare.
2. Whether the proposed location of the conditional use is in accordance with the following objectives of the Zoning Ordinance:
   a. To guide community growth along sound lines;
   b. To ensure a harmonious, convenient relationship among land uses;
   c. To promote a safe, workable traffic circulation system;
   d. To provide appropriate locations for needed community facilities;
   e. To promote business activities of appropriate types;
   f. To protect and enhance real property values within the City; and
   g. To conserve the City's natural beauty, to improve its appearance and to preserve and enhance its distinctive physical character.
3. Whether the proposed conditional use will comply with the regulations prescribed for the district in which the site is located and the general provisions of Chapter 1 of the Los Altos Municipal Code.
4. Depending on the proposed use, as outlined in Section 14.80.060 of the Zoning Ordinance, additional findings may need to be made.

SUBMITTING MORE THAN ONE APPLICATION

These instructions will be modified in the event that the application is submitted simultaneously with another application (e.g. design review, subdivision, variance). If the project includes multiple applications, work with Planning staff to better understand the City's submittal requirements to avoid redundancy.

40 MAIN - MIXED USE
NOV. 8, 2018

City of Los Altos
Planning Division
(650) 947-2750
Planning@losaltosca.gov

Project No. 2018-1108545

DENSITY BONUS REPORT SUBMITTAL REQUIREMENTS

A housing development including five or more residential units may propose a density bonus in accordance with California Government Code Section 65915 et seq. ("Density Bonus Law") and the City's Affordable Housing Ordinance (Zoning Code Chapter 14.28).

Any applicant requesting a density bonus and/or any incentive(s), waiver(s), or parking reductions provided by State Density Bonus Law shall submit a Density Bonus Report as described below concurrently with the filing of the planning application for the first discretionary permit required for the housing development. The requests contained in the Density Bonus Report shall be processed concurrently with the planning application.

The Density Bonus Report shall include the following minimum information:

1. **Requested Density Bonus:**

- [x] Minimum Number of Dwelling Units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded.
- [x] Fractional Units. All density bonus calculations shall be rounded up to the next whole number including the base density, Restricted Affordable units, and the number of affordable units required to be eligible for a density bonus.
- [x] Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units, proposed number of affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.
- [x] A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.
- [x] The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
- [x] Calculation of the maximum number of dwelling units permitted by the City's zoning ordinance and general plan for the housing development, excluding any density bonus units.
- [x] Number of bedrooms in the proposed market-rate units and the proposed affordable units.
- [x] NA A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents

occupying dwelling units when the site contained the maximum number of dwelling units, if known.

- ☑ NA Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.
- NA If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and evidence that each of the requirements included in Government Code Section 65915(g) can be met.

2. **Requested Incentive(s) and Concessions:** In the event an application proposes incentives or concessions pursuant to State Density Bonus Law, to ensure that each incentive contributes significantly to the economic feasibility of the proposed affordable housing, the Density Bonus Report shall include the following minimum information for each incentive or concession requested, shown on a site plan if appropriate:
   - ☐ The City's usual development standard and the requested development standard or regulatory incentive/concession. Applicant shall identify whether each of the requested incentive(s)/concession(s) is an on-menu or off-menu request.
   - ☐ Include reasonable documentation, in a form subject to approval by the City, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing. Applicant may also be required to provide funds to cover city expenses incurred for a peer review of applicant's documentation.
   - NA If approval of mixed use zoning is proposed as an incentive, provide evidence that nonresidential land uses will reduce the cost of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning is required in order to provide for affordable rents or affordable sales prices.

3. **Requested Waiver(s):** In the event an application proposes waivers of development standards pursuant to State Density Bonus Law, the Density Bonus Report shall include the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate:
   - ☐ The City's usual development standard and the requested development standard.
   - ☐ Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the allowed densities or with the concessions and/or incentives requested.

4. **Requested Parking Reduction:** In the event an application proposes a parking reduction pursuant to Government Code Section 65915(p), a table showing parking required by the zoning ordinance and parking proposed under Section 65915(p). If an additional parking reduction is proposed under the provisions of Section 65915(p)(2) or (p)(3), evidence that the project qualifies for the additional parking reduction.

NA **Child Care Facility:** If a density bonus or incentive is requested for a child care facility, evidence that all of the requirements included in Government Code Section 65915(h) can be met.

NA **Condominium Conversion:** If a density bonus or incentive is requested for a condominium conversion, evidence that all of the requirements included in Government Code Section 65915.5 can be met.

7. **Other**: Include any other documentation, materials or fees/funds required by this Section or by the City for the purpose evaluating and/or reviewing a density bonus, incentives, parking requirements alterations, and/or waivers or any other provision.

8. **Fee**: Payment of any fee in an amount set by resolution of the City Council for staff or consultant time necessary to determine compliance of the Density Bonus Plan with State Density Bonus Law.

→ TO BE DETERMINED.

Community Development Department
One North San Antonio Road
Los Altos, California 94022-3087

February 6, 2019

Daniel R. Golub, Esq.
Holland & Knight
50 California Street, Suite 2500
San Francisco, CA 94111

Daniel.Golub@hklaw.com

Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10

Dear Mr. Golub:

This letter responds to your letter, dated January 10, 2019 and received by the City on January 17, 2019 (the "January Letter") regarding the above-referenced project (the "Project") and application (the "Application") for a streamlined ministerial permit pursuant to Government Code 65913.4, *et seq.,* "(SB 35") and a density bonus request to increase the maximum number of dwelling units on the Project site and concessions/waivers to the City's zoning requirements (site development standards found in Title 14, Zoning of the Los Altos Municipal Code.) at 40 Main Street, Los Altos, California.

As you know, Mr. Ted Sorenson and Mr. William Maston (the "Applicant") submitted the Application on November 7, 2018. On December 7, 2018, the City timely provided a thorough and detailed letter (the "Determination Letter") describing where the application was incomplete and the information needed to enable the City to process the application. As part of the Determination Letter, the City determined that the Project did not qualify for streamlined permitting project under SB 35.

In summary, the City believes its Determination Letter appropriately, and in good faith fully, responded to the Application and determined that the Project did not qualify to be processed under SB 35. The Determination Letter provided, to the fullest extent feasible in light of the information contained in the Application, an explanation of, and detailed documentation to demonstrate, inconsistencies between the Application and applicable City standards for the Project. In accordance with and, as contemplated by, SB 35 and the State's Streamlined Ministerial Approval Process Guidelines (the "Guidelines"), dated November 29, 2018, the City reviewed the Application to determine whether or not it contained all materials required by the City. The City found that the Application **did not contain all materials required by the City and specified in detail the additional materials necessary for the City to evaluate the Application.** (*See* Guidelines Sec. 301(b), p. 11).

The City is fully aware of its responsibilities to timely and fully evaluate project applications under SB 35. However, SB 35 does not obviate the need for the City to evaluate project applications based upon full and accurate information. If it were to authorize and pursue streamlined approval of the Project without the necessary information, the City would risk violating a host of its other legal obligations, including those found in the Density Bonus law, the California Environmental Quality Act, and State planning and zoning laws and other laws and regulations.

As demonstrated by the Determination Letter, the Application did not contain sufficient information to enable the City to make a meaningful and lawful determination that the Project is eligible for streamlined review under SB 35. As a result, **based upon the information provided to date, the City *finds and determines that the Project is not eligible for issuance of a streamlined ministerial permit. The City will consider any request the Applicant may choose to submit to enable a determination of the Project's SB 35 eligibility or otherwise process the Application if and when Applicant provides the additional necessary information.***

Below please find the City's response to specific points raised in your January Letter:

1. **IN ACCORDANCE WITH SB 35, THE DETERMINATION LETTER SPECIFIED OBJECTIVE STANDARDS IN EXISTING CITY CODE TO IDENTIFY LACK OF COMPLIANCE WITH SB 35 REQUIREMENTS**

Among the extensive criteria a project must meet to qualify for streamlined review under SB 35 are the requirements that the project meet specific affordability requirements and be "consistent with objective zoning standards and objective design review standards in effect at the time the [application] is submitted to the local government" for consideration (Gov. Code Section 65913.4(a)(5). With respect to the affordability requirements, the State has continued to develop and evolve its standards in this area over the past year since SB 35 became effective. As a result, the City's initial review relied on outdated information that a fifty percent (50%) affordability requirement would apply. However, at this juncture, the City acknowledges that, at the time of the Application submittal, a ten percent (10%) affordability requirement was required to be met; therefore, the Application was subject to a ten percent (10%) standard. Notably, even though a ten (10%) standard applies to the Application, under current State standards all new applications in Los Altos are again required to meet a fifty percent (50%) affordability standard to qualify for SB 35 streamlining.

With respect to a project's consistency with objective standards, logic dictates, and the Guidelines suggest, that a city can only make a meaningful determination if a submittal contains reasonably sufficient information to enable the city to measure a project's consistency with such standards. Here, consistent with the Guidelines, upon receipt of the application, the City reviewed the Application to determine if the Application contained sufficient information for a reasonable person to determine whether the proposed development is consistent, compliant, or in conformity with objective standards." (See Guidelines 301(b)(1)(A)). Recognizing that the Application did not contain sufficient information, the Determination Letter attached a request for additional information listed in the "Notice of Incomplete Application," generated by the City's Engineering and Planning Divisions.

The Notice of Incomplete Application clearly listed the deficiencies of the Application in accordance with requirements of the Permit Streamlining Act and all other applicable legal requirements. The Determination Letter, together with the Notice of Incomplete Application, provided express, detailed and extensive notice of the Application's shortcomings and invited submittal of additional information to enable the City to review and process the Application. However, none was forthcoming. Instead of providing the requested information and working with the City to develop information necessary for the City to evaluate the Application and to determine the Project's eligibility for SB 35 streamlining, the Applicant chose to wait for over a month without any substantive interaction. Instead, the Applicant opted to submit the January Letter asserting legal arguments and demanding streamlined approval.

As described in the Determination Letter and the Notice of Incomplete Application, a host of information was and still is needed to complete the Application and enable a meaningful review of the Application to determine ***whether*** it complies with City's objective development standards. This includes, among other things, information addressing the following issues:

a. The driveway entrance along the parking plaza will affect up to 2 parking spaces, which is not consistent with objective City standards (See Note 18)

b. Parking circulation is not sufficiently presented to determine whether it is consistent with objective City standards, i.e. How/where will the vehicles queue while waiting for the mechanical lift system to go into the underground parking area? (See Note 19)

With respect to parking access and egress standards, your January Letter asserts that the Project complies with all of the City's objective standards with respect to off-street parking. However, without the information cited in the Determination Letter and the Notice of Incomplete Application, the City simply lacks the information necessary to determine consistency with these and other applicable City standards

2. THE APPLICATION FAILED TO PROVIDE REQUIRED INFORMATION FOR COMPLIANCE WITH CITY DENSITY BONUS ORDINANCE:

As noted above, the Application seeks more than a streamlined ministerial approval; it also seeks density bonus units and concessions/waivers to site development standards.

The City recognizes that the SB 35 evaluation of a Project's consistency with objective standards is exclusive of additional density or concessions, incentives or waivers of development standards granted under the State Density Bonus law, Gov. Code Sec. 65915, *et seq.,* and the City's density bonus ordnance, Los Altos Municipal Code section 14.28.040. However, SB 35 does not obviate the need for the City to evaluate and apply the requirements of State Density Bonus law and the City's density bonus ordinance. Under those provisions, the City must evaluate requests for concessions, incentives or waivers to determine if the standards specified in State law and City ordinances require denial of the request. These standards include critical considerations regarding public health and safety, which the City must have sufficient information to seriously evaluate. For example, both the State Density Bonus law and the City's density bonus ordinance require an evaluation of whether requested concessions or incentives will result in identifiable and actual cost reductions to provide for affordable housing. The City may deny the request if it makes findings that the concession or incentive does not provide this benefit or if it would have an unmitigable specific, adverse impact upon public health and safety or the physical environment, (see Gov. Code Sec. 65915). Absent the information necessary to make this crucial evaluation, the City cannot reasonably evaluate, let alone grant streamlined ministerial approval of, either the Applicant's request for density bonus incentives and concessions or approval of the Project.

Here, there is insufficient information provided to demonstrate or support the need for the requested concessions and waivers. The Determination Letter requested additional information necessary for this critical evaluation, and, to date, such information has not been provided. If the Applicant intends to proceed in good faith with the Application, the City again refers the Applicant to the Notice of Incomplete Application and urges the submittal of the additional information necessary to appropriately evaluate the Project and reach a determination on whether the project meets the criteria for density bonus waivers and concessions. As noted in the Notice of Incomplete Application, this includes, but is not limited to, the following:

a. Provide circled items from the Submittal requirements for Commercial or Multi-Family Design Review list.

b. Provide circled items from the Density Bonus Report Submittal Requirements list.

3. CONCURRENT APPLICATIONS

As staff noted in the Determination Letter, there are no legal paths to allow for the concurrent processing of two development applications for the same site. As a result, the City reiterates its request that one or the other application be withdrawn so that there is only one application in process.

4. HOUSING ACCOUNTABILITY ACT

The January Letter asserts that the Housing Accountability Act (Gov. Code Section 65589.5) (the "HAA") also "requires the City to approve the Project." Although the City fully supports the development of housing and, affordable housing in particular, the HAA does not apply. The HAA establishes requirements for local governments' consideration and approval of housing development based upon objective development standards in place at the time a project application is determined or deemed complete. As noted above, however, the Application is not yet complete. The City timely identified extensive and substantial information necessary for the Application to be deemed complete, but to date the Applicant has failed to provide sufficient additional information that was requested. As a result, the HAA does not apply and does not dictate anything with respect to Project approval at this time.

5. CONCLUSION

In conclusion, the City believes the Determination Letter appropriately responded to the Application submittal. The City provided detailed documentation to demonstrate conflicts between the applicant's submittal and applicable City zoning standards required for compliance with SB 35, and requested additional information concerning the City's adopted density bonus regulations.

The City is happy to continue its review of the project once the additional application information and studies are submitted. Further, the City is also happy to evaluate the Project's eligibility for streamlined review in accordance with SB 35 at that time.

Please feel free to contact me if you would like to set up a meeting with staff to discuss the submittal requirements. We look forward to working with you to move forward with a complete application for the Project.

Jon Biggs, City of Los Altos
Community Development Director

cc: City Attorney

Community Development Department
One North San Antonio Road
Los Altos, California 94022-3087

February 21, 2019

Daniel R. Golub, Esq.
Holland & Knight
50 California Street, Suite 2500
San Francisco, CA 94111

Daniel.Golub@hklaw.com

Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10

Dear Mr. Golub:

I am in receipt of your letter dated February 19, 2019 regarding the proposed project at 40 Main Street. In the letter you inquire about an appeal pursuant to Los Altos Municipal Code Section 1.12.020. I believe the decision to not approve the subject project at 40 Main Street and request for additional information is subject to appeal and provide this notification of that.

If you, or any interested party, seeks to challenge the City's decision on this matter, an appeal **must** be filed by no later than fifteen calendar (15) days from the date of the February 6, 2019 letter, by **the close of business 4:30 pm on THURSDAY FEBRUARY 21, 2019**. An appeal shall be on an application form available at the Community Development Department at 1 North San Antonio Road to the attention Jon Biggs, Community Development Director. The appeal shall state specifically the grounds for the appeal and must include payment of $595.00 in accordance with the City of Los Altos Master Fee Schedule.

Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court.

Sincerely,

Jon Biggs, City of Los Altos
Community Development Director

CITY OF LOS ALTOS

GENERAL APPLICATION

Type of Review Requested: *(Check all boxes that apply)*

Permit # ____________

	One-Story Design Review	Commercial/Multi-Family	Environmental Review
	Two-Story Design Review	Sign Permit	Rezoning
	Variance	Use Permit	R1-S Overlay
	Lot Line Adjustment	Tenant Improvement	General Plan/Code Amendment
	Tentative Map/Division of Land	Sidewalk Display Permit	Appeal
	Historical Review	Preliminary Project Review	Other:

Project Address/Location: ____________

Project Proposal/Use: ____________ Current Use of Property: ____________

Assessor Parcel Number(s): ____________ Site Area: ____________

New Sq. Ft.: ____________ Altered/Rebuilt Sq. Ft.: ____________ Existing Sq. Ft. to Remain: ____________

Total Existing Sq. Ft.: ____________ Total Proposed Sq. Ft. (including basement): ____________

Is the site fully accessible for City Staff inspection? ____________

Applicant's Name: ____________

Telephone No.: ____________ Email Address: ____________

Mailing Address: ____________

City/State/Zip Code: ____________

Property Owner's Name: ____________

Telephone No.: ____________ Email Address: ____________

Mailing Address: ____________

City/State/Zip Code: ____________

Architect/Designer's Name: ____________

Telephone No.: ____________ Email Address: ____________

Mailing Address: ____________

City/State/Zip Code: ____________

** If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finaled prior to obtaining your building permit. Please contact the Building Division for a demolition package. **

(continued on back)

Does your project comply with any Deed Restrictions, Conditions, Covenants, and Restrictions (CC&R's), or any other recorded conditions of the subdivision in which it is located? Examples are restrictions that limit development to one-story height or may require setbacks greater than those required by City Codes. You are responsible for researching your title insurance report to find the CC&R's for your property. If you do not have a copy of the title report, you may obtain the information from a title insurance company or the County Recorder's Office. ☐ Yes ☐ No ☐ N/A

If No, please explain below in what way your project does not comply with the restrictions and why you propose such variations.

____

____

____

I certify that the above information is true and correct.

Date: ____________________

Property Owner/Applicant or Authorized Agent Signature: ______________________________

(If signing as an authorized agent, please submit evidence of written authorization)

For City Staff Use Only:

Received by: __________________________________ Date: _______________

Department Review Required:

Fire Department	YES / NO	Date Notified:______________
Building Division	YES / NO	Date Notified:______________
Public Works Engineering	YES / NO	Date Notified:______________
City Manager	YES / NO	Date Notified:______________
____________________		Date Notified:______________
____________________		Date Notified:______________

Is the submittal package complete? YES / NO

If NO, what items still need to be submitted?

____

____

____

____

Holland & Knight

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Daniel R. Golub
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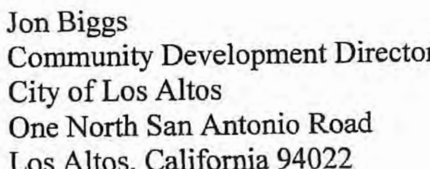
Daniel.Golub@hklaw.com

February 21, 2019



Jon Biggs
Community Development Director
City of Los Altos
One North San Antonio Road
Los Altos, California 94022

Jon Maginot
Deputy City Manager/City Clerk
City of Los Altos
One North San Antonio Road
Los Altos, California 94022

Re: Appeal regarding 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs and Mr. Maginot:

We are in receipt of Mr. Biggs' February 21, 2019 letter contending that the City of Los Altos has an established appeal procedure that applies to the above-referenced ministerial project. It does not appear to us that the City's appeal procedures apply to this project. *See* City of Los Altos Municipal Code § 1.12.020 (providing that there is no right to appeal to the City Council for ministerial acts). Indeed, such a requirement would defeat the purpose of the staff-level ministerial approval process provided for by Senate Bill 35 ("SB 35"), by subjecting SB 35 applications to review by a city's discretionary decision-making body.

However, for the purpose of avoiding dispute, we hereby submit the accompanying appeal form and will tender the appeal fee.

For the reasons set forth in our January and February letters (on file with the City and re-submitted with the accompanying appeal), the City's decision to deny the SB 35 permit was unlawful.

Sincerely,

HOLLAND & KNIGHT LLP

By: Daniel R. Golub

ATTACHMENT 3

Holland & Knight

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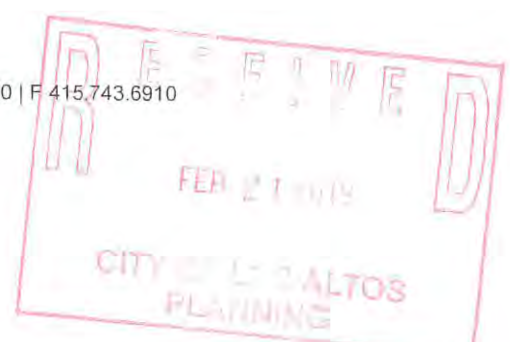

February 19, 2019

Jon Maginot
Los Altos City Clerk/Deputy City Manager
One North San Antonio Road
Los Altos, California 94022
administration@losaltosca.gov

SENT VIA EMAIL AND COURIER

Re: Government Claims Act claim – Unlawful Permit Denial

Dear Mr. Maginot:

As described in the accompanying correspondence with Los Altos Community Development Department Director Jon Biggs, the City of Los Altos has unlawfully denied a streamlined ministerial permit to which 40 Main Street Offices, LLC (the "Applicant") is entitled pursuant to Gov. Code § 65913.4. On behalf of the Applicant, we hereby submit a claim pursuant to the Government Claims Act, Gov. Code § 810 *et seq*. to the extent there is any arguable requirement that the Applicant exhaust this avenue for relief before availing itself of its legal remedies.

Pursuant to Gov. Code § 910, the following is the required information regarding the claim:

Name and Address of Claimant. Gov. Code § 910(a).	40 Main Street Offices, LLC c/o Ted Sorensen 40 Main Street Los Altos, CA 94022
Post office address to which the person presenting the claim desires notices to be sent. Gov. Code § 910(b).	Daniel Golub Holland & Knight 50 California Street, Suite 2800 San Francisco, CA 94111

Date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted. Gov. Code § 910(c).	The City of Los Altos denied the Applicant's application for a streamlined ministerial permit in a letter dated December 7, 2018, and confirmed that denial in an additional letter dated February 6, 2019. For the reasons set forth in the accompanying correspondence, the City's determination was unlawful.
A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim. Gov. Code § 910(d).	As described in the accompanying correspondence, the City's denial has unlawfully precluded the Applicant from proceeding with the development of the 40 Main Street Project.
The name or names of the public employee or employees causing the injury, damage, or loss, if known. Gov. Code § 910(e).	Los Altos Community Development Director Jon Biggs denied the application on behalf of the City of Los Altos.
Amount claimed if less than $10,000, or identification of whether litigation would be limited or unlimited civil case. Gov. Code § 910(f).	The City's denial entitles the Applicant to mandamus relief, as well as monetary relief in the form of, *inter alia*, fines and penalties pursuant to Gov. Code § 65589.5(k), and attorney's fees pursuant to Code Civ. Proc. § 1021.5 and Gov. Code § 65589.5(k). Since these amounts could exceed $25,000, and since the property at issue also is worth well more than $25,000, the amount in controversy exceeds the $25,000 limit for limited civil cases, and any litigation over the claim would be an unlimited civil case. *See* Code Civ. Proc. § 85(a).

Pursuant to Gov. Code § 911.6(a), please provide your response within 45 days of this letter.

Sincerely,

HOLLAND & KNIGHT LLP

By: Daniel R. Golub

Enclosures: Correspondence with Community Development Department

Holland & Knight

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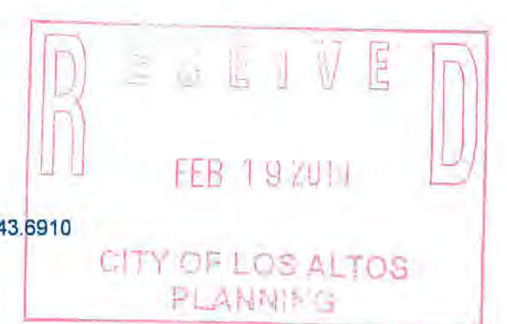
Holland & Knight LLP | www.hklaw.com



Daniel R. Golub
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February 19, 2019

Jon Biggs
Director
Los Altos Community Development Department
One North San Antonio Road
Los Altos, California 94022
jbiggs@losaltosca.gov

SENT VIA EMAIL AND COURIER

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs:

As you know, we represent 40 Main Street Offices, LLC (the "Applicant") in connection with the above-captioned Application, submitted November 8, 2018 ("Application," attached as Exhibit 1 hereto) for a streamlined ministerial permit for the 40 Main Street Project ("Project"). In a letter dated December 7, 2018 ("Determination Letter", or "Determination," attached as Exhibit 2 hereto), you denied the Application on behalf of the City of Los Altos ("City"). For the reasons set forth in our January 10, 2019 letter (attached as Exhibit 3 hereto), the City's December Determination did not identify any legally sufficient grounds to deny the Application, and as a result the City was required by State law to issue a streamlined ministerial permit no later than February 6, 2019.[1] I am in receipt of your February 6, 2019 letter (attached as Exhibit 4 hereto), sent to me via email at 4:34 pm on the date of the City's statutory deadline to grant the Application, which letter confirmed that the City would not grant the Application. The purpose of this further response is to (1) provide some important background on SB 35 in the context of the Applicant's long efforts to build a modest development in a manner that is consistent with the City's Los Altos

[1] Please note that the January 10 letter was first received by the City on January 10, the same day it was dated and sent, not on January 17, as stated in your February 6 letter. See Exhibit 5 (confirmation e-mail from Western Messenger demonstrating that the letter was received and signed for by a City official at 12:47 p.m. on January 10).

Design Plan and the Downtown Design Guidelines, (2) respond to the February 6 Letter, (3) confirm that, by failing to issue the streamlined ministerial permit required by law within the timeline required by law, the City is now in violation of, *inter alia*, Gov. Code §§ 65913.4 and 65589.5, (4) request your confirmation that there are no legally established procedures to seek appeal or reconsideration of the City's Determination, and (5) provide a final opportunity to avoid litigation of this matter.

I. Background on SB 35 and the Development Process on this Site

There is now a growing realization among legal scholars that local governments' excessive discretionary review of housing development projects is a key cause of California's housing supply crisis.[2] The State Legislature recognized this incontrovertible fact at least as early as 1990, when it found and declared that "local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects." Gov. Code § 65589.5(a)(1)(D). In 2017, finding that the state's "housing supply and affordability crisis" had reached "historic proportions . . . hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives," the Legislature reiterated its intent that State housing laws have long been intended to "meaningfully and effectively curb[] the capability of local governments to deny, reduce the density for, or render infeasible housing development projects." Gov. Code § 65589.5(a)(2). Recognizing that "[t]hat intent has not been fulfilled," *id.*, the Legislature adopted a comprehensive package of State housing laws to streamline the approval of housing developments like the Project. One of the centerpieces of this legislative package is SB 35 of 2017, which establishes that housing developments like the Project, which comply with all of the City's objective standards, and meet all of SB 35's other qualifying criteria, cannot be denied based on City officials' discretionary judgments, and also cannot be delayed through never-ending cycles of "completeness" review.

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[2] *See, e.g.*, Jennifer Hernandez *et al.*, In the Name of the Environment (2015); Jennifer Hernandez, *et al.*, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 HASTINGS ENVTL. L.J. 21, 21-22 (2018); Moira O'Neill, *et al.*, Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process (Berkeley Law Center for Law, Energy & the Environment; Berkeley Institute of Urban & Regional Development, Columbia Graduate School of Architecture, Planning & Preservation, February 2018), available at https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf (in major jurisdictions, "even if . . . developments comply with the underlying zoning code, they require additional scrutiny from the local government before obtaining a building permit," which "triggers CEQA review of these projects"; "Our data shows that in many cases, these cities appear to impose redundant or multiple layers of discretionary review on projects"); Moira O'Neill *et al.*, Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates, 25 HASTINGS ENVTL. L. J. 1, 73-77 (2019); Elmendorf, Christopher S., Beyond the Double Veto: Land Use Plans As Preemptive Intergovernmental Contracts (February 9, 2019). Available at SSRN: https://ssrn.com/abstract=3256857, at pp. 33-37 (noting that especially before 2017, local jurisdictions were largely free to ignore their own plans for meeting regional housing goals, and could always use CEQA to kill housing approvals). These and other referenced materials cited in this letter, our December response letter, and the initial Application, are included as Exhibit 9, attached hereto.

Despite the City's promise in its Downtown Design Guidelines (December 2009) that call for "providing fairness and consistency in the City's downtown development review and approval process," the City's excessive discretionary review process of the Applicant's efforts to build a modestly sized residential development are a quintessential example of why SB 35 is so desperately needed.

The SB 35 Application is the third application the Applicant has submitted to develop the project site with a relatively uncomplicated, modestly sized development that complies with all of the City's many objective criteria for development in this location. The most recent prior application was *submitted in September 2013* and remains "under consideration" after more than five years of review and delay.

City staff issued a letter determining the prior application to be incomplete in October 2013. After the Applicant carefully reviewed and addressed the numerous items the City stated were required for a complete application, staff declared the Applicant's resubmitted application to also be incomplete in December 2015, adding numerous additional completion criteria that had not been required for the previous submission. Staff would later acknowledge that many of these requirements were not, in fact, requirements for a complete application.

After finally acknowledging the application was complete, staff finally issued a formal letter determining the application to be complete in September 2016. But instead of proceeding to be promptly considered on the merits by the city's discretionary decision-making bodies, as any "complete" application should be allowed to do, there followed almost a year and a half of additional delay at the staff level before the application was first heard before the City's Planning Commission. During this time, staff added additional requirements on the already concededly "complete" application, such as outside design review (which to the best of our knowledge no other project before or since has been required to undergo), a third parking report requiring data that no other project in Los Altos has been required to complete, and compliance with newly adopted policies, such as a "story pole policy" adopted years after the project application was submitted in September 2013.

Eventually, after the application finally cleared the daunting hurdles to be considered on its merits, it proceeded to a Planning Commission hearing in June 2017, where the Commission refused to approve it and demanded numerous design changes.[3] After the project architect substantively redesigned the Project to meet the Commission's direction, the Commission rejected it a year later in June 2018. At both hearings, the Commissioners' comments expressed clearly aesthetic, subjective and discretionary preferences about how the project should be designed, which were unrelated to any objective requirements in the City's adopted standards. At the June 2018 hearing, the Planning Commission Chair, claiming (incorrectly) that she had already seen the project "seven

[3] In between the 2017 and 2018 Commission meetings, staff simply refused for seven months to act on City Council's July 2017 direction to meet with the applicants to negotiate a development agreement that would include the redevelopment of parking plaza 10 to add as many as twenty public parking stalls, and staff only agreed to move forward with a hearing date after the applicants agreed to eliminate the redevelopment of plaza 10 from the application.

times," indicated that she would oppose any future attempts to build any project at the location that was not completely redesigned and reduced in size.[4]

SB 35 was designed precisely for processes and projects like this one. It was only after more than five years of attempts to achieve a discretionary approval for this Project that the Applicant turned to its legal rights under SB 35: to pay the high cost of preparing and submitting an SB 35 application in order to proceed under the ministerial process now required by State law. The City's December and February responses to the Application indicate that the City does not intend to meet either the letter or spirit of this law, and instead intends to foist the requirements of a discretionary process – including another round of "completeness" review – on a procedure that the Legislature has explicitly directed to be ministerial. This is no longer permissible as a matter of State law.

II. Response to February 6 Letter

As you know, in the City's December 7 Determination, you stated that the City had completed its "review of the Project" and concluded that the Project did not qualify for SB 35 streamlining for two reasons: (1) because the Project supposedly did not provide the minimum required amount of affordable housing, and (2) because the Project supposedly did not meet objective zoning standards related to parking. We appreciate your acknowledgement that the first of these contentions was erroneous, and that the Project in fact meets the 10% affordable housing standard that applies to the Application.[5] As we noted in our January 10 Letter, the Determination Letter's second ground also was not a permissible basis to deny the Application, for several reasons: because the City's Determination Letter failed to identify any parking standards that qualify as "objective" under SB 35's definition of that term, because the Determination failed to identify "which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard," as required by law (Gov. Code § 65913.4(b)(1)), and because, in any case, the Application affirmatively demonstrated that the Project complied with all applicable objective parking standards. Nothing in the February 6 Letter states anything to the contrary – and in fact, nothing in the February 6 Letter even disputes or responds to these contentions. Therefore, for the reasons set forth in the January 10 letter, the City's decision to deny the Application was unlawful.

Nonetheless, the following responds to the contentions in the February 6 letter (each section A, B, C and D, *infra*, corresponds to numbered Parts 1, 2, 3 and 4 of the February 6 letter, respectively).

A. Since the City Did Not Identify any Objective Standards with Which the Project Conflicts, the City's Failure to Issue a Streamlined Ministerial Permit Was Unlawful.

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[4] Documentation of the correspondence and City records related to this process are attached hereto as Exhibit 6.

[5] For the record, for the reasons explained in footnote 1 of our January 10 Letter, we disagree that new SB 35 applications submitted in Los Altos are required to provide 50% lower-income units, at least not until the City timely adopts and submits an annual progress report on its 2018 housing production. However, our disagreement on this point appears to be immaterial since we both agree that the 10% standard applies to this Application.

The February 6 letter claims - for the first time - that the Applicant has not submitted a "complete" SB 35 application, invoking the Permit Streamlining Act, Gov. Code § 65920 *et seq*. Respectfully, this is simply a mistake of law. The Permit Streamlining Act expressly states that it does not apply to ministerial projects such as the Project. Gov. Code § 65928. The SB 35 process, in notable contrast to the Permit Streamlining Act, does not authorize a local agency to refuse to process an application on the grounds that it is "incomplete." Instead of encompassing the concept of application "completeness," SB 35 provides that a streamlined ministerial permit must be granted within 90 days of the day the application is *submitted*, rather than calculating the deadline from the date the application is deemed or determined to be "complete." Gov. Code § 65913.4(b)(1). Most importantly, it is not the Applicant's burden to establish the Project's consistency with the objective standards; it is the City's burden to establish the contrary. *See* Gov. Code § 65913.4(b)(1); HCD SB 35 Streamlined Ministerial Permit Guidelines ("Guidelines"), § 301(a)(3). Specifically, the City must provide "written documentation of *which standard or standards* the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard." Gov. Code § 65913.4(b)(1)(A) (emphasis added); Guidelines, § 301(a)(3).

Despite this, the February 6 Letter states that the City has now decided that the SB 35 Application is "incomplete," and further states that the Applicant must submit *all of the materials the City requires for discretionary project applications* before the City will process the SB 35 Application - without explaining why any of this material is in any way relevant to the SB 35 criteria and standards. This novel – and legally unsupported – contention is (1) irreconcilable with your previous contentions in the December 7 Determination, (2) too late to be asserted well after the City's 60-day deadline has expired, and (3) in any case, legally untenable.

First, the City's contention is completely at odds with the City's Determination Letter. The December 7 Determination did *not* say that the City required any discretionary project application materials in order to analyze the SB 35 Application. To the contrary, the December 7 SB 35 Determination states that the information required in the attached "Notice of Incomplete Application" would be required only "*if*. . . [the Applicant] elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice" (emphases added). Nowhere does the Determination Letter state that any of this material is required in order to facilitate the City's review of whether the Application complied with the applicable SB 35 objective standards. To the contrary, you stated that even without this material, the City had succeeded in completing its "review of the project" and rendered an assessment of whether the Application met the criteria for streamlined ministerial permitting.

Second, it is too late for the City to now claim that, without this information, the Project may conflict with an objective standard. The 60-day deadline to raise this concern has passed. Once again, if a city believes an SB 35 application may conflict with any of the City's applicable objective standards, the city is required to provide, within 60 days of submittal, "written documentation of *which standard or standards* the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard." Gov. Code § 65913.4(b)(1)(A); *see also* Guidelines, § 301(a)(3). The statute and Guidelines both state explicitly what result occurs when, as here, the City fails to identify a specific objective standard

with which the project conflicts: "the development shall be deemed to satisfy the objective planning standards." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).

Third, even if the City had timely raised this type of concern, the City cannot demand that an SB 35 applicant submit all of the information normally required for a discretionary permit application. SB 35 states that consideration of an SB 35 application must be "strictly focused on assessing compliance with criteria required for streamlined projects." Gov. Code § 65913.4(c). The City's documentation demands run afoul of this statutory restriction, since the City is demanding numerous materials, studies and documents that are wholly irrelevant to the question of whether the Project meets the applicable objective standards.

Finally, even putting aside all of the above, there should be no doubt that the Application did, in fact, "contain[] sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards," Guidelines, § 301(b), as the City itself implicitly acknowledged when it stated in the December Determination that the City had completed its "review of the project." Despite the fact that it was not the Applicant's burden to establish the Project's consistency with the City's objective standards, the Application carefully identified each potentially applicable provision of the City's municipal code, line by line, and explained in detail either how the Project complied with the standard or why the standard did not qualify as "objective" under SB 35's definition of that term. If there were any valid reason to dispute any of these contentions, it would have been easy enough for the City to say so, and to cite the specific code section at issue.

Other cities have published SB 35 application forms which do not demand that applicants provide the type of material used to assess discretionary permit applications. *See* forms used by the cities of San Francisco and Concord, attached hereto as part of Exhibit 7. Cities including San Francisco, Cupertino and Berkeley have granted SB 35 applications based on material directly comparable to the Application See *id.* The format of the Application is almost identical to the format used in an application to the City of Berkeley for an SB 35 permit for the 2012 Berkeley Way Project, which application the City of Berkeley had no difficulty analyzing and granting. See *id.* There is no reason why the City of Los Altos could not have mad the same determination that its fellow jurisdictions have.

Even at this date, well past the City's 60-day deadline, the City can only vaguely suggest that the Project may conflict with a "host" of objective standards, but *cannot name a single example*,[6] despite the clear statutory requirement that the City identify any such standard with particularity. The very purpose of SB 35 is to enable a clear, straightforward assessment of whether a housing development complies with objective standards. The City's documentation requests seek to

[6] As noted in our January 10 Letter, the only examples cited in the February 6 letter – which point to Notes 18 and 19 on the December 7 "Notice of Incomplete Application" – do not cite any specific objective standard with which the Project conflicts. Neither Note 18 nor Note 19 cite any specific standard at all, much less a standard that qualifies as "objective," and the notes refer to subjective considerations such as whether the project is "acceptable." These types of questions and concerns may be relevant to a discretionary process but are plainly irrelevant to a ministerial approval based on objective standards.

transform this ministerial process into a discretionary process, and are a clear attempt to evade the central purpose of this State law.

B. The City Has Not, and Now Cannot, Make the Necessary Findings under the Density Bonus Law to Deny the Requested Concession/Incentive and Waiver.

We appreciate your acknowledgement that the Project must be considered consistent with objective standards without regard to modifications to which the Applicant is entitled pursuant to the State Density Bonus Law. The Application provided all information necessary to determine that the Project is entitled to the Density Bonus Law concession/incentive and waiver requested in the Application. With respect to information requested in "2-a" of your February 6 Letter, which reiterates the City's demand that the Applicant provide all of the information required for discretionary project applications, we refer you to our response immediately *supra*. With respect to the request for information in "2-b" of the February 6 Letter, our January 10 letter already explained that all of this information was in fact provided in the original Application. For your convenience, please see the attached table, which explains where each circled and underlined item from the City's Density Bonus Submittal Requirement document is located in the original Application materials. *See* Exhibit 8, attached hereto.

Please note that, as we stated in footnote 3 of the January 10 Letter, the City had very limited grounds on which it could have denied the requested Density Bonus Law requests. The burden was on the *City* to establish the existence of those grounds. It is, of course, not the Applicant's burden to provide the City with evidence from which the City could meet *its* burden to make findings to deny a Density Bonus Law request. But in any event, the City's own municipal code states that for an "on-menu" concession/incentive such as the 11-foot height increase requested in the Application, "[t]he city council has determined that the on-menu incentive[] . . . would not have a specific, adverse impact." Los Altos Municipal Code ("LAMC") § 14.28.040(F)(1). Therefore, there is no need for any additional information to confirm what the City Council has already decided, which is that the requested concession/incentive will have no adverse impact and therefore cannot be denied unless the City makes a finding based on substantial evidence that it would not result in cost savings. The City made no such finding, the time has passed to do so, and so the Project's consistency with objective standards must be determined without regard to the modifications to which the Applicant is entitled under the Density Bonus Law.

C. The City Has Not Identified any Objective Standard which Prohibits the Processing of Concurrent Applications.

We refer you to Part III of our January 10 Letter, in which we point out that the City has not identified any objective standard which precludes the Applicant from submitting an SB 35 application on the site, and in which we stated that the Applicant authorized the City to suspend any processing of the prior application while the SB 35 Application remains under review. This point appears to be moot, since as we understand it, the City has now completed its review of the SB 35 Application, and will not grant the requested permit, and so there is no still-pending application left to withdraw.

D. The Housing Accountability Act Also Requires the City to Approve the Project.

We refer you to Part IV of our January 10 Letter. The Applicant has submitted all information necessary to establish that the Project meets all of SB 35's qualifying criteria. Under these circumstances, the City's unlawful refusal to grant a streamlined ministerial permit violates the Housing Accountability Act. The Applicant is therefore entitled to the attorney's fees and potential fines and penalties authorized under the Housing Accountability Act.

III. Exhaustion of Remedies

For the reasons set forth above, the City's decision not to grant the SB 35 Application was unlawful. Pursuant to LAMC § 1.12.020, it appears that there are no further avenues to appeal or to seek reconsideration of the City staff's Determination that the City will not grant a streamlined ministerial permit for the Project on the basis of the Application, as submitted. If, notwithstanding this, the City believes that it has adopted any procedures to seek appeal or reconsideration of the City staff's final decision to deny the SB 35 permit, please advise us of those avenues immediately so that the Applicant can consider availing itself of those procedures.

We have concurrently submitted a claim to the City Clerk pursuant to the Government Claims Act, Gov. Code § 900 *et seq*., to the extent there is any arguable requirement that the Applicant exhaust this avenue for relief before availing itself of its legal remedies.

IV. Conclusion

We urge the City to evaluate whether its taxpayers, residents, and those needing housing would be well-served by litigating this matter – which would result in delayed construction of urgently-needed housing, as well as cause the City to spend taxpayer dollars on litigation defense costs as well as the fines and attorney's fees that would be due to the Applicant based on the City's unlawful denial of this Application.

We appreciate your willingness to meet and discuss the development of the Project site, but your letter makes clear that you are only willing to discuss how the Project could theoretically proceed once the Applicants meet the newly articulated "submittal requirements" that your most recent letter claims are required for an SB 35 application. Since the Application as submitted entitles the Project to approval, it is hard to see how this would be a fruitful discussion. It appears clear that the City does not intend to implement SB 35 in a manner consistent with State law. However, if you would like to discuss alternatives to litigation, we and the Applicant team would be very willing to discuss this.

If we do not hear otherwise from you, we anticipate bringing legal action no later than 90 days from the date of the February 6 letter, and may do so well before the 90 days expire, and without further notice. Therefore, please do not hesitate to contact us as soon as possible if you would like to discuss potential alternatives to litigating this issue.

Sincerely,

HOLLAND & KNIGHT LLP

By: Daniel R. Golub

Enclosures: Exhibit 1 – November 8, 2018 SB 35 Application

Exhibit 2 – December 7, 2018 SB 35 Determination Letter

Exhibit 3 – January 10, 2019 Response Letter

Exhibit 4 – February 6, 2019 Response Letter

Exhibit 5 – January 10, 2019 Delivery Confirmation E-mail

Exhibit 6 – Correspondence and City records related to prior discretionary process

Exhibit 7 – SB 35 forms and approval documents from other jurisdictions

Exhibit 8 – Response to Density Bonus Submittal Requirements

Exhibit 9 – Documents Cited and Referenced in November 8, 2018 Application, January 10, 2019 Response Letter, and this letter

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January 10, 2019

Jon Biggs
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Los Altos Community Development Department
One North San Antonio Road
Los Altos, California 94022

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs:

We represent 40 Main Street Offices, LLC (the "Applicant") in connection with the above-captioned Application for a streamlined ministerial permit for the 40 Main Street Project ("Project"), which Application was submitted to the City of Los Altos ("City") on November 8, 2018. The Project will bring 15 much-needed housing units, as well as new office space, to a site the City has long recognized as appropriate for development as part of the City's plan to establish a sense of entry to the City's Downtown area. The project will provide 15 new infill and transit-oriented dwelling units in Downtown, proximate to walkable goods and services. In addition, the City of Los Altos will be able to add 13 market-rate and two affordable units to its Regional Housing Needs Assessment compliance.

As you know, Chapter 366, Statutes of 2017, as amended ("SB 35"), requires cities to issue a streamlined ministerial permit to any housing developments that meet SB 35's qualifying objective standards. Gov. Code § 65913.4(a). If cities believe an SB 35 application conflicts with any applicable objective standards, the city is required to provide, within 60 days of submittal, "written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard." Gov. Code § 65913.4(b)(1)(A); *see also* HCD Streamlined Ministerial Approval Process Guidelines ("Guidelines"), § 301(a)(3). Otherwise, "the development shall be deemed to satisfy the objective planning standards." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).

We have reviewed your brief December 7 letter concluding that the Project is not eligible for streamlined ministerial permitting ("SB 35 Determination"), in which you do not dispute that the Project satisfies nearly all applicable SB 35 criteria, but in which you claim that that the Project is not eligible for SB 35 streamlining for two reasons: (1) because the Project "does not provide the percentage of affordable dwelling units required by the State regulations", and (2) because the Project does not meet unspecified standards related to parking. Neither of these contentions are correct, and neither provide a legally permissible basis to deny a streamlined ministerial permit. Since the City has not validly identified any SB 35 standard with which the Project conflicts, and the time to do so has now elapsed, the Project is now deemed to comply with all of SB 35's qualifying criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). As set forth below, State law requires the City of Los Altos to issue a streamlined ministerial permit for the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same).

I. The Project Qualifies for SB 35 Streamlining Because It Meets the Applicable Affordable Housing Requirement

SB 35 requires local governments to issue a streamlined ministerial permit to housing developments which provide a specified minimum percentage of units as housing affordable to lower-income households earning below 80 percent of the area median income. Gov. Code § 65913.4(a)(4). The applicable minimum percentage of affordable housing depends on several factors. *Id.* As pertinent here, the applicable percentage depends upon whether the locality submitted its latest housing production report to the Department of Housing & Community Development ("HCD") by the April 1 statutory deadline. Gov. Code §§ 65400, 65913.4(a)(4)(B)(i). HCD issued several determinations during 2018, reporting on each California jurisdiction's status at various points during the year.

The December 7 SB 35 Determination cites a January 31, 2018 HCD determination as support for the contention that the Project was required to provide 50% affordable units to qualify for streamlined ministerial permitting. But HCD's January 31, 2018 determination was not the current HCD determination on the date the Application was submitted. HCD issued a subsequent determination on June 1, 2018, which unambiguously states that as of that date the City of Los Altos was "subject to SB 35 . . . streamlining for proposed developments with at least *<u>10% affordability</u>*." *See* relevant excerpts from this determination attached hereto as <u>Exhibit A</u> (emphasis added). The June 1, 2018 determination was HCD's most current determination as of the date the Application was submitted on November 7, 2018, and "[a] locality's status on the date the application is submitted determines . . . which level of affordability (10 or 50 percent) an applicant must provide to be eligible for streamlined ministerial permitting." Guidelines, § 200(g); see also Gov. Code § 65913.4(a)(5) (SB 35 criteria are determined based on standards "in effect at the time that the development is submitted to the local government . . ..."). The Applicant has confirmed directly with HCD – the agency delegated with statutory authority to implement SB 35, *see* Gov. Code § 65913.4(j) - that the 10% affordability requirement applied in Los Altos on

November 7, 2018. See e-mail attached as Exhibit B. Since the Project will provide more than 10% of its units as affordable to low-income households, the Project meets the applicable minimum percentage of units to qualify for a streamlined ministerial permit.[1]

II. The Project Meets All Applicable Objective Standards, Including All Objective Standards Related to Parking

A housing development that meets all of SB 35's other criteria is entitled to a streamlined ministerial permit as long as the development is "consistent with *objective* zoning standards . . . in effect at the time that the development is submitted." Gov. Code § 65913.4(a)(5) (emphasis added). The statute defines "objective" standards extremely narrowly; a city may only apply "standards that involve no personal or subjective judgment by a public official and are 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 before submittal." Gov. Code §65913.4(a)(5); *see also* Guidelines, § 102(p) (same). A local government may not apply any standards that do not qualify as "objective" under this narrow definition, and a local government cannot require an SB 35 applicant to meet any discretionary or subjective criteria typically required in an application for a discretionary permit. Guidelines, §§ 300(b)(1) & 301(a)(1). "Determination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." Guidelines, § 300(b)(8).

If a local government believes that an application for a project with less than 150 housing units conflicts with any objective standards, the local government must "provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard." Gov. Code § 65913.4(b)(1); *see also* Guidelines, § 301(a)(3). If "the local government fails to provide the required documentation . . ., the development shall be deemed to satisfy the objective planning standards . . . ." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C) (same).

It is not the Applicant's burden to establish the Project's consistency with applicable objective standards; it is the City's burden to establish the contrary. *See* Gov. Code § 65913.4(b)(1). Guidelines, § 301(a)(3). Notwithstanding this, the Application contained a detailed submission affirmatively demonstrating that the Project is, in fact, consistent with every one of the City's

[1] We further note that, irrespective of any determinations issued by HCD, SB 35's statutory requirements are clear. A locality is subject to the 10% requirement if "[t]he locality did not submit its latest production report to . . . [HCD] by the time period required by Section 65400 [of the Government Code] . . .." Gov. Code § 65913.4(a)(4)(B)(i). Section 65400 of the Government Code requires all local governments to submit an annual housing report no later than April 1 of each year, reporting on the housing production completed in the prior calendar year. The City of Los Altos submitted its "latest production report" (the report documenting on housing production during the 2017 calendar year) after the April 1, 2018 statutory deadline. Since it remains the case that the City "did not submit its latest production report to the department by the time period required by Section 65400," the City will remain subject to the 10% requirement until and unless it submits its production report documenting its 2018 housing production by the April 1, 2019 statutory deadline. For this additional reason, the Project meets the applicable affordable housing requirement for SB 35 streamlining.

applicable objective zoning standards as well as all of SB 35's other qualifying criteria. The December 7 SB 35 Determination does not dispute that the Application satisfies all of the applicable SB 35 criteria in Gov. Code § 65913.4(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), (a)(8), (a)(9) and (a)(10), and in Guidelines, Article IV, §§ 400, 401, & 403. The City's SB 35 Determination also does not dispute that the Project satisfies all of the City's numerous objective zoning standards other than those related to parking.

As for parking, the City's December 7 SB 35 Determination states only that the plans "do not provide the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking." This cursory statement falls well short of the statutory requirement to "provide the development proponent written documentation of *which standard or standards* the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard." Gov. Code § 65913.4(b)(1) (emphasis added). The determination does not even cite the code section or sections the City believes the Project to violate and provides no explanation of the reason the Project conflicts with the unidentified standards. Since the City has not provided the "required documentation" of "which standard or standards" the City believes that the Project conflicts within, and since the 60-day deadline to do so has now elapsed, the Project is now deemed to comply with all such standards as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C).

With this said, and without in any way waiving the Applicants' rights to maintain that the Project is now legally deemed consistent with all applicable objective standards, the following discussion demonstrates that the Project does, in fact, meet all applicable objective zoning standards related to parking spaces and access/egress to off-street parking.

A. Compliance with Numeric Parking Standards

We refer you again to Attachment 2 of the Project application material submitted November 8, 2018, and in particular to the portions of the table addressing sections 14.74.080, 14.74.100, and 14.74.200 of the Los Altos Municipal Code ("LAMC"). This table demonstrates compliance with all objective parking standards and requirements, as they are modified by SB 35 pursuant to Gov. Code § 65913.4(d)(2). SB 35 modifies a local agency's maximum parking standards as applied to an SB 35 Application, providing that a local agency "shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." Gov. Code § 65913.4(d)(2).

As set forth in the original application, the Project, which contains both non-residential and residential components, meets all applicable zoning requirements for each component. For the non-residential component of the Project, there is no applicable parking requirement. Under the City's zoning regulations for "office uses" in this zoning district:

> For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking

> district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.

LAMC § 14.74.100. As shown in the Project's architectural drawing package, since the Project participates in the public parking district, and since the 5,724-square foot office area (and even 1,271-square foot residential floor area) do not exceed the lot area of 6,995 square feet, no parking spaces are required for the non-residential floor area.

For the residential portion of the Project, the City of Los Altos' numeric zoning standard in Section 14.74.080 of the Zoning Ordinance does not apply pursuant to SB 35. Rather, the SB 35 statutorily required standard of one parking space per dwelling unit applies per Government Code § 65913.4(d)(2). The Project exceeds this standard, because it provides 18 parking spaces, and only 15 dwelling units are proposed (with one unit being exempt due to the property's participation in the parking district).

B. Compliance with Objective Parking Access and Egress Standards

As demonstrated in the preceding section and the original Application, the Project complies with all of the City's objective standards with respect to off-street parking.

The SB 35 Determination suggests that the Project does not meet an objective zoning standard related to adequate access/egress to off-street parking, but the SB 35 Determination does not cite any code section governing access and egress – and certainly not any code section with objective language – with which the Project fails to comply. The SB 35 Determination's reference to "adequate" access and egress is irrelevant to an SB 35 application, since determining "adequacy" is a subjective determination that does not qualify as "objective" under SB 35's definition. Gov. Code § 65913.4(a)(5); Guidelines, § 102(p); *see also Honchariw v. County of Stanislaus,* 200 Cal. App. 4th 1066, 1076 (2011) ("suitability" is a "subjective" criteria that is inapplicable when state law only permits application of "objective" standards).

It has been the City's demonstrated practice to allow projects such as 40 Main Street to obtain access from the City's downtown public parking areas. As a result of the Project one space in the public parking plaza may be affected by the Project but one parking space will be made available for the public's use on Main Street where the property's current driveway exists.[2]

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[2] As discussed *infra* at Part V, the City's SB 35 Determination was also accompanied by a separate "Notice of Incomplete Application" and attachments describing requirements that the City believes *would* apply *if* the Applicant were to submit a discretionary use permit application rather than an SB 35 streamlined ministerial application. The "Notice of Incomplete Application" letter and attachments are not relevant to the City's SB 35 Determination, but even if they were, they would not provide any valid reason to deny the Applicant's SB 35 Application. Although the "Notice of Incomplete Application" letter and its attachments contain some references to parking (for example in notes 3, 18 and 19), none of these references cite any *objective* requirements related to parking spaces or required access and egress to parking. The requests in note 3, for example, are found neither in any of the City's objective standards, nor in the Parking Standards Exhibit A.

III. The City Has Not Identified any Objective Standard Precluding an SB 35 Application on this Site, but the City Can Suspend Processing of the Prior Application While the City Completes the Review of the SB 35 Application

The December 7 SB 35 Determination claims that because two applications have been submitted for the site, one application must be withdrawn. The letter cites no legal authority for this proposition. As set forth above, to the extent the City believed there to be an objective City standard that precluded the Applicants from submitting an SB 35 Application on this site, the City was required to identify that specific standard within 60 days of the Application submittal. *See* Gov. Code § 65913.4(b)(1). However, to avoid any unnecessary disputes, the Applicant is willing to authorize the City to suspend any processing or other activities planned for the previously submitted application during the time that the November 8 SB 35 Application remains under submission.

IV. The Housing Accountability Act Also Requires the City to Approve the Project

As stated in the Application, we also note that, in addition to being subject to SB 35, the Project is also subject to the Housing Accountability Act ("HAA" or "Act"), because more than two-thirds of the Project's square footage is designated for residential use. Gov. Code § 65589.5(g)(2). Pursuant to the Housing Accountability Act, "[w]hen a proposed housing development project complies with applicable, objective general plan, zoning and subdivision standards and criteria," the City *may not* disapprove the project or reduce its density unless the City makes findings, supported by a preponderance of the evidence, that the project would have an unavoidable impact on public health or safety that cannot be mitigated in any way other than rejecting the project or reducing its size. Gov. Code § 65589.5(j). Under recent reforms to the HAA, the question of whether a project is consistent with objective standards is resolved under a standard of review that is extremely deferential to the applicant. *See* Gov. Code § 65589.5 (f)(4) ("a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would <u>*allow a reasonable person to conclude*</u> that the housing development project or emergency shelter is consistent, compliant, or in conformity") (emphasis added); *see also* Gov. Code § 65589.5(a)(2)(L) ("It is the policy of the state that. . . [the HAA] should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing").

As set forth above, the Project complies with all applicable objective standards under any standard of review. But at the very least, it is clear that it is possible for a "reasonable person to conclude" that the project complies with the City's objective standards. Gov. Code § 65589.5 (f)(4). Accordingly, the HAA "imposes 'a substantial limitation' on the government's discretion to deny a permit." *N. Pacifica, LLC. v. City of Pacifica* 234 F. Supp. 2d 1053, 1059 (N.D. Cal. 2002), aff'd sub nom. *N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478 (9th Cir. 2008). Before the City could legally reject the Project or reduce its density, the City would be required to demonstrate, based on a preponderance of the evidence, that the project would cause "a significant, quantifiable, direct, and unavoidable impact" on public health or safety, "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(j)(1)(A). The City would be required to further affirmatively prove that there are no feasible means of addressing such "public health" and "safety" impacts other than rejecting or reducing the size of the Project. Gov. Code § 65589.5(j)(1)(B). The Legislature recently re-affirmed its intent that the conditions allowing a project to be rejected on this ground should "arise infrequently." Ch. 243, Stats. 2018 (A.B. 3194) (amending Gov. Code § 65913.4(a)(3)). Here, there is no evidence – to say nothing of the required *preponderance* of the evidence – that the Project would have any impact at all on public health or safety. Even if there were, there is no evidence that any such impacts are incapable of mitigation. Therefore, any improper denial of the Project would violate the HAA.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5 (j), (k). Any local government that disapproves a housing development project must now meet the more demanding "preponderance of the evidence" standard – rather than the more deferential "substantial evidence" standard – in proving that it had a permissible basis under the Act to reject the project. Gov. Code § 65589.5 (j)(1). As recently reformed, the HAA makes attorney's fees presumptively available to prevailing plaintiffs regardless of whether the project contains 20% affordable housing. Gov. Code § 65589.5(k)(1)(A). If the City fails to prove in litigation that it had a valid basis to reject the project, the court *must* issue an order compelling compliance with the Act, and any local government that fails to comply with such order within 60 days *must* be fined a minimum of $10,000 per housing unit and may also may be ordered directly to approve the project. Gov. Code § 65589.5(k). The HAA further provides that if a local jurisdiction acts in bad faith when rejecting a housing development, the applicable fines must be multiplied by five. *Id.*

V. The "Notice of Incomplete Application" Accompanying the SB 35 Determination Is Irrelevant to the SB 35 Application

The December 7 SB 35 Determination notes that if the Applicant "elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice" (emphasis added), the Applicant would need to submit certain additional materials required for discretionary applications such as for a Conditional Use Permit or discretionary Design Review. The City's SB 35 Determination is accompanied by a separate letter labelled "Notice of Incomplete Application" ("NOIA"), and related attachments, which identify submittal requirements that *would* apply *if* the Applicant were to elect to apply for a discretionary permit to develop a project on the 40 Main Street site. The Applicant's November 8 SB 35 Application does not seek approval of the Project through any of these discretionary permit avenues, and none of these requirements apply to the current SB 35 Application.

We do not understand the City to suggest that any of these materials are necessary for consideration of the November 8 SB 35 Application (and the City's SB 35 Letter cannot possibly be read to suggest that they are). But in any event, the law is clear that consideration of an SB 35 application must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution," Gov. Code § 65913.4(c). Since the City has not published any application materials for SB 35 applications, the City cannot require SB 35 applicants to submit any additional material

as long as the Application contains "sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards." Guidelines, § 301(b)(1)(A). Moreover, most of the notes, comments, and requests for further plans and revisions to plans are the type of comments and questions that the City addresses *after* entitlement review is completed, such as during the plan check process. Consistent with the City's processes for processing discretionary permit applications, any arguable need to address these issues cannot be a ground for denying a streamlined ministerial permit. "A locality may not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals." Guidelines, § 300(b)(2).

Since the City has not published application materials for SB 35 applications, the Applicants submitted application materials and related submissions typically required for a discretionary Use Permit, as well as Use Permit fee in the amount of $5,350. But as the City correctly notes in the December 7 SB 35 Letter, a Use Permit application is, in fact, legally distinct from an SB 35 Application. We therefore respectfully request that the City confirm it will charge a fee for this application consistent with a fee for a ministerial conformance process such as a Zoning Approval, and to refund to the Applicant the difference between that amount and the submitted fee.

Although not required to do so, and although the City's SB 35 Determination is clear that none of the material in the NOIA relates to the City's SB 35 Determination, the Project team has reviewed the NOIA and all attachments, and can confirm that none of the comments or requests in the NOIA relate to any objective standard for which compliance must be demonstrated as a precondition to issuance of an SB 35 streamlined ministerial permit. None of the comments or requests for design requests relate to the Project's demonstration of compliance with the numeric standards or other physical standards of the City of Los Altos.

With this said, in the interest of being responsive to the comments of City agencies, the Applicant is able and willing to provide, purely for informational purposes, additional information about the Project as well as responses to some of the comments received on the Application. Please note that this letter, and these submissions, are not in any sense a re-submission or new application for the Project. The purpose of this letter is to explain why the November 8, 2018 Application sufficed to qualify the Project for a streamlined ministerial permit, and the purpose of these additional responses is to voluntarily provide additional information and responses to comments on the Application by City agencies. Specifically, understanding the importance of fire safety and accessibility, the Project architect has reviewed and addressed all comments made by the Fire Department and the Building Division. *See* Exhibit C. These design issues can and will be addressed in post-entitlement plan check review.

The Project team can also provide a courtesy response to the "Density Bonus Report Submittal Requirement" document accompanying the NOIA. This document is a requirement of the City of Los Altos for discretionary project applications. However, to avoid any question about the Project's entitlement to Density Bonus Law bonuses, modifications, waivers, concessions and incentives, the original SB 35 application submitted on November 8, 2018 included as Attachment D a report following the format and providing the information (coupled with the Applicant

Statement's Project Description) that is required in the City's Density Bonus Report Submittal Requirements. The Project team has reviewed each of the boxes (all three categories), with an emphasis on the unchecked items on the City's "Density Bonus Report Submittal Requirement" document. Every item, including those that are left unchecked in the City's letter, have been addressed in original Project Description and the original Attachment D. Please continue to reference those documents with any questions you may have with respect to the Project's entitlement to a density bonus with the appropriate waivers/modifications and incentives/concessions.[3]

VI. The City Is Required to Complete All Public Oversight over the Application, and to Issue a Streamlined Ministerial Permit, No Later than February 6

As set forth above, the City is required to complete any design review or other public oversight over the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same). However, any such oversight or design review must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction," and this review "shall not in any way inhibit, chill, or preclude the ministerial approval" required by SB 35. Gov. Code § 65913.4(c); *see also* Guidelines, § 301(a)(2)(B) ("Design review or public oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval provided by these Guidelines or its effect"). And as set forth above, the Project is now deemed to comply with all of SB 35's qualifying objective criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). If, consistent with these limitations, the City intends to conduct any additional public oversight or design review over the Project, please

[3] Please note that some provisions of the City's "Density Bonus Law Submittal Requirements" document, and note 7 of the NOIA, are out of date and inconsistent with current State law. The State Density Bonus Law provides that "[a] local government shall not condition the submission, review, or approval of an [Density Bonus Law] application . . . on the preparation of an additional report or study that is not otherwise required by state law," Gov. Code § 65915(a)(2), and that the *City* "shall bear the burden of proof for the denial of a requested concession or incentive." Gov. Code § 65915(d)(4). Effective in 2017, the Legislature amended the Density Bonus Law specifically to eliminate the authority of cities to reject a requested concession or incentive on the grounds that "[t]he concession or incentive is not required in order to provide for affordable housing costs," Stats.2016, ch. 758 (A.B.2501), § 1. The currently operative text of the law only authorizes the City to reject the requested concession if the *City* demonstrates that "[t]he concession or incentive does not result in identifiable and actual cost reductions." *Id.* The purpose of this amendment was to foreclose the exact documentation demands made in the City's submittal requirement documents. *See* Assem. Com. on Housing & Community Development, Floor Analysis of Assembly Bill No. 2501 (2015-2016 Reg. Sess.), August 30, 2016, at p. 4 (legislative amendments were intended to respond to "local governments [which] interpret . . . [the previously operative] language to require developers to submit pro formas"); *see also* "Policy White Paper: City of Santa Rosa, Density Bonus Ordinance Update", *available at* https://srcity.org/DocumentCenter/View/18475/Density-Bonus-Policy-White-Paper, at p. 45 ("amendments adopted through AB 2501 are intended to presume that incentives and concessions provide cost reductions, and therefore contribute to affordable housing development").

inform us and the Applicant of the type of public oversight or design review that the City expects to conduct.

VII. Conclusion

Based on the foregoing, we hope and expect that we or the Applicants will receive information about any remaining design review or public oversight over the Project, and that the Applicants will receive the streamlined ministerial permit required by State law, no later than February 6. In the hopefully unlikely event that the City intends not to meet the requirements of State law outlined above, please be advised that we have been retained by the Applicant to explore all legal remedies provided by law to enforce the requirements of California housing law. If you would like to discuss these or other matters, please feel free to contact me at (415)743-6900.

Sincerely,

HOLLAND & KNIGHT LLP

By: Daniel R. Golub

SB 35 Statewide Determination Summary

Cities and Counties Subject to SB 35 Streamlining Provisions

When Proposed Developments Include ≥ 10% Affordability

When jurisdictions have insufficient progress toward their Above Moderate income RHNA and/or have not submitted the latest Housing Element Annual Progress Report (2017), these jurisdictions are subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

These conditions currently apply to the following 338 jurisdictions:

	JURISDICTION
91	FORT JONES
92	FORTUNA
93	FOUNTAIN VALLEY
94	FOWLER
95	FRESNO COUNTY
96	GARDEN GROVE
97	GLENN COUNTY
98	GONZALES
99	GRAND TERRACE
100	GRASS VALLEY
101	GREENFIELD
102	GRIDLEY
103	GUADALUPE
104	GUSTINE
105	HALF MOON BAY
106	HANFORD
107	HAWAIIAN GARDENS
108	HAYWARD
109	HEMET
110	HERMOSA BEACH
111	HIDDEN HILLS
112	HIGHLAND
113	HOLTVILLE
114	HUMBOLDT COUNTY
115	HUNTINGTON BEACH
116	HUNTINGTON PARK
117	HURON
118	IMPERIAL
119	IMPERIAL COUNTY
120	INDIAN WELLS
121	INDUSTRY
122	INGLEWOOD
123	INYO COUNTY
124	IONE
125	IRWINDALE
126	ISLETON
127	JACKSON
128	JURUPA VALLEY
129	KERMAN
130	KERN COUNTY

	JURISDICTION
131	KINGS COUNTY
132	KINGSBURG
133	LA CANADA FLINTRIDGE
134	LA HABRA
135	LA HABRA HEIGHTS
136	LA MIRADA
137	LA PALMA
138	LA PUENTE
139	LA QUINTA
140	LA VERNE
141	LAKE COUNTY
142	LAKEPORT
143	LANCASTER
144	LASSEN COUNTY
145	LATHROP
146	LAWNDALE
147	LEMOORE
148	LINDSAY
149	LIVE OAK
150	LIVINGSTON
151	LODI
152	LOMA LINDA
153	LOMPOC
154	LONG BEACH
155	LOOMIS
156	LOS ALAMITOS
157	LOS ALTOS
158	LOS ALTOS HILLS
159	LOS ANGELES COUNTY
160	LOS BANOS
161	LOYALTON
162	LYNWOOD
163	MADERA
164	MANHATTAN BEACH
165	MANTECA
166	MARICOPA
167	MARINA
168	MARIPOSA COUNTY
169	MARTINEZ
170	MARYSVILLE

	JURISDICTION
171	MAYWOOD
172	MCFARLAND
173	MENDOCINO COUNTY
174	MENDOTA
175	MENIFEE
176	MERCED
177	MERCED COUNTY
178	MILLBRAE
179	MODESTO
180	MODOC COUNTY
181	MONTAGUE
182	MONTCLAIR
183	MONTEBELLO
184	MONTEREY
185	MONTEREY COUNTY
186	MONTEREY PARK
187	MORENO VALLEY
188	MORRO BAY
189	MOUNT SHASTA
190	MURRIETA
191	NATIONAL CITY
192	NEEDLES
193	NEVADA CITY
194	NEWARK
195	NEWMAN
196	NORCO
197	NOVATO
198	OCEANSIDE
199	OJAI
200	ONTARIO
201	ORANGE
202	ORANGE COVE
203	ORLAND
204	OROVILLE
205	OXNARD
206	PACIFIC GROVE
207	PACIFICA
208	PALM DESERT
209	PALMDALE
210	PALOS VERDES ESTATES

SB 35 Determination for the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, and Sonoma; and all cities within each county

These jurisdictions are in the First Half Reporting Period, including 3 years (2015-2017 APRs) of an 8-year planning period. ***Less than 37.5% permitting progress toward 5th Cycle regional housing needs assessment (RHNA) for an income category is considered insufficient progress.***

Jurisdictions with insufficient progress toward Above-Moderate RHNA are subject to SB 35 streamlining for developments with 10% affordability or above. Jurisdictions with insufficient progress toward Lower RHNA (Very Low and Low) are subject to SB 35 streamlining for developments with 50% affordability or above.

(Note: Jurisdictions are automatically subject to SB 35 streamlining provisions when latest Annual Progress Report (2017) Not Submitted)

COUNTY	JURISDICTION	VLI % COMPLETE	LI % COMPLETE	MOD % COMPLETE	ABOVE MOD % COMPLETE
SAN MATEO	SOUTH SAN FRANCISCO	14.2%	1.4%	8.9%	57.2%
SOLANO	SUISUN CITY	0.0%	0.0%	0.0%	32.8%
SANTA CLARA	SUNNYVALE	5.4%	2.3%	8.5%	69.7%
MARIN	TIBURON	0.0%	0.0%	0.0%	57.9%
ALAMEDA	UNION CITY	0.0%	0.0%	131.8%	18.0%
SOLANO	VACAVILLE	4.9%	19.4%	307.5%	92.2%
SOLANO	VALLEJO	0.0%	0.0%	0.0%	13.2%
CONTRA COSTA	WALNUT CREEK	7.0%	4.5%	4.7%	57.1%
SONOMA	WINDSOR	0.0%	0.0%	1.5%	38.3%
SAN MATEO	WOODSIDE	52.2%	15.4%	13.3%	154.5%
NAPA	YOUNTVILLE	25.0%	50.0%	300.0%	175.0%
Alameda County	NEWARK	No 2017 Annual Progress Report			
Contra Costa County	MARTINEZ	No 2017 Annual Progress Report			
Contra Costa County	RICHMOND	No 2017 Annual Progress Report			
San Mateo County	ATHERTON	No 2017 Annual Progress Report			
Santa Barbara County	GUADALUPE	No 2017 Annual Progress Report			
Santa Barbara County	SANTA BARBARA	No 2017 Annual Progress Report			
Santa Barbara County	SOLVANG	No 2017 Annual Progress Report			
Santa Clara County	LOS ALTOS	No 2017 Annual Progress Report			
Solano County	RIO VISTA	No 2017 Annual Progress Report			

From: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>
Sent: Friday, January 4, 2019 3:51 PM
To: Mark Rhoades <mark@rhoadesplanninggroup.com>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: RE: Los Altos

Yes, on November 8, 2018, Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

From: Mark Rhoades <mark@rhoadesplanninggroup.com>
Sent: Friday, January 4, 2019 3:47 PM
To: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: Los Altos

Melinda,

On November 8, 2018, we submitted an SB 35 application for a proposed project in the City of Los Altos. Can you confirm that on November 8, 2018, the City of Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability? As of November 8, 2018, HCD's most recent "SB 35 Determination Summary" was the CA HCD determination issued on June 1, 2018, which identifies Los Altos as subject to streamlining for projects with at least 10% affordability on page 3.

Thank you,

Mark Rhoades, AICP
Rhoades Planning Group
510.545.4341

****

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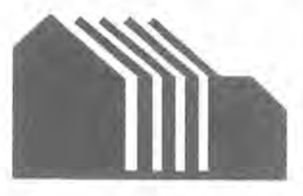


William Maston
Architect & Associates
384 Castro St.
Mountain View, CA 94041
t. 650.968.7900 f. 650.968.4913
www.mastonarchitect.com

January 7, 2019

Community Development Department
City of Los Altos
One North San Antonio Road
Los Altos, California 94022
Attention: Jon Biggs

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10; SB 35 Determination
Additional Specific Project Comments

Dear Jon Biggs,

40 Main St.

1. Parking requirements – contrary to staff comments the project meets parking requirements set forth in SB 35 – All of the information was provided in the initial set of drawings.
    a. Los Altos parking code 14.74.100 exempts the first 100% of FAR for projects which participated in the public parking district (40 Main is a participant in the public parking district), therefore the 5,724 square feet of first floor office space is exempt from providing any parking, additionally 1,226 square feet of second floor residential (equivalent to one unit) is also exempt from any parking requirements.
    b. Upper level residential units – SB 35 is very specific about the required parking for residential units. Minimum for SB 35 is 1 car per unit with no guest parking required. However, van accessible parking is required to be on-site. Our project includes 2 levels of underground parking providing 18 parking spaces where only 14 (15 minus 1 per 14.74.100) parking spaces are required. Of the 18-parking spaces provided 2 are van accessible. Each floor is accessed by a car elevator platform.

2. Fire access – required fire access and dimensional requirements for the same are being met on both Main Street at the front of the building and the Plaza Ten parking lot driveway at the rear of the building.

3. All other fire department comments are noted and will be specified at plan check.

4. Onsite handicap accessible parking (ADA) – on site ADA parking requirements are met by providing 2 van accessible parking spaces on site including required clear head height of any obstruction at 8'2".

Sincerely,

Bill Maston
Project Architect

Jon Biggs

From: William Maston <billm@mastonarchitect.com>
Sent: Monday, December 10, 2018 10:42 AM
To: Jon Biggs; Ted Sorensen; Gerald Sorensen; Bill Maston
Subject: RE: 40 Main, Notice of Determination and Incomplete Application

Hi Jon,

Thanks for your review and report. We will get right on it. If I have any questions, I'll follow up soon.

If I don't see you in person, have a great holiday!

Regards,
Bill

William Maston

William Maston Architect & Associates
384 Castro Street
Mountain View, CA 94041
t. 650.968.7900 f. 650.968.4913
www. mastonarchitect.com

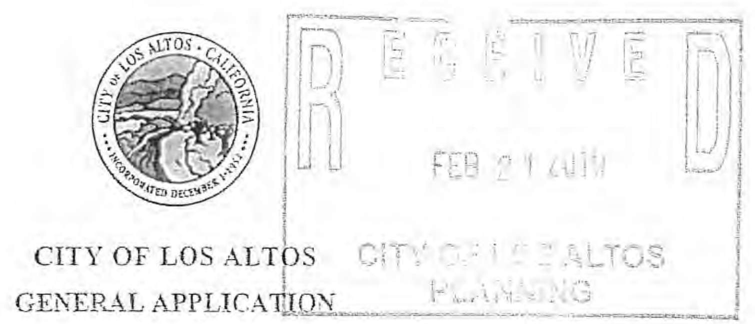
From: Jon Biggs <jbiggs@losaltosca.gov>
Sent: Friday, December 07, 2018 3:13 PM
To: Ted Sorensen <ted@tgslawoffices.com>; Gerald Sorensen <gjsorensen@sbcglobal.net>; William Maston <billm@mastonarchitect.com>
Subject: 40 Main, Notice of Determination and Incomplete Application

Gentlemen:

Attached is the notice of determination and notice of incomplete application for the mixed use project at 40 Main Street, Los Altos, that was submitted on November 8, 2018.

Paper copies are following in the mail.

Jon Biggs, City of Los Altos
Community Development Director



CITY OF LOS ALTOS
GENERAL APPLICATION

Type of Review Requested: *(Check all boxes that apply)* Permit # 18-D-07 18-UP-10

	One-Story Design Review		Commercial/Multi-Family		Environmental Review
	Two-Story Design Review		Sign Permit		Rezoning
	Variance		Use Permit		R1-S Overlay
	Lot Line Adjustment		Tenant Improvement		General Plan/Code Amendment
	Tentative Map/Division of Land		Sidewalk Display Permit	X	Appeal
	Historical Review		Preliminary Project Review		Other:

Project Address/Location: 40 Main Street

Project Proposal/Use: Office/Residential mixed use Current Use of Property: Office

Assessor Parcel Number(s): 167-38-032 Site Area: 6,995

New Sq. Ft.: 29,566 SF Altered/Rebuilt Sq. Ft.: 0 Existing Sq. Ft. to Remain: 0

Total Existing Sq. Ft.: 2,127 Total Proposed Sq. Ft. (including basement): 42,418 SF

Is the site fully accessible for City Staff inspection? Yes

Applicant's Name: 40 Main Street Offices LLC
Telephone No.: 650·949·4900 Email Address: Ted@Gunnmanagement.com
Mailing Address: 40 Main Street
City/State/Zip Code: Los Altos, CA. 94022

Property Owner's Name: 40 Main Street Offices LLC
Telephone No.: 650·949·4900 Email Address: Ted@Gunnmanagement.com
Mailing Address: 40 Main Street
City/State/Zip Code: Los Altos, CA. 94022

Architect/Designer's Name: William J. Moston Architect & Assoc.
Telephone No.: 650·968·7900 Email Address: billm@mostonarchitect.com
Mailing Address: 384 Castro Street
City/State/Zip Code: Mountain View, CA. 94041

** If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finaled prior to obtaining your building permit. Please contact the Building Division for a demolition package. **

(continued on back)

ATTACHMENT 4
APPL19-0002

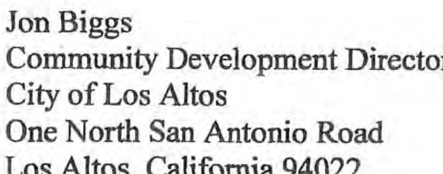
Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Daniel R. Golub
+1 415-743-6976
Daniel.Golub@hklaw.com

RECEIVED

February 21, 2019


Jon Biggs
Community Development Director
City of Los Altos
One North San Antonio Road
Los Altos, California 94022

Jon Maginot
Deputy City Manager/City Clerk
City of Los Altos
One North San Antonio Road
Los Altos, California 94022

Re: Appeal regarding 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs and Mr. Maginot:

We are in receipt of Mr. Biggs' February 21, 2019 letter contending that the City of Los Altos has an established appeal procedure that applies to the above-referenced ministerial project. It does not appear to us that the City's appeal procedures apply to this project. *See* City of Los Altos Municipal Code § 1.12.020 (providing that there is no right to appeal to the City Council for ministerial acts). Indeed, such a requirement would defeat the purpose of the staff-level ministerial approval process provided for by Senate Bill 35 ("SB 35"), by subjecting SB 35 applications to review by a city's discretionary decision-making body.

However, for the purpose of avoiding dispute, we hereby submit the accompanying appeal form and will tender the appeal fee.

For the reasons set forth in our January and February letters (on file with the City and re-submitted with the accompanying appeal), the City's decision to deny the SB 35 permit was unlawful.

Sincerely,

HOLLAND & KNIGHT LLP

By: Daniel R. Golub

Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Daniel R. Golub
+1 415-743-6976
Daniel.Golub@hklaw.com

February 19, 2019

Jon Biggs
Director
Los Altos Community Development Department
One North San Antonio Road
Los Altos, California 94022
jbiggs@losaltosca.gov

SENT VIA EMAIL AND COURIER

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs:

As you know, we represent 40 Main Street Offices, LLC (the "Applicant") in connection with the above-captioned Application, submitted November 8, 2018 ("Application," attached as Exhibit 1 hereto) for a streamlined ministerial permit for the 40 Main Street Project ("Project"). In a letter dated December 7, 2018 ("Determination Letter", or "Determination," attached as Exhibit 2 hereto), you denied the Application on behalf of the City of Los Altos ("City"). For the reasons set forth in our January 10, 2019 letter (attached as Exhibit 3 hereto), the City's December Determination did not identify any legally sufficient grounds to deny the Application, and as a result the City was required by State law to issue a streamlined ministerial permit no later than February 6, 2019.[1] I am in receipt of your February 6, 2019 letter (attached as Exhibit 4 hereto), sent to me via email at 4:34 pm on the date of the City's statutory deadline to grant the Application, which letter confirmed that the City would not grant the Application. The purpose of this further response is to (1) provide some important background on SB 35 in the context of the Applicant's long efforts to build a modest development in a manner that is consistent with the City's Los Altos

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[1] Please note that the January 10 letter was first received by the City on January 10, the same day it was dated and sent, not on January 17, as stated in your February 6 letter. See Exhibit 5 (confirmation e-mail from Western Messenger demonstrating that the letter was received and signed for by a City official at 12:47 p.m. on January 10).

ATTACHMENT 4a

Design Plan and the Downtown Design Guidelines, (2) respond to the February 6 Letter, (3) confirm that, by failing to issue the streamlined ministerial permit required by law within the timeline required by law, the City is now in violation of, *inter alia*, Gov. Code §§ 65913.4 and 65589.5, (4) request your confirmation that there are no legally established procedures to seek appeal or reconsideration of the City's Determination, and (5) provide a final opportunity to avoid litigation of this matter.

I. Background on SB 35 and the Development Process on this Site

There is now a growing realization among legal scholars that local governments' excessive discretionary review of housing development projects is a key cause of California's housing supply crisis.[2] The State Legislature recognized this incontrovertible fact at least as early as 1990, when it found and declared that "local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects." Gov. Code § 65589.5(a)(1)(D). In 2017, finding that the state's "housing supply and affordability crisis" had reached "historic proportions . . . hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives," the Legislature reiterated its intent that State housing laws have long been intended to "meaningfully and effectively curb[] the capability of local governments to deny, reduce the density for, or render infeasible housing development projects." Gov. Code § 65589.5(a)(2). Recognizing that "[t]hat intent has not been fulfilled," *id.*, the Legislature adopted a comprehensive package of State housing laws to streamline the approval of housing developments like the Project. One of the centerpieces of this legislative package is SB 35 of 2017, which establishes that housing developments like the Project, which comply with all of the City's objective standards, and meet all of SB 35's other qualifying criteria, cannot be denied based on City officials' discretionary judgments, and also cannot be delayed through never-ending cycles of "completeness" review.

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[2] *See, e.g.*, Jennifer Hernandez *et al.*, In the Name of the Environment (2015); Jennifer Hernandez, *et al.*, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 HASTINGS ENVTL. L.J. 21, 21-22 (2018); Moira O'Neill, *et al.*, Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process (Berkeley Law Center for Law, Energy & the Environment; Berkeley Institute of Urban & Regional Development, Columbia Graduate School of Architecture, Planning & Preservation, February 2018), available at https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf (in major jurisdictions, "even if . . . developments comply with the underlying zoning code, they require additional scrutiny from the local government before obtaining a building permit," which "triggers CEQA review of these projects"; "Our data shows that in many cases, these cities appear to impose redundant or multiple layers of discretionary review on projects"); Moira O'Neill *et al.*, Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates, 25 HASTINGS ENVTL. L. J. 1, 73-77 (2019); Elmendorf, Christopher S., Beyond the Double Veto: Land Use Plans As Preemptive Intergovernmental Contracts (February 9, 2019). Available at SSRN: https://ssrn.com/abstract=3256857, at pp. 33-37 (noting that especially before 2017, local jurisdictions were largely free to ignore their own plans for meeting regional housing goals, and could always use CEQA to kill housing approvals). These and other referenced materials cited in this letter, our December response letter, and the initial Application, are included as Exhibit 9, attached hereto.

Despite the City's promise in its Downtown Design Guidelines (December 2009) that call for "providing fairness and consistency in the City's downtown development review and approval process," the City's excessive discretionary review process of the Applicant's efforts to build a modestly sized residential development are a quintessential example of why SB 35 is so desperately needed.

The SB 35 Application is the third application the Applicant has submitted to develop the project site with a relatively uncomplicated, modestly sized development that complies with all of the City's many objective criteria for development in this location. The most recent prior application was *submitted in September 2013* and remains "under consideration" after more than five years of review and delay.

City staff issued a letter determining the prior application to be incomplete in October 2013. After the Applicant carefully reviewed and addressed the numerous items the City stated were required for a complete application, staff declared the Applicant's resubmitted application to also be incomplete in December 2015, adding numerous additional completion criteria that had not been required for the previous submission. Staff would later acknowledge that many of these requirements were not, in fact, requirements for a complete application.

After finally acknowledging the application was complete, staff finally issued a formal letter determining the application to be complete in September 2016. But instead of proceeding to be promptly considered on the merits by the city's discretionary decision-making bodies, as any "complete" application should be allowed to do, there followed almost a year and a half of additional delay at the staff level before the application was first heard before the City's Planning Commission. During this time, staff added additional requirements on the already concededly "complete" application, such as outside design review (which to the best of our knowledge no other project before or since has been required to undergo), a third parking report requiring data that no other project in Los Altos has been required to complete, and compliance with newly adopted policies, such as a "story pole policy" adopted years after the project application was submitted in September 2013.

Eventually, after the application finally cleared the daunting hurdles to be considered on its merits, it proceeded to a Planning Commission hearing in June 2017, where the Commission refused to approve it and demanded numerous design changes.[3] After the project architect substantively redesigned the Project to meet the Commission's direction, the Commission rejected it a year later in June 2018. At both hearings, the Commissioners' comments expressed clearly aesthetic, subjective and discretionary preferences about how the project should be designed, which were unrelated to any objective requirements in the City's adopted standards. At the June 2018 hearing, the Planning Commission Chair, claiming (incorrectly) that she had already seen the project "seven

[3] In between the 2017 and 2018 Commission meetings, staff simply refused for seven months to act on City Council's July 2017 direction to meet with the applicants to negotiate a development agreement that would include the redevelopment of parking plaza 10 to add as many as twenty public parking stalls, and staff only agreed to move forward with a hearing date after the applicants agreed to eliminate the redevelopment of plaza 10 from the application.

times," indicated that she would oppose any future attempts to build any project at the location that was not completely redesigned and reduced in size.[4]

SB 35 was designed precisely for processes and projects like this one. It was only after more than five years of attempts to achieve a discretionary approval for this Project that the Applicant turned to its legal rights under SB 35: to pay the high cost of preparing and submitting an SB 35 application in order to proceed under the ministerial process now required by State law. The City's December and February responses to the Application indicate that the City does not intend to meet either the letter or spirit of this law, and instead intends to foist the requirements of a discretionary process – including another round of "completeness" review – on a procedure that the Legislature has explicitly directed to be ministerial. This is no longer permissible as a matter of State law.

II. Response to February 6 Letter

As you know, in the City's December 7 Determination, you stated that the City had completed its "review of the Project" and concluded that the Project did not qualify for SB 35 streamlining for two reasons: (1) because the Project supposedly did not provide the minimum required amount of affordable housing, and (2) because the Project supposedly did not meet objective zoning standards related to parking. We appreciate your acknowledgement that the first of these contentions was erroneous, and that the Project in fact meets the 10% affordable housing standard that applies to the Application.[5] As we noted in our January 10 Letter, the Determination Letter's second ground also was not a permissible basis to deny the Application, for several reasons: because the City's Determination Letter failed to identify any parking standards that qualify as "objective" under SB 35's definition of that term, because the Determination failed to identify "which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard," as required by law (Gov. Code § 65913.4(b)(1)), and because, in any case, the Application affirmatively demonstrated that the Project complied with all applicable objective parking standards. Nothing in the February 6 Letter states anything to the contrary – and in fact, nothing in the February 6 Letter even disputes or responds to these contentions. Therefore, for the reasons set forth in the January 10 letter, the City's decision to deny the Application was unlawful.

Nonetheless, the following responds to the contentions in the February 6 letter (each section A, B, C and D, *infra*, corresponds to numbered Parts 1, 2, 3 and 4 of the February 6 letter, respectively).

A. Since the City Did Not Identify any Objective Standards with Which the Project Conflicts, the City's Failure to Issue a Streamlined Ministerial Permit Was Unlawful.

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[4] Documentation of the correspondence and City records related to this process are attached hereto as Exhibit 6.

[5] For the record, for the reasons explained in footnote 1 of our January 10 Letter, we disagree that new SB 35 applications submitted in Los Altos are required to provide 50% lower-income units, at least not until the City timely adopts and submits an annual progress report on its 2018 housing production. However, our disagreement on this point appears to be immaterial since we both agree that the 10% standard applies to this Application.

The February 6 letter claims - for the first time - that the Applicant has not submitted a "complete" SB 35 application, invoking the Permit Streamlining Act, Gov. Code § 65920 *et seq*. Respectfully, this is simply a mistake of law. The Permit Streamlining Act expressly states that it does not apply to ministerial projects such as the Project. Gov. Code § 65928. The SB 35 process, in notable contrast to the Permit Streamlining Act, does not authorize a local agency to refuse to process an application on the grounds that it is "incomplete." Instead of encompassing the concept of application "completeness," SB 35 provides that a streamlined ministerial permit must be granted within 90 days of the day the application is *submitted*, rather than calculating the deadline from the date the application is deemed or determined to be "complete." Gov. Code § 65913.4(b)(1). Most importantly, it is not the Applicant's burden to establish the Project's consistency with the objective standards; it is the City's burden to establish the contrary. *See* Gov. Code § 65913.4(b)(1); HCD SB 35 Streamlined Ministerial Permit Guidelines ("Guidelines"), § 301(a)(3). Specifically, the City must provide "written documentation of *which standard or standards* the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard." Gov. Code § 65913.4(b)(1)(A) (emphasis added); Guidelines, § 301(a)(3).

Despite this, the February 6 Letter states that the City has now decided that the SB 35 Application is "incomplete," and further states that the Applicant must submit *all of the materials the City requires for discretionary project applications* before the City will process the SB 35 Application - without explaining why any of this material is in any way relevant to the SB 35 criteria and standards. This novel – and legally unsupported – contention is (1) irreconcilable with your previous contentions in the December 7 Determination, (2) too late to be asserted well after the City's 60-day deadline has expired, and (3) in any case, legally untenable.

First, the City's contention is completely at odds with the City's Determination Letter. The December 7 Determination did *not* say that the City required any discretionary project application materials in order to analyze the SB 35 Application. To the contrary, the December 7 SB 35 Determination states that the information required in the attached "Notice of Incomplete Application" would be required only "*if*. . . [the Applicant] elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice" (emphases added). Nowhere does the Determination Letter state that any of this material is required in order to facilitate the City's review of whether the Application complied with the applicable SB 35 objective standards. To the contrary, you stated that even without this material, the City had succeeded in completing its "review of the project" and rendered an assessment of whether the Application met the criteria for streamlined ministerial permitting.

Second, it is too late for the City to now claim that, without this information, the Project may conflict with an objective standard. The 60-day deadline to raise this concern has passed. Once again, if a city believes an SB 35 application may conflict with any of the City's applicable objective standards, the city is required to provide, within 60 days of submittal, "written documentation of *which standard or standards* the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard." Gov. Code § 65913.4(b)(1)(A); *see also* Guidelines, § 301(a)(3). The statute and Guidelines both state explicitly what result occurs when, as here, the City fails to identify a specific objective standard

with which the project conflicts: "the development shall be deemed to satisfy the objective planning standards." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).

Third, even if the City had timely raised this type of concern, the City cannot demand that an SB 35 applicant submit all of the information normally required for a discretionary permit application. SB 35 states that consideration of an SB 35 application must be "strictly focused on assessing compliance with criteria required for streamlined projects." Gov. Code § 65913.4(c). The City's documentation demands run afoul of this statutory restriction, since the City is demanding numerous materials, studies and documents that are wholly irrelevant to the question of whether the Project meets the applicable objective standards.

Finally, even putting aside all of the above, there should be no doubt that the Application did, in fact, "contain[] sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards," Guidelines, § 301(b), as the City itself implicitly acknowledged when it stated in the December Determination that the City had completed its "review of the project." Despite the fact that it was not the Applicant's burden to establish the Project's consistency with the City's objective standards, the Application carefully identified each potentially applicable provision of the City's municipal code, line by line, and explained in detail either how the Project complied with the standard or why the standard did not qualify as "objective" under SB 35's definition of that term. If there were any valid reason to dispute any of these contentions, it would have been easy enough for the City to say so, and to cite the specific code section at issue.

Other cities have published SB 35 application forms which do not demand that applicants provide the type of material used to assess discretionary permit applications. *See* forms used by the cities of San Francisco and Concord, attached hereto as part of Exhibit 7. Cities including San Francisco, Cupertino and Berkeley have granted SB 35 applications based on material directly comparable to the Application See *id.* The format of the Application is almost identical to the format used in an application to the City of Berkeley for an SB 35 permit for the 2012 Berkeley Way Project, which application the City of Berkeley had no difficulty analyzing and granting. See *id.* There is no reason why the City of Los Altos could not have mad the same determination that its fellow jurisdictions have.

Even at this date, well past the City's 60-day deadline, the City can only vaguely suggest that the Project may conflict with a "host" of objective standards, but *cannot name a single example*,[6] despite the clear statutory requirement that the City identify any such standard with particularity. The very purpose of SB 35 is to enable a clear, straightforward assessment of whether a housing development complies with objective standards. The City's documentation requests seek to

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[6] As noted in our January 10 Letter, the only examples cited in the February 6 letter – which point to Notes 18 and 19 on the December 7 "Notice of Incomplete Application" – do not cite any specific objective standard with which the Project conflicts. Neither Note 18 nor Note 19 cite any specific standard at all, much less a standard that qualifies as "objective," and the notes refer to subjective considerations such as whether the project is "acceptable." These types of questions and concerns may be relevant to a discretionary process but are plainly irrelevant to a ministerial approval based on objective standards.

transform this ministerial process into a discretionary process, and are a clear attempt to evade the central purpose of this State law.

B. The City Has Not, and Now Cannot, Make the Necessary Findings under the Density Bonus Law to Deny the Requested Concession/Incentive and Waiver.

We appreciate your acknowledgement that the Project must be considered consistent with objective standards without regard to modifications to which the Applicant is entitled pursuant to the State Density Bonus Law. The Application provided all information necessary to determine that the Project is entitled to the Density Bonus Law concession/incentive and waiver requested in the Application. With respect to information requested in "2-a" of your February 6 Letter, which reiterates the City's demand that the Applicant provide all of the information required for discretionary project applications, we refer you to our response immediately *supra*. With respect to the request for information in "2-b" of the February 6 Letter, our January 10 letter already explained that all of this information was in fact provided in the original Application. For your convenience, please see the attached table, which explains where each circled and underlined item from the City's Density Bonus Submittal Requirement document is located in the original Application materials. *See* Exhibit 8, attached hereto.

Please note that, as we stated in footnote 3 of the January 10 Letter, the City had very limited grounds on which it could have denied the requested Density Bonus Law requests. The burden was on the *City* to establish the existence of those grounds. It is, of course, not the Applicant's burden to provide the City with evidence from which the City could meet *its* burden to make findings to deny a Density Bonus Law request. But in any event, the City's own municipal code states that for an "on-menu" concession/incentive such as the 11-foot height increase requested in the Application, "[t]he city council has determined that the on-menu incentive[] . . . would not have a specific, adverse impact." Los Altos Municipal Code ("LAMC") § 14.28.040(F)(1). Therefore, there is no need for any additional information to confirm what the City Council has already decided, which is that the requested concession/incentive will have no adverse impact and therefore cannot be denied unless the City makes a finding based on substantial evidence that it would not result in cost savings. The City made no such finding, the time has passed to do so, and so the Project's consistency with objective standards must be determined without regard to the modifications to which the Applicant is entitled under the Density Bonus Law.

C. The City Has Not Identified any Objective Standard which Prohibits the Processing of Concurrent Applications.

We refer you to Part III of our January 10 Letter, in which we point out that the City has not identified any objective standard which precludes the Applicant from submitting an SB 35 application on the site, and in which we stated that the Applicant authorized the City to suspend any processing of the prior application while the SB 35 Application remains under review. This point appears to be moot, since as we understand it, the City has now completed its review of the SB 35 Application, and will not grant the requested permit, and so there is no still-pending application left to withdraw.

D. The Housing Accountability Act Also Requires the City to Approve the Project.

We refer you to Part IV of our January 10 Letter. The Applicant has submitted all information necessary to establish that the Project meets all of SB 35's qualifying criteria. Under these circumstances, the City's unlawful refusal to grant a streamlined ministerial permit violates the Housing Accountability Act. The Applicant is therefore entitled to the attorney's fees and potential fines and penalties authorized under the Housing Accountability Act.

III. Exhaustion of Remedies

For the reasons set forth above, the City's decision not to grant the SB 35 Application was unlawful. Pursuant to LAMC § 1.12.020, it appears that there are no further avenues to appeal or to seek reconsideration of the City staff's Determination that the City will not grant a streamlined ministerial permit for the Project on the basis of the Application, as submitted. If, notwithstanding this, the City believes that it has adopted any procedures to seek appeal or reconsideration of the City staff's final decision to deny the SB 35 permit, please advise us of those avenues immediately so that the Applicant can consider availing itself of those procedures.

We have concurrently submitted a claim to the City Clerk pursuant to the Government Claims Act, Gov. Code § 900 *et seq*., to the extent there is any arguable requirement that the Applicant exhaust this avenue for relief before availing itself of its legal remedies.

IV. Conclusion

We urge the City to evaluate whether its taxpayers, residents, and those needing housing would be well-served by litigating this matter – which would result in delayed construction of urgently-needed housing, as well as cause the City to spend taxpayer dollars on litigation defense costs as well as the fines and attorney's fees that would be due to the Applicant based on the City's unlawful denial of this Application.

We appreciate your willingness to meet and discuss the development of the Project site, but your letter makes clear that you are only willing to discuss how the Project could theoretically proceed once the Applicants meet the newly articulated "submittal requirements" that your most recent letter claims are required for an SB 35 application. Since the Application as submitted entitles the Project to approval, it is hard to see how this would be a fruitful discussion. It appears clear that the City does not intend to implement SB 35 in a manner consistent with State law. However, if you would like to discuss alternatives to litigation, we and the Applicant team would be very willing to discuss this.

If we do not hear otherwise from you, we anticipate bringing legal action no later than 90 days from the date of the February 6 letter, and may do so well before the 90 days expire, and without further notice. Therefore, please do not hesitate to contact us as soon as possible if you would like to discuss potential alternatives to litigating this issue.

Sincerely,

HOLLAND & KNIGHT LLP

By: Daniel R. Golub

Enclosures: Exhibit 1 – November 8, 2018 SB 35 Application

Exhibit 2 – December 7, 2018 SB 35 Determination Letter

Exhibit 3 – January 10, 2019 Response Letter

Exhibit 4 – February 6, 2019 Response Letter

Exhibit 5 – January 10, 2019 Delivery Confirmation E-mail

Exhibit 6 – Correspondence and City records related to prior discretionary process

Exhibit 7 – SB 35 forms and approval documents from other jurisdictions

Exhibit 8 – Response to Density Bonus Submittal Requirements

Exhibit 9 – Documents Cited and Referenced in November 8, 2018 Application, January 10, 2019 Response Letter, and this letter

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January 10, 2019

Jon Biggs
Director
Los Altos Community Development Department
One North San Antonio Road
Los Altos, California 94022

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs:

We represent 40 Main Street Offices, LLC (the "Applicant") in connection with the above-captioned Application for a streamlined ministerial permit for the 40 Main Street Project ("Project"), which Application was submitted to the City of Los Altos ("City") on November 8, 2018. The Project will bring 15 much-needed housing units, as well as new office space, to a site the City has long recognized as appropriate for development as part of the City's plan to establish a sense of entry to the City's Downtown area. The project will provide 15 new infill and transit-oriented dwelling units in Downtown, proximate to walkable goods and services. In addition, the City of Los Altos will be able to add 13 market-rate and two affordable units to its Regional Housing Needs Assessment compliance.

As you know, Chapter 366, Statutes of 2017, as amended ("SB 35"), requires cities to issue a streamlined ministerial permit to any housing developments that meet SB 35's qualifying objective standards. Gov. Code § 65913.4(a). If cities believe an SB 35 application conflicts with any applicable objective standards, the city is required to provide, within 60 days of submittal, "written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard." Gov. Code § 65913.4(b)(1)(A); *see also* HCD Streamlined Ministerial Approval Process Guidelines ("Guidelines"), § 301(a)(3). Otherwise, "the development shall be deemed to satisfy the objective planning standards." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).

We have reviewed your brief December 7 letter concluding that the Project is not eligible for streamlined ministerial permitting ("SB 35 Determination"), in which you do not dispute that the Project satisfies nearly all applicable SB 35 criteria, but in which you claim that that the Project is not eligible for SB 35 streamlining for two reasons: (1) because the Project "does not provide the percentage of affordable dwelling units required by the State regulations", and (2) because the Project does not meet unspecified standards related to parking. Neither of these contentions are correct, and neither provide a legally permissible basis to deny a streamlined ministerial permit. Since the City has not validly identified any SB 35 standard with which the Project conflicts, and the time to do so has now elapsed, the Project is now deemed to comply with all of SB 35's qualifying criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). As set forth below, State law requires the City of Los Altos to issue a streamlined ministerial permit for the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same).

I. The Project Qualifies for SB 35 Streamlining Because It Meets the Applicable Affordable Housing Requirement

SB 35 requires local governments to issue a streamlined ministerial permit to housing developments which provide a specified minimum percentage of units as housing affordable to lower-income households earning below 80 percent of the area median income. Gov. Code § 65913.4(a)(4). The applicable minimum percentage of affordable housing depends on several factors. *Id.* As pertinent here, the applicable percentage depends upon whether the locality submitted its latest housing production report to the Department of Housing & Community Development ("HCD") by the April 1 statutory deadline. Gov. Code §§ 65400, 65913.4(a)(4)(B)(i). HCD issued several determinations during 2018, reporting on each California jurisdiction's status at various points during the year.

The December 7 SB 35 Determination cites a January 31, 2018 HCD determination as support for the contention that the Project was required to provide 50% affordable units to qualify for streamlined ministerial permitting. But HCD's January 31, 2018 determination was not the current HCD determination on the date the Application was submitted. HCD issued a subsequent determination on June 1, 2018, which unambiguously states that as of that date the City of Los Altos was "subject to SB 35 . . . streamlining for proposed developments with at least ***10% affordability***." *See* relevant excerpts from this determination attached hereto as Exhibit A (emphasis added). The June 1, 2018 determination was HCD's most current determination as of the date the Application was submitted on November 7, 2018, and "[a] locality's status on the date the application is submitted determines . . . which level of affordability (10 or 50 percent) an applicant must provide to be eligible for streamlined ministerial permitting." Guidelines, § 200(g); see also Gov. Code § 65913.4(a)(5) (SB 35 criteria are determined based on standards "in effect at the time that the development is submitted to the local government . . .."). The Applicant has confirmed directly with HCD – the agency delegated with statutory authority to implement SB 35, *see* Gov. Code § 65913.4(j) - that the 10% affordability requirement applied in Los Altos on

November 7, 2018. See e-mail attached as Exhibit B. Since the Project will provide more than 10% of its units as affordable to low-income households, the Project meets the applicable minimum percentage of units to qualify for a streamlined ministerial permit.[1]

II. The Project Meets All Applicable Objective Standards, Including All Objective Standards Related to Parking

A housing development that meets all of SB 35's other criteria is entitled to a streamlined ministerial permit as long as the development is "consistent with *objective* zoning standards . . . in effect at the time that the development is submitted." Gov. Code § 65913.4(a)(5) (emphasis added). The statute defines "objective" standards extremely narrowly; a city may only apply "standards that involve no personal or subjective judgment by a public official and are 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 before submittal." Gov. Code §65913.4(a)(5); *see also* Guidelines, § 102(p) (same). A local government may not apply any standards that do not qualify as "objective" under this narrow definition, and a local government cannot require an SB 35 applicant to meet any discretionary or subjective criteria typically required in an application for a discretionary permit. Guidelines, §§ 300(b)(1) & 301(a)(1). "Determination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." Guidelines, § 300(b)(8).

If a local government believes that an application for a project with less than 150 housing units conflicts with any objective standards, the local government must "provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard." Gov. Code § 65913.4(b)(1); *see also* Guidelines, § 301(a)(3). If "the local government fails to provide the required documentation . . .. the development shall be deemed to satisfy the objective planning standards . . .." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C) (same).

It is not the Applicant's burden to establish the Project's consistency with applicable objective standards; it is the City's burden to establish the contrary. *See* Gov. Code § 65913.4(b)(1), Guidelines, § 301(a)(3). Notwithstanding this, the Application contained a detailed submission affirmatively demonstrating that the Project is, in fact, consistent with every one of the City's

[1] We further note that, irrespective of any determinations issued by HCD, SB 35's statutory requirements are clear. A locality is subject to the 10% requirement if "[t]he locality did not submit its latest production report to . . . [HCD] by the time period required by Section 65400 [of the Government Code] . . .." Gov. Code § 65913.4(a)(4)(B)(i). Section 65400 of the Government Code requires all local governments to submit an annual housing report no later than April 1 of each year, reporting on the housing production completed in the prior calendar year. The City of Los Altos submitted its "latest production report" (the report documenting on housing production during the 2017 calendar year) after the April 1, 2018 statutory deadline. Since it remains the case that the City "did not submit its latest production report to the department by the time period required by Section 65400," the City will remain subject to the 10% requirement until and unless it submits its production report documenting its 2018 housing production by the April 1, 2019 statutory deadline. For this additional reason, the Project meets the applicable affordable housing requirement for SB 35 streamlining.

applicable objective zoning standards as well as all of SB 35's other qualifying criteria. The December 7 SB 35 Determination does not dispute that the Application satisfies all of the applicable SB 35 criteria in Gov. Code § 65913.4(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), (a)(8), (a)(9) and (a)(10), and in Guidelines, Article IV, §§ 400, 401, & 403. The City's SB 35 Determination also does not dispute that the Project satisfies all of the City's numerous objective zoning standards other than those related to parking.

As for parking, the City's December 7 SB 35 Determination states only that the plans "do not provide the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking." This cursory statement falls well short of the statutory requirement to "provide the development proponent written documentation of *which standard or standards* the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard." Gov. Code § 65913.4(b)(1) (emphasis added). The determination does not even cite the code section or sections the City believes the Project to violate and provides no explanation of the reason the Project conflicts with the unidentified standards. Since the City has not provided the "required documentation" of "which standard or standards" the City believes that the Project conflicts within, and since the 60-day deadline to do so has now elapsed, the Project is now deemed to comply with all such standards as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C).

With this said, and without in any way waiving the Applicants' rights to maintain that the Project is now legally deemed consistent with all applicable objective standards, the following discussion demonstrates that the Project does, in fact, meet all applicable objective zoning standards related to parking spaces and access/egress to off-street parking.

A. Compliance with Numeric Parking Standards

We refer you again to Attachment 2 of the Project application material submitted November 8, 2018, and in particular to the portions of the table addressing sections 14.74.080, 14.74.100, and 14.74.200 of the Los Altos Municipal Code ("LAMC"). This table demonstrates compliance with all objective parking standards and requirements, as they are modified by SB 35 pursuant to Gov. Code § 65913.4(d)(2). SB 35 modifies a local agency's maximum parking standards as applied to an SB 35 Application, providing that a local agency "shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." Gov. Code § 65913.4(d)(2).

As set forth in the original application, the Project, which contains both non-residential and residential components, meets all applicable zoning requirements for each component. For the non-residential component of the Project, there is no applicable parking requirement. Under the City's zoning regulations for "office uses" in this zoning district:

> For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking

district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.

LAMC § 14.74.100. As shown in the Project's architectural drawing package, since the Project participates in the public parking district, and since the 5,724-square foot office area (and even 1,271-square foot residential floor area) do not exceed the lot area of 6,995 square feet, no parking spaces are required for the non-residential floor area.

For the residential portion of the Project, the City of Los Altos' numeric zoning standard in Section 14.74.080 of the Zoning Ordinance does not apply pursuant to SB 35. Rather, the SB 35 statutorily required standard of one parking space per dwelling unit applies per Government Code § 65913.4(d)(2). The Project exceeds this standard, because it provides 18 parking spaces, and only 15 dwelling units are proposed (with one unit being exempt due to the property's participation in the parking district).

B. Compliance with Objective Parking Access and Egress Standards

As demonstrated in the preceding section and the original Application, the Project complies with all of the City's objective standards with respect to off-street parking.

The SB 35 Determination suggests that the Project does not meet an objective zoning standard related to adequate access/egress to off-street parking, but the SB 35 Determination does not cite any code section governing access and egress – and certainly not any code section with objective language – with which the Project fails to comply. The SB 35 Determination's reference to "adequate" access and egress is irrelevant to an SB 35 application, since determining "adequacy" is a subjective determination that does not qualify as "objective" under SB 35's definition. Gov. Code § 65913.4(a)(5); Guidelines, § 102(p); *see also Honchariw v. County of Stanislaus*, 200 Cal. App. 4th 1066, 1076 (2011) ("suitability" is a "subjective" criteria that is inapplicable when state law only permits application of "objective" standards).

It has been the City's demonstrated practice to allow projects such as 40 Main Street to obtain access from the City's downtown public parking areas. As a result of the Project one space in the public parking plaza may be affected by the Project but one parking space will be made available for the public's use on Main Street where the property's current driveway exists.[2]

[2] As discussed *infra* at Part V, the City's SB 35 Determination was also accompanied by a separate "Notice of Incomplete Application" and attachments describing requirements that the City believes *would* apply *if* the Applicant were to submit a discretionary use permit application rather than an SB 35 streamlined ministerial application. The "Notice of Incomplete Application" letter and attachments are not relevant to the City's SB 35 Determination, but even if they were, they would not provide any valid reason to deny the Applicant's SB 35 Application. Although the "Notice of Incomplete Application" letter and its attachments contain some references to parking (for example in notes 3, 18 and 19), none of these references cite any *objective* requirements related to parking spaces or required access and egress to parking. The requests in note 3, for example, are found neither in any of the City's objective standards, nor in the Parking Standards Exhibit A.

III. The City Has Not Identified any Objective Standard Precluding an SB 35 Application on this Site, but the City Can Suspend Processing of the Prior Application While the City Completes the Review of the SB 35 Application

The December 7 SB 35 Determination claims that because two applications have been submitted for the site, one application must be withdrawn. The letter cites no legal authority for this proposition. As set forth above, to the extent the City believed there to be an objective City standard that precluded the Applicants from submitting an SB 35 Application on this site, the City was required to identify that specific standard within 60 days of the Application submittal. *See* Gov. Code § 65913.4(b)(1). However, to avoid any unnecessary disputes, the Applicant is willing to authorize the City to suspend any processing or other activities planned for the previously submitted application during the time that the November 8 SB 35 Application remains under submission.

IV. The Housing Accountability Act Also Requires the City to Approve the Project

As stated in the Application, we also note that, in addition to being subject to SB 35, the Project is also subject to the Housing Accountability Act ("HAA" or "Act"), because more than two-thirds of the Project's square footage is designated for residential use. Gov. Code § 65589.5(g)(2). Pursuant to the Housing Accountability Act, "[w]hen a proposed housing development project complies with applicable, objective general plan, zoning and subdivision standards and criteria," the City *may not* disapprove the project or reduce its density unless the City makes findings, supported by a preponderance of the evidence, that the project would have an unavoidable impact on public health or safety that cannot be mitigated in any way other than rejecting the project or reducing its size. Gov. Code § 65589.5(j). Under recent reforms to the HAA, the question of whether a project is consistent with objective standards is resolved under a standard of review that is extremely deferential to the applicant. *See* Gov. Code § 65589.5 (f)(4) ("a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would *allow a reasonable person to conclude* that the housing development project or emergency shelter is consistent, compliant, or in conformity") (emphasis added); *see also* Gov. Code § 65589.5(a)(2)(L) ("It is the policy of the state that. . . [the HAA] should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing").

As set forth above, the Project complies with all applicable objective standards under any standard of review. But at the very least, it is clear that it is possible for a "reasonable person to conclude" that the project complies with the City's objective standards. Gov. Code § 65589.5 (f)(4). Accordingly, the HAA "imposes 'a substantial limitation' on the government's discretion to deny a permit." *N. Pacifica, LLC. v. City of Pacifica* 234 F. Supp. 2d 1053, 1059 (N.D. Cal. 2002), aff'd sub nom. *N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478 (9th Cir. 2008). Before the City could legally reject the Project or reduce its density, the City would be required to demonstrate, based on a preponderance of the evidence, that the project would cause "a significant, quantifiable, direct, and unavoidable impact" on public health or safety, "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(j)(1)(A). The City would be required to further affirmatively prove that there are no feasible means of addressing such "public health" and "safety" impacts other than rejecting or reducing the size of the Project. Gov. Code § 65589.5(j)(1)(B). The Legislature recently re-affirmed its intent that the conditions allowing a project to be rejected on this ground should "arise infrequently." Ch. 243, Stats. 2018 (A.B. 3194) (amending Gov. Code § 65913.4(a)(3)). Here, there is no evidence – to say nothing of the required *preponderance* of the evidence – that the Project would have any impact at all on public health or safety. Even if there were, there is no evidence that any such impacts are incapable of mitigation. Therefore, any improper denial of the Project would violate the HAA.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5 (j), (k). Any local government that disapproves a housing development project must now meet the more demanding "preponderance of the evidence" standard – rather than the more deferential "substantial evidence" standard – in proving that it had a permissible basis under the Act to reject the project. Gov. Code § 65589.5 (j)(1). As recently reformed, the HAA makes attorney's fees presumptively available to prevailing plaintiffs regardless of whether the project contains 20% affordable housing. Gov. Code § 65589.5(k)(1)(A). If the City fails to prove in litigation that it had a valid basis to reject the project, the court *must* issue an order compelling compliance with the Act, and any local government that fails to comply with such order within 60 days *must* be fined a minimum of $10,000 per housing unit and may also may be ordered directly to approve the project. Gov. Code § 65589.5(k). The HAA further provides that if a local jurisdiction acts in bad faith when rejecting a housing development, the applicable fines must be multiplied by five. *Id.*

V. The "Notice of Incomplete Application" Accompanying the SB 35 Determination Is Irrelevant to the SB 35 Application

The December 7 SB 35 Determination notes that if the Applicant "elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice" (emphasis added), the Applicant would need to submit certain additional materials required for discretionary applications such as for a Conditional Use Permit or discretionary Design Review. The City's SB 35 Determination is accompanied by a separate letter labelled "Notice of Incomplete Application" ("NOIA"), and related attachments, which identify submittal requirements that *would* apply *if* the Applicant were to elect to apply for a discretionary permit to develop a project on the 40 Main Street site. The Applicant's November 8 SB 35 Application does not seek approval of the Project through any of these discretionary permit avenues, and none of these requirements apply to the current SB 35 Application.

We do not understand the City to suggest that any of these materials are necessary for consideration of the November 8 SB 35 Application (and the City's SB 35 Letter cannot possibly be read to suggest that they are). But in any event, the law is clear that consideration of an SB 35 application must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution." Gov. Code § 65913.4(c). Since the City has not published any application materials for SB 35 applications, the City cannot require SB 35 applicants to submit any additional material

as long as the Application contains "sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards." Guidelines, § 301(b)(1)(A). Moreover, most of the notes, comments, and requests for further plans and revisions to plans are the type of comments and questions that the City addresses *after* entitlement review is completed, such as during the plan check process. Consistent with the City's processes for processing discretionary permit applications, any arguable need to address these issues cannot be a ground for denying a streamlined ministerial permit. "A locality may not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals." Guidelines, § 300(b)(2).

Since the City has not published application materials for SB 35 applications, the Applicants submitted application materials and related submissions typically required for a discretionary Use Permit, as well as Use Permit fee in the amount of $5,350. But as the City correctly notes in the December 7 SB 35 Letter, a Use Permit application is, in fact, legally distinct from an SB 35 Application. We therefore respectfully request that the City confirm it will charge a fee for this application consistent with a fee for a ministerial conformance process such as a Zoning Approval, and to refund to the Applicant the difference between that amount and the submitted fee.

Although not required to do so, and although the City's SB 35 Determination is clear that none of the material in the NOIA relates to the City's SB 35 Determination, the Project team has reviewed the NOIA and all attachments, and can confirm that none of the comments or requests in the NOIA relate to any objective standard for which compliance must be demonstrated as a precondition to issuance of an SB 35 streamlined ministerial permit. None of the comments or requests for design requests relate to the Project's demonstration of compliance with the numeric standards or other physical standards of the City of Los Altos.

With this said, in the interest of being responsive to the comments of City agencies, the Applicant is able and willing to provide, purely for informational purposes, additional information about the Project as well as responses to some of the comments received on the Application. Please note that this letter, and these submissions, are not in any sense a re-submission or new application for the Project. The purpose of this letter is to explain why the November 8, 2018 Application sufficed to qualify the Project for a streamlined ministerial permit, and the purpose of these additional responses is to voluntarily provide additional information and responses to comments on the Application by City agencies. Specifically, understanding the importance of fire safety and accessibility, the Project architect has reviewed and addressed all comments made by the Fire Department and the Building Division. *See* Exhibit C. These design issues can and will be addressed in post-entitlement plan check review.

The Project team can also provide a courtesy response to the "Density Bonus Report Submittal Requirement" document accompanying the NOIA. This document is a requirement of the City of Los Altos for discretionary project applications. However, to avoid any question about the Project's entitlement to Density Bonus Law bonuses, modifications, waivers, concessions and incentives, the original SB 35 application submitted on November 8, 2018 included as Attachment D a report following the format and providing the information (coupled with the Applicant

Statement's Project Description) that is required in the City's Density Bonus Report Submittal Requirements. The Project team has reviewed each of the boxes (all three categories), with an emphasis on the unchecked items on the City's "Density Bonus Report Submittal Requirement" document. Every item, including those that are left unchecked in the City's letter, have been addressed in original Project Description and the original Attachment D. Please continue to reference those documents with any questions you may have with respect to the Project's entitlement to a density bonus with the appropriate waivers/modifications and incentives/concessions.[3]

VI. The City Is Required to Complete All Public Oversight over the Application, and to Issue a Streamlined Ministerial Permit, No Later than February 6

As set forth above, the City is required to complete any design review or other public oversight over the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same). However, any such oversight or design review must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction," and this review "shall not in any way inhibit, chill, or preclude the ministerial approval" required by SB 35. Gov. Code § 65913.4(c); *see also* Guidelines, § 301(a)(2)(B) ("Design review or public oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval provided by these Guidelines or its effect"). And as set forth above, the Project is now deemed to comply with all of SB 35's qualifying objective criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). If, consistent with these limitations, the City intends to conduct any additional public oversight or design review over the Project, please

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[3] Please note that some provisions of the City's "Density Bonus Law Submittal Requirements" document, and note 7 of the NOIA, are out of date and inconsistent with current State law. The State Density Bonus Law provides that "[a] local government shall not condition the submission, review, or approval of an [Density Bonus Law] application . . . on the preparation of an additional report or study that is not otherwise required by state law," Gov. Code § 65915(a)(2), and that the *City* "shall bear the burden of proof for the denial of a requested concession or incentive." Gov. Code § 65915(d)(4). Effective in 2017, the Legislature amended the Density Bonus Law specifically to eliminate the authority of cities to reject a requested concession or incentive on the grounds that "[t]he concession or incentive is not required in order to provide for affordable housing costs." Stats.2016, ch. 758 (A.B.2501), § 1. The currently operative text of the law only authorizes the City to reject the requested concession if the *City* demonstrates that "[t]he concession or incentive does not result in identifiable and actual cost reductions." *Id.* The purpose of this amendment was to foreclose the exact documentation demands made in the City's submittal requirement documents. *See* Assem. Com. on Housing & Community Development, Floor Analysis of Assembly Bill No. 2501 (2015-2016 Reg. Sess.), August 30, 2016, at p. 4 (legislative amendments were intended to respond to "local governments [which] interpret . . . [the previously operative] language to require developers to submit pro formas"); *see also* "Policy White Paper: City of Santa Rosa, Density Bonus Ordinance Update", *available at* https://srcity.org/DocumentCenter/View/18475/Density-Bonus-Policy-White-Paper, at p. 45 ("amendments adopted through AB 2501 are intended to presume that incentives and concessions provide cost reductions, and therefore contribute to affordable housing development").

inform us and the Applicant of the type of public oversight or design review that the City expects to conduct.

VII. Conclusion

Based on the foregoing, we hope and expect that we or the Applicants will receive information about any remaining design review or public oversight over the Project, and that the Applicants will receive the streamlined ministerial permit required by State law, no later than February 6. In the hopefully unlikely event that the City intends not to meet the requirements of State law outlined above, please be advised that we have been retained by the Applicant to explore all legal remedies provided by law to enforce the requirements of California housing law. If you would like to discuss these or other matters, please feel free to contact me at (415)743-6900.

Sincerely,

HOLLAND & KNIGHT LLP

By: Daniel R. Golub

Exhibit A

SB 35 Statewide Determination Summary

Cities and Counties Subject to SB 35 Streamlining Provisions

When Proposed Developments Include ≥ 10% Affordability

When jurisdictions have insufficient progress toward their Above Moderate income RHNA and/or have not submitted the latest Housing Element Annual Progress Report (2017), these jurisdictions are subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

These conditions currently apply to the following 338 jurisdictions:

	JURISDICTION
91	FORT JONES
92	FORTUNA
93	FOUNTAIN VALLEY
94	FOWLER
95	FRESNO COUNTY
96	GARDEN GROVE
97	GLENN COUNTY
98	GONZALES
99	GRAND TERRACE
100	GRASS VALLEY
101	GREENFIELD
102	GRIDLEY
103	GUADALUPE
104	GUSTINE
105	HALF MOON BAY
106	HANFORD
107	HAWAIIAN GARDENS
108	HAYWARD
109	HEMET
110	HERMOSA BEACH
111	HIDDEN HILLS
112	HIGHLAND
113	HOLTVILLE
114	HUMBOLDT COUNTY
115	HUNTINGTON BEACH
116	HUNTINGTON PARK
117	HURON
118	IMPERIAL
119	IMPERIAL COUNTY
120	INDIAN WELLS
121	INDUSTRY
122	INGLEWOOD
123	INYO COUNTY
124	IONE
125	IRWINDALE
126	ISLETON
127	JACKSON
128	JURUPA VALLEY
129	KERMAN
130	KERN COUNTY

	JURISDICTION
131	KINGS COUNTY
132	KINGSBURG
133	LA CANADA FLINTRIDGE
134	LA HABRA
135	LA HABRA HEIGHTS
136	LA MIRADA
137	LA PALMA
138	LA PUENTE
139	LA QUINTA
140	LA VERNE
141	LAKE COUNTY
142	LAKEPORT
143	LANCASTER
144	LASSEN COUNTY
145	LATHROP
146	LAWNDALE
147	LEMOORE
148	LINDSAY
149	LIVE OAK
150	LIVINGSTON
151	LODI
152	LOMA LINDA
153	LOMPOC
154	LONG BEACH
155	LOOMIS
156	LOS ALAMITOS
157	LOS ALTOS
158	LOS ALTOS HILLS
159	LOS ANGELES COUNTY
160	LOS BANOS
161	LOYALTON
162	LYNWOOD
163	MADERA
164	MANHATTAN BEACH
165	MANTECA
166	MARICOPA
167	MARINA
168	MARIPOSA COUNTY
169	MARTINEZ
170	MARYSVILLE

	JURISDICTION
171	MAYWOOD
172	MCFARLAND
173	MENDOCINO COUNTY
174	MENDOTA
175	MENIFEE
176	MERCED
177	MERCED COUNTY
178	MILLBRAE
179	MODESTO
180	MODOC COUNTY
181	MONTAGUE
182	MONTCLAIR
183	MONTEBELLO
184	MONTEREY
185	MONTEREY COUNTY
186	MONTEREY PARK
187	MORENO VALLEY
188	MORRO BAY
189	MOUNT SHASTA
190	MURRIETA
191	NATIONAL CITY
192	NEEDLES
193	NEVADA CITY
194	NEWARK
195	NEWMAN
196	NORCO
197	NOVATO
198	OCEANSIDE
199	OJAI
200	ONTARIO
201	ORANGE
202	ORANGE COVE
203	ORLAND
204	OROVILLE
205	OXNARD
206	PACIFIC GROVE
207	PACIFICA
208	PALM DESERT
209	PALMDALE
210	PALOS VERDES ESTATES

SB 35 Determination for the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, and Sonoma; and all cities within each county

These jurisdictions are in the First Half Reporting Period, including 3 years (2015-2017 APRs) of an 8-year planning period. ***Less than 37.5% permitting progress toward 5th Cycle regional housing needs assessment (RHNA) for an income category is considered insufficient progress.***

Jurisdictions with insufficient progress toward Above-Moderate RHNA are subject to SB 35 streamlining for developments with 10% affordability or above. Jurisdictions with insufficient progress toward Lower RHNA (Very Low and Low) are subject to SB 35 streamlining for developments with 50% affordability or above.

(Note: Jurisdictions are automatically subject to SB 35 streamlining provisions when latest Annual Progress Report (2017) Not Submitted)

COUNTY	JURISDICTION	VLI % COMPLETE	LI % COMPLETE	MOD % COMPLETE	ABOVE MOD % COMPLETE
SAN MATEO	SOUTH SAN FRANCISCO	14.2%	1.4%	8.9%	57.2%
SOLANO	SUISUN CITY	0.0%	0.0%	0.0%	32.8%
SANTA CLARA	SUNNYVALE	5.4%	2.3%	8.5%	69.7%
MARIN	TIBURON	0.0%	0.0%	0.0%	57.9%
ALAMEDA	UNION CITY	0.0%	0.0%	131.8%	18.0%
SOLANO	VACAVILLE	4.9%	19.4%	307.5%	92.2%
SOLANO	VALLEJO	0.0%	0.0%	0.0%	13.2%
CONTRA COSTA	WALNUT CREEK	7.0%	4.5%	4.7%	57.1%
SONOMA	WINDSOR	0.0%	0.0%	1.5%	38.3%
SAN MATEO	WOODSIDE	52.2%	15.4%	13.3%	154.5%
NAPA	YOUNTVILLE	25.0%	50.0%	300.0%	175.0%
Alameda County	NEWARK	No 2017 Annual Progress Report			
Contra Costa County	MARTINEZ	No 2017 Annual Progress Report			
Contra Costa County	RICHMOND	No 2017 Annual Progress Report			
San Mateo County	ATHERTON	No 2017 Annual Progress Report			
Santa Barbara County	GUADALUPE	No 2017 Annual Progress Report			
Santa Barbara County	SANTA BARBARA	No 2017 Annual Progress Report			
Santa Barbara County	SOLVANG	No 2017 Annual Progress Report			
Santa Clara County	LOS ALTOS	No 2017 Annual Progress Report			
Solano County	RIO VISTA	No 2017 Annual Progress Report			

Exhibit B

From: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>
Sent: Friday, January 4, 2019 3:51 PM
To: Mark Rhoades <mark@rhoadesplanninggroup.com>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: RE: Los Altos

Yes, on November 8, 2018, Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

From: Mark Rhoades <mark@rhoadesplanninggroup.com>
Sent: Friday, January 4, 2019 3:47 PM
To: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: Los Altos

Melinda,

On November 8, 2018, we submitted an SB 35 application for a proposed project in the City of Los Altos. Can you confirm that on November 8, 2018, the City of Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability? As of November 8, 2018, HCD's most recent "SB 35 Determination Summary" was the CA HCD determination issued on June 1, 2018, which identifies Los Altos as subject to streamlining for projects with at least 10% affordability on page 3.

Thank you,

****

This email and any files attached are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please notify the sender immediately. This email and the attachments have been electronically scanned for email content security threats, including but not limited to viruses.

Exhibit C

William Maston
Architect & Associates

January 7, 2019

Community Development Department
City of Los Altos
One North San Antonio Road
Los Altos, California 94022
Attention: Jon Biggs

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10; SB 35 Determination
Additional Specific Project Comments

Dear Jon Biggs,

40 Main St.

1. Parking requirements – contrary to staff comments the project meets parking requirements set forth in SB 35 – All of the information was provided in the initial set of drawings.
   a. Los Altos parking code 14.74.100 exempts the first 100% of FAR for projects which participated in the public parking district (40 Main is a participant in the public parking district), therefore the 5,724 square feet of first floor office space is exempt from providing any parking, additionally 1,226 square feet of second floor residential (equivalent to one unit) is also exempt from any parking requirements.
   b. Upper level residential units – SB 35 is very specific about the required parking for residential units. Minimum for SB 35 is 1 car per unit with no guest parking required. However, van accessible parking is required to be on-site. Our project includes 2 levels of underground parking providing 18 parking spaces where only 14 (15 minus 1 per 14.74.100) parking spaces are required. Of the 18-parking spaces provided 2 are van accessible. Each floor is accessed by a car elevator platform.

2. Fire access – required fire access and dimensional requirements for the same are being met on both Main Street at the front of the building and the Plaza Ten parking lot driveway at the rear of the building.

3. All other fire department comments are noted and will be specified at plan check.

4. Onsite handicap accessible parking (ADA) – on site ADA parking requirements are met by providing 2 van accessible parking spaces on site including required clear head height of any obstruction at 8'2".

Sincerely,

Bill Maston
Project Architect

EXHIBIT 1

Government Code 65913.4 (SB 35) Submittal for 40 Main Street in Los Altos, California

Table of Contents

This application is being submitted under SB 35 streamlining provisions (Gov. Code § 65913.4). Pursuant to SB 35, the requirement to seek a discretionary permit for this project does not apply. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a). Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). As set forth in Attachment # 1 of the Applicant Statement of this application, the standards for issuance of a use permit, structural alteration permit and parcel map involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.

Nonetheless, for informational purposes, the applicant is voluntarily providing the following documents that are ordinarily required for conditional use permit application.

Cover Letter

1. General Application Form
2. Applicant Statement, with Attachments:
    A. Objective Standards Table
    B. SB 35 Environmental Mapping
    C. Commitment to Prevailing Wage
    D. Density Bonus Report
3. Filing Fees (as applicable)
4. Project Plans
    - Cover Sheet
    - Site Plan
    - Floor Plans
    - Building Elevations
    - Roof Plan
    - Landscape Plan

40 Main Street, Los Altos, California
Government Code Section 65913.4 Project Submittal
November 8, 2018

Applicant Statement – 40 Main Street

INTRODUCTION AND OVERVIEW

This Applicant Statement is submitted on behalf of 40 Main Street Offices, LLC, for a proposed residential mixed-use development project to replace an existing single-story office building located at 40 Main Street in the City of Los Altos ("City"). This is an application for a streamlined ministerial development permit pursuant to Government Code Section 65913.4, otherwise known as Senate Bill 35, as well as Government Code 65915 et seq ("State Density Bonus Law"). The project is also subject to Government Code Section 65589.5, the Housing Accountability Act, because it is consistent with all of the City's objective standards. The project proposes to include 15 for rent apartment units, two of which will be affordable to low-income households (to households earning below 80% of Area Median Income [AMI]). In addition, the project will provide 5,724 square feet of office space on the ground floor and a below-grade parking structure with 18 spaces. The gross project floor area totals 29,566 square feet.

As the State of California Department of Housing and Community Development ("HCD") recently noted, Los Altos is subject to SB 35 streamlining for proposed developments with at least 10% affordability at 80% AMI. Localities are subject to streamlining for projects providing 10% affordability if the jurisdiction "did not submit its latest [annual] production report to the department by the" April 1 deadline "required by Section 65400 [of the Government Code]." Gov. Code § 65913.4(a)(4)(A)(i).

The City has long recognized the development potential for the site, identifying the area in the Downtown Land Use Plan as "establishing a sense of entry into the Downtown". The 2009 adopted plan envisioned larger development in the Commercial Retail Sales district by removing the two-story height limitation and removing the 2.0 maximum Floor Area Ratio requirements. The plan also spoke to a vision of creating continuous building frontage on shopping streets.

The project also includes a density bonus pursuant to Government Code Section 65915, with waivers/modifications and concessions/incentives, as allowed per the statute and the Los Altos density bonus ordinance provisions. Finally, the proposed project is also subject to Government Code Section 65589.5, also known as the Housing Accountability Act. The project's consistency with each of these provisions of State law is discussed in detail below. All three of these Government Code sections are State legislative efforts that recognize the severity of California's housing crisis and the difficulties associated with developing new housing at appropriately zoned, transit-oriented and urbanized locations. The following legislative findings (from Government Code section 65589.5(a)(2)) are instructive of how, and why, the City must interpret and implement these laws:

> California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives...

> The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled...
>
> It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

With those laws and policies in mind, the following sets forth the Applicant Statement. This Statement also includes the following attachments:

A. Attachment A, Objective Standards Table, which demonstrates compliance with City of Los Altos General Plan, Zoning, Subdivision, and Design Standards, as applicable;
B. Attachment B, SB 35 Environmental Mapping, which demonstrates compliance with SB 35 location and environmental criteria;
C. Attachment C, which demonstrates the project proponent's commitment letter to construct the project using prevailing wage labor compensation; and,
D. Attachment D, Density Bonus Report, as required by the City of Los Altos.

SB 35/Government Code Section 65913.4

The legislature enacted SB 35 in 2017 as a response to California's housing crisis and, specifically, the negative impact that the lack of housing production is having on the State's economic vitality, environmental goals and social diversity.

Under SB 35, cities that did not submit their most recent required annual progress report before the April 1 statutory deadline, or who are not on track to meet their Regional Housing Needs Allocation (RHNA) housing production obligations are required to follow a streamlined, ministerial approval process for qualified housing projects. On June 1, 2018, HCD confirmed that Los Altos failed to submit an annual progress report by the April 1 deadline, and so is subject to SB 35 streamlining for projects providing 10% of units affordable to households earning less than 80% AMI threshold.

The SB 35 approval process requires cities to approve projects within 90 days of submittal of an application if they propose 150 or fewer units, and such approval must be based only on whether the project complies with "objective planning standards." To qualify, the project must meet a number of criteria, including providing certain percentages of the units affordable to households with incomes below 80% area median income; paying prevailing wage for construction labor; and meeting all objective zoning and design review standards.

The terms "objective zoning standards" and "objective design review standards" are narrowly defined to mean "standards that involve no personal or subjective judgment by a public official and are 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 prior to submittal." A comprehensive checklist of SB 35 requirements is found in Table 2 below. Because the statute mandates that the process is ministerial and that projects are judged purely on objective standards that do not involve the exercise of

discretion, CEQA does not apply to the SB 35 process. *See* 14 Cal. Code Regs. §15268(a) ("Ministerial projects are exempt from the requirements of CEQA"); *see also* Pub. Res. Code §21080(b)(1).

For the purposes of SB 35, "additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915" may not be considered when assessing the project's compliance with the City's objective standards (Gov. Code § 65914.4(a)(5)). The project qualifies for a density bonus under the State Density Bonus Law, because it will provide 20% of its base project units with rent affordable to households earning 80% of AMI. The benefits afforded under State Density Bonus Law also include waivers/modifications of development standards that would otherwise "physically preclude" the density bonus project and two concessions/incentives as discussed in the Density Bonus Report (Attachment D).

By meeting the provisions of the state density bonus law and SB 35, the proposed base project also exceeds the City of Los Altos affordability requirements under Chapter 14.28 of the City's Zoning Ordinance.

PROJECT DESCRIPTION

Project Uses

The proposed project includes 15 dwelling units, 5,724 square feet of office space on the ground floor, and direct vehicular access to two-levels of below-grade parking via a vehicle elevator. The proposed parking is located within the structure in a secured basement-level garage. Above the ground floor are residential apartments. Two units will be provided at below-market rate rent at 80% AMI. The proposed apartment units, as demonstrated in the attached plans, contain a mix of one-, two-, and three- bedroom units.

Project Residential Affordability

The proposed project is subject to three different residential affordability criteria per the State of California statutes listed above and the Los Altos affordable housing requirements, as follows:

1. SB 35 requires 10% of units in Los Altos to be dedicated affordable units to households with incomes below 80% AMI, see Gov. Code § 65913.4(a)(4)(B)(i), and the project's compliance with that criterion insures that it meets the requirements of the City of Los Altos' Multiple-Family Affordable Housing Law (Chapter 14.26.030.D.2).

2. State Density Bonus Law thresholds require a rental project to provide at least 20% of its units to low income households with incomes of less than 80% AMI to be eligible for a 35% bonus and up to two incentives (*see* LAMC 14.28.040(C)(1)(a)(ii) Table DB 1 and *see* Gov. Code § 65915(d)(2)(B)).

3. City of Los Altos thresholds require 10% of units at 50% AMI (very low income) or 15% of units at 80% AMI (low income).

Density Bonus

The City of Los Altos Implementing Density Bonus Ordinance (Chapter 14.28 of the Los Altos Municipal Code) provides for the standard density bonus language as it appears in GC Sec. 65915, for density bonus

up to 35%. The local ordinance also allows for additional density through the application of a menu of pre-approved concessions/incentives, based on a project's proposed unit affordability. The concessions/incentives that are pre-approved under the ordinance allow for a number of different items that an applicant may select, some of which result in additional floor area, units and density, consistent with Gov. Code § 65915(n).

Pursuant to Government Code Section 65915, and the local ordinance, the proposed project is entitled to a 35% density bonus, and up to two concessions/incentives. The proposed project only seeks to avail itself of one additional concession/incentive—an 11-foot height increase which provides for the 4th story in the 5-story massing proposed. The 5th story is the density bonus floor area. This is discussed in greater detail in the attached density bonus report.

Location

The proposed project at 40 Main Street is located at the northeast corner of the six-block downtown triangle. The project site measures 6,994 square feet.

Downtown Los Altos, the vicinity of the project site, and the surrounding uses supports a pedestrian-oriented shopping district with tree-lined streets and a small town-square ambiance. The project site is located at the north-east corner of the Downtown Core District. Directly adjoining the project site to the south are two single-story buildings housing a religious institution and an office. To the north there is a two-story office building with professional uses. Across Main Street to the east is a boutique hotel. The west face of the project site is a public parking lot.

This corner of the downtown area is zoned CRS/OAD (Commercial Retail Sales/Office-Administrative District). The Zoning Ordinance envisions this zone to provide a full range of retail, office, mixed-use residential, and commercial services while also encouraging a village-like pedestrian atmosphere that creates an entrance to the downtown.

Table 1: Surrounding Uses and Zoning

Direction	*Use*	*Zoning*
North	Office	CRS/OAD
East	Hotel	CRS/OAD
South	Religious/Office	CRS/OAD
West	Parking	CRS/OAD

Project Design

The project is designed with a clearly defined architectural base, middle, and top. At the ground floor, tan stone, accented by bronze storefront frames, convey the office ground-floor use and set the base of the building. The light-colored stucco facades above are punctuated by recessed balconies and dark metal window frames. The top level is stepped back and contains a variety of roof forms, which break up the building massing and roofline.

Neighborhood Mixed Use Development

The project site is in a pedestrian-oriented environment with connections to transit. The VTA 40-line bus route runs directly from the site to the San Antonio Transit Center and the 52 line bus is located within walking distance and provides a connection to the Mountain View Caltrain station and the Mountain View-Winchester VTA Light Rail line. The surrounding neighborhood supports walkable destinations for residential goods and services. The proposed project will enhance the existing small-scale pedestrian-oriented environment of the Downtown, as envisioned by the Downtown Core Specific Plan, and provide needed new housing.

Project Statistics

The project includes the following major elements:

- Lot Size: 6,995 SF
- Lot Coverage: 6,745 SF
- Commercial Net Floor Area: 5,724 SF
- Gross Project Floor Area: 29,566 SF (not including basement parking areas)

PROJECT COMPLIANCE AND APPLICABILITY OF STANDARDS

Compliance with City of Los Altos Zoning and Design Review Standards

A comprehensive table analyzing the project's consistency with all applicable zoning and design review standards is included as Attachment A of this Applicant Statement. Table 2 identifies key development standards.

Table 2: Zoning Development Standards – Downtown Commercial and CRS/OAD			
Characteristic	*CRS/OAD Standard*	*Base Project*	*Proposed Project*
Residential Units	N/A	8	15
Commercial Floor Area	N/A	5,724	5,724
Maximum Intensity (FAR) (1)	N/A	N/A	4.2
Maximum Building Height (feet)	30	30	56.5 (waiver and incentive)
Minimum First Floor Height	12	12	12
Maximum Stories	N/A	N/A	5
Setbacks (feet)			
Front (Min & Max)	0	0	0
Side (Min & Max)	0	0	0 to 10 (waiver)

Rear (Min.), adjacent to public parking	2 (landscaped)	2	2
Parking[2]			
1 to 3 Bedroom Dwelling Unit	2 spaces/unit	8 (min. 1/unit per SB 35)	18 (min. 1/unit per SB 35) (waiver)
Visitor	1 space/4 units	N/A (per SB35)	N/A (per SB35)
Minimum Ground-Floor Transparency	60%	61%	61%

(1) The Los Altos Zoning Ordinance objective development standards have been used in the consideration of the base project envelope for the proposed project at 40 Main Street, and the zoning ordinance was amended to eliminate the previously imposed FAR limit in this zoning district. There is no inconsistency between the city's zoning and its General Plan on this or any other point. Gov. Code §65319.4(a)(5)(B). The most recently adopted element of the City's General Plan, the Housing Element, explicitly affirms that under the General Plan, there is "no limit" on FAR in this district. (City of Los Altos 2015 Housing Element, at p. 89.) HCD certified the City's current Housing Element based on this representation, the City Council has approved several projects downtown based on an unlimited FAR, after finding that they conform with the General Plan. See, e.g., 240 Third Street 3/13/18 and 4/22/08 Staff Reports; 45 Main Street 4/22/08 Staff Report.

(2) Based on participation in the public parking district, no parking is required for 100% of the lot area (i.e., 6,994 square feet). This standard exempts all of the office floor area (5,724 square feet) from the parking requirement and a portion of the residential requirement (1,271 square feet), which equates to one unit.

Attachment A identifies objective standards in the Zoning Ordinance and Downtown Design Guidelines.

Compliance with City of Los Altos General Plan and Downtown Core Area Plan

The project site is located within the Los Altos Downtown Area Plan. The project's General Plan land use designation is Downtown Commercial. Both the Los Altos Downtown Urban Design Plan and the General Plan land use designation support intensive mixed-use development at this location. The operative zoning for the site is CRS/OAD (Commercial). Since Los Altos is a general law City, its General Plan and Zoning Ordinance must be consistent with one another or the City's land use decision-making authority for all discretionary projects is compromised. When the Council adopted the zoning ordinances applicable to the project site, the City Council determined that those zoning ordinances complied with the General Plan, as required by State law—and it has continuously re-affirmed that determination when approving other projects in the same zoning district.

Environmental Review

SB 35 specifies that the approval process is "ministerial" and approval will be granted if the project complies with "objective standards," meaning standards for which no subjective judgment is exercised. Since CEQA does not apply to ministerial approvals such as this, environmental review is not required for the project.

PROJECT COMPLIANCE WITH ALL APPLICABLE LAWS

1. SB 35: Government Code Section 65913.4 (SB 35) Review and Approval Criteria

As shown Table 2, the submittal complies with the SB 35 eligibility requirements. The following table lists the criteria for a project's consideration per the Government Code, as demonstrated below and confirms that the project complies.

	Table 2: Government Code Section 65913.4 Eligibility Requirement	Requirement satisfied?
1.	**Is the project a multifamily housing development with 2 or more units? Subd. (a)(1).** The project is mixed use multifamily housing development with 15 units.	Yes
2.	**Is the project located in an area designated by the U.S. Census Bureau as an urbanized area? Subd. (a)(2)(A).** The project is located in the City of Los Altos, which is entirely within a U.S. Census urbanized area boundary. *See also:* https://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua78904_san_francisco--oakland_ca/DC10UA78904.pdf	Yes
3.	**Is more than 75% of the project site's perimeter developed with urban uses? Subds. (a)(2)(B), (h)(8).** SB 35 defines "urban uses" as "any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." Based on these standards, the entirety of the Project site's perimeter is developed with urban uses.	Yes
4.	**Does the site have either a zoning or a general plan designation that allows for residential use or residential mixed-use development, with at least two-thirds of the square footage designated for residential use? Subd. (a)(2)(C).** The General Plan land use designation for the site is "Downtown Commercial" within the "Core" special planning area of Downtown, which is characterized by general retail and service uses as well as "higher density residential uses...in the Core and Periphery areas." The site is located in the CRS/OAD Commercial Retail Sales/Office zoning district which allows housing above the ground floor. The gross building area is approximately 29,566 sq. ft., of which 23,842 sq. ft., (approximately 80%) is designated for residential use.	Yes

	Table 2: Government Code Section 65913.4 Eligibility Requirement	Requirement satisfied?
5.	**Has the Department of Housing and Community Development (HCD) determined that the local jurisdiction is subject to SB 35? Gov't Code Sec. 65913.4(a)(4)(A).** On June 1, 2018, HCD issued a revised determination regarding which jurisdictions throughout the State are subject to streamlined housing development under SB 35. The City of Los Altos is subject to SB 35 because it did not submit a 2017 Annual Progress Report by the required due date. Therefore projects are eligible for streamlining under SB 35 for proposed developments with at least 10% affordable units. See also: http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary.pdf	Yes
6.	**Will the project include the required percentage of below market rate housing units? Subd. (a)(3) and (a)(4)(B)** Los Altos is subject to streamlining for 10% affordable projects because "[t]he locality did not submit its latest production report to the department by the time period required by Section 65400 [of the Government Code]." Gov. Code § 65913.4(a)(4)(B)(i). The project meets the required 10% of below-market rate housing units since the project includes two units, which will be available to low income households (up to 80% AMI) thereby exceeding the 10% threshold at 80% of AMI (as well as entitling the project to a 35% density bonus).	Yes
7.	**Is the project consistent with "objective zoning standards" and "objective design review standards?" Subd. (a)(5)** The Project will comply with all applicable objective standards, except where the project is entitled to waivers/modifications and concessions/incentives pursuant to State Density Bonus Law, as permitted by SB 35. SB 35 defines "objective planning standards" narrowly: "standards that involve no personal or subjective judgment by a public official and are 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 prior to submittal." See Attachment A for a complete list of objective zoning and design review standards associated with this project.	Yes

8.	**Is the project located outside of all types of areas exempted from SB 35? Subd. (a)(6-7), (10).**
	
	The project site is not located within any of the below exempt areas.
	
	<u>Subd.(a)(6) exempt areas</u>:
	- Coastal zone
	- Prime farmland or farmland of statewide importance
	- Wetlands
	- High or very high fire hazard severity zones
	- Hazardous waste sites
	- Earthquake fault zone (unless the development complies with applicable seismic protection building code standards)
	- Floodplain or floodway designated by FEMA
	- Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan
	- Habitat for a state or federally protected species
	- Land under a conservation easement
	
	The project site is not located on any of the above areas. See Attachment B for detailed mapping.
	
	<u>Subd. (a)(7) exempt areas</u>:
	- A development that would require the demolition of housing that:
	    - Is subject to recorded rent restrictions
	    - Is subject to rent or price control
	    - Was occupied by tenants within the last 10 years
	- A site that previously contained housing occupied by tenants within past 10 years
	- A development that would require the demolition of a historic structure on a national, state, or local register
	- The property contains housing units that are occupied by tenants, and units at the property are/were offered for sale to the general public by the subdivider or subsequent owner of the property.
	
	There have been no dwelling units on the property at any point during the last ten years, and the project would not require the demolition of any residential or historic structures.
	
	<u>Subd. (a)(10) exempt areas</u>:
	- Land governed under the Mobilehome Residency Law
	- Land governed by the Recreational Vehicle Park Occupancy Law
	- Land governed by the Mobilehome Parks Act
	- Land governed by the Special Occupancy Parks Act
		Yes

	Table 2: Government Code Section 65913.4 Eligibility Requirement	Requirement satisfied?
	Response: The project site is not located on land governed by any of the above laws.	
9.	**If the Project is not a public work, has the proponent certified that all construction workers employed in the development project be paid prevailing wages? Subd. (a)(8)(A).** As detailed in Attachment C, the applicant certifies that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages.	**Yes**
10.	**Has the applicant made the required "skilled and trained workforce" certification, to the extent applicable? Subd. (a)(8)(B).** The "skilled and trained workforce" certification requirement is inapplicable because the Project proposes fewer than 75 units. Gov. Code § 65913.4(a)(8)(B)(i)(I).	**Not Applicable.**
11.	**If the project involves a subdivision, are the criteria in subd. (a)(9) satisfied?** The Project does not involve a subdivision.	**Not Applicable.**

2. Density Bonus: Government Code Section 65915, Affordable Housing Compliance and Density Bonus Entitlement

The project is a rental project, so the provisions of GC Sec. 65915(b)(1)(A), 65915(d)(2)(B), and 65915(f)(1) apply with respect to levels of affordability and percentages of units as do the commensurate levels of density bonus and concessions/incentives. In the case of the proposed project, 25% of base project units will be provided at 80% AMI, allowing for up to a 35% density bonus, even though the SB 35 application would only require 10% of all units to be affordable at less than 80% AMI. It also provides that the project is allowed up to two concessions/incentives. The project has chosen to avail itself to only one concession/incentive from the approved list. See Attachment D for the Density Bonus Report, which includes a broader discussion of waivers/modifications and concessions/incentives.

3. Housing Accountability Act

As set forth in this Applicant Statement, the project is entitled to streamlined ministerial approval under SB 35. In addition, the Housing Accountability Act also requires the City of Los Altos to approve the project, and prohibits the city from reducing its requested density or imposing any conditions that have the same effect or impact on the ability of the project to provide housing Gov. Code § 65589.5(i), (j).

The project is protected under the Housing Accountability Act since it consists of at least two-thirds residential uses, and because it complies with the City's objective standards and criteria, as demonstrated in Attachment A of this application statement. The City is only permitted to reject a project under these

circumstances if it can make findings based on a preponderance of evidence that the project would have a significant, unavoidable, and quantifiable impact on "objective, identified written public health or safety standards, policies, or conditions." Gov. Code §65589.5(j). The Legislature recently affirmed its expectation that these types of conditions "arise infrequently." Ch. 243, Stats. 2018, § 1 (adding subdivision (a)(3) to Gov. Code § 65585.5). Here, there is no evidence, let alone a preponderance of evidence, that the project would have any impact on public health and safety that cannot be feasibly mitigated.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5(k). As recently reformed in the 2017 legislative session, the act makes attorney's fees and costs of suit presumptively available to prevailing plaintiffs, requires a minimum fine of $10,000 per housing unit for jurisdictions that fail to comply with the act, and authorizes fines to be multiplied by five times if a court concludes that a local jurisdiction acted in bad faith when rejecting a housing development. *Id.*

Applicant Statement, Attachment A
Objective Standards Table – 40 Main Street

Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5).

Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).

See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	**Applicability**	**Compliance**
Section 14.54.030 - Permitted uses (CRS/OAD).		
The following uses shall be permitted in the CRS/OAD District: a) Business, professional, and trade schools located above the ground floor; b) Office-administrative services; c) Parking spaces and loading areas incidental to a permitted use; d) Personal services; e) Private clubs, lodges, or fraternal organizations located above the ground floor; f) Restaurants, excluding drive-through services; g) Retail; and h) Uses which are determined by the city planner to be of the same general character.	Applicable objective criteria.	The project's proposes office-administrative services on the ground floor, consistent with the permitted uses.
Section 14.54.040 – Conditional uses and structures (CRS/OAD).		

Upon the granting of a use permit in accordance with the provisions of Chapter 14.80 of this title, the following uses shall be permitted in the CRS/OAD District: A. Any new building that has an area greater than seven thousand (7,000) gross square feet, and any addition to an existing building which would result in the total building area exceeding seven thousand (7,000) gross square feet, including additions to buildings which presently exceed seven thousand (7,000) gross square feet in area; B. Cocktail lounges; C. Commercial recreation; D. Hotels; E. Housing located above the ground floor; F. Medical and dental clinics; G. Medical and dental offices that are five thousand (5,000) gross square feet or more; and H. Uses which are determined by the planning commission to be of the same general character.	The project proposes a building of 29,566 square feet, including housing located above the ground floor. However, the requirement to seek a conditional use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a); *see also* HCD's SB 35 Streamlined Ministerial Approval Draft Guidelines (9/28/18), § 300(b)(2). Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). As set forth below in Chapter 14.80 of the Los Altos Municipal Code, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
14.54.050 - Required conditions (CRS/OAD)		
A. All businesses, services, and processes shall be conducted within a completely enclosed structure, except for parking and loading spaces, incidental sales and display of plant materials and garden supplies occupying no more than one thousand five hundred (1,500) square feet of exterior sales and display area, outdoor eating areas operated incidental to permitted eating and drinking services, and as otherwise allowed upon the issuance of an outdoor display permit. Exterior storage is prohibited.	Applicable objective criteria.	All business would be conducted inside the proposed building. The project does not propose any business uses outside the enclosed structure nor exterior storage.
B. No use shall be permitted and no process, equipment, or materials shall be employed which are found to be objectionable by reason of odor, dust, noise, vibration, illumination, glare, unsightliness or electrical disturbances which are manifested beyond the premises in which the permitted use is located.	Not an objective standard. Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). The conditions imposed by Chapter 14.54.050 (B) involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.	Not applicable. However, the project does not propose uses associated with the impacts listed in subsection B.

C. No property owner, business owner and/or tenant shall permit or allow operation of a business which violates the required conditions of this chapter, including the following general criteria: 1. Refuse collection. Every development, including applications for tenant improvements, shall provide suitable space for solid waste separation, collection, and storage and shall provide sites for such that are located so as to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way. Refuse collection areas are encouraged to be shared, centralized, facilities whenever possible. 2. Lighting. Lighting within any lot that unnecessarily illuminates any other lot and/or substantially interferes with the use or enjoyment of such other lot is prohibited. Lighting unnecessarily illuminates another lot if (i) it clearly exceeds the minimum illumination necessary to provide for security of property and the safety of persons using such roads, driveways, sidewalks, parking lots, and other common areas and facilities, or (ii) if the illumination could reasonably be achieved in a manner that would not substantially interfere with the use or enjoyment of neighboring properties. 3. Air pollution. Any use that emits any "air contaminant" as defined by the Bay Area air quality management district shall comply	C.1 Is not an objective standard. C.2 is not an objective standard. C.3 the project does not propose any use that emits any of the Bay Area Air Quality Management District defined air contaminants. C.4 Is not an objective standard. C.5 Is not an objective standard. C.6 the project does not propose any uses in conflict with 'Chapter 6.16 Noise Control'	Subsections C.1, C.2, C.4, C.5, and C.6 are not applicable. However, the project intends to provide refuse collection, lighting, and maintenance services, and does not propose to create unreasonable odors or noise. Subsection C.3 applies. The project does not propose to emit substantial air contaminants, as listed by the Air District (https://www.arb.ca.gov/toxics/id/taclist.htm) and would comply with all required state standards concerning air pollution that are applicable to a mixed use residential/office project.

with applicable state standards concerning air pollution. 4. Maintenance of common areas, improvements, and facilities. Maintenance of all common areas, improvements, facilities, and public sidewalks adjacent to the subject property shall be required. In the case of public sidewalks, maintenance shall be limited to keeping the sidewalk clean and free of debris, markings, and food and drink stains by means of sweeping, cleaning with water and/or steam cleaning. 5. Odors. No use may generate any odor that may be found reasonably objectionable as determined by an appropriate agency such as the Santa Clara County health department and the Bay Area air quality management district beyond the boundary occupied by the enterprise generating the odor. 6. Noise. No person shall operate, or cause to be operated, any source of sound at any location within the city or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level when measured on any other property either incorporated or unincorporated, to exceed standards as set forth in Chapter 6.16 of the Los Altos Municipal Code. In order to attenuate noise associated with commercial development, walls up to twelve (12) feet in height may be required at a commercial/residential interface. Other		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
conditions may be applied such as, but not limited to, muffling of exterior air conditioning facilities.		
Section 14.54.060 – Front yard (CRS/OAD)		
With the exception of landscaping, all development in the CRS/OAD District must be built to the back of the sidewalk.	Applicable objective criteria. The front and rear yards front onto sidewalks; the side yards do not. The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. *See* Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").	As shown on Sheet B1.01, the base project is built to the back of sidewalk along the front elevation. Along the rear elevation, which fronts a public parking lot (see subsection 14.54.080.A, below), the building is setback with landscaping between the building and sidewalk. The proposed project would have a setback of 0 feet in the front yard and a minimum of 2 feet in the rear yard. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback requirements because the setbacks, if applied, would physically preclude the density bonus project.
Section 14.54.070 – Side yard (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	**Applicability**	**Compliance**
No side yards shall be required, and none shall be allowed, except where the side property line of a site abuts a public parking plaza, the minimum width of the side yard shall be two feet which shall be landscaped. A required side yard may be used for parking except for the area required to be landscaped.	Applicable objective criteria. There is no proposed side yard and the side property lines do not abut the public parking plaza. The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. *See* Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").	As shown on Sheet B1.01, the base project has a side yard setback of 0 feet, in compliance with the minimum and maximum required setback. The proposed project would have a side yard of 0 to 10' feet. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback requirements because the setbacks, if applied, would physically preclude the density bonus project.
Section 14.54.080 – Rear yard (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.[illegible] – General Standards and Exceptions

Provision	Applicability	Compliance
No rear yard shall be required except as follows: A. Where the rear property line of a site abuts a public parking plaza, the minimum depth of the rear yard shall be two feet, which shall be landscaped.	Applicable objective criteria. The rear property line abuts a public parking plaza. The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. *See* Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").	As shown on Sheet B1.01, the base project has a rear yard setback minimum of 2 feet, which is landscaped, in compliance with this requirement. The proposed project would have a rear yard setback of 2 feet which is landscaped with planter boxes. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback landscaping requirements because the setbacks, if applied, would physically preclude the density bonus project.
B. Where the rear property line of a site abuts an existing alley, the minimum depth of the rear yard shall be ten (10) feet, of which the rear two feet shall be landscaped. A required rear yard may be used for parking, except for the area required to be landscaped.	Not applicable to the project. The proposed project site does not abut an existing alley.	Not applicable.
Section 14.54.090 – Off-street parking (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/CAD Commercial Retail Sales/Office Administrative District / 14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
Parking facilities shall be provided in accordance with Chapter 14.74 of this title. In addition, parking facilities shall: A. Reduce the visual impact of parking structures and parking lots by locating them at the rear or interior portions of building sites	The requirements of Chapter 14.74 are discussed below. Subdivision (a) is an applicable standard.	The project complies by proposing interior parking in a two-level below-grade basement.
B. Minimize the street frontage of the lot or structure by placing its shortest horizontal edge along the street;	Applicable objective standard.	The project complies by proposing interior parking in a below-grade basement.
C. When parking structures must be located at street frontage because other locations are proven infeasible, the ground level frontage shall either be used for commercial space or shall provide a landscaped area not less than five feet in width between the parking area and the public right-of-way;	Does not apply pursuant to SB 35 – non-objective standard.	Not applicable. However, the project complies by proposing interior parking in a two-level below-grade basement.
D. Not be accessed from state or Main Streets unless no other access is feasible, in which case the number of direct entrances to parking facilities from streets shall be kept to a minimum;	The entrance to the parking garage is from the rear of the building and not from State or Main Streets.	Not applicable.
E. Provide a landscaped buffer not less than five feet in width between a parking lot or structure and street frontage or buildings. Where the landscaped strip adjoins a public street or pedestrian walkway, the landscaped strip may be required to include a fence, wall, berm, or equivalent feature;	The project does not propose a parking lot or structure, since parking is provided below-grade.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	**Applicability**	**Compliance**
F. Provide a minimum of interior landscaping for unenclosed parking facilities as follows: where the total parking provided is located on one site and is fourteen thousand nine hundred ninety-nine (14,999) square feet or less, five percent of total parking area; where the parking is fifteen thousand (15,000) through twenty-nine thousand nine hundred ninety-nine (29,999) square feet, seven and one-half percent of total parking area; and where the facility is thirty thousand (30,000) square feet or greater, ten (10) percent of total parking area;	The project does not propose unenclosed parking.	Not applicable.
G. Trees in reasonable number shall be provided; ground cover alone is not acceptable. Interior landscaping shall be distributed throughout the paved area as evenly as possible. Provision shall be made for automatically irrigating all planted area. All landscaping shall be protected with concrete curbs or other acceptable barriers. All landscaping shall be continuously maintained.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.
14.54.110 – Off-street loading and refuse collection (CRS/OAD).		
A. Where buildings are served by alleys, all service-delivery entrances, loading docks, and refuse collection facilities shall be located to be accessed from the alley. No loading area shall be located at the street frontage or building facade.	The building is not served by an alley and no loading zones are proposed along the Main Street frontage.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	**Applicability**	**Compliance**
B. A minimum of thirty-two (32) square feet of covered refuse collection area shall be provided and shall not be located in any front or street side yard. Where an alley exists, the refuse collection area shall be accessed from the alley. Refuse collection areas shall be on site, but are encouraged to be shared, centralized, facilities whenever possible.	Applicable objective zoning standard.	Sheet B2.02 identifies the 184-square foot "Garbage/Recycle" room on the ground floor. The room opens onto the rear sidewalk, adjacent to the public parking plaza.
C. On sites not served by an alley, service areas shall be located to the rear, side, or at an internal location where visibility from public streets, public parking plazas and neighboring properties will be minimized.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. However, the project complies by locating the service area adjacent to the rear of the building where visibility is minimized.
D. Refuse collection areas shall be enclosed by a screen wall of durable material and planting as necessary to screen views from streets, public parking plazas and neighboring properties.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. However, the refuse collection area is located within the building.
14.54.120 – Height of structures (CRS/OAD).		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District ([illegible]) – General Standards and Exceptions

Provision	Applicability	Compliance
No structure shall exceed thirty (30) feet in height. The first story shall have a minimum interior ceiling height of twelve (12) feet to accommodate retail use, and the floor level of the first story shall be no more than one foot above sidewalk level.	Applicable objective criteria. Under SB35, consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915". *See* Gov. Code § 65913.4(a)(5) Accordingly, the project's conformity with the height requirement is judged based on the "base project" and not on the plans that incorporate density bonus law modifications.	As shown on Sheet B4.01, the base project has a building height of 30 feet and a first-floor height of 12 feet and is therefore compliant with the district standards. Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the height restriction for the partial 5th story because the height limit, if applied, would physically preclude the density bonus project. In addition to granting the density bonus, the City must also grant the Project up to two incentives or concessions pursuant to GC Sec. 65915(d)(1) because more than 10% of the "base density" units will be affordable to very low-income households. The City is required to grant the incentive for the 4th story, insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts. As shown on Sheet A4.01, the proposed project would have a maximum height of 56'-6" and a first floor height of 12 feet.
14.54.130 – Design control (CRS/OAD).		

Table 1: Chapter 14.52 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
A. No structure shall be built or altered including exterior changes in color, materials, and signage in the CRS/OAD District except upon approval of the city planner or as prescribed in Chapter 14.78 of this title	Does not apply pursuant to SB 35 – non-objective standards. See discussion of Chapter 14.78 below.	Not applicable.
B. Reduction of apparent size and bulk: 1. As a general principle, building surfaces should be relieved with a change of wall plane that provides strong shadow and visual interest. 2. Every building over twenty-five (25) feet wide shall have its perceived height and bulk reduced by dividing the building mass into smaller-scale components by: i. A change of plane; ii. A projection or recess; iii. Varying cornice or roof lines; iv. Providing at least one entrance for every twenty-five (25) feet of building frontage; or v. Other similar means. 3. The proportions of building elements, especially those at ground level, should be kept intimate and close to human size by using recesses, courtyards, entries, or outdoor spaces along the perimeter of the building to define the underlying twenty-five (25) foot lot frontage.	In general, these provisions are not objective standards and therefore do not apply pursuant to SB 35. To the extent subsection B.2.i - iv are "objective," the project complies.	B.2.i - iv: The proposed project incorporates the design features as stated in this section. It includes changes of plane, projections and recesses, varied cornice and roof lines, and the base project's frontage along Main Street contains three entrances at less than 25-foot intervals, as shown in Sheet B2.02. Item B.2.v is not an objective standard, so it does not apply. The remaining provisions of section B. are not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions

Provision	Applicability	Compliance
C. The primary access to the ground floor for all buildings shall be directly to the street or parking plazas, with the exception of arcade or interior courtyard spaces.	Applicable objective criteria.	The project complies because the ground floor entrances from Main Street consist of two entrances to the ground floor offices and an entrance to the residential lobby to access the units above.
D. Consideration should be given to the relationship of the project and its location in the downtown to the implementation of goals and objectives of the downtown urban design plan. Evaluation of design approval shall consider one or more of the following factors: 1. The project location as an entry, edge, or core site; 2. The ability to contribute to the creation of open space on-site or in designated areas; 3. Enhancement of the pedestrian environment through the use of pathways, plantings, trees, paving, benches, outdoor dining areas or other amenities; 4. Building facade improvements including, paint, signage, service areas, windows and other features; 5. On- or off-site improvements; and/or 6. Public or private landscape improvements.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.

Table 1: Chapter 14.[illegible] – CRS/OAD [illegible] Administrative [illegible] General Standards and Exceptions

Provision	Applicability	Compliance
E. Opaque, reflective, or dark tinted glass should not be used on the ground floor elevation. Sixty (60) percent of the ground floor elevation should be transparent window surface.	Applicable objective standards.	As shown on Sheet B3.01, the base project complies by providing 61% transparency on the ground-floor elevation and does not propose dark tinted glass at the ground floor level. As shown on Sheet A3.01, the proposed project also complies with this standard.
F. Courtyards should be partially visible from the street or linked to the street by a clear circulation element such as an open passage or covered arcade.	This is not an Objective standard.	Not applicable.
G. Rooftop mechanical, venting, and/or exhausting equipment must be within the height limit and screened architecturally from public view, including views from adjacent buildings located at the same level.	The height limit provision represents an applicable objective standard.	Rooftop mechanical, venting, and/or exhausting equipment is screened from public view. The height limit is subject to the density bonus waiver and incentive already requested for height.
14.66.240 - Height limitations—Exceptions		
E. Cupolas, chimneys, tanks, or electrical or mechanical equipment required to operate and maintain the building, solar thermal and photovoltaic panels, parapet walls and skylights may project not more than twelve (12) feet above the roof and the permitted building height, provided the combined area of all roof structures, excluding solar thermal and photovoltaic panels, does not exceed four percent of the gross area of the building roof.	Applicable objective standards.	As shown on Sheet B3.01, the base project complies since the parapet height extends just 9 feet about the permitted building height and the mechanical equipment represents 98 square feet (2%) of 6,156 square feet, and therefore does not exceed 4% of the gross area of the building roof. The proposed project has a ratio of 4.4% and therefore requests a waiver from this requirement. As noted above, for the proposed project, the height limit is subject to the density bonus waiver and the incentive for building height that are already requested.

14.74.080: Residential uses in CN, DC, CD/R3, CRS/OAD, CRS and CT Districts		
For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required as follows for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking district: A. There shall be two off-street parking spaces for each dwelling unit in a multiple-family dwelling or apartment house having two rooms or more in addition to the kitchens and bathrooms. B. There shall be one and one-half off-street parking spaces for each dwelling unit in a multiple-family dwelling or apartment house having less than two rooms in addition to the kitchens and bathrooms. C. One on-site visitor space shall be required for every four multiple-family residential dwelling units or fraction thereof. Mixed use projects may substitute nonresidential parking spaces for visitor use in-lieu of providing dedicated visitor parking spaces, subject to approval of the commission and council.	These standards do not apply pursuant to SB 35. Local governments "shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." Gov. Code § 65913.4(d)(2).	Consistent with SB35 parking requirements, the base project provides 8 spaces for 8 units. The proposed project provides 18 spaces for 15 units, thereby meeting the SB35 standard.
14.74.100 - Office uses in CRS/OAD, OA, CN, CD, CD/R3, CRS and CT Districts.		

For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.	Applicable objective standard.	The project site participates in the public parking district and therefore qualifies for parking exemptions for the 5,724-square foot office area and 1,271-square foot residential floor area, given the lot area of 6,995 square feet. Therefore no parking is required or provided for the office component, and no parking is required for one of the base project units, since several units are less than 1,271 square feet. Still, as noted above, consistent with SB35 parking requirements, the base project provides 8 spaces for 8 units. The proposed project provides 18 spaces for 15 units.
14.74.200 - Development standards for off-street parking and truck loading spaces		
A. Off-street parking facilities shall conform to the following standards: 1. Perpendicular parking space size. Each standard parking space shall consist of an area not less than nine feet wide by eighteen (18) feet long, except as noted on the drawing labeled "Parking Standards Exhibit A" on file in the office of the planning department.	Applicable objective standard.	As shown on Sheets A2.01 and A2.02, parking stalls measure a minimum of 9 x 18 feet.
2. Handicapped persons perpendicular parking space size. Parking stalls for the use of the physically handicapped shall comply with the requirements set forth in Part 2 of Title 24 of the California Administrative Code and Chapter 9 of Division 11 of the Vehicle Code of the state.	Applicable objective standard.	Project will comply with Title 24 ADA requirements for parking.

3. Truck loading space size. Truck loading spaces shall not be less than ten (10) feet wide by twenty-five (25) feet long.	No truck loading is required or provided.	Not applicable.
4. Clearance. Standard and compact parking spaces shall have a vertical clearance of at least seven feet over the entire area. In addition, the spaces shall be clear horizontally (for example, pillars in a basement or parking structure shall not be located in required parking spaces). Truck loading spaces shall have a vertical clearance of at least fourteen (14) feet.	Applicable objective standard.	As shown on Sheet A4.01, the parking areas have a vertical clearance of 11'-6", therefore complying with this standard. No loading spaces are required.
B. Each parking and loading space shall be accessible from a public street or alley.	Applicable objective standard.	Parking is accessible from the public parking lot and public access aisle at the rear of the building.
C. The parking and loading area shall be paved with an all-weather asphaltic concrete or Portland cement concrete pavement and marked in accordance with the city engineering standards (not applicable for single-family dwellings).	Applicable objective standard.	The parking garage will be paved with concrete per City Engineering standards.
D. Concrete bumper guards or wheel stops shall be provided for all parking spaces, except as provided in this section. The concrete curb around a perimeter landscaped area shall not be used as a bumper stop unless approved by the commission and the council. In such cases, the commission and the council may allow a parking space length to be reduced by two feet.	Applicable objective standard.	Wheel stops are provided for all parking spaces.
E. Lighting shall be deflected downward and away from any residential property.	Applicable objective standard.	All exterior lighting shall be deflected downward. No residential properties are adjacent to the site.
F. No advertising or sign, other than identification or direction signs, shall be permitted in the parking or loading area.	Applicable objective standard.	No advertising or signs, other than identification or direction signs, are proposed in the parking garage.

G. No repair or servicing of vehicles shall be permitted in the parking or loading area.	Applicable objective standard.	No vehicle repair or servicing is proposed.
H. No area which lies within the precise plan line for a public street or alley adopted by the council shall be computed as satisfying the parking and loading space requirements of this chapter.	Applicable objective standard.	The proposed project does not propose parking or loading within a public street or alley.
I. A parking area abutting on property in an R District or across a street or an alley from property in an R District shall be screened, subject to the approval of the planning department, by a solid fence or wall or a compact evergreen hedge or other screening not less than six feet high, subject to the provisions of Chapter 14.72 of this title regulating fences (not applicable for single-family dwellings).	The project site is not located in or adjacent to an R district site.	Not applicable.
J. The minimum width of a one-way drive shall be twelve (12) feet.	The project proposes a two-way drive aisle.	Not applicable.
K. The minimum width of a two-way drive shall be eighteen (18) feet.	Applicable objective standard.	As shown on Sheets A2.01 and A2.02, the two-way drive aisle measures 26 feet.
L. Space for turning around on the site shall be provided for parking areas of three or more spaces so that no cars need back into the street (not applicable for single-family dwellings).	Applicable objective standard.	No parking is proposed to back out onto a street.
M. Parallel and acute angle parking shall be designed for one-way traffic only, unless otherwise specified by the commission.	Applicable objective standard.	No angled or parallel parking is proposed for the project.

N. The minimum standards for the design of off-street parking areas shall be in accordance with those shown on the drawing labeled "Parking Standards Exhibit A" on file in the office of the planning department.	Applicable objective standard.	As shown on Sheets A2.01 and A2.02, the parking garage layout shows 9 x 18-foot parking spaces and a minimum back-up distance of 26 feet.
O. If found to be necessary or desirable by the city, the design standards set forth in this section may be waived for public and community facility uses or commercially operated public parking facilities in order to permit attended or supervised parking.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.
P. District requirements resulting in one-half or greater parking space shall be deemed to require a full space.	These standards do not apply pursuant to SB 35. Gov. Code § 65913.4(d)(2).	Not applicable.
Q. For the purposes of this section, "net square footage" shall mean the total horizontal area in square feet on each floor, including basements, but not including the area of inner courts or shaft enclosures.	This provision is a definition, not a substantive requirement.	Noted.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing

Provision	Applicability	Compliance
14.28.030 - General requirements		
The following provisions shall apply to all multiple-family residential projects: A. One (1) to four (4) units. Affordable housing units are not required. B. Five (5) to nine (9) units. Affordable housing units are required. In the event that the developer can demonstrate to the satisfaction of the city council that providing affordable housing units in a project will be	The base project proposes 8 multiple-family residential units and therefore is subject to this subsection.	The base rental project provides 25% of units (2 units) for low income households (up to 80% AMI), thereby exceeding the requirement.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
financially infeasible, the city council may waive the requirement to provide affordable housing units. C. Ten (10) units or more. Affordable housing units are required. D. For multiple-family residential projects where affordable housing units are required, the following minimum percentage of units shall be provided. 1. Rental units. Fifteen (15) percent low income or ten (10) percent very-low income housing. 2. Owner units. Ten (10) percent moderate income housing. E. Notwithstanding Section 14.28.030 (D) in projects containing more than ten (10) units and when more than one (1) affordable unit is required at least one (1) affordable unit must be provided at the low income level.		
F. Unless otherwise approved by the city council, all affordable units in a project shall be constructed concurrently with market rate units, shall be dispersed throughout the project, and shall not be significantly distinguishable by design, construction or materials.	Applicable objective standard.	The BMR units will be constructed concurrently with the market rate units and will not be significantly distinguishable by design, construction or materials. One unit is proposed on the second floor and one unit is proposed on the third floor so the units are "dispersed throughout the project."
G. Any tentative map, use permit, PUD, design application or special development permit approved for multiple-family residential construction projects meeting the foregoing criteria shall contain sufficient conditions of approval to ensure compliance with the provisions of this chapter.	No tentative map is proposed. Additionally, no discretionary use permits are required pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a).	Not applicable.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
14.28.040 - Density bonuses.		
C. Development eligibility, bonus densities, and incentive counts. 1. Eligible developments, bonus densities, and incentive counts. The developments identified in this subsection are eligible for density bonuses and/or incentives as well as parking requirement alterations and waivers. For each development, this section provides levels of density bonus available and the number of incentives available. For applicable standards, see subsections (E) (Density Bonus Standards), (F) (Incentive Standards), (G) (Parking Requirement Alteration Standards), and (H) (Waivers Standards) a. Housing development with low income restricted affordable units, for sale or for rent. A housing development project that includes at least ten (10) percent of the total units of the project for low income households, either in for sale or for rent, shall be granted the following: i. Density bonus. A project that includes ten (10) percent low income housing shall be granted a density bonus of twenty (20) percent. For each one percent increase above the required ten (10) percent low income units, the density bonus shall be increased by one and one-half percent, up to a maximum density bonus of thirty-five (35) percent. See Table DB 1.	Applicable objective standard.	The 8-unit base project includes 2 low income units, which equates to 25% of the base project. Therefore the project qualifies for a 35% bonus.

<table>
<tr><th colspan="3">Table 3: Chapter 14.28 - Multiple-Family Affordable Housing</th></tr>
<tr><td>Table DB 1
<table><tr><th>Percentage Low Income Units</th><th>Percentage Density Bonus</th></tr><tr><td>20 or more</td><td>35.0</td></tr></table></td><td></td><td></td></tr>
<tr><td>ii. Incentives. A project that includes at least ten (10) percent low income units shall be granted one incentive. A project that includes at least twenty (20) percent low income units shall be granted two incentives. A project that includes at least thirty (30) percent low income units shall be granted three incentives. See Table DB 2.
Table DB 2
<table><tr><th>Percentage Low Income Units</th><th>Number of Incentives</th></tr><tr><td>10 or more</td><td>1</td></tr><tr><td>20 or more</td><td>2</td></tr><tr><td>30 or more</td><td>3</td></tr></table></td><td>Applicable objective standard.</td><td>The base project includes 25% low income units. Therefore the project qualifies for two incentives.</td></tr>
<tr><td>D. Application processing and review.
1. Application. An application for a density bonus, incentives, parking requirements alterations, and/or waiver or any other provision in this section shall:
a. Be submitted in conjunction with an applicable development permit application;</td><td>Applicable objective standard.</td><td>See Attachment D for compliance with these standards.</td></tr>
</table>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
b. Be made on a form provided by the community development department; c. Be accompanied by applicable fees; d. Include reasonable documentation, using forms prepared by the city, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing; e. Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the densities authorized under this section or with the concessions and/or incentives requested; and f. Include any other documentation or materials required by this section or by the city for the purpose of density bonus, incentives, parking requirements alterations, and/or waivers or any other provision in this section. 2. Review authority. Applications shall be reviewed by the review authority charged to review the applicable development permit application.		

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
E. Density bonus standards. Developments eligible for density bonuses as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive the density bonuses as provided below: 1. No waiver required. The granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards. 2. Density calculation. The area of any land required to be dedicated for street or alley purposes may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone in which the project is located. 3. Fractional units. All density bonus calculations shall be rounded up to the next whole number including the base density, restricted affordable units, and the number of affordable units required to be eligible for a density bonus. 4. Minimum number of dwelling units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded. 5. Other discretionary approval. Approval of density bonus units shall not, in and of itself,	Applicable objective standard.	See Attachment D for compliance with these standards.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
trigger other discretionary approvals required by this Code. 6. Other affordable housing subsidies. Approval of density bonus units does not, in and of itself, preclude projects from receipt of other government subsidies for affordable housing. 7. Optional density bonuses. Nothing in this section shall be construed to prohibit the city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section. 8. Lesser percentage of density bonus. If elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density, is permissible.		

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
F. Incentive standards. A development eligible for incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives). 1. On-menu incentives. The city council has determined that the on-menu incentives listed below would not have a specific, adverse impact. a. Lot coverage. Up to twenty (20) percent increase in lot coverage limits. b. Lot width. Up to twenty (20) percent decrease from a lot width requirement. c. Floor area ratio. In zone districts with a floor area ratio maximum, an increase in the maximum floor area equal to the floor area of the affordable housing units for the housing development project, up to a thirty-five (35) percent increase in the floor area maximum. d. Height. Up to an eleven (11) foot increase in the allowable height. e. Yard/setback. Up to twenty (20) percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.	Under SB35, consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915". *See* Gov. Code § 65913.4(a)(5). Accordingly, the project's conformity with the height requirement is judged based on the base project and not on the plans that incorporate density bonus modifications.	The proposed project includes one on-menu incentive for an 11-foot increase in building height. The City is required to grant the incentive for the 4th story, insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts. As shown on Sheet A4.01, the proposed project would have a maximum height of 56'-6" and a first floor height of 12 feet.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
f. Open space. Up to twenty (20) percent decrease from an open space requirement, provided that (i) the landscaping for the housing development project is sufficient to qualify for the number of landscape points equivalent to ten (10) percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines "O," and (ii) any such reduction is first applied to open space on any project floor or floors above grade.		
2. Off-menu incentives. An applicant may request an incentive not included in subsection (F)(1) (On-Menu Incentives), so long as such incentive meets the definition under state law. The review authority will determine whether any such requested off-menu incentive may have a specific, adverse impact.	The proposed project does not request any off-menu incentives.	Not applicable.
G. Parking requirement alteration standards. 1. General parking requirement. Developments eligible for density bonuses and/or incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) must comply with the applicable parking provisions of Chapter 14.74 (Off-Street Parking and Loading), unless the development qualifies for a parking requirement alteration as provided in subsections (G)(2) (On-Menu	See discussion of Chapter 14.74, above.	See discussion of Chapter 14.74, above.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
Parking Requirement Alterations) or (G)(3) (Off-Menu Parking Requirement Alterations).		
H. Waiver standards. 1. Waivers or reduction. An applicant may apply for a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development identified in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city to discuss the proposed waiver or reduction. 2. No Change in other incentives. A proposal for the waiver or reduction of development standards described in subsection A shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to this section. 3. Denial of requested waiver. The reviewing authority may deny a request for a waiver under this section if it finds the waiver would: a. Waive or reduce a development standard that would not have the effect of physically precluding the construction of a development meeting the criteria of this section at the densities or with the	Under SB35, consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915". *See* Gov. Code § 65913.4(a)(5). Accordingly, the project's conformity with the height requirement is judged based on the base project and not on the plans that incorporate density bonus modifications.	Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the height restriction for the partial 5th story because the height limit, if applied, would physically preclude the density bonus project.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
incentives permitted under this section; or b. Have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or c. Have an adverse impact on any real property that is listed in the California Register of Historical Resources; or d. Be contrary to state or federal law.		
I. Covenants. 1. Covenant required. Prior to issuance of a building permit for a development identified in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) that qualified for a density bonus, incentive, and/or parking alteration, the developer must record a restrictive covenant against the development as provided in subsection (I)(2) (Covenants for Specific Developments). 2. Covenants for specific developments. a. For rental developments for low or very low income households. For a development that contains rental housing for low or very low income households, a covenant acceptable to the city shall be	Applicable objective standard.	The Project will comply with the requirement to record a covenant as required, prior to issuance of a building permit.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
recorded with the Santa Clara County Recorder, guaranteeing that the affordability criteria will be observed for at least fifty-five (55) years from the issuance of the certificate of occupancy or a longer period of time if required by the construction or mortgage financing assistance program, mortgage assistance program, or rental subsidy program. ... 3. Private right of action. Any covenant described in this section must provide for a private right of enforcement by the city, any tenant, or owner of any building to which a covenant and agreement applies. 4. Conflict of durations. If the duration of affordability covenants provided for in this section conflicts with the duration for any other government requirement, the longest duration shall control. J. State regulations. All other provisions of California Government Code Sections 65915 to 65918, and any amendments thereto, not specified herein are incorporated by reference into this section.		

Table 4: Chapter 14.78 - Design and Transportation Review—Multiple-Family, Public and Community Facilities, Office and Administrative, and Commercial Districts

Provision	Applicability	Compliance
14.78.020 - Requirement for administrative design review.		
A. No building permit shall be issued for any new main or accessory structure, or addition or alteration thereto within an R3, PCF, PUD, PC, OA or C district, until such construction has received administrative design review approval by the community development director or their designee. Window replacements, reroofing and rooftop venting and exhausting equipment, and mechanical equipment are exempt from this requirement. B. Whenever, as determined by the community development director or their designee, the construction, expansion or modification of a main or accessory structure may be in conflict with the design review findings contained in this chapter, the project shall be referred to the planning and transportation commission for action on the design review approval.	Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). Any required "design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction." Gov. Code § 65913(c). Aside from the zoning development standards and objective Downtown Design Guidelines described in this attachment, the city has not adopted any other objective design standards by ordinance or resolution.	Pursuant to SB 35, the proposed project is only subject to "objective" design review standards. The only applicable Downtown Design Guideline standards that qualify as "objective" are listed below. No other objective standards are contained in the guidelines. The project has been designed to conform to both standards. No conflicts with any objective standards are proposed, and any review approval "shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects" and these two objective design standards. Gov. Code § 65913(c).

Table 5: Downtown Design Guidelines

Provision	Applicability	Compliance
Downtown Commercial Core *Most of these adopted design guidelines do not qualify as "objective" under SB 35. Below are the guidelines that could be interpreted as objective standards.*		
3.2.3d: Utilize awnings and canopies at windows and entries ... • Keep the mounting height at a human scale with the valence height not more than 8 feet	Applicable objective standard.	The base project provides awnings across most windows and entries. As shown on Sheets B4.01 and B5.01, the ground floor awning height is at 8 feet above grade.
3.2.4c: Utilize operable windows in traditional styles. Recess windows at least 3 inches from the face of the wall.	Applicable objective standard.	As shown on Sheet B5.01, windows are recessed at least 3 inches from the face of wall.

Applicant Statement, Attachment B
SB 35 Environmental Mapping – 40 Main Street

Establishing that the project at 40 Main Street is outside certain regulatory zones as required for SB 35 threshold compliance.

- Coastal zone
- Prime farmland or farmland of statewide importance
- Wetlands
- High or very high fire hazard severity zones
- Hazardous waste sites
- Earthquake fault zone (unless the development complies with applicable seismic protection building code standards)
- Floodplain or floodway designated by FEMA
- Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan
- Habitat for a state or federally protected species
- Land under a conservation easement

California Coastal Zone: https://www.coastal.ca.gov/maps/czb/

Map does not extend far enough east to show project site. Coastal zone does not extend past San Francisco.

Prime farmland or farmland of statewide importance:
ftp://ftp.consrv.ca.gov/pub/dlrp/FMMP/pdf/2016/scl16.pdf

PRIME FARMLAND

PRIME FARMLAND HAS THE BEST COMBINATION OF PHYSICAL AND CHEMICAL FEATURES ABLE TO SUSTAIN LONG-TERM AGRICULTURAL PRODUCTION. THIS LAND HAS THE SOIL QUALITY, GROWING SEASON, AND MOISTURE SUPPLY NEEDED TO PRODUCE SUSTAINED HIGH YIELDS. LAND MUST HAVE BEEN USED FOR IRRIGATED AGRICULTURAL PRODUCTION AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.

FARMLAND OF STATEWIDE IMPORTANCE

FARMLAND OF STATEWIDE IMPORTANCE IS SIMILAR TO PRIME FARMLAND BUT WITH MINOR SHORTCOMINGS, SUCH AS GREATER SLOPES OR LESS ABILITY TO STORE SOIL MOISTURE. LAND MUST HAVE BEEN USED FOR IRRIGATED AGRICULTURAL PRODUCTION AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.

UNIQUE FARMLAND

UNIQUE FARMLAND CONSISTS OF LESSER QUALITY SOILS USED FOR THE PRODUCTION OF THE STATE'S LEADING AGRICULTURAL CROPS. THIS LAND IS USUALLY IRRIGATED, BUT MAY INCLUDE NONIRRIGATED ORCHARDS OR VINEYARDS AS FOUND IN SOME CLIMATIC ZONES IN CALIFORNIA. LAND MUST HAVE BEEN CROPPED AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.

FARMLAND OF LOCAL IMPORTANCE

SMALL ORCHARDS AND VINEYARDS PRIMARILY IN THE FOOTHILL AREAS. ALSO LAND CULTIVATED AS DRY CROPLAND FOR GRAINS AND HAY.

GRAZING LAND

GRAZING LAND IS LAND ON WHICH THE EXISTING VEGETATION IS SUITED TO THE GRAZING OF LIVESTOCK.

URBAN AND BUILT-UP LAND

URBAN AND BUILT-UP LAND IS OCCUPIED BY STRUCTURES WITH A BUILDING DENSITY OF AT LEAST 1 UNIT TO 1.5 ACRES, OR APPROXIMATELY 6 STRUCTURES TO A 10-ACRE PARCEL. COMMON EXAMPLES INCLUDE RESIDENTIAL, INDUSTRIAL, COMMERCIAL, INSTITUTIONAL FACILITIES, CEMETERIES, AIRPORTS, GOLF COURSES, SANITARY LANDFILLS, SEWAGE TREATMENT, AND WATER CONTROL STRUCTURES.

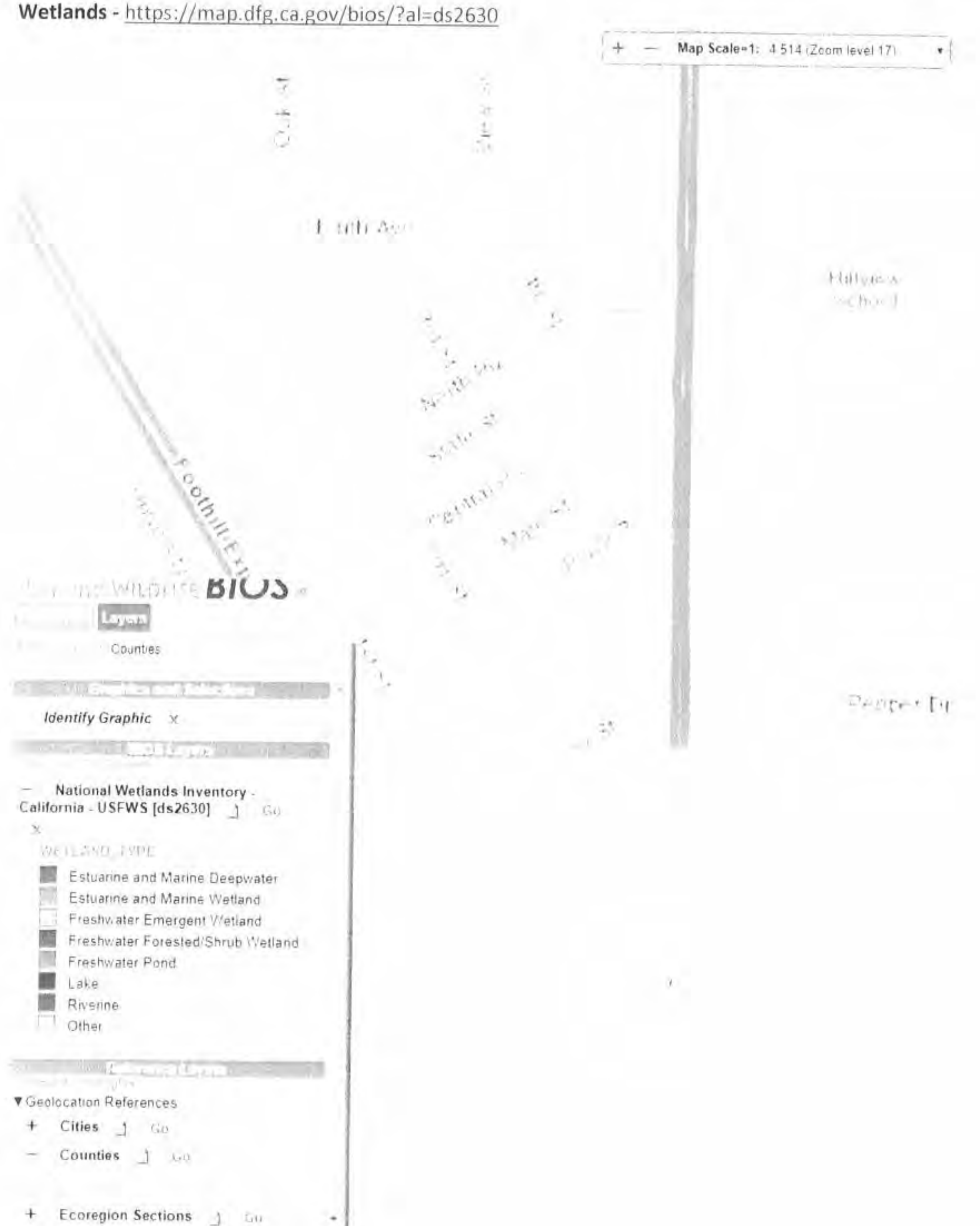
OTHER LAND

OTHER LAND IS LAND NOT INCLUDED IN ANY OTHER MAPPING CATEGORY. COMMON EXAMPLES INCLUDE LOW DENSITY RURAL DEVELOPMENTS, BRUSH, TIMBER, WETLAND, AND RIPARIAN AREAS NOT SUITABLE FOR LIVESTOCK GRAZING, CONFINED LIVESTOCK, POULTRY, OR AQUACULTURE FACILITIES, STRIP MINES, BORROW PITS, AND WATER BODIES SMALLER THAN 40 ACRES. VACANT AND NONAGRICULTURAL LAND SURROUNDED ON ALL SIDES BY URBAN DEVELOPMENT AND GREATER THAN 40 ACRES IS MAPPED AS OTHER LAND.

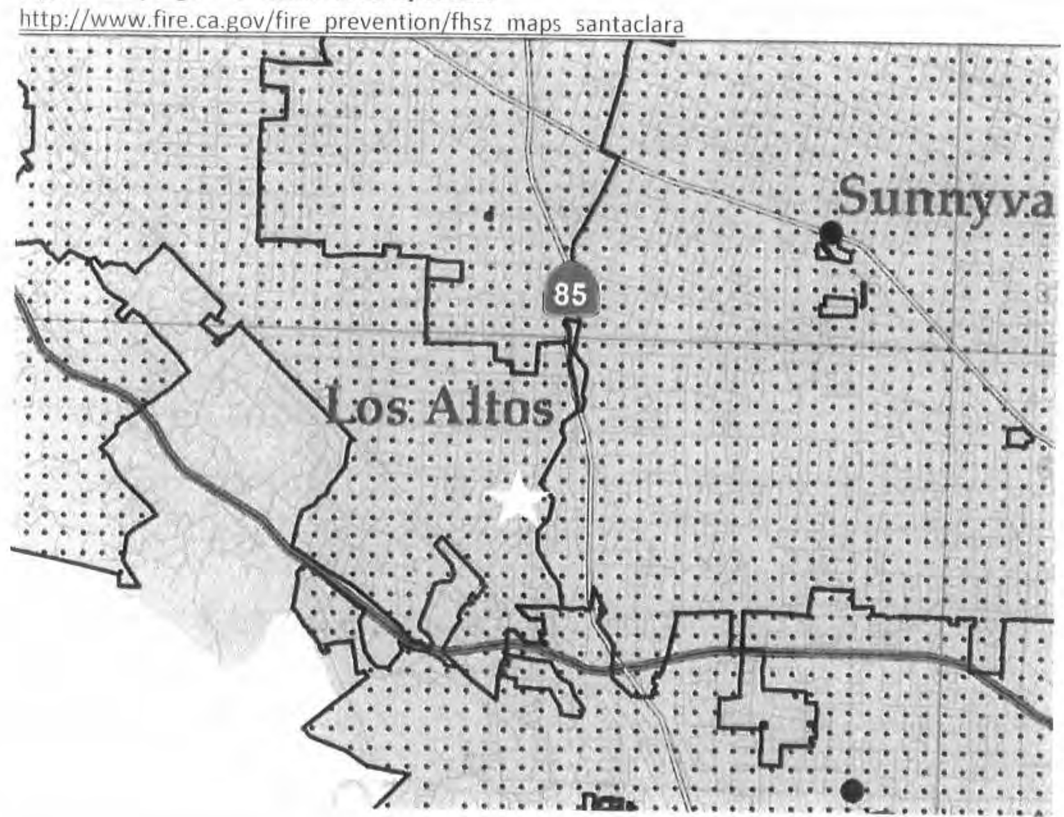
WATER

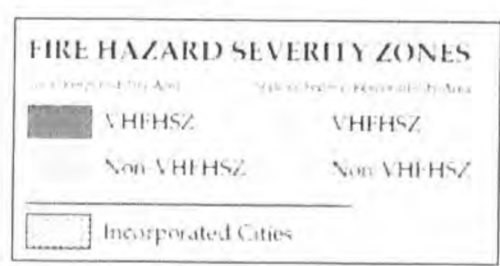
PERENNIAL WATER BODIES WITH AN EXTENT OF AT LEAST 40 ACRES.

Wetlands - https://map.dfg.ca.gov/bios/?al=ds2630

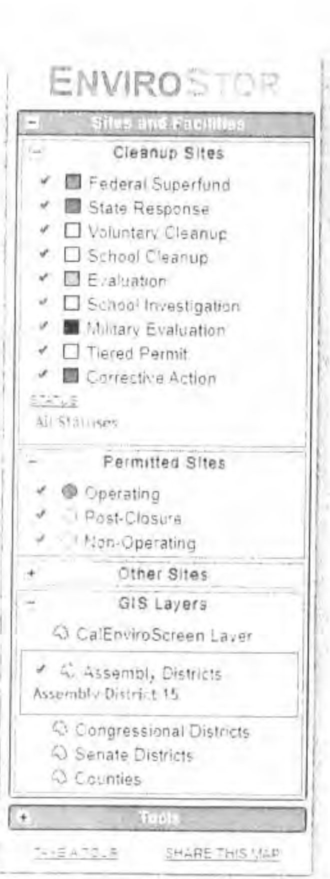


High or very high fire hazard severity zones:
http://www.fire.ca.gov/fire_prevention/fhsz_maps_santaclara

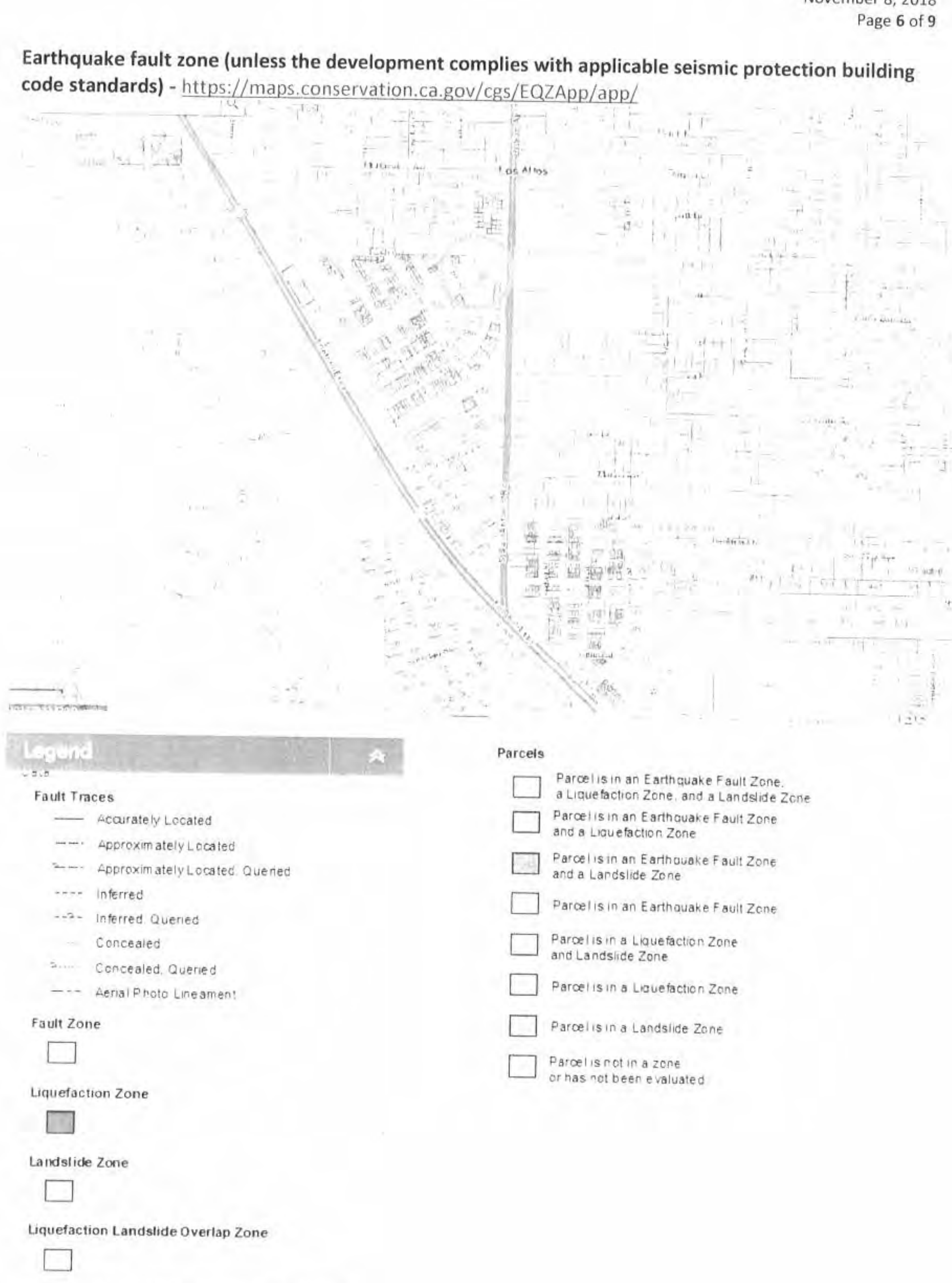




Hazardous waste sites - https://www.envirostor.dtsc.ca.gov/public/map/?assembly=15

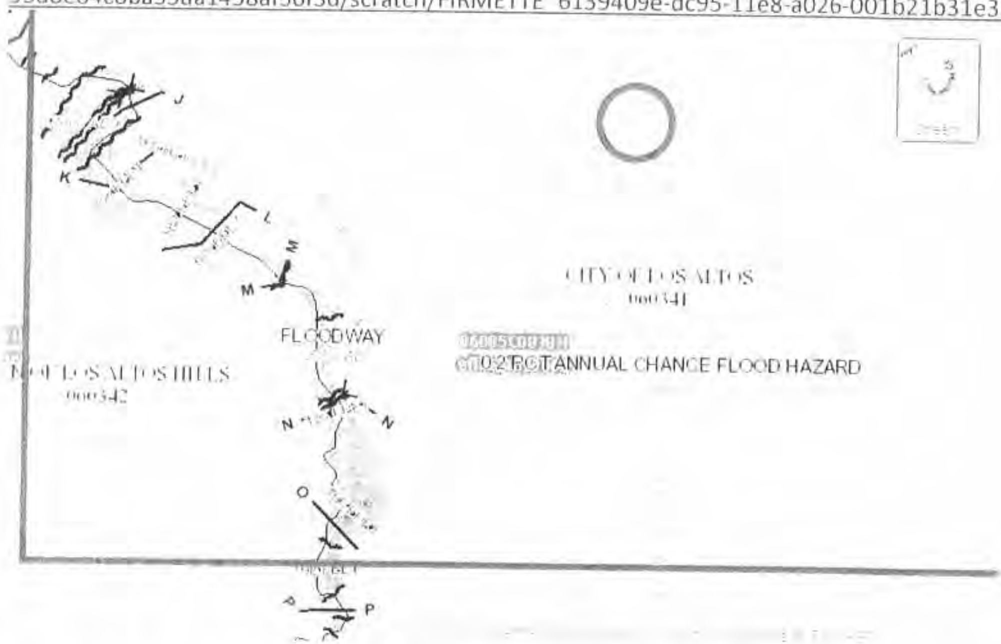


Earthquake fault zone (unless the development complies with applicable seismic protection building code standards) - https://maps.conservation.ca.gov/cgs/EQZApp/app/



Floodplain or floodway designated by FEMA

https://p4.msc.fema.gov/arcgis/rest/directories/arcgisjobs/nfhl_print/nfhlprinttool2_gpserver/j3e95bb95d8e84c8ba35aa1458af56f3d/scratch/FIRMETTE_6139409e-dc95-11e8-a026-001b21b31e35.pdf

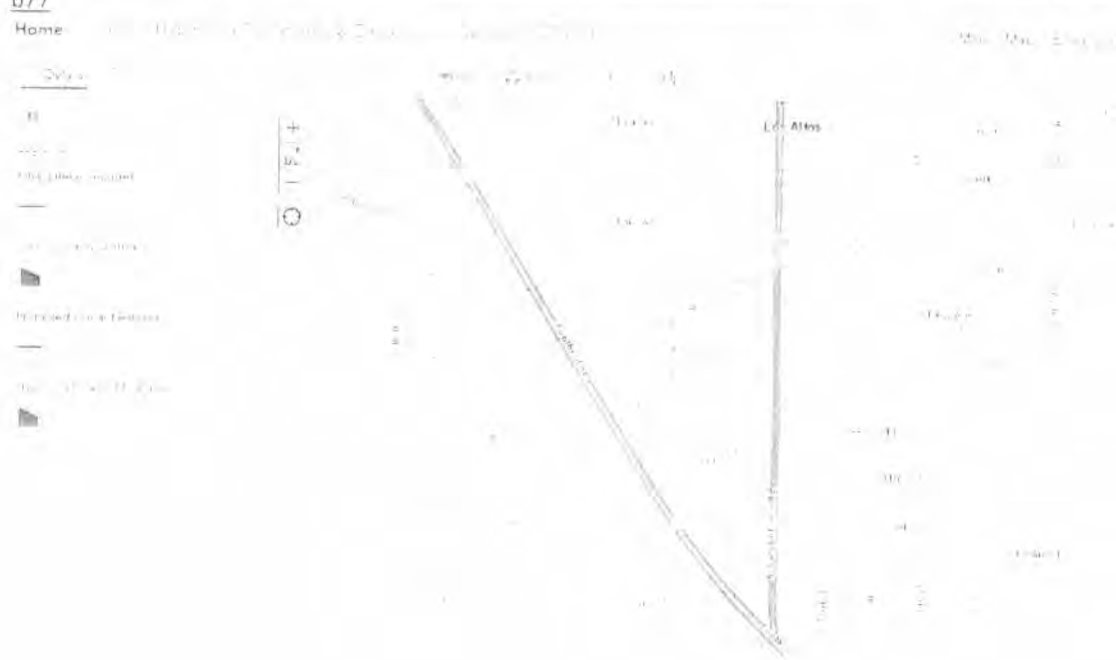


Site is located within Zone X: a 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average flood depth less than one foot or with drainage areas of less than one square mile.

Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan - http://www.calands.org/map

Habitat for a state or federally protected species

Federal:
https://fws.maps.arcgis.com/home/webmap/viewer.html?webmap=9d8de5e265ad4fe09893cf75b8dbfb77



Applicant Statement, Attachment C
SB 35 Prevailing Wage Commitment Letter – 40 Main Street

November 8, 2018

Jon Biggs
Community Development Director
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

Re: Commitment to and Certification of SB 35 Prevailing Wage and Skilled & Trained Workforce Requirements

Dear Mr. Biggs:

By way of this letter, 40 Main Street Offices, LLC (the "Applicant"), the applicant for the 40 Main Street Project ("Project"), certifies that per the requirements of Senate Bill 35, all construction workers will be paid the applicable prevailing wages.

The Applicant hereby certifies that all requirements in California Government Code § 65913.4(a)(8)(A)(ii) will be met. Specifically, all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. The Applicant will ensure that the prevailing wage requirement is included in all contracts for the performance of the work and will ensure that all other requirements contained in Gov. Code § 65913.4(a)(8)(A)(ii) will be satisfied, as applicable.

Sincerely,

Applicant Statement, Attachment D
Density Bonus Report – 40 Main Street

1. **Requested Density Bonus**
   I. *Minimum Number of Dwelling Units*: the project proposes to build 15 rental units which includes two below market rate units. This exceeds the minimum threshold for the City's ordinance, which is five dwelling units.
   II. *Summary Table of Permitted and Proposed Units*:

Dwelling Unit Summary	
Base project dwelling units permitted by zoning and general plan	N/A – no density standard in Los Altos Zoning Code for CRS/OAD. Based on the development standards for the site, the project is entitled to two floors of residential above the ground floor (see Applicant Statement and Attachment A: Compliance with Objective Zoning Standards), based on the 30-foot height limit. The base project includes 8 units.
Proposed number of affordable units by income level	The project proposes two units affordable to low-income households, defined as earning less than 80% of Area Median Income (AMI).
Proposed bonus percentage	Project proposes eight base units of which two (25% of project) are affordable. The project is therefore entitled to a 35% density bonus.
Number of density bonus units proposed	The project proposes 7 density bonus units.
Total number of dwelling units proposed	A total of 15 units are proposed.
Proposed Density per Acre	Total project is 93 dwelling units per acre. (Site is 6,994 square feet with 15 units.)

   III. *Tentative map and/or preliminary site plan. Must show the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.*

See second floor and third floor plans in attached plan set for the location of the proposed affordable units.

   IV. *Zoning and general plan designations and assessor parcel number.*

Characteristic	**Designation**
Zoning District	CRS/OAD
General Plan Land Use	Downtown Commercial
Assessor's Parcel Number (APN)	167-38-032

V. *Calculation of the maximum number of dwelling units permitted by the City's zoning ordinance and general plan for the housing development, excluding any density bonus units.*

The Los Altos Zoning Ordinance and general plan do not specify a maximum number of dwelling units.

VI. *Number of bedrooms in the proposed market-rate units and the proposed affordable units.*

Floor	Market Rate Units	Below Market Rate Unit
First	N/A	N/A
Second	4 units: • 1 one bedroom • 2 two bedroom • 1 three bedroom	1 two bedroom unit
Third	4 units • 1 one bedroom • 2 two bedroom • 1 three bedroom	1 one bedroom unit
Fourth	4 units • 1 one bedroom • 2 two bedroom • 1 three bedroom	
Fifth	3 units: 3 two bedroom	

VII. *Description of all dwelling units that have existed on the site in the previous five-year period.*

N/A. For at least the past five years, the project has been a commercial property with no housing units.

VIII. *Description of any recorded document applicable to the site that restricted rents.*

N/A. For at least the past five years, the project has been a commercial property with no housing units.

IX. *Land donation density bonus question.*

N/A, no land donation is included as part of this application.

2. *Requested Incentive(s) and Concessions*

The project is entitled to two concessions under LAMC Sec. 14.28.040.C.1.a.ii and GC Sec. 65915. The project proposes to use one 11' height increase, which is an "on-menu" incentive.

3. *Requested waivers*

Development Standard	Proposed Development Standard for Waiver	Rationale for how waiver is required to avoid physically precluding construction
30' Height Limit	Additional 2/3 of a floor	The project proposes a fourth floor of housing as an incentive. A waiver of the 2/3rd of a fifth floor is required to construct the density bonus units. The units cannot be constructed within the first three floors because they are already at the maximum potential floor area/density.
Side Yard	0 to 10' setback	The increased setback is required to construct the density bonus units as proposed in the attached plans.
Parking Regulations	Parking standards per SB35	The parking waiver is required to construct the density bonus units as proposed in the attached plans.
Rooftop Mechanical	4.4% of rooftop area to be occupied by mechanical equipment	A waiver is required to construct the density bonus units as proposed in the attached plans.

4. *Requested parking reduction*

Per SB 35, the project is not subject to local parking requirements that exceed one space per unit.

5. *Childcare facility.*

N/A

6. *Condominium Conversion*

N/A

7. *Other*

N/A

8. *Fee*

The fees for the project will be provided as determined by the City of Los Altos' adopted legal requirements.

Government Code Section 65915, Affordable Housing Compliance and Density Bonus Entitlement

Government Code Section 65915 requires the City grant density bonuses to qualifying affordable housing projects as they are otherwise defined in the statute. GC Sec. 65915(n) allows that a city may grant a greater density bonus than allowed by state law but only if the local agency has a specific ordinance allowing the additional bonus. GC Sec. 65915(n) states:

> If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section. (GC Sec. 65915(n))

The City of Los Altos has a local implementing density bonus ordinance that does include language allowing for a greater density bonus than is otherwise required by State law. The LADBO allowance for additional density bonus is found in Los Altos Municipal Code (LAMC) section 14.28.040.E.7:

> Optional density bonuses. Nothing in this section shall be construed to prohibit the city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section. (LAMC Sec. 14.28.040.E.7)

Density Standard and Bonus

The project is a rental housing project that will provide 25% of its base project units at 80% AMI and is therefore entitled to a 35% density bonus and two concessions/incentives. In the case of the proposed project, at least 20% of base project units must be provided at not greater than low incomes (up to 80% AMI) to allow for a full 35% density bonus, even though the SB 35 application would only require 10% of all units to be affordable at less than 80% AMI. It also provides that the project is allowed up to two concessions/incentives.

Waivers and Modifications

The City must waive any development standards that would have the effect of "physically precluding" the density bonus project, including the concessions discussed below. The height limit standard, if applied, would physically preclude the project and thus must be waived. Further, if there are other development standards that would physically preclude the project with the density bonus units and incentives/concessions, those must also be waived.

Concessions and Incentives

In addition to granting the density bonus, the City must also grant the project up to two incentives or concessions pursuant to GC Sec. 65915(d)(1) because 20% of the "base density" units will be affordable to low-income households. The City is required to grant the concessions/incentives insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts. Although the Project qualifies for two incentives or concessions, the project only requires one as described below.

Los Altos' specific allowance for density increases beyond 35% are found in LAMC Sec. 14.28.040.C.1.a.ii, as follows:

> ii. Incentives. A project that includes at least ten (10) percent low income units shall be granted one incentive. A project that includes at least twenty (20) percent low income units shall be granted two incentives. A project that includes at least thirty (30) percent low income units shall be granted three incentives.

The menu of incentives found in LAMC Sec. 14.28.040.F states:

> F. Incentive standards. A development eligible for incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives).
>
> ...
>
> d. Height. Up to an eleven (11) foot increase in the allowable height.

Given that the project is entitled to two concessions under LAMC Sec. 14.28.040.C.1.a.ii and GC Sec. 65915, it follows that it may avail itself to two 11' height increases. However, the proposed project is only requesting one concession/incentive to allow for an 11-foot increase in building height for the fourth story, in addition to the waiver request for the partial fifth story.

The City would "bear the burden of proof for the denial of a requested concession or incentive," Gov. Code § 65915(d)(4). Effective in 2017, the Legislature amended the Density Bonus Law specifically to eliminate the authority of cities to reject a requested concession or incentive on the grounds that "[t]he concession or incentive is not required in order to provide for affordable housing costs," Stats.2016, ch. 758 (A.B.2501), § 1. The currently operative text of the law only authorizes the City to reject the requested concession if the City demonstrates that "[t]he concession or incentive does not result in identifiable and actual cost reductions." whereas the prior language required that concessions are also "financially sufficient." Id. Here, the concession yields direct savings to the proposed project and the development standard does not impact public health and safety, nor is it required by State or federal

law. The proposed project costs are increased as a podium development that contains two levels of underground parking. The proposed concession offsets the costs of the two proposed below market rate units. The balance of the density bonus and other market rate units must bear the substantial financial burden of paying the costs of the podium construction and underground parking.

EXHIBIT 2

Community Development Department
One North San Antonio Road
Los Altos, California 94022

December 7, 2018

40 Main Street Offices, LLC,
c/o Ted Sorensen
40 Main Street
Los Altos, CA 94022,

&

William J. Maston, Architect and Associates
384 Castro Street
Mountain View, CA 94041

Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10; SB 35 DETERMINATION

Dear Mr. Sorensen and Mr. Maston:

This letter provides our decision on the application you have submitted, dated November 8, 2018, for a mixed-use project at 40 Main Street, Los Altos, CA, submitted for consideration under the provisions of SB 35, the California State legislation that provides for streamlined permit processing of projects meeting certain requirements.

Our review of the project indicates that it is not subject to the provisions of SB 35 for the following reasons:

- The project does not provide the percentage of affordable dwelling units required by the State regulations. The SB 35 Statewide Determination Summary list (http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary01312018.pdf) concludes that the City of Los Altos requires 50% of more affordable to take advantage of SB 35. See Government Code Section 65913.4(a)(4)(A) and (B)(ii).

- Per Government Code Section 65913.4(a)(5), the development, excluding any density bonus units, concessions, incentives, or waivers is inconsistent with the City's objective zoning standards. Namely, the plans purporting to demonstrate a consistent project do not provide the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking.

In addition, this application results in two applications that have been submitted for this site. One or the other of the projects must be withdrawn. The City of Los Altos does not have provisions that provide for the concurrent processing of multiple development proposals on the same site.

If you elect to pursue other approval/permit avenues for the project that is the subject of this notice, the applications, fees, deposits, studies, and information contained in the attached Notice of Incomplete Application are required to continue an evaluation of the project. A review of any submittals may reveal that other applications, fees, deposits, studies, and information are required to continue an evaluation of the project to determine completeness and processing through the environmental review and public hearing processes.

Sincerely,

Jon Biggs, City of Los Altos
Community Development Director

Attachments:

Notice of Incomplete Application

Community Development Department
One North San Antonio Road
Los Altos, California 94022

NOTICE OF INCOMPLETE APPLICATION

December 7, 2018

40 Main Street Offices, LLC
c/o Ted Sorensen
40 Main Street
Los Altos, CA 94022

&

William J. Maston, Architect and Associates
384 Castro Street
Mountain View, CA 94041

Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10

Dear Mr. Sorensen and Mr. Maston:

This letter is in response to the Design Review and Use Permit applications submitted on November 8, 2018 for a new mixed-use building at 40 Main Street. The application is **incomplete** for processing. This letter is a list of the items that will need to be addressed or provided for the application to be deemed complete.

Per Zoning Code Section 14.78.050, all necessary plan revisions, documentation and information to address the comments in this letter must be submitted within **180 days** of the date of this letter in order to avoid this application from being deemed expired. This application will be deemed expired on June 6, 2019. If additional time is necessary to fully address the City's comments, you may submit a written request for an extension of up to an additional 180 days. The request should include justification for the extension and outline the circumstances that have caused a delay in the submittal of the required information.

Once the application has been deemed complete, we can discuss the schedule for the required public meetings before the Complete Streets Commission, Planning Commission and the City Council, and the environmental review process as required by the California Environmental Quality Act.

LIST OF COMPLETENESS ITEMS

Planning Division

1. Provide a preliminary lighting plan that provides details and locations of all exterior lighting fixtures.

2. Provide a sign design plan that includes signage details – dimensions, letter size, colors, material, illumination, sign/letter cross sections – for the existing pole sign and all building mounted signage. The sign materials should be high quality and match the style of the project architecture.

3. Update the design of the parking levels to include the following information:
   a. Provide vehicle circulation details such as directional arrows, striping and stop signs;
   b. Show that all parking spaces will be double-striped;
   c. Show the location of all proposed EV charging stations. For the remaining EV reserved spaces, consider alternative locations in the parking lot;
   d. Provide a complete engineering plan of the vehicle circulation system that will provide access to and egress from the underground parking levels of the structure, to include projections for vehicle queuing in public parking plaza 10 and circulation patterns of vehicles traveling through public parking plaza 10.

4. Provide a landscape plan to include the following information:
   a. Show existing and proposed landscaping, trees and improvements within the public right-of-way and details for the landscape plane;
   b. Provide a tree inventory (size and species) of all existing trees on the site and along the property frontage in the public street right-of-way and a report from a certified arborist or forester that details the conditions of the trees.

5. Provide an acoustical analysis that evaluates the proposed rooftop mechanical equipment and noise generated by delivery trucks to ensure that the project is in compliance with the City's General Plan and the Noise Control Regulations.

6. Variance application for an exception to the maximum permitted height and reduction in the required number of off-street parking spaces with the variance application fee of $5,350.

7. Provide a preliminary deposit in the amount of $75,000 to cover the initial cost of environmental evaluation that must be conducted on the project and independent studies and analysis necessary to complete the environmental review.

8. Provide a deposit of $15,000 to cover the cost of the peer review of the density bonus report that is required in order to demonstrate how any concessions and incentives requested result in identifiable and actual cost reductions to provide affordable housing.

9. Provide a deposit of $6,000 to cover the cost of an independent design evaluation of the structure and its conformance with the Los Altos Downtown Design Guidelines.

10. Provide a shadow study depicting how shadows that will be cast by the project throughout the course of the day, for both the winter and summer seasons.

11. Provide complete engineering and/or manufacturers details for the mechanical vehicle lift system that is being proposed

12. Provide a Sketch-Up model of the project so it can be inserted into the Downtown model and evaluated.

13. Provide an address list, in label format, for all commercial tenants within 500 feet of the project.

14. Provide two sets of blank, postage paid postcards. Each set should have enough postcards to cover all property owners and business tenants within 500 feet of the project (80 property owners plus additional commercial tenants).

15. Provide circled items from the Submittal requirements for Commercial or Multi-Family Design Review list (attached).

16. Provide circled items from the Submittal requirements for Conditional Use Permits list (attached).

17. Provide circled items from the Density Bonus Report Submittal Requirements list (attached).

Building Division

See comments listed on the November 15, 2018 Memorandum from the Building Division.

Engineering Division

These are preliminary comments supplemental to those additional comments that the Engineering Division may develop as it continues its review of any revised plans submitted for the project. A complete set of conditions of approval will be added to the application prior to consideration of the project by the Planning Commission.

18. The driveway entrance along parking plaza will affect up to 2 parking spaces which is not acceptable.

19. Parking circulation is inadequate. How/where will the vehicles queue while waiting for the mechanical lift system to go into the underground parking area?

20. C3 bioretention areas shall be located in building common areas to allow for bi-annual inspections by City and SCC Vector Control staff.

21. Provide a truck route plan that shows the street routes that delivery trucks will use and include turning templates for the trucks entering and exiting the site. Also, note the size of the trucks and the hours of operation. This information should be included as a plan sheet.

22. The applicant shall contact Mission Trails Company and submit a solid waste disposal plan indicating the type and size of container proposed and the frequency of pick-up service subject to the approval of the Engineering Division. The applicant shall submit evidence that Mission Trails Company has reviewed and approved the size and location of the enclosure for recyclables.

23. The project will be required to submit a Stormwater Management Plan (SWMP) report showing:
    a. That 100 percent of the site is being treated to include the new paving and new sidewalk;
    b. The project is in compliance with the San Francisco Bay Municipal Regional Stormwater NPDES Permit Order R2-2009-0074, NPDES Permit No. CAS612008, October 14, 2009;
    c. That all treatment measures are in accordance with the C.3 Provisions for Low Impact Development (LID) and in compliance with the December 1, 2011 requirements; and
    d. The SWMP shall be reviewed and approved by a City approved third party consultant. The recommendations from the SWMP shall be shown on the building plans.

Santa Clara County Fire Department (Fire Marshall, 408-378-4010)

24. See comments listed on the November 15, 2018 Memorandum from the Fire Department.

To continue the development review process, submit five (5) full sized sets of plans, five (5) half sized sets of plans and two (2) copies of all technical reports and support information required by this notice of incomplete application.

Sincerely,

Jon Biggs, City of Los Altos
Community Development Director

Attachments:

Building Division Memo, Dated November 15, 2018

Santa Clara County Fire Department Memo/Letter, Dated November 15, 2018

Submittal requirements for Commercial or Multi-Family Design Review

Submittal requirements for Conditional Use Permits

Density Bonus Report Submittal Requirements

MEMORANDUM

DATE: 11/15/18

TO:
- City Manager
- Building Division
- Fire Department
- Engineering Division
- Other

FROM: PLANNING DIVISION

RE: **40 Main Street**
18-D-07 & 18-UP-10 – 40 Main Street Offices, LLC
William J. Maston Architect & Associates

Attached is a copy of an application and/or drawings.

Please return any comments by: ______________________

Van Accessible Vertical Clearances?
Kirk B. Ballard 12/6/18

CITY OF LOS ALTOS
GENERAL APPLICATION

Type of Review Requested: *(Check all boxes that apply)* Permit # 108545

	One-Story Design Review	X	**Commercial/Multi-Family**		**Environmental Review**
	Two-Story Design Review		**Sign Permit**		**Rezoning**
	Variance	X	**Use Permit**		**R1-S Overlay**
	Lot Line Adjustment		**Tenant Improvement**		**General Plan/Code Amendment**
	Tentative Map/Division of Land		**Sidewalk Display Permit**		**Appeal**
	Historical Review		**Preliminary Project Review**		**Other:**

Project Address/Location: [illegible] Los Altos CA 94022

Project Proposal/Use: Mixed Use / Residential Current Use of Property: Office

Assessor Parcel Number(s): 167-38-032 Site Area: 6,995

New Sq. Ft.: 21,566 Altered/Rebuilt Sq. Ft.: ______ Existing Sq. Ft. to Remain: ______

Total Existing Sq. Ft.: 2,050 Total Proposed Sq. Ft. (including basement): ______

Applicant's Name: 40 Main Street Offices, LLC
Telephone No.: (650) 924-0418 Email Address: ted@gunnmanagement.com
Mailing Address: 40 Main Street
City/State/Zip Code: Los Altos CA 94022

Property Owner's Name: 40 Main Street Offices, LLC
Telephone No.: (650) 924 - 0418 Email Address: ted@gunnmanagement.com
Mailing Address: 40 Main Street
City/State/Zip Code: Los Altos CA 94022

Architect/Designer's Name: William J Maston Architect & Associates
Telephone No.: (650) 968-7900 Email Address: billm@mastonarchitect.com
Mailing Address: 384 Castro Street
City/State/Zip Code: Mountain View, CA 94041

* * * If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finaled prior to obtaining your building permit. Please contact the Building Division for a demolition package. * * *

(continued on back)

Does your project comply with any Deed Restrictions, Conditions, Covenants, and Restrictions (CC&R's), or any other recorded conditions of the subdivision in which it is located? Examples are restrictions that limit development to one-story height or may require setbacks greater than those required by City Codes. You are responsible for researching your title insurance report to find the CC&R's for your property. If you do not have a copy of the title report, you may obtain the information from a title insurance company or the County Recorder's Office. ☐ Yes ☐ No ☒ N/A

If No, please explain below in what way your project does not comply with the restrictions and why you propose such variations.

N/A

I certify that the above information is true and correct.

Date: 11/13/18

Property Owner/Applicant or Authorized Agent Signature: [signature]

(If signing as an authorized agent, please submit evidence of written authorization)

For City Staff Use Only:

Received by: Eliana / Sean Date: 11/8/18

Department Review Required:

Fire Department	(YES) / NO	Date Notified: 11/15/18
Building Division	(YES) / NO	Date Notified: 11/15/18
Public Works Engineering	(YES) / NO	Date Notified: 11/15/18
City Manager	(YES) / NO	Date Notified: 11/15/18
		Date Notified:
		Date Notified:

Is the submittal package complete? YES / NO (TBD)

If NO, what items still need to be submitted?

18-4273

RECEIVED

NOV 1 6 2018

SA... ...RA COUNTY
FIRE DEPARTMENT

DRC

MEMORANDUM

DATE: 11/15/18

TO:
___ City Manager
___ Building Division
_X_ Fire Department
___ Engineering Division
___ Other ____________

FROM: PLANNING DIVISION

RE: **40 Main Street**
18-D-07 & 18-UP-10 – 40 Main Street Offices, LLC/
William J. Maston Architect & Associates

Attached is a copy of an application and/or drawings.

Please return any comments by: Thurs. 11/29/18

PLAN REVIEW No 18 4273

BLDG PERMIT No

DEVELOPMENTAL REVIEW COMMENTS

Plans and Scope of Review:

This project shall comply with the following:

The California Fire (CFC), Building (CBC) and Residential (CRC) Code, 2016 edition, as adopted by the City of Los Altos Municipal Code (LOSMC), California Code of Regulations (CCR) and Health & Safety Code.

The scope of this project includes the following:

Review of preliminary application for a proposed four-story residential (15 units) over ground floor office (29,566 square foot building) with two levels of underground parking (square footage not provided).

NOTE: Please be advised that the review comments are based on limited information provided on the plans and as the submittal also included a 3-story, a full detailed plan review could not be conducted. Please provide only one building proposal in future plan submittals so that we can provide more clear and accurate comments.

Plan Status:

Plans are **NOT APPROVED.** To prevent plan review and inspection delays, the below noted Developmental Review Conditions shall be addressed on all pending and future plan submittals and any referenced diagrams to be reproduced onto the future plan submittal.

Plan Review Comments:

1. Review of this Developmental proposal is limited to acceptability of site access and water supply as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work the applicant shall make application to, and receive from, the Building Department all applicable construction permits.

City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST TYPE	ApplicantName	DATE	PAGE
LOS	☒	☐	☒	☐	☒	B/R	pending	William Matson Architect &	11/29/2018	1 OF 4

SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION	PROJECT TYPE OR SYSTEM
5 2pkg	29,566		Commercial Development	Design Review

NAME OF PROJECT	LOCATION
40 MAIN OFFICES AND RESIDENCES	40 Main St Los Altos

TABULAR FIRE FLOW	REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY
			Baker, Kathy

FIRE DEPARTMENT
SANTA CLARA COUNTY

PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

2. **Fire Sprinklers Required:** Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.18 whichever is the more restrictive. For the purposes of this section, firewalls used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations. NOTE: The owner(s), occupant(s) and any contractor(s) or subcontractor(s) are responsible for consulting with the water purveyor of record in order to determine if any modification or upgrade of the existing water service is required. A State of California licensed (C-16) Fire Protection Contractor shall submit plans, calculations, a completed permit application and appropriate fees to this department for review and approval prior to beginning their work. CFC Sec. 903.2 as adopted and amended by LOSMC. **Provide a note in Project Data on Sheet A0.01 indicating that a fire sprinkler system will be provided and installed per NFPA 13 and 13R, 2016 edition standards.**

3. **Water Supply Requirements:** Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2016 CFC Sec. 903.3.5 and Health and Safety Code 13114.7.

4. **Two-way communication system:** Two-way communication systems shall be designed and installed in accordance with NFPA 72 (2016 edition), the California Electrical Code (2013 edition), the California Fire Code (2016 edition), the California Building Code (2016 edition), and the city ordinances where two way system is being installed, policies, and standards. Other standards also contain design/installation criteria for specific life safety related equipment. These other standards are referred to in NFPA 72.

5. **Fire Alarm Requirements:** The building shall be provided with a fire alarm system in accordance with CFC Section 907.

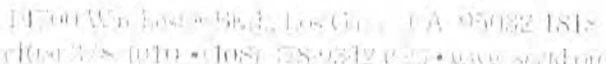
City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	ApplicantName	DATE	PAGE
LOS	☒	☐	☒	☐	☒	B/R	pending	William Matson Architect &	11/29/2018	2 OF 4

SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION	PROJECT TYPE OR SYSTEM
5-2pkg	29,566		Commercial Development	Design Review

NAME OF PROJECT	LOCATION
40 MAIN OFFICES AND RESIDENCES	40 Main St Los Altos

TABULAR FIRE FLOW	REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY
			Baker, Kathy

FIRE DEPARTMENT
SANTA CLARA COUNTY



PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

6. **Public Fire Hydrant(s) Required:** Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be 500 feet, with a minimum single hydrant flow of 500 GPM at 20 psi, residual. Fire hydrants shall be provided along required fire apparatus access roads and adjacent public streets. CFC Sec. 507, and Appendix B and associated Tables, and Appendix C. **Identify on the plans the location of all existing and new fire hydrants as required to comply with above mentioned code section.**

7. **Aerial Fire Apparatus Access Roads:** 1. Where required: Buildings or portions of buildings or facilities exceeding 30 feet (9144 mm) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway. 2. Width: Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925) in the immediate vicinity of any building or portion of building more than 30 feet (9144 mm) in height. 3. Proximity to building: At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572) and a maximum of 30 feet (9144mm) from the building, and shall be positioned parallel to one entire side of the building, as approved by the fire code official. CFC Sec. 503. **Aerial Apparatus Access will be required along the west side of the building, opposite Main Street. Identify this access road as well as all above required measurements on site access sheet.**

8. **Timing of installation:** When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods of protection are provided. Temporary street signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2 CFC Sec. 501.4

9. **Ground ladder access:** Ground-ladder rescue from second and third floor rooms shall be made possible for fire department operations. With the climbing angle of seventy five degrees maintained, an approximate walkway width along either side of the building shall be no less than seven feet clear. Landscaping shall not be allowed to interfere with the required access. CFC Sec. 503 and 1029 NFPA 1932 Sec. 5.1.8 through 5.1.9.2. **Identify the location of ground ladder access on the plans.**

City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	ApplicantName	DATE	PAGE
LOS	☒	☐	☒	☐	☒	B/R	pending	William Matson Architect &	11/29/2018	3 OF 4

SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION	PROJECT TYPE OR SYSTEM
3-2pkg	29,566 +		Commercial Development	Design Review

NAME OF PROJECT	LOCATION
40 MAIN OFFICES AND RESIDENCES	40 Main St Los Altos

TABULAR FIRE FLOW	REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY
			Baker, Kathy

FIRE DEPARTMENT
SANTA CLARA COUNTY

14700 Winchester Blvd • Los Gatos, CA 95032-1818
(408) 378-4010 • (408) 378-9342 (fax) • www.sccfd.org

PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

10. **Standpipes Required:** Standpipe systems shall be provided in new buildings and structures in accordance with this section. Fire hose threads used in connection with standpipe systems shall be approved and shall be compatible with fire department hose threads. The location of fire department hose connections shall be approved. Standpipes shall be manual wet type. In buildings used for high-piled combustible storage, fire hose protection shall be in accordance with Chapter 32. Standpipe systems shall be installed in accordance with this section and NFPA 14 as amended in Chapter 47. CFC Sec. 905

11. **Emergency Responder Radio Coverage:** Emergency responder radio coverage in new buildings. All new buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communication systems. Refer to CFC Sec. 510 for further requirements

12. **Construction Site Fire Safety:** All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification SI-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. CFC Chp. 33

13. **Address identification:** New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1

This review shall not be construed to be an approval of a violation of the provisions of the California Fire Code or of other laws or regulations of the jurisdiction. A permit presuming to give authority to violate or cancel the provisions of the Fire Code or other such laws or regulations shall not be valid. Any addition to or alteration of approved construction documents shall be approved in advance. [CFC, Ch.1, 105.3.6]

City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	ApplicantName	DATE	PAGE
LOS	☒	☐	☒	☐	☒	B/R	pending	William Matson Architect &	11/29/2018	4 OF 4

SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION	PROJECT TYPE OR SYSTEM
-2pkg	29,566		Commercial Development	Design Review

NAME OF PROJECT	LOCATION
40 MAIN OFFICES AND RESIDENCES	40 Main St Los Altos

TABULAR FIRE FLOW	REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY
			Baker, Kathy

40 MAIN - MIXED USE
– NOV. 8, 2018

City of Los Altos
Planning Division
(650) 947-2750
Planning@losaltosca.gov

Project. No. 2018-1108545

SUBMITTAL REQUIREMENTS
COMMERCIAL OR MULTI-FAMILY DESIGN REVIEW

APPLICATION FORM, FEE & REQUIRED MATERIALS

All items are required at time of submittal. The project will not be scheduled for a public meeting until the application has been reviewed by a planner and is deemed complete.

1. **General Application Form**

2. **Filing Fee(s)**

Application	$________
Environmental Review	$________
Public Notification ($1.00/notice) *	$________
Other:________________	$________
TOTAL	$________

Make checks payable to the City of Los Altos. Fees are not refundable.

** Notices mailed to all properties and business tenants within 500 feet of project site for the Planning Commission and City Council public meetings.*

3. **Materials Board**
   a. Initial submittal: Provide color photos on an 8.5" x 11" sheet showing roofing material, siding, applied materials (e.g. stone, brick), trim, etc., and identify manufacturer and product specifications.
   b. Once application is deemed complete: Provide product samples of proposed materials and colors on an 11" x 17" board and, if necessary, applied material mockups to illustrate the appearance of materials together.

4. **Technical Studies**
   Depending on the nature of the project, technical studies, such as a traffic impact assessment, arborist report or acoustical analysis, may be required.

5. **Climate Action Plan Checklist for New Development**

6. **Color Renderings and 3D Model**
   a. Provide a sufficient number of perspective color renderings of the proposed structure, photo simulated within the existing context of the built and natural surroundings, to represent how all elevations of the building will appear at a pedestrian scale/level.
   b. Provide a digital model (using SketchUp or a similar program) of the proposed development and adjacent buildings within the broader streetscape area that can be presented and manipulated to represent the three dimensional qualities of the proposed building within the existing context of the built and natural surroundings.

7. **Architectural Design Plans** *(see checklist below)*
   a. Initial submittal: Five (5) full-size sets (24" x 36") and five (5) half-size sets (11" x 17").
   b. Once application deemed complete: Additional half-size sets of plans will be required before each public meeting and a digital copy in .pdf format on a CD, a USB data key or emailed to the project planner.

ARCHITECTURAL DESIGN PLANS

1. **Cover Sheet**

- ☑ Vicinity Map (clear and legible)
- ☑ Table of Contents
- ☑ General Project Information (project description, general plan, zoning, property owner, design professionals, etc.)
- ☑ A summary of land development calculations including, but not limited to, site area, lot coverage, setbacks, impervious surfaces, building floor area, parking stalls (required and proposed), and, when appropriate, number of beds, students and/or dining seats
- ☑ Rendering or graphic of proposed project

2. **Site Plan** (⅛" = 1' scale)

- ☑ Subject property showing all property lines and adjacent streets
- ☑ Location of all structures on subject property
- ☐ Location and dimensions of parking, driveway, and loading areas
- ☐ Location, size, type and proposed disposition of all existing trees over four-inches in diameter
- ☐ Landscape areas, walkways, fences, retaining walls, utility areas, and trash facilities

3. **Floor Plans** (¼" = 1' scale) / 3/16" = 1'-0" - OK

- ☐ Show existing and proposed development
- ☑ Identify details such as balconies, roof gardens, cabanas, etc.

NOTE: Floor plans for single-story buildings may be shown on the site plan.

4. **Floor Area Calculation Diagram** (⅛" = 1' scale)

- ☑ Gross floor area - measured to outside edge of wall and including all space enclosed by walls (habitable space, non-habitable space, accessory structures, basements)
- ☐ Net floor area - excluding all inner courts and/or shaft enclosures (stairwells, elevator shafts, etc)
- ☐ Existing floor area of structures to be removed

5. **Building Elevations** (¼" = 1' scale)

- ☑ Building materials and design details
- ☑ Roof pitch
- ☑ Roof-mounted equipment
- ☑ New signage being proposed
- ☑ Height
- ☐ Color(s) - SAMPLES
- ☒ Fencing NA

6. ✓ **Building Cross-Sections** (¼" = 1' scale)

Provide at least two (2) cross-sections (one perpendicular from the other) taken from the highest ridge, showing existing and proposed grades, finished floor heights, wall plates, and building height measured to existing grade.

Roof Plan (¼" = 1' scale)

- ☑ Roof pitch
- ☑ Existing roof to remain and new roof area
- ☑ All rooftop mechanical equipment and screening location(s)

8. **Landscape Plan** (¼" = 1' scale)

- ☐ A conceptual planting plan that identifies all existing and proposed trees and plants
- ☐ Hardscape, walkways, fences and retaining walls
- ☐ Utility areas and trash facilities
- ☐ A calculation identifying total area of proposed hardscape and softscape
- ☐ Provide color photos of all proposed trees and evergreen screening species, along with the following information:
  - Common name
  - Anticipated height and spread at maturity
  - Average rate of growth

9. **Grading and Drainage Plan** (⅛" = 1' scale)

NOTE: The Grading and Drainage Plan shall be prepared by a registered civil engineer or a licensed architect.

- ☐ Location and elevation of benchmarks
- ☐ Elevation at street and neighboring property lines
- ☐ Pad elevation
- ☑ Finished floor elevation
- ☑ Tree location(s)
- ☐ Lot drainage pattern
- ☐ Existing and proposed contours
- ☐ Stormwater management measures to retain stormwater on site in accord with the Best Management Practices
- ☐ All existing and proposed utilities (lines, transformers, meters, etc.) and adjacent infrastructure

✓10. **Construction Management Plan**

Prepare a preliminary construction management plan that identifies anticipated truck routing and staging, construction worker parking plan (on-site and off-site) and pedestrian routing (sidewalk closures, detours, etc.). *See Construction Management Plan handout for more specific direction.*

✓11. **Streetscape Elevation**

Render proposed structure(s) in relation to buildings/development on adjoining properties. In the case of a corner lot, a streetscape of each street is required.

PUBLIC NOTIFICATION

1. **Mailed Notices** – All properties within 500 feet of the project site will receive a mailed notice of all public meetings 10-14 days before the meeting date. The Planning Division will provide an area map showing all properties within a 500-foot radius of the project site.
   NOTE: For projects in or near commercial areas, notification will also be provided to all commercial tenants within the 500-foot radius area. The applicant is responsible for providing a name and address list of all commercial tenants within the notification area in a label format approved by staff.

2. **On-Site Posting Requirement** – In addition to the mailed notices, a public notice billboard (four feet by six feet) with color renderings of the project will need to be installed at the project site at least 10 days prior to the first public meeting date. *See Public Notice Billboard handout for more specific direction.*

3. **Story Poles** – All new development projects are required to install story poles on the site at least 20 days prior to the first Planning Commission meeting. *See Story Pole handout for more specific direction.*

CITY ACTION

The project will be reviewed at public meetings before the Complete Streets Commission (CSC), the Planning Commission (PC) and the City Council (CC). CSC will hold a public meeting to provide a recommendation regarding the project's transportation amenities (vehicle, bicycle and pedestrian). The PC will hold a public meeting to review and provide a recommendation on all components of the project, and the CC will review and take a final action on the project.

In order to approve the project, the PC and CC must make specific findings on each of the following issues:

1. The proposal meets the goals, policies and objectives of the Los Altos General Plan and any specific plan, design guidelines and ordinance design criteria adopted for the specific district or area.

2. The proposal has architectural integrity and has an appropriate relationship with other structures in the immediate area in terms of height, bulk and design.

3. Building mass is articulated to relate to the human scale, both horizontally and vertically. Building elevations have variation and depth, and avoid large blank wall surfaces. Residential or mixed-use residential projects incorporate elements that signal habitation, such as identifiable entrances, stairs, porches, bays and balconies.

4. Exterior materials and finishes convey high quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, arcades and structural elements. Materials, finishes, and colors have been used in a manner that serves to reduce the perceived appearance of height, bulk and mass, and are harmonious with other structures in the immediate area.

5. Landscaping is generous and inviting, and landscape and hardscape features are designed to complement the building and parking areas, and to be integrated with the building architecture and the surrounding streetscape. Landscaping includes substantial street tree canopy, either in the public right-of-way or within the project frontage.

6. Signage is designed to complement the building architecture in terms of style, materials, colors and proportions.

7. Mechanical equipment is screened from public view and the screening is designed to be consistent with the building architecture in form, material and detailing.

8. Service, trash and utility areas are screened from public view, or are enclosed in structures that are consistent with the building architecture in materials and detailing.

40 MAIN - MIXED USE
NOV. 8, 2018

City of Los Altos
Planning Division
(650) 947-2750
Planning@losaltosca.gov

Project No. 2018-1108545

SUBMITTAL REQUIREMENTS
CONDITIONAL USE PERMIT

APPLICATION FORM, FEE & OTHER REQUIRED MATERIALS

All items are required at time of submittal. The project will not be scheduled for a public meeting until the application has been reviewed by a planner and is deemed complete.

1. **General Application**

2. ✓ **Proposed Use Description**
Provide a detailed project description of the proposed use that includes all relevant and applicable information related to the proposed use (description of business, number of employees, hours of operation, how building/site will be used, etc.).

3. **Filing Fee(s)**

Application	$ VARIANCE - $5,550 -
Environmental Review	$ DEPOSIT REQ. - SEE LETTER
Public Notification ($1.00/notice) *	$
Other:	$
TOTAL	$

Make checks payable to the City of Los Altos. Fees are not refundable.

* *Notices mailed to all properties and business tenants within 500 feet of project site for the Planning and Transportation Commission and City Council public meetings.*

4. **Project Plans** *(see checklist below)*
   - ✓ a. Initial submittal: Five (5) full-size sets (24" x 36") and five (5) half-size sets (11" x 17").
   - b. Once application is deemed complete: 14 additional half-size sets of plans and a digital copy in .pdf format on a CD, a USB data key or emailed to the project planner.

PROJECT PLANS

1. **Cover Sheet**
   - ☑ Vicinity Map (clear and legible)
   - ☑ Table of Contents (DRAWING INDEX)
   - ☑ General Project Information (project description, general plan, zoning, property owner, design professionals, etc.)
   - ☑ A summary of land development calculations including, but not limited to, site area, lot coverage, setbacks, impervious surfaces, building floor area, parking stalls (required and proposed), and, when appropriate, number of beds, students and/or dining seats

2. **Site Plan** (⅛" = 1' scale) ✓

- [x] Subject property showing all property lines and adjacent streets
- [x] Location of all structures on subject property
- [ ] Location and dimensions of parking, driveway, and loading areas (indicate surfacing material)
- [ ] Location, size, type and proposed disposition of all existing trees over four-inches in diameter
- [ ] Landscape areas, walkways, fences, retaining walls, utility areas, and trash facilities. Any special landscape features such as children's play areas must be specified;
- [x] A summary of land development calculations including site area, lot coverage allowed and proposed, total proposed impervious surface, building area, parking stalls required and proposed, and when appropriate number of beds, students of dining seats

3. **Floor Plans** (¼" = 1' scale) / 3/16" = 1'-0" - OK

- [ ] Show existing and proposed development
- [x] Identify details such as balconies, roof gardens, cabanas, etc.

NOTE: Floor plans for single-story buildings may be shown on the site plan.

4. **Building Elevations** (¼" = 1' scale)

- [ ] Building materials and design details
- [x] Roof pitch
- [x] Roof-mounted equipment
- [x] New signage being proposed
- [x] Height
- [ ] Color(s)
- [x] Fencing NA

5. **Roof Plan** (¼" = 1' scale)

- [x] Roof pitch
- [x] ~~Existing roof to remain and~~ new roof area
- [x] All rooftop mechanical equipment and screening location(s)

6. **Landscape Plan**

- [ ] Existing landscaping and trees to remain
- [ ] Proposed front yard (and exterior side yard) landscaping, street trees and hardscape improvements
- [ ] Any landscaping required for privacy and/or visual screening
- [ ] A calculation showing:
  - Total hardscape area
  - Existing softscape area
  - New softscape area.

Hardscape area includes house footprint, driveway, swimming pool and other impervious areas

PUBLIC HEARING NOTIFICATION

1. **Mailed Notices** – All properties within 500 feet of the project site will receive a mailed notice of all public meetings 10-14 days before the meeting date. The Planning Division will provide an area map showing all properties within a 500-foot radius of the project site.
   NOTE: For projects in or near commercial areas, notification will also be provided to all commercial tenants within the 500-foot radius area. The applicant is responsible for providing a name and address list of all commercial businesses within the notification area in a label format approved by staff.

2. **On-Site Posting Requirement** – In addition to the mailed notices, a meeting notice will need to be posted at the project site at least 10 days prior to the public hearing date. City staff will provide the notice along with instructions for properly posting it on the project site.

CITY ACTION

The Planning Commission and/or City Council, when required, must make specific findings on each of the following issues when considering a conditional use permit application:

1. Whether the proposed location of the conditional use is desirable or essential to the public health, safety, comfort, convenience, prosperity or welfare.
2. Whether the proposed location of the conditional use is in accordance with the following objectives of the Zoning Ordinance:
   a. To guide community growth along sound lines;
   b. To ensure a harmonious, convenient relationship among land uses;
   c. To promote a safe, workable traffic circulation system;
   d. To provide appropriate locations for needed community facilities;
   e. To promote business activities of appropriate types;
   f. To protect and enhance real property values within the City; and
   g. To conserve the City's natural beauty, to improve its appearance and to preserve and enhance its distinctive physical character.
3. Whether the proposed conditional use will comply with the regulations prescribed for the district in which the site is located and the general provisions of Chapter 1 of the Los Altos Municipal Code.
4. Depending on the proposed use, as outlined in Section 14.80.060 of the Zoning Ordinance, additional findings may need to be made.

SUBMITTING MORE THAN ONE APPLICATION

These instructions will be modified in the event that the application is submitted simultaneously with another application (e.g. design review, subdivision, variance). If the project includes multiple applications, work with Planning staff to better understand the City's submittal requirements to avoid redundancy.

40 MAIN - MIXED USE
NOV. 8, 2018

City of Los Altos
Planning Division
(650) 947-2750
Planning@losaltosca.gov

Project No. 2018-1108545

DENSITY BONUS REPORT SUBMITTAL REQUIREMENTS

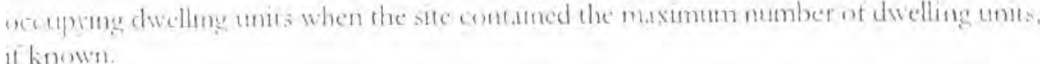
A housing development including five or more residential units may propose a density bonus in accordance with California Government Code Section 65915 et seq. ("Density Bonus Law") and the City's Affordable Housing Ordinance (Zoning Code Chapter 14.28).

Any applicant requesting a density bonus and/or any incentive(s), waiver(s), or parking reductions provided by State Density Bonus Law shall submit a Density Bonus Report as described below concurrently with the filing of the planning application for the first discretionary permit required for the housing development. The requests contained in the Density Bonus Report shall be processed concurrently with the planning application.

The Density Bonus Report shall include the following minimum information:

1. **Requested Density Bonus:**

- [x] Minimum Number of Dwelling Units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded.
- [x] Fractional Units. All density bonus calculations shall be rounded up to the next whole number including the base density, Restricted Affordable units, and the number of affordable units required to be eligible for a density bonus.
- [x] Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units, proposed number of affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.
- [x] A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.
- [x] The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
- [x] Calculation of the maximum number of dwelling units permitted by the City's zoning ordinance and general plan for the housing development, excluding any density bonus units.
- [x] Number of bedrooms in the proposed market-rate units and the proposed affordable units.
- [x] NA A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents


occupying dwelling units when the site contained the maximum number of dwelling units, if known.

- ☑ NA Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.
- NA If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and evidence that each of the requirements included in Government Code Section 65915(g) can be met.

2. **Requested Incentive(s) and Concessions:** In the event an application proposes incentives or concessions pursuant to State Density Bonus Law, to ensure that each incentive contributes significantly to the economic feasibility of the proposed affordable housing, the Density Bonus Report shall include the following minimum information for each incentive or concession requested, shown on a site plan if appropriate:
   - ☐ The City's usual development standard and the requested development standard or regulatory incentive/concession. Applicant shall identify whether each of the requested incentive(s)/concession(s) is an on-menu or off-menu request.
   - ☐ Include reasonable documentation, in a form subject to approval by the City, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing. Applicant may also be required to provide funds to cover city expenses incurred for a peer review of applicant's documentation.
   - NA If approval of mixed use zoning is proposed as an incentive, provide evidence that nonresidential land uses will reduce the cost of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning is required in order to provide for affordable rents or affordable sales prices.

3. **Requested Waiver(s):** In the event an application proposes waivers of development standards pursuant to State Density Bonus Law, the Density Bonus Report shall include the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate:
   - ☐ The City's usual development standard and the requested development standard.
   - ☐ Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the allowed densities or with the concessions and/or incentives requested.

4. **Requested Parking Reduction:** In the event an application proposes a parking reduction pursuant to Government Code Section 65915(p), a table showing parking required by the zoning ordinance and parking proposed under Section 65915(p). If an additional parking reduction is proposed under the provisions of Section 65915(p)(2) or (p)(3), evidence that the project qualifies for the additional parking reduction.

NA **Child Care Facility:** If a density bonus or incentive is requested for a child care facility, evidence that all of the requirements included in Government Code Section 65915(h) can be met.

NA **Condominium Conversion:** If a density bonus or incentive is requested for a condominium conversion, evidence that all of the requirements included in Government Code Section 65915.5 can be met.

7. **Other:** Include any other documentation, materials or fees/funds required by this Section or by the City for the purpose evaluating and/or reviewing a density bonus, incentives, parking requirements alterations, and/or waivers or any other provision.

8. **Fee:** Payment of any fee in an amount set by resolution of the City Council for staff or consultant time necessary to determine compliance of the Density Bonus Plan with State Density Bonus Law.

→ TO BE DETERMINED.

EXHIBIT 3

Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

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January 10, 2019

Jon Biggs
Director
Los Altos Community Development Department
One North San Antonio Road
Los Altos, California 94022

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs:

We represent 40 Main Street Offices, LLC (the "Applicant") in connection with the above-captioned Application for a streamlined ministerial permit for the 40 Main Street Project ("Project"), which Application was submitted to the City of Los Altos ("City") on November 8, 2018. The Project will bring 15 much-needed housing units, as well as new office space, to a site the City has long recognized as appropriate for development as part of the City's plan to establish a sense of entry to the City's Downtown area. The project will provide 15 new infill and transit-oriented dwelling units in Downtown, proximate to walkable goods and services. In addition, the City of Los Altos will be able to add 13 market-rate and two affordable units to its Regional Housing Needs Assessment compliance.

As you know, Chapter 366, Statutes of 2017, as amended ("SB 35"), requires cities to issue a streamlined ministerial permit to any housing developments that meet SB 35's qualifying objective standards. Gov. Code § 65913.4(a). If cities believe an SB 35 application conflicts with any applicable objective standards, the city is required to provide, within 60 days of submittal, "written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard." Gov. Code § 65913.4(b)(1)(A); *see also* HCD Streamlined Ministerial Approval Process Guidelines ("Guidelines"), § 301(a)(3). Otherwise, "the development shall be deemed to satisfy the objective planning standards." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).

We have reviewed your brief December 7 letter concluding that the Project is not eligible for streamlined ministerial permitting ("SB 35 Determination"), in which you do not dispute that the Project satisfies nearly all applicable SB 35 criteria, but in which you claim that that the Project is not eligible for SB 35 streamlining for two reasons: (1) because the Project "does not provide the percentage of affordable dwelling units required by the State regulations", and (2) because the Project does not meet unspecified standards related to parking. Neither of these contentions are correct, and neither provide a legally permissible basis to deny a streamlined ministerial permit. Since the City has not validly identified any SB 35 standard with which the Project conflicts, and the time to do so has now elapsed, the Project is now deemed to comply with all of SB 35's qualifying criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). As set forth below, State law requires the City of Los Altos to issue a streamlined ministerial permit for the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same).

I. The Project Qualifies for SB 35 Streamlining Because It Meets the Applicable Affordable Housing Requirement

SB 35 requires local governments to issue a streamlined ministerial permit to housing developments which provide a specified minimum percentage of units as housing affordable to lower-income households earning below 80 percent of the area median income. Gov. Code § 65913.4(a)(4). The applicable minimum percentage of affordable housing depends on several factors. *Id.* As pertinent here, the applicable percentage depends upon whether the locality submitted its latest housing production report to the Department of Housing & Community Development ("HCD") by the April 1 statutory deadline. Gov. Code §§ 65400, 65913.4(a)(4)(B)(i). HCD issued several determinations during 2018, reporting on each California jurisdiction's status at various points during the year.

The December 7 SB 35 Determination cites a January 31, 2018 HCD determination as support for the contention that the Project was required to provide 50% affordable units to qualify for streamlined ministerial permitting. But HCD's January 31, 2018 determination was not the current HCD determination on the date the Application was submitted. HCD issued a subsequent determination on June 1, 2018, which unambiguously states that as of that date the City of Los Altos was "subject to SB 35 . . . streamlining for proposed developments with at least *10% affordability*." *See* relevant excerpts from this determination attached hereto as Exhibit A (emphasis added). The June 1, 2018 determination was HCD's most current determination as of the date the Application was submitted on November 7, 2018, and "[a] locality's status on the date the application is submitted determines . . . which level of affordability (10 or 50 percent) an applicant must provide to be eligible for streamlined ministerial permitting." Guidelines, § 200(g); see also Gov. Code § 65913.4(a)(5) (SB 35 criteria are determined based on standards "in effect at the time that the development is submitted to the local government . . .."). The Applicant has confirmed directly with HCD – the agency delegated with statutory authority to implement SB 35, *see* Gov. Code § 65913.4(j) - that the 10% affordability requirement applied in Los Altos on

November 7, 2018. See e-mail attached as Exhibit B. Since the Project will provide more than 10% of its units as affordable to low-income households, the Project meets the applicable minimum percentage of units to qualify for a streamlined ministerial permit.[1]

II. The Project Meets All Applicable Objective Standards, Including All Objective Standards Related to Parking

A housing development that meets all of SB 35's other criteria is entitled to a streamlined ministerial permit as long as the development is "consistent with *objective* zoning standards . . . in effect at the time that the development is submitted." Gov. Code § 65913.4(a)(5) (emphasis added). The statute defines "objective" standards extremely narrowly; a city may only apply "standards that involve no personal or subjective judgment by a public official and are 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 before submittal." Gov. Code §65913.4(a)(5); *see also* Guidelines, § 102(p) (same). A local government may not apply any standards that do not qualify as "objective" under this narrow definition, and a local government cannot require an SB 35 applicant to meet any discretionary or subjective criteria typically required in an application for a discretionary permit. Guidelines, §§ 300(b)(1) & 301(a)(1). "Determination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." Guidelines, § 300(b)(8).

If a local government believes that an application for a project with less than 150 housing units conflicts with any objective standards, the local government must "provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard." Gov. Code § 65913.4(b)(1); *see also* Guidelines, § 301(a)(3). If "the local government fails to provide the required documentation . . ., the development shall be deemed to satisfy the objective planning standards . . . ." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C) (same).

It is not the Applicant's burden to establish the Project's consistency with applicable objective standards; it is the City's burden to establish the contrary. *See* Gov. Code § 65913.4(b)(1). Guidelines, § 301(a)(3). Notwithstanding this, the Application contained a detailed submission affirmatively demonstrating that the Project is, in fact, consistent with every one of the City's

[1] We further note that, irrespective of any determinations issued by HCD, SB 35's statutory requirements are clear. A locality is subject to the 10% requirement if "[t]he locality did not submit its latest production report to . . . [HCD] by the time period required by Section 65400 [of the Government Code] . . .." Gov. Code § 65913.4(a)(4)(B)(i). Section 65400 of the Government Code requires all local governments to submit an annual housing report no later than April 1 of each year, reporting on the housing production completed in the prior calendar year. The City of Los Altos submitted its "latest production report" (the report documenting on housing production during the 2017 calendar year) after the April 1, 2018 statutory deadline. Since it remains the case that the City "did not submit its latest production report to the department by the time period required by Section 65400," the City will remain subject to the 10% requirement until and unless it submits its production report documenting its 2018 housing production by the April 1, 2019 statutory deadline. For this additional reason, the Project meets the applicable affordable housing requirement for SB 35 streamlining.

applicable objective zoning standards as well as all of SB 35's other qualifying criteria. The December 7 SB 35 Determination does not dispute that the Application satisfies all of the applicable SB 35 criteria in Gov. Code § 65913.4(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), (a)(8), (a)(9) and (a)(10), and in Guidelines, Article IV, §§ 400, 401, & 403. The City's SB 35 Determination also does not dispute that the Project satisfies all of the City's numerous objective zoning standards other than those related to parking.

As for parking, the City's December 7 SB 35 Determination states only that the plans "do not provide the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking." This cursory statement falls well short of the statutory requirement to "provide the development proponent written documentation of *which standard or standards* the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard." Gov. Code § 65913.4(b)(1) (emphasis added). The determination does not even cite the code section or sections the City believes the Project to violate and provides no explanation of the reason the Project conflicts with the unidentified standards. Since the City has not provided the "required documentation" of "which standard or standards" the City believes that the Project conflicts within, and since the 60-day deadline to do so has now elapsed, the Project is now deemed to comply with all such standards as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C).

With this said, and without in any way waiving the Applicants' rights to maintain that the Project is now legally deemed consistent with all applicable objective standards, the following discussion demonstrates that the Project does, in fact, meet all applicable objective zoning standards related to parking spaces and access/egress to off-street parking.

A. Compliance with Numeric Parking Standards

We refer you again to Attachment 2 of the Project application material submitted November 8, 2018, and in particular to the portions of the table addressing sections 14.74.080, 14.74.100, and 14.74.200 of the Los Altos Municipal Code ("LAMC"). This table demonstrates compliance with all objective parking standards and requirements, as they are modified by SB 35 pursuant to Gov. Code § 65913.4(d)(2). SB 35 modifies a local agency's maximum parking standards as applied to an SB 35 Application, providing that a local agency "shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." Gov. Code § 65913.4(d)(2).

As set forth in the original application, the Project, which contains both non-residential and residential components, meets all applicable zoning requirements for each component. For the non-residential component of the Project, there is no applicable parking requirement. Under the City's zoning regulations for "office uses" in this zoning district:

> For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking

district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.

LAMC § 14.74.100. As shown in the Project's architectural drawing package, since the Project participates in the public parking district, and since the 5,724-square foot office area (and even 1,271-square foot residential floor area) do not exceed the lot area of 6,995 square feet, no parking spaces are required for the non-residential floor area.

For the residential portion of the Project, the City of Los Altos' numeric zoning standard in Section 14.74.080 of the Zoning Ordinance does not apply pursuant to SB 35. Rather, the SB 35 statutorily required standard of one parking space per dwelling unit applies per Government Code § 65913.4(d)(2). The Project exceeds this standard, because it provides 18 parking spaces, and only 15 dwelling units are proposed (with one unit being exempt due to the property's participation in the parking district).

B. Compliance with Objective Parking Access and Egress Standards

As demonstrated in the preceding section and the original Application, the Project complies with all of the City's objective standards with respect to off-street parking.

The SB 35 Determination suggests that the Project does not meet an objective zoning standard related to adequate access/egress to off-street parking, but the SB 35 Determination does not cite any code section governing access and egress – and certainly not any code section with objective language – with which the Project fails to comply. The SB 35 Determination's reference to "adequate" access and egress is irrelevant to an SB 35 application, since determining "adequacy" is a subjective determination that does not qualify as "objective" under SB 35's definition. Gov. Code § 65913.4(a)(5); Guidelines, § 102(p); *see also Honchariw v. County of Stanislaus,* 200 Cal. App. 4th 1066, 1076 (2011) ("suitability" is a "subjective" criteria that is inapplicable when state law only permits application of "objective" standards).

It has been the City's demonstrated practice to allow projects such as 40 Main Street to obtain access from the City's downtown public parking areas. As a result of the Project one space in the public parking plaza may be affected by the Project but one parking space will be made available for the public's use on Main Street where the property's current driveway exists.[2]

[2] As discussed *infra* at Part V, the City's SB 35 Determination was also accompanied by a separate "Notice of Incomplete Application" and attachments describing requirements that the City believes *would* apply *if* the Applicant were to submit a discretionary use permit application rather than an SB 35 streamlined ministerial application. The "Notice of Incomplete Application" letter and attachments are not relevant to the City's SB 35 Determination, but even if they were, they would not provide any valid reason to deny the Applicant's SB 35 Application. Although the "Notice of Incomplete Application" letter and its attachments contain some references to parking (for example in notes 3, 18 and 19), none of these references cite any *objective* requirements related to parking spaces or required access and egress to parking. The requests in note 3, for example, are found neither in any of the City's objective standards, nor in the Parking Standards Exhibit A.

III. The City Has Not Identified any Objective Standard Precluding an SB 35 Application on this Site, but the City Can Suspend Processing of the Prior Application While the City Completes the Review of the SB 35 Application

The December 7 SB 35 Determination claims that because two applications have been submitted for the site, one application must be withdrawn. The letter cites no legal authority for this proposition. As set forth above, to the extent the City believed there to be an objective City standard that precluded the Applicants from submitting an SB 35 Application on this site, the City was required to identify that specific standard within 60 days of the Application submittal. *See* Gov. Code § 65913.4(b)(1). However, to avoid any unnecessary disputes, the Applicant is willing to authorize the City to suspend any processing or other activities planned for the previously submitted application during the time that the November 8 SB 35 Application remains under submission.

IV. The Housing Accountability Act Also Requires the City to Approve the Project

As stated in the Application, we also note that, in addition to being subject to SB 35, the Project is also subject to the Housing Accountability Act ("HAA" or "Act"), because more than two-thirds of the Project's square footage is designated for residential use. Gov. Code § 65589.5(g)(2). Pursuant to the Housing Accountability Act, "[w]hen a proposed housing development project complies with applicable, objective general plan, zoning and subdivision standards and criteria," the City *may not* disapprove the project or reduce its density unless the City makes findings, supported by a preponderance of the evidence, that the project would have an unavoidable impact on public health or safety that cannot be mitigated in any way other than rejecting the project or reducing its size. Gov. Code § 65589.5(j). Under recent reforms to the HAA, the question of whether a project is consistent with objective standards is resolved under a standard of review that is extremely deferential to the applicant. *See* Gov. Code § 65589.5 (f)(4) ("a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would ***allow a reasonable person to conclude*** that the housing development project or emergency shelter is consistent, compliant, or in conformity") (emphasis added); *see also* Gov. Code § 65589.5(a)(2)(L) ("It is the policy of the state that. . . [the HAA] should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing").

As set forth above, the Project complies with all applicable objective standards under any standard of review. But at the very least, it is clear that it is possible for a "reasonable person to conclude" that the project complies with the City's objective standards. Gov. Code § 65589.5 (f)(4). Accordingly, the HAA "imposes 'a substantial limitation' on the government's discretion to deny a permit." *N. Pacifica, LLC. v. City of Pacifica* 234 F. Supp. 2d 1053, 1059 (N.D. Cal. 2002), aff'd sub nom. *N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478 (9th Cir. 2008). Before the City could legally reject the Project or reduce its density, the City would be required to demonstrate, based on a preponderance of the evidence, that the project would cause "a significant, quantifiable, direct, and unavoidable impact" on public health or safety, "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(j)(1)(A). The City would be required to further affirmatively prove that there are no feasible means of addressing such "public health" and "safety" impacts other than rejecting or reducing the size of the Project. Gov. Code § 65589.5(j)(1)(B). The Legislature recently re-affirmed its intent that the conditions allowing a project to be rejected on this ground should "arise infrequently." Ch. 243, Stats. 2018 (A.B. 3194) (amending Gov. Code § 65913.4(a)(3)). Here, there is no evidence – to say nothing of the required *preponderance* of the evidence – that the Project would have any impact at all on public health or safety. Even if there were, there is no evidence that any such impacts are incapable of mitigation. Therefore, any improper denial of the Project would violate the HAA.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5 (j), (k). Any local government that disapproves a housing development project must now meet the more demanding "preponderance of the evidence" standard – rather than the more deferential "substantial evidence" standard – in proving that it had a permissible basis under the Act to reject the project. Gov. Code § 65589.5 (j)(1). As recently reformed, the HAA makes attorney's fees presumptively available to prevailing plaintiffs regardless of whether the project contains 20% affordable housing. Gov. Code § 65589.5(k)(1)(A). If the City fails to prove in litigation that it had a valid basis to reject the project, the court *must* issue an order compelling compliance with the Act, and any local government that fails to comply with such order within 60 days *must* be fined a minimum of $10,000 per housing unit and may also may be ordered directly to approve the project. Gov. Code § 65589.5(k). The HAA further provides that if a local jurisdiction acts in bad faith when rejecting a housing development, the applicable fines must be multiplied by five. *Id.*

V. The "Notice of Incomplete Application" Accompanying the SB 35 Determination Is Irrelevant to the SB 35 Application

The December 7 SB 35 Determination notes that if the Applicant "elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice" (emphasis added), the Applicant would need to submit certain additional materials required for discretionary applications such as for a Conditional Use Permit or discretionary Design Review. The City's SB 35 Determination is accompanied by a separate letter labelled "Notice of Incomplete Application" ("NOIA"), and related attachments, which identify submittal requirements that *would* apply *if* the Applicant were to elect to apply for a discretionary permit to develop a project on the 40 Main Street site. The Applicant's November 8 SB 35 Application does not seek approval of the Project through any of these discretionary permit avenues, and none of these requirements apply to the current SB 35 Application.

We do not understand the City to suggest that any of these materials are necessary for consideration of the November 8 SB 35 Application (and the City's SB 35 Letter cannot possibly be read to suggest that they are). But in any event, the law is clear that consideration of an SB 35 application must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution," Gov. Code § 65913.4(c). Since the City has not published any application materials for SB 35 applications, the City cannot require SB 35 applicants to submit any additional material

as long as the Application contains "sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards." Guidelines, § 301(b)(1)(A). Moreover, most of the notes, comments, and requests for further plans and revisions to plans are the type of comments and questions that the City addresses *after* entitlement review is completed, such as during the plan check process. Consistent with the City's processes for processing discretionary permit applications, any arguable need to address these issues cannot be a ground for denying a streamlined ministerial permit. "A locality may not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals." Guidelines, § 300(b)(2).

Since the City has not published application materials for SB 35 applications, the Applicants submitted application materials and related submissions typically required for a discretionary Use Permit, as well as Use Permit fee in the amount of $5,350. But as the City correctly notes in the December 7 SB 35 Letter, a Use Permit application is, in fact, legally distinct from an SB 35 Application. We therefore respectfully request that the City confirm it will charge a fee for this application consistent with a fee for a ministerial conformance process such as a Zoning Approval, and to refund to the Applicant the difference between that amount and the submitted fee.

Although not required to do so, and although the City's SB 35 Determination is clear that none of the material in the NOIA relates to the City's SB 35 Determination, the Project team has reviewed the NOIA and all attachments, and can confirm that none of the comments or requests in the NOIA relate to any objective standard for which compliance must be demonstrated as a precondition to issuance of an SB 35 streamlined ministerial permit. None of the comments or requests for design requests relate to the Project's demonstration of compliance with the numeric standards or other physical standards of the City of Los Altos.

With this said, in the interest of being responsive to the comments of City agencies, the Applicant is able and willing to provide, purely for informational purposes, additional information about the Project as well as responses to some of the comments received on the Application. Please note that this letter, and these submissions, are not in any sense a re-submission or new application for the Project. The purpose of this letter is to explain why the November 8, 2018 Application sufficed to qualify the Project for a streamlined ministerial permit, and the purpose of these additional responses is to voluntarily provide additional information and responses to comments on the Application by City agencies. Specifically, understanding the importance of fire safety and accessibility, the Project architect has reviewed and addressed all comments made by the Fire Department and the Building Division. *See* Exhibit C. These design issues can and will be addressed in post-entitlement plan check review.

The Project team can also provide a courtesy response to the "Density Bonus Report Submittal Requirement" document accompanying the NOIA. This document is a requirement of the City of Los Altos for discretionary project applications. However, to avoid any question about the Project's entitlement to Density Bonus Law bonuses, modifications, waivers, concessions and incentives, the original SB 35 application submitted on November 8, 2018 included as Attachment D a report following the format and providing the information (coupled with the Applicant

Statement's Project Description) that is required in the City's Density Bonus Report Submittal Requirements. The Project team has reviewed each of the boxes (all three categories), with an emphasis on the unchecked items on the City's "Density Bonus Report Submittal Requirement" document. Every item, including those that are left unchecked in the City's letter, have been addressed in original Project Description and the original Attachment D. Please continue to reference those documents with any questions you may have with respect to the Project's entitlement to a density bonus with the appropriate waivers/modifications and incentives/concessions.[3]

VI. The City Is Required to Complete All Public Oversight over the Application, and to Issue a Streamlined Ministerial Permit, No Later than February 6

As set forth above, the City is required to complete any design review or other public oversight over the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same). However, any such oversight or design review must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction," and this review "shall not in any way inhibit, chill, or preclude the ministerial approval" required by SB 35. Gov. Code § 65913.4(c); *see also* Guidelines, § 301(a)(2)(B) ("Design review or public oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval provided by these Guidelines or its effect"). And as set forth above, the Project is now deemed to comply with all of SB 35's qualifying objective criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). If, consistent with these limitations, the City intends to conduct any additional public oversight or design review over the Project, please

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[3] Please note that some provisions of the City's "Density Bonus Law Submittal Requirements" document, and note 7 of the NOIA, are out of date and inconsistent with current State law. The State Density Bonus Law provides that "[a] local government shall not condition the submission, review, or approval of an [Density Bonus Law] application . . . on the preparation of an additional report or study that is not otherwise required by state law." Gov. Code § 65915(a)(2), and that the *City* "shall bear the burden of proof for the denial of a requested concession or incentive." Gov. Code § 65915(d)(4). Effective in 2017, the Legislature amended the Density Bonus Law specifically to eliminate the authority of cities to reject a requested concession or incentive on the grounds that "[t]he concession or incentive is not required in order to provide for affordable housing costs," Stats.2016, ch. 758 (A.B.2501), § 1. The currently operative text of the law only authorizes the City to reject the requested concession if the *City* demonstrates that "[t]he concession or incentive does not result in identifiable and actual cost reductions." *Id.* The purpose of this amendment was to foreclose the exact documentation demands made in the City's submittal requirement documents. *See* Assem. Com. on Housing & Community Development, Floor Analysis of Assembly Bill No. 2501 (2015-2016 Reg. Sess.), August 30, 2016, at p. 4 (legislative amendments were intended to respond to "local governments [which] interpret . . . [the previously operative] language to require developers to submit pro formas"); *see also* "Policy White Paper: City of Santa Rosa, Density Bonus Ordinance Update", *available at* https://srcity.org/DocumentCenter/View/18475/Density-Bonus-Policy-White-Paper, at p. 45 ("amendments adopted through AB 2501 are intended to presume that incentives and concessions provide cost reductions, and therefore contribute to affordable housing development").

inform us and the Applicant of the type of public oversight or design review that the City expects to conduct.

VII. Conclusion

Based on the foregoing, we hope and expect that we or the Applicants will receive information about any remaining design review or public oversight over the Project, and that the Applicants will receive the streamlined ministerial permit required by State law, no later than February 6. In the hopefully unlikely event that the City intends not to meet the requirements of State law outlined above, please be advised that we have been retained by the Applicant to explore all legal remedies provided by law to enforce the requirements of California housing law. If you would like to discuss these or other matters, please feel free to contact me at (415)743-6900.

Sincerely,

HOLLAND & KNIGHT LLP

By: Daniel R. Golub

Exhibit A

SB 35 Statewide Determination Summary

Cities and Counties Subject to SB 35 Streamlining Provisions

When Proposed Developments Include ≥ 10% Affordability

When jurisdictions have insufficient progress toward their Above Moderate income RHNA and/or have not submitted the latest Housing Element Annual Progress Report (2017), these jurisdictions are subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

These conditions currently apply to the following 338 jurisdictions:

	JURISDICTION
91	FORT JONES
92	FORTUNA
93	FOUNTAIN VALLEY
94	FOWLER
95	FRESNO COUNTY
96	GARDEN GROVE
97	GLENN COUNTY
98	GONZALES
99	GRAND TERRACE
100	GRASS VALLEY
101	GREENFIELD
102	GRIDLEY
103	GUADALUPE
104	GUSTINE
105	HALF MOON BAY
106	HANFORD
107	HAWAIIAN GARDENS
108	HAYWARD
109	HEMET
110	HERMOSA BEACH
111	HIDDEN HILLS
112	HIGHLAND
113	HOLTVILLE
114	HUMBOLDT COUNTY
115	HUNTINGTON BEACH
116	HUNTINGTON PARK
117	HURON
118	IMPERIAL
119	IMPERIAL COUNTY
120	INDIAN WELLS
121	INDUSTRY
122	INGLEWOOD
123	INYO COUNTY
124	IONE
125	IRWINDALE
126	ISLETON
127	JACKSON
128	JURUPA VALLEY
129	KERMAN
130	KERN COUNTY

	JURISDICTION
131	KINGS COUNTY
132	KINGSBURG
133	LA CANADA FLINTRIDGE
134	LA HABRA
135	LA HABRA HEIGHTS
136	LA MIRADA
137	LA PALMA
138	LA PUENTE
139	LA QUINTA
140	LA VERNE
141	LAKE COUNTY
142	LAKEPORT
143	LANCASTER
144	LASSEN COUNTY
145	LATHROP
146	LAWNDALE
147	LEMOORE
148	LINDSAY
149	LIVE OAK
150	LIVINGSTON
151	LODI
152	LOMA LINDA
153	LOMPOC
154	LONG BEACH
155	LOOMIS
156	LOS ALAMITOS
157	LOS ALTOS
158	LOS ALTOS HILLS
159	LOS ANGELES COUNTY
160	LOS BANOS
161	LOYALTON
162	LYNWOOD
163	MADERA
164	MANHATTAN BEACH
165	MANTECA
166	MARICOPA
167	MARINA
168	MARIPOSA COUNTY
169	MARTINEZ
170	MARYSVILLE

	JURISDICTION
171	MAYWOOD
172	MCFARLAND
173	MENDOCINO COUNTY
174	MENDOTA
175	MENIFEE
176	MERCED
177	MERCED COUNTY
178	MILLBRAE
179	MODESTO
180	MODOC COUNTY
181	MONTAGUE
182	MONTCLAIR
183	MONTEBELLO
184	MONTEREY
185	MONTEREY COUNTY
186	MONTEREY PARK
187	MORENO VALLEY
188	MORRO BAY
189	MOUNT SHASTA
190	MURRIETA
191	NATIONAL CITY
192	NEEDLES
193	NEVADA CITY
194	NEWARK
195	NEWMAN
196	NORCO
197	NOVATO
198	OCEANSIDE
199	OJAI
200	ONTARIO
201	ORANGE
202	ORANGE COVE
203	ORLAND
204	OROVILLE
205	OXNARD
206	PACIFIC GROVE
207	PACIFICA
208	PALM DESERT
209	PALMDALE
210	PALOS VERDES ESTATES

SB 35 Determination for the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, and Sonoma; and all cities within each county

These jurisdictions are in the First Half Reporting Period, including 3 years (2015-2017 APRs) of an 8-year planning period. ***Less than 37.5% permitting progress toward 5th Cycle regional housing needs assessment (RHNA) for an income category is considered insufficient progress.***

Jurisdictions with insufficient progress toward Above-Moderate RHNA are subject to SB 35 streamlining for developments with 10% affordability or above. Jurisdictions with insufficient progress toward Lower RHNA (Very Low and Low) are subject to SB 35 streamlining for developments with 50% affordability or above.

(Note: Jurisdictions are automatically subject to SB 35 streamlining provisions when latest Annual Progress Report (2017) Not Submitted)

COUNTY	JURISDICTION	VLI % COMPLETE	LI % COMPLETE	MOD % COMPLETE	ABOVE MOD % COMPLETE
SAN MATEO	SOUTH SAN FRANCISCO	14.2%	1.4%	8.9%	57.2%
SOLANO	SUISUN CITY	0.0%	0.0%	0.0%	32.8%
SANTA CLARA	SUNNYVALE	5.4%	2.3%	8.5%	69.7%
MARIN	TIBURON	0.0%	0.0%	0.0%	57.9%
ALAMEDA	UNION CITY	0.0%	0.0%	131.8%	18.0%
SOLANO	VACAVILLE	4.9%	19.4%	307.5%	92.2%
SOLANO	VALLEJO	0.0%	0.0%	0.0%	13.2%
CONTRA COSTA	WALNUT CREEK	7.0%	4.5%	4.7%	57.1%
SONOMA	WINDSOR	0.0%	0.0%	1.5%	38.3%
SAN MATEO	WOODSIDE	52.2%	15.4%	13.3%	154.5%
NAPA	YOUNTVILLE	25.0%	50.0%	300.0%	175.0%
Alameda County	NEWARK	No 2017 Annual Progress Report			
Contra Costa County	MARTINEZ	No 2017 Annual Progress Report			
Contra Costa County	RICHMOND	No 2017 Annual Progress Report			
San Mateo County	ATHERTON	No 2017 Annual Progress Report			
Santa Barbara County	GUADALUPE	No 2017 Annual Progress Report			
Santa Barbara County	SANTA BARBARA	No 2017 Annual Progress Report			
Santa Barbara County	SOLVANG	No 2017 Annual Progress Report			
Santa Clara County	LOS ALTOS	No 2017 Annual Progress Report			
Solano County	RIO VISTA	No 2017 Annual Progress Report			

Exhibit B

From: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>
Sent: Friday, January 4, 2019 3:51 PM
To: Mark Rhoades <mark@rhoadesplanninggroup.com>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: RE: Los Altos

Yes, on November 8, 2018, Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

From: Mark Rhoades <mark@rhoadesplanninggroup.com>
Sent: Friday, January 4, 2019 3:47 PM
To: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: Los Altos

Melinda,

On November 8, 2018, we submitted an SB 35 application for a proposed project in the City of Los Altos. Can you confirm that on November 8, 2018, the City of Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability? As of November 8, 2018, HCD's most recent "SB 35 Determination Summary" was the CA HCD determination issued on June 1, 2018, which identifies Los Altos as subject to streamlining for projects with at least 10% affordability on page 3.

Thank you,

****

This email and any files attached are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please notify the sender immediately. This email and the attachments have been electronically scanned for email content security threats, including but not limited to viruses.

Exhibit C

ATTACHMENT 4b

January 7, 2019

Community Development Department
City of Los Altos
One North San Antonio Road
Los Altos, California 94022
Attention: Jon Biggs

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10; SB 35 Determination
Additional Specific Project Comments

Dear Jon Biggs,

40 Main St.

1. Parking requirements – contrary to staff comments the project meets parking requirements set forth in SB 35 – All of the information was provided in the initial set of drawings.
   a. Los Altos parking code 14.74.100 exempts the first 100% of FAR for projects which participated in the public parking district (40 Main is a participant in the public parking district), therefore the 5,724 square feet of first floor office space is exempt from providing any parking, additionally 1,226 square feet of second floor residential (equivalent to one unit) is also exempt from any parking requirements.
   b. Upper level residential units – SB 35 is very specific about the required parking for residential units. Minimum for SB 35 is 1 car per unit with no guest parking required. However, van accessible parking is required to be on-site. Our project includes 2 levels of underground parking providing 18 parking spaces where only 14 (15 minus 1 per 14.74.100) parking spaces are required. Of the 18-parking spaces provided 2 are van accessible. Each floor is accessed by a car elevator platform.

2. Fire access – required fire access and dimensional requirements for the same are being met on both Main Street at the front of the building and the Plaza Ten parking lot driveway at the rear of the building.

3. All other fire department comments are noted and will be specified at plan check.

4. Onsite handicap accessible parking (ADA) – on site ADA parking requirements are met by providing 2 van accessible parking spaces on site including required clear head height of any obstruction at 8'2".

Sincerely,

Bill Maston
Project Architect

EXHIBIT 4

Community Development Department
One North San Antonio Road
Los Altos, California 94022-3087

February 6, 2019

Daniel R. Golub, Esq.
Holland & Knight
50 California Street, Suite 2500
San Francisco, CA 94111

Daniel.Golub@hklaw.com

Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10

Dear Mr. Golub:

This letter responds to your letter, dated January 10, 2019 and received by the City on January 17, 2019 (the "January Letter") regarding the above-referenced project (the "Project") and application (the "Application") for a streamlined ministerial permit pursuant to Government Code 65913.4, *et seq.*, "(SB 35") and a density bonus request to increase the maximum number of dwelling units on the Project site and concessions/waivers to the City's zoning requirements (site development standards found in Title 14, Zoning of the Los Altos Municipal Code.) at 40 Main Street, Los Altos, California.

As you know, Mr. Ted Sorenson and Mr. William Maston (the "Applicant") submitted the Application on November 7, 2018. On December 7, 2018, the City timely provided a thorough and detailed letter (the "Determination Letter") describing where the application was incomplete and the information needed to enable the City to process the application. As part of the Determination Letter, the City determined that the Project did not qualify for streamlined permitting project under SB 35.

In summary, the City believes its Determination Letter appropriately, and in good faith fully, responded to the Application and determined that the Project did not qualify to be processed under SB 35. The Determination Letter provided, to the fullest extent feasible in light of the information contained in the Application, an explanation of, and detailed documentation to demonstrate, inconsistencies between the Application and applicable City standards for the Project. In accordance with and, as contemplated by, SB 35 and the State's Streamlined Ministerial Approval Process Guidelines (the "Guidelines"), dated November 29, 2018, the City reviewed the Application to determine whether or not it contained all materials required by the City. The City found that the Application **did not contain all materials required by the City and specified in detail the additional materials necessary for the City to evaluate the Application.** (*See* Guidelines Sec. 301(b), p. 11).

The City is fully aware of its responsibilities to timely and fully evaluate project applications under SB 35. However, SB 35 does not obviate the need for the City to evaluate project applications based upon full and accurate information. If it were to authorize and pursue streamlined approval of the Project without the necessary information, the City would risk violating a host of its other legal obligations, including those found in the Density Bonus law, the California Environmental Quality Act, and State planning and zoning laws and other laws and regulations.

As demonstrated by the Determination Letter, the Application did not contain sufficient information to enable the City to make a meaningful and lawful determination that the Project is eligible for streamlined review under SB 35. As a result, **based upon the information provided to date, the City *finds and determines that the Project is not eligible for issuance of a streamlined ministerial permit. The City will consider any request the Applicant may choose to submit to enable a determination of the Project's SB 35 eligibility or otherwise process the Application if and when Applicant provides the additional necessary information.***

Below please find the City's response to specific points raised in your January Letter:

1. IN ACCORDANCE WITH SB 35, THE DETERMINATION LETTER SPECIFIED OBJECTIVE STANDARDS IN EXISTING CITY CODE TO IDENTIFY LACK OF COMPLIANCE WITH SB 35 REQUIREMENTS

Among the extensive criteria a project must meet to qualify for streamlined review under SB 35 are the requirements that the project meet specific affordability requirements and be "consistent with objective zoning standards and objective design review standards in effect at the time the [application] is submitted to the local government" for consideration (Gov. Code Section 65913.4(a)(5). With respect to the affordability requirements, the State has continued to develop and evolve its standards in this area over the past year since SB 35 became effective. As a result, the City's initial review relied on outdated information that a fifty percent (50%) affordability requirement would apply. However, at this juncture, the City acknowledges that, at the time of the Application submittal, a ten percent (10%) affordability requirement was required to be met; therefore, the Application was subject to a ten percent (10%) standard. Notably, even though a ten (10%) standard applies to the Application, under current State standards all new applications in Los Altos are again required to meet a fifty percent (50%) affordability standard to qualify for SB 35 streamlining.

With respect to a project's consistency with objective standards, logic dictates, and the Guidelines suggest, that a city can only make a meaningful determination if a submittal contains reasonably sufficient information to enable the city to measure a project's consistency with such standards. Here, consistent with the Guidelines, upon receipt of the application, the City reviewed the Application to determine if the Application contained sufficient information for a reasonable person to determine whether the proposed development is consistent, compliant, or in conformity with objective standards." (See Guidelines 301(b)(1)(A)). Recognizing that the Application did not contain sufficient information, the Determination Letter attached a request for additional information listed in the "Notice of Incomplete Application," generated by the City's Engineering and Planning Divisions.

The Notice of Incomplete Application clearly listed the deficiencies of the Application in accordance with requirements of the Permit Streamlining Act and all other applicable legal requirements. The Determination Letter, together with the Notice of Incomplete Application, provided express, detailed and extensive notice of the Application's shortcomings and invited submittal of additional information to enable the City to review and process the Application. However, none was forthcoming. Instead of providing the requested information and working with the City to develop information necessary for the City to evaluate the Application and to determine the Project's eligibility for SB 35 streamlining, the Applicant chose to wait for over a month without any substantive interaction. Instead, the Applicant opted to submit the January Letter asserting legal arguments and demanding streamlined approval.

As described in the Determination Letter and the Notice of Incomplete Application, a host of information was and still is needed to complete the Application and enable a meaningful review of the Application to determine ***whether*** it complies with City's objective development standards. This includes, among other things, information addressing the following issues:

a. The driveway entrance along the parking plaza will affect up to 2 parking spaces, which is not consistent with objective City standards (See Note 18)

b. Parking circulation is not sufficiently presented to determine whether it is consistent with objective City standards, i.e. How/where will the vehicles queue while waiting for the mechanical lift system to go into the underground parking area? (See Note 19)

With respect to parking access and egress standards, your January Letter asserts that the Project complies with all of the City's objective standards with respect to off-street parking. However, without the information cited in the Determination Letter and the Notice of Incomplete Application, the City simply lacks the information necessary to determine consistency with these and other applicable City standards

2. THE APPLICATION FAILED TO PROVIDE REQUIRED INFORMATION FOR COMPLIANCE WITH CITY DENSITY BONUS ORDINANCE:

As noted above, the Application seeks more than a streamlined ministerial approval; it also seeks density bonus units and concessions/waivers to site development standards.

The City recognizes that the SB 35 evaluation of a Project's consistency with objective standards is exclusive of additional density or concessions, incentives or waivers of development standards granted under the State Density Bonus law, Gov. Code Sec. 65915, *et seq.*, and the City's density bonus ordnance, Los Altos Municipal Code section 14.28.040. However, SB 35 does not obviate the need for the City to evaluate and apply the requirements of State Density Bonus law and the City's density bonus ordinance. Under those provisions, the City must evaluate requests for concessions, incentives or waivers to determine if the standards specified in State law and City ordinances require denial of the request. These standards include critical considerations regarding public health and safety, which the City must have sufficient information to seriously evaluate. For example, both the State Density Bonus law and the City's density bonus ordinance require an evaluation of whether requested concessions or incentives will result in identifiable and actual cost reductions to provide for affordable housing. The City may deny the request if it makes findings that the concession or incentive does not provide this benefit or if it would have an unmitigable specific, adverse impact upon public health and safety or the physical environment, (see Gov. Code Sec. 65915). Absent the information necessary to make this crucial evaluation, the City cannot reasonably evaluate, let alone grant streamlined ministerial approval of, either the Applicant's request for density bonus incentives and concessions or approval of the Project.

Here, there is insufficient information provided to demonstrate or support the need for the requested concessions and waivers. The Determination Letter requested additional information necessary for this critical evaluation, and, to date, such information has not been provided. If the Applicant intends to proceed in good faith with the Application, the City again refers the Applicant to the Notice of Incomplete Application and urges the submittal of the additional information necessary to appropriately evaluate the Project and reach a determination on whether the project meets the criteria for density bonus waivers and concessions. As noted in the Notice of Incomplete Application, this includes, but is not limited to, the following:

a. Provide circled items from the Submittal requirements for Commercial or Multi-Family Design Review list.

b. Provide circled items from the Density Bonus Report Submittal Requirements list.

3. CONCURRENT APPLICATIONS

As staff noted in the Determination Letter, there are no legal paths to allow for the concurrent processing of two development applications for the same site. As a result, the City reiterates its request that one or the other application be withdrawn so that there is only one application in process.

4. **HOUSING ACCOUNTABILITY ACT**

The January Letter asserts that the Housing Accountability Act (Gov. Code Section 65589.5) (the "HAA") also "requires the City to approve the Project." Although the City fully supports the development of housing and, affordable housing in particular, the HAA does not apply. The HAA establishes requirements for local governments' consideration and approval of housing development based upon objective development standards in place at the time a project application is determined or deemed complete. As noted above, however, the Application is not yet complete. The City timely identified extensive and substantial information necessary for the Application to be deemed complete, but to date the Applicant has failed to provide sufficient additional information that was requested. As a result, the HAA does not apply and does not dictate anything with respect to Project approval at this time.

5. **CONCLUSION**

In conclusion, the City believes the Determination Letter appropriately responded to the Application submittal. The City provided detailed documentation to demonstrate conflicts between the applicant's submittal and applicable City zoning standards required for compliance with SB 35, and requested additional information concerning the City's adopted density bonus regulations.

The City is happy to continue its review of the project once the additional application information and studies are submitted. Further, the City is also happy to evaluate the Project's eligibility for streamlined review in accordance with SB 35 at that time.

Please feel free to contact me if you would like to set up a meeting with staff to discuss the submittal requirements. We look forward to working with you to move forward with a complete application for the Project.

Jon Biggs, City of Los Altos
Community Development Director

cc: **City Attorney**

EXHIBIT 5

From: Maine, Michelle L (SFO - X56907)
Sent: Thursday, January 10, 2019 1:07 PM
To: Golub, Daniel R (SFO - X56976)
Subject: FW: Delivery Confirmation for Control # 3325464

Michelle Maine | Holland & Knight
Sr Legal Secretary
Holland & Knight LLP
50 California Street, Suite 2800 | San Francisco CA 94111 Phone 415.743.6907 | Fax 415.743.6910
michelle.maine@hklaw.com | www.hklaw.com

-----Original Message-----
From: csr@westernmessenger.com <csr@westernmessenger.com>
Sent: Thursday, January 10, 2019 12:37 PM
To: Maine, Michelle L (SFO - X56907) <michelle.maine@hklaw.com>
Subject: Delivery Confirmation for Control # 3325464

WESTERN MESSENGER

ATTN: MICHELLE

CTRL: 3325464 ORDER DATE: 1/10/19 SERVICE TYPE: REG V
CUST: 33220 HOLLAND & KNIGHT REF: 160614.1

PU: HOLLAND & KNIGHT	DL: LOS ALTOS COMMUNITY DEVT DEPT
50 CALIFORNIA STREET	1 NORTH SAN ANTONIO ROAD
SAN FRANCISCO CA 94114-4624	LOS ALTOS CA
RM:2800 USA	USA
TO SEE: MICHELLE	TO SEE: BIGGS, JOHN

DEL DATE: 1/10/19 TIME: 12:37 SIGN: MS TANQUAY

EXHIBIT 6

Community Development Department
One North San Antonio Road
Los Altos, California 94022

October 25, 2013

40 Main Street Offices LLC
Attn: Ted Sorensen and Jerry Sorensen
40 Main Street
Los Altos, CA 94022

Subject: 40 MAIN STREET (Application No. 13-D-14 and 13-UP-03)

Dear Mr. Sorensen and Mr. Sorensen:

This letter is in response to the Commercial Design Review and Use Permit application that was submitted on September 25, 2013 for a new office building at 40 Main Street. Based on our staff review, the application has been deemed **incomplete** for processing. While the City supports the general nature of downtown redevelopment and developing a new office building on the site, staff remains concerned that the project includes too many exceptions/variances from the zoning code. This letter is a summary of the issues that will need to be addressed.

Since this is a new development application, all required project plans and reports will need to be submitted. All plans, reports and materials that were included in your previous development application have been filed in the City's archive and must remain with that file.

THE PLANNING DIVISION

Parking Plaza Restriping

The application includes a conceptual plan to re-strip Public Parking Plaza 10 to add as many as 20 additional parking spaces. Chapter 14.74.170 in the Zoning Ordinance is not a policy that allows for private developers to reconfigure or redevelop public parking plazas in order to use that parking for their development. That is a public use of land that needs to be decided by Council policy, with the participation of the other parking district beneficiaries. This code section outlines that it is permissible for a developer to meet their parking requirements on adjacent properties that are within 300 feet of a proposed project, provided that the parking is not already being used by an existing development and that it is actually owned by the subject property owner or can be permanently allocated by deed to that project.

While the City Council has expressed some interest in allowing private parties to reconfigure public parking plazas, the City does not currently have any policies in place for how to handle a proposal or who would benefit from the increased parking that is created. In order to properly review and consider this proposal as part of the development application, a City policy will need to first be approved by the City Council.

Staff will facilitate this discussion with the City Council in order to develop a policy for how to review and approve private proposals to reconfigure public parking plazas. In order to move forward with this

policy discussion, the proposed reconfiguration of Public Parking Plaza 10 will need to be revised to include the following information:

1. Show all existing property lines and easements.
2. Show all parking stalls consistent with the City's parking stall dimension requirements (nine feet wide by 18 feet deep).
3. Show all existing utilities and provide details for undergrounding all overhead utilities.
4. Show how the parking lot would treat storm water runoff per Best Management Practices and in compliance with the City's Municipal Regional Stormwater NPDES Permit (MRP).
5. The reconfiguration should only include parking spaces within Public Parking Plaza 10. On-street parking within a public street right-of-way is a separate topic.
6. A conceptual landscape plan which shows existing trees to remain, existing trees to be removed and new trees to be planted.

Once the revised plan has been submitted, staff will have a qualified third-party traffic expert review the plan and evaluate the proposed circulation and functionality. Once that has been completed, it will be scheduled for a discussion before the City Council to develop a public parking plaza reconfiguration policy and to consider your proposal. This policy discussion will need to be separate from your development application and should occur first in order to resolve the question before the development application goes through the public review process.

It should also be noted that any new policy that is approved by the City Council would be subject to the California Environmental Quality Act (CEQA).

Parking Exception and Public Paseo

As outlined in your cover letter, the project is seeking an exception from providing any new parking to serve the office building in exchange for a public paseo between Main Street and Public Parking Plaza 10. Staff cannot support this exception request. A parking solution is necessary as part of this project since the parking impact from this development would be detrimental to the surrounding properties, the public benefit would not be equivalent and it would not be consistent with the General Plan.

If the Public Parking Plaza 10 reconfiguration plan is accepted by the City Council, then staff can evaluate the remaining parking shortfall and work with you on options for how best to mitigate it. As outlined in the Zoning Ordinance, for properties within the Downtown's public parking district, no parking is required for the net square footage which does not exceed 100 percent of the lot area. However, all square footage above 100 percent of the lot area does need to provide parking. The project plans do not clearly provide the necessary information to understand the parking that would be required per the Zoning Ordinance. Therefore, please revise the plans to include the following information:

1. Provide a floor area diagram for each floor that calculates gross and net floor area for the project. This floor area diagram should be prepared and stamped by the project architect. As outlined in 14.74.200(Q) of the Parking Ordinance, net square footage means the total horizontal area in square feet on each floor, including basements, but not including the area of inner courts or shaft enclosures.
2. Provide a parking analysis based on the building's net floor area, which includes restrooms, lobbies, trash enclosures, mechanical rooms and common corridors. The plans identify mechanical shafts on each floor; what is the proposed use of these spaces? They do not appear to be shaft enclosures

(such as concrete enclosed shafts used to house stairs and elevations) and should be counted toward the building's net square footage.

Height Exception and Public Paseo

As outlined in Section 14.66.230 of the Municipal Code (Height Measurement), "the vertical dimension [height] shall be measured from the average elevation of the finished lot grade at the front, rear, or side of the building, whichever has the greater height, to the highest point of the roof deck of the top story in the case of a flat roof." The plans need to be revised to show the height of the building as measured to the highest point of the roof deck. The correctly measured building height appears to be approximately 37 feet.

The project is also seeking an exception from the District's 30-foot height requirement in exchange for this public paseo. While staff supports the development of public paseos as outlined in the Downtown Design Plan and Downtown Design Guidelines, a paseo in this location is of limited public benefit since Public Parking Plaza 10 is used primarily by the existing office uses that are adjacent to it and this section of Main Street is a short block with nearby existing pedestrian access points/pathways to the parking plaza within 50 feet to the south and 150 feet to the north. The public benefit of the proposed paseo does not appear to be equal to the magnitude of the requested height exception, which would allow the building to exceed the District's height requirement by approximately seven feet. Staff cannot support this request as proposed.

As outlined in the City's Downtown Design Guidelines, the proposed paseo should be a minimum of 10 feet in width. As proposed, the paseo appears to vary between six and nine feet in width. Staff is also concerned about the second and third floor projections over the paseo, which reduces the pathways openness to the sky and could discourage pedestrians that are not accessing the building from using the paseo. In addition, the paseo rendering (Sheet A0.02) appears to show retail uses in the ground floor of the building; however, the parking analysis and project description identifies the ground floor as being for office uses only. Please clarify the intended uses of the ground floor space and update the rendering, project description and/or parking analysis accordingly.

Zoning Compliance

1. The CRS/OAD District requires a two-foot rear yard setback that is landscaped when abutting a public parking plaza (Sec. 14.54.080). The proposed second and third floors encroach into this setback. These rear yard setback encroachments will need to be included in the application's "exception for public benefit" request.
2. Provide a preliminary drainage and improvement plan prepared by a licensed architect or civil engineer. As outlined in the City's submittal requirements, the plan should include the following:
   a. Elevations at street and neighboring property lines, the pad elevation and finished floor elevation. These elevation points should be used as the base for measuring the building height.
   b. All existing and proposed easements; show the proposed pedestrian access easement for the paseo.
   c. The lot drainage pattern and proposed storm drain infrastructure.
   d. Stormwater management measures to retain stormwater on site in accordance with Best Management Practices.
   e. Underground utilities – existing and proposed. Specifically, the locations of the electrical transformer, the fire sprinkler service and the water main backflow preventer.

3. The faux balconies on the rear elevation of the third floor encroach into the public right-of-way/parking plaza. While staff can support awning and overhang encroachments, permanent architectural elements such as these balconies should be contained within the property boundaries.
4. The landscape plan (Sheet A0.2) needs to provide more detail about the proposed landscaping (proposed trees and landscape species and sizes, planter box details, rear landscaping, etc.).
5. The roof slope on the roof plan (Sheet A4.0) does not match the roof slope shown on the cross section (Sheet A8.0).
6. Revise the project elevations (Sheets A5.0 and A6.0) as follows:
   a. On the east elevation, the third floor should extend to the right side property line in order to be consistent with the floor plan.
   b. The south elevation should show the balconies and awnings that face the parking plaza.
   c. The west elevation should show the left side of the building at the side property line in order to be consistent with the site plan and floor plans.
7. The paseo plan (Sheet A7.0) should be bundled with the landscape plan. In addition, the plan should include a scale, north arrow, dimensions to identify pathway width at various points, existing pedestrian improvements within the public right-of-way on either side of the building and indicate proposed pedestrian circulation patterns.
8. Revise the building sections (Sheet A8.0) as follows:
   a. Provide specifications (specifically height) for all rooftop mechanical equipment. As outlined in CRS/OAD District Section 14.54.130(G), all rooftop mechanical, venting, and/or exhausting equipment must be within the height limit and screened architecturally from public view, including views from adjacent buildings located at the same level. The acoustical analysis that was submitted with the previous application included air conditioning units that were 5.25 feet in height, which is significantly taller than the units shown on the building section.
   b. Show the profiles of the proposed roof mounted photovoltaic panels.
   c. Show the rear facing balcony and awnings.
   d. The parapet walls do not appear tall enough to screen the rooftop mechanical equipment and photovoltaic as required by Section 14.54.130(G).
   e. Provide the correct building height measurement as outlined above.
9. Provide a preliminary construction management plan that identifies anticipated truck routing and staging, construction worker parking plan (on-site and off-site) and pedestrian routing (sidewalk closures, detours, etc.).
10. Provide an address list, in label format, for all commercial tenants within 500 feet of the project.
11. Provide two sets of blank, postage paid postcards to cover all commercial business tenants within 500 feet of the project.
12. The City does not have a bicycle parking ordinance, but does use the VTA Bicycle Technical Guidelines as a recommended bicycle parking guideline. For office uses, VTA recommends one space per 6,000 square feet (75% Class I and 25% Class II). Based on these guidelines, staff will be recommending that the project provide a minimum of two Class I and two Class II bicycle parking spaces.

Technical Studies and Reports

Please submit two (2) copies of each of the following technical reports:

1. A current traffic impact analysis that evaluates the traffic and circulation impacts from the proposed project.
2. An acoustical analysis for all proposed rooftop mechanical equipment.

BUILDING DIVISION

No comments at this time.

ENGINEERING DIVISION

1. Provide civil plans that show all new and existing utilities, including the project's storm drain system and calculations showing that it is in compliance with the Municipal Regional Stormwater NPDES Permit (MRP). Also, show and justify the pipe size for the new sewer lateral from the proposed building to the existing sewer connection point to the main sewer line.
2. Provide a parking analysis and show that all parking stalls shall be designed per City standards.
3. Provide and show a public access easement on the plans for the public paseo.

SANTA CLARA COUNTY FIRE DEPARTMENT

See attached letter for Fire Department comments.

As the project planner assigned to this project, you can contact me directly at (650) 947-2633 or zdahl@losaltosca.gov if you have any questions. To continue the development review process, submit five (5) full sized sets of plans, five (5) half sized sets of plans and two (2) copies of all technical reports and support information.

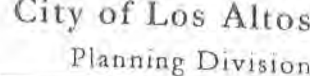
Once the revised application materials have been submitted, please contact me to discuss a schedule for the required public meetings before the Bicycle and Pedestrian Advisory Commission, Planning and Transportation Commission and the City Council, and the environmental review process as required by CEQA.

Sincerely,

Zachary Dahl, AICP
Senior Planner

c: Erin Uesugi, Project Architect
Marcia Somers, City Manager
James Walgren, Assistant City Manager
Jolie Houston, City Attorney

Attachment:
Santa Clara County Fire Department Letter



City of Los Altos
Planning Division
(650) 947-2750
Planning@losaltosca.gov

CITY OF LOS ALTOS STORY POLES POLICY

Purpose

In accordance with City Council direction on March 24, 2015, all commercial, multiple-family and mixed-use development projects receiving subject to greater Planning and Transportation Commission and City Council review must have story poles erected as part of the application process. The purpose of this policy is to help show the development's height, massing and profile in the context of the actual environment and to help provide a visual notice of a project.

Procedure

1. For projects that require story poles, the applicant's architect or engineer must prepare a Story Pole Plan to indicate the locations where the poles will be installed.

2. A Story Pole Plan shall be approved by the Community Development Director prior to the placement of the poles on the site. Once approved, the applicant shall inform the Community Development Director when the placement of the story poles is complete and submit photographs showing the installation in context.

3. The story poles shall be installed prior to the public noticing of the project and shall be kept in place until the project has been acted upon and the appeal period has ended. If the project is appealed, the story poles shall remain until final action is taken. If final consideration of the project is substantially delayed, or the project is substantially modified, the Community Development Director may require the removal or the modification of the story poles.

Plan Requirements

1. The Story Pole Plan must be at an appropriate scale and include: a) a site plan showing the location of any existing structure, the outline of any proposed structures and the location of the story poles; b) elevation views of the story poles; and c) any materials, means of installation and structural requirements.

2. The story poles shall be of sufficient number and location to adequately demonstrate the height, mass, and bulk of the project. At a minimum, story poles shall be placed at all outside building corners of the building wall (excluding eaves) and along the main rooflines (ridges, hips and valleys) of the proposed structure(s) or addition. Architectural elements such as towers, spires, elevator and mechanical penthouses, cupolas, mechanical equipment screening and similar elements that are visible from the streetscape must be represented by the story poles.

3. A licensed surveyor or civil engineer shall submit written verification that the location and height the poles and netting accurately represents the height, profile and location of the proposed structure(s) or addition.

4. The Community Development Director may waive or amend the requirements of the Story Pole Plan at the Director's discretion.

Materials and Methods

1. Story poles shall be constructed of lumber, metal poles, or other sturdy building material acceptable to the Community Development Director. Such materials shall be designed to withstand the wind and weather. At least two-foot wide orange woven plastic fencing (or netting) must be used to represent the rooflines of the proposed structure(s) or addition. One of the story poles on each elevation must be clearly marked and labeled in five-foot increments measured from the proposed finished grade and consistent with the approved Story Pole Plan.

2. All story poles shall be placed, braced and supported to ensure the health, safety and general welfare of the public. Applicants shall sign an agreement that holds the City harmless for any liability associated with the construction of, or damage caused by the story poles. If at any time, the City determines the story poles to be unsafe, they shall be repaired and reset immediately by the applicant or, at the City's discretion, removed. Depending on the scope of the poles, building permits and inspections may be required at the discretion of the Community Development Director.

Exceptions

1. The Community Development Director may grant exceptions to the Story Pole Policy due to: a) a public health and/or safety concern, or b) that such an installation would impair the use of existing structure(s) or the site to the extent it would not be able to be occupied and the existing business and/or residential use would be infeasible. Some form of poles and netting and/or on-site physical representation of the project may be required, even if an exception is granted.

2. The Story Pole Plan may be limited in scope at the discretion of the Community Development Director. In such cases such as where there are multiple detached structures proposed and where identifying the locations of key structures would suffice, the story poles may be limited to the outline(s) of key structures and/or showing a structure(s) greatest height and mass.

3. In granting an exception, the Community Development Director may require additional digital imagery simulations, computer modeling, built to-scale models or other visual techniques in-lieu of the story pole requirements.

Community Development Department
One North San Antonio Road
Los Altos, California 94022

December 18, 2015

40 Main Street Offices LLC
Attn: Ted Sorensen and Jerry Sorensen
40 Main Street
Los Altos, CA 94022

Subject: 40 MAIN STREET (Application Nos. 13-D-14 and 13-UP-03)

Dear Mr. Sorensen and Mr. Sorensen:

This letter is in response to the updated plans and materials submitted on November 24, 2015 related to the Commercial Design Review and Use Permit application for a new office building at 40 Main Street. Based on staff review, the application has been deemed **incomplete** for processing. While the City supports the general nature of downtown redevelopment and developing a new office building on the site, staff remains concerned that the project includes too many exceptions from the Zoning Code. This letter is a summary of the issues that will need to be addressed.

It should also noted that many of the comments in the October 25, 2013 incomplete letter were not addressed by the plans and materials that were recently submitted to the City. In addition, since over two years has elapsed from the date of the original application submittal, the City has adopted several new requirements for commercial design review applications. These policies include the requirement for Climate Action Plan checklist, story poles, a 3D model of the project within the surrounding context and a public notification billboard with color renderings of the project. A copy of the current commercial design review application submittal requirements is attached with this letter.

The next submittal should address **all** issues identified in this letter and meet current commercial design review requirements. Partial resubmittals will not be accepted.

THE PLANNING DIVISION

Exceptions for Public Benefit

In exchange for implementing provisions of the Downtown Design Plan, the Zoning Code allows for exceptions to be granted, provided the following findings can be made:

- The granting of the exception will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the area;
- The benefit to the City derived from granting the exception is an appropriate mitigation when considered against the cost to the developer;
- The project and mitigation will result in a public benefit to the downtown; and

- The resultant project and mitigation are consistent with the General Plan and promote or accomplish objectives of the Downtown Design Plan.

The project is seeking three exceptions from the Zoning Code in exchange for providing a public paseo from Main Street to Public Parking Plaza 10:

- Parking: For office uses, the parking requirement is one space per 300 square feet of net floor area. For properties that are within a public parking district, parking is required for any net square footage that exceeds 100 percent of the lot area. Based on these requirements, the project is required to provide 25 onsite parking spaces for 7,608 square feet of net floor area on a lot that is 7,841 square feet in size (see comment no. 3 under Zoning Compliance on page 3). The project is not providing any onsite parking.
- Building Height: The height limit for the CRS/OAD District is 30 feet. The project is seeking a building with a roof deck height of up to 37 feet.
- Rear Yard Setback: The CRS/OAD District requires a two-foot rear yard setback that is landscaped when abutting a public parking plaza. The proposed second and third floors do not meet this setback and extend to the property line.

As outlined in the Downtown Design Guidelines, a paseo should be a minimum of 10 feet in width. As proposed, the paseo appears to vary between six and nine feet in width. Staff is also concerned about the second and third floor projections over the paseo, which reduces the pathway's openness to the sky and could discourage pedestrians that are not accessing the building from using it.

While staff supports the development of public paseos to improve pedestrian circulation in Downtown, a paseo in this location is of limited public benefit since Public Parking Plaza 10 is used primarily by the existing office uses that are adjacent to it and this section of Main Street is a short block with nearby existing pedestrian access points/pathways to the parking plaza within 50 feet to the south and 150 feet to the north. The public benefit of the proposed paseo does not appear to be equal to the magnitude of the requested parking, height and setback exceptions. A parking solution is necessary as part of this project since the increase in parking demand from this development would be detrimental to the surrounding properties. Since the public benefit is not equivalent to the exceptions requested, granting the exceptions would not be consistent with the General Plan and the Zoning Code and staff cannot support the request.

Zoning Compliance

1. As outlined in Section 14.66.230 of the Municipal Code (Height Measurement), "the vertical dimension [height] shall be measured from the average elevation of the finished lot grade at the front, rear, or side of the building, whichever has the greater height, to the highest point of the roof deck of the top story in the case of a flat roof." The plans need to be revised to show the height of the building as measured to the highest point of the roof deck. The building height, when measured correctly, appears to be approximately 37 feet.

2. Provide a floor area diagram for each floor that calculates gross and net floor area for the project. This floor area diagram should be prepared and stamped by the project architect.
   a. As outlined in 14.74.200(Q) of the Parking Ordinance, net square footage means the total horizontal area in square feet on each floor, including basements, but not including the area of inner courts or shaft enclosures.

   b. The plans identify mechanical shafts on each floor. What is the proposed use of these spaces? They do not appear to be shaft enclosures (such as concrete enclosed shafts used to house stairs or elevations) and should be counted toward the building's net square footage.

3. The lot size is identified as being 7,841 square feet in size, but the preliminary grading and drainage plan appears to identify the site as being 6,950 square feet in size. To ensure that the lot size is accurately accounted for, provide a site survey that verifies the lot size from a licensed land surveyor or civil engineer.

4. The landscape plan (Sheet A0.2) needs to provide more detail about the proposed landscaping (proposed trees and landscape species and sizes, planter box details, rear landscaping, etc.). In addition, it should show all utility and drainage infrastructure identified on the grading and drainage plan (backflow preventers, drainage inlets, etc.).

5. The paseo plan (Sheet A7.0) should be bundled with the landscape plan. In addition, the plan should include a scale, north arrow, dimensions to identify pathway width at various points, existing pedestrian improvements within the public right-of-way on either side of the building and indicate proposed pedestrian circulation patterns.

6. The roof slope on the roof plan (Sheet A4.0) does not match the roof slope shown on the cross section (Sheet A8.0).

7. Revise the project elevations (Sheets A5.0 and A6.0) as follows:
   a. On the east elevation, the third floor should extend to the right side property line in order to be consistent with the floor plan.
   b. The south elevation should show the balconies and awnings that face the parking plaza.

8. Revise the building sections (Sheet A8.0) as follows:
   a. Provide specifications (specifically height) for all rooftop mechanical equipment. As outlined in CRS/OAD District Section 14.54.130(G), all rooftop mechanical, venting, and/or exhausting equipment must be within the height limit and screened architecturally from public view, including views from adjacent buildings located at the same level. The acoustical analysis indicates that the air conditioning units will be 5.25 feet in height, which is significantly taller than the units shown on the building section.
   b. Show the profiles of the proposed roof mounted photovoltaic panels.
   c. Show the rear facing balcony and awnings.
   d. The parapet walls do not appear tall enough to screen the rooftop mechanical equipment and photovoltaic panels.
   e. Provide the correct building height measurement as outlined above.

9. Revise the preliminary grading and drainage plan (Sheet CE1.0) to show the proposed pedestrian access easement for the paseo and the gas main connection. Regarding the existing transformer in the public right-of-way, is it large enough to serve this project? If not, show location of the new transformer.

10. Provide a preliminary construction management plan that identifies anticipated truck routing and staging, construction worker parking plan (on-site and off-site) and pedestrian routing (sidewalk closures, detours, etc.).

11. Provide a letter from Mission Trail Waste Systems that verifies the size of the proposed trash room is large enough to accommodate all trash, recycling and green waste bins that are necessary to serve an office building of this size.

12. Provide an address list, in label format, for all commercial tenants within 500 feet of the project.

13. Provide two sets of blank, postage paid postcards to cover all commercial business tenants within 500 feet of the project.

Design Review

14. Tower elements are not appropriate for buildings that are located mid-block. Design alternatives that remove the tower element and create a building scale that better relates to the adjacent structures should be considered.

15. The faux balconies on the rear elevation of the third floor encroach into the public right-of-way/parking plaza. While staff can support awning and overhang encroachments, permanent architectural elements such as these balconies should be contained within the property boundaries.

16. As recommended in the Downtown Design Guidelines (3.2.4.c), update the building design to show that all windows are recessed at least three inches from the face of the exterior wall.

17. Provide additional photo-simulated color renderings that show the building as viewed from the parking plaza and as viewed from Main Street south of the project.

18. Provide a 3D digital model of the proposed development and adjacent buildings within the broader streetscape area.

19. The updated plans show two bicycle racks (four Class II spaces), which exceeds the minimum recommendation of two Class II spaces per VTA standards. However, to comply with the VTA standards, the project should also provide at least two Class I bicycle parking spaces for employees working in the building.

Study Session

20. As previously discussed, the project is going to be scheduled for a design review study session before the Planning and Transportation Commission. The study session date is tentatively scheduled for January 21, 2016. In order to move forward with the study session, 14 half size sets of plans will need to be submitted to the City. The meeting date and deadline to submit the half size sets of plans will be confirmed in early January.

Technical Studies and Reports

21. Traffic Impact Analysis

    a. The use of traffic counts from January 2011 does not meet City standards for a traffic impact analysis since traffic volumes have increased and changed since that time.

    b. There are new buildings and uses in downtown that need to be adequately reflected in the "Existing Conditions" analysis and subsequent project conditions analyses.

    c. The report should clearly identify total daily trips as well as net new trips generated by the project.

22. Parking Demand Analysis

    a. The report should provide an analysis of the existing office building and where that parking is currently accommodated.

    b. The report should account for the onsite parking that will be lost as part of the project (four tandem spaces located in the existing driveway).

    c. The report should analyze the total parking demand for the project, not just the net increase, and provide an analysis of where in Downtown the available spaces to serve the project are located (using acceptable walking radius, etc).

    d. The use of the local observed data for parking does not reflect newer uses and buildings in Downtown. Since Downtown parking demand has significantly changed in the past few years, all data should be updated and survey data from 2009-2011 should not be used.

23. Acoustical Analysis

    a. The report should identify how many condensing units will be required to serve an office building of this size and analyze the cumulative noise that will be generated by these units.

BUILDING DIVISION

24. No comments at this time.

ENGINEERING DIVISION

25. The project is required to comply with the City of Los Altos Municipal Regional Stormwater (MRP) National Pollutant Discharge Elimination System (NPDES) Permit No. CA S612008, Order R2-20154-0049, Provision C.3 dated November 19, 2015.

26. The proposed stormwater detention does not appear to satisfy Low Impact Development (LID) requirements and direct discharge into the storm drain system is not permitted. Please revise drainage design to show how the project will satisfy stormwater LID requirements per the current Stormwater MRP.

27. The stormwater discharge point shall be connected to the catch basin at Main Street.

28. Contact Mission Trail Waste Systems and submit a solid waste and recyclables disposal plan indicating the type, size and number of containers proposed, and the frequency of pick-up

service subject to the approval of the Engineering Division, and provide documentation that Mission Trail Waste Systems has reviewed and approved the size and location of the proposed trash enclosure. The enclosure shall be designed to prevent rainwater from mixing with the enclosure's contents and shall be drained into the City's sanitary sewer system. The enclosure's pad shall be designed to not drain outward, and the grade surrounding the enclosure designed to not drain into the enclosure.

29. The applicant shall dedicate the pedestrian paseo to the City of Los Altos for use as public right-of-way as a public easement.

30. Provide adequate bike parking along Main Street per Chapter 10 of the VTA Bicycle Technical Guidelines 2012.

31. The existing street light shall remain.

32. The quantity and type of street trees to be installed along Main Street shall be consistent with the Downtown Design Plan and Design Guidelines.

33. The irrigation system for the trees and vegetation in the public right-of-way shall be connected to the private water service within the property. A landscape maintenance agreement between the City of Los Altos and the property owner will be required.

34. All existing outdoor fixtures along the property frontage, such as the United States Postal Service mailbox and the City of Los Altos refuge container, shall be retained.

35. The project shall use the existing sewer lateral and upgrade appropriately. The applicant will be required to submit calculations showing that the upgrade will not exceed two-thirds full due to the project's sewer loads. Calculations shall include the six-inch main from the property to the point where it connects to the twenty-seven inch sewer line on El Camino Real. For any segment that is calculated to exceed two-thirds full for average daily flow or for any segment that the flow is surcharged in the main due to peak flow, the applicant shall replace the four-inch sewer line with a six-inch sewer line.

SANTA CLARA COUNTY FIRE DEPARTMENT

36. See attached letter for Fire Department comments.

If you have any questions, contact me directly at (650) 947-2633 or zdahl@losaltosca.gov. To continue the development review process, submit five (5) full sized sets of plans, five (5) half sized sets of plans and two (2) copies of all technical reports and support information that address **all** issues identified in this letter and meet current commercial design review requirements.

Once the revised application materials have been submitted, please contact me to discuss a schedule for the required public meetings before the Bicycle and Pedestrian Advisory Commission, Planning and Transportation Commission and the City Council, and the environmental review process as required by CEQA.

Sincerely,

Zachary Dahl, AICP
Planning Services Manager

Cc: Erin Uesugi, Project Architect
Steve Piasecki, Community Development Director (Interim)
Marcia Somers, City Manager
Jolie Houston, City Attorney

Attachments:
Submittal Requirements for Commercial or Multi-Family Design Review
Climate Action Plan Checklist for New Development
Santa Clara County Fire Department Letter

heck list of outstanding items called out by Zack Dahl incomplete letters

ctober 25, 2013 letter
he Planning Division
arking Plaza Restriping
up=Duplicate request
ew=New Item
IR=Misread of plans
=Completed
R=Completed with resubmittal
=Outstanding
R=Not Required

Requested/Outstanding

tem	REQ Y/N	Resp	Item Request identifier/Item Description/ *Comments*	Status
			Items 1-29 were pulled from the staff letter dated 10/25/2013	
1	Y	Uesugi	10/25/13 Letter Page 2 "Parking Exception and Public Paseo" paragraph 11, (item 1)/ "Provide a floor area diagram for each floor that calculates gross and net floor area for the project. This floor area diagram should be prepared and stamped by the project architect."/ *A net building area for each floor and parking table is included on the front page of the submitted plans. This is a unique request for 40 Main Street.* ** We agreed that we would incorporate a table similar to the one contained in the September plan set and if possible we would identify on the plans through shading the square footage removed for purposes of parking.	O
3	Y	Uesugi	10/25/13 Letter Page 3 "Height Exception and Public Paseo" paragraph 13, / "The plans need to be revised to show the height of the building as measured to the highest point of the roof deck." *The plans are being revised to identify this height.* **This has been agreed to all along.	O
4	Y	Uesugi	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 20, (item 5)/ "The roof slope on the roof plan (sheet A0.2) does not match the roof slope shown on the cross section (Sheet A8.0)./	O

			There is no actual outstanding item request being made in this statement, but we will address the issue and have the architect correct the inconsistency. ** This has been agreed to all along.	
!2))UP ;ee 3	Y	Uesugi	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 23, (item 8.e.)/ "Revise the building sections (Sheet A8.0) as follows: - Provide the correct building height measurement as outlined above." *This is a duplicate request; it is the same as number 3.* ** Duplicate – agreed to.	O
!3	Y	Sorensen	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 24,/ "Provide a preliminary construction management plan that identifies anticipated truck routing and staging, construction worker parking plan (on-site and off-site) and pedestrian routing (sidewalk closures, detours, etc.)."/ *We have requested the staff provide us with a recent sample of a construction management plan which they have so far refused to do.* ** It was agreed to produce a limited plan that would include a proposed truck route to the site, employee parking along Edith, blocked parking spots behind and in front of the site, location of the construction trailer.	O
!4	Y	Sorensen	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 25/ "Provide an address list, in label format, for all commercial tenants within 500 feet of the project."/ *We understand this needs to be completed and intended to complete this task once staff indicated the application was complete.* ** It was agreed that this could be completed once Staff indicates that package is complete.	O
!5	Y	Sorensen	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 26/ "Provide two sets of blank, postage paid postcards to cover all commercial business tenants with 500 feet of the project."/ *We understand this needs to be completed and intended to complete this task once staff indicated the application was complete. The city is required to provide applicant the number of post cards required – it has not done so.* ** City needs to provide a list and number of cards required.	O
			Items 31- are pulled from the staff letter dated 12/18/2015	

7 I New	Y	Maston	12/18/15 Letter Page 4"Design Review" (Item 18)/ "Provide a 3D digital model of the proposed development and adjacent buildings within the broader streetscape area." *This is a new request. It is also a new requirement added to the code after our initial submittal. In process.* ** It was agreed that we would produce this as part of the package.	O

Y=14
N=35
New=18

CR=10
O=7

Required/Completed

tem #	REQ Y/N	Resp	Item Request identifier/Item Description/ *Comments*	Status
			Items 1-29 were pulled from the staff letter dated 10/25/2013	
	Y	McCloud	10/25/13 Letter Page 3 "Zoning Compliance" paragraph 17, (item 2)/ "Provide a preliminary drainage and improvement plan prepared by a licensed architect or civil engineer." *This was provided as sheet CE1.0 in the resubmittal package* ** Included in sheet CE1.0	CR
	Y	McCloud	10/25/13 Letter Page 3 "Zoning Compliance" paragraph 17, (item 2.a.)/ "Elevations at street and neighboring property lines, the pad elevation and finished floor elevation."/ *These are all included in sheet CE1.0.* ** Included in sheet CE1.0	CR
	Y	McCloud	10/25/13 Letter Page 2 "Zoning Compliance" paragraph 17, (item 2.c.)/ "The lot drainage pattern and proposed storm drain infrastructure."/ *These are all included in sheet CE1.0.* ** Included in sheet CE1.0	CR
0	Y	McCloud	10/25/13 Letter Page 3 "Zoning Compliance" paragraph 17, (item 2.d.)/ "Stormwater management measures to retain stormwater on site in accordance with Best Management Practices."/	CR

			This is included in sheet CE1.0 ** Included in sheet CE1.0	
1	Y	McCloud	10/25/13 Letter Page 3 "Zoning Compliance" paragraph 17, (item 2.e.)/ "Underground utilities – existing and proposed. Specifically, the locations of the electrical transformer, the fire sprinkler service and the water main backflow preventer."/ *These are all included in sheet CE1.0* ** Included in sheet CE1.0	CR
:6	Y	Sorensen	10/25/13 Letter Page 5 "Technical Studies and Reports" paragraph 28, (Item 1.)/ "Please submit two (2) copies of the following – A current traffic impact analysis that evaluates the traffic and circulation impacts from the proposed project."/ *Two copies of a traffic and circulation report were submitted with the updated submittal. The study met the VTA standard that is the current city of Los Altos requirement.* ** These were submitted.	CR
:7	Y	Sorensen	10/25/13 Letter Page 5 "Technical Studies and Reports" paragraph 28, (Item 2.)/ "Please submit two (2) copies of the following – acoustical analyses for all proposed rooftop mechanical equipment."/ *Two copies of the acoustical specifications were submitted with the updated submittal.* ** These were submitted	CR
:8)UP	Y	McCloud	10/25/13 Letter Page 5 "Engineering Division" paragraph 30, (Item 1.)/ "Provide civil plans that show all new and existing utilities, including the project's storm drain system and calculations showing that it is in compliance with the Municipal Regional Stormwater NPDES Permit (MRP). Also, show and justify the pipe size for the new sewer lateral from the proposed building to the existing sewer connection point to the main sewer line."/ *This is the same request as items, 6-11, above and are all contained in Sheet CE1.0.* ** Included in sheet CE1.0	CR
			Items 31- are pulled from the staff letter dated 12/18/2015	

ʼ=14
√=35
Vew=18

CR=10
O=7

Not Required

tem	REQ Y/N	Resp	Item Request identifier/Item Description/ *Comments*	Status
			Items 1-29 were pulled from the staff letter dated 10/25/2013	
	N	Uesugi	10/25/13 Letter Page 2 "Parking Exception and Public Paseo" paragraph 12, (item 2)/ "Provide a parking analysis based on the building's net floor area."/ *Parking requirement based on net square footage is included in the parking table on the front page of the submitted plans.* **We agreed to include a table similar to the table in the September submittal.	NR CR
	N	Sorensen	10/25/13 Letter Page 3 "Height Exception and Public Paseo" paragraph 15. / "In addition, the paseo rendering (sheet A0.02) *appears* to show retail uses in the ground floor of the building; however, *the parking analysis* and project description identifies the ground floor as being for office uses only. Please clarify the intended uses of the ground floor space *and update the rendering*, project description and/or parking analysis accordingly."/ *Inappropriate request, applicant is not a required to submit renderings that meet the personal judgments of the staff. The rendering does not represent retail, but rather an active daily scene. Given staff's comments above regarding a lack of parking analysis – how is it possible that they can now reference a parking analysis?* **Agreed this is not a requirement, existing renderings and 3D model meet the requirement.	NR
	N	Sorensen	10/25/13 Letter Page 3 "Zoning Compliance" paragraph 16/ "The proposed second and third floors encroach into this setback…These rear yard setback encroachments will need to be included in the application's "exception for public benefit" request."/ *In the prior application the Planning Commission and the City Council made clear that the rear yard setback was a grade level requirement only and that staff was misinterpreting the code. We agree with the conclusion of the Planning Commission and the City Council. If staff wants to make this an issue they can do it in the staff report. There is no action for us to take on this statement. applicants are not required to list the exceptions for public benefit in the application.* ** Jon agreed he would review further and that we will incorporate a letter making the case that this is not an exception to the code.	NR

1	N	McCloud	10/25/13 Letter Page 3 "Zoning Compliance" paragraph 17, (item 2.b.)/ "All existing and proposed easements; show the proposed pedestrian access easement for the paseo."/ *Existing public easements are shown on the CE1.0 page, and we are not proposing a pedestrian access easement, therefore all existing and proposed easements (none) are contained in sheet CE1.0.* ** We agreed this is not an item for completeness. Jon agreed to provide us with the existing easements for the hotel property, and for 400 Main Street and any other paseo easements with downtown properties. Further it was agreed that our property should be treated consistently with the agreements made for these other properties.	NR
2	N MR	Uesugi	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 18, (item 3)/ "Faux balconies on the rear elevation of the third floor encroach into the public right-of-way…permanent architectural elements such as these balconies should be contained with the property boundaries." *There is not a request made to be addressed in this statement – further there are no faux balconies proposed. What is seen is an architectural element, purely decorative, and does not protrude into the right-of-way.* ** It was agreed this is not a completeness item. Further it was acknowledged by Jon there are no faux balconies to be shown.	NR
3	N	Uesugi- Bavia	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 19, (item 4)/ "Provide more detail about the proposed landscaping (proposed trees and landscape species and sizes, planter box details, rear landscaping, etc.)." *This is the same landscape plan that was accepted by staff, the A & S Committee, the Planning Commission, and City Council in the previous application. Chinese Pistache trees are called out as is ground cover per Los Altos Landscape guidelines. We will add additional detail related to the sizes of the trees, planter box details, and the small rear yard landscaping strip.* ** It was agreed this is not a completeness item. We did agree to possibly create a legend on the sheet, and include sizes and possibly notes on irrigation.	NR
5	N MR	Uesugi	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 21, (item 6.a.)/ "Revise the project elevations – On the east elevation, the third floor should extend to the right side property line in order to be consistent with the floor plan."/ *The third floor elevation is drawn consistent with the third floor, floor plan. The wall is off of the property line and extends back at an angle. This gap is represented in the elevation.* **It was agreed this is not an item for completeness, further it was agreed that the elevation accurately reflects the floor plans.	NR MR

6	N MR	Uesugi	<u>10/25/13 Letter Page 4 "Zoning Compliance" paragraph 21, (item 6.b.)/</u> "Revise the project elevations – The south elevation should show the balconies and awnings that face the parking plaza."/ *Because of the angle of the lot the awnings do not appear in a true elevation, therefore there is nothing to actually show as requested. There are NO balconies on this side of the building.* <u>** It was agreed this is not an item of completeness, further it was agreed that the awnings would not appear. We will request that the architect add a note.</u>	NR MR
7	N MR	Uesugi	<u>10/25/13 Letter Page 4 "Zoning Compliance" paragraph 21, (item 6.c.)/</u> "Revise the project elevations – The west elevation should show the left side of the building at the side property line in order to be consistent with the site plan and floor plans."/ *The west elevation does show the building at the property line. The left side of the building is shaded to show the 8-feet of wall section recessed 5-feet. The elevation properly depicts the building.* <u>** It was agreed this is not an item for completeness, further it was agreed that the elevation accurately reflects the floor plans.</u>	NR MR
8	N	Uesugi	<u>10/25/13 Letter Page 4 "Zoning Compliance" paragraph 22, (item 7)/</u> "The paseo plan (Sheet A7.0) should be bundled with the landscape plan. In addition, the plan should include a scale, north arrow, dimensions to identify pathway width at various points, existing pedestrian improvements within the public right-of-way on either side of the building and indicate proposed pedestrian circulation patterns "/ *It is not a requirement that the paseo and landscape plans are bundled, but we will re-order the sheets. There is no requirement that individual sheets have a north arrow and a scale, both of which are contained in the plan set on sheet (A0.1) site plan. The ground floor plan (Sheet A1.0) contains multiple width measurements of the paseo. Beyond sidewalks there are no pedestrian improvements to show in the public right-of-way. Pedestrian circulation patterns?* *While none of the items listed are actual requirements we will request that the architect add a north arrow, scale, and paseo width measurements, as well as note pedestrian circulation.* <u>** It was agreed that this was not an item for completeness. We did agree to request the architect incorporate the suggestions by re-bundling the sheets, inserting a north arrow and scale.</u>	NR
9 **?	N	Uesugi	<u>10/25/13 Letter Page 4 "Zoning Compliance" paragraph 23, (item 8.a.)/</u> "Revise the building sections (Sheet A8.0) as follows: - Provide specifications (specifically height) for all roof top mechanical equipment." *HVAC specifications were submitted. How is it possible that staff was aware of the acoustical analysis that was submitted with the previous application when it was instructed to not look at the previous application and stated that all materials from that application are unavailable?* <u>** Spec sheets were submitted. We will ask the architect to estimate the height.</u>	NR

!0	N	Uesugi	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 23, (item 8.b.)/ "Revise the building sections (Sheet A8.0) as follows: - Show the profiles of the proposed roof mounted photovoltaic panels"/ *The roof will be photovoltaic ready but we are not proposing photovoltaic at this time, so this request does not apply.* ** It was agreed that this is not a completeness item. Further we have removed photovoltaic from the plans. If the city would like them we will add them at their request.	NR
!1	N MR	Uesugi	10/25/13 Letter Page 4 "Zoning Compliance" paragraph 23, (item 8.c.)/ "Revise the building sections (Sheet A8.0) as follows: - Show the rear facing balcony and awnings."/ *There are no rear facing balconies! The architect will add a representation of the rear facing awnings.* **It was agreed this is not a completeness item, further there are no balcony's to show.	NR
!9	N	Sorensen	10/25/13 Letter Page 5 "Engineering Division" paragraph 30, (Item 2.)/ "Provide a parking analysis and show that all parking stalls shall be designed per City standards."/ *Parking analysis was provided. No parking stalls are being proposed.* **We are not providing in on-site stalls, therefore this is not a completeness item.	NR CR
;0	N	McCloud	10/25/13 Letter Page 5 "Engineering Division" paragraph 30, (Item 3.)/ "Provide and show a public access easement on the plans for the public paseo."/ *There is no public access easement being provided therefore it cannot be shown on the plans.* **It was agreed this is not a completeness item. Jon Biggs agreed to provide us with the easements provided by 400 Main Street and the hotel and any other downtown properties. Further it was agreed that 40 Main Street should be treated consistently with other projects.	NR
			Items 31- are pulled from the staff letter dated 12/18/2015	
;1 New	N	McCloud	12/18/15 Letter Page 3 "Zoning Compliance" (Item 3)/ "Provide a site survey that verifies the lot size from a licensed land surveyor or civil engineer."/ *We have requested that or engineer complete this work and will include it in the next submittal. This is a new request – moving the goal posts. No other application has been requested to complete this work.* **It was agreed this is not a completeness item.	NR

2	N	Uesugi	12/18/15 Letter Page 3 "Zoning Compliance" (Item 4)/ "Landscape plan (Sheet A0.2)… should show all utility and drainage infrastructure identified on the grading and drainage plan (backflow preventers, drainage inlets, etc.)." *All of theses items are shown on the civil plan CE1.0 and are not required to be shown on the landscape plan. This is a new request – moving the goal posts.* **It was agreed this is not a completeness item. All items requested in the civil plan are included in the plan.	NR
3 New	N	McCloud	12/18/15 Letter Page 3 "Zoning Compliance" (Item 9)/ " Revise the preliminary grading and drainage plan (Sheet CE1.0) to show the proposed pedestrian access easement for the paseo and the gas main connection. Regarding the existing transformer in the public right-of-way, is it large enough to serve this project? If not, show location of the new transformer."/ *Gas Main Connection? Yes the existing Transformer is large enough to service the project. No new transformer location is required.* **It was agreed this is not a completeness item. We will look to identify the gas main. We will provide comment from the PGE consultant.	NR
4 New	N	Sorensen	12/18/15 Letter Page 4 "Zoning Compliance" (Item 10)/ "Provide a letter from Mission Trail Waste Systems that verifies the size of the proposed trash room is large enough to accommodate all trash, recycling and green waste bins that are necessary to serve an office building of this size."/ *We will get a letter.* **It was agreed this is not a completeness item.	NR
5 New	N	Uesugi	12/18/15 Letter Page 4 "Design Review" (Item 16)/ "As recommended in the Downtown Design Guidelines (3.2.4.c), update the building design to show that all windows are recessed at least three inches from the face of the exterior wall." *This is a guideline not a code requirement. This is a new request – moving the goal posts.* **It was agreed this is not a completeness item. We will request that the architect make the reference on the window sheet.	NR

:6 New	N	Maston	12/18/15 Letter Page 4 "Design Review" (Item 17)/ "Provide additional photo-simulated color renderings that show the building as viewed from the parking plaza and as viewed from Main Street south of the project."/ *This is a new request and is not a requirement – moving the goal posts.* ** 3D photo rendering will be provided.	NR
:8	N	Sorensen	12/18/15 Letter Page 4 "Design Review" (Item 19)/ "However, to comply with the VTA standards, the project should also provide at least two Class I bicycle parking spaces for employees working in the building."/ *This is not the Los Altos requirement. We will work with the Bpac to best meet the bicycle storage requirements.* **It was agreed that this is not a requirement. Further Jon Biggs was not a fan of the Class I bike racks.	NR
:9 New :*?	N	Nelson/Nygaard	12/18/15 Letter Page 5 "Technical Studies and Reports" Traffic Impact Analysis (Item 21.c.)/ "The report should clearly identify total daily trips as well as net new trips generated by the project."/ *The traffic report submitted meets the requirements of the city of Los Altos as prescribed in the City of Los Altos General Plan.* **It was agreed this is not an item for completeness as the traffic study per VTA standards has been submitted.	NR
:0 New	N	Sorensen – Nelson/Nygaard	12/18/15 Letter Page 5 "Technical Studies and Reports" Parking Demand Analysis (Item 22.a)/ "The report should provide an analysis of the existing office building and where that parking is currently accommodated."/ *Parking reports are not required, further parking reports submitted are not required to include an analysis of the existing building and where its parking is accommodated. New request – moving the goal posts.* **It was agreed this is not an item for completeness.	NR
:1 New	N	Sorensen – Nelson/Nygaard	12/18/15 Letter Page 5 "Technical Studies and Reports" Parking Demand Analysis (Item 22.b)/ "The report should account for the onsite parking that will be lost as part of the project (four tandem spaces located in the existing driveway)."/ *Parking reports are not required, further parking reports submitted are not required to include an analysis of the existing building and where its parking is accommodated. New request – moving the goal posts.* **It was agreed this is not an item for completeness.	NR

2 New	N	Sorensen – Nelson/Nygaard	12/18/15 Letter Page 5 "Technical Studies and Reports" Parking Demand Analysis (Item 22.c)/ "The report should analyze the total parking demand for the project, not just the net increase, and provide an analysis of where in Downtown the available spaces to serve the project are located (using acceptable walking radius, etc.)."/ *Parking reports are not required, further the parking report submitted did analyze the total parking demand for the proposed project. is not required to provide an analysis of where in Downtown the available are located to serve the project (it is part of the plaza system – the spaces are located in the ten plaza system). What is the definition of an acceptable walking radius, and whose definition is it?* **It was agreed this is not an item for completeness.	NR
3 New	N	Sorensen – Nelson/Nygaard	12/18/15 Letter Page 5 "Technical Studies and Reports" Parking Demand Analysis (Item 22.d)/ "The use of the local observed data for parking does not reflect newer uses and buildings in Downtown. Since Downtown parking demand has significantly changed in the past few years, all data should be updated and survey data from 2009-2011 should not be used."/ *There is only one new building and use in the parking plaza system since the 2009-2011 data was collected – the hotel, which we are told by staff has zero impact on the plaza system as a whole at peak hours. Parking plaza data has not significantly changed in the downtown for over forty years according to the data collected in the five parking studies that the city has completed since 1978. All but two parking studies supported by staff over the past decade has no survey data included in the study and only one of those two studies used data more current than the data used in our parking report.* **It was agreed this is not an item for completeness.	NR
4 New	N	Uesugi	12/18/15 Letter Page 5 "Technical Studies and Reports" Acoustical Analysis (Item 23)/ "The report should identify how many condensing units will be required to serve an office building of this size and analyze the cumulative noise that will be generated by these units."/ *This is not a requirement. This demonstrates a lack of understanding of acoustics.* **It was agreed this is not an item for completeness. Cut sheets have been provided.	NR
5 New	N	McCloud	12/18/15 Letter Page 5 "Engineering Division" (Item 26)/ "The proposed stormwater detention does not appear to satisfy Low Impact Development (LID) requirements and direct discharge into the storm drain system is not permitted. Please revise drainage design to show how the project will satisfy stormwater LID requirements per the current Stormwater MRP."/ **It was agreed this is not an item for completeness. The project engineer has submitted the civil plan and believes it meets LID requirements.	NR

6 New	N	McCloud	12/18/15 Letter Page 5 "Engineering Division" (Item 27)/ "The stormwater discharge point shall be connected to the catch basin at Main Street." **This is not an item for completeness. We do not believe the catch basin is in Main Street.	NR
7 New Dup See 4	N	Sorensen	12/18/15 Letter Page 5 "Engineering Division" (Item 28)/ "Contact Mission Trail Waste Systems and submit a solid waste and recyclables disposal plan indicating the type, size and number of containers proposed, and the frequency of pick-up service subject to the approval of the Engineering Division, and provide documentation that Mission Trail Waste Systems has reviewed and approved the size and location of the proposed trash enclosure. The enclosure shall be designed to prevent rainwater from mixing with the enclosure's contents and shall be drained into the City's sanitary sewer system. The enclosure's pad shall be designed to not drain outward, and the grade surrounding the enclosure designed to not drain into the enclosure." **This is not an item for completeness.	NR
8 New	N	Sorensen	12/18/15 Letter Page 6 "Engineering Division" (Item 29)/ "The applicant shall dedicate the pedestrian paseo to the City of Los Altos for use as public right-of-way as a public easement." *We were not proposing that – no other paseo has dedicated a public right-of-way.* **It was agreed this is not an item for completeness. Further it was agreed that 40 Main would be treated like other applications, and that Jon Biggs would provide easements provided by 400 Main Street and the Hotel.	NR
9 New	N	Sorensen	12/18/15 Letter Page 6 "Engineering Division" (Item 30)/ "Provide adequate bike parking along Main Street per Chapter 10 of the VTA Bicycle Technical Guidelines 2012"/ *This is a duplicate request see item 38 above. This is not a Los Altos code requirement and the building is providing bike parking.* ***This is not an item for completeness.*	NR
0 New	N	Uesugi – Bavia	12/18/15 Letter Page 6 "Engineering Division" (Item 32)/ "The quantity and type of street trees to be installed along Main Street shall be consistent with the Downtown Design Plan and Design Guidelines." *This is not a request to be addressed in pre-planning, therefore not an outstanding item. It also points out that the Landscaping request above are not items that must be addressed in pre-Planning as size and type of landscaping is recommended in the Design Guidelines and the Urban Design Plan.* **This is not an item for completeness.	NR

·1 New	N	McCloud ?	12/18/15 Letter Page 6 "Engineering Division" (Item 35)/ "The project shall use the existing sewer lateral and upgrade appropriately. The applicant will be required to submit calculations showing that the upgrade will not exceed two-thirds full due to the project's sewer loads. Calculations shall include the six-inch main from the property to the point where it connects to the twenty-seven inch sewer line on El Camino Real. For any segment that is calculated to exceed two-thirds full for average daily flow or for any segment that the flow is surcharged in the main due to peak flow, the applicant shall replace the four-inch sewer line with a six-inch sewer line." **This is not an item for completeness. Further this is not an item for approval.	NR

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RE: follow up to completion letter

From: Jon Biggs (jbiggs@losaltosca.gov)

To: gjsorensen_1999@yahoo.com

Date: Thursday, July 7, 2016, 4:25 PM PDT

Hello Jerry –

Thank you for the email. It reflects our discussions earlier today and is an accurate reflection of the information that is still necessary to complete the application and those items that would be addressed further, even though they are not items of completeness.

I look forward to receiving the information your architect is working on and bringing a consulting planner on board to manage this project.

Jon Biggs, City of Los Altos

Community Development Department

From: Sorensen Gerald [mailto:gjsorensen_1999@yahoo.com]
Sent: Thursday, July 07, 2016 12:06 PM
To: Jon Biggs
Subject: follow up to completion letter

Good Afternoon Jon,

Again thank you for taking the time to meet with us earlier today. We are certainly aware we are taking a lot of your time and appreciate your support in the process.

In our mutual review of the past two letters staff sent to us, the February 1, 2016 letter does not mention completeness items. Our mutual review today of the December 18, 2015 letter has 48 items and subitems to be completed. It is our understanding that we mutually agreed today that only seven of those 48 items, (1, 3, 6, 10, 12, 13, 17/18), are actual requirements for completeness of the application, and that we agreed to try and further address items, (2, 4, 5, 11, 16,), to meet the request as stated although they are not items required for completeness.

We would appreciate confirmation that this is your understanding of our meeting today as well.

Our architect is working hard to make these minor changes to the plans and we hope to have everything we agreed to complete soon.

As always we greatly appreciate your time, and fully understand the time and management challenges that you currently have and would simply like to use our time to make our time together as productive as possible.

Thank you.

Jerry

650-906-0491

Community Development Department
One North San Antonio Road
Los Altos, California 94022-3087

September 28, 2016

Mr. Jerry Sorensen & Mr. Ted Sorensen
40 Main Street
Los Altos, CA 94022

Re: 40 Main Street

Dear Jerry and Ted:

I have completed my review of the information you have provided to date and this letter serves as notice that we have sufficient information to proceed with preparations for the public hearings at which your applications for development at 40 Main Street will be reviewed for recommendation and action.

We may have requests for clarifying information in the future as we complete our analysis of the project, including the necessary environmental analysis required by the California Environmental Quality Act, and develop appropriate conditions and staff recommendations. Further direction will be provided so that the appropriate public hearing notification and community notices are in place prior to the respective dates of those hearings.

Please feel free to contact me if you have additional questions.

Sincerely:

Jon Biggs, City of Los Altos
Community Development Director

RE: next meeting

From: Jon Biggs (jbiggs@losaltosca.gov)

To: gjsorensen_1999@yahoo.com

Date: Thursday, October 20, 2016, 3:08 PM PDT

Thank you Jerry – I have reached out to Erin.

Jon

From: Sorensen Gerald [mailto:gjsorensen_1999@yahoo.com]
Sent: Thursday, October 20, 2016 11:05 AM
To: Jon Biggs <jbiggs@losaltosca.gov>; Erin Uesugi <erin@uesugi-architects.com>
Subject: Re: next meeting

Good Morning Jon,

Good Morning Erin,

Jon, I am copying Erin (our architect) on this response. My thoughts are that it is far more efficient if you and Erin coordinate the earliest mutually convenient time for a call. Once the two of you have landed on a time that works for the two of you, I will make myself available to be on the call. We can use our office for the call.

Erin's phone number is 415-781-4141, and her email is erin@uesugi-architects.com

Jon's phone number is 650-947-2635, and his email is jbiggs@losaltosca.gov

I shared with Erin that you wanted to better understand the following design issues.

1. The evolution and purpose of the tower element. Specifically on a property that was not a corner property.
2. The height of the tower. Specifically how the top windows worked as a design element.
3. The Gable roof elements. Specifically your concern that the Gable on the Main Street elevation

4. The first floor tower window heights and how they relate to the other first floor windows.
5. The combination of forms on the first floor elevations.

As we discussed last Erin is far better at explaining the design form, function, and evolution of all of these issues than I could ever hope to do. If there are any other issues I think it would make the call more efficient if Erin was aware of them in advance of the call.

Erin, as I mentioned to you I think it is best if you are able to respond to Jon's architecture and design questions rather than me. Given that both of you have very busy schedules I think it is best if you coordinate a time and then include me. We are working to a November PTC hearing date so the sooner the two of you can talk the better.

Thanks

Jerry

650-906-0491

From: Jon Biggs <jbiggs@losaltosca.gov>
To: Sorensen Gerald <gjsorensen_1999@yahoo.com>
Sent: Thursday, October 20, 2016 7:54 AM
Subject: RE: next meeting

How does next Wednesday afternoon work for a phone call with Erin work?

Jon

From: Sorensen Gerald [mailto:gjsorensen_1999@yahoo.com]
Sent: Wednesday, October 19, 2016 10:23 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Re: next meeting

Jon,

know if that is the week of 10/31 (I'm not available), or 11/7. I know we are working to a November PTC date, so her availability is problematic.

Are there other issues other than the few design issues that we need to complete - and could complete without her?

Jerry

From: Jon Biggs <jbiggs@losaltosca.gov>
To: Sorensen Gerald <gjsorensen_1999@yahoo.com>
Sent: Wednesday, October 19, 2016 9:42 AM
Subject: RE: next meeting

Hello Jerry –

I believe it will be best if she is present at the meeting – a phone conference is not usually conducive to these types of discussions – do you have an idea of her availability?

Jon

From: Sorensen Gerald [mailto:gjsorensen_1999@yahoo.com]
Sent: Tuesday, October 18, 2016 2:29 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: next meeting

Jon,
Can we set the next meeting date. I have reached out to Erin but her schedule is quite backed up right now. I was hoping that we could schedule a time and that possibly Erin could call in so that we can talk through those issues that you mentioned to me.

Let me know what might work for you.

Jerry

RE: follow up

From: Jon Biggs (jbiggs@losaltosca.gov)

To: gjsorensen_1999@yahoo.com

Date: Tuesday, November 29, 2016, 4:42 PM PST

Hello Jerry –

I did have a good Thanksgiving and hope you did as well.

I don't have an opportunity to meet this week, what is your schedule like for next week. I have run into a bit of an issue concerning parking and the CEQA review – although your latest parking analysis makes a case for reduced parking ratios it does not indicate what the project's impacts to the existing parking supply would be. I'm exploring past studies to determine occupancy rates for parking spaces in the plazas.

I have also enlisted the assistance of an architectural firm to provide a design analysis of the building and I await their findings.

As to the parking review – the consultant is finalizing the work on that now and may have some questions for me – he is slated to give me some feedback this week or early part of next week. I will keep you posted, as others are interested in the results as well.

Jon

From: Sorensen Gerald [mailto:gjsorensen_1999@yahoo.com]
Sent: Monday, November 28, 2016 10:40 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: follow up

Good Morning Jon,

I would like to follow up with you about moving our application forward to the PTC. Would you have time to meet this week? I am also curious of the status of the parking committee report review. Last we spoke you had indicted that you thought the consultant would have a review/report back to you by the middle of November. Given that we are at November 28, I was wondering if that had happened or if there was an update as to when you would expect a report from the consultant.

I hope you had a great Thanksgiving and look forward to meeting with you soon.

Jerry

Jon Biggs
Sorensen Gerald

Hi Jerry –

I have been communicating with the consultants and we are meeting later this week to address questions. It has taken some time, but I want to be sure I get things right and as importantly they get things right a s well. Los Altos has a unique history when it comes to parking and it seems that every file drawer I open or bit of information I pursue – a new piece of information comes up.

As to the design – I believe our phone meeting with Erin was somewhat helpful, but there remain design elements of the building's design that I am concerned with and felt that an independent opinion would be beneficial for me and the PTC plus the City Council. The height of the building is a concern and given the recent change to the height limits in other areas of the Downtown, the height of your building will need to be very carefully evaluated – I think a skilled architect can help with that.

I do not agree that parking is not an element of CEQA review – the purpose of CEQA is to evaluate a project's potential for impacts on the environment. Parking, or lack thereof, has the potential for a significant impact on the environment and needs to be evaluated – refer to "Taxpayers for Accountable School Bond Spending v. San Diego Unified School District", March 2013 for information on the need to analyze parking. Again the parking analysis you have submitted provides information concerning parking ratios for the use, but does not address whether the parking demand that is generated will have a significant impact on the parking supply. As you note – your project can be modified to provide for less square footage, but the analysis of this is still missing and we would need an amended project under the current CEQA review. The City's parking study of 2013 indicates that parking occupancies of plaza 10 are at capacity during the peak occupancy hour. I've been making an effort to go through plaza 10 a little while after the lunch hour of late – and although this is an unscientific method – I see that this plaza is often full with only 2 or 3 available spaces available. What the impacts of your project would have on the current supply – not only plaza 10, but other plazas and on-street parking spaces have not been fully evaluated.

I hope this information is helpful in explaining the hurdles that have come up in the review of the project. I will contact you as soon as I hear back from the architect so we can go over his review together.

Jon

From: Sorensen Gerald [mailto:gjsorensen_1999@yahoo.com]
Sent: Friday, December 09, 2016 5:10 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Re: follow up

Good Evening Jon,

Per the email thread below, you had indicated that you would have the information from the parking consultants and design consultant early this week. It is now Friday end of day and I am disappointed that I have not heard from you regarding scheduling a meeting.

As a reminder you had initially indicated that the parking review would be completed during the summer, then by the middle of November and now we are in the middle of December. Being quite familiar with the work of the committee I am confused by the delays.

Regarding a design review of our building by an architectural firm, I am similarly confused. This is a project that better meets the city's Design Guideline criteria and the City's Urban Design Plan than any project submitted in the past ten years. Further it has been through five public hearings and received unanimous support for the architecture and design. Lastly we met in October with our architect Erin Uesugi on the phone to discuss the design issues that you wanted to understand further. I am curious as to the purpose of now hiring a firm to complete a design review, as the issue of architecture and design is truly an issue for the Planning and Transportation Committee. Could you share your thoughts?

Regarding parking and CEQA. We have discussed with you in the past that parking is not an element of CEQA review. In addition we have shared with you many times that we are prepared at this time to reduce the square footage of the building to what ever square footage will be supported by the city. Therefore what additional analysis could be required?

Could you share with me any other projects in the City of Los Altos that have been required to provide an analysis of the parking impacts to the existing supply? I am not aware of any project that has done so.

We received your letter of September 28th indicating that our project application was complete. We are now at the middle of December and we have yet to be scheduled for a Planning and Transportation Committee meeting. We would like to be scheduled for the first available Planning and Transportation Committee meeting.

Please let me know of your earliest time to meet to move the project forward.

Jerry

Jon Biggs
Sorensen Gerald

Hello Jerry –

Good to hear from you. My apologies for not getting this you sooner, but other projects have been time consuming. I am sending the latest information for your project – including the review by the architectural consultant. Although information your architect shared during the conference call was helpful, it did not fully alleviate the concerns I had for the design of your building and I thought it best to seek an independent evaluation, which as noted above is attached. Seeking the advice of consulting professionals was one of the recommendations by the Downtown Building Committee and albeit theirs was recommendation to get this input in the early stages of the project, your project application had been submitted earlier but I felt the decision making bodies would benefit from this review in light of the Downtown focus of late.

As to the parking – each project is unique and is evaluated on a case by case basis. As you can see from the attached environmental review the parking analysis provided with your project application does not evaluate the potential impacts that your project, having no on-site parking, will have on the existing public parking supply, and this has the potential for being significant; thus, the need for further review through an environmental impact report. Try as I may – I just could not develop an analysis, based on recent independent studies, that indicates the project would have a less than significant impact on the public parking supply, both on-street and in the public parking plazas. I am open to discussing further and evaluating other information you might have that documents no significant impact would occur; however, the information at present does not support such a conclusion. I have been awaiting one further evaluation of this environmental analysis, but that has not been yet provided.

After you have an opportunity to review the attached please contact me so that we can schedule a meeting to discuss and determine the next steps for the project.

From: Sorensen Gerald [mailto:gjsorensen_1999@yahoo.com]
Sent: Monday, February 13, 2017 11:24 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Re: follow up

Good Morning Jon,

I am writing to follow up on our application.

We received from you a letter of completion on September 28th, 2016. It is my understanding that the city is responsible for providing applicants with any feedback within 30 days. That would be October 28, 2016. It has now been 4 and a half months well past the 30 day time frame. Further below is your last communication to us. Dated December 12, 2016, and states that you have asked for an "Independent Opinion" that would be beneficial for you, the PTC and the council. It has been two months since you sent this email. We could and should have already come before the Council by this time.

Also, I am confused as to why you think an "independent opinion" is necessary given that it is the purpose of the PTC to evaluate the architecture. Given that you acknowledge that the phone meeting with Erin was helpful, "but there remain design elements of the building's design that I am concerned with" why did you not raise those during our meeting with Erin? After all the agenda of items discussed were your issues, you indicated satisfaction at the time, why were any other issues you had not included in that meeting? Further as you acknowledge it was helpful to talk through issues with Erin, why wouldn't you have the consultant also meet with Erin to best understand the design in the full context?

So far as we know, no other application has been subjected to an "independent" review. No other project has been required to do a CEQA analysis for parking. If we are mistaken, could you please share with us any projects that you have requested an independent review, or CEQA analysis for? Also, why would this review take over two months to be completed? It seems that such a review should include a discussion with the architect and should not require more than one week to complete.

I would like to see any and all correspondence between the city and the independent architectural consultant. I would also request that we schedule a meeting to discuss our application with you, and City Manager Chris Jordan as soon as possible.

Jerry

From: Jon Biggs <jbiggs@losaltosca.gov>

To: Sorensen Gerald <gjsorensen_1999@yahoo.com>

Sent: Thursday, February 23, 2017, 5:07:10 PM PST

Subject: Parking Analysis Guidance 40 Main

Hello Jerry –

Here's the parking analysis information.

Jon

=== Subscribe to City Manager Weekly Updates, and more! ===

PARKING ANALYSIS – 40 MAIN

PARKING ANALYSIS

- The report shall provide the parking demand of the existing office building and where that parking is currently accommodated (on-site, on-street, parking plazas, etc.).
- The report shall calculate and provide the total number of on-site parking spaces required by the Los Altos Municipal Code – based on the proposed use of the building and its net square footage as net square footage is defined in Chapter 14.74 of the Los Altos Municipal Code.
- Since no on-site parking is proposed, the report shall identify and provide those locations where parking will be utilized – on-street, public parking, plazas, private lots, or other locations and identify the standards used to determine these locations, such as acceptable walking radius.
- If private parking areas are identified, the report needs to identify the appropriate legal document that will be executed to insure permanent use of the parking.
- The report shall provide key information regarding each identified parking location, such as the total number of parking spaces, number of accessible spaces, employee permit spaces (if present), time limits on parking, or other information necessary to evaluate parking utilization.
- The report shall provide the current hourly occupancy rates of each identified parking location from 8 am to 7 pm for a Weekday and Saturday (represented as a percentage of the total number of parking spaces at each identified location).
- The report shall identify the current peak hour occupancies.
- The report shall project the distribution of the required parking for the project amongst each identified parking location from 8 am to 7 pm for a Weekday and Saturday (represented as a percentage of the total number of parking spaces at each identified location).
- The report shall identify the projected peak hour occupancies.
- The report needs to account for any timed limits at identified parking locations and how these time limits may impact parking occupancy levels.
- The report may include an analysis of the City's parking permit system and how it will be used as part of the overall parking strategy for the project.
- The data collection and report preparation shall be completed by a qualified parking engineering or consulting firm with experience in conducting these types of studies and analysis.
- Other information may be requested or provided to evaluate the project's parking impacts.

From: Jon Biggs <jbiggs@losaltosca.gov>

To: Sorensen Gerald <gjsorensen_1999@yahoo.com>

Sent: Friday, February 24, 2017, 8:02:04 AM PST

Subject: Parking Study Guidance

Hello Jerry –

I updated item four of the parking study information I sent you yesterday and attach the update with this email.

Jon

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PARKING ANALYSIS – 40 MAIN

PARKING ANALYSIS

- The report shall provide the parking demand of the existing office building and where that parking is currently accommodated (on-site, on-street, parking plazas, etc.).
- The report shall calculate and provide the total number of on-site parking spaces required by the Los Altos Municipal Code – based on the proposed use of the building and its net square footage as net square footage is defined in Chapter 14.74 of the Los Altos Municipal Code.
- Since no on-site parking is proposed, the report shall identify and provide those locations where parking will be utilized – on-street, public parking, plazas, private lots, or other locations and identify the standards used to determine these locations, such as acceptable walking radius.
- If private parking areas are identified, the report needs to identify the appropriate legal document that will be executed to insure permanent use of the parking. Per Section 14.74.170, any off-site parking used to serve the proposed office building shall be within 300 feet of the project site.
- The report shall provide key information regarding each identified parking location, such as the total number of parking spaces, number of accessible spaces, employee permit spaces (if present), time limits on parking, or other information necessary to evaluate parking utilization.
- The report shall provide the current hourly occupancy rates of each identified parking location from 8 am to 7 pm for a Weekday and Saturday (represented as a percentage of the total number of parking spaces at each identified location).
- The report shall identify the current peak hour occupancies.
- The report shall project the distribution of the required parking for the project amongst each identified parking location from 8 am to 7 pm for a Weekday and Saturday (represented as a percentage of the total number of parking spaces at each identified location).
- The report shall identify the projected peak hour occupancies.
- The report needs to account for any timed limits at identified parking locations and how these time limits may impact parking occupancy levels.
- The report may include an analysis of the City's parking permit system and how it will be used as part of the overall parking strategy for the project.
- The data collection and report preparation shall be completed by a qualified parking engineering or consulting firm with experience in conducting these types of studies and analysis.
- Other information may be requested or provided to evaluate the project's parking impacts.

Submittal Timelines

- **Jon Biggs**

  Sorensen Gerald

  Chris Jordan

Hello Jerry –

This email is to provide you with some time lines for the submittal of pending information for the 40 Main project. Given the public review period for the environmental analysis, the requested parking study must be submitted at least 20 working days in advance of the Planning and Transportation Commission (PTC) meeting. This provides time to review the analysis, update the initial study as appropriate and make the analysis available for the required 20 day public review period. For example – if April 20th is the PTC meeting date, the parking analysis must be submitted to the City no later than Friday March 24, 2017.

In addition, story poles are required for the project and I want to be sure you incorporate what is needed for these into your scheduling. I have attached the City's story pole policy that provides the information your architect or engineer can use in the preparation of the Story Pole Plan. I need to approve the plan before the installation of the story poles, which need to be installed prior to the public noticing. The information in the attached policy includes additional information and guidance for the installation of the story poles.

Please let me know if you have any questions.

Jon Biggs, City of Los Altos

Community Development Department

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RE: 40 Main Street PTC hearing June 1

- **Jon Biggs**

Sorensen Gerald,Chris Jordan

William Maston,christopher.diaz@bbklaw.com

Hi Jerry,

As I said to Bill – the item will be agendized for a workshop meeting with the PTC at their June 1 meeting. The public hearing on the project will be on June 15, this provides the time needed to post, mail, and publish the public hearing notice and the notice for the environmental review, which I am in the process of wrapping up given the information you have provided.

As a reminder the story poles for the project need to be in place by June 1 so that the Commission and public have adequate time to review them in advance of the hearing.

Jon

From: Sorensen Gerald [mailto:gjsorensen_1999@yahoo.com]
Sent: Monday, May 22, 2017 3:03 PM
To: Chris Jordan <cjordan@losaltosca.gov>; Jon Biggs <jbiggs@losaltosca.gov>
Cc: William Maston <bill@mastonarchitect.com>; christopher.diaz@bbklaw.com
Subject: 40 Main Street PTC hearing June 1

Dear Chris & Jon (Chris Diaz by CC)

I am writing again to share my frustration that we have not yet been placed on the June 1, PTC agenda.

Jon wrote to our architect Bill Maston on May 12th, and stated; "If you want to move forward for a hearing on June 1, I will make that happen;..."Please let me know." - I am letting you know again today - we want to be on the June 1, PTC agenda.

Jon met with Bill Maston on May 16th. At that meeting it is our understanding that the following points were agreed to:

1) The existing parking study submitted on April 13, responded to every aspect of the scope presented to us by Jon in his February 24th email,

2) At Jon's request we would try to work with the parking consultant to reorganize/reformat the report so as to emphasize one part of the report. Jon requested no substantive changes, just a reformatting of the report. We reformatted the report as Jon requested and submitted it to Jon on the May 18,

3) Jon acknowledged that there is no 20-day CEQA notice required prior to a PTC hearing - therefore there is no additional notice requirements for a June 1, PTC hearing, beyond the standard mailing of post cards and issuance of the agenda and staff report. There is no requirement of a newspaper notice. Further newspaper notice could be made in the Daily Post as well as the Town Crier.

Chris, in our three meetings, (May 12 2016, August 18 2016, and February 28 2017) you have assured me each time that you were committed to our project receiving a quick hearing date with the PTC and Council. It has now been more than 12 months since our initial meeting, and eight months since we received our letter of completion. I am requesting that this project move forward June 1, at the PTC, as was promised in Jon's email of May 12th. There is still plenty of time to accomplish this. If we an do this now, we will be in a position for a June 20 Council meeting.

We appreciate your consideration and hope you can help Jon find a way to make this happen.

Thank you,

Jerry

650-906-0491

MINUTES OF A REGULAR MEETING OF THE PLANNING AND TRANSPORTATION COMMISSION OF THE CITY OF LOS ALTOS, HELD ON THURSDAY, JUNE 15, 2017 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, ONE NORTH SAN ANTONIO ROAD, LOS ALTOS, CALIFORNIA

ESTABLISH QUORUM

PRESENT: Chair Meadows, Vice-Chair Bressack, Commissioners Bodner, Enander, Oreizy, and Samek

ABSENT: Commissioner McTighe

STAFF: Community Development Director Biggs and Assistant City Attorney Wisinski

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. **Planning and Transportation Commission Minutes**
   Approve the minutes of the June 1, 2017 Regular Meeting.

Action: Upon motion by Vice-Chair Bressack, seconded by Commissioner Oreizy, the Commission approved the minutes of the June 1, 2017 Regular Meeting as modified by Commissioner Enander. The motion was approved by the following vote: AYES: Bressack, Bodner, Enander Meadows, Oreizy and Samek; NOES: None; ABSTAIN: None; ABSENT: McTighe. (6-0)

PUBLIC HEARING

In response to written comments, Commissioner Bodner noted that there was no reason for her to recuse herself and that she has not formed an opinion on the project before the Planning and Transportation Commission meeting.

1. **13-D-14 and 13-UP-03 – 40 Main Street Offices, LLC – 40 Main Street**
   Proposed three-story office building having 17,428 square feet of gross floor area that replaces the existing one-story office building containing 2,127 square feet. The project includes the removal of existing structures, site improvements, plants, and landscaping. The proposed structure is approximately 38 feet in height measured to the highest point of the building and approximately 45 feet to the top of a tower element. The project proposes a pedestrian paseo connecting parking plaza 10 to Main Street as a public benefit. For this proposed public benefit, the applicant is seeking development incentives in the form of increases in the maximum building height, reduction in the number of on-site parking spaces, and a reduction in the rear yard setback requirement for the upper floors. The project requires use permit, and design review approval in addition to acceptance of the pedestrian paseo as a public benefit that supports the requested exceptions to the height, parking, and rear yard setback requirements. A Mitigated Negative Declaration is being proposed. The PTC will consider the project, along

Community Development Director Biggs presented the staff report recommending denial of the project and its permit applications to the City Council.

Project representative Bill Maston gave a presentation of the project, showed 3D renderings of the project, and talked about the benefit of providing a paseo.

<u>Public Comment</u>

Los Altos Hills Resident Robert Sandor gave his support and said he was pleased with the look and style of the building, that the design fits well with the village character, and that it will be positive for downtown.

Downtown business tenant Brendan Pratt of the Pratt Center stated his concerns about parking and the impact the project will have on Plaza 10, that he has been in business for 17 years and chose the building because of its close proximity to other downtown businesses, that finding parking is already difficult for his clients, and noted that two restaurants will re-open again.

Downtown business owner and tenant Von Packard of 4 Main Street gave his opposition stating that the changes that need to be made to the project have not been made and if the project is brought into compliance with Code, he could look at supporting it.

Resident Mike Abrams noted his support for the following reasons: it's clear that our downtown restaurants and merchants would benefit from additional Class A office space and more feet on the street; and the project proposal has gone on long enough and the City needs to work with the developer to work out the issues to get the project approved.

Resident Anabel Pelham gave her support for the paseo, said to fix up Plaza 10, that the project will add vibrancy, and gives the opportunity to get out and about with safe lighting for seniors.

Resident Steven Yarbrough said that project will affect him, but he is in favor, that the builder's recommendation to revise Plaza 10 is a brilliant idea, disagreed with staff's conclusion of stucco not being an appropriate material for downtown, and the criticism of bulk because the building would complement the hotel across the street.

Resident William Milks gave his support for the project and changes to Plaza 10 and stated that he was unaware of a parking issue because he has no problem finding parking when he frequents downtown.

Resident Nancy Walsh stated that Plaza 10 needs to be upgraded and the City should consider it since the developer is willing to pay for it.

Resident Pat Marriott stated that she was part of the Downtown Buildings Committee that created a checklist so all projects would be treated equitably, gave her support for the 3D modeling and story poles, that almost all other projects downtown have received parking exceptions form the City, and that the design fits the village character.

Resident Mike Conner gave his support for the project stating that Los Altos has improved and should continue to improve with projects, such as this one that fits the village character and it would add to the gateway to downtown.

Resident Francis Murray gave his support, said that this is an important project and an example of why exceptions are needed, and agreed with the revisions to Plaza 10 that are proposed.

Resident Jim Wing said his CEQA concerns were in the Initial Study in the transportation section of the report because the data used is too old and the report should be revised. He stated that the PTC reviewed this data on June 16, 2011 and could not explain the discrepancies (see letter submitted). He stated that we need a good set of current data, that the paseo will not be used by residents, and that Wells Fargo has an access easement across the driveway to Plaza 10.

Resident Michael Hudrall stated he was very concerned with the parking waiver being requested by the project, any parking overflow into his neighborhood, and cut through traffic. He said he was worried about the cumulative impacts of new downtown projects and the Downtown Vision and stated that a comprehensive analysis is needed. He was not in favor of the paseo as a public benefit.

Resident Bart Nelson stated that the three issues that need action are the rear yard setback, the height of the building and parking. He was in favor of reworking the plazas to provide the needed additional parking.

Resident Andrea Eaton stated that staff needs to help development projects through the process and find the positives of the project, not just the negatives in the staff report. She gave her support for the project and said the application of parking waivers on projects feels inconsistent and restriping the plaza is an excellent idea and the City should find a way to make that possible.

Downtown business tenant and dentist, Thanh Chan of Main Dental, stated that he's been at this location for 10 years and has seen many changes for the good of downtown and supports this project. He said that because there is no access to good foot traffic, there is a turnover of five to eight businesses a year. He also noted that employees are occupying the parking spaces for customers in the plazas.

Resident Alex Glew stated his support for the project, that the scale is appropriate, makes a nice entrance to the City, that the interpretation of rules has become absurd and makes development unfair, the restriping of the plaza is a great idea, and Los Altos needs more Class A office space.

Resident David Duperrault gave his support for the project and stated that Jerry Sorenson has given a lot to this community. He further stated the need to talk about the public benefit of the paseo as a public plaza/space because vehicles, pedestrians and bicycles conflict at the Wells Fargo driveway.

Mountain View Resident Wyatt Allen gave his support for the project, stated that the parking issue is very minor, the project was designed to be attractive and has the village ambience, the use of stucco is reasonable, the Wells Fargo access is problematic, and the office use is appropriate because retail really struggles downtown.

Resident David Rock gave his support for the project stating that the building fits in with the village character on Main Street, was in favor of the restriping of the plaza to get more parking spaces at the applicant's expense, the project meets 23 of the 24 Downtown Design Guidelines, the City should not be obsessed over stories when the focus should be related to height, the obsession with interior heights of buildings is baffling, and we need Class A office downtown because there are lots of requests for it.

Unincorporated Los Altos resident Mark Rogge gave his support for the project, stated the need for more office downtown, that office workers will avail themselves of services and restaurants downtown, that the property is already part of the original parking district and has already paid into and provided parking, and that the public benefit of the paseo is important.

Realtor, resident and Enchanté Hotel owner Abigail Ahrens stated she was happy that the project didn't use a sloped roof.

Downtown business tenant for the Christian Science Reading Room, Katherine O'Toole, stated her support for the paseo and the width of it to provide a public benefit.

Resident Jon Baer stated he wants Class A office, but does not want this project approved. He was concerned with the use of cheap materials, the height, and setbacks that are too narrow and too low. He further stated that the restriping of the plazas need to go with the growth of the downtown.

Downtown business tenant Scott Atkinson stated his opposition to the project noting that the community standards and costs were known by the applicant at the time submittal, that the community should not foot the bill for the parking, taking away does not justify this, and horizontal parking is difficult.

The Commission discussed the project and voiced concerns regarding the story poles not accurately representing the project proposal. The parking proposal for Plaza 10 needs to be included with the application and studied. All the commissioners were in support of the office use with a conditional use permit.

Some of the design concerns mentioned included: this is not a coherent architectural design; there are problems with the design materials as well as bulk and mass; a third story works here, but may need to be set back further in the roof/dormers; not an appropriate location of the tower because it is too cramped; needs more open space in the front of the building; the paseo is too narrow; stucco is acceptable if done right where the pilasters will accentuate vertical elements and there needs to be more horizontal lines; the paseo is not enough of a public benefit to offset what the developer is getting; but a redo of the parking plaza 10 would be an adequate benefit; need clarity of the parapet and how it relates to the building height; use more natural and higher quality materials; lack of on-site parking is unacceptable; the fly over presentation was not realistic and does not match the rendering provided to the Commission; and the tower creates an artificial corner that does not need to be there.

Action: Upon motion by Commissioner Enander, seconded by Vice-Chair Bressack, the Commission continued design and use permit applications 13-D-14 and 13-UP-03 to a date uncertain and wanted to see all changes made to address the project issues. The motion was approved by the following vote: AYES: Bressack, Bodner, Enander Meadows, Oreizy and Samek; NOES: None; ABSTAIN: None; ABSENT: McTighe. (6-0)

COMMISSIONERS' REPORTS AND COMMENTS

Commissioner Samek said that the Commission should review Public Benefits to better identify those that would be appropriate for the Downtown.

POTENTIAL FUTURE AGENDA ITEMS

Commissioner Samek requested that Public Benefits downtown, parking on Edith and cross streets, and landscape screening enforcement be put on a future agenda for discussion.

ADJOURNMENT

Chair Meadows adjourned the meeting at 10:25 P.M.

____

Jon Biggs

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS, HELD ON TUESDAY, JULY 11, 2017, BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, 1 NORTH SAN ANTONIO ROAD, LOS ALTOS, CALIFORNIA

ESTABLISH QUORUM

PRESENT: Mayor Prochnow, Vice Mayor Mordo, Councilmembers Bruins (via teleconference; left meeting at 8:25 p.m.), Lee Eng and Pepper

ABSENT: None

PLEDGE OF ALLEGIANCE

Mayor Prochnow led the Pledge of Allegiance to the flag.

CHANGES TO THE ORDER OF THE AGENDA

Item number 8 was moved to the beginning of the meeting.

DISCUSSION ITEM

8. Use of Public Parking Plaza to Facilitate Private Development: Consider a re-configuration of a public parking plaza for private development, provided that any new design comply with the City's standards for parking lots, and provide direction as appropriate

Mayor Prochnow recused herself due to a potential financial conflict of interest (owns property within the 500 feet of the proposed parking plaza), stepped down from the dais and left the chamber. Vice Mayor Mordo conducted the meeting.

City Manager Jordan presented the report.

Public Comments

The following individuals provided public comments: Bill Maston, representing the property owners of 40 Main Street), Los Altos residents Bart Nelson, Andrea Eaton, Jon Baer, David Duperrault, Nancy Bremeau, Teresa Morris, Nancy Phillips and Jim Wing, Robert Sandor, Jerry Wittenauer and Kim Cranston.

Action: Motion made by Councilmember Bruins, seconded by Vice Mayor Mordo, to consider the re-configuration of a public parking plaza for private development, provided that any new design: 1) comply with the City's standards for parking lots in 14.74.200 of the Municipal Code; 2) provide additional public amenities, such as bicycle parking, electric vehicle charging stations, etc.; 3) provide additional parking stalls; and 4) provide adequate landscaping, including tree canopy.

Councilmember Bruins amended the motion to be that the Council will consider the re-configuration of a public parking plaza for private development, provided that any new design comply with the

City's standards for parking lots in 17.74.200 of the Municipal Code. The motion, as amended, passed by the following roll call vote: AYES: Bruins, Lee Eng, Mordo and Pepper; NOES: None; ABSTAIN: Prochnow; ABSENT: None.

Action: Upon a motion by Vice Mayor Mordo, seconded by Councilmember Pepper, the Council directed that this action is solely for Parking Plaza 10 and the application of the owners of 40 Main Street, by the following roll call vote: AYES: Bruins, Lee Eng, Mordo and Pepper; NOES: None; ABSTAIN: Prochnow; ABSENT: None.

Mayor Prochnow returned to the dais and resumed conducting the meeting.

SPECIAL PRESENTATION

Mayor Prochnow presented a proclamation for National Parks and Recreation Month to Neysa Fligor, Chair of the Parks and Recreation Commission.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Catherine Anne Stansbury spoke regarding a dog park in Los Altos.

Laura Teksler, representing the Environmental Commission, spoke regarding the Green Infrastructure Plan Framework.

Claudia Coleman, Chair of the Hillview Community Center Project Task Force, spoke regarding the Task Force.

CONSENT CALENDAR

Councilmember Lee Eng pulled items number 2 and 4.

Action: Upon a motion by Councilmember Pepper, seconded by Vice Mayor Mordo, the Council approved the Consent Calendar, with the exception of items number 2 and 4, by the following vote: AYES: Lee Eng, Mordo, Pepper and Prochnow; NOES: None; ABSTAIN: None; ABSENT: Bruins, as follows:

1. Council Minutes: Approved the minutes of the June 27, 2017 study session and regular meeting.

2. Installation of sculptures: Approve the installation of *Mutha Hen* at the corner of State Street and Third Street, *Alegria* at Village Park, and *Reverse Prometheus* on the Civic Center campus between the Library and City Hall – *pulled for discussion* *(see page 4)*.

3. Ordinance No. 2017-432: Smoke Free Civic Center: Introduced and waived further reading of Ordinance No. 2017-432 amending Chapter 6.28 of the City of Los Altos Municipal Code to regulate smoking on the Civic Center Campus.

4. Resolution No. 2017-30: Volunteer Service Standards repeal: Adopt Resolution No. 2017-30 repealing Resolution No. 2009-33 setting volunteer service standards – *pulled for discussion (see page 4).*

5. Construction Contract Award: 2017 City-wide Street Pavement Maintenance Projects, TS-01001, TS-01003 and TS-01004: Awarded the Base Bid and Add Alternates No. 1 and 3 for the 2017 City-wide Street Pavement Maintenance Projects, TS-01001, TS-01003 and TS-01004 to Intermountain Slurry Seal, Inc. in the amount of $1,159,764 and authorized the City Manager to execute a contract on behalf of the City.

6. Resolution No. 2017-31: Cycle 2 One Bay Area Grant – Fremont Avenue Asphalt Concrete Overlay: Adopted Resolution No. 2017-31 to demonstrate compliance with the Surplus Land Act as amended by Assembly Bill 2135 per MTC requirement for the $336,000 OBAG funds and allocate $199,000 for a new CIP project with a total budget of $455,000 to resurface Fremont Avenue, between Grant Road and the City limit.

PUBLIC HEARING

7. Resolution No. 2017-32: 2017/18 Community Development Fee Schedule: Adopt Resolution No. 2017-32, setting the FY 2017/18 Fee Schedule for the Community Development Department

Planning Services Manager Kornfield and Building Official Ballard presented the report.

Mayor Prochnow opened the public hearing. There were no public comments. Mayor Prochnow closed the public hearing.

Action: Upon a motion by Councilmember Pepper, seconded by Vice Mayor Mordo, the Council adopted Resolution No. 2017-32 setting the FY 2017/18 Fee Schedule for the Community Development Department, by the following vote: AYES: Lee Eng, Mordo, Pepper and Prochnow; NOES: None; ABSTAIN: None; ABSENT: Bruins.

DISCUSSION ITEMS

9. Potential City Projects and Potential Fundraising Efforts: Discuss potential City projects and potential fundraising efforts and determine next steps, if any

City Manager Jordan presented the report.

Public Comments

The following individuals provided public comments: David Smith, representing Our Next Library Committee, and Los Altos residents Nancy Bremeau and Teresa Morris.

Direction: Mayor Prochnow and Vice Mayor Mordo were appointed to a subcommittee to develop a policy for fundraising for City projects.

Mayor Prochnow recused herself due to a potential financial conflict of interest (owns property within the Downtown), stepped down from the dais and left the chamber. Vice Mayor Mordo conducted the meeting.

Direction: Councilmembers directed staff to look at the cost of potentially expanding underground parking in Parking Plaza 7 as part of the current exploration of building underground parking.

Mayor Prochnow returned to the dais and resumed conducting the meeting.

Direction: Councilmembers supported considering the placement of a theater, affordable senior housing and/or affordable housing on City property Downtown.

10. Delegate to League of California Cities Annual Conference and Business Meeting: Designate Councilmembers as Delegate and Alternate for the purpose of attending and voting at the League of California Cities Annual Conference and Business Meeting September 13-15, 2017 in Sacramento

Action: Upon a motion by Councilmember Pepper, seconded by Vice Mayor Mordo, the Council designated Mayor Prochnow as Delegate for the purpose of attending and voting at the League of California Cities Annual Conference and Business Meeting September 13-15, 2017 in Sacramento, by the following vote: AYES: Lee Eng, Mordo, Pepper and Prochnow; NOES: None; ABSTAIN: None; ABSENT: Bruins.

ITEMS PULLED FROM CONSENT CALENDAR

2. Installation of sculptures: Approve the installation of *Mutha Hen* at the corner of State Street and Third Street, *Alegria* at Village Park, and *Reverse Prometheus* on the Civic Center campus between the Library and City Hall

Councilmember Lee Eng expressed concerns with installing artwork before the adoption of the Public Arts Master Plan.

Public Comments

Maddy McBirney, representing the Public Arts Commission, provided public comments.

Action: Upon a motion by Vice Mayor Mordo, seconded by Councilmember Pepper, the Council approved the installation of *Mutha Hen* at the corner of State Street and Third Street and *Alegria* at Village Park, by the following vote: AYES: Lee Eng, Mordo, Pepper and Prochnow; NOES: None; ABSTAIN: None; ABSENT: Bruins.

Action: Upon a motion by Vice Mayor Mordo, seconded by Councilmember Lee Eng, the Council denied the installation of *Reverse Prometheus*, by the following vote: AYES: Lee Eng, Mordo and Pepper; NOES: Prochnow; ABSTAIN: None; ABSENT: Bruins.

4. Resolution No. 2017-30: Volunteer Service Standards repeal: Adopt Resolution No. 2017-40 repealing Resolution No. 2009-33 setting volunteer service standards

Councilmember Lee Eng expressed concerns that there was no need to repeal Resolution No. 2009-33.

Public Comments

The following provided public comments: Julie Rose, representing the Los Altos Chamber of Commerce, and Los Altos resident Roy Lave.

Action: Upon a motion by Vice Mayor Mordo, seconded by Councilmember Pepper, the Council adopted Resolution No. 2017-30 repealing Resolution No. 2009-33 setting volunteer service standards, by the following vote: AYES: Mordo, Pepper and Prochnow; NOES: Lee Eng; ABSTAIN: None; ABSENT: Bruins.

INFORMATION ONLY ITEMS

A. City Manager-approved purchases between $50,000 and $75,000 for the period April 1 – June 30, 2017

B. 2017 Council Priorities status update

C. Green Infrastructure Plan Framework

COUNCIL/STAFF REPORTS AND DIRECTIONS ON FUTURE AGENDA ITEMS

Future agenda item

The Council requested a future agenda item to receive an update and to provide input on the Foothill Expressway project between El Monte Avenue and San Antonio Road.

Council reports

Vice Mayor Mordo reported he attended a meeting of the Silicon Valley Clean Energy Board on July 10, 2017.

Councilmember Pepper reported she attended the Boy Scout Troop 37 100th Anniversary celebration on July 1, 2017 and the Environmental Commission meeting on July 10, 2017. She further reported she volunteered at the Art and Wine Festival the weekend of July 8 and 9, 2017.

Councilmember Lee Eng reported that she and Mayor Prochnow and Vice Mayor Mordo attended the staff barbeque on July 6, 2017 and that she attended a Fourth of July event at the Los Altos Presbyterian Church.

Mayor Prochnow reported she attended the Senior Commission meeting on July 10, 2017

ADJOURNMENT

Mayor Prochnow adjourned the meeting at 9:36 p.m.

____
Mary Prochnow, MAYOR

____
Jon Maginot, CMC, CITY CLERK

Subject: Exclusive Negotiating Agreement
Date: Tuesday, October 3, 2017 at 12:42:42 PM Pacific Daylight Time
From: Ted Sorensen
To: cjordan@losaltosca.gov
CC: Jon Biggs, William Maston, Sorensen Gerald

Chris,

We noticed that our proposed exclusive negotiating agreement is still not on the October 10 consent calendar. Is there any chance that this could still be added to the consent calendar? If not, can we be sure that it is on the October 24 calendar?

Thanks,

Ted Sorensen
(650) 924-0418 (cell)

Subject: RE: Exclusive Negotiating Agreement
Date: Tuesday, October 3, 2017 at 3:54:33 PM Pacific Daylight Time
From: Chris Jordan
To: Ted Sorensen
CC: Jon Biggs, Bill Maston, Sorensen Gerald

Ted

The ENA has been provided to the City Attorney for review. When the review is finished, we will either get back to you with requested changes, or it will be placed on an agenda.

Chris

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Tuesday, October 03, 2017 12:43 PM
To: Chris Jordan <cjordan@losaltosca.gov>
Cc: Jon Biggs <jbiggs@losaltosca.gov>; Bill Maston <billm@mastonarchitect.com>; Sorensen Gerald <gjsorensen_1999@yahoo.com>
Subject: Exclusive Negotiating Agreement

Chris,

We noticed that our proposed exclusive negotiating agreement is still not on the October 10 consent calendar. Is there any chance that this could still be added to the consent calendar? If not, can we be sure that it is on the October 24 calendar?

Thanks,

Ted Sorensen
(650) 924-0418 (cell)

=== Subscribe to [illegible], and more! ===

From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Wednesday, February 14, 2018 at 3:12 PM
To: Ted Sorensen <ted@gunnmanagement.com>, Ted Sorensen <ted@tgslawoffices.com>, Gerald Sorensen <gjsorensen@sbcglobal.net>
Subject: City Attorney Contact Info

Hello Jerry and Ted –

Here is the contact information for the City Attorney – I told him he can expect a call or email in a day or two if you do not hear from him.

Christopher Diaz
Partner
christopher.diaz@bbklaw.com
[illegible] 977-3309 C: (310) [illegible]
www.[illegible]law.com

See you next Wednesday, February 21, here at my office at 2:00.

Jon

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Wednesday, February 14, 2018 at 4:04 PM
To: Ted Sorensen <ted@gunnmanagement.com>, Ted Sorensen <ted@tgslawoffices.com>, Gerald Sorensen <gjsorensen@sbcglobal.net>
Subject: RE: City Attorney Contact Info

Sounds good.

I have attached scanned copies of the plaza 10 layout options for you to review as it sounded like you didn't have printed copies.

Jon

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Wednesday, February 14, 2018 3:39 PM
To: Jon Biggs <jbiggs@losaltosca.gov>; Ted Sorensen <ted@tgslawoffices.com>; Gerald Sorensen <gjsorensen@sbcglobal.net>
Subject: Re: City Attorney Contact Info

Jon,

Thanks for the very productive meeting this afternoon. I will give Chris Diaz a call tomorrow morning.

See you Wednesday.

Best regards,

Ted

From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Tuesday, March 6, 2018 at 8:38 AM
To: Ted Sorensen <ted@tgslawoffices.com>
Subject: RE: Next Step

Hi Ted – I will check his availability and set up a meeting.

Also – I am working with our Public Works Department on some guidance regarding parking plaza 10 and placement of bollards at the driveway aprons to Edith – I expect to have that wrapped up this week as well.

Will get back to you with some date and time options.

Jon

From: Ted Sorensen [mailto:ted@tgslawoffices.com]
Sent: Monday, March 05, 2018 4:15 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Next Step

Jon,

I spoke with Chris Diaz last week and I think we made good progress.

We decided that the next time he is in town, we should all get together to nail down the type of agreement that is appropriate and the CEQA process for Plaza 10.

Can you set something up with Chris Diaz for later this week?

Thanks,

Ted Sorensen
(650) 924-0418 (cell)

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Tuesday, March 20, 2018 at 10:00 AM
To: Ted Sorensen <ted@gunnmanagement.com>
Subject: RE: 40 Main Street

OK

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Tuesday, March 20, 2018 9:22 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Re: 40 Main Street

Jon,

The meeting with Chris Diaz could be in your office with you and us with Chris on the phone. No need for him to actually be present.

I am anticipating a relatively short meeting 20-30 minutes tops. We just want to get a contractual arrangement for doing the work (without surprises) and an environmental process worked out with you and Chris together. If we can do this, we should be able to make things happen relatively quickly.

Thanks,

Ted

From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Tuesday, March 20, 2018 at 7:28 AM
To: Ted Sorensen <ted@gunnmanagement.com>
Subject: RE: 40 Main Street

Will try.

Jon

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Monday, March 19, 2018 4:03 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Re: 40 Main Street

Great. Can we also set up a meeting with Chris Diaz?

Thanks,

Ted

From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Monday, March 19, 2018 at 3:54 PM

To: Ted Sorensen <ted@gunnmanagement.com>
Subject: RE: 40 Main Street

Hi Ted – I have a meeting with our engineering staff tomorrow morning and will provide some feedback from that discussion as soon as it ends.

Jon

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Monday, March 19, 2018 10:35 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: 40 Main Street

Jon,

We have redesigned our building and we are ready to prepare a new layout on the Plaza 10 parking. When we last met, you were going to speak with the City Engineer that same day. In our last e-mail exchange you indicated that you would speak with the engineering department on the access issues to Edith. I'm not sure if you have completed that interaction yet.

I was going to speak with Chris Diaz about contractual and environmental issues with respect to Plaza 10. After many weeks, I was able to speak with Chris Diaz and he indicated he needed to speak with you and have another meeting with us to finalize the approach.

At this point, however, we have not had those meetings and we still lack a suitable contractual basis and plan for environmental review of Plaza 10 plans. In my telephone conversation with Chris about these issues he suggested that he needed input from you to finalize an approach. In order to move forward with our application,

We need to:

1. Hear from the City Engineer (and maybe the fire department) on the proposed access to Edith.
2. Meet with Chris Diaz and you to finalize the contractual and environmental arrangements for moving forward on a design and approval schedule for plaza 10;

Can we schedule these meetings soon? I will be out of town on Thursday and Friday this week. Except for that Jerry and I (and Bill) are available.

Best regards,

Ted Sorensen

(650) 924-0418 (cell)

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From: Ted Sorensen <ted@gunnmanagement.com>
Date: Wednesday, March 21, 2018 at 8:01 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Re: Plaza 10 re-striping

Okay. Let me know.

Sent from my iPhone

On Mar 21, 2018, at 7:59 AM, Jon Biggs <jbiggs@losaltosca.gov> wrote:

Hi Ted –

I met with engineering staff yesterday to review the plaza 10 striping proposals – they had some concerns and were going to take some more time to study them. They are slated to get back to me next week to go over their review.

Jon

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Thursday, March 22, 2018 at 7:08 AM
To: Ted Sorensen <ted@gunnmanagement.com>
Subject: RE: Plaza 10 re-striping

OK – will let you know if engineering here would like to meet.

Jon

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Wednesday, March 21, 2018 3:24 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Re: Plaza 10 re-striping

Jon,

If it would be helpful, our Civil Engineer could meet with your engineering staff to address any concerns they may have relating to the restriping layout and SWPPP or other issues. Also, Bill Maston will be available as needed.

Best regards,

Ted

From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Wednesday, March 21, 2018 at 7:59 AM
To: Ted Sorensen <ted@gunnmanagement.com>
Subject: Plaza 10 re-striping

Hi Ted –

I met with engineering staff yesterday to review the plaza 10 striping proposals – they had some concerns and were going to take some more time to study them. They are slated to get back to me next week to go over their review.

Jon

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Wednesday, March 28, 2018 at 7:46 AM
To: Ted Sorensen <ted@tgslawoffices.com>
Subject: RE: Short call

Hi Ted – I have not heard back, although engineering folks have been occupied the last few days in preparation for the Council meeting. I will let you know as soon as I hear something back.

Jon

From: Ted Sorensen [mailto:ted@tgslawoffices.com]
Sent: Tuesday, March 27, 2018 3:06 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Short call

Jon,

Any word about when we can have a short telephone call with Chris Diaz?

Also, any word from the engineering department on the designs for Plaza 10?

Best regards,

Ted Sorensen

(650) 924-0418 (cell)

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Monday, April 9, 2018 at 7:46 AM
To: Ted Sorensen <ted@tgslawoffices.com>
Subject: RE: Short call

Hi Ted –

I was out of the office at the end of last week so I wasn't here to check in with engineering on their status –

I do have this on my list of things to get done today however and will get back to you.

Jon

From: Ted Sorensen [mailto:ted@tgslawoffices.com]
Sent: Wednesday, April 04, 2018 3:57 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: FW: Short call

Jon,

Any response from my e-mail below?

Thanks,

Ted

P.S. Do you expect that the parking committee work will be finalized at next week's meeting?

From: Ted Sorensen <ted@tgslawoffices.com>
Date: Tuesday, March 27, 2018 at 3:06 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Short call

Jon,

Any word about when we can have a short telephone call with Chris Diaz?

Also, any word from the engineering department on the designs for Plaza 10?

Best regards,

Ted Sorensen

(650) 924-0418 (cell)

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Thursday, May 3, 2018 at 8:21 AM
To: Ted Sorensen <ted@gunnmanagement.com>
Subject: RE: 40 Main application?

Ok – I have it on my calendar for an hour. Will see you here.

Jon

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Wednesday, May 02, 2018 10:06 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Re: 40 Main application?

Jon,

Ok. We will see you then.

Ted

From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Wednesday, May 2, 2018 at 8:15 AM
To: Ted Sorensen <ted@gunnmanagement.com>
Subject: RE: 40 Main application?

Hello Ted –

Apologies for the delayed response, but there have been other things consuming my time the past few weeks.

I did review the changes to the parking lot layout with our engineering department and they have indicated the following are needed to continue their analysis of the proposal –

- Given the change to the ingress and egress from Plaza 10 - demonstrate that 4th Street and its adjacent intersections have the capacity to handle the additional trip volumes for the am and pm peak hours. These should be based on current conditions and trip counts at these locations (circulation studies on file do not provide the current traffic volumes, which are needed for this analysis)

- Provide an engineer's analysis that demonstrates that emergency and delivery vehicles can enter and leave Plaza 10 and that the internal circulation of the reconfigured parking plaza can accommodate the turning movements for this range of vehicles.

There may also be a need to put funds on deposit for a peer review of the above data – engineering staff has a full workload and given these improvements would be taking place on City property, they would benefit from the additional review of the studies you provide.

The remainder of this week is booked up, but there is some time to meet next Wednesday, say 2:00 pm?

Jon

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Tuesday, May 01, 2018 3:56 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: FW: 40 Main application?

Jon,

Jerry and I would like to meet with you to discuss our application.

I realize things are busy at the Planning Department but it has now been 10 months since the July 11, 2017 Council Meeting directing us to work with you to bring our application back, with an approach to the redevelopment of plaza 10. We immediately prepared an Exclusive Negotiating Agreement for the City to consider. We were finally able to discuss a contractual strategy with Chris Diaz in early April. It was agreed at that time you would coordinate a meeting when Chris was next in Los Altos, so that we could finalize an approach. We have yet to hear back from you.

At the same time, you were going to get back to us on the response from the engineering department regarding the proposed layout of plaza 10. We haven't heard from you on this matter either.

Given that the Planning Commission is about to make parking recommendations that will be sent to council which will impact our development, we think it would be appropriate for us to meet to discuss an appropriate strategy to addressing parking at 40 Main Street.

Would you be able to schedule time later this week?

Thanks,

Ted Sorensen (650) 924-0418 (cell)

From: Ted Sorensen <ted@gunnmanagement.com>
Date: Thursday, April 26, 2018 at 4:38 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: 40 Main application?

Jon,

We are pleased that the Planning Commission is moving forward with the Parking Committee recommendations at this point. But we are concerned that the Council will not take up the issue until (at least) late June. Can Jerry and I meet with you briefly to discuss how we advance our application at this point?

Thanks,

Ted Sorensen

(650) 924-0418 (cell)

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Thursday, May 24, 2018 at 11:54 AM
To: Ted Sorensen <ted@tgslawoffices.com>
Subject: RE: June 7 date

Hi Ted –

We have published the notice, and I believe Yvonne has sent out the mailing – we'll need to bill you for that.

I'll have to double check with her on other things that might be needed for now.

Jon

From: Ted Sorensen [mailto:ted@tgslawoffices.com]
Sent: Thursday, May 24, 2018 11:13 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: June 7 date

Jon,

Have you sent out notice for the June 7 Planning Commission meeting?

Bill will call later today to make sure that you have everything you need.

Best regards,

Ted Sorensen (650) 924-0418

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Thursday, May 24, 2018 at 4:44 PM
To: Ted Sorensen <ted@tgslawoffices.com>
Subject: RE: 40 Main Project

Great – thanks Ted. I'll see you on Tuesday.

You have a great Memorial Day weekend as well.

Jon

From: Ted Sorensen [mailto:ted@tgslawoffices.com]
Sent: Thursday, May 24, 2018 2:11 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Cc: Bill Maston <billm@mastonarchitect.com>
Subject: Re: 40 Main Project

Jon,

Thanks for getting back to me today.

1. We will see you Tuesday at 3:30 to make sure everything is ready to go.

2. We will bring a check for $438 to that meeting.

3. We will come by this afternoon to pick up the notice and post it on site.

4. We will update the large notice at the property ASAP.

5. Story poles and netting are due to be updated on May 31.

6. We will prepare a new letter describing our current application and bring it on Tuesday as well.

We wish you a great Memorial Day weekend and see you Tuesday.

Ted

From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Thursday, May 24, 2018 at 1:44 PM
To: Ted Sorensen <ted@tgslawoffices.com>
Cc: Bill Maston <billm@mastonarchitect.com>
Subject: 40 Main Project

Hello Ted –

I've just gotten the update on the needs for the June 7 PC meeting for the project – here they are:

- The notice to post on the site is ready to pick up here at the office – it is available at the front counter. It needs to be posted by end of day tomorrow, Friday, May 25.
- We have mailed the notices for the Planning Commission – total for the mailing is $219.00. We can also mail the notices when this goes on to the City Council, which will be another $219.00.
- The large posting at the site needs to be updated to reflect the revised project as do the story poles and netting.

We should probably meet next Tuesday to discuss a bit – for continuity you should provide us with something in writing indicating you would like to move forward and have the revised project considered, without a reworking of plaza 10. I think the Commission would appreciate something in writing from you that notes this. I have time to meet on Tuesday in the morning between 9 and 10 and then again in the afternoon between 3:30 and 4:30.

Thanks and please let me know if you have any questions.

Jon

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From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Thursday, May 31, 2018 at 1:00 PM
To: Alexander Huang <AlexanderH@mastonarchitect.com>
Cc: Bill Maston <billm@mastonarchitect.com>, Ted Sorensen <ted@gunnmanagement.com>
Subject: RE: Electronic Copy of Plans

Got it – thanks everyone.

Jon

From: Alexander Huang [mailto:AlexanderH@mastonarchitect.com]
Sent: Thursday, May 31, 2018 12:04 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Cc: Bill Maston <billm@mastonarchitect.com>; ted@gunnmanagement.com
Subject: RE: Electronic Copy of Plans

Hi Jon,

Please find the attached plans for 40 Main as an electronic copy (pdf) and at the following link for the full sized:
https://www.dropbox.com/s/2zj3phqamojfk5j/20170829_40MAIN_DRC1_SUBMITTAL.pdf?dl=0
. A s

Regards,

Alexander Huang
Architectural Draftsman

William Maston Architect & Associates
384 Castro Street
Mountain View, CA 94041
t. 650 968 7900 **f.** 650 968 4913
e. alexanderh@mastonarchitect.com
www. mastonarchitect.com

From: Ted Sorensen <ted@tgslawoffices.com>
Sent: Thursday, May 31, 2018 10:36 AM
To: Jon Biggs <jbiggs@losaltosca.gov>; William Maston <billm@mastonarchitect.com>
Subject: Re: Electronic Copy of Plans

Bill,

Please take care of this.

Thanks,

Ted

(650) 924-0418 (cell)

From: Jon Biggs <jbiggs@losaltosca.gov>
Date: Thursday, May 31, 2018 at 10:34 AM
To: Ted Sorensen <ted@tgslawoffices.com>, Bill Maston <billm@mastonarchitect.com>
Subject: Electronic Copy of Plans

Hello Ted and Bill –

Can you send me an electronic copy (pdf) of the revised plans for 40 Main as we need to post them to our planning commission agenda page.

Thanks,

Jon

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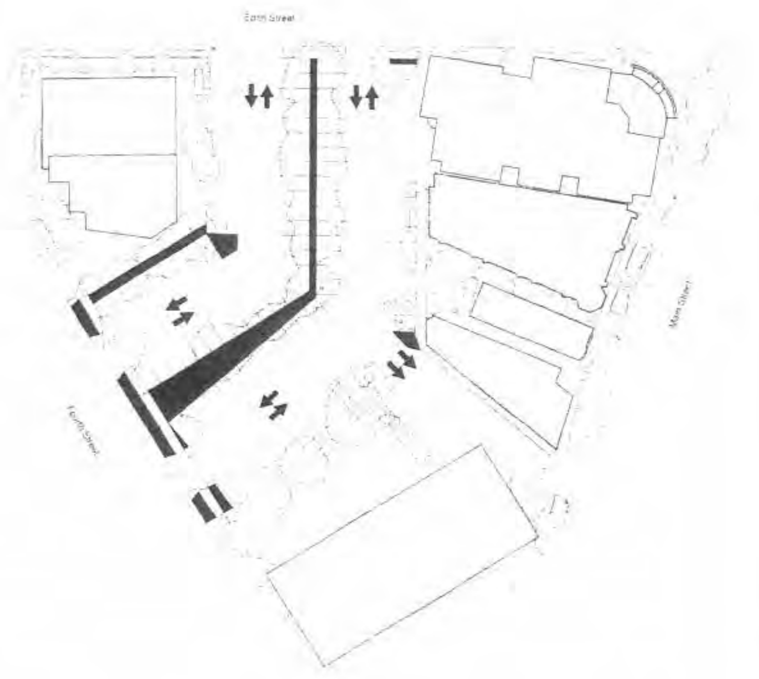

ɔn A: Parking Layout at 8'-6"

ı Ten
ıdard" Stalls 100
ɔled Access Stalls 4
Accessible Stalls 1
ː(+18) 105

ɪt Stalls
ing Lot Nine 3
th Street 14
Street 6
ı Street 12

*Efficiency ratio is increased by 9.66, from 49.94 to 59.60

Level of Service Ratio	59.60
Tree Count (+12°/o)	28
Total Landscapable Area (+12°/o)	3372 SF

*Up to 18 additional on site parking stalls using 8' - 6" dimensions

*Up to 20 additional stalls depending on

Edith Street

Main Street

Fourth Street

Existing Parking Layout at 45°

Plaza Ten	
"Standard" Stalls	85
Disabled Access Stalls	1
Van Accessible Stalls	1
Total:	87

Street Stalls	
Fourth Street	5
Main Street	5
Edith Street	9
Total:	19

Existing parking lot configuration sizes vary from 7' wide to 9'-6" wide. Average is 8'-6"

Level of Service Ratio	49.94
Tree Count	25
Total Landscapable Area	3000 SF

Level of Service (LOS) is measured by the width and angle of parking stalls in a lot to

#	Rev.	Date

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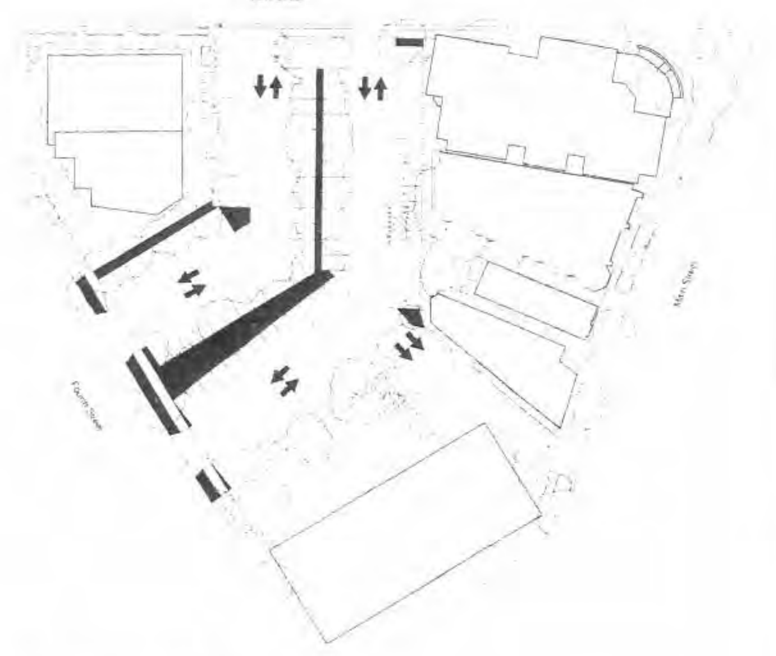
PRELIMINARY NOT FOR CONSTRUCTION

40 MAIN STREET

40 MAIN STREET, LOS ALTOS CA 94022

PARKING LAYOUT OPTIONS

MAI 2017 008
AUG 16 2017
WMAA



ɪn C: Parking Layout at 9' - O"

Ten:		
ɪdard" Stalls	92	
ɪled Access Stalls	4	
ɪccessible Stalls	1	
:(+10)		97

t Stalls:	
ng Lot Nine	3
h Street	14
Street	6
Street	14

This option is similar to Option B however internal circulation has been added to allow access to both isles of parking without existing to Edith Street. This option reduces the amount of proposed parking by two but increases safety along Edith Street.

Level of Service Ratio	61.50
Tree Count (+4%)	27
Total Landscapable	3412 SF

Option B: Parking Layout at 9' - O"

Plaza Ten:	
"Standard" Stalls	95
Disabled Access Stalls	4
Van Accessible Stalls	1
Total:(+13)	100

Street Stalls:	
Parking Lot Nine	3
Fourth Street	14
Main Street	6
Edith Street	12

* EXISTING CODE IS (9'-0") WIDE

Level of Service Ratio	61.50
Tree Count (+8%)	27

#	Rev	Date

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PRELIMINARY
NOT FOR CONSTRUCTION

40 MAIN STREET
40 MAIN STREET, LOS ALTOS CA 94022

PARKING LAYOUT OPTIONS

MINUTES OF A REGULAR MEETING OF THE PLANNING COMMISSION OF THE CITY OF LOS ALTOS, HELD ON THURSDAY, JUNE 7, 2018 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, ONE NORTH SAN ANTONIO ROAD, LOS ALTOS, CALIFORNIA

ESTABLISH QUORUM

PRESENT: Chair Bressack, Vice Chair Samek, Commissioners Bodner, Enander, Lee, and McTighe

ABSENT: Commissioner Meadows

STAFF: Community Development Director Biggs

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. **Planning Commission Minutes**
Approve the minutes of the April 19, 2018 Study Session and Regular Meeting, the May 3, 2018 Regular Meeting, and the May 17, 2018 Study Session.

Action: Upon motion by Commissioner McTighe, seconded by Commissioner Bodner, the Commission approved the Consent Calendar. The motion for the April 19, 2018 Study Session was approved (3-0-3) by the following vote:
AYES: Bressack, Enander, McTighe
NOES: None
ABSTAIN: Bodner, Lee and Samek
ABSENT: Meadows

The motion for the April 19, 2018 Regular Meeting was approved (4-0-2) by the following vote:
AYES: Bodner, Bressack, Enander, McTighe
NOES: None
ABSTAIN: Lee and Samek
ABSENT: Meadows

The motion for the May 3, 2018 Regular Meeting was approved (4-0-2) by the following vote:
AYES: Bodner, Bressack, Enander, McTighe
NOES: None
ABSTAIN: Lee and Samek
ABSENT: Meadows

The motion for the May 17, 2018 Study Session was approved (3-0-3) by the following vote:
AYES: Bressack, Enander, McTighe
NOES: None
ABSTAIN: Bodner, Lee and Samek

PUBLIC HEARING

2. **<u>13-D-14, 13-UP-03, An Exception for Public Benefit Request, and A Proposed Mitigated Negative Declaration – 40 Main Street Offices, LLC – 40 Main Street</u>**
   Commercial Design Review, Use Permit, an Exception for Public Benefit Request, and A Proposed Mitigated Negative Declaration for a revised three-story office building having 16,619 square feet of gross floor area that replaces the existing one-story office building containing 2,127 square feet. The project includes the removal of existing structures, site improvements, plants, and landscaping. The proposed structure is approximately 38 feet in height measured to the highest point of the building and approximately 45 feet to the top of a tower element. The project proposes a pedestrian paseo connecting parking plaza 10 to Main Street as a public benefit. For this proposed public benefit, the applicant is seeking development incentives in the form of increases in the maximum building height, reduction in the number of on-site parking spaces, and a reduction in the rear yard setback requirement for the upper floors. The project requires use permit, and design review approval in addition to acceptance of the pedestrian paseo as a public benefit that supports the requested exceptions to the height, parking, and rear yard setback requirements. This project has been revised following its consideration by the Planning Commission on June 15, 2017. A Mitigated Negative Declaration is being proposed. The Planning Commission will consider the project, along with the environmental review, and develop a recommendation to the City Council. *Project Planner: Biggs*

Community Development Director Biggs presented the staff report recommending that the Commission hold a public hearing and develop a recommendation to the City Council.

Project architect Bill Maston presented the revised plans of the proposed building and noted he was available to answer questions and adjust address issues identified by the Commissioners.

<u>Public Comment</u>
Los Altos Hills resident Robert Sandor gave his support for the project, said he comes to downtown Los Altos every day, that it is a beautiful building to look at, and the City is too slow to make changes.

Los Altos resident Michael Hudnall stated his concern with spill over parking from the project into his neighborhood, concern with the 20-25 parking space shortage for the project, added the use permit doesn't account for the parking deficit, noted the Downtown Vision proposed to adjust the white dot parking program, which may impact adjoining residential districts, and recommended that the parking exception be rejected.

Los Altos resident Jane Tansuwan stated her concern with spill over parking into her neighborhood.

Los Altos business owner, Brendon Pratt of The Pratt Center, stated that he rents next door and selected this location for the parking and convenience to services that are offered in the Downtown and added he sees clients eight hours a day who all seek to find a parking space. He feels as a tenant of a neighboring building that he is a small business owner who is caught in the middle or a larger set of issues.

Los Altos resident Mike Abrams gave his support for the project, the Downtown Vision effort, and said there is a mandate that encourages more office development.

Los Altos Hills resident Jerry Wittenauer gave his support for the project, said it was a fine addition and gateway building for the downtown, that the changes are positive, and agrees with fostering vitality in downtown.

Los Altos resident and business owner of a tech company, Jim Hill, gave his support for the project and agreed with the last two speakers. He added that he is looking for a place to raise a business, was able to find a parking space in the plaza even during Farmer's Market, and finished by noting he likes the architecture of the proposed building.

Los Altos business owner Sara Saatchi spoke with concern about the impact the proposed project will have on her business, noted that she currently has to parking some distance from her office, which is in the building next door and parking is a concern – more parking, not less, is needed.

Los Altos resident and owner of Enchanté Hotel, Abby Ahrens, noted that the hotel brings in $250,000 in Transient Occupancy Tax revenue to the City of Los Altos every year. She said the project developers have ignored the planning code and brought back the same plan time after time and that she changed the third story on the hotel to meet zoning code.

Los Altos business owner Kathleen Hugino stated that the project would make parking even more difficult and impacted in an already full parking plaza and can't imagine where people will have to park.

Los Altos resident Robert Gluss stated that the size of the building is still quite massive and it will dwarf the surrounding buildings, clashes with the downtown area, and is concerned that the project would result in more parking along Edith Avenue, which will cause a safety issue.

Commission discussion about the project then followed public comment.

ENVIRONMENTAL REVIEW – PROPOSED MITIGATED NEGATIVE DECLARATION

Action: A motion by Commissioner McTighe, seconded by Commissioner Enander, to recommend to the City Council that adoption of the Mitigated Negative Declaration be denied failed on a 3-3 vote.
AYES: Enander, Lee, and McTighe
NOES: Bressack, Bodner, and Samek
ABSENT: Meadows

Action: A motion by Commissioner Bodner, seconded by Vice Chair Samek, to recommend to the City Council that the Mitigated Negative Declaration be adopted failed 3-3 on a 3-3 vote.
AYES: Bressack, Bodner, and Samek
NOES: Enander, Lee, and McTighe
ABSENT: Meadows

The Planning Commission could not achieve consensus on a recommendation to the City Council on the Mitigated Negative Declaration that is proposed for this project. For the record Commissioner Enander noted she could not recommend adoption of the Mitigated Negative Declaration because she had concerns with the adequacy of the circulation study that had been done for the project. There was consensus from the two other dissenting Commissioners on this point.

Commissioners McTighe and Enander withdrew their motion to recommend denial of the use permit and design review applications after the project architect, Bill Maston requested that the Commission

Project architect Bill Maston asked the Commission for specific feedback on the project so that he could review development of a revised proposal to bring back at a later meeting.

Action: Upon motion by Commissioner McTighe, seconded by Commissioner Enander, the Commission voted 4-2 to continue the project to a future meeting, with no specific date, and provided the following feedback:

- Minimize vertical walls;
- Explore making the building more horizontal in nature to compliment the horizontal nature of the built environment in the Downtown;
- Carefully evaluate the mass, scale, and height of the building;
- Carefully evaluate the Downtown design guidelines and recognize that compliance with these are not a public benefit;
- Pull back the front of the building, as its height along Main Street in incongruous with other buildings in the Downtown;
- Adjust the mix and interplay of exterior materials is as the amount of stucco and hard surfaces displayed in the proposed plan result in a very monolithic structure;
- Reduce the mass of the building;
- Eliminate or significantly reduce the third story;
- Develop a project with appropriate interior ceiling heights – more in line with class A office space;
- Eliminate the tower element;
- Set back the upper floors of the building from the wall plains on the first level;
- Develop an appropriate transition between the proposed building an its neighboring buildings;
- Recognize this is not a gateway site into the Downtown;
- Develop an appropriate transition into the Downtown;
- Reconsider placement of pedestrian paseo and recognize it is a benefit to the proposed building and not much of a public benefit;

The motion was approved (4-2) by the following vote:
AYES: Bodner, Lee, McTighe, and Samek
NOES: Bressack and Enander
ABSENT: Meadows

COMMISSIONERS' REPORTS AND COMMENTS

Commissioners' Reports was continued to the next meeting since Commissioner Meadows was the representative at the last City Council meeting.

Commissioners noted the Joint Study Session on the parking regulations with the City Council for June 12, 2018 and the 8:00 p.m. start time.

POTENTIAL FUTURE AGENDA ITEMS

None noted.

ADJOURNMENT

Chair Bressack adjourned the meeting at 9:02 P.M.

____

Jon Biggs
Community Development Director

EXHIBIT 7

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Streamlined Housing Development
Applications Under Senate Bill 35

What is Senate Bill 35?
Senate Bill 35 (SB 35) became effective on January 1, 2018. It enacted Government Code section 65913.4 to require cities and counties to use a streamlined ministerial review process for qualifying multifamily housing developments that comply with the jurisdiction's objective planning standards, provide specified levels of affordable housing, and meet other specific requirements.

What is a streamlined review process?
Under SB 35, the City is required to review qualifying projects using a ministerial review process, which means that no discretionary approvals can be required, and the City is required to process applications within the timeframes specified in Government Code section 65913.4(c). The review process would be also be streamlined because, as a ministerial project, the project would not be subject to environmental review under the California Environmental Quality Act (CEQA).

Does my project qualify to apply for streamlining?
The California Department of Housing and Community Development (HCD) determined that Concord is subject to SB 35[1]. To be eligible for a streamlined review process, an application must meet **ALL** of the following criteria:

- The project must propose at least two multifamily residential units.
- The project site must be on a legal parcel with 75 percent of its perimeter adjoining parcels that are developed with urban uses and be zoned for, or designated in the General Plan to allow, residential or residential mixed-uses.
- At least 2/3 of the proposed development's square footage must be designated for residential use.
- The project must provide affordable housing as specified under Government Code section 65913.4(a)(4)(B), which specifies that:
  - Projects in Concord that contain more than 10 units of housing must reserve at least 10% of their total units as affordable to households making below 80 percent of the area median income in Contra Costa County.
- The project applicant must certify that it will comply with the following wage requirements defined in Government Code section 65913.4(a)(8):
  - If the development is not in its entirety a public work (as defined in Labor Code section 1720 *et seq.*), all construction workers employed in the

[1] As of February 1, 2018, HCD determined that Concord is subject to SB 35 streamlining for eligible projects.

execution of the development must be paid at least prevailing wages, unless the project includes 10 or fewer units and does not require a subdivision.

- For projects that require a subdivision or that propose 75 or more units that are not 100 percent subsidized affordable housing, prevailing wages must be paid and a skilled and trained workforce, as defined in Government Code section 65913.4(a)(8)(B)(ii), must be used to complete the development.

- None of the exclusions specified in Government Code section 65913.4(a)(6), (7), or (9) apply. (Refer to Concord's *Streamlined Housing Development — Senate Bill 35 Standard Application*, page 2 and 3.)

If it qualifies for SB 35, what planning standards are applicable to my project?
Qualifying projects must be consistent with all of the City's objective zoning and design review standards, including the City's General Plan, Development Code, and any applicable master plans and specific plans. Modifications to otherwise-applicable standards under density bonus law do not affect a project's ability to qualify for SB 35.

What are the parking requirements?
If your project qualifies, no more than one parking space per residential unit is required. For projects that meet the requirements specified in Government Code section 65913.4(d)(1), and the project is located within the Transit Station Overlay District , no residential parking is required. Mixed-use projects must provide parking for the commercial component of the development as required by the City's Development Code.

How do I apply for streamlined review?
To apply for a project that qualifies under SB 35, an applicant must follow the procedure specified in Concord Municipal Code (CMC) Chapter 15.405, as summarized below:

1. First, schedule a pre-application meeting with Community and Economic Development Department staff to review the submittal requirements in the application checklist.
2. Next, submit an SB 35 development application to the Planning Division. The application must be submitted along with all of the material identified in the application checklist to confirm that the project qualifies for SB 35. Applications are subject to all of the requirements of CMC 18.405.030.

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What is the process for streamlined approval?

The Planning Division will determine if the project is eligible for streamlined approval within 60 days after application submittal for projects of 150 or fewer units, or within 90 days for larger projects. If the Planning Division denies the application as incomplete or ineligible for SB 35, the applicant may revise the project to comply with SB 35 and resubmit the application, subject to the same timeline for review. Once the application is accepted for review under SB 35, the Community and Economic Development Department will approve or deny the project within 90 days after application submittal for projects of 150 or fewer units, or within 180 days for larger projects.

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Streamlined Housing Development
Senate Bill 35 Eligibility Checklist

Government Code section 65913.4, also known as Senate Bill 35 (SB 35), requires the City to review qualifying multifamily housing development projects using a ministerial review process. Eligible projects must comply with objective planning standards, provide specified levels of affordable housing, and meet other specific requirements, as detailed below.

The following information and checklist is intended as a guide to help applicants and the City's Planning Division determine **if** a project is eligible for streamlined processing under SB 35. To be eligible for SB 35, a project must meet **ALL** of the following criteria, from 1 through 10:

1. ☐ **NUMBER AND TYPE OF UNITS.** The project must be a multifamily housing development that contains at least two residential units and comply with the minimum and maximum residential density range permitted for the site, plus any applicable density bonus.

2. ☐ **AFFORDABILITY.** If more than 10 residential units are proposed, at least 10 percent of the project's total units must be dedicated as affordable to households making below 80 percent of the area median income.[2]

   ☐ If the project will contain subsidized units, the applicant has recorded or is required by law to record, a land use restriction for the following minimum durations, as applicable:

   ☐ 55 years for rental units.

   ☐ 45 years for homeownership units.

3. ☐ **URBAN INFILL.** The project must be located on a legal parcel or parcels within the incorporated City limits. At least 75 percent of the perimeter of the site must adjoin parcels that are developed with urban uses. For purposes of SB 35, "urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. Parcels that are only separated by a street or highway shall be considered adjoined.

4. ☐ **ZONED OR PLANNED RESIDENTIAL USES.** The project must be located on a site that is either zoned or has a General Plan designation for residential or residential mixed-use development, including sites where residential uses are

[2] As of February 1, 2018, the California Department of Housing and Community Development (HCD) determined that Concord is subject to SB 35 for projects with 10 percent affordable units. Projects seeking to use SB 35 may also be subject to the City's Inclusionary Housing Ordinance, which may have additional requirements. Prior to submitting an application for streamlined review, applicants should confirm the current affordability requirements with the Planning Division.

permitted as a conditional use. If the multifamily housing development is a mixed-use development, at least two-thirds of the project's square footage must be designated for residential use.

5. ☐ **CONSISTENT WITH OBJECTIVE STANDARDS.** The project must meet all objective zoning and design review standards in effect at the time the application is submitted.

   ☐ If the project is consistent with the minimum and maximum density range allowed within the General Plan land use designation, it is deemed consistent with housing density standards.

   ☐ Any density bonus or any concessions, incentives, or waivers of development standards or reduction of parking standards requested under the Density Bonus Law in Government Code section 65915 are deemed consistent with objective standards.

   ☐ Objective standards are those that require no personal or subjective judgment and must be verifiable by reference to an external and uniform source available prior to submittal. Sources of objective standards include, without limitation:

      ☐ General Plan.

      ☐ Concord Municipal Code.

      ☐ Downtown Specific Plan.

      ☐ Todos Santos Design Guidelines.

      ☐ Downtown Corridors Plan.

6. ☐ **PARKING.** The project must provide at least one parking space per unit; however, no parking is required if the project meets any of the following criteria:

   ☐ The project is located within the Transit Station Overlay District.

   ☐ The project is located within an architecturally and historically significant historic district.

   ☐ On-street parking permits are required but not offered to the occupants of the project.

   ☐ The project is located within one block of a car share vehicle station.

7. ☐ **LOCATION.** The project must be located on a property that is **outside** each of the following areas:

   ☐ Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the

Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by Concord's voters.[3]

- ☐ Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

- ☐ A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This does not apply to sites excluded from the specified hazard zones by the City, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.[3]

- ☐ A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed-uses.

- ☐ A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

- ☐ A flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

- ☐ A floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

- ☐ Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of

[3] As of February 1, 2018, no properties in Concord fall within this category. Prior to submitting an application for streamlined review, applicants should confirm with the Planning Division if the listed exclusion is applicable.

the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.[3]

- ☐ Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
- ☐ Lands under conservation easement.[3]
- ☐ A site that would require demolition of housing that is:
  - ☐ Subject to recorded restrictions or law that limits rent to levels affordable to moderate, low, or very-low income households.
  - ☐ Subject to rent control.[3]
  - ☐ Currently occupied by tenants or that was occupied by tenants within the past 10 years.
- ☐ A site that previously contained housing occupied by tenants that was demolished within the past 10 years.
- ☐ A site that would require demolition of an historic structure that is on a local, state, or federal register.
- ☐ A parcel of land or site governed by the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

8. ☐ **SUBDIVISIONS.** The project does not involve an application to create separately transferable parcels under the Subdivision Map Act. However, a subdivision is permitted if either of the following apply:

- ☐ The project is financed with low-income housing tax credits (LIHTC) and satisfies the prevailing wage requirements identified in item 9 of this Eligibility Checklist.
- ☐ The project satisfies the prevailing wage and skilled and trained workforce requirements identified in items 9 and 10 of this Eligibility Checklist.

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9. ☐ **PREVAILING WAGE.** The project proponent must certify that at least one of the following is true:

   ☐ The entirety of the project is a public work as defined in Government Code section 65913.4(8)(A)(i).

   ☐ The project is not in its entirety a public work and all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.

   ☐ The project includes 10 or fewer units AND is not a public work AND does not require subdivision.

10. ☐ **SKILLED AND TRAINED WORKFORCE.** If the project consists of 75 or more units that are not 100 percent subsidized affordable housing, the project proponent must certify that it will use a skilled and trained workforce, as defined in Government Code section 65913.4(8)(B)(ii).[4]

[4] Beginning January 1, 2022, the skilled and trained workforce requirement is reduced to apply to projects of 50 units or more that are not 100 percent subsidized affordable housing.

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Streamlined Housing Development
Senate Bill 35 Standard Application

SUBMITTAL REQUIREMENTS. If an applicant qualifies under the Senate Bill 35 Eligibility Checklist, the following information and materials listed on the attached SB 35 Application Checklist are required for a complete application. Please review this checklist with City's Planning Division staff to confirm specific requirements and to determine if other applications are required.

SB 35 Standard Applications are reviewed to determine if the application qualifies as a Streamlined Housing Development within 60 days after application submittal for projects of 150 or fewer units, or within 90 days for larger projects. Applications that are not eligible for Streamlined Housing Development processing or that do not provide a complete application, including this Standard Application and listed items on the SB 35 Application Checklist, will be denied and must be re-submitted, subject to review within 60 days after re-submittal for projects of 150 or fewer units, or within 90 days for larger projects.

Eligible Streamlined Housing Development applications are ministerially reviewed within 90 days after application submittal for projects of 150 or fewer units, or within 180 days for larger projects.

Project Information to be filled in by Applicant and/or Property Owner:

Applicant's Contact Information:	**Property Owner's Contact Information:**
Name: ______	Name: ______
Address: ______	Address: ______
City, State: ______ ZIP: ______	City, State: ______ ZIP: ______
Email: ______	Email: ______
Phone: ______	Phone: ______

Project Site / Address:	**Assessor's Parcel Number:**
General Plan and Zoning Designations:	**Proposed Unit Count:**
Proposed Residential Square Footage:	**Proposed Non-Residential Square Footage:**

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Is the project seeking a density bonus or any concession, waiver, or reduction of parking standards under state Density Bonus Law?

Yes ☐ **No** ☐

Type of Multifamily Housing Development Proposed:

☐ Multifamily rental; residential only with no proposed subdivision.

☐ Multifamily residential with proposed subdivision (must qualify for exception to subdivision exclusion)

☐ Mixed-use (at least 2/3 of square footage must be designated for residential. If a subdivision is included, must qualify for exception to subdivision exclusion.)

Number of Parking Spaces Proposed:

Is the site within the Transit Station Overlay District? Yes ☐ No ☐

Is the site within an architecturally and historically significant historic district?

Yes ☐ No ☐

Are on-street parking permits required but not offered to the occupants of the project?

Yes ☐ No ☐

Is the site within one block of a car share vehicle station? Yes ☐ No ☐

Does the project propose more than 10 units? Yes ☐ **No** ☐

Has the applicant certified compliance with affordability requirements?

Yes ☐ No ☐ n/a ☐

Has the applicant certified compliance with prevailing wage requirements?

Yes ☐ No ☐ n/a ☐

Does the project propose 75 units or more? Yes ☐ **No** ☐

Has the applicant certified compliance with skilled and trained workforce requirements?

Yes ☐ No ☐ n/a ☐

Does the project involve a subdivision of land? Yes ☐ **No** ☐

Is the project financed with low-income housing tax credits? Yes ☐ No ☐

Has the applicant certified compliance with prevailing wage requirements?

Yes ☐ No ☐ n/a ☐

Has the applicant certified compliance with skilled and trained workforce requirements?

Yes ☐ No ☐ n/a ☐

Has the applicant certified that the project site has not contained any housing occupied by tenants within the past 10 years? Yes ☐ **No** ☐

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Is the project site within a very high fire hazard severity zone? Yes □ No □ Are there adopted fire hazard mitigation measures applicable to the development? Yes □ No □
Is the project site a hazardous waste site? Yes □ No □ Has the applicant provided evidence that the Department of Toxic Substances Control has cleared the site for residential use or residential mixed-uses? Yes □ No □ n/a □
Is the project site within a delineated earthquake fault zone? Yes □ No □ Does the development comply with applicable seismic protection building code standards? Yes □ No □
Is the project site habitat for protected species, identified in an adopted natural community conservation plan, or under a conservation easement? Yes □ No □
Does the project funding source include public funds? Yes □ No □

Project Description and Other Details

Please attach a narrative project description that summarizes the proposed project and its purpose. Please include a discussion of the project site context, including what existing uses, if any, adjoin the project site and whether the location is eligible for Streamlined Housing Development processing. You must also include a discussion of how the proposed project is consistent with all objective zoning and design review standards applicable to the project site.

Property Owner Signature(s):	Date

FOR PLANNING DIVISION USE ONLY

FILE NUMBER:	DATE APPROVED OR DENIED:
PLANNER:	STATUS:
PROJECT ADDRESS:	ZONING:
APN:	PROJECT NAME:

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Streamlined Housing Development
Certificate for Compliance with Eligibility Requirements

____

Date

I, ______________________, do hereby certify and declare as follows:

(a) The subject property is located at (address and assessor's parcel number):

___________________________ ___________________________

Address *Assessor's Parcel Number*

(b) I am a duly authorized officer or owner of the subject property.

(c) The property owner agrees to comply with the applicable affordable housing dedication requirements established under Government Code section 65913.4(a)(4).

(d) The property owner agrees to comply with the applicable prevailing wage requirements established under Government Code section 65913.4(a)(8)(A).

(e) The property owner agrees to comply with the applicable skilled and trained workforce requirements established under Government Code section 65913.4(a)(8)(B).

(f) The property owner certifies that the project site has not contained any housing occupied by tenants within 10 years prior to the date written above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this day in:

___________________________ ___________________________

Location *Date*

____

Signature

____

Name (Print), Title

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Streamlined Housing Development
Senate Bill 35 Application Checklist

SUBMITTAL REQUIREMENTS. The following information is required for a complete application. Please review this checklist with City of Concord Planning and Engineering Divisions.

☐ **APPLICATION FORM.** Include signature and contact information for the legal property owner, applicant or authorized agent and contact information for the Civil Engineer, Architect, Landscape Architect, and all other consultants involved with the application.

☐ **FILING FEE*.** (See Master Fees and Charges Schedule for current year).

☐ **CERTIFICATE FOR COMPLIANCE WITH ELIGIBILITY REQUIREMENTS.** The property owner or the owner's authorized agent must certify under penalty of perjury that certain threshold eligibility criteria are satisfied.

☐ **TITLE REPORT.** Prepared within the past three months. (three copies)

☐ **ARBORIST REPORT.** Prepared by an ISA Certified Arborist for the removal or disturbance of any Protected Tree on the site or on an adjacent property which could be impacted by the proposed development. Describe the condition of all Protected trees to be removed/disturbed and provide a statement of specific reasons for the proposed removal. (three copies) (City of Concord 2012 Development Code, Article VI, Division 3 Tree Preservation and Protection)

☐ **STATEMENT OF DESIGN INTENT.** Describe the design program, the designer's approach, and how the architectural, landscape and other elements have been integrated in compliance with the City's objective standards. The relationship of the project to adjacent properties and to the adjacent streets should be expressed in design terms. Define the site, building design, and landscape concepts in terms of site design goals and objectives, pedestrian circulation, outdoor-use areas, visual screening and enhancements, conservation of natural resources, mitigation of negative site characteristics, and off-site influences.

*** The City adjusts all fees and charges on an annual basis in accordance with the San Francisco-San Jose-Oakland Area Consumer Price Index, actual hourly rates for work performed by City employees, and the Construction Cost Index for the San Francisco Bay Area published in the most current edition of the Engineering News Record. The new fees are adopted following a public hearing and incorporated in the Master Fees and Charges Resolution July 1 of every year. Persons interested in how a particular fee is adjusted should contact the City department that administers the fee or the Finance Department.**

☐ **STATEMENT OF CONSISTENCY WITH OBJECTIVE STANDARDS.** Describe how the proposed project is consistent with all objective zoning and design review standards applicable to the project site, including those standards included in the General Plan, Concord Municipal Code, the Downtown Specific Plan, the Todos Santos Design Guidelines, the Downtown Corridors Plan, and other applicable City documents. At a minimum, define how the project complies with use requirements, floor area standards, density, setbacks, height standards, lot coverage ratios, landscaping standards, creek setbacks, tree preservation and protection standards, water efficient landscaping requirements, stormwater requirements, and common open space, private useable open space, and public open space requirements.

REQUIREMENTS FOR ALL DEVELOPMENT PLANS. If the application is filed in conjunction with other applications, submittal requirements from all applicable checklists shall be incorporated into one set of plans. All plans shall:

___ Be prepared, signed and stamped by licensed professionals.
___ Include the date of preparation and dates of each revision.
___ Be fully dimensioned and drawn to scale on the same size sheets, with a consistent scale (as noted) throughout all plan sheets.
___ Be submitted in collated sets and folded to 8-1/2" x 11".
___ Be numbered in proper sequence.

A set of plans shall be submitted on a CD in pdf format for all projects that require Planning Commission or Zoning Administrator approval and the following numbers of plan sets are required:

___ 15 sets full size 24" x 36"
___ 21 sets reduced to 11" x 17"
___ 1 set 8 1/2" x 11"
___ 1 each, full-sized colored Site Plan, Elevations, and Landscape Plans. Colored plans shall be rolled, not folded.

☐ **DEVELOPMENT PLAN SETS.** The following plans shall comprise the development plan set:

☐ **TITLE SHEET** Including project name, location, assessor's parcel numbers, prior development approvals, and table of contents listing all the plan sheets with content, page numbers, and date prepared.

☐ **SITE PLAN.** Prepared by a licensed Civil Engineer, drawn at 1"= 20' scale, with scale noted, a graphic bar scale, and north arrow. The plan shall include the following:

☐ Vicinity map showing north arrow, the location and boundary of the project, major cross streets and the existing street pattern in the vicinity.

☐ Table with the following information:

- ☐ General Plan and Zoning designations.
- ☐ Size of property including gross & net lot area (square feet and acres).
- ☐ For residential development, include the floor area for each unit type, the number of bedrooms, the number of units by type, the number of units per building, the total number of units, and net density.
- ☐ For commercial development, total floor area in each building (including basements, mezzanines, interior balconies, and upper stories or levels in a multistory building) and total building area and FAR (Floor Area Ratio = total floor area divided by total net land area).
- ☐ Percent lot coverage, percent of net lot area covered by buildings (total ground floor area of all buildings divided by net lot area).
- ☐ Percentage of net lot area devoted landscaping, common open space and private useable open space.
- ☐ Parking requirements under Government Code section 65913.4(d) and tabulation of the number of parking spaces proposed by type (standard, universal, compact and handicapped) and proposed parking ratios.
- ☐ Bicycle and motorcycle parking (required and proposed) under City of Concord Development Code Chapter 18.160.

☐ Existing and proposed property lines with dimensions, bearings, radii and arc lengths, easements, and net & gross lot area for existing and proposed parcels. Benchmark based on U.S.C. & G.S. datum, 1929 (City of Concord is on the same datum as U.S.C. & G.S., 1929).

☐ Location and dimensions of all existing and proposed structures extending 50 feet beyond the property. If adjacent to a street, show the entire width of street to the next property line, including driveways. Clearly identify all existing and proposed structures such as fencing, walls, all building features including decks and porches, all accessory structures including garages and sheds, mailboxes, and trash enclosures. Label all structures and indicate the structures to remain and the structures to be removed.

☐ Dimensions of setbacks from property lines and between structures.

☐ Location, dimension and purpose (i.e. water, sewer, access, etc.) of all easements including sufficient recording data to identify the conveyance (book and page of official records).

☐ Location and dimensions for all adjacent streets (public and private) and proposed streets showing both sides of streets, street names, street width, striping, centerlines, centerline radii of all curves, median and landscape strips, bike lanes, pedestrian ways, trails, bridges, curb, gutters, sidewalks,

driveways, and edge of right-of-way including any proposed or required right-of-way dedication. Show all existing and proposed improvements including traffic signal poles and traffic signs. Show line of sight for all intersections and driveways based on current City of Concord standards, and corner setback lines based on City of Concord Standard Plan S-36.

- ☐ Existing topography and proposed grading extending 50 feet beyond the property at 2 foot contour intervals for slopes up to 5% and less than 5 feet in height; and contour intervals of 5 feet for slopes over 5% or greater than 5 feet in height. Include spot elevations, pad elevations, percent slope and show all retaining walls with TOW/BOW elevations.

- ☐ Drainage information showing spot elevations, pad elevations, existing catch basins, and direction of proposed drainage, including approximate street grade and existing and proposed storm drain locations.

- ☐ Location and dimensions of existing and proposed utilities including water supply system, sanitary sewers and laterals, drainage facilities, wells, septic tanks, underground and overhead electrical lines, utility poles, aboveground utility vaults and meters, transformers, electroliers, street lights, lighting fixtures, underground irrigation and drainage lines, backflow prevention and reduced pressure devices, traffic signal poles, underground conduit for signals and interconnect, and traffic signal pull boxes, signal cabinets, service cabinets, and other related facilities.

- ☐ Location and dimensions of parking spaces, back-up, loading areas, and circulation patterns.

- ☐ Survey of all existing trees on the site and adjacent to the site with a trunk diameter of 6" or greater, at 1"=20' scale, indicating species, size (circumference or diameter noted) measured at 4-1/2' above grade, and base elevation. Trunk locations and the drip line shall be accurately plotted. Identify all protected trees (trees over 72 in. in circumference measured 4-1/2 feet above natural grade, multi-stemmed trees with one stem of at least 24 inches in circumference).

- ☐ Location of all natural features such as creeks, ponds, drainage swales, wetlands (as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)), etc., extending 50 feet beyond the property line to show the relationship with the proposed development.

- ☐ Location on the site of any prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for

agricultural protection or preservation by a local ballot measure that was approved by Concord's voters.

- ☐ If any parcel is within a FEMA defined 100-year floodplain or floodway:
  - ☐ Identify the floodplain or floodway on all plan sheets depicting the existing and proposed site, with the base flood elevation (BFE) and flood zone type clearly labeled. In addition, show the existing site topography and finish floor elevations for all existing and proposed structures. If FEMA has not defined a BFE, a site specific hydraulic analysis will be required to determine the BFE prior to deeming the application complete (CMC Sec. 34-32.b2).
  - ☐ Flood zone boundaries and floodwater surface elevation. If the property proposed to be developed is within or adjacent to the 100 year flood zone (Zone A) or the National Flood Insurance Program, Flood Insurance Rate Map, the extent of Zone A shall be clearly drawn on the tentative map and the 100 year flood water surface elevation shall be shown. The map shall show the approximate location of the Floodway Boundary as shown on the latest edition of the "Flood Boundary and Floodway Map" published by the Federal Emergency Management Agency.

☐ **CONTEXTUAL PLAN.** Use topographic or aerial map as base. Show the relationship of the project to the building and site features within 50 feet. The plan shall include:

- ☐ Building footprints, pad elevations and building height.
- ☐ Land use and zoning designation on all lots.
- ☐ Property lines and dimensions of the subject site and adjacent properties showing all easements.
- ☐ Location of streets, medians, curb cuts, sidewalks, driveways, and parking areas.
- ☐ Location of all creeks, waterways and trees.
- ☐ Vicinity map indicating site in relation to major streets.

☐ **BUILDING ELEVATIONS.** Plans shall be drawn by a licensed Architect at 1/8" = 1' minimum scale; dimensioned vertically and horizontally with sample representations at ¼"= 1' scale for detail areas. Elevations should not include superimposed landscaping and trees that hide the buildings. The plans shall include:

- ☐ Fully dimensioned elevations for buildings identifying materials, details and features include visible rooftop equipment, plumbing, electrical meters and method of concealment.
- ☐ All four sides of buildings.
- ☐ Vertical dimensions from all points above existing and finished grade on all elevations.

- ☐ Topography with existing and proposed grades accurately represented to show building height to show the relationship of the building to the site and adjacent properties.
- ☐ Location, height and design of rooftop mechanical equipment and proposed screening. Provide a section detail showing height of equipment in relation to the height of the proposed screen structure.
- ☐ Elevations and dimensions for existing structures to remain.
- ☐ Location and type of building mounted exterior lighting.
- ☐ Detailed building sections showing depth of reveals, projections, recesses, etc.
- ☐ Details of vents, gutters, downspouts, scuppers, external air conditioning equipment, etc.
- ☐ Details including materials and dimensions of door and window treatments, railings, stairways, handicap ramps, trim, fascia, soffits, columns, fences, and other elements which affect the building. Provide wall sections at ½"=1' scale to clarify detailing as appropriate.

☐ **FLOOR PLANS.** Plan shall be drawn by a licensed Architect at 1/8"= 1' or larger scale.

☐ **ROOF PLAN.** Plan shall be drawn by a licensed Architect at 1/8"= 1' or larger scale. The plan shall include property lines, outline of building footprint, ridgelines, valleys, flat roof areas, roof pitch and rooftop mechanical equipment, and screening. Plans shall show existing roof forms and roof forms to be added or changed.

☐ **TRUE CROSS-SECTIONS.** A minimum of two cross-sections (more as needed to showing varying site conditions) drawn at 1:1 scale (same scale used for both vertical and horizontal axis), 1"=20' minimum scale, with scale noted, and a graphic bar scale, through critical portions of the site extending 50 feet beyond the property line onto adjacent properties or to the property lines on the opposite side of adjacent streets. Sections shall include existing topography, final grades, location and height of existing and proposed structures, fences, walls, roadways, parking areas, landscaping, trees, and property lines. Section locations shall be identified on the Site Plan.

☐ **COLOR AND MATERIALS BOARD.** Samples of materials and color palette representative of actual materials/colors for all buildings and structures. Identify the name of manufacturer, product, style, identification numbers and other pertinent information on the display. Displays should be no larger than 8-1/2" x 14", except where actual material samples are presented.

☐ **LANDSCAPE PLANS.** Plan shall be drawn at 1" = 20' or larger scale by a licensed Landscape Architect. The plan shall incorporate the proposed Grading and Utility Plan, showing the location of existing and proposed utility lines and utility structures screened back, but legible, and shall include the following:

- ☐ Final planting plan showing proposed trees, shrubs and shrub groupings, lawn, and groundcover areas, existing trees to be saved, stormwater treatment areas, special paving, hardscape, and site furnishings. Include a landscape legend with a list of proposed plant materials (indicate both Latin and common name), including size, spacing, total quantities, ultimate height, and spread of materials. Trees shall be a minimum of 24 gallon size and shrubs a minimum of 5 gallon size. Accent or sub-shrubs may be 1-gallon in size. Larger trees may be required depending on project location, size, or other conditions.
- ☐ Size, species, trunk location, and canopy of all existing trees (6" in diameter or larger) on-site and on abutting property that could be affected by the project. Identify which trees will remain and trees to be removed. Any tree proposed as mitigation for the removal of a protected tree shall be identified as a replacement tree.
- ☐ Show accurate representation of plant materials within three years.
- ☐ Identify the location and screening of all above ground utilities and bio-swales or other stormwater treatment areas with 1:10 scale cross sections showing the planting within the bio-swales and screening of the utilities.
- ☐ Provide enlarged details (minimum of 1:10 scale) for focal points and accent areas.
- ☐ Location and details and/or manufacturers catalogue cuts of ground signs, walls, fences, paving, decorative planters, trellises, arbors, and other related site improvements.
- ☐ Landscape plans with more than two sheets shall show the plant legend with symbols for each species on every sheet.
- ☐ Statement indicating that a fully automatic irrigation system will be provided.
- ☐ Color and materials submittal for all special paving, hardscape treatment, walls, landscape lighting, and site furnishings.
- ☐ The Landscape plan shall be coordinated and consistent with the Stormwater Plan.
- ☐ Note signed and dated by project by Landscape Architect that plans are in compliance with all City standards.

☐ **TREE SURVEY.** Prepared by an ISA Certified Arborist, drawn at 1"=20' scale, showing accurate trunk location and drip line for all existing trees on the site and adjacent to the site with a trunk diameter of 6" or greater (measured at 4-1/2' above grade). For each tree, specify the species, size (circumference or diameter noted), and base elevation and clearly indicate if it is to be preserved or to be removed. Identify all protected trees (trees over 72 in. in circumference measured 4-1/2 feet above natural grade, multi-stemmed trees with one stem of at least 24 inches in circumference). Identify existing trees or plant materials on abutting properties that could influence site design or be impacted by the project.

☐ **FENCE PLAN.** Drawn at 1"=20' scale showing the location, height and type of all fences and walls.

☐ **LIGHTING PLAN.** Location and type of exterior lighting, both fixed to the building and freestanding, any and all lights for circulation, security, landscaping, building accent or other purpose.

☐ **UTILITY PLAN.** Prepared by a licensed Civil Engineer and drawn at 1"= 20' scale, with scale noted, showing the location and dimensions of existing and proposed utilities including water supply system, sanitary sewers and laterals, drainage facilities/storm drainage system, wells, septic tanks, underground and overhead electrical lines, utility poles, aboveground utility vaults and meters, transformers, underground irrigation and drainage lines, backflow prevention and reduced pressure devices, electroliers, lighting fixtures, street lights, traffic signal poles, traffic signal pull boxes, signal cabinets.

☐ **PHOTOMETRIC PLAN.** For plan requirements see: www.cityofconcord.org/livingin concord/transportation downloads/streetlights.

☐ **STORMWATER CONTROL PLAN.** See Stormwater Control Plan Application Checklist. All Stormwater Plans shall be coordinated and consistent with all Site, Grading, Utility, and Landscape Plans. If the project creates or replaces more than 10,000 sq. ft. of impervious area, a Stormwater Control Plan is required. Provide the following information to determine if the project meets this threshold:

- ☐ Site size in sq. ft.
- ☐ Existing impervious surface area (all land covered by buildings, sheds, patios, parking lots, streets, paved walkways, driveways, etc.) in sq. ft.
- ☐ Impervious surface area created, added or replaced in sq. ft.
- ☐ Total impervious surface area in sq. ft.
- ☐ Percent increase/replacement of impervious surface area (new impervious surface area in sq. ft./existing impervious surface area in sq. ft. multiplied by 100).
- ☐ Estimated area in sq. ft. of land disturbance during construction (including clearing, grading or excavating)

☐ **SIGN PLANS.** Plans shall be drawn to scale, at 1" = 20' minimum scale with dimensions, total sign area, colors, materials, sign copy, font styles, sign returns, illumination method, and any other details for all signs. Show dimensioned location and mounting details of signs on building elevations and include a site plan referencing all sign locations and location of ground signs. A colored rendering of all signs shall be provided.

☐ **PHOTO-SIMULATIONS** (if applicable). Digital photo-simulations of the site with and without the project, taken from various points off-site with the best visibility of the project. Include a key map showing the location where each photo was taken.

☐ **PHOTOS.** Several photos of the project site and adjacent development.

FOR STAFF USE ONLY

FILE NUMBER ______________________ ASSOCIATED FILES ______________________

PLANNER ______________________ DATE ______________________

PROJECT NAME ______________________

PROJECT ADDRESS ______________________

GENERAL PLAN ______________________ ZONING ______________________

San Francisco

1650 MISSION STREET, #400
SAN FRANCISCO, CA 94103
WWW.SFPLANNING.ORG

AFFORDABLE HOUSING STREAMLINED APPROVAL PURSUANT TO SENATE BILL 35 AND PLANNING DIRECTOR BULLETIN #5

ATTENTION: A Project Application must be completed and/or attached prior to submitting this Supplemental Application. See the Project Application for instructions.

California Senate Bill 35 (SB-35) was signed by Governor Jerry Brown on September 29, 2017 and became effective January 1, 2018. SB-35 applies in cities that are not meeting their Regional Housing Need Allocation (RHNA) goal for construction of above-moderate income housing and/or housing for households below 80% area median income (AMI). SB-35 amends Government Code Section 65913.4 to require local entities to streamline the approval of certain housing projects by providing a ministerial approval process. Currently, San Francisco meets its RHNA goal for construction of above-moderate income housing. However, the City is not meeting the RHNA goal for affordable housing below 80% AMI. Therefore, at this time, projects providing on-site affordable housing at 80% AMI are eligible for streamlining in San Francisco provided they meet all of the eligibility criteria.

For questions, call 415.558.6377, email pic@sfgov.org, or visit the Planning Information Center (PIC) at 1660 Mission Street, First Floor, San Francisco, where planners are available to assist you.

Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 415.575.9010. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder

中文： 如果您希望獲得使用中文填寫這份申請表的幫助，請致電415.575.9010。請注意，規劃部門需要至少一個工作日來回應。

Tagalog: Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 415.575.9120. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

WHAT IS AFFORDABLE HOUSING STREAMLINED APPROVAL?

SB-35 amends Government Code Section 65913.4 to require local entities to streamline the approval of certain housing projects by providing a ministerial approval process, removing the requirement for CEQA analysis, and removing the requirement for Conditional Use Authorization or other similar discretionary entitlements granted by the Planning Commission or Historic Preservation Commission. This is a voluntary program that a project sponsor may elect to pursue, provided that certain eligibility criteria are met.

IS MY PROJECT ELIGIBLE FOR AFFORDABLE HOUSING STREAMLINED APPROVAL?

In order to be eligible for streamlining, the project must meet **all** of the following criteria:

- **Affordability:** At least 50% of the proposed residential units must be dedicated as affordable to households at 80% AMI for either rental or ownership projects. In order to assure that the affordable units remain so dedicated, they must comply with the San Francisco Inclusionary Affordable Housing Program Procedures Manual with regard to monitoring, enforcement, and procedures for eligibility, including the lottery.
- **Number of Units:** The development must contain at least two or more net new residential units.
- **Zoning and Residential Uses:** The development must be located on a legal parcel or parcels that are zoned for residential uses. At least 2/3 of the floor area of the proposed development must be dedicated to residential uses.
- **Location:** The development must be located on a property that is not within a coastal zone, prime farmland, wetlands, a high fire hazard severity zone, hazardous waste site, a delineated earthquake fault zone, a flood plain, a floodway, a community conservation plan area, a habitat for protected species, or under a conservation easement.
- **Demolition of Residential Units:** The project does not demolish any housing units that have been occupied by tenants in the last 10 years; are subject to any form of rent or price control, or are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes.
- **Historic Buildings:** The project does not demolish a historic structure that has been placed on a national, state, or local historic register. A local historic register includes those properties listed within Article 10 or 11 of the San Francisco Planning Code.
- **Consistent with Objective Standards:** The project must meet all objective standards of the Planning Code at the time of SB-35 application submittal. Such objective standards are those that require no personal or subjective (discretionary) judgment, such as objective dimensional requirements, and as otherwise set forth below.
- **Prevailing Wages:** If the development is not in its entirety a public work, as defined in Government Code Section 65913.4 (a)(8)(A), all construction workers employed in the execution of the development must be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.
- **Skilled and Trained Workforce provisions:** A skilled and trained workforce, as defined in Government Code Section 65913.4 (a)(8)(B)iii, must complete the development if the project consists of 75 or more units that are not 100 percent subsidized affordable housing.
- **Subdivisions:** The development did not or does not involve a subdivision of a parcel that is subject to the California Subdivision Map Act, unless the development either (i) receives a low-income housing tax credit and is subject to the requirement that prevailing wages be paid, or (ii) is subject to the requirements to pay prevailing wages and to use a skilled and trained workforce.

WHAT IS THE PROCESS FOR STREAMLINED APPROVAL?

Projects that elect to take advantage of streamlining stipulated in SB-35 must submit a site or building permit application and an SB-35 Streamlined Development application demonstrating the project's eligibility. These can be submitted at the Department of Building Inspection (DBI), under the same procedure as site and building permit submittals. When speaking with a planner at the Public Information Center (PIC), please indicate that this is an SB-35 submittal to ensure that it is routed to the appropriate planner.

CEQA review is not required for SB-35 eligible projects because they are subject to a ministerial approval process. The site or building permit will not be subject to any applicable neighborhood notice requirements in the Planning Code, and the Department will not accept Discretionary Review applications for these projects because they are subject to a ministerial approval process.

SB-35 includes timelines for streamlined review. Planning staff must determine if a project is eligible for streamlining within 60 days of application submittal for projects of 150 or fewer units, and 90 days for projects containing more than 150 units. If the Department provides written comments to a Project Sponsor detailing how a project is not SB-35 eligible as proposed, or requests additional information to make such a determination, then the 60 or 90 day timeline will restart upon submittal of a revised development application in response to that written notice.

Any design review or public oversight must be completed in 90 days for 150 or fewer units and 180 days for projects with more than 150 units, measured from the date of the AB-35 application submittal. The Planning Director may decide, on a case by case basis, to schedule a design review hearing for an SB-35 project at the Planning Commission and/or Historic Preservation Commission.

HOW DOES THIS PROCESS INTERSECT WITH 100% AFFORDABLE PROJECTS THAT REQUIRE ADMINISTRATIVE APPROVAL AND THE 100% AFFORDABLE HOUSING BONUS PROGRAM?

There are various programs and entitlement paths in the Planning Code for projects providing 50-100% of the residential units as affordable. The following section provides information about these specific project types.

100% Affordable Housing Projects under Planning Code Section 315
Currently, 100% Affordable Housing Projects are considered a principally permitted use and must comply with administrative review procedures provided in Planning Code Section 315. Under Planning Code Section 315, an Affordable Housing Project may seek exceptions to Planning Code requirements that may otherwise be available through the Planning Code, including but not limited to Sections 253, 303, 304, 309, and 329, without a Planning Commission hearing. These have been considered discretionary exceptions from the objective controls of the Planning Code.

When SB 35 becomes effective as of January 1, 2018, the Planning Department will ministerially grant an SB-35 eligible project that is also 100% affordable any exception that is equal to or less than the Zoning Modifications automatically granted to a 100% Affordable Housing Bonus Project pursuant to Planning Code Section 206.4. Any 100% Affordable Housing Project granted such an exception, pursuant to Planning Code Section 315 and this Bulletin, will be considered to be consistent with the objective controls of the Planning Code.

Under Planning Code Section 206.4, qualifying projects are entitled to receive certain Zoning Modifications, as well as a density bonus and height increase. These modifications are provided in detail as follows:

- **Rear Yard:** The required rear yard per Section 134 or any applicable special use district may be reduced to no less than 20% of the lot depth or 15 feet, whichever is greater. Corner properties may provide 20% of the lot area at the interior corner of the property to meet the minimum rear yard requirement, provided that each horizontal dimension of the open area is a minimum of 15 feet; and that the open area is wholly or partially contiguous to the existing midblock open space, if any, formed by the rear yards of adjacent properties.
- **Dwelling Unit Exposure:** The dwelling unit exposure requirements of Section 140(a)(2) may be satisfied through qualifying windows facing an unobstructed open area that is no less than 15 feet in every horizontal dimension, and such open area is not required to expand in every horizontal dimension at each subsequent floor.
- **Off Street Loading:** No off-street loading spaces under Section 152.
- **Automobile Parking:** Up to a 100% reduction in the minimum off-street residential and commercial automobile parking requirement under Article 1.5 of the Planning Code.

- **Open Space:** Up to a 10% reduction in common open space requirements if required by Section 135, but no less than 36 square feet of open space per unit.
- **Inner Courts as Open Space:** In order for an inner court to qualify as useable common open space, Section 135(g)(2) requires it to be at least 20 feet in every horizontal dimension, and for the height of the walls and projections above the court on at least three sides (or 75% of the perimeter, whichever is greater) to be no higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space in the court. 100 Percent Affordable Housing Bonus Projects may instead provide an inner court that is at least 25 feet in every horizontal dimension, with no restriction on the heights of adjacent walls. All area within such an inner court shall qualify as common open space under Section 135.

100% Affordable Housing Bonus Projects under Planning Code Section 206.4

The 100% Affordable Housing Bonus Program allows for objective Zoning Modifications in association with a Development Bonuses, including a density bonus and height increase. Projects that are eligible for the 100% Affordable Housing Bonus Program pursuant to Section 206.4 qualify for streamlining pursuant to SB-35, provided they meet all eligibility requirements above, and require no additional Planning Code exceptions from the Planning Commission.

State Density Bonus Projects under Planning Code Section 206.5 or 206.6

Projects that use the State Density Bonus Program and meet all other eligibility requirements above qualify for streamlining under SB-35. Any waivers, concessions, or incentives, conferred through the State Density Bonus Law are considered code-complying, and therefore are consistent with the objective standards of the Planning Code.

Mixed-Income Affordable Projects (50-99% Affordable)

Mixed-income projects that provide at least 50% of units that are affordable to qualifying households and meet all other eligibility requirements above are eligible for streamlining pursuant to SB-35. If Planning Code exceptions are required as part of a project approval including, but not limited to, a Variance (Sec. 305), a Downtown Authorization Project (Sec. 309), a HOME-SF Project Conditional Use authorization (Sec. 303), or a Large Project Authorization (Sec. 329), the project is not eligible for streamlining because it does not comply with objective standards of the Planning Code.

HOW WILL OTHER ENTITLEMENTS BE AFFECTED?

SB-35 states that a project must be consistent with objective zoning and design standards, which are standards that involve no personal or subjective judgment by a public official. They must be uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and the public official prior to submittal. Therefore, projects that elect to take advantage of streamlining stipulated in SB-35 are only subject to objective standards and will not be required to follow subjective or discretionary processes.

Shadow Analysis Applications

Planning Code Section 295 mandates Planning Commission approval of new structures above 40 feet in height that would cast shadow on properties under the jurisdiction of, or designated to be acquired by the Recreation and Parks Department, provided that the Planning Commission determines the shadow to be insignificant or not adverse to the use of the park. This determination is either objective or subjective depending on the type of criteria that has been adopted to govern shadow limits on the particular park.

There are two types of parks: those with quantitative limits on the amount of new shadow that may be cast on the park ("budgets"), and those that have not been assigned quantitative shadow budgets. Projects would be eligible for streamlining pursuant to SB-35 if they cast a shadow on a park that **does not** have a quantitative shadow budget because the review standards for the new shadow on these parks are subjective. A Shadow Analysis application will not be required in this scenario.

When receiving an application, the assigned planner will complete a shadow fan to determine if there is any potential shadow on a park with a budget. If the shadow fan shows a potential shadow, the Department will provide written comments detailing how the project is not SB-35 eligible as proposed and the sponsor will be required to provide a shadow study. The 60 or 90 day timeline will restart upon submittal of a revised development application in response to the written notice. Projects will not be eligible for SB-35 streamlining if they cast a shadow on a park with a shadow budget that causes the shadow budget to be exceeded. If the shadow cast is within the park's budget, the project is eligible for streamlining.

Certificate of Appropriateness and Permits to Alter

SB-35 prohibits demolition of historic buildings placed on local registers, such as Article 10 and Article 11 of the Planning Code, but does not limit development on landmark properties or lots within districts or demolition of noncontributory buildings. The Certificate of Appropriateness and the Permit to Alter are associated with Articles 10 and 11 of the Planning Code, respectively, and are discretionary approvals that rely upon subjective judgement. As such, they are not required for projects eligible for SB-35. However, there are occasional site-specific factors and characteristics for historic districts and city landmarks identified within Article 10 or 11 that are objective standards. Examples of objective standards may include specifications about which materials may be used or legislative setbacks. Projects that do not demolish Article 10 or 11 buildings may be eligible for SB-35 streamlining as long as the objective standards of Article 10 or 11 are met. Even though a building may have been considered a historic resource under the broad provisions of CEQA, it may not be considered a historic building under the narrower definition contained in SB-35.

With regard to process, after a SB-35 Streamlining application is submitted, preservation staff will review the project for compliance with Article 10 or 11 objective standards. If the project does not meet the objective standards, the Department will provide written comments detailing how the project is not SB-35 eligible as proposed and the sponsor could revise the project to maintain eligibility. The 60 or 90 day timeline will restart upon submittal of a revised development application in response to the written notice. Neither a Certificate of Appropriateness application nor a Permit to Alter application will be required for SB-35 eligible projects. The Planning Director may decide, on a case by case basis, to schedule a design review hearing for an SB-35 project at the Planning Commission and/or Historic Preservation Commission.

AFFORDABLE HOUSING STREAMLINED APPROVAL PURSUANT TO SENATE BILL 35 AND PLANNING DIRECTOR BULLETIN #5

Property Information

Project Address: Block/Lot(s):

Project Description:

Is this a 100% Affordable Housing Project?: Yes No

Will the Project use SB-35 in conjunction with the State Density Bonus?: Yes No
If yes, please submit a completed Individually Requested State Density Bonus Program Supplemental Application with your submittal.

Will the Project use SB-35 in conjunction with the Affordable Housing Density Bonus Program?: Yes No
If yes, please submit a completed Individually Requested State Density Bonus Program Supplemental Application with your submittal.

Project Description:

Please provide a narrative project description that summarizes the project and its purpose. Please include the AMI levels of the populations to be served in the development and describe the project's intended program.

PROJECT AND LAND USE TABLES

If the proposed size of the project is not finalized, provide the maximum estimates.

General Land Use Category

	Existing (square footage area)	Proposed (square footage area)
Parking GSF		
Residential		
Retail/Commercial		
Office		
Industrial-PDR		
Medical		
Visitor		
CIE (Cultural, Institutional, Educational)		
Useable Open Space		
Public Open Space		

Project Features

	Existing Unit(s) (Count)	Proposed Unit(s) (Count)
Dwelling Units - Affordable		
Hotel Rooms		
Dwelling Units - Market Rate		
Building Number		
Stories Number		
Parking Spaces		
Loading Spaces		
Bicycle Spaces		
Car Share Spaces		
Public Art		
Other		

Land Use - Residential

	Existing (square footage area)	Proposed (square footage area)
Studios		
One Bedroom		
Two Bedroom		
Three Bedroom (and +)		
Group Housing - Rooms		
Group Housing - Beds		
SRO		
Micro		
Accessory Dwelling Unit*		
*For ADUs, individually list all ADUs and include unit type (e.g. studio, 1 bedroom, 2 bedroom, etc.) and the square footage area for each unit.		

Zoning Modifications

100% Affordable Housing Projects are eligible for any or all of the following zoning modifications.
Select the modifications that the project seeks below.

☐ Rear yard:
The required rear yard per Section 134 or any applicable special use district may be reduced to no less than 20% of the lot depth, or 15 feet, whichever is greater. Corner properties may provide 20% of the lot area at the interior corner of the property to meet the minimum rear yard requirement, provided that each horizontal dimension of the open area is a minimum of 15 feet and that the open area is wholly or partially contiguous to the existing mid-block open space, if any, formed by the rear yards of adjacent properties.

☐ Inner Courts as Open Space:
100 Percent Affordable Housing Projects may instead provide an inner court that is at least 25 feet in every horizontal dimension, with no restriction on the heights of adjacent walls. All area within such an inner court shall qualify as common open space under Section 135.

☐ Dwelling Unit Exposure:
The dwelling unit exposure requirements of Section 140(a)(2) may be satisfied through qualifying windows facing an unobstructed open area that is no less than 15 feet in every horizontal dimension, and such open area is not required to expand in every horizontal dimension at each subsequent floor.

☐ Open Space:
Common open space provided per Section 135 or any applicable special use district may be reduced up to 10%.

☐ Off-Street Loading:
Off-street loading spaces per Section 152 shall not be required.

☐ Automobile Parking:
Residential and commercial parking requirements per Section 151 or any applicable special use district may be reduced by up to 100%.

Under penalty of perjury the following declarations are made:

a) The undersigned is the owner or authorized agent of the owner of this property.

b) The information presented is true and correct to the best of my knowledge.

c) Other information or applications may be required.

Signature ______________________ Name (Printed) ______________________

Relationship to Project (i.e. Owner, Architect, etc.) ______________ Phone ______________ Email ______________________

I herby authorize City and County of San Francisco Planning staff to conduct a site visit of this property, making all portions of the interior and exterior accessible.

Signature ______________________ Name (Printed) ______________________

Date ______________

For Department Use Only

Application received by Planning Department:

By: ______________________ Date: ______________

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
Section 23E.68.030 Uses Permitted		
A. The 'Use and Required Permits' table identifies permitted, permissible, and prohibited uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH) or is prohibited. Uses within the Downtown Arts District Overlay area (ADO) are also subject to Section 23E.68.040.	The list of permitted uses establishes objective standards governing which uses are allowed in the Zoning District. However, the requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a). Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). As set forth below, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.	The Project will only contain uses on the list of "Uses Permitted" on Table 23E.68.030: "Dwelling Units, including multifamily developments" and "Group Living Accommodations subject to R-3 Standards", and a residential/commercial cafeteria. However, these uses shall not require a Use Permit/Public Hearing. Rather, pursuant to SB 35, this submittal is subject to ministerial review, but it includes application forms as available from the City's standard forms. COMPLIANT. Uses proposed are permissible in the district, but because of SB35, no discretionary use permits are required.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Provision	Applicability	Compliance
Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions		
B. The Zoning Officer may approve an Administrative Use Permit for any use that he or she determines is compatible with the purposes of the C-DMU District. Any use that is not listed that is not compatible with the purposes of the C-DMU District shall be prohibited.	Not applicable to the Project. The Project will only contain uses listed on Table 23E.68.030.	Not applicable. NOT APPLICABLE.
Section 23E.68.040 Downtown Arts District Overlay		
Subsections A through C.	Not applicable to the project. The Project is not located within the Downtown Arts District Overlay.	Not applicable. NOT APPLICABLE.
Section 23E.68.050 Construction of New Floor Area: Use Permits		
Gross floor area of 10,000 square feet or more shall not be created unless a Use Permit is obtained subject to the findings in Section 23E.68.090.D. Creation of new floor area includes construction of new buildings or accessory buildings; additions to existing buildings; or the installation of new floor area or mezzanine levels within or onto existing buildings.	The proposed project would create more than 10,000 square feet of new floor area. However, as noted in the applicability response to Section 23E.68.030.A, above, pursuant to SB 35, the project cannot be required to obtain a discretionary use permit.	Not applicable. NOT APPLICABLE.
Section 23E.68.060 Use Limitations		
A. No commercial use shall operate except between the hours of 6:00 a.m. and 2:00 a.m. except as authorized by an Administrative Use Permit, and in accordance with Section 23E.16.010.	The project does not propose any commercial uses.	Not applicable. NOT APPLICABLE. BFHP support services are a non-profit organization, and are considered a commercial, office use. BFHP has 24-hr staffing, and the shelter operates from 5 p.m. to 8 a.m, outside the specified hours. However no use permits are required to authorize operation outside those hours.
B. Any use that is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.68.030.	The project does not propose any incidental uses listed in Table 23E.68.030.	Not applicable. NOT APPLICABLE.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
C. Any activity or use that occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor, and Exterior Window Uses heading in Table 23E.68.030.	The project does not propose any outdoor uses listed in Table 23E.68.030.	Not applicable. NOT APPLICABLE. No outdoor activities proposed.
D. Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement Arcades shall be subject to the requirements of Chapter 23E.16 in addition to the requirements of this Chapter.	The project does not propose any Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, or Amusement Arcades.	Not applicable. NOT APPLICABLE.
E. For new uses identified in Table 23E.68.030 that are located on the ground floor adjacent to a street frontage, storefront windows are required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.	The project proposes new uses identified in the referenced table that are adjacent to a street frontage. The numeric standard of pedestrian viewing is a minimum of 10 feet into the storefront area is therefore applicable.	The first-floor plan on Sheet A2.01B and the north elevation on Sheet A3.01 demonstrate the project does not propose to locate permanent fixtures within 10 feet of the storefront windows that would obstruct pedestrian viewing. COMPLIANT. Applicable to office uses on ground floor in building. Window glazing is transparent, per design criterion, Storefronts & Entrances #8 (page 56), and fixtures within 10 feet of windows are below eye-level.
F. In new buildings constructed on Public Serving Frontages, as illustrated in Sub-title 23F and the Downtown Area Plan, entrances to individual dwelling units and to living quarters in Group Living Accommodations are prohibited on the street-facing side of the street-level floor.	According to definition in Sub-title 23F, and the accompanying figure, the project site is not located on a Public Serving Frontage.	Not applicable. NOT APPLICABLE.
G. Non-Chartered Financial Institutions are not permitted in this District.	The project does not propose any Non-Chartered Financial Institution uses.	Not applicable. NOT APPLICABLE.
Section 23E.68.065 Performance Standards		
Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program adopted concurrently	This is not an objective standard. Moreover, projects proposed under SB35 streamlining provisions are ministerial and are not subject to CEQA.	Not applicable. Project is subject to applicable Mitigation Measures, per Streamlined Ministerial Approval Process Guidelines, Section

<table>
<tr><th colspan="3">Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</th></tr>
<tr><th colspan="3">Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions</th></tr>
<tr><th>Provision</th><th>Applicability</th><th>Compliance</th></tr>
<tr><td colspan="3">Section 23E.68.070 Development Standards</td></tr>
<tr><td>A. The height for main buildings shall not exceed the following limits and shall satisfy the following requirements:

<table>
<tr><th colspan="4">Table 23E.68.070
Height Limits (as per Downtown Area Plan) *</th></tr>
<tr><th>C-DMU Sub-Area</th><th>Minimum</th><th>Maximum</th><th>Maximum With Use Permit</th></tr>
<tr><td>Buffer</td><td>None</td><td>50 feet</td><td>60 feet</td></tr>
<tr><td colspan="4">*Notwithstanding Sub-title 23F, in the case of a roof with parapet walls, building height shall be measured to the top of the roof and parapets may exceed the height limits above by up to five (5) feet as of right.</td></tr>
</table></td>
<td>This maximum height is waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").</td>
<td>As shown on Sheet A0.DB1, the base project has a building height of 45'-1" and is therefore compliant with the 50-foot height limit for CMU Buffer sites.

Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the height restriction because the height limit, if applied, would physically preclude the density bonus project. The proposed project would have a maximum height of 65'-4".
COMPLIANT. Via waivers and concessions under Density Bonus law.</td></tr>
<tr><td>B. The Board may issue Use Permits for up to five buildings that exceed the limits set forth in Table 23E.68.070 if it makes the finding in Section 23E.68.090.E, and as follows:
1. In the combined Core and Outer Core areas, up to two buildings of over 75 feet but not more than 120 feet.
2. In the Core area, up to three buildings over 120 feet but not more than 180 feet. Allowed uses in such buildings include:
a. Two residential buildings with ground-level commercial uses.
b. One hotel building with conference facilities and accessory commercial uses.</td>
<td>As described under the response to Subsection 23E.68.070.A above, the base project before the application of the state density bonus, complies with the height requirements of the Zoning Ordinance. The maximum height requirement of the Zoning Ordinance is waived by operation of State Law.</td>
<td>Not applicable. See response above.

NOT APPLICABLE.</td></tr>
</table>

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
3. Application process for buildings over 75 feet in height: a. Applications for any of the five buildings over 75 feet in height may be submitted on July 1, 2012. If no applications that satisfy the submittal requirements as determined by the Zoning Officer are submitted on that date, then the next deadline to submit applications will be no later than six months from that date, with application opportunity dates at six month intervals until the first application has been submitted. Once the first application has been submitted, then the application opportunity date will occur once yearly on the anniversary of the date of the first submittal. b. A project shall secure a position as one of the five allowed buildings over 75 feet in height following final Use Permit approval. Such Use Permits shall include a condition of approval that establishes a schedule for: submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and commencement of construction. The process for allowing extension of the timeline requirements, if any, shall be specified in the condition. c. Failure of a permittee to strictly comply with the schedule established by the Use Permit shall be grounds for revocation of the Use Permit pursuant to Chapter 23B.60.		

C. No yards for main buildings, accessory buildings, or accessory structures shall be required, except as required in Section 23E.04.050 for commercial lots abutting or confronting residential zoning. In addition buildings shall be set back from property lines as set forth in the table and provisions below, unless modified by a Use Permit subject to the findings in Section 23E.68.090.F.

Portion of Building at Height of:	Front Lot Line	Interior Side Lot Line		Rear Lot Line
		65' and less from lot frontage	Over 65' from lot frontage	
Zero to 20 feet	0' minimum, 5' maximum;	0' minimum	0' minimum	0' minimum
21 feet to 75 feet	0' minimum	0' minimum	5' minimum	5' minimum
76 feet to 120 feet	15' minimum	5' minimum	15' minimum	15' minimum
Over 120 feet	15' minimum	15' minimum	15' minimum	15' minimum

1. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.
2. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
3. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that this provision shall not apply to lots confronting public uses with a residential zoning

The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. *See* Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").

As shown on Sheet A0.DB2b, the base project has a front yard setback of 15 feet in compliance with the 15-foot front yard setback required for a lot confronting an R-2A zone and 5-foot setbacks for the side and rear years, as required for buildings between 21 and 75 feet.

Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the setback requirements because the setbacks, if applied, would physically preclude the density bonus project. The proposed project would have a minimum setback of 0 feet in the front and side yards and 15 feet in the rear yard.

COMPLIANT. Via waivers under Density Bonus law.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, this provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way. 4. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height. 5. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50% of the surface area of the side of the building on which the projections are located.		

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
D. New buildings shall provide on-site open space as follows: 1. For residential uses, 80 square feet of usable open space per unit. a. Each square foot of such open space that is provided as Privately-Owned Public Open Space shall be counted as two square feet of required on-site open space for residential uses. 2. For non-residential uses, one (1) square foot of privately-owned public open space per 50 square feet of commercial floor area. 3. In lieu of providing the open space required by this Section on site, an applicant may pay an in-lieu fee to help fund the Streets and Open Space Improvement Plan (SOSIP) and/or construct public improvement consistent with the SOSIP, as specified in the Use Permit, provided the Board makes the findings in Section 23E.68.090.G.	The open space requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. *See* Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after "excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915").	As shown on Sheet A0.DB2a, the base project proposes 9,240 square feet of open space, including 2,050 square feet of privately-owned public open space (which is counted at 2:1), and is therefore compliant with the required open space area. The proposed project includes 10,400 square feet of open space where 11,640 is required. Pursuant to State Density Bonus Law, the applicant is entitled to a concession of the open space requirement because a reduction results in identifiable and actual cost reductions to provide for affordable housing costs and does not result in any adverse public health or safety impacts. COMPLIANT. Via concession under Density Bonus law.

Section 23E.68.075 Fee to Implement Streets and Open Space Improvement Plan (SOSIP)

Provision	Applicability	Compliance
In addition to any other requirement of this Chapter, projects shall be subject to payment of an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP), as may be adopted by the City.	The proposed project appears to be subject to the fee.	If the City determines that the fee applies to the project, the project sponsor will provide for the fee as required by the City. APPLICABLE. Project will be reviewed for compliance by the Public Works Dept. during Building Permit plan check.

Section 23E.68.080 Parking – Number of Spaces

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

<table>
<tr><th>Provision</th><th>Applicability</th><th>Compliance</th></tr>
<tr><td>A. All parking shall be provided in accordance with the requirements of this Section and Chapter 23E.28, except as set forth in this Section. No change of commercial use within the existing floor area of a building shall be required to meet the off-street parking requirements of this Section or Chapter 23E.28, unless the structure has been expanded to include new floor area.</td><td>This standard does not apply pursuant to SB 35. The City may "not impose parking standards for a streamlined development" if "[t]he development is located within one-half mile of public transit." Gov. Code §65913.4(d).</td><td>Not applicable. The Project is within a half mile of the Downtown Berkeley BART station and several AC Transit bus lines with headways that exceed 15 minutes.

NOT APPLICABLE.</td></tr>
<tr><td>B. The District minimum standard vehicle parking space requirement for all floor area is one and a half spaces per each 1,000 square feet of gross floor area or as required for the uses listed in the following table.
<table>
<tr><th>Use</th><th>Number of Parking Spaces Required</th></tr>
<tr><td>Dwelling Units, Single and Multi-Family Buildings</td><td>One per three dwelling units</td></tr>
<tr><td>Group Living Accommodations (Including Single Room Occupancy Residential Hotels) and Nursing Homes</td><td>One per eight sleeping rooms</td></tr>
</table>
1. Additions up to 1,000 square feet of gross floor area, or up to twenty-five percent (25%) of existing gross floor area, whichever is less, are exempt from the parking requirements for new floor area.
2. Parking spaces shall be provided on site, or off site within 800 feet subject to securing an AUP and in compliance with Section 23E.28.030.</td><td>See response to Section 23E.68.080.A above.</td><td>Not applicable. See response above.

NOT APPLICABLE.</td></tr>
</table>

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.	No commercial floor area is proposed.	Not applicable. However, the project proposes more than 50 interior bicycle parking spaces in a 1,234 square foot room on the ground floor to accommodate tenants' and employees' needs. NOT APPLICABLE. Project is exempt, per SB35 provisions (see page 30). However, bicycle room is provided and the bike parking requirement for a non-SB35 exempt project is exceeded.
D. The vehicle parking space requirements of this Section may be reduced or waived through payment of an in-lieu fee to be used to provide enhanced transit services, subject to securing a Use Permit subject to the finding in section 23E.68.090.H or modified with an AUP subject to the findings in 23E.28.140.	See response to Section 23E.68.080.A above.	Not applicable. NOT APPLICABLE.
E. New construction that results in an on-site total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications, including, but not limited to, real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System or equivalent, as determined by the Zoning Officer in consultation with the Transportation Division Manager.	No publicly available parking spaces are proposed.	Not applicable. NOT APPLICABLE.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts		
Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions		
Provision	**Applicability**	**Compliance**
F. Occupants of residential units or GLA units constructed, newly constructed or converted from a non-residential use shall not be eligible for Residential Parking Permit (RPP) permits under Chapter 14.72 of the BMC.	See response to Section 23E.68.080.A above. Additionally, draft SB35 guidelines developed by the Department of Housing and Community Development and released September 28, 2018 specify that parking requirements shall not be imposed "When on-street parking permits are required, but not offered to the occupants of the development."	Not applicable. NOT APPLICABLE.
G. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit, unless the Board grants a Use Permit to waive this requirement for projects which include financing for affordable housing subject to the finding in section 23E.68.090.I.	See response to Section 23E.68.080.A above.	Not applicable. NOT APPLICABLE.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts		
Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions		
Provision	**Applicability**	**Compliance**
H. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident. A notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents. 1. A pass for unlimited local bus transit service; or 2. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.	The project proposes to provide a new structure and is, therefore, subject to the requirements of Section 23E.68.080.H.	The applicant shall provide (i) a pass for unlimited local bus transit service to every employee, residential unit, and/or GLA resident, OR (ii) a functionally equivalent transit benefit, subject to approval by the Zoning Officer. Applicant has agreed to provide unlimited transit passes or equivalent transit benefit. Project will be reviewed for compliance by the Land Use Planner during Building Permit plan check.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
I. For residential structures constructed or converted from a non-residential use that require vehicle parking under Section 23E.68.080.B, required parking spaces shall be designated as vehicle sharing spaces in the amounts specified in the following table. If no parking spaces are provided pursuant to Section 23E.68.080.D, no vehicle sharing spaces shall be required. **Number of Parking Spaces Required** — **Minimum Number of Vehicle Sharing Spaces** 0 – 10 — 0 11 – 30 — 1 30 – 60 — 2 1. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost. 2. The vehicle sharing spaces required by this Section shall remain available to a vehicle sharing service provider as long as providers request the spaces. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.	See response to Section 23E.68.080.A above.	Subsection B does not apply to the proposed project so no vehicle sharing spaces are required. Not applicable. NOT APPLICABLE.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Provision	Applicability	Compliance
Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions		
J. For residential structures constructed or converted from a non-residential use subject to Sections 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I, prior to issuance of a Certificate of Occupancy, the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City, which demonstrates that the project is in compliance with the applicable requirements of 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I. Thereafter, the property owner shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.	The ongoing compliance reporting requirement set forth in Section 23E.68.080.J is not an objective standard for purposes of determining SB 35 eligibility. Notwithstanding the above, because subsection H applies to the project, the applicant acknowledges that the project is also subject to this subsection J.	The project will provide an annual report as required for compliance with subsection H, as requested by the City. Project will be reviewed for compliance by the the Transportation Division during Building Permit plan check
K. Any construction which results in the creation of more than 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.72.	No commercial floor area is proposed.	Not applicable. NOT APPLICABLE. New commercial area = 4,688 SF. However, a loading space is provided in the project.
Section 23E.68.085 Green Building Provisions		
A. Construction of new buildings and additions of more than 20,000 square feet shall attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.	Applicable objective standard.	The project will utilize the GreenPoint Rating System as authored by Build-It Green and achieve the GreenPoint equivalent of LEED Gold. COMPLIANT.

Table 1. BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions		
Provision	**Applicability**	**Compliance**
B. Additions of 20,000 square feet or less shall be required to meet all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.	The project does not represent an addition of 20,000 square feet or less.	Not applicable. NOT APPLICABLE.
Section 23E.68.090: Findings		
A. In order to approve any Use Permit under this Chapter, the Zoning Officer or Board must make the findings required by Section 23B.32.040, as well as the findings required by the following paragraphs of this Section to the extent applicable.	Does not apply pursuant to SB 35. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a). As set forth in Section 23E.64.090.B through I below, the applicable findings under this section of the Zoning Ordinance are not objective standards.	Not applicable. NOT APPLICABLE. No Use Permits required.
B. A proposed use or structure must: 1. Be compatible with the purposes of the District; and 2. Be compatible with the surrounding uses and buildings.	See response to subsection Section 23E.68.090.A above.	Not applicable. NOT APPLICABLE. No Use Permits required.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
C. For each Administrative Use Permit obtained under Section 23E.68.040.C to allow a new carry out food service store or ground floor office use within the Downtown Arts District Overlay, the Zoning Officer must find that: 1. The project meets the purposes of the Arts Overlay District as set forth in Section 23E.68.040; and 2. The location, size, type, appearance, and signage of the proposed use will: a. Animate and enhance the pedestrian experience on the street; and b. Be generally open to the public evenings and on weekends, whenever practicable.	See response to subsection Section 23E.68.090.A above.	Not applicable. NOT APPLICABLE. No Use Permits required.
D. In order for any Use Permit to be granted under Section 23E.68.050 for new floor area, the Board must find that: 1. The addition or new building is compatible with the visual character and form of the District; and 2. No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.	See response to subsection Section 23E.68.090.A above.	Not applicable. NOT APPLICABLE. No Use Permits required.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
E. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.	See response to subsection Section 23E.68.090.A above.	Not applicable. NOT APPLICABLE. No Use Permits required.
F. In order to approve a Use Permit for modification of the setback requirements of 23E.68.070.C, the Board must find that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.	See response to subsection Section 23E.68.090.A above.	Not applicable. NOT APPLICABLE. No Use Permits required.

Table 1: BMC Sub-Title 23E Provisions Applicable In All Non-Residential Districts

Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions

Provision	Applicability	Compliance
G. In-Lieu Open Space. 1. In order to approve a Use Permit under Section 23E.68.070.D for payment of an in-lieu fee, the Board must find that the in-lieu payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown. 2. In order to approve a Use Permit under Section 23E.68.070.D for construction of public improvements consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP), the Board must find that the public improvements: a. Will be located within the vicinity of the project and are consistent with the SOSIP; and b. The improvements will be coordinated with other ongoing or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the downtown; and c. The improvements will be completed prior to issuance of a certificate of occupancy for the project, unless otherwise allowed by the Conditions of Approval.	See response to subsection Section 23E.68.090.A above.	Not applicable. NOT APPLICABLE. Meets Usable Open Space requirements with Density Bonus concession.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts		
Chapter 23E.68 C-DMU Downtown Mixed-Use District Provisions		
Provision	**Applicability**	**Compliance**
H. In order to approve a Use Permit to allow a reduction of required vehicle parking spaces under Section 23E.68.080.D, which may be reduced to zero, the Board must find that the applicant will pay an in-lieu fee to a fund established by the City that provides enhanced transit services.	See response to subsection Section 23E.68.090.A above.	Not applicable. NOT APPLICABLE. No Use Permits required.
I. In order to approve a Use Permit to allow parking spaces to be leased or sold in combination with the proposed affordable housing units under Section 23E.68.080.G, the Board must find that applicant has demonstrated that the combined parking is necessary for the purpose of obtaining financing or meeting other obligations. (Ord. 7229-NS § 1 (part), 2012)	See response to subsection Section 23E.68.090.A above.	Not applicable. NOT APPLICABLE. No Use Permits required.

Table 2 includes zoning standards applicable zoning standards for all districts.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts

Provision	Applicability	Compliance
Chapter 23B.32.040 Use Permits		
Section 23B.32.040 Findings for Issuance and Denial and Conditions		
A. The Board may approve an application for a Use Permit, either as submitted or as modified, only upon finding that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.	The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a). Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). The standards listed in this provision involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.	Although this standard does not apply, the proposed project will neither be a detriment to the neighborhood nor to the City of Berkeley in general. The proposed project represents an improvement on an underutilized lot by providing much needed affordable housing and social services for low-income households and homeless individuals. The project, therefore, aligns with Berkeley's General Plan, Downtown Area Plan and Climate Action Plan goals which seek to increase housing opportunities, particularly in locations such as this, located along major transportation corridors and proximate to commercial amenities. NOT APPLICABLE. No Use Permits required.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
B. Prior to approving any Use Permit the Board must also make any other findings required by either the general or District regulations applicable to that particular Use Permit.	The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a). The findings required by the applicable District regulation are addressed above in the Table relevant to Section 23E.68.090 of the Zoning Ordinance.	Not applicable. NOT APPLICABLE. No Use Permits required.
C. The Board shall deny an application for a Use Permit if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination.	The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a). Under SB 35, the only applicable standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5). As set forth below, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.	Not applicable. NOT APPLICABLE. No Use Permits required.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
D. The Board may attach such conditions to any Use Permit as it deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)	The requirement to attached conditions to a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a).	Not applicable. NOT APPLICABLE. No Use Permits required. However, project is subject to standard COAs, per Streamlined Ministerial Approval Process Guidelines, Section 301(a)(5). See Attachment C.
Chapter 23C.23 Percentage for Public Art on Private Projects		
23C.23.030 Exceptions		
This Chapter does not apply to the following project types: A. Multifamily housing that has a regulatory agreement with a government agency restricting the rent and limiting tenancy to qualifying households not exceeding specified incomes for at least 60% of the units. B. Buildings with Religious Assembly Uses as defined in Section 23F.04.010 and Buildings with Arts and Cultural Uses. For purposes of this section, "Arts and Cultural Use" means buildings that have as their primary purpose the presentation of one or more cultural resources, and that are operated by public entities or nonprofit organizations dedicated to cultural activities available to a broad public. C. Transitional Housing.	The project proposes both transitional housing and below market rate multifamily housing with a regulatory agreement that restricts the rent and limits tenancy to qualifying households not exceeding specified incomes for more than 60% of the units.	Not applicable. NOT APPLICABLE.
Chapter 23E.04 Lot and Development Standards		
Section 23E.04.020 Heights		

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
A. In any commercial, mixed use or manufacturing District, the height limits for Schools, buildings for Religious Assembly Use, hospitals and other public buildings permitted in such District shall not exceed the height limit permitted for that District.	The project is not proposing a school, building for Religious Assembly Use, hospital, or other public building.	Not applicable. NOT APPLICABLE.
B. Towers, antennas and poles used for the transmission of electricity, telephone, telegraph, cable television, or other messages; except for electromagnetic signals for cellular radiotelephone service and wireless telecommunications; and flag poles, chimneys, water tanks, heating and air conditioning equipment, skylights, solar energy equipment, vents, pipes and similar structures and necessary mechanical appurtenances may be built and used to a greater height than the limit established for the District in which the building is located. Wireless telecommunication antennas, other than those located within the public right-of-way, shall be subject to the height restrictions in Section 23C.17.060 and shall require a Use Permit or Administrative Use Permit.	Applicable objective standard.	Roof top appurtenances are shown in the roof top plan in the attached plan set. They include solar hot water tanks, solar hot water panels, and photovoltaic panels. No wireless antennas are proposed. NOT APPLICABLE.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
C. Any projection not listed in the foregoing paragraph is prohibited except upon issuance of an AUP, including, but not limited to, mechanical penthouses, elevator equipment rooms, and cupolas, domes, turrets, and other architectural elements which exceed a District's height limit. No such structure shall represent more than fifteen percent (15%) of the average floor area of all of the building's floors; and no tower or similar structure shall be used as habitable space or for any commercial purpose, other than that which may accommodate the mechanical needs of the building. (Ord. 6671-NS § 5 2001: Ord. 6478-NS § 4 (part), 1999)	Applicable objective standard.	The building's roof includes mechanical penthouse and elevator equipment rooms that exceed the CMU Buffer district height limit. A waiver of the applicable Administrative Use Permit for height standards for rooftop equipment is a part of the project's proposed density bonus program. The average floor area of all the buildings floors is 22,997 sq. ft. The roof-top equipment rooms cover 680 sq. ft. of roof area or 3% of the average floor area of the proposed project. Therefore, the project complies with the standard. NOT APPLICABLE. Planning policy is to exempt the base project in density bonus proposals from this standard.

Section 23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones		
A. Any structure that is located in a commercial District that abuts or confronts a lot or lots in a residential District shall conform to the following yard setback requirements unless otherwise specified by the provisions of an individual District:	The applicable individual district, the CMU Buffer zone, identifies yard standards for commercial lots confronting residentially-zoned lots. See response to Subsection 23E.68.070 in Table 1.	Not applicable. COMPLIANT. Via waivers under Density Bonus law.
B. The minimum width of any side yard shall be five (5) feet;	See response to Section 23E.04.050.A above.	NOT APPLICABLE. No residential district in this direction.
C. The minimum depth of any rear yard shall be ten (10) feet, or ten percent (10%) of the depth of the lot, whichever is greater;	See response to Section 23E.04.050.A above.	NOT APPLICABLE. No residential district in this direction

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
D. The minimum depth of any front yard, or the minimum width of any side yard on the street side, shall be the same required yard as specified for the adjacent residential District.	See response to Section 23E.04.050.A above.	Not applicable. COMPLIANT. Via waivers under Density Bonus law.
E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District.	See response to Section 23E.04.050.A above.	Not applicable. NOT APPLICABLE. No Use Permits required.
Section 23E.04.060 Special Building Feature Requirements for C- Lots Abutting Residential Zones		
A. For lots that are located in a commercial District that abuts or confronts a lot or lots in a residential District the following building features shall conform to the specified requirements, unless otherwise specified by the provisions of an individual District:	Applicable objective standard.	Introductory statement. No further response required.
B. Display windows and customer entrances, other than required exits, shall be oriented in a manner so they do not face abutting lots in a residential District;	Applicable objective standard.	Since the proposed project is a residential development, no customers or customer entrances are proposed to face abutting residential lots. Although storefront type windows are proposed as architectural features along the north elevation—which abuts a residential district—no commercial displays are proposed. COMPLIANT.
C. Exterior lighting shall be shielded in a manner which avoids direct glare onto abutting lots in a residential District;	Applicable objective standard.	The exterior lighting proposed for the project is shown in the attached plan set. All exterior

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
		lighting will be shielded and/or directed on site. APPLICABLE. Project will be reviewed for compliance by the Land Use Planner during Building Permit plan check.
D. A solid wall or fence, measuring six (6) feet in height from existing grade, shall be erected at the lot line of an abutting lot in a residential District in order to provide screening;	This is an applicable standard.	A minimum six-foot-high fence is proposed along the west property line. See site plan in attached plan set. COMPLIANT.
E. Exhaust air ducts shall be located or oriented in a manner which directs vented air flows away from any residential District, and equipment which mitigates odors shall be installed;	Applicable objective standard.	Not applicable. However, exhaust vents are proposed to be located more than 35' away from the nearest residential use. They are also down wind of the prevailing wind direction for the Downtown Berkeley area. Specific equipment specifications will be provided during building plan check review for compliance with this standard. See the roof plan in the attached plan set for location detail. COMPLIANT.
F. The Board may approve an Use Permit reducing or waiving the requirements of this Section if it finds that any such requirement is unnecessary to minimize the effects of commercial uses on a lot in the residential District.	The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a).	Not applicable. NOT APPLICABLE. No Use Permits required.
Chapter 23E.08 Design Review		
Section 23E.08.020 Applicability		

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
A. The design review process and the design guidelines apply to the following: 1. Development within all commercial, manufacturing, mixed use and all other non-residential Districts; 2. All commercial and mixed-use projects in the R-4 District; 3. All commercial, mixed use and community and institutional projects in the R-SMU and R-S Districts; and 4. All mixed use and community and institutional projects in the R-3 District within the boundaries of the Southside Plan (see Section 23D.36.050 for area description).	This provision describes the types of development that are subject to design review but does not impose any standards. Pursuant to SB 35, the only applicable "design review standards" are those that "involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4(a)(5).	Since the Project is located in a commercial district, it is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards. Project has been reviewed for compliance with objective design standards in the Downtown Area Plan, see pages 55-58.
B. All projects for which a building or sign permit is required, involving exterior construction or alteration, the removal of public facades or any portion of those facades, or the erection or replacement of signs, are subject to design review.	This provision describes a procedural requirement but does not impose any standards.	The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards. See pages 55-58.
C. Permits for projects that are subject to design review may not be issued without design review approval, except that they may be issued conditional upon such approval occurring before the issuance of a building permit or for a permit for a sign as set forth in BMC 20.12.010 (the Sign Ordinance).	This provision describes a procedural requirement but does not impose any standards.	The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards. See pages 55-58.
D. No Zoning Certificate may be approved before approval of design review for such a pending Zoning Certificate application.	This provision describes a procedural requirement but does not impose any standards.	The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards. See pages 55-58.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
E. No building or sign permit may be issued, except in conformance with this Chapter.	This provision describes a procedural requirement but does not impose any standards.	The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards. See pages 55-58.
Section 23E.08.030 Applicability of Design Review: Criteria		
A. For projects determined to be subject to Design Review under Section 23E.08.020, the design review standards under Section 23E.08.040 shall apply. For projects requiring a public hearing by the Zoning Adjustments Board, staff shall recommend to the Board whether Design Review should be conducted by staff or by the Design Review Committee. The responsibility for conducting Design Review shall be as set forth in Section 23E.12.020, as to whether the DRC, the LPC, or staff conducts Design Review.	The provision describes the entity responsible for design review but does not impose a standard. Pursuant to SB 35, the only applicable design review standards are those "that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4(a)(5).	The Design Review Committee or design review staff is responsible for design review. Project has been reviewed for compliance with objective design standards in the Downtown Area Plan, see pages 55-58.
B. In making this determination, the Board or staff shall consider the following criteria: 1. Project size; 2. Visibility; 3. Degree of sensitivity of the community.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. Project has been reviewed for compliance with objective design standards in the Downtown Area Plan, see pages 55-58.
Section 23E.08.040 Design Review Standards		
A. Design review shall consider the design of a project in relation to its urban context and shall focus on the application of the design guidelines referred to in this Ordinance and other guidelines written in conformance	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. Project has been reviewed for compliance with objective design standards in the Downtown Area Plan, see pages 55-58.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
with the guidelines which are formally adopted by the Planning Commission.		
B. When conducting design review the Design Review Committee, the LPC, or staff shall use the design guidelines adopted by the Planning Commission as its official policy.	This provision describes a procedural requirement but does not impose any standards.	The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards. See pages 55-58.
C. The Design Review Guidelines, or any portion thereof, may be amended by the Commission. The Board may comment to the Commission on such amendments.	This provision describes a procedural requirement but does not impose any standards.	The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards. See pages 55-58.
D. The entity responsible for design review shall consider the conformance of the application to the standards set forth in and promulgated under this Ordinance, and may either approve, deny or modify an application for design review. However, no modification may be made that is not consistent with any other requirement of this Ordinance. (Ord. 6478-NS § 4 (part), 1999)	This provision describes a procedural requirement but does not impose any standards.	The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards. See pages 55-58.
Chapter 23E.28 Off-Street Parking and Transportation Services Fee		
Section 23E.28.040 Traffic Engineering Requirements		

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
A. In addition to the requirements of this Ordinance, all off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City's Traffic Engineering requirements. B. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible and safe parking areas, and are adequately integrated with the City's overall street pattern and traffic flows. C. Dimensional requirements and standards for off-street parking spaces, driveway and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and the Zoning Adjustments Board. D. Notwithstanding any reduction in off-street parking spaces that may be granted for mixed use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces. (Ord. 6848-NS § 6 (part), 2005: Ord. 6478-NS § 4 (part), 1999)	Not applicable pursuant to SB 35 – inapplicable parking standard.	The City may "not impose parking standards" if "[t]he development is located within one-half mile of public transit." Gov. Code §65913.4(d). The Project is within a half mile of the Downtown Berkeley BART station and several AC Transit bus lines with headways that exceed 15 minutes. NOT APPLICABLE. Project is exempt, per SB35 provisions [65913.4(d)] because it is 1/2-mile or less from transit and because RPP is not offered to project residents.
Section 23E.28.050 Number of Parking Spaces Required		
A. Off-street parking spaces provided in conjunction with a use or structure existing on October 1, 1959, on	See response to Section 23E.28.040.D above.	Not applicable. The parking that exists on the property supports a

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
the same property or on property under the same ownership, may not be reduced below, or if already less than, may not be further reduced below, the requirements of this chapter for similar use or structure. However, required parking spaces may be removed to meet ADA compliance or traffic engineering standards.		commercial parking lot use. The commercial parking lot use is being extinguished pursuant to this application and the parking is no longer required for the use. NOT APPLICABLE. Project exempt.
B. In the case of an AUP, a Use Permit, or a variance the Zoning Officer and Board may require more off-street parking spaces than the minimum required by the applicable District, if he/she or it finds that the demand for parking spaces will exceed the minimum requirement.	See response to Section 23E.28.040.D above. Additionally, the requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a).	Not applicable. NOT APPLICABLE. Project exempt.
C. When the formula for determining the number of required off-street parking spaces results in a requirement of a fractional space, any fraction below one-half shall be disregarded, and fractions including and over one-half shall be counted as requiring one parking space.	See response to Section 23E.28.040.D above.	Not applicable. NOT APPLICABLE. Project exempt.
D. No off-street parking space requirement under this Ordinance may be satisfied by a tandem off-street parking space, unless approved by both the City Traffic Engineer and the Board.	See response to Section 23E.28.040.D above.	Not applicable. NOT APPLICABLE. Project exempt.
E. An applicant may count existing off-street parking spaces towards meeting the parking requirements of this Ordinance when both the existing use, or portions of the use that is to remain, and the proposed use and/or structure are used in computing the required number of off-street parking spaces.	See response to Section 23E.28.040.D above.	Not applicable. NOT APPLICABLE. Project exempt.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
F. When the number of off-street parking spaces required for a structure or use is based on the number of employees, it shall be based upon the shift or employment period during which the greatest number of employees are present at the structure or use.	See response to Section 23E.28.040.D above.	Not applicable. NOT APPLICABLE. Project exempt.
G. When the number of off-street parking spaces required is based on the floor area for a specified use, the definition of Floor Area, Gross as set forth in Sub-title 23F shall apply. In addition, unenclosed areas of a lot, including, but not limited to, outdoor dining areas, garden/building supply yards and other customer-serving outdoor areas for retail sales, shall also be counted toward the floor area for those commercial uses with specified off-street parking requirements. (Ord. 6856-NS § 4 (part), 2005: Ord. 6478-NS § 4 (part), 1999)	See response to Section 23E.28.040.D above.	Not applicable. NOT APPLICABLE. Project exempt.
Section 23E.28.070 Bicycle Parking		

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
A. Bicycle parking spaces required by each District's bicycle parking requirements shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer. Bicycle parking shall be located in accordance to the design review guidelines.	The City may "not impose parking standards" if "[t]he development is located within one-half mile of public transit." Gov. Code §65913.4(d). The Project is within a half mile of the Downtown Berkeley BART station and several AC Transit bus lines with headways that exceed 15 minutes. Design review guidelines for bicycle parking are only applicable to the extent those guidelines are (1) "published and adopted by ordinance or resolution" and (2) "involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4 (a)(5), (c). The requirement to seek location approval by the City Traffic Engineer or Zoning Officer is applicable only to the extent the Engineer or Zoning Officer will grant or deny approval based on the Project's compliance with published, objective criteria.	Not applicable. The C-DMU district requirements only require bicycle parking for commercial floor area, of which none is proposed. The "non-residential" floor areas of the project are uses incidental to, and support of, the primary residential use. However, the project provides more than 40 interior and secure bike spaces in a 1,234 square foot ground floor room for tenants and staff. In the event the City determines that bike parking is a project requirement, the plan set notes that as a precautionary measure and show required bicycle parking, which is more than the City's requirement. NOT APPLICABLE. Project exempt. However, bicycle room is provided and the bike parking requirement for a non-SB35 exempt project is exceeded.
B. Except in C-E and C-T Districts, Bicycle Parking shall be provided for new floor area or for expansions of existing industrial, commercial, and other non-residential buildings at a ratio of one space per 2,000 square feet of gross floor area.	See Response to Section 23E.28.070.A above.	Not applicable. NOT APPLICABLE. Project exempt.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
C. The Zoning Officer in consultation with the City Traffic Engineer may modify the requirement with an Administrative Use Permit for Tourist Hotels in the C-DMU District.	The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Moreover, a tourist hotel is not proposed as part of the project.	Not applicable. NOT APPLICABLE.
Section 23E.28.090 In-lieu Parking Fee		
A. In those commercial and manufacturing Districts in which a public parking fund exists for the purpose of developing public parking, applicants may make an in-lieu payment for construct, maintenance and operation of public off-street parking instead of providing off-street parking spaces as required by this chapter. The fee shall be pursuant to resolution of the Council. In-lieu payments under this section shall be used for the purposes set forth in each Ordinance establishing such public parking funds.	Not applicable pursuant to SB 35 – inapplicable parking standard. The City may "not impose parking standards" if "[t]he development is located within one-half mile of public transit." Gov. Code §65913.4(d). The Project is within a half mile of the Downtown Berkeley BART station and several AC Transit bus lines with headways that exceed 15 minutes.	Not applicable. NOT APPLICABLE. Project exempt.
B. In-lieu fees may, at the applicant's option, be paid in a lump sum or in annual installments as specified in each ordinance establishing a parking fund, and may be adjusted annually for inflation. If paid annually, the first annual payment of an in-lieu fee shall be due as a condition of occupancy, and subsequent payments shall be due on January 31 of succeeding years. (Ord. 6478-NS § 4 (part), 1999)	Not applicable pursuant to SB 35 – inapplicable parking standard. The City may "not impose parking standards" if "[t]he development is located within one-half mile of public transit." Gov. Code §65913.4(d). The Project is within a half mile of the Downtown Berkeley BART station and several AC Transit bus lines with headways that exceed 15 minutes.	Not applicable. NOT APPLICABLE. Project exempt.
Section 23E.28.100 Transportation Services Fee		

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
A Transportation Services Fee (TSF) may be required for all new construction of gross floor area in commercial and manufacturing Districts, pursuant to resolution of the Council.	TBD	To the extent TSF has been adopted and is applicable to the project, the applicant acknowledges that it will comply with any such requirement. NOT APPLICABLE. No fee required.
Section 23E.28.140 Required Findings for Parking Reductions Under Section 23E.28.130 for C Districts		
A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the findings required by Section 23B.28.050 and/or 23B.32.040 as applicable, in addition to any findings required in this section to the extent applicable	Does not apply pursuant to SB 35. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a). The applicable findings under this section of the Zoning Ordinance are not objective standards.	Not applicable. NOT APPLICABLE. Project exempt.
B. To approve any reduction of the off-street parking spaces under Section 23E.28.130, or under other sections that refer to this section, the Zoning Officer or Zoning Adjustments Board must find that the reduction will not substantially reduce the availability of on-street parking in the vicinity of the use. The Zoning Officer or Board must also find that at least one of each of the two groups of conditions below apply: 1. a. The use is located one-third of a mile or less from a Bay Area Rapid Transit (BART) station, intercity rail station or rapid bus transit stops; or b. The use is located one-quarter of a mile or less from a publicly accessible parking facility, the use of which is not limited to a specific business or activity during the use's peak parking demand; or	Does not apply pursuant to SB 35. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. *See* Gov. Code § 65913.4(a).	Not applicable. NOT APPLICABLE. Project exempt.

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23B Ordinance Administration, 23C General Provisions Applicable in All Districts, and 23E Provisions Applicable in All Non-Residential Districts		
c. A parking survey conducted under procedures set forth by the Planning Department finds that within 500 feet or less of the use, on non-residential streets, at least two times the number of spaces requested for reduction are available through on-street parking spaces for at least two of the four hours of the use's peak parking demand; or d. The use includes one of the following neighborhood-serving uses: Retail Products Store(s), Food Service Establishments, and/or Personal/Household Service(s). These uses include, but are not limited to: Dry Cleaning and Laundry Agents, Drug Stores, Food Products Stores, Household Items Repair Shops, and/or Laundromats; and 2. a. The parking requirement modification will meet the purposes of the district related to improvement and support for alternative transportation, pedestrian improvements and activity, or similar policies; or b. There are other factors, such as alternative transportation demand management strategies or policies in place, that will reduce the parking demand generated by the use. C. To approve any modification of the parking requirements, unrelated to the number of spaces, under Section 23E.28.130 or under other sections that refer to that section, the Zoning Officer or Zoning Adjustments Board must find that the parking requirement modification allows the continued use of an existing parking supply and that meeting the parking requirements is not financially feasible or practical.		NOT APPLICABLE. Project exempt.

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Table 3: Chapter 23C.12 Inclusionary Housing Requirements

Provision	Applicability	Compliance
Section 23C.12.030 General Inclusionary Requirement: 20% of Units		
A. Any project subject to this chapter is required to include at least 20% of the total number of Dwelling Units within the project as Inclusionary Units, except that Limited Equity Cooperatives are required to include at least 51% of their units as Inclusionary Units. B. In applying the percentages above, any decimal fraction above a whole number of Dwelling Units shall be paid as an in-lieu fee. C. For the purpose of determining the median income levels for Households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census.	Applicable objective standard.	The project will provide 99% of units at below-market rates, based on income levels for the Oakland PMSA. See Applicant Statement. NOT APPLICABLE. The project is an affordable housing project with units for rent, and no market rate units. This Inclusionary Housing ordinance does not apply to the project.
Section 23C.12.035: Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project		
Subsection A through F	By providing more than 10% of its units for Low and more than 10% of its units for Very Low-Income households, the Project is exempt from the City's affordable housing mitigation fee.	Not applicable. NOT APPLICABLE.
Section 23C.12.040: Requirements Applicable to all Inclusionary Units		
A. All Inclusionary Units other than those in Limited Equity Cooperatives shall be sold to the City or its designee or to Low Income, Lower Income or Very Low Income Households or shall be rented to Households of similar incomes. Units in Limited Equity Cooperatives shall be sold or rented to Households whose gross incomes do not exceed 120% of the Oakland PMSA median.	Applicable objective standard.	The project will rent all inclusionary housing units to households with incomes below 60% of AMI, thereby exceeding the 120% threshold. NOT APPLICABLE.

Table 3: Chapter 23C.12 Inclusionary Housing Requirements		
B. The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all Dwelling Units and other information as required for determining compliance with this chapter.	Applicable objective standard.	The project will enter into a regulatory agreement with the City indicating the number, type, location, approximate size and construction schedule of all dwelling units. NOT APPLICABLE.
C. All Inclusionary Units in a project and phases of a project shall be constructed concurrently with, or prior to, the construction of non-inclusionary units.	Applicable objective standard.	All dwelling units (except for the Manager's Unit) are below-market rate and therefore qualify as "inclusionary" units and will be constructed as part of one phase of development. The Manager's Unit will not come on line before the BMR units. NOT APPLICABLE.
D. All Inclusionary Units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the non-Inclusionary Units in the project; and be comparable with the design or use of non-inclusionary units in terms of appearance, materials and finish quality.	Applicable objective standard.	All dwelling units are below-market rate and therefore qualify as "inclusionary" units with the exception of the single manager's unit. NOT APPLICABLE.
E. In projects where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee to the City. 1. The in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects, where Government Code Section 65915 does not apply, and the difference between affordable cost for an appropriately-sized household and the fractional value of the average	All inclusionary units will be provided on site, as part of the project. Therefore this code section does not apply.	Not applicable. NOT APPLICABLE.

Table 3: Chapter 23C.12 Inclusionary Housing Requirements		
comparable actual sales price for the fraction of the unit in projects where Government Code Section 65915 does apply to require a Density Bonus or equivalent incentive.; 2. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation), to provide, construct or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.		
F. Where the applicant demonstrates, and Staff concurs, that the direct construction and financing costs of the Inclusionary Units, excluding marketing cost and profit (and also excluding land costs if a Density Bonus or equivalent incentive is provided), exceed the selling prices allowed for Inclusionary Units by this chapter, the Board may approve one or more of the following measures to reduce costs or increase profitability: 1. Reduction of the floor area or in the interior amenities of the Inclusionary Units, provided that such units conform to applicable building and housing codes; 2. An increase in the number of bedrooms in the Inclusionary Units; 3. In a home ownership project, construction of rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects; 4. Waiving of the in-lieu participation fees for fractions of units.	Not an objective standard and the project does not seek such relief.	Not applicable. NOT APPLICABLE.
Section 23C.12.050: State of California Density Bonus Requirements		

Table 3: Chapter 23C.12 Inclusionary Housing Requirements		
A. The City shall grant a density increase of at least 25% over the otherwise allowable maximum residential density permitted by this Ordinance and the General Plan in effect when the application for the development was determined to be complete, and at least one of the concessions or incentives set forth in Government Code Section 65915(h); unless the decision maker makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Government Code Section 65915(c); or the City shall provide other incentives of equivalent financial value based on the land cost per Dwelling Unit; if an applicant agrees, or proposes, to construct at least one of the following three alternatives to comply with Density Bonus requirements: 1. Twenty percent of the total units of a housing development for lower income Households, as defined in Health and Safety Code Section 50079.5; or 2. Ten percent of the total units of a housing development for very low-income Households, as defined in Health and Safety Code Section 50105; or 3. Fifty percent of the total Dwelling Units of a housing development for qualifying residents, as defined in Civil Code Section 51.3.	Applicable objective standard.	The proposed project provides more than 99% of its units affordable at 60% AMI or less. The proposed project is subject to three different affordable unit criteria. SB 35 requires 50% of units to be dedicated affordable units, and the project's compliance with that criterion insures that it meets the requirements of State Density Bonus Law, which require 20% of units to be affordable to lower income households and the City's inclusionary housing requirements which require a mix of units affordable to low (10%) and very-low (20%) income households. NOT APPLICABLE.
B. For purposes of this chapter, the Density Bonus shall not be included when determining the number of housing units which is equal to 10% or 20% of the total.	Applicable objective standard.	The Density Bonus units are not included in the calculation of additional floor area. See Sheet A0.DB3 for details. NOT APPLICABLE.

Table 3: Chapter 23C.12 Inclusionary Housing Requirements		
The Density Bonus shall apply to housing developments consisting of five or more Dwelling Units.		
C. The use of a Density Bonus is preferred over other types of concessions or incentives. Incentives may include, but are not limited to, fee deferments and waivers, granting of Variances, relaxation of otherwise applicable Permit conditions and provision of government benefits.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. NOT APPLICABLE.
D. If the Density Bonus or equivalent incentive granted is above 25%, the applicant shall agree to a cost certification process.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. The City may not require more information for a density bonus entitlement than is allowed by GC Sec. 65915. GC Sec. 65915 does not provide for any requirement to "cost certify" any density bonus allowance, which permits up to 35% bonus. NOT APPLICABLE.

Section 23C.12.060: Inclusionary Unit Requirements for Rental Housing Projects		
A. All Inclusionary Units shall be occupied by Low, Lower or Very Low Income Households.	Applicable objective standard.	The project will rent all inclusionary housing units to households with incomes below 60% of AMI. Therefore, all Inclusionary Units will be occupied by Low, Lower or Very Low-Income Households. NOT APPLICABLE.
B. The maximum rental price for Inclusionary Units shall be affordable, as set forth in Section E below, to an appropriate-sized Household whose income is 81% of the Oakland PMSA median.	Applicable objective standard.	The maximum rental price for inclusionary units will be as set forth in Section E below, to an appropriate-sized Household whose income is 80% of the Oakland PMSA median, or less. NOT APPLICABLE.

Table 3: Chapter 23C.12 Inclusionary Housing Requirements		
C. In projects requiring more than one Inclusionary Unit, at least 50% of those units shall be rented at a price that is affordable to Low- or Lower-Income Households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of Inclusionary Units, the majority of units shall be priced to be affordable to a Household at 50% of median income if subsidies are available. If no rental subsidies are available, all Inclusionary Unit prices shall be affordable to Households at 81% income of the Oakland PMSA median.	Applicable objective standard.	Approximately 75% of inclusionary housing units will be rented to very low-income households and 24% to low income households. NOT APPLICABLE.
D. If an applicant agrees to provide 10% Lower Income Inclusionary Units, the rental price for such units shall be affordable to a Household with income that is 60% of the Oakland PMSA median.	Applicable objective standard.	The maximum rental price for lower income units shall be affordable to a household with income that is 60% of the Oakland PMSA median. The project proposes more than 99% of units affordable at 60% AMI or less. NOT APPLICABLE.
E. A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a Household's Gross Income. 1. Gross Household Income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program; 2. For purposes of calculating rent, appropriate Household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter.	Applicable objective standard.	Noted. Project will comply subject to a regulatory agreement with the City. NOT APPLICABLE.

Table 3: Chapter 23C.12 Inclusionary Housing Requirements		
F. Dwelling Units designated as Inclusionary Units shall remain in conformance with the regulations of this section for the life of the building.	Applicable objective standard.	Noted. Project will comply subject to a regulatory agreement with the City NOT APPLICABLE.
G. The City or its designee shall screen applicants for the Inclusionary Units and refer eligible Households of the appropriate Household size for the unit. For purposes of occupancy, the appropriate Household size standards used by the Housing Authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used. The applicant or owner shall retain final discretion in the selection of the eligible Households referred by the City.	The federal Section 8 Existing Housing Program standards for housing size represents an applicable objective standard.	Noted. Project will comply subject to a regulatory agreement with the City. NOT APPLICABLE. .
H. The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability of the Inclusionary Units by eligible Households.	Applicable objective standard.	Noted. Project will comply subject to a regulatory agreement with the City NOT APPLICABLE
23C.12.070 Inclusionary Unit Requirements for Ownership Projects		
Subsection A through F	All inclusionary units that meet the requirements of Section 23C.12 will be rental units. No ownership units are proposed. Therefore, this code section does not apply.	Not applicable NOT APPLICABLE.

Table [illegible]: Miscellaneous BMC Subsections

Provision	Applicability	Compliance
Chapter 14.48 Miscellaneous Use of Streets and Sidewalks		
14.48.180 Decorative noncommercial installations. Decorative noncommercial installations subject to the following regulations and requirements: A. At least six feet of improved sidewalk area measured at right angles to the curb shall be kept open and unobstructed. B. Such decorative noncommercial installations shall be placed and maintained in the portion of the sidewalk area farthest from the curb; provided, however, that subject to all other conditions herein specified, such installations may be placed and maintained in the portion of the sidewalk area adjacent to the curb if such installations will not interfere with access to or from any parked vehicle and are: 1. Not closer than twenty-five feet to any curb return or fire hydrant; 2. Not located adjacent to any commercial or passenger loading zone; 3. Not closer to the curb than eighteen inches; 4. Not affixed to any City or utility company-owned poles or appurtenances; 5. Not mounted in or affixed to the sidewalk; 6. Not inconsistent with safety, development in the area, or other decorative noncommercial installations. C. No decorative noncommercial installation shall be placed or maintained in the sidewalk area without a permit therefor. Application for such permit shall be made to the office of the City Manager, who may require as part of the application such information as may be deemed necessary to determine compliance with this Section and other applicable laws and regulations, including but not limited to a scaled site plan, signature of the fronting property owner and permittee, and agreement to indemnify	Applicable objective standard.	See attached plan set. The project will comply with Engineering and Building Code regulations for site development as required at the time of the Building Permit. Project will be reviewed by the Building and Safety Division during Building Permit plan check.

Table A: Miscellaneous BMC Subsections		
the City as specified in Subsection D. The application shall be referred to the Public Works Department and the Civic Art Commission for review to determine that it is in the public interest to grant the permit, and that the granting thereof will not be detrimental to the public health, safety or general welfare. The permit shall not be granted without the approval of both the Public Works Department and the Civic Art Commission. If such approval is given and the City Manager concurs, the permit shall be granted subject to the conditions hereinabove set forth, and such additional conditions as may reasonably be imposed. Such permit shall be subject to revocation by the City Manager without cause and revocation; the decorative noncommercial installation for which the permit has been given shall be removed within ten days after notice. D. Anyone granted a permit for a decorative noncommercial installation shall agree to indemnify and hold harmless the City, its officers and employees of and from any and all claims, damages or suits that may arise or in any way be occasioned by the granting of the permit or the maintenance of the decorative noncommercial installation permitted thereby. 1. The permittee shall carry liability insurance in the amount of $500,000. E. For purposes of this Chapter, "Decorative Noncommercial Installations" shall include but are not limited to artwork, planters, and other objects that are placed within the public right-of-way by a private party for the purpose of decoration in a residential, commercial, or industrial district, not for the purpose of advertising, commerce or other economic benefit.		Project will be reviewed by the Building and Safety Division during Building Permit plan check.
Chapter 16.04.070 Construction materials and specifications--Sidewalks and parking strips and parking steps.		
A. Definitions. As used herein, "parking strip" means the area between the back of the curb and front of the sidewalk, and	Applicable objective standard.	The project will comply with Engineering and Building Code

Table 4: Miscellaneous BMC Subsections		
"parking step" means the pedestrian walkway within the parking strip. B. Materials. Sidewalks and parking steps shall be wood-float-finished concrete, heavy-broom-finished concrete or paving bricks imbedded in concrete of a suitable abrasive surface to provide pedestrian safety and convenience. Other material may be used only with the special written permission of the Director of Public Works. C. Color. 1. Concrete. Concrete color will be that obtained by adding three-quarters of a pound of lampblack per cubic yard of Portland cement concrete, except in those cases where other color is authorized by the Director of Public Works in the reasonable exercise of his discretion. 2. Paving Brick. Paving-brick color will be that authorized by the Director of Public Works in the reasonable exercise of his discretion. D. Concrete Finish. Concrete finish shall be wood-float-finished or heavy-broom-finished, as indicated on the permit. E. Tree Wells. The director of public works may prescribe or authorize tree wells in parking strips after due consultation with the Director of Recreation and Parks. Prescribed or authorized tree wells shall be indicated on the permit.		regulations for site development at the time of the Building Permit. Project will be reviewed by the Building and Safety Division during Building Permit plan check.
Chapter 16.04.080 Construction materials and specifications--Driveway approaches, curbs and curbs and gutters.		
A. Materials. Driveway approaches, curbs or curbs and gutters shall be portland cement concrete. B. Concrete Color. Concrete color will be that obtained by adding three-quarters of a pound of lampblack per cubic yard of portland cement concrete, except in those cases where other color is authorized by the Director of Public Works in the reasonable exercise of his discretion. C. Concrete Finish. Concrete finish shall be wood-float-finished or heavy-broom-finished, as indicated on the permit.	Applicable objective standard.	The project will comply with Engineering and Building Code regulations for site development at the time of the Building Permit. Project will be reviewed by the Building and Safety Division during Building Permit plan check.

Table 4: Miscellaneous BMC Subsections		
Chapter 16.06.020 Improvements required when		
New curb, combined curb and gutter, and sidewalks shall be installed in the public right-of-way contiguous to any property where new structures are erected, or where additions, alterations and rehabilitations exceeding fifty percent of the replacement value of the building as it exists prior to alteration are made, and either of the following conditions exist: A. Curb, combined curb and gutter, or sidewalk are constructed in front of properties constituting more than fifty percent of the front footage of the block in which they are located; B. The nature or the effect of the new construction would cause a hazard to an abutting property or to the adjacent public right-of-way if curb, combined curb and gutter or sidewalk were not installed.	Applicable objective standard.	The project will comply with Engineering and Building Code regulations for site development at the time of the Building Permit. Project will be reviewed by the Building and Safety Division during Building Permit plan check.
Chapter 16.28.040 Size and placement of numbers.		
All numbers shall be at least two inches in height and placed upon or immediately above the entrance or entrances to the building; provided, however, where such location is impractical numbers may be placed in other locations but must be visible. All numbers must be placed so as to be readily seen from the street by persons approximately in front of the building or house to which the numbers apply.	Applicable objective standard.	The project will comply with Engineering and Building Code regulations for site development at the time of the Building Permit. Project will be reviewed by the Building and Safety Division during Building Permit plan check.
Chapter 19.28 Berkeley Building Code		
Various subsections	Potentially applicably standards.	Compliance with this section of the Code will be reviewed as part of the building permit process. Project will be reviewed by the Building and Safety Division during Building Permit plan check.
Chapter 20.24.030 Number of on-premises signs permitted on premises		

Table 4: Miscellaneous BMC Subsections		
In addition to temporary signs, the number of on-premises signs on premises in commercial districts is limited to: A. On premises with one street frontage, any combination of two of the following: one wall sign, one projecting sign, one ground sign, one roof sign, one marquee sign, one moving sign. B. On premises with more than one street frontage, for each additional street frontage any combination of two of the following: one wall sign, one projecting sign, one marquee sign, one moving sign. C. An unlimited number of on-premises signs with a sign area of eight square feet or less within the business premises, to direct customers of the business within the business premises.	Applicable objective standard.	The project will seek approval for signage under separate permit at a later date. Project will undergo Sign Review when SR application is submitted at later date.
Chapter 20.24.040 On-premises signs—Allowable sign area limitations.		
Except as otherwise provided in Section 20.24.050 and Chapter 20.36, the allowable sign area of on-premises signs in commercial districts shall be subject to the provisions of Chapter 20.16 and the following limitations: A. The sign area of ground signs shall be limited to one square foot for each linear foot of street frontage of the premises or two hundred (200) square feet, whichever is less; B. The sign area of projecting signs shall not exceed ten (10) percent of the building face of the premises or one hundred fifty (150) square feet, whichever is less; C. The sign area of wall signs shall not exceed fifteen (15) percent of the building face of the premises or one hundred fifty (150) square feet, whichever is less; D. The sign area of roof signs shall not exceed ten (10) percent of the building face of the premises or one hundred (100) square feet, whichever is less;	Applicable objective standard.	The project will seek approval for signage under separate permit at a later date. Project will undergo Sign Review when SR application is submitted at later date.

Table 4: Miscellaneous BMC Subsections		
E. The area of on-premises signs permitted under Section 20.24.030.C shall not be counted against the allowable sign area of on premises signs; F. As used in this section, "building face" means the product in square feet of the frontage of the building premises and the exterior height of the building premises. (Ord. 7120-NS § 10 (part), 2009: Ord. 6474-NS § 21, 1999: Ord. 6424-NS § 1 (part), 1998)		Project will undergo Sign Review when SR application is submitted at later date.
Chapter 20.60.020 Incombustible material required.		
Every electric sign shall be constructed of incombustible material.	Applicable objective standard.	The project will seek approval for signage under separate permit at a later date. Project will undergo Sign Review when SR application is submitted at later date.

Table 5: Downtown Area Plan

SB 35 only permits jurisdictions to apply "objective zoning standards and objective design review standards" that involve no personal or subjective judgment by a public official and are 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 prior to submittal." Gov. Code § 65913.4(a)(5).

Provision	Downtown Area Plan Conformance
Downtown Area Plan Policies: The General Plan also calls for implementation of the Downtown Area Plan. The Plan identifies the project sites as a Buffer area to provide a transition between the more intense development Downtown and the residential neighborhood to the north of the site. The Plan also identifies the site as a Potential Opportunity Site.	
Policy ES- 4.1: Energy and Environmental Performance. Require environmentally sustainable "green" building with public benefits in all cases, except when "green standards" would discourage historic rehabilitations or adaptive reuse of existing buildings. Promote highly energy-efficient buildings and on-site energy generation through design and construction techniques. Buildings should have exceptional environmental performance across the full spectrum of concerns (as described in Policies ES-4.2 to S-4.9). Coordinate Downtown initiatives with citywide provisions. a) Require energy performance of LEED Gold or equivalent in all new non-UC buildings and substantial additions, except for historic rehabilitations and adaptive re-use of existing buildings. (LEED is the US Green Building Council's "Leadership in Energy and Environmental Design" program.) Provide incentives and programs for even greater energy and environmental performance, with LEED Platinum as a goal. Allow projects that are LEED Platinum, and "net-zero" projects that generate as much energy as they use, to defer building permit fees. b) Meet Title-24 energy requirements and any local green standards adopted by Council. Require commercial properties to use management	The project will utilize the GreenPoint Rating System as authored by Build-It Green to achieve the GreenPoint equivalent of LEED Gold. The project will meet all Title 24 energy requirements, as mandated by law. COMPLIANT.

Table 5: Downtown Area Plan	
tools that track building energy use and benchmark performance. Energy efficiency provisions should vary by building type, in recognition of the unique opportunities and constraints associated with each. Describe preferred development practices through amendments to the Downtown Design Guidelines. Factors to consider include but are not limited to: - reuse of buildings or portions of buildings; - super insulated walls, windows, and doors; - daylighting interiors; - passive solar heating; - efficient appliances and equipment; - making the use of stairways a more inviting alternative to the use of elevators; - "smart-metering" to capture detailed energy usage information about a building or unit, and communicate it to occupants; and - credit for energy performance features not recognized by Title 24 - such as the use of natural ventilation and providing on-site renewable energy generation....	
Policy ES-6.1: Recycling & Reuse. Maximize recycling and reuse opportunities for residents, workers, visitors, businesses, and institutions. a) Require on-site recycling services with sufficient space for receptacles, in all new construction, substantial additions, and substantial renovations, except for historic rehabilitation and adaptive re-use...	The project's trash and recycling needs have been sized as directed by meetings with Solid Waste Division staff and are shown in the attached plans. Any additional needs will be addressed at the Building Permit stage. Project will be reviewed for compliance by the Zero Waste Division during Building Permit plan check.
Policy LU-2.1: Contributions Required of All Development. New buildings and substantial additions, regardless of height, shall provide the following public benefits, except as noted for historic rehabilitations and adaptive re-use of existing buildings. a) Green Buildings (see policies under Goal ES-4). - Meet LEED Gold or equivalent.	a) Green Buildings • The project will utilize the GreenPoint Rating System as authored by Build-It Green to achieve the equivalent of LEED Gold. • The project will meet Title 24 requirements, this standard will be addressed at Building Permit stage. Project will be reviewed for compliance by the Land Use Planner during Building Permit plan check.

Table 5: Downtown Area Plan	
– Meet Title-24 energy requirements and any local green standards adopted by Council. – Provide on-site recycling services.	• The project will provide on-site recycling services as shown in that attached plans. Project will be reviewed for compliance by the Zero Waste Division during Building Permit plan check.
b) Open Space and Green Infrastructure (see also Streets and Open Space chapter). – Pay an impact fee to fund the Streets and Open Space Improvement Plan (SOSIP). – Provide on-site open space. On-site open space requirements may be reduced by paying an in lieu fee to be applied toward Downtown SOSIP improvements. – Ensure no new net water runoff on-site or through in lieu payment for Downtown improvements (see policies under Goal ES-5).	b) Open Space and Green Infrastructure • The proposed project has a requested a waiver pursuant to State Density Bonus Law for its remainder open space, therefore no additional open space is required, and no fee may be assessed NOT APPLICABLE. Meets UOS requirements with Density Bonus concession. No fee required.
c) Alternative Transportation (see policies in Access chapter). – Provide car sharing opportunities. – Provide on-site bike parking. – Provide transit passes for project's residents and/or employees. – Make pretax transit commuter benefits available to residents and/or employees. – Parking spaces shall be rented separate from dwelling units. – Residents in new downtown buildings shall be ineligible for Residential Preferential Parking permits. – Pay a fee for Downtown SOSIP improvements. – Provide on-site parking. Required parking may be reduced by paying into a fund to provide enhanced transit services, which may be contained within the Streets and Open Space Improvement Plan. (See Policy AC-1.3.)	c) Alternative Transportation • Parking is not proposed for the project nor is it required pursuant to SB 35 because of the project's proximity to BART and transit. The project has demonstrated compliance, with the balance of the transportation standards listed in the zoning conformance items in the above table. Parking is NOT APPLICABLE. Bike parking is provided. Residents will be ineligible for RPP. Applicant has agreed to provide unlimited transit passes or equivalent transit benefit. Project will be reviewed for compliance by the Land Use Planner during Building Permit plan check.
d) Housing and Community Services (see policies in Housing and Community Health & Services chapter). – Pay an affordable housing mitigation fee and/or provide affordable housing per City policy. – Pay child care mitigation fee.	d) Housing and Community Services • The project is more than 99% below market rate housing and is exempt from the City's housing mitigation fee as described above and in the Applicant Statement. The project does not propose new commercial floor area so it is exempt from the Childcare mitigation fee. Affordable housing mitigation fee is NOT APPLICABLE. See page 4, Objective Standards Table Addendum. Child care mitigation fee is NOT APPLICABLE - commercial area is 4,688 SF, less than the 7,500 SF threshold.

Table 5: Downtown Area Plan	
e) Before new zoning provisions for new building heights are adopted, specific requirements will be defined in the context of citywide provisions and returned to City Council for approval. f) At the recommendation of the Landmarks Preservation Commission and at the discretion of the Zoning Adjustments Board, requirements may be waived to encourage the adaptive reuse of older buildings. Also consider zoning provisions to define thresholds where substantial renovations and substantial additions to existing buildings may be exempt (see Policies ES-4.1, LU-4.3, HD-4.2 and HD-4.3). g) The applicable public benefit requirements shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.	NOT APPLICABLE.
Policy LU-2.4: Developer Contributions for Open Space. New development shall help pay for streetscape and public open space improvements and maintenance. a) Adopt a Streets and Open Space Improvements Fee for recreation and open space and dedicate it to improvements in the Streets and Open Space Improvement Plan (SOSIP) and consistent with California law. b) Developers shall provide adequate on-site open space for public use at street-level and for capturing run-off or pay an in-lieu fee for public open space improvements. Street-level open space requirements are in addition to private open space requirements for occupants of residential projects (see policies in Goals ES-5 and OS-1 to 3). c) Require developers to make improvements to abutting streets as a condition for approval. Required improvements should conform to the SOSIP. d) Contributions from institutional and nonprofit uses should be pursued in a manner consistent with requirements on all projects developed by "nonprofit" institutions. e) See Policy ED-12.1 – Revenues for Downtown, regarding revenue for Downtown streetscape and open space improvements.	As described above the project provides on-site open space and publicly accessible open space. It is subject to a concession pursuant to state density law for the balance of the open space required but not provided on site. Pursuant to state law the project is not subject to in lieu fees for open space reductions because the concession that is requested eliminates the requirement. NOT APPLICABLE. Meets Usable Open Space requirements with Density Bonus concession. No fee required.

Table 5: Downtown Area Plan	
f) Coordinate developer contributions with other funding opportunities and priorities.	
Policy LU-7.2: Transitions. Avoid abrupt transitions between residential-only neighborhoods and development projects built in Corridor and Buffer areas. a) Zoning provisions should be developed so that projects that are across the street from residentially-designated parcels respect the predominant scale of existing buildings on the confronting block. For projects that abut or confront residentially designated property, the new building should not exceed 45 feet at the sidewalk or 60 feet where a 10-foot "stepback" is provided (see Table LU-1). b) No project should exceed 60 feet within 40 feet of any residentially designated property (see Figure LU-1). The required depth of this "stepback" shall be evaluated and determined as Zoning provisions are revised, and be sufficient for mitigating significant shadow and privacy impacts on abutting residentially zoned parcels.	The project provides multifamily residential uses in a transition zone between commercial development fronting University and Shattuck Avenues, and abutting multifamily residential development across Berkeley Way. Consistent with State Density Bonus Law regulations, the project is entitled to a waiver for increased building height, above the height limit established by the CMU zoning district. NOT APPLICABLE. Project is exempt due to waivers and concessions granted under Density Bonus law.
Policy AC-4.1: Transit Priority. Promote transit as the primary mode for commuting to and from Downtown, and give transit priority over personal vehicles. Encourage use of transit by area businesses, institutions, and residents. The City strongly supports improved local and regional transit service to and from Downtown. a) Require that new development provides bus passes and promotes use of alternative modes (see Policies LU-2.1 and AC-1.3)...	Applicant has agreed to provide unlimited transit passes or equivalent transit benefit. Project will be reviewed for compliance by the Land Use Planner during Building Permit plan check.
Downtown Berkeley Design Guidelines: The design guidelines implement the objectives and policies of the Historic Preservation and Urban Design chapter of the Berkeley Downtown Area Plan. First adopted in 1993, the guidelines were updated in 2012 following adoption of the Downtown Area Plan.	

Table 5: Downtown Area Plan	
Facades #7: The facades of Downtown's historic buildings are comprised of load-bearing walls and frames, the limits of which give similar scale and expression. Maintain the typical rhythm of structural bays and enframed storefronts of 15-30 feet spacing at ground level, in order to enhance visual continuity with existing buildings and pedestrian scale. Curtain walls, if used, should be designed with rhythm, patterns and modulation to be visually interesting.	The ground-floor elevation along Berkeley Way is characterized by a combination of recesses, continuous storefront bays, and window systems separated by structured bays. The storefront systems extend 28-30 feet, depending on location. COMPLIANT.
Facades #13: Window should comprise 25-50% of upper facades visible from public areas, and should reflect the rhythm, scale, proportion, and detailing of upper windows of Landmark and Significant buildings.	Not applicable. This is not an objective standard. However, as shown in the attached plans the upper floor windows comprise 28% of the façade. The first part of this guideline is objective, and the project is COMPLIANT.
Facades #15: Place storm windows or screens on the interior so window exteriors are not visibly altered.	No screens or storm windows are proposed. NOT APPLICABLE. None proposed.
Storefronts & Entrances #6: Continue the rhythm of 15-30 feet enframed storefront openings at ground level, in order to reinforce visual continuity and pedestrian scale. Large, single tenant spaces must continue this appearance of individual storefronts.	The storefront systems extend 28-30 feet, depending on location. COMPLIANT
Storefronts & Entrances #7: Except for recessed entries, a majority of the storefront should be at the property line, and other recessed portions should not detract from streetwall continuity.	Not applicable. This is not an objective standard. However, the majority of the ground-floor elevation is built to the property line. The 16-foot setback provides for the publicly-accessible ground floor open space. It also creates a recess that provides visual relief for the 323-foot length of the property and distinction between the two components of the building (i.e., BRIDGE vs. BHFP entrances), while maintaining the continuity of the streetwall. The first part of this guideline is objective, and the project is COMPLIANT.
Storefronts & Entrances #8: Design storefront entrances and windows to maximize the visibility for the interior. At least 75% of storefronts should be transparent, and all doors used by the public should be clear glazed.	Not applicable. This is not an objective standard. The last part of this guideline is objective, and the project is COMPLIANT.

Table 5: Downtown Area Plan	
Materials #8: All glass on ground floors should be clear and nonreflective. Upper floor windows may have lightly tinted, but non-reflective glass. Stained, translucent, or decorative glass may be used for transom windows, and should be used where equipment or ventilation ducts would otherwise be visible. Apply only transparent sun screens or window film to glazing.	Not applicable. This is not an objective standard. The first part of this guideline is objective, and the is COMPLIANT.
Lighting, Security, & Equipment #5: Permanently attached interior or exterior security bars are not allowed.	No exterior security bars are proposed. NOT APPLICABLE. None proposed.
Awnings & Canopies #5: The height of awnings should provide pedestrian scale to the building and meet code requirements. Locate the structural components of awnings at least 8 feet above the sidewalk. Unrestricted valances or returns should be at least 7 feet above the sidewalk, and may project no more than 2/3 of the width of the sidewalk.	Not applicable. This is not an objective standard. However, as shown on Sheet A3.04, proposed entry canopies extend 10 feet above the sidewalk. No valances or awnings are proposed. The last part of this guideline is objective, and the project is COMPLIANT.
Awnings #7: Use matte canvas fabric for awnings; not vinyl, fiberglass, plastic, wood or other unsuitable materials. Glass and metal awnings may be appropriate for some buildings, but must be consistent with the architectural style of the building and the historic character of Downtown.	Entry canopies are aluminum, as appropriate for this multi-family residential development, which does not contain ground-floor retail uses. COMPLIANT.
Canopies #3: Locate canopies at least 8 feet above the sidewalk, and at least 1.5 feet from the curb line.	As shown on Sheet A3.04, proposed entry canopies extend 10 feet above the sidewalk. COMPLIANT.
Frontages, Setbacks, and Height #3: Continue the rhythm of 15-30 foot spacing of structural bays and/or enframed storefronts at ground level, in order to establish visual continuity with existing buildings and create pedestrian scale.	The storefront systems extend 28-30 feet, depending on location, creating visual continuity and interest at the pedestrian level. COMPLIANT.

Table 5: Downtown Area Plan	
Frontages, Setbacks, and Height #4: Design recessed storefront entrances so they do not exceed 50% of the width of the storefront, nor ten feet in depth.	Storefront entrances are not proposed. NOT APPLICABLE. None proposed.
Downtown Streets & Open Space Improvement Plan: The SOSIP establishes a framework for Downtown Berkeley's public realm, including public parks, plazas, and street rights-of-way.	
Policy 5.2, Tree Palette & Community Character. New trees should be selected in the context of community character and environmental objectives, along with existing conditions such as existing tree species on each street. Street trees make an enormous positive contribution to the character and quality of urban places, especially when they are selected to promote visual congruity, livability and maximize aesthetic benefits. a. Limit trees to those that are appropriate to the Downtown as described in Appendix A, Palette of Appropriate Downtown Street Trees, except where indigenous or other drought resistant alternative would be equivalent. Explore whether indigenous or other drought-resistant alternatives may be available. The Parks/Urban Forestry Division should determine the species for new trees, in consultation with abutting property owners. Recommendations for specific streets appear in Tables h.1 and h.2, Recommended Trees by Street Segment – except for trees selected in conjunction with Major Projects. Tree species have been recommended based on their form, size at maturity, color, texture, seasonal blossoms, and persistence of leaves (evergreen vs. deciduous). Staff may make revisions to these recommendations to address technical concerns, such as tree litter and maintenance costs. Excerpt of Table H.1 **BERKELEY WAY**	Not applicable. This is not an objective standard. However the project proposes to conform with these standards based on the design shown in the attached plan set. The Purple Leaf Plum has been selected for the street trees consistent with the City standard. Project will be reviewed for compliance by the City Arborist and Public Works during Building Permit plan check.

Table 5: Downtown Area Plan

Segment	Context	Existing Tree Species	Proposed
Shattuck to Milvia	Residential	Plum & Black Acacia	Purple Leaf Plum

Standard	Response
Policy 5.3, Tree Location. Use trees to shade and provide a canopy over sidewalks, and over bicycle and vehicle lanes to the extent possible, and to provide a sense of separation between pedestrians and vehicles. New trees should be positioned for public safety and a healthy urban forest. e. While a full and continuous canopy of street trees is desirable, trees should not create unsafe conditions or put utilities at risk. Care should be taken to avoid conflicts between street trees and the use of passenger loading zones, parking for persons with disabilities, and/or bus stops, on a case-by-case basis. A minimum clearance should be provided between street trees and the following elements: Intersection: 20 feet Stop sign/signal: 20 feet Streetlight: half of width of mature canopy for species selected Utility box: 5 feet Utility pole: 10 feet Water meter: 5 feet Gas line: 5 feet Sewer: 5 feet Fire hydrant: 5 feet Parking Meter: 5 feet Driveway: 5 feet (commercial driveways may need greater distance) Building drain line: 5 feet Storm drain: 5 feet	Not applicable. This is not an objective standard. At building permit stage, the project will be designed to comply as closely as possible. Project will be reviewed for compliance by the City Arborist and Public Works during Building Permit plan check.

Table 5: Downtown Area Plan	
Policy 5.4, Preparation & Installation. Trees and associated features should be installed in ways that promote the sustained health of the trees... c. Installation should follow Parks/Urban Forestry Division standards and guidelines. For residential frontages, planting and maintenance should be provided for using citywide programs and procedures, which are described in Berkeley's "Illustrated Guide to the Street Tree Planting Program" (available at the reference desk of each branch of the Berkeley Public Library). Where appropriate, trees would be planted in public right of way locations at the properties of residents who request them, to the extent that funding permits. Under this citywide program, abutting residents, agree to follow City procedures including watering the tree for at least three years; keeping the tree well clear of weeds and filled with soil or mulch; and to clean-up all leaf debris... e. Tree basins (the hole that they are planted in) may have various shapes but should be at least 16 square feet to maintain adequate oxygen and water, and should ideally be 32 square feet. Continuous trenching between tree basins should be used wherever possible, particularly where minimum sized tree basins must be employed.... o. Minimum tree size at planting is a 15-gallon container, and 24-inch box is required when associated with development. The caliper (trunk diameter) of trees to be planted should be a minimum of 3/4 to 1.5 inches for a 15-gallon container, and 1.5 to 2.5 inches for a boxed tree.	Not applicable. This is not an objective standard. At building permit stage, the project will be designed to comply as closely as possible. However, proposed street tree wells are minimum 18 square feet and tree will be 24" box. Project will be reviewed for compliance by the City Arborist during Building Permit plan check.

Table 5: Downtown Area Plan	
Policy 5.5, Establishment & Maintenance. Trees should be maintained to protect public safety and the health of the tree… d. For higher street-tree survival rates, a responsible party – such as an abutting property owner, community organization, or landscape contractor -- should weed, water and mulch a new tree for the first three years after planting. Newly planted trees must be given approximately 20 gallons of water once a week, especially during warm weather seasons (approximately from March 15 to October 15). The responsible party should also keep grass and weeds out of mulching areas, without damaging the base of the tree. e. Pruning must be coordinated and authorized by the Forestry Section, and should be conducted under the supervision of a Certified Arborist. No branches should extend beyond the tree basin perimeter below 8 feet in height. Tree branches that extend over pedestrian paths of travel should be maintained to provide 8 feet of vertical clearance. Over vehicle lanes, branches should pruned to provide a 14-foot minimum clearance.	Not applicable. This is not an objective standard. At building permit stage, the project will be designed to comply as closely as possible. Trees will be maintained as required by the City. Project will be reviewed for compliance by the City Arborist during Building Permit plan check.
Policy 9.1, Light Intensities & Distribution. The form and placement of lighting and the quality of light should promote attractive, distinctive and safe environments Downtown. At the same time, lighting should not create a nuisance for residents nor should it needlessly contribute to light pollution (also known as "sky glow"). a. City Standards. Lighting shall meet City standards described in the Municipal Code, including standards for travel lanes. Pedestrian areas should be well lighted, and the light intensity of pedestrian areas should generally exceed City standards. All lighting proposals shall be subject to review and approval by Berkeley's Department of Public Works… e. Fixture Heights. The height of fixtures and poles should emphasize pedestrian activity to the extent possible, while also providing sufficient illumination for the safety of bicycles and vehicles. Generally, new	Not applicable. This is not an objective standard. At building permit stage, the project will be designed to comply as closely as possible. The project will conform to City light standards for exterior illumination on buildings. Project will be reviewed for compliance by the Public Works during Building Permit plan check.

Table 5: Downtown Area Plan	
fixtures should not exceed a height of 16 feet to optimize pedestrian-level lighting and placemaking. To provide sufficient illumination for motorists and bicyclists, taller fixtures should be used at intersections and in select midblock locations, as is determined through technical analysis. At intersections, taller poles should also be used for mounting traffic signals to the extent possible, so that the number of poles is minimized… h. Glare and Light Pollution. Each light fixture should direct its light toward the areas that it serves. Light fixtures should use "cut-offs" and other devices to shield the light source when seen from upper-story residential units in mixed-use areas. In residential areas, ground floor units should be shielded. Directing light downward also mitigates "sky glow," the cumulative aesthetic impact from urban light sources. (See also "Placement, Height & Spacing.") i. Trees. Nearby trees' lowest branches should be pruned to a 14-foot minimum over vehicle lanes and an 8-foot minimum over pedestrian paths of travel (see Street Trees & Landscaping chapter). Where frequent light fixtures are called for, a higher minimum may be needed to adequately illuminate streets and sidewalks.	Project will be reviewed for compliance by the Public Works during Building Permit plan check.

BMC/ZO Chapter Section 23C.10 Emergency Shelter Zoning		
23C.10.040 Standards for Emergency Shelters Located in Commercial Districts		
A. No individual or household may be denied emergency shelter because of an inability to pay.	Not applicable. Not an objective standard.	However, no individual or household will be denied emergency shelter because of an inability to pay. NOT APPLICABLE.
B. No emergency shelter shall be located within 300 feet of another emergency shelter, provided that a Use Permit may be obtained to allow a buffer distance less than stated above.	Applicable.	No other emergency shelter is located within 300 feet of the proposed shelter. Therefore, the project complies. COMPLIANT.
C. When abutting a residentially-zoned property all areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation, shall be located indoors.	Applicable.	All areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation, will be located indoors. The outdoor space to be built as part of the overall development will be owned and managed by BRIDGE's 89-unit property and the HOPE Center 53-unit permanent supportive housing property and is not part of the shelter's property nor area for activities and use. Therefore, the project complies. COMPLIANT.
D. The maximum number of beds shall be as set forth in Table 23C.10.060; provided, that a Use Permit may be obtained to allow exceeding the maximum bed count.	Applicable.	The project will not exceed the maximum number of shelter beds set for in Table 23C.10.060; 44 temporary beds are proposed, where up to 60 are permitted in the C-DMU zoning district. Therefore, the project complies. COMPLIANT. The shelter contains 32 beds.
E. Required emergency shelter facilities: 1. An area for onsite client intake equal to 1/4 of the area provided for client beds. This may be a multi-use area. 2. Showers and restroom facilities.	Applicable.	The project includes showers and restroom facilities and an intake area in excess of ¼ of the area provided for client beds. The shelter support facilities and program area account for 76% of the total area dedicated to the shelter, for a ratio of ¾ provided for client beds. Please see plan sheets A2.01A and A2.02A for floor area detail. Therefore, the project complies. COMPLIANT.

F. Optional facility services may include: 1. Secure personal storage. 2. Daytime services. 3. Meal services. 4. Communal kitchen. 5. Laundry equipment for clients. 6. Child care. 7. Vehicle and/or bicycle parking.	Not applicable. Not an objective standard.	However, the project will include a variety of services, consistent with the recommendations of this subsection. See applicant statement (addendum, dated 12/5/18) for details. NOT APPLICABLE.
G. Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures, and shall be directed in a manner that does not cast light onto neighboring properties.	Not applicable. Not an objective standard.	However, no exterior lighting is proposed that will cast light onto neighboring properties. No exterior lighting currently proposed. Project will be reviewed for compliance by the Land Use Planner during Building Permit plan check.
H. On-site management shall be provided at all times the facility is in operation and at least one hour prior to and after facility operation hours.	Applicable.	On-site management will be provided, consistent with this subsection. There will be two staff per overnight shift between 4 pm and 8 am. There will also be case managers who staggered to provide services seven days a week during afternoon and evening hours. Therefore, the project complies. COMPLIANT.

I. Prior to issuance of a Zoning Certificate the shelter operator shall submit a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address: 1. Client congregation outside of the shelter facility in order to prevent queuing within the public right-of-way. 2. Eligibility criteria, enforcement rules, and procedures for disruptive clients. 3. Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person. 4. Bed bug prevention. 5. Refuse collection. 6. Security procedures. 7. Separation of sleeping areas and restrooms by gender and for families. 8. Consistency with the Alameda County-Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.	Applicable.	A Shelter Safety and Management Plan, which addresses subsections 1 through 8, is attached. Therefore, the project complies. COMPLIANT. Plan was reviewed and deemed adequate by Health Housing and Community Services.
J. Prior to issuance of a Zoning Certificate the shelter provider shall provide evidence that a community meeting was held and that all owners and occupants on record with the Alameda County Assessor within a 100 foot radius of the proposed shelter location were notified. A community meeting shall not be required when the target population of the proposed shelter requires privacy due to safety concerns as determined by the Zoning Officer.	Applicable.	The project sponsor will host a community meeting addressing the shelter on December 12, 2018 and noticed to owners and occupants within a 100-foot radius of the shelter site. A flyer for this meeting is attached. Following the meeting a copy of the agenda, minutes, and sign-in sheet will be provided. Therefore, the project complies. COMPLIANT.

BMC/ZO Chapter 23D.04 Lot and Development Standards		
Section 23E.04.020 Useable Open Space		
F. At least 40% of the total area required as usable open space, exclusive of balconies above the first floor, shall be a landscaped area. For multiple dwelling uses, such landscaped areas shall incorporate automatic irrigation and drainage facilities adequate to assure healthy growing conditions for plants.	Applicable objective standard.	The project complies. As shown in the attached plan set, 49% of the Project's usable open space is landscaped and has automatic irrigation and is drained for healthy growth. COMPLIANT.
BMC Section 22.20.065 Affordable housing mitigation fee		
Subsections A - I	Applicable. By providing more than 10% of its units for Low and more than 10% of its units for Very Low-Income households, the Project is exempt from the City's affordable housing mitigation fee.	The proposed project affordability satisfies the requirements of this section. NOT APPLICABLE. The project is an affordable housing project with units for rent, and no market rate units. No fee required.
BMC/ZO Chapter 12.34 CURBSIDE REFUSE, ORGANICS, AND RECYCLING COLLECTION		
Section 12.34.020 Garbage, Recycling, and Organics Carts--Location		
B. In instances in which the City determines that curbside collection is impossible due to insufficient room in the gutter or at the curb (an area at least 2 feet by 3 feet square), absence of a parking strip adjacent to the curb, a slope not suitable for carts as determined by the City, or other conditions that compromise collection operations and safety, the City may authorize an exception to curbside participation and provide backyard/on-property service.		COMPLIANT. The Applicant has acknowledged that they will agree to on-site trash cart service.

Planning and Development Department
Land Use Planning Division

SENT VIA US MAIL AND E-MAIL

December 21, 2018

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Berkeley, CA 94704

RE: 2012 Berkeley Way, Letter of Compliance
SB35 (Government Code 65913.4) Application for a Mixed-Use Development (142 units of affordable housing; transitional dorms; temporary housing; and supportive services)

Dear Mr. Saxby, Ms. Hollywood, and Ms. Light:

You have applied for approval of a development project pursuant to Government Code Section 65913.4 (Senate Bill [SB] 35). City staff has completed its review of the application and has found it to be: 1) eligible for SB 35, ministerial review, and 2) consistent with all applicable objective zoning standards.

<u>**Summary of Project's Consistency with SB 35 and the City's Objective Criteria**</u>

Under Government Code Section 65913.4(a), a development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

City analysis: The application includes more than two dwelling units.

(2) The development is located on a site that satisfies all of the following:
(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States

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Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

City analysis: The City of Berkeley is within the boundaries of an Urbanized Area and Urban Cluster, according to 2010 US Census from the Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

City analysis: The site is surrounded by urban uses.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

City analysis: The site is in the Downtown Mixed-Use Zoning District (C-DMU, Buffer sub-area). Permitted uses include mixed-use developments (e.g. residential/commercial; hotel/other commercial; office/other commercial), multi-family developments, hotels and offices, and medical practitioners (Berkeley Municipal Code Chapter 23E.68). In addition, the General Plan land use designation for the site is "Medium Density Residential", which is characterized by a "mix of single-family homes and small to medium sized multi-family structures."

The applicant has stated that the gross building area is approximately 138,860 square feet. By staff's calculation, the residential use area for BRIDGE housing is 89,120 square feet, and the residential use area for Berkeley Food and Housing Project (subtracting out service/office areas for the shelter and community meals) is 45,675 square feet. Thus, the residential areas constitute approximately 97% of the development, well over the required 66.6%.

(3) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

City analysis: The project contains 142 units – 141 below market rate and 1 non-below market rate, manager's unit. Per State Density Bonus Law (Government Code Section 65915), the project must designate either 8 Very Low Income or 16 Low Income units as "qualifying units" to be eligible for the Density Bonus. The applicant will be required to record a regulatory agreement with the City for the qualifying units for a duration of 55 years. The remainder of the affordable units (the non-qualifying units) are subject to a separate terms and affordability agreement with the City and other providers of funding.

(B) Forty-five years for units that are owned.

City analysis: If the units are subdivided for sale, they will be subject to income qualifications and resale restrictions.

(4) The development satisfies both of the following:
(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain

eligible under this subparagraph until the department's determination for the next reporting period. A locality shall be subject to this subparagraph if it has not submitted an annual housing element report to the department pursuant to paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years before the development submitted an application for approval under this section.

City analysis: While the City of Berkeley has made sufficient progress toward its Above Moderate income Regional Housing Needs Allocation (RHNA), it has made insufficient progress towards its Lower income RHNA (Very Low and Low income). Therefore, the development satisfies this criterion.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing approved than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that zoning ordinance applies.
(ii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of housing affordable to households making below 80 percent of the area median income that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making below 80 percent of the area median income, unless the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, in which case that ordinance applies.
(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to any income level described in clause (i) or (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

City analysis: The City of Berkeley has made insufficient progress towards its Lower income RHNA (Very Low and Low income). Therefore, the development satisfies this criterion.

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards" and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are 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 prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.
(B) In the event that objective zoning, general plan, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

City analysis: The project is consistent with all relevant objective zoning standards. See Attachment A: Objective Standards Table, for staff comments and/or clarifications of objective zoning standards. The project is also subject to the City's Density Bonus Procedures, an objective standard which uses a formula to calculate the maximum allowable density for a site with no district-specified density standard, and to determine the density bonus according to State Density Bonus Law. Staff finds that the project is consistent with this objective standard as well.

(6) The development is not located on a site that is any of the following:
(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

City analysis: In this area, the coastal zone is west of the San Francisco peninsula; the site is not within a coastal zone.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

City analysis: All Berkeley land is designated "Urban and Built-Up Land" by the California Department of Conservation.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

City analysis: There are no wetlands, as defined in the United States Fish and Wildlife Service Manual Part 660 FW 2, located within the Project site.

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

City analysis: The site is not within a very high fire hazard severity zone.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

City analysis: The Project site is not listed as a hazardous materials release site pursuant to Government Code Section 65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

City analysis: The Project site is not within a delineated earthquake fault zone as determined by the State Geologist.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

City analysis: The Project site is not within a mapped flood plain (it is within Zone X, the lowest flood risk zone) as determined by maps promulgated by the Federal Emergency Management Agency.

(H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

City analysis: The Project site is within an area of minimal flood hazard (Zone X) as determined by maps promulgated by the Federal Emergency Management Agency.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

City analysis: The Project site is not located within the boundaries of an adopted conservation plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

City analysis: The Project site does not contain habitat for protected species identified as candidate, sensitive, or species of special status.

(K) Lands under conservation easement.

City analysis: The Project site is not located within a conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:
(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
(iii) Housing that has been occupied by tenants within the past 10 years.

City analysis: The site is currently developed with a commercial surface parking lot; it would not require the demolition of housing.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

City analysis: The site has been operated as a commercial surface parking lot for more than 10 years.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

City analysis: The site is not on a historic register and would not require the demolition of a historic structure.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

City analysis: The site is currently developed with a commercial surface parking lot, and would not require the demolition of housing.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:
(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.
(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in therein.
(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.
(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.
(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:
(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.
(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.
(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.
(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.
(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:
(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.
(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.
(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:
(i) The project includes 10 or fewer units.
(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

City analysis: The applicant has submitted a letter committing to providing prevailing wages as required for a project that is not a public work. The application is not required to use a skilled and trained workforce to complete the development because the application was submitted in October, 2018, and the development consists of more than 75 units and the units are 100 percent subsidized.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).
(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

City analysis: The project does not involve the subdivision of a parcel.

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

City analysis: The project is not on a site governed by these laws.

Additional Requirements and Next Steps

Per the Streamlined Ministerial Approval Process Guidelines, Section 301(a)(5), "Approval of ministerial processing does not preclude imposed standard conditions of approval as long as those conditions are objective and broadly applicable to development within the locality regardless of streamlined approval. This includes any objective process requirements related to the issuance of a building permit. However, any further approvals, such as demolition, grading and building period or, if required, final map, on a ministerial basis is subject to the objective standards". (California Department of Housing and Community Development, 2018, p.11) Therefore, the project is subject to the attached Downtown Area Plan Mitigation Monitoring and Reporting Program (Attachment B) and the City's Standard Conditions of Approval (Attachment C).

Please be sure to read these documents thoroughly to better understand project requirements moving forward into the building permit phase, which is the next step.

If you have any questions, please contact me at (510) 981-7400 or via email at tburroughs@cityofberkeley.info.

Sincerely,

Timothy Burroughs
Director, Department of Planning & Development

Attachments:
- Attachment A: Objective Standards Table
- Attachment B: Mitigation Monitoring and Reporting Program, Downtown Area Plan EIR
- Attachment C: Standard Conditions of Approval
- Attachment D: Project Plans

EXHIBIT 8

From the 12/7/18 NOIA and 2/6/19 Letter:

"17. Provide circled items from the Density Bonus Report Submittal Requirements list"

Referenced Deficiency	Applicable Section from Density Bonus Report of Original Application	Notes
2. Requested Incentive(s) and Concessions		
The City's usual development standard and the requested development standard or regulatory incentive/concession. Applicant shall identify whether each of the requested incentive(s)/concession(s) is an on-menu or off-menu request. (Emphasis added by City)	A separate and stand-alone Density Bonus Report Was provided as Attachment D of the original SB 35 application submittal. Page 2 of the Density Bonus Report states, "The project proposes to use one 11' height increase, which is an "on-menu" incentive."	The originally submitted SB 35 application (Density Bonus Report, Attachment D) provided this information and clearly indicates the requested incentive as on-menu.
Include reasonable documentation in a form subject to approval by the City, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing. Applicant may also be required to provide funds to cover city expenses incurred for a peer review of applicant's documentation. (Emphasis added by City)	Page 6 of the originally submitted Density Bonus Report, explains the rationale for how the concession leads to direct cost savings from podium construction and underground parking. The last paragraph of Page 5 of the originally submitted Density Bonus Report explains how under State law the burden is on the City to demonstrate that the incentive or concession does not result in identifiable and actual cost reductions.	The originally submitted SB 35 application (Density Bonus Report, Attachment D) provided this information. The City of Los Altos' Municipal Code Section 14.28.040(F)(3) mirrors state law that "Denial of requested incentive" lays out the three findings that must be made based on substantial evidence: a) does not request in cost reductions b) specific, adverse impact on public health and safety c) contrary to state or federal law. The City has not made any of those three findings in writing. Further, in several Staff reports regarding a proposed development at 4880 El Camino Real, Staff stated that "the City must give deference to the applicant on granting the requested development incentives unless it can make either of the finding..."

3. Requested Waiver(s)		
The City's usual development standard and the requested development standard	Page 3 includes a table that lists the City's usual development standard in first column, the proposed standard as well as rationale for why the waiver is required.	The original Density Bonus report satisfies this requirement.
Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the allowed densities or with the concessions and/or incentives requested. (emphasis added by City)	Page 3 includes a table that lists the City's usual development standard in first column, the proposed standard as well as rationale for why the waiver is required. The submitted plan set shows both the base project (required development standards and building envelope) and the proposed building configuration that incorporates the waivers and modifications.	Los Altos staff report for 4880 El Camino Real development only provided the following justification to allow a rooftop structure to exceed height and area limit development standards: "In this case, a fifth floor is needed to accommodate the additional four units. The waiver for the height and area of the rooftop structures is necessary since the project relies on taller ceiling heights and rooftop amenities to make up for the development cost of affordable housing units, where a taller elevator cab and further enclosure of the rooftop structures is necessary to provide for the rooftop amenities." (Page 4, 8/23/16 Agenda Item 9: 4880 El Camino Real Development Application)
4. Requested Parking Reduction		
Table showing parking requested by the zoning ordinance and parking proposed under Section 65915(p). if an additional parking reduction is proposed under the provisions of Section 65915(p)(2) or (p)(3), evidence that the project qualifies for the additional parking reduction.	Page 5/6 of the original SB 35 Applicant Statement shows the required City parking standard, as well as the reference to the statutory parking exemption. The originally submitted SB 35 application (Density Bonus Report, Attachment D) includes SB 35's parking exemption language.	The Applicant Statement and Density Bonus Report (Attachment D) provide the required data and information.
8. Fees		
Payment of any fee in an amount set by resolution of the City Council for staff or consultant time necessary to determine compliance of the Density Bonus Plan with	Page 3: "The fees for the project will be provided as determined by the City of Los Altos' adopted legal requirements"	The adopted City of Los Altos 2018-19 fee schedule does not include any basis for charging this fee. Regardless, a statement that a fee amount is "to be

State Density Bonus Law. **"TO BE DETERMINED"** (bolded phrase added by City staff)		determined" does not describe a submittal requirement.

EXHIBIT 9

Holland & Knight

IN THE NAME OF THE ENVIRONMENT

How Litigation Abuse Under the California Environmental Quality Act Undermines California's Environmental, Social Equity and Economic Priorities – and Proposed Reforms to Protect the Environment from CEQA Litigation Abuse

Jennifer Hernandez, David Friedman and Stephanie DeHerrera | Holland & Knight

ATTACHMENT 4c

IN THE NAME OF **THE ENVIRONMENT**

How Litigation Abuse Under the California Environmental Quality Act Undermines California's Environmental, Social Equity and Economic Priorities – and Proposed Reforms to Protect the Environment from CEQA Litigation Abuse

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PREFACE

This report analyzes all CEQA lawsuits filed in California over a three-year study period, 2010-2012, to describe how CEQA lawsuits are used in practice. The study demonstrates that about half of CEQA lawsuits target taxpayer-funded projects with no "business" or other private sector sponsor, and that the most frequent targets of CEQA lawsuits are projects designed to advance California's environmental policy objectives. Specifically, for CEQA lawsuits targeting construction projects, 80% of CEQA lawsuits target "infill" projects in established communities rather than "greenfield" projects on undeveloped or agricultural lands outside established communities. The most commonly targeted type of public infrastructure project was transit systems, the most commonly targeted type of industrial/utility project was renewable energy projects (primarily solar projects that were required to pay prevailing wages), and the most commonly targeted type of private sector project was infill housing (primarily higher-density, multifamily urban housing). The study also confirms that CEQA litigation abuse by parties seeking to advance non-environmental interests is widespread, and that duplicative CEQA lawsuits against implementation of the same project or plan can delay and derail projects, such as development of transit-served neighborhoods in urban areas, by decades.

CEQA litigation abuse has been decried by a broad range of public, private and non-profit groups – and by elected leaders and their staff. CEQA has been singled out as one of the key causes of runaway housing prices (especially in coastal counties) and as a major reason California has fallen far behind other states in creating, retaining, and onshoring middle-class manufacturing jobs that have helped create a manufacturing renaissance in other states. As one of California's signature "new economy" companies, Google, explained, its major fiber facilities would not be built in California, "in part because of the regulatory complexity here brought on by CEQA and other rules. Other states have equivalent processes in place to protect the environment without causing such harm to business processes and therefore create incentives for new services to be deployed there instead."

Ending CEQA litigation abuse is the most cost-effective "incentive" available to restore California's jobs base, make housing more affordable, and meaningfully improve the future of the nearly nine million Californians that the U.S. Census Bureau reports are living in poverty.

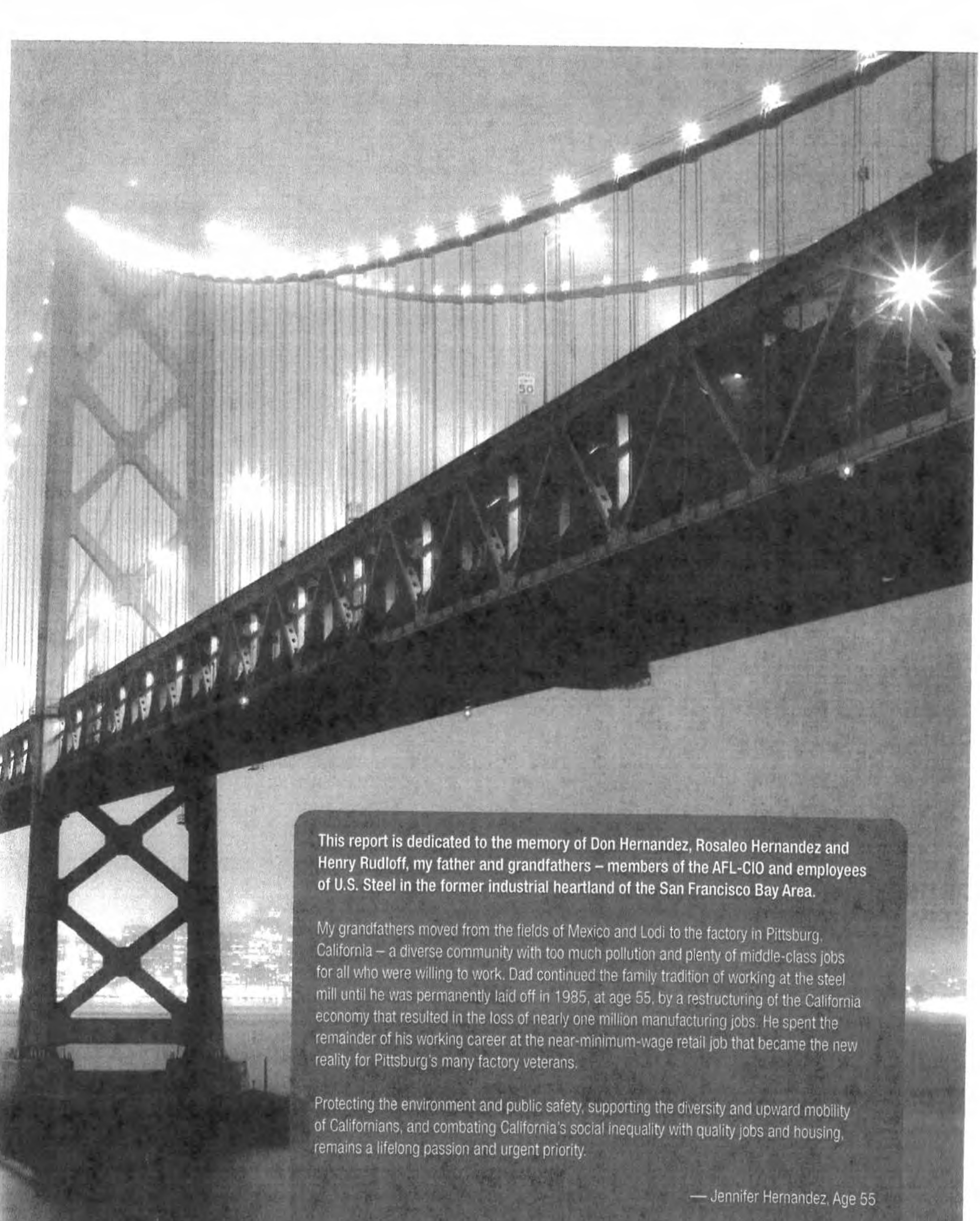
The study recommends three reforms to curtail CEQA litigation abuse, and cites the precedent for each:

1. **Extend CEQA transparency to CEQA lawsuits by requiring those filing lawsuits to disclose their identity and environmental (or non-environmental) interests.** This transparency is already required in CEQA's attorney fee motions and amicus filings.

2. **Eliminate sequential, duplicative lawsuits aimed at derailing plans and projects for which an Environmental Impact Report (EIR) has already been certified and either was not challenged or was upheld in court.** This CEQA compliance track already exists for implementation of specific plans and now-defunct redevelopment agency plans.

3. **Preserve CEQA's existing structure and access to litigation remedies for environmental purposes, but restrict judicial use of the extraordinary remedy of invalidating project approvals to projects that would cause a significant adverse threat to public health, irreplaceable tribal resources or ecological systems.** This judicial remedy restriction was granted to the Kings Arena basketball project in Sacramento.

This study demonstrates that about half of CEQA lawsuits target taxpayer-funded projects with no "business" or other private sector sponsor, and that the most frequent targets of CEQA lawsuits are projects designed to advance California's environmental policy objectives.



This report is dedicated to the memory of Don Hernandez, Rosaleo Hernandez and Henry Rudloff, my father and grandfathers – members of the AFL-CIO and employees of U.S. Steel in the former industrial heartland of the San Francisco Bay Area.

My grandfathers moved from the fields of Mexico and Lodi to the factory in Pittsburg, California – a diverse community with too much pollution and plenty of middle-class jobs for all who were willing to work. Dad continued the family tradition of working at the steel mill until he was permanently laid off in 1985, at age 55, by a restructuring of the California economy that resulted in the loss of nearly one million manufacturing jobs. He spent the remainder of his working career at the near-minimum-wage retail job that became the new reality for Pittsburg's many factory veterans.

Protecting the environment and public safety, supporting the diversity and upward mobility of Californians, and combating California's social inequality with quality jobs and housing, remains a lifelong passion and urgent priority.

— Jennifer Hernandez, Age 55

INTRODUCTION

This report analyzes all lawsuits alleging violations of the California Environmental Quality Act (CEQA) over a three-year study period: 2010-2012.[1]

Prior CEQA studies have focused on the much smaller fraction of CEQA lawsuits that actually result in a published appellate court decision on the substantive adequacy of an agency's environmental evaluation of a project.[2] This study period overlaps with the last three years of a companion CEQA Judicial Outcomes study of all published CEQA appellate court cases involving the substantive adequacy of CEQA compliance over a 15-year study period (1997-2012).[3]

A simple comparison of the number of CEQA lawsuits filed during this study period to the average number of CEQA lawsuits that result in published judicial opinions over the 15-year period of the companion study shows that only about 5% of CEQA lawsuits result in a published appellate or California Supreme Court decision. Although local media report on some of the 200-plus CEQA lawsuits filed annually, these lawsuits are not tracked systematically. This study presents the first comprehensive report of CEQA litigation in practice, and reveals the pattern of agency actions targeted by CEQA lawsuits for the entire body of CEQA petitions,[4] including the 95% of CEQA lawsuits that do not result in published appellate court opinions.

The study confirms that CEQA litigation abuse is indeed widespread. A variety of special interest groups use CEQA lawsuits throughout California to pursue non-environmental objectives, such as lawsuits targeting transit, renewable energy, transit-oriented housing and regulatory programs designed to achieve California's ambitious environmental protection and climate change laws.

The study also demonstrates that CEQA litigation is overwhelmingly used in cities, with special-interest CEQA lawsuits targeting core urban services like parks, schools, libraries and even senior housing – most often by Not In My Backyard (NIMBY) opponents who conflate their individual "environment" (i.e., the view outside their bedroom window) with environmental policies and mandates that require acceptance of neighborhood-scale changes such as making more efficient use of existing park and school facilities for California's growing (and diverse) population.

Of greatest concern at a policy and political level, CEQA litigation abuse allows polite, passionate neighbors to oppose change – in the name of "the environment" – including the changes required to address environmental priorities such as climate change, and changes required to address California's growing population, including people of different economic, ethnic, religious and other demographic characteristics than project opponents. In cases involving opposition to projects like affordable housing, mosques and youth parks, the greatest social travesty of CEQA litigation abuse is the empowerment (and concealment) of bigots.

Part 1 describes the results of the study across several key factors: what kinds of projects are targeted in CEQA lawsuits, where the targeted projects are located, what kinds of parties file CEQA lawsuits, and who bears the cost of CEQA lawsuits (and litigation preparation practices such as "overdoing" CEQA studies to reduce the potential for a lawsuit loss).

Part 2 presents the stories behind the statistics, and includes anecdotal information from published media reports and other sources about actual and threatened CEQA lawsuits to help illustrate the real-life effect of CEQA litigation abuse on housing, critically needed jobs, schools and workforce training, and on all manner of public infrastructure, from transit to libraries to renewable energy.[5]

Part 3 concludes with recommendations for three moderate CEQA statutory reforms to end egregious lawsuit abuse and return this great law to its mission: protecting the environment and public health, informing and involving the public, and assuring transparency and accountability for agency decisions that affect the environment.

Of greatest concern at a policy and political level, CEQA litigation abuse allows polite, passionate neighbors to oppose change – in the name of "the environment" – including the changes required to address environmental priorities such as climate change, and changes required to address California's growing population, including people of different economic, ethnic, religious and other demographic characteristics than project opponents.

PART 1

CEQA LAWSUITS IN THE REAL WORLD – THE NUMBERS

This study is designed to provide comprehensive information about current CEQA litigation practices: what kinds of "projects" are targeted by CEQA lawsuits, how many of these lawsuits challenge "infill" projects in cities and other developed communities, what CEQA compliance tracks result in lawsuit challenges, and who files CEQA lawsuits. The aim is to inform policy discussions about the nature and extent of CEQA litigation abuse (use of CEQA for non-environmental purposes) – and inform equity and economic discussions about whether CEQA's 1970 statutory framework for private-party litigation enforcement needs to be updated to align with California's environmental priorities.

A. Politics 101: Half of All CEQA Lawsuits Target Taxpayer Projects – Not "Business"

Although the political debate around CEQA is persistently framed by many as a battle between "business" and "enviros" (environmental advocacy groups), as a legal matter, CEQA applies to all discretionary agency actions, including approvals of public construction projects, approvals of agency plans, policies, and fund allocations, and the approval of regulations and ordinances (including regulations and ordinances to reduce pollution or conserve open space). The framing of CEQA as a "business v. enviro" political debate is not supported by the data: half of CEQA lawsuits target agency projects for which there is no private sector sponsor at all,[6] and many private sector projects – such as CEQA lawsuits targeting single-family home renovations[7] – have no business sponsor either.

CEQA Challenges to Public Agency Projects

Public agency approvals to acquire or renovate parks, and build or modify all types of public facilities and infrastructure – ranging from small public service facilities like schools, fire stations and libraries to larger public infrastructure projects, such as transit systems and wastewater treatment plants – are all "projects" triggering the need for an Environmental Impact Report (EIR) or other CEQA document or determination, and all of these agency actions can be challenged in CEQA lawsuits.[8]

CEQA Litigation: Degree of Adverse Effects Often Ignored by Sacramento's Leaders and Special Interests

Special interests and political leaders in Sacramento have grown comfortable with viewing CEQA through an "enviro v. business" prism. For example, State Senator Darrell Steinberg excluded public agencies responsible for implementing projects – and complying with CEQA – from negotiation sessions aimed at seeking common ground to modernize CEQA. Stung by their exclusion, the Public Works Coalition, a broad alliance of public agencies that collectively represents nearly every school, county and special district in California, unsuccessfully attempted to join the dialogue in a plea to legislative leaders, writing:

> "It is widely recognized that many of CEQA's key requirements are fundamentally uncertain. No matter how much time and how many resources have been invested...a project opponent can craft arguments as to why a lead agency failed to fully comply with CEQA. As a result, it is very difficult for lead agencies to effectively execute CEQA decisions that can be upheld in court if they are challenged."
>
> "What often compromises the virtues of CEQA are individuals and groups with ulterior motives who exploit CEQA's uncertainties through litigation, or the threat of litigation, to achieve objectives that have nothing to do with environmental protection."
>
> "Each misuse and abuse of CEQA not only wastes scarce public resources that would otherwise fund essential public services, it also damages the integrity of meaningful environmental protection."
>
> – Public Works Coalition letter, January 29, 2013
> (*Copy available on request from the authors of this report.*)

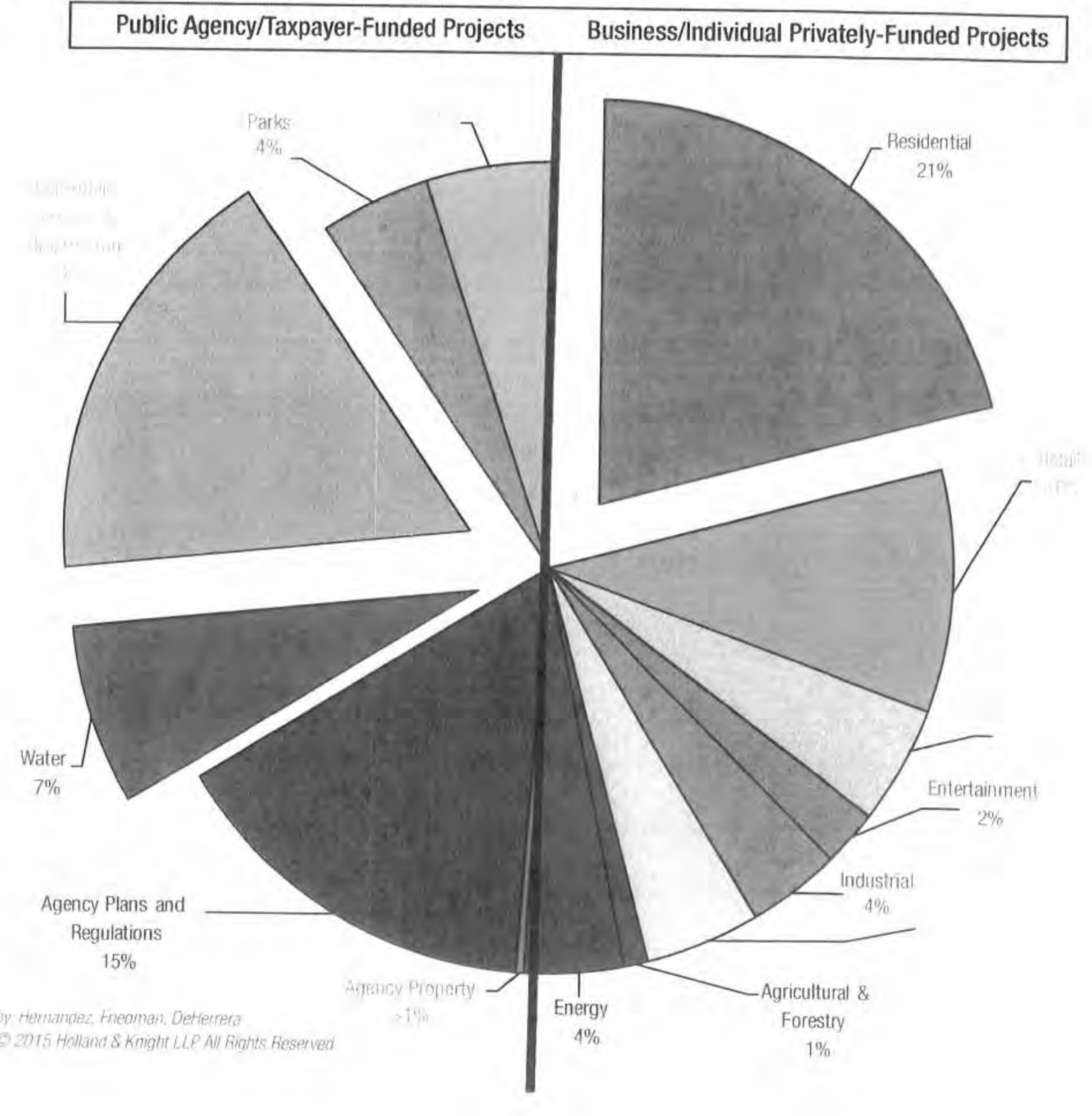
The framing of CEQA as a "business v. enviro" political debate is not supported by the data: half of CEQA lawsuits target agency projects for which there is no private sector applicant or developer.

CEQA also defines "project" to include agency actions that are mandatory under other federal and state laws. This includes developing and implementing plans and regulations covering many different topics. Again, these range from those that affect relatively large groups or areas such as General Plan updates that apply to a whole city or county, and greenhouse gas or other pollution reduction regulations that apply statewide, to agency actions that have a far smaller reach, such as a city ordinance limiting single-use plastic bags or requiring permits for marijuana dispensaries, or a city plan to improve housing affordability or focus development in areas served by existing or planned transit services.[9]

Agencies also manage property and facilities, and property management decisions that involve no physical modifications to existing facilities – such as converting an underutilized women's prison to a men's prison to relieve prison overcrowding,[10] or outsourcing management of a city-owned property[11] – are subject to CEQA, and during this study period were targeted by CEQA lawsuits.

As shown by Figure 1, about half – just over 49% – of CEQA lawsuits target agency actions for which there is no private sector proponent (business, non-profit or individual applicants seeking agency approval or funding).

Figure 1
CEQA Lawsuits Targeting Taxpayer-Funded and Privately-Funded Projects



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For the majority of CEQA lawsuits, CEQA's compliance costs, including litigation costs and obligatory payment of attorneys' fees, fall on California taxpayers - not "business."

For the half of all CEQA lawsuits targeting public agency projects, CEQA's compliance costs and litigation risks, including payment of attorneys' fees to parties successfully suing agencies, are borne by taxpayers.

If electricity generation projects (which during the study period included only new renewable energy facilities such as solar farms) and "repowered" existing electricity plants proposed to be modified to use cleaner new technologies to reduce air or water pollution[12] are added to this public sector category based on the fact that California's ratepayers must ultimately pay for these projects, just over 53% of CEQA's lawsuits involve projects that are paid for by the same taxpayer-generated revenue pool of property taxes, sales taxes and other taxes and fees that are otherwise available to pay for schools, parks, libraries, public health and social services, law enforcement, fire and emergency services, road and infrastructure maintenance, and other public agency services and facilities.

Public infrastructure is the most frequent target of CEQA lawsuits, and within this category the most frequent litigation target is transit projects – the same projects that reduce per capita greenhouse gas emissions and other air pollutants by providing an alternative to automobiles (especially for commuters). Regional and global environmental benefits are achieved by transit improvements, but local neighborhood groups forced to accept new transit systems frequently do not support these improvements, and use CEQA lawsuits to try to stop, delay or modify transit infrastructure.

For the majority of CEQA lawsuits (public agency lawsuits plus ratepayer-funded electric generation), CEQA's compliance costs, including litigation costs and obligatory payment of attorneys' fees, fall on California taxpayers – not "business." Agencies (and taxpayers) cannot recover litigation attorneys' fees if agencies win CEQA lawsuits, nor can agencies (or taxpayers) block lawsuits filed by parties using CEQA for non-environmental purposes.

Figure 1 also shows that the private-sector projects challenged in CEQA lawsuits are overwhelmingly non-polluting land uses that often raise intense localized concerns about increased population densities and resulting demands on public services and local roadways. The largest single target of CEQA lawsuits against private projects are residential projects (21%), followed by retail projects (10%), commercial (non-industrial) projects (5%) and entertainment (2%) projects. The categories of projects with the greatest potential to cause pollution or adversely affect protected species – Industrial (4%), Agricultural/Forestry (1%), Mining (5%) and Renewable Energy/Energy Retrofit projects (4%) – comprise only 14% of all CEQA lawsuits filed during the study period.

CEQA litigation overwhelmingly targets "infill" development that accommodates population and economic growth that would otherwise spill into undeveloped exurban areas.

B. CEQA Lawsuits Overwhelmingly Target "Infill" Projects, Not "Sprawl"

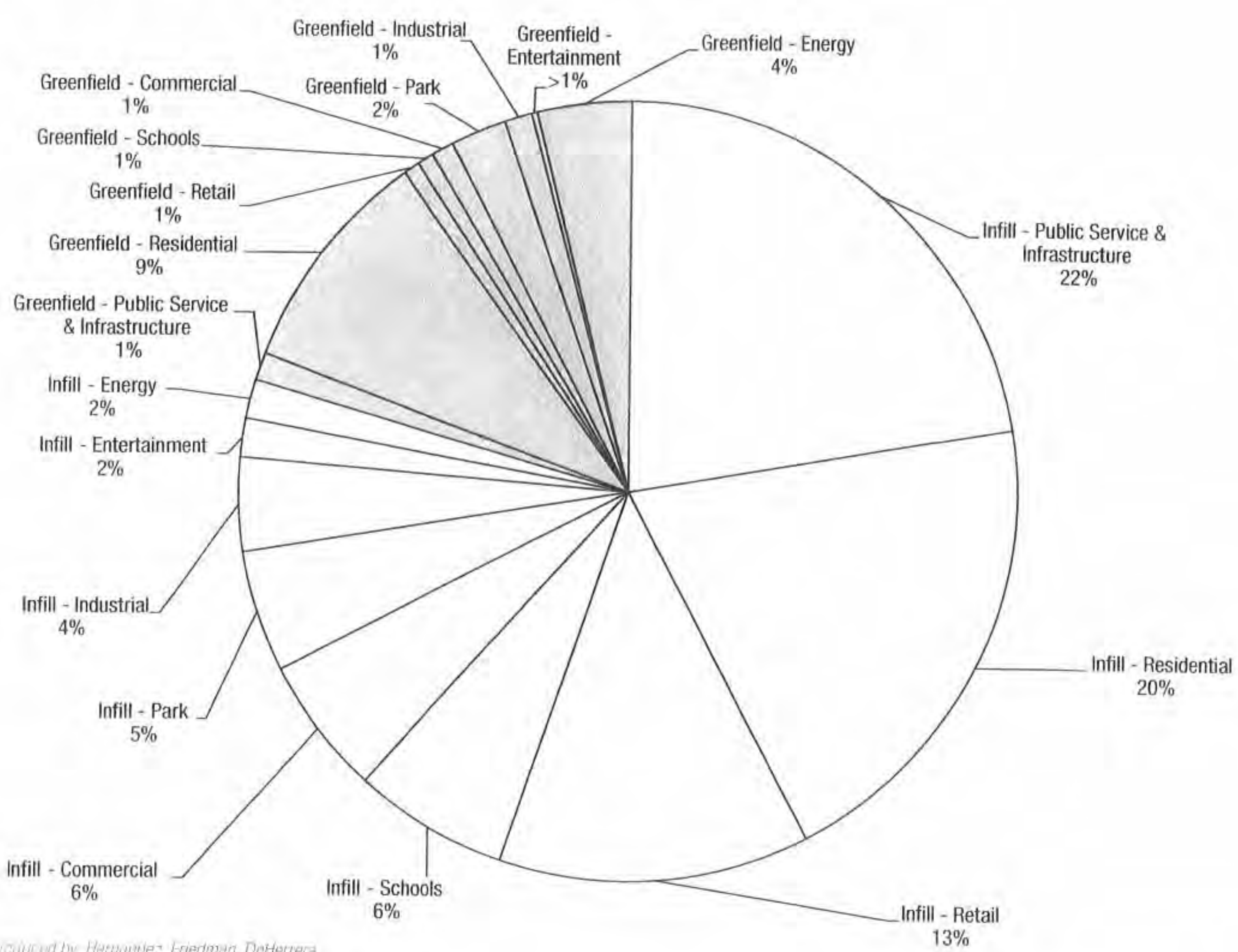
Another common political assertion by the entrenched special interests that defend CEQA litigation's status quo is that CEQA litigation mostly combats "sprawl" development that causes longer commutes, destroys farms and wildlands, and draws financial and human capital away from urban areas.

This study proves that the opposite is true: CEQA litigation overwhelmingly targets "infill" development that accommodates population and economic growth that would otherwise spill into undeveloped exurban areas. Of the cases that could be constructed in either "greenfield" rural or exurban locations, or "infill" locations in established communities,[13] 80% of CEQA lawsuits targeted "infill" projects, and only 20% targeted "greenfield" projects, as shown in Figure 2. It is noteworthy that at 80%, the number of CEQA lawsuit petitions filed against infill projects is higher than the 62% of infill projects addressed in reported appellate court cases.[14] As a result, this study demonstrates that earlier studies that examined only reported appellate court cases substantially understated the extent to which CEQA lawsuits target infill projects.

Figure 2

CEQA Lawsuits Targeting Greenfield Versus Infill Projects

(Select project types shown. See Tables 2B through 2D for all project types)



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"Infill" projects include private and public sector projects located entirely within one of California's 482 cities,[15] or located immediately adjacent to existing developed areas in an unincorporated county. Projects located in county areas that are not immediately adjacent to existing development, even if they are adjacent to major infrastructure such as an interstate highway, are classified as "greenfield."

Not every challenged agency project falls into either the "infill" or "greenfield" category. For example, many agency regulatory decisions –such as statewide greenhouse gas reduction regulations or county general plans governing both developed and less developed areas of a county,[16] or water supply management projects that include physical modifications to water infrastructure that occur in a different location than the often-multiple locations where water will ultimately be delivered for consumption[17]– do not fit within this "infill/greenfield" paradigm. Similarly, although the majority of the 36 lawsuits challenging mining, agricultural, and forestry projects involved agency approvals regulating existing operations, and thus fell roughly within the "redevelopment" concept often associated with "infill" (e.g., approval of a mine reclamation plan for an existing mine), none of these inherently open-space projects that are located based on pre-existing natural characteristics such as mineral reserves, were categorized as either "infill" or "greenfield" projects.[18] The location of all challenged private sector projects other than mining, agricultural and forestry projects was classified as "infill" or "greenfield."

Infill Lawsuits by the Numbers

Of the four-fifths of the study sample that were "infill" CEQA lawsuits, Figure 3 illustrates the fact that CEQA lawsuits most often targeted the public facilities and infrastructure that served these infill area populations – and public transit systems (which exclude roads and highways) were the top target of these CEQA infill infrastructure lawsuits.[19] The second-most-likely infill target was housing. As shown in Figure 4, almost half (45%) of the lawsuits challenging infill residential projects were aimed at higher-density, transit-oriented attached units (e.g., apartments and condominiums).[20] It is also noteworthy that over 6% of all infill CEQA lawsuit targets were urban park projects, ranging from trail improvements to accommodate disabled anecdotal visitors[21] to playground and playfield improvements.[22] (Further anecdotal information about these and other types of challenged projects is provided in Part 2 of this study).

Figure 3
CEQA Lawsuits Targeting Infill Projects

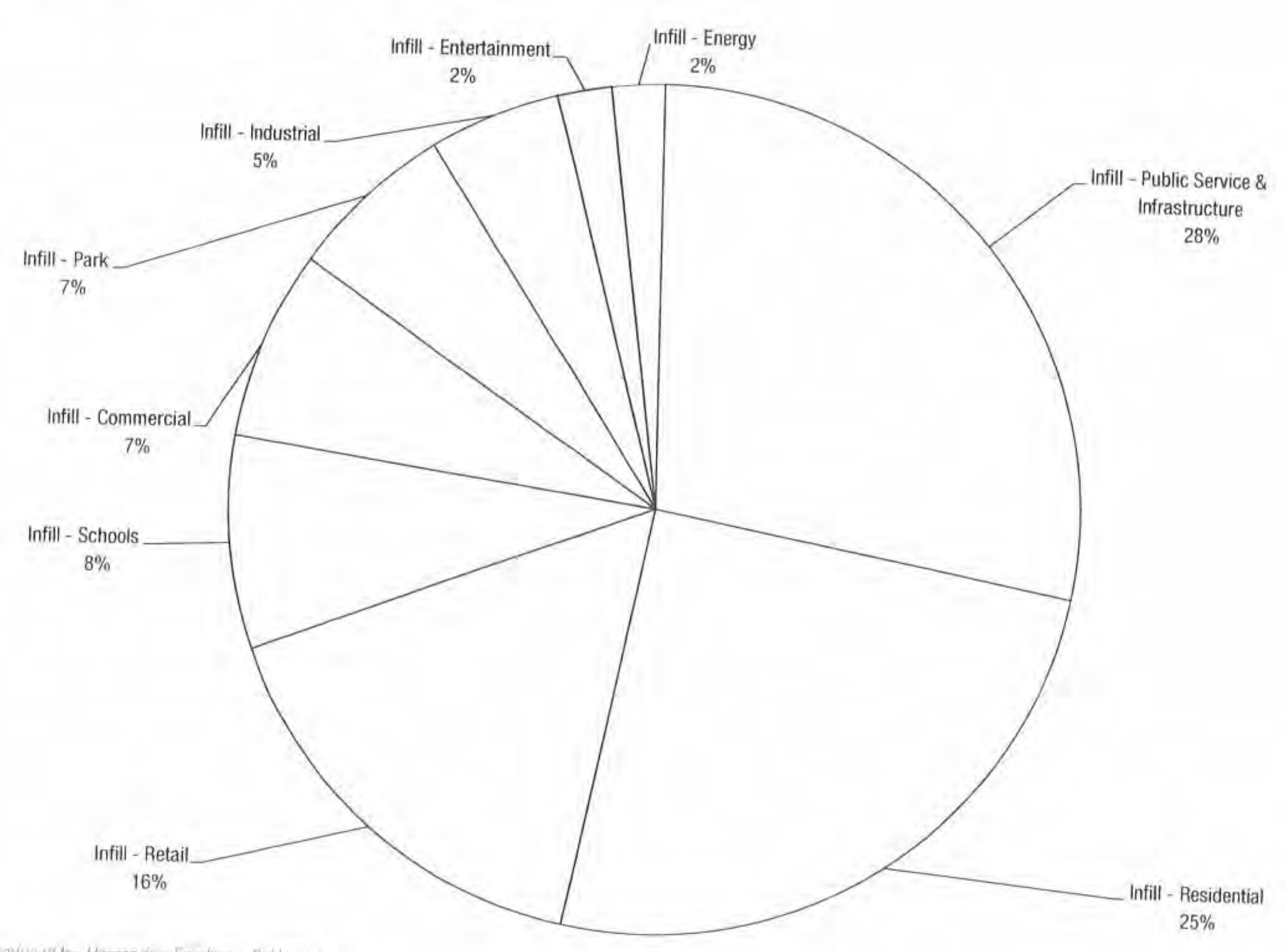

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Figure 4
CEQA Lawsuits Targeting Infill Housing

Small Subdivision 9%
Mobile Home Conversion (Rent to Own) 1%
Master Planned Community 12%
Multifamily/ Mixed Use 45%
Single Family Home/ Second Unit 17%
Large Subdivision/ Mixed Use 16%

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Impassioned infill project opponents are typically local residents who may in principle support many statewide environmental mandates that require fundamental changes to the character of California communities by prioritizing new development with higher densities (e.g., multi-story apartment or condominium projects) along transit corridors and promoting higher-density "mixed use" projects that include residential, retail services, and employment uses (e.g., offices) on the same property, but who adamantly oppose such changes in their own community. Such projects typically provide for less parking, and cause more traffic congestion, than traditionally lower-density development patterns like single-family detached homes or traditional shopping malls. As has been observed by notable environmental advocacy groups such as the Natural Resources Defense Council and the California League of Conservation Voters, the environmental benefits of denser development patterns are regional or even global (e.g., more transit use means lower air emissions including greenhouse gases), but these overarching environmental benefits are poorly suited to the structure of CEQA.[23] In fact, localized traffic congestion can be a daily irritant to frustrated residents, and congestion can also result in higher localized air pollution levels such as diesel particulate matter.[24]

Then-Oakland Mayor (and now Governor) Jerry Brown unsuccessfully urged the California Supreme Court to Avoid Extending CEQA to Urban Design Disputes

In an unsuccessful plea to the California Supreme Court to reverse an appellate court decision allowing residents of single-family homes in a planned community to use CEQA to raise private "aesthetic impact" objections to block more affordable planned townhomes, in 2005 then-Oakland Mayor Jerry Brown wrote:

> "The appellate court decision incorrectly held that neighbors' aesthetic distaste for the city's approved lot sizes, setbacks, street width, housing style, and other design matters constituted a potentially significantly effect on the environment, thereby requiring preparation of an EIR..."
>
> "Unless the [appellate court] decision is reversed, we are deeply concerned that our city's elegant density policy of infill development will be undermined by long delays and expensive but useless analysis – analysis paralysis."
>
> "Since 2000, six separate EIRs have been prepared for various of these [higher-density, transit-oriented residential] projects at a cost of millions of dollars and unconscionable delay."
>
> "[This] illustrates the profoundly negative impacts that the escalating misuse of CEQA is having on smart growth and infill housing" and "strikes at the heart of majoritarian democracy and long standing precedents requiring deference to city officials when they are interpreting their own land use rules."
>
> "The [appellate court] found aesthetically degrading the 'excessive massing of housing with insufficient front, rear and side yard setbacks [citation omitted].' Just as cogently, other people may well conclude that the close arrangement ... fostered a cozy, neighborly intimacy. The fact that narrow streets are unfriendly to speeding cars and that neighbors are thrust into close contact may well be viewed as a superior quality of living rather than a negative impact."
>
> "CEQA discourse has become increasingly abstract, almost medieval in its scholasticism. Nevertheless, if you apply common sense and the practical experience of processing land use applications, you will conclude that what is at stake in this case is not justiciable environmental impacts but competing visions of how to shape urban living."

— Hon. J. Brown, amicus brief to the California Supreme Court in *Pocket Protectors v. City of Sacramento* (No. C046247) 2005. The court declined to review or reverse the appellate court decision. Mayor Brown then successfully sought a partial, time-limited CEQA exemption for Oakland's urban projects. This is an example of the "one-off" special CEQA deals periodically cut by the Legislature as discussed in Part 2 of this report.

"CEQA discourse has become increasingly abstract, almost medieval in its scholasticism. Nevertheless, if you apply common sense and the practical experience of processing land use applications, you will conclude that what is at stake in this case is not justiciable environmental impacts but competing visions of how to shape urban living."

– Oakland Mayor Jerry Brown (2005)

For NIMBY litigants opposed to higher-density development and other neighborhood-scale changes in their communities, CEQA statutes and case law provide many examples of the legitimacy of privatized "environmental" protection. Protection of an individual's view, protection of an individual's "quality of life" measured by convenient access to ample parking supplies, and the absence of any localized increases in ambient noise or traffic congestion, are all recognized as CEQA impacts. CEQA also does not create any ranking system for impacts: each significant impact is as significant as any other, and each warrants as much mitigation as is feasible, resulting in inevitable policy trade-offs that are then litigated by the losing side of the political debate. Policymakers may support transit and higher-density development on transit corridors; residents may not, and if they lose at the policy level their next step is the courthouse, where they can allege dozens of technical study flaws in CEQA documents, and are likely to stop the approved project if even one study flaw is identified. (Part 3 includes a proposed reform of CEQA remedies for technical study flaws.)

Other reasons petitioners challenge infill projects run the political (and policy) spectrum, and often have little or nothing to do with "the environment." Anti-abortion protesters used a CEQA lawsuit in an attempt to block a planned parenthood clinic proposed to be located in an existing building in a neighborhood that already offered abortion services, asserting that the city violated CEQA by failing to appropriately consider the noise nuisance that the protesters would themselves create in the neighborhood if the clinic was allowed to open.[25] Mosque projects were targeted by those not sharing the same religious orientation, and one case included a plaintiff calling itself a "patriot" group.[26] Transitional housing for foster youth who "age out" of the traditional foster home programs on their 18th birthday,[27] affordable housing[28] and supportive senior housing[29] were targeted with improbable assertions of increased traffic and parking congestion. In addition, concerns were reported about "those people" and "loitering youth," and fears of "increased crime and vandalism," that are more evocative of a hoped-for past era of civil rights abuses than the "modern" self-image of wealthy, liberal – and notoriously NIMBY – coastal communities.[30]

> In addition, concerns were reported about "those people" and "loitering youth," and fears of "increased crime and vandalism," that are more evocative of a hoped-for past era of civil rights abuses than the wealthy, liberal – and notoriously NIMBY – coastal communities.

Greenfield Challenges

As shown in Figure 2, greenfield projects make up only 20% of the projects targeted by CEQA lawsuits.[31] Figure 5 shows the distribution of CEQA lawsuits against different types of greenfield projects. Just under half of these involve residential projects, including primarily "master planned communities" which include a mix of retail, commercial and employment components, schools and parks, along with associated public services and infrastructure, and are typically located either at the edge of existing developed areas already served by highways or other public infrastructure, or new or expanded resort projects. The second-largest category of greenfield development lawsuits targeted new renewable energy facilities, such as solar plants. Challenges to "greenfield" park projects like park trail construction or other projects designed to improve the visitor experience or increase visitation made up over 10% of the challenged greenfield projects; infrastructure and public service projects (e.g., a new high school in an unincorporated county community[32]) made up the remainder of the "greenfield" project category. More information about and examples of these projects are provided in Part 2 of this report.

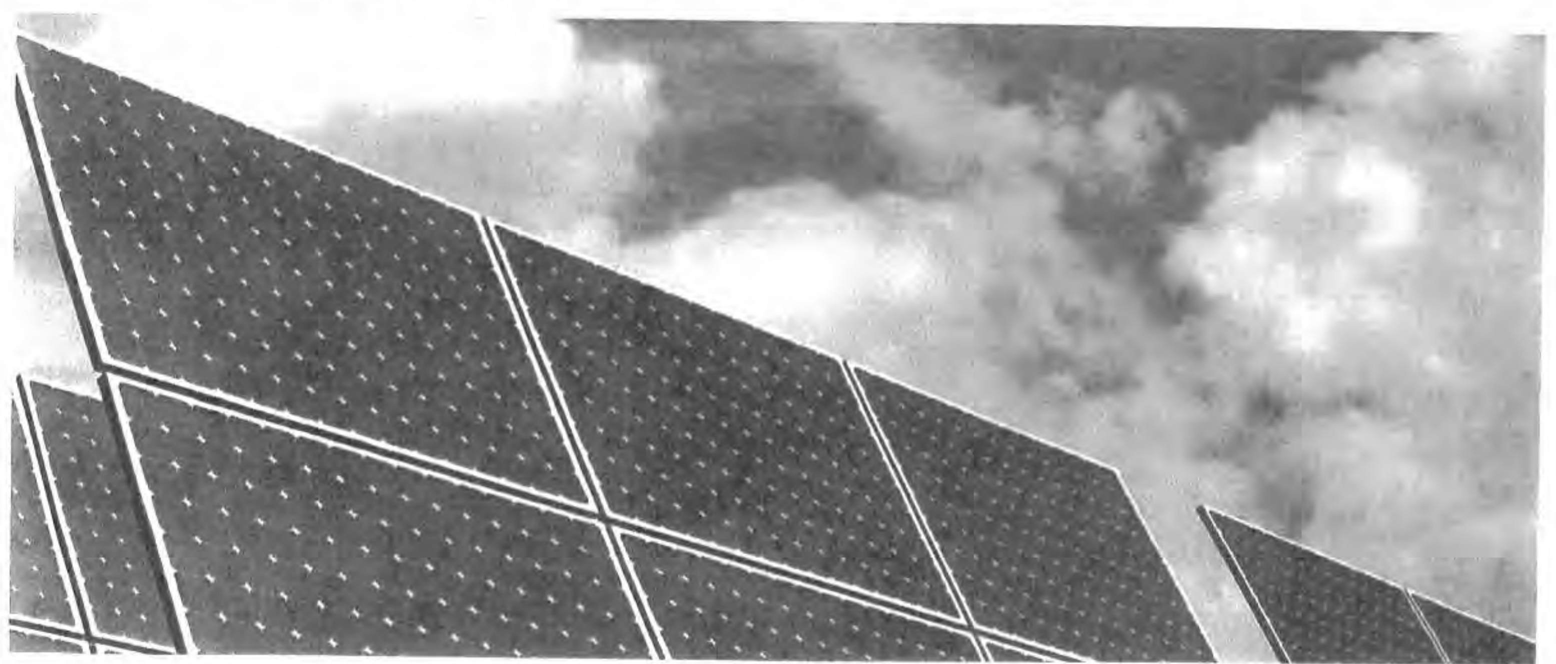
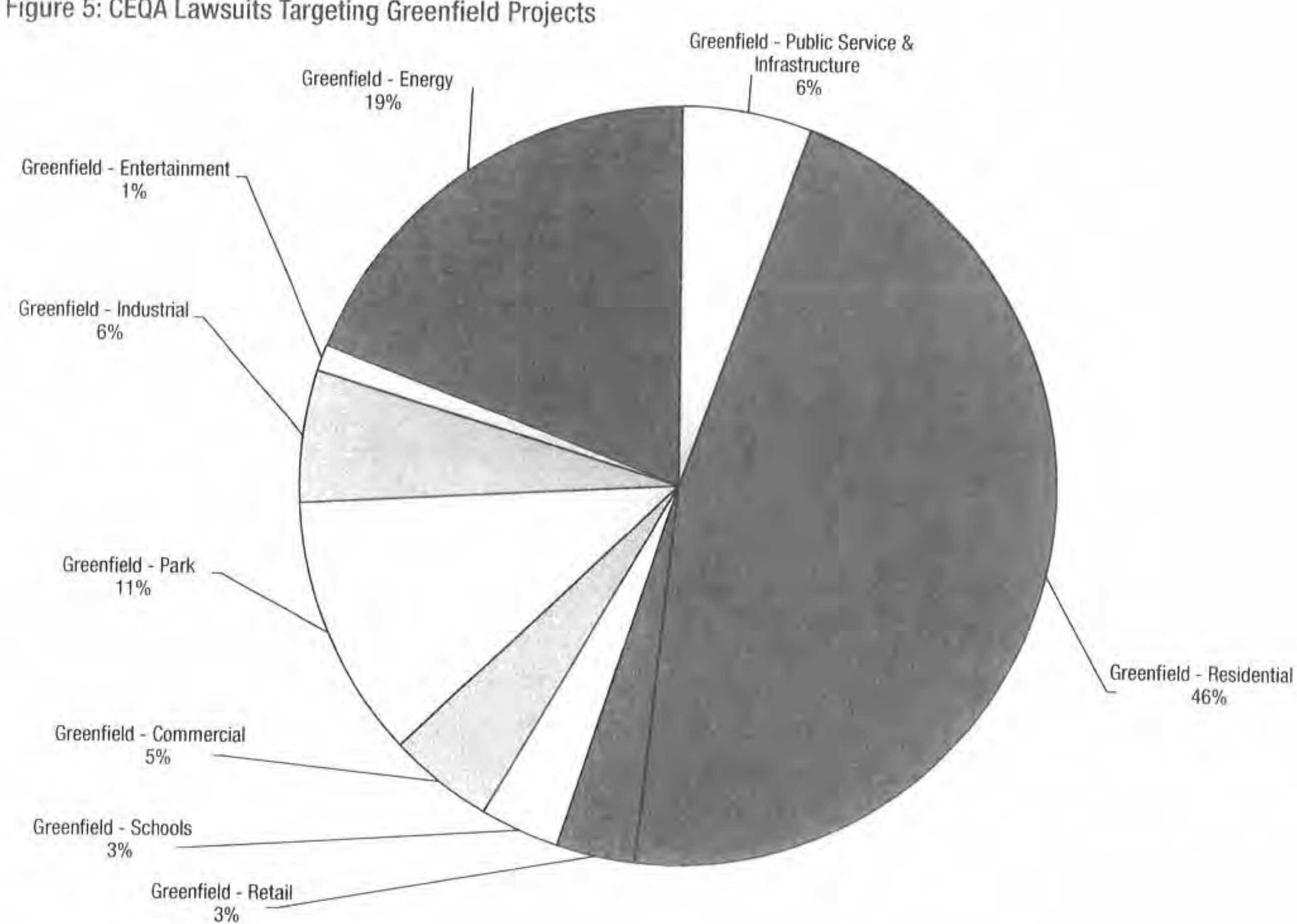


Figure 5: CEQA Lawsuits Targeting Greenfield Projects



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Bottom Line: CEQA Litigation Overwhelmingly Targets Infill Projects

This study definitively shows that housing and other types of projects that could, in principle, be located in either a greenfield or infill location are four times more likely to be sued if they are located in an infill location.[33] Notwithstanding the much higher CEQA litigation risk, the market continues to demand growth in California coastal counties. As a result, housing developers and agencies seeking to satisfy this market demand and comply with state mandates for higher-density, transit-oriented housing factor in CEQA compliance and litigation costs (and delays) when pricing projects. CEQA adds to housing costs. As the California Legislative Analyst recently reported, CEQA and other NIMBY opposition, as well as various regulatory and growth restrictions in coastal communities, have caused California's for-sale and rental housing prices to be far higher – more than double the cost – of any other state in the nation.[34]

"Any party can file a CEQA lawsuit, even if it has no environmental purpose. For example, a competitor can file a CEQA lawsuit to delay or derail a competing project."

NIMBY opposition to coastal county housing projects has steep costs. Taking into account the cost of housing, the U.S. Census Bureau has confirmed that California has earned the dubious distinction of having the highest percentage, and by far the greatest number, of people living in poverty of any state.[35]

No one asserts that Coastal California's excessive housing costs and supply shortfalls are all attributable to CEQA litigation abuse. That said, the fact is that CEQA litigation is a weapon most often fired at infill projects: the transit-oriented, higher-density, lower energy and lower water-consuming projects that myriad state policies have determined to be environmentally superior to rural "sprawl." People who cannot afford to live in California's coastal counties are then forced inland, where housing costs drop by half or more (e.g., Inland Empire housing costs are less than half of Orange County and Los Angeles housing costs),[36] but require long workplace commutes, since more employment opportunities remain in coastal counties. Those who cannot afford proximate urban housing are then the victims of more NIMBY opposition to transportation solutions, such as transit systems and HOV-lane additions to highways. With residents of inland counties paying far more for energy (e.g., for air conditioning in hotter climates) and more for gasoline (as a result of longer commutes, plus fuel surcharges such as the cap and trade-based greenhouse gas pricing increase that became effective in 2015), the "environmental" use of CEQA litigation against infill projects by NIMBYs disproportionately targets what was once the backbone core of the Democratic party: poor, working class and minority citizens.

> Why should we continue to tolerate litigation abuse of California's premier environmental statute to block non-polluting infill projects?

> The "environmental" use of CEQA litigation against infill projects by NIMBYs disproportionately targets what was once the backbone core of the Democratic party: poor, working class and minority citizens.

C. Everybody Files CEQA Lawsuits – for Any Reason

CEQA lawsuits have several unique attributes not shared by any other environmental statute in the United States:

- **First, any party can file a CEQA lawsuit, even for a non-environmental purpose.** For example, a competitor can file a CEQA lawsuit to delay or derail a competing project,[37] and a labor union can file a CEQA lawsuit to secure an agreement that gives the union that filed the lawsuit control over which project jobs will be allocated among which unions.[38]

- **Second, a CEQA lawsuit can be filed anonymously.** Neither the public, the judge, the public agency defending the lawsuit, nor the private applicant for the 50% of the CEQA lawsuits that have a private applicant,[39] are entitled to know who is suing them. They also are not entitled to know whether the lawyer who filed the CEQA lawsuit even has a client or is simply pursuing a "bounty hunter" claim for a quick (and typically confidential) financial settlement payoff. CEQA lawsuits also can be filed on behalf of a previously non-existent, unincorporated association with a sympathetic-sounding name (e.g., "Friends of Sustainable Neighborhoods"), provided that one member of the newly formed "association" filed any agency comment at any time prior to agency approval of the project. A lawsuit may allege any CEQA violation that was raised by any party at any time prior to agency approval, even if the objecting party agrees that the alleged deficiency was adequately addressed by the agency as part of the CEQA and project approval process.

The California Legislature has consistently declined to require disclosure of the identity and interest of those filing CEQA lawsuits. In late 2014, the California Judicial Council – which has independent authority to adopt court rules requiring disclosure – declined to extend its existing CEQA litigation disclosure rules (currently applicable to those filing "friend of court" amicus briefs in CEQA cases, and those seeking recovery of attorney fee awards in concluded CEQA lawsuits), to parties filing CEQA lawsuits. The Judicial Council concluded that requiring disclosure of CEQA litigants was a policy matter to be decided by the Legislature.[40]

As discussed in Part 3, the Legislature's refusal to extend CEQA's transparency mandate to those filing CEQA lawsuits provides a vivid illustration of how the special interests that use CEQA for non-environmental purposes exert their power in the legislative arena.

CEQA lawsuits are also relatively inexpensive: a case can be brought for the cost of a county court filing fee of a few hundred dollars. In addition, lawsuits require only preparation of a complaint or "petition" (which can allege very generalized deficiencies in an agency's environmental documentation) and two briefs (an opening brief typically limited to 25 pages, and a reply brief typically limited to 10-25 pages), with one court hearing in front of a judge typically lasting less than one day. The lawsuit is decided based on the content of the agency's "administrative record," the contents of which are prescribed by statute. The challenger is required to prepare or pay for preparation of the administrative record, but there is no prompt statutory remedy available if the challenger fails to timely prepare or pay for the cost of the record. Record preparation disputes can extend the time required to resolve a CEQA lawsuit for a year or longer.

> The Legislature's refusal to extend CEQA's transparency mandate to CEQA lawsuits provides a vivid illustration of how the special interests that use CEQA for non-environmental purposes wield power in the legislative arena.

> In the published CEQA appellate court cases that comprise the body of jurisprudence available for determining the probable outcome of a CEQA lawsuit, challengers enjoy nearly 50/50 odds of winning.

CEQA lawsuits proceed through California's three levels of judicial review: the trial court process can extend over two years, an automatic and mandatory right to appellate court review can require another one to two years, and a discretionary appeal to the California Supreme Court can take another year or longer. All litigation process times have been stressed by substantial budget cuts to the judiciary.

The simple act of filing a CEQA lawsuit, without seeking an injunction or awaiting any judicial remedy, vests the challenger with tremendous leverage. As documented in several recent CEQA studies of appellate court decisions:[41]

- In the published CEQA appellate court cases that comprise the body of jurisprudence available for determining the probable outcome of a CEQA lawsuit, challengers enjoy nearly 50/50 odds of winning.[42]
  - Even if the agency completed an EIR – the most elaborate and costly form of CEQA document, which by statute is to be upheld if it is supported by "substantial evidence in the record" even if "substantial evidence in the record" also supports a contrary conclusion or decision – the plaintiff still prevailed 43% of the time. To put the remarkably favorable odds of winning a CEQA lawsuit into perspective, in a meta-study of 11 administrative lawsuits nationally, including 5,081 federal court cases, agency challengers lost in 69% of the cases – and the Internal Revenue Service, which is required by Congress to closely track and quickly address adverse court claims, loses only 22% of its cases.[43]

- For "Negative Declarations," which are a less costly and less time-consuming type of CEQA document, the standard of judicial review is whether an opponent has made a "fair argument" that a project "may" have even a single adverse environmental impact. Negative declarations fail to withstand judicial scrutiny in 56% of the cases.

- CEQA documents must now study in excess of 100 different "environmental" topics. For each topic, an agency must correctly address the "setting" and "baseline," evaluate the project's "impacts," and identify "significance thresholds" for measuring whether an impact is indeed "significant" or "less than significant." For each "significant" impact, an agency must then identify "feasible" mitigation measures to "avoid" or "reduce to a less than significant level" such impacts, correctly identify "reasonably foreseeable future projects or plans" in the "project vicinity" (which may result in a significant adverse "cumulative" impact – even for a project impact that has been mitigated to a less than significant level), identify and evaluate a "reasonable range" of "feasible" alternatives to a project that can attain "all or most" of the project's "objectives," explain its conclusions with "findings," and then disclose "significant unavoidable impacts" for which no feasible mitigation measure or alternative is available. It is not enough under CEQA for a project to comply with a previously adopted plan for which an EIR has already been prepared, nor is it enough to demonstrate that a project complies with California's famously strict environmental standards that govern everything from energy and water efficiency to greenhouse gases and species protection.

- It is virtually impossible for lawyers engaged in CEQA litigation, and judges deciding CEQA cases, to avoid raising questions or concerns about whether an agency correctly completed all required components of the CEQA analytical process. It is also hard for judges, once they decide that an agency "did the air quality calculations incorrectly," to conclude that the agency should not be required to repeat this or other analytical steps.

CEQA documents must now study in excess of 100 different "environmental" topics.

- The most likely remedy in the event the court rules that an agency has not completed the required level of analysis and processing is for a judge to vacate the agency's project approval, and require more CEQA study. Vacating the project approval means, simply, that the project must be halted – as is – at the time when the decision is issued (absent special dispensation by a judge, such as weather-proofing by installing blue tarps on exposed plywood roofs) for the 2-4 years (or more) needed to repeat the agency CEQA process, and then return to court for a new trial court ruling and another round of appellate court review. In a recent case, a completed high-rise apartment project with tenants was served with a tenant eviction notice when a judge determined – years after the fact – that a historic resources study of a now-demolished former Spaghetti Factory restaurant fell short of what CEQA requires.[44]

- To address many conflicting CEQA appellate court decisions, as of May 2015, the California Supreme Court has 10 pending CEQA cases under review. These cases deal with a variety of issues with wide applicability throughout California. This includes the interplay between CEQA and California's climate change laws and policies,[45] the extent to which CEQA covers public safety services, and can require as "mitigation" staffing for police and fire services,[46] the extent to which increased demand for transit is an "environmental" impact requiring mitigation,[47] and the extent to which pre-existing environmental conditions (e.g., ambient levels of noise or odors or vehicle exhaust) should be evaluated under CEQA since these are environmental impacts on a project, rather than project impacts on the environment.[48] Some of these cases have been pending for several years, and the California Supreme Court is under no hard deadline for reaching a final decision, either by ruling for or against the agency targeted by the CEQA lawsuit or by remanding the case back to the lower courts for further consideration.

- There is no limit to the number of times a project can be sued under CEQA: each discretionary approval by each agency can be the subject of a separate CEQA lawsuit. For example, more than 20 lawsuits have been filed over the past 30 years against an infill redevelopment project in Los Angeles, most of which involve alleged CEQA deficiencies,[49] including two lawsuits filed during the 2010-2012 study period for this report.[50]

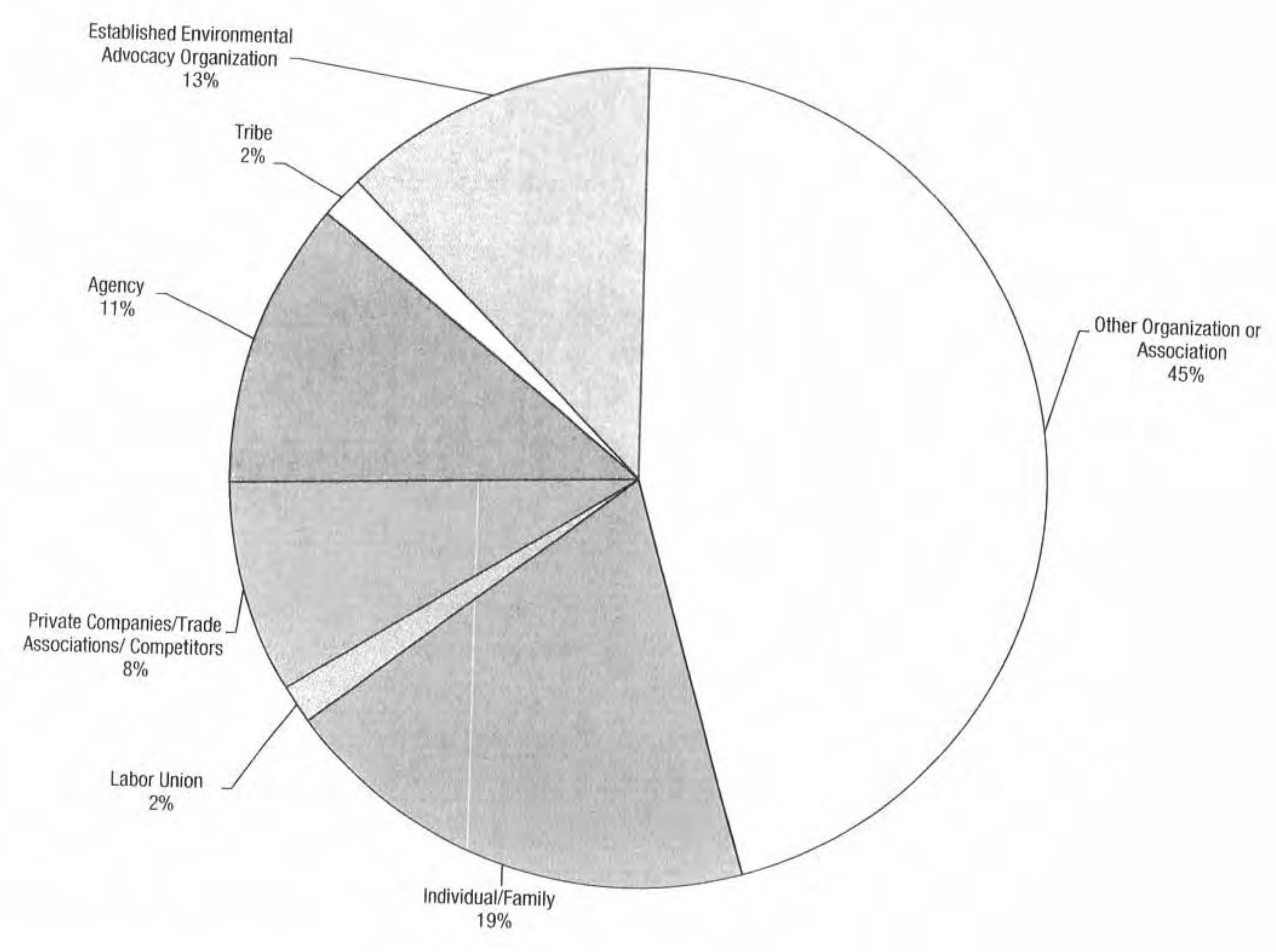
- A separate California "free speech" statutory prohibition – forbidding "strategic lawsuits against public participation" – prevents lawsuits from being filed against project opponents for any reason, such as tortious interference or even extortion.[51] In the most notorious of the recent cases, a student housing company run by enterprising alumni from the University of Southern California sought to control the student rental market by filing a CEQA lawsuit to block a project being built by a competing student housing developer. To gain further leverage, the housing company filed eight more CEQA lawsuits against the developer's other California projects, and then filed two more lawsuits against projects by relatives of the developer under a statute similar to CEQA in Washington state. The targeted developer filed a federal civil racketeering lawsuit against the student entrepreneurs, who had by then repeatedly described themselves as the "Al-Qaeda of CEQA." A federal judge declined to dismiss the federal lawsuit, and the entrepreneurs closed up shop.[52]

With these odds, these judicial remedies, these issues awaiting clarification from the Supreme Court, and these and other war stories, it should come as no surprise that banks making construction loans, and government agencies making time-sensitive grant and appropriations decisions, usually decline to fund projects while a CEQA lawsuit is pending. There is no bonding or other requirement that applies to project opponents who file CEQA lawsuits, project opponents are not required to pay attorneys' fees if the agency ultimately wins the lawsuits, and project opponents are entitled to seek judicial approval of reimbursement of their attorneys' fees and a "multiplier" or bonus amount for helping enforce an "environmental" law if they win even a partial victory on one environmental study topic regardless of whatever their real motivation is harming competitors, negotiating labor terms, derailing new environmental protections, or stopping "those people" from coming into a neighborhood.

Figure 6 presents our assessment of the types of parties ("petitioners") filing CEQA lawsuits. Because some CEQA lawsuits include multiple types of petitioners (e.g., one or more individuals and one or more groups), the total number of petitioners is larger than the total number of lawsuits filed. If there were multiple entities of the same type (e.g., multiple individuals), then only the petitioner type (e.g., "individual") was tallied. We created seven petitioner types: (1) individuals/families; (2) local/regional entities including unincorporated associations with sympathetic-sounding new names, but no readily-accessible track record of environmental litigation advocacy; (3) private companies such as competitors and trade associations; (4) other public agencies unhappy with the decision of the "lead" public agency that prepared the CEQA documentation; (5) Native American tribes; (6) labor unions; and (7) state and national environmental advocacy groups (e.g., the Sierra Club and Communities for a Better Environment).

It should come as no surprise that banks making construction loans, and government agencies making time-sensitive grant and appropriations decisions, usually decline to fund projects while a CEQA lawsuit is pending.

Figure 6: Types of Petitioners Filing CEQA Lawsuits



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About two-thirds (64%) of the petitioners filing CEQA lawsuits are either individuals or "other" organizations or associations. Recognized state and national environmental advocacy groups, by contrast, comprise only 13% of the CEQA petitioners. These statistics are not surprising; environmental advocacy groups generally support the types of infill development, including transit systems and other urban services, that are the most frequent targets of CEQA lawsuits. CEQA litigation abuse is primarily the domain of NIMBYs and anonymous new unincorporated entities, including those using CEQA for non-environmental purposes.

One surprising outcome of the study (to the authors, at least), however, is the frequency with which agencies use CEQA to sue each other. Agencies comprise 11% of CEQA petitioners, and largely fall into two groups: agencies seeking more "mitigation" – physical improvements to roadways or other infrastructure, or fee payments – from the "lead" agency that prepared the CEQA document and approved the project, and agencies fighting the zero sum game of allocating (and paying for) California's water resources. Although some tribal representatives have been active in CEQA reform discussions, tribes comprised only 2% of CEQA petitioners – and tribal projects were also the target of CEQA lawsuits.

CEQA litigation abuse is primarily the domain of NIMBYs and anonymous new unincorporated entities, including those using CEQA for non-environmental purposes.

Labor unions appeared as named parties in only 2% of CEQA petitions, business groups and competitors comprised 8% of the petitioner category, and inter-agency disputes accounted for 11% of petitioners.

Because the identity of those filing CEQA lawsuits is not required to be disclosed (a troubling exception to CEQA's disclosure and transparency mandates and public purpose), the authors of this study called more than 100 of the public agencies that had been targeted by CEQA lawsuits to get further information from agency planning or attorney staff about the nature of the parties filing CEQA lawsuits. From these interviews we learned the following:

- ***Business competitors***. Private sector competitive abuse of CEQA often garners the strongest political criticisms, but is part of a systematic approach to advance competitive business objectives with unconventional tactics. In "Protecting Market Share: The Boundaries of Competitive Engagement," a consulting group boasts that it is "the world leader in land use politics" and explains:

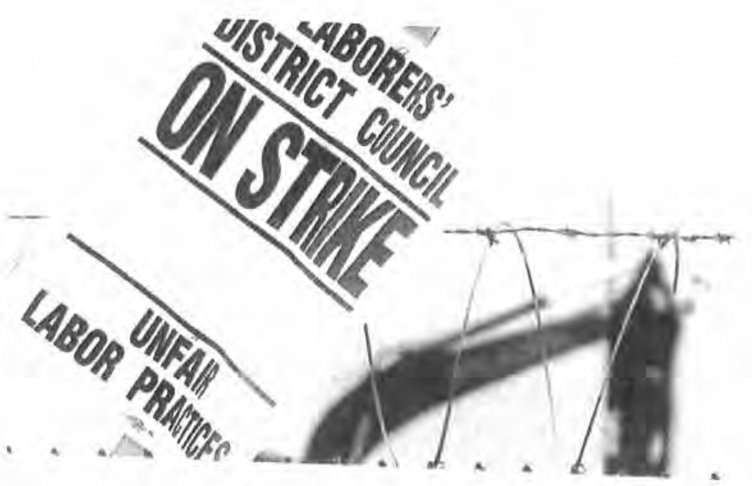
  "The courts have sanctioned the right to organize community opposition that urges government officials and agencies to deny land use permits to applicants, even when the underlying motive of the opposition is protecting market share and eliminating competition. What's more, the courts are protecting third-party funding sources, in many cases anonymous funding sources, which support the opposition efforts in order to block potential competition."[53]

Private sector competitive abuse is not limited to direct competitors (e.g., union versus non-union grocers or other competing retailers). Sometimes economic competitors are simply fighting projects that could increase their operating costs or decrease their access to "free" public resources. For example, a surface strip mining company that depends on maintaining a very shallow groundwater level in a remote valley has filed a CEQA lawsuit against a water project that proposes to transport some of the water stored in the valley to urban users – which could affect mining operations.[54] Private party disputes over water and other localized resources can result in contract claims and other lawsuits – but CEQA lawsuits to protect the commercial interests of miners strays far afield of CEQA's environmental protection goals.

- ***Regulated party petitioners*** generally identified themselves in CEQA petitions. Regulated industries tended to file CEQA lawsuits in the name of a trade association, and used CEQA to try to delay or modify regulations by asserting that more elaborate environmental studies were required to accurately assess a regulation's true environmental impacts (e.g., local agencies targeted by a trade group to block restrictions on the use of plastic bags),[55] or to more thoroughly document the environmental trade-offs in regulations that allegedly prioritized one policy objective over others (e.g., restrictions on the use of "once-through" water to cool power plants).[56] One of the more interesting examples of this regulated party petitioner pattern were CEQA lawsuits filed against marijuana dispensary use permit ordinances, in which parties aligned with medical marijuana purveyors asserted that placing limits on the number of authorized dispensaries could drive up prices, thereby forcing people to either drive longer for less expensive pot (with resulting traffic, air pollution, and greenhouse gas emissions) or grow their own pot and thereby consume more water during drought conditions.[57]

Labor tends to use CEQA litigation (and litigation threats) to gain control of project job allocations and wages, but also uses CEQA in disputes with other labor unions.

- ***Construction trade unions*** were more likely to be identified in petitions than other trade unions, but unions filing CEQA lawsuits typically did not identify themselves as a union. Labor tends to use CEQA litigation (and litigation threats) to gain control of project job allocations and wages, but also uses CEQA in disputes with other labor unions. In the high percentage of renewable projects in the Southern California desert that were threatened or sued under CEQA, for example, two different labor petitioner groups – each affiliated with a different construction trade union – each filed their own CEQA lawsuit against the same project.[58] This occurred in a reported dispute over which union would control the jobs created by these projects, and the competing unions used CEQA lawsuits in lieu of using the federal regulatory process for resolving territorial disputes.[59] Labor CEQA lawsuits were filed even for jobs requiring payment of prevailing wages and other negotiated terms that are generally perceived as favorable by the community and policy stakeholders (e.g., agency approval conditions requiring hiring of local businesses or residents, small businesses, minority-owned businesses or women-owned businesses).[60] Such union lawsuits reportedly sought to control job allocations to union members and allies. Agencies that declined to require Project Labor Agreements (PLAs) as conditions of project approval have been particular targets of these labor tactics, such as San Diego's expansion of its convention center.[61]



- ***Non-construction unions*** are even less likely to be named in CEQA petitions, in part due to federal law restrictions on the manner in which such unions are allowed to use unconventional tactics (like CEQA lawsuits) to bargain over wage and working condition issues with their employers. By far the largest category of these cases involve CEQA challenges to non-union retailers, particularly Walmart.[62] Lawsuits filed against Walmart and similar projects were all filed by "local" groups with environmental-sounding names, although union backing of such lawsuits was well known (and open union opposition to such projects was clear in the administrative agency approval process).[63] Another noteworthy case involved a union lawsuit against the closure of a luxury clothing store, and the opening of a replacement store in a nearby city, in a reported bid to avoid the need to organize a union and enroll employees at the new store.[64]

CEQA Helped Assure that the U.S. Manufacturing Resurgence Bypassed California

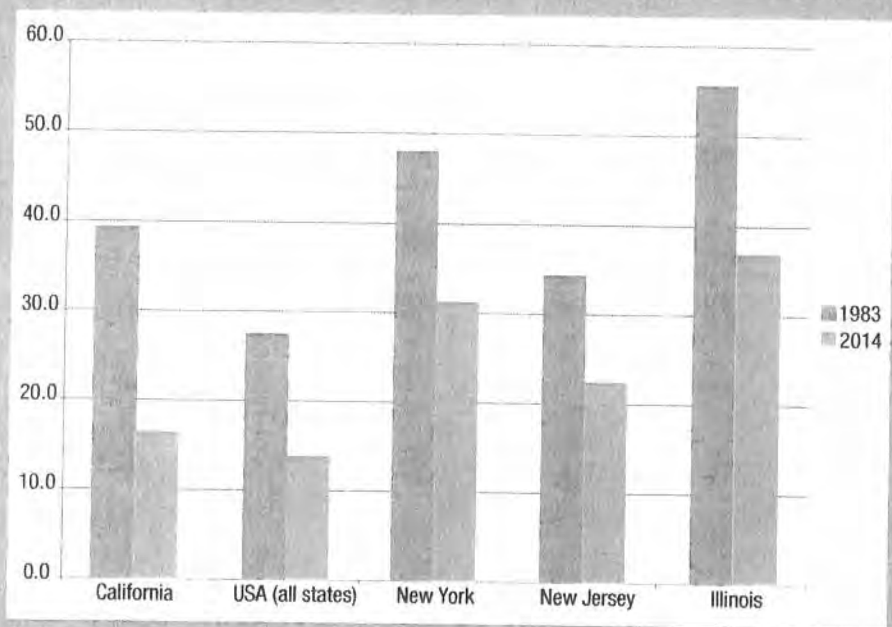
As commenter Richard Rider recently observed:

> "So, CEQA saves California?? Guess the other 49 states are cesspools of pollution and filth. Surely they envy us our protections."
>
> "Well, the other states DO like CEQA. After all, California is the engine of prosperity – for the other 49 states."
>
> "FACT: From 2007 through 2010, 10,763 industrial facilities were built or expanded across the country – but only 176 of those were in CA. So with roughly 12% of the nation's population, CA got 1.6% of the built or expanded industrial facilities. Stated differently, adjusted for population, the other 49 states averaged 8.4 times more manufacturing growth than did California."

— Richard Rider, comment on Voice of San Diego article, "The Great Uncertainty Facing California Businesses" (comment posted December 21, 2014), *available at* http://www.cmta.net/20110303mfgFacilities07to10.pdfProsperity

It is noteworthy that CEQA lawsuits do not appear to have materially affected California's workforce participation in private labor unions, based on available national data.

Bar Graph 1: Percent Union Members in Construction Workforce in 1983 and 2014



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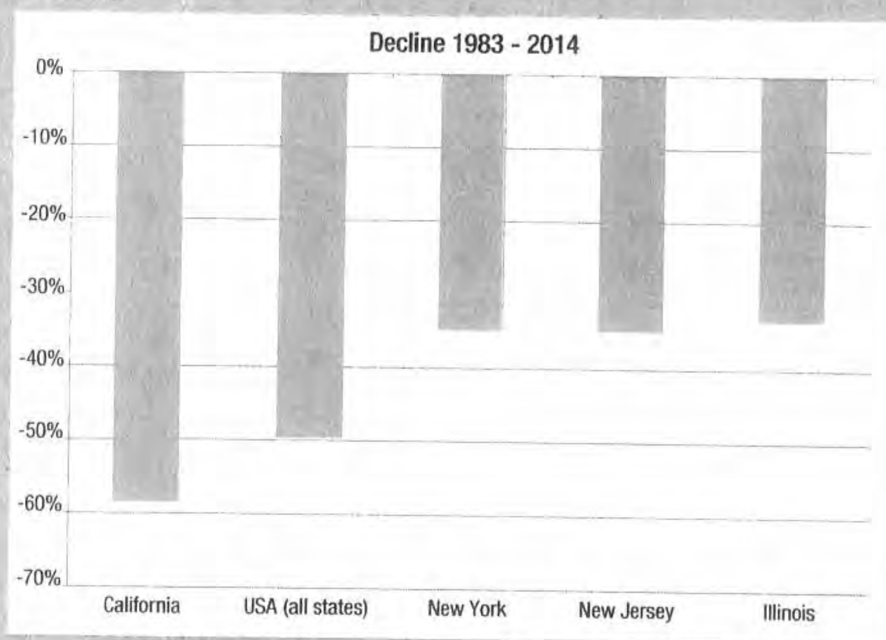
Bar Graph 2: Percent Decline in Rate of Private Construction Union Membership 1983-2012



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There is no evidence that California construction trade use of CEQA lawsuits (and lawsuit threats) is materially helping increase union membership in construction trades. As shown in Bar Graph 1, California construction trades have a higher rate of union membership than the national average. However, California construction trades also have a lower membership rate than other blue state flagships such as New York, New Jersey, Massachusetts and Illinois as measured over a multi-year period ending in 2014. Bar Graph 2 shows that California's construction unions have suffered a higher percentage decline in construction trade union membership relative to other states during the same period. California's construction union membership picked up slightly between 2012 and 2014, but still lags behind 24 other blue and purple states such as Illinois, New York, Indiana, Hawaii, Ohio, Pennsylvania and Wisconsin.

Job loss from NIMBY use of CEQA lawsuits (and CEQA lawsuits more generally) – which affects prevailing wage jobs, and both construction and non-construction unions – has been documented by various studies. One such analysis was prepared by the noted Southern California economist John Husing. It evaluated seven projects targeted by CEQA lawsuits and concluded that from just these projects, 3,245 prevailing wage jobs, paying workers an average annual wage of $100,502, were delayed or eliminated on an annual basis. The total affected annual lost wages and benefits was $326.1 million.

— Barry T. Hirsch and David Macphearson, Current Population Survey (CPS Outcoming Rotation Group (ORG) Earnings File (2015)), *available at* http://unionstats.gsu.edu/State%20U_1983.xls and http://unionstats.gsu.edu/State_U_2012.xlsx (accessed April 30, 2014); John Husing, CEQA Working Group, "Misuse of CEQA and Prevailing Wage Workers" (September 12, 2013), *available at* http://ceqaworkinggroup.com/wp-content/uploads/2013/09/Final-Husing-Report.pdf (accessed May 28, 2015).

Source: www.unionstats.com is an Internet data resource providing private and public sector labor union membership, coverage and density estimates compiled from the monthly household Current Population Survey (CPS). Economy-wide estimates are provided beginning in 1973; estimates by state, detailed industry and detailed occupation begin in 1983; and estimates by metropolitan area begin in 1986. The Union Membership and Coverage Database, constructed by Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University) and David Macpherson (Department of Economics, Trinity University), was created in 2002 and is updated annually.

Some union lawsuits represent distinct trade-offs between construction and operating unions, highlighted in an agency appeal dispute regarding union participation in a new transit car manufacturing facility in Los Angeles.[65] For various reasons, including California's consistently poor business rankings (generally attributed to high regulatory hurdles, CEQA litigation uncertainty, and other tactics), the post-recession resurgence of middle-class manufacturing jobs in the United States has largely bypassed California.[66] A CEQA challenge to the new construction of one of the very few new manufacturing facilities proposed to be located in Los Angeles in many years – for the manufacture of transit cars paid for by Los Angeles taxpayers – was derailed by a union that filed a CEQA appeal seeking a "card check" agreement with the manufacturer. ("Card check" is an expedited process for enrolling employees in a union and bypassing the ordinary union election process.) The manufacturer initially declined to accept the "card check" procedure, and announced that it would relocate the plant outside California, at which point political intervention resulted in a compromise that created fewer prevailing wage construction jobs – the new manufacturing facility would not be built – but delivered the "card check" outcome sought by the union litigant. The press reported that there were no environmental benefits included in the negotiated outcome.[67] It is noteworthy that this example did not result in an actual CEQA lawsuit being filed, since a political compromise occurred at the agency approval level.

- ***NIMBYs.*** Notwithstanding the more frequently reported non-environmental use of CEQA by unions and business competitors, NIMBYs comprised by far the largest number of project opponents, particularly for infill projects. NIMBY opponents were often characterized as "older" or "wealthier" or "less ethnically diverse" than the part of the population that would benefit from the challenged project, particularly for urban schools, parks, and multifamily housing projects. As a noted land use expert has observed, "[t]he people who are most apt to fight things have six-figure incomes and nice houses and college and post-college degrees."[68] NIMBYs and their advocates are often personally impassioned about protecting "their" environment, defining the "environment" as their local community. In fact, one of their advocates has waged an unsuccessful campaign to banish the term "NIMBY" from public use, calling it the "N-word" of CEQA."

- ***"Greenmail" and "Bounty Hunter Lawyers."*** Numerous lawsuits filed by entities with community-sounding names were attributed to lawyers that used CEQA to extract monetary, non-environmental, confidential settlements from agency and/ or private project sponsors. Several media stories have named two lawyers, including a Southern California lawyer who filed the largest number of CEQA lawsuits during the study period, as engaging in "greenmail" – using environmental laws to extract monetary settlements for private gain. There are also reported allegations of widespread violations of state and federal tax laws by dozens of the non-profit CEQA petitioners organizations formed by, and sharing the same address, relatives and colleagues of, the lawyer filing the highest number of CEQA lawsuits during the study period.[69]

NIMBYs comprised by far the largest number of project opponents, particularly for infill projects. NIMBY opponents were often characterized as "older" or "wealthier" or "less ethnically diverse" than the part of the population that would benefit from the challenged project, particularly for urban schools, parks, and multifamily housing projects.

> CEQA lawsuits are filed by businesses seeking to derail competitors, labor unions wanting to control the allocation of jobs, NIMBYs opposed to neighborhood-scale change even when limited to the repair of existing houses or occupancy of existing buildings, and lawyers who collect substantial, confidential monetary settlements without ever identifying their clients. Collectively, these paint a troublesome picture of undesirable, and abusive, civil lawsuits clogging California's overburdened and underfunded judiciary.

- ***Other Community Groups.*** During interviews, there were no reports of non-environmental community advocacy groups (e.g. poverty advocates) filing CEQA lawsuits to leverage non-environmental settlement terms. There were community groups deeply concerned about localized environmental conditions, and there were "Community Benefit Agreements" as well as "Development Agreements" negotiated typically as part of the political process with agency staff and elected leaders. These agreements included providing non-environmental benefits, such as prioritizing local residents in hiring or providing affordable housing, contributing to local job training or educational programs, and supporting the arts and other activities.[70] These and similar community agreements known to the authors emerged as a result of political advocacy and organizing efforts rather than CEQA lawsuits.

- ***National and Regional Environmental Organizations.*** About 13% of CEQA lawsuits included as named petitioners established statewide environmental advocacy groups such as Communities for a Better Environment and the Center for Biological Diversity, and established regional environmental advocacy groups such as Endangered Habitats League. These lawsuits were more likely to target greenfields projects, projects or plans involving highway or industrial plant expansions, and state regulatory programs involving pollution control or resource extraction. Some local chapters of major organizations (e.g., the Sierra Club and Audubon Society) also field CEQA lawsuits, and generally pursued the same agenda as the established environmental groups that did not operate with a chapter structure. If CEQA's standing requirements (the right to file a lawsuit to enforce CEQA) was modified to be in alignment with its parent federal statute, the National Environmental Policy Act (NEPA), these environmental advocacy groups would continue to have full access to judicial review and enforcement of CEQA – and the projects these groups target tend to have a much larger environmental footprint than the infill spats that currently dominate the judiciary's CEQA litigation caseload.

- ***California Tribes*** appeared in only about 2% of CEQA cases and were more likely to participate in lawsuits with multiple petitioners including established state and national environmental organizations. Tribal projects were also targeted by CEQA lawsuits. (It is noteworthy that the study period pre-dated the January 2013 effective date of Assembly Bill 52 (Gatto), which expands CEQA requirements relating to tribal consultation and mitigation.)

CEQA lawsuits filed by businesses seeking to derail competitors, labor unions wanting to control the allocation of jobs, NIMBYs opposed to neighborhood-scale change even when limited to the repair of existing houses or occupancy of existing buildings, and lawyers who collect substantial, confidential monetary settlements without ever identifying their clients – collectively, these paint a troublesome picture of undesirable, and abusive, civil lawsuits clogging California's overburdened and underfunded judiciary.

What's most shocking, however, is that these abusive litigation tactics are being undertaken in the name of "the environment" – when in fact the environment, jobs, affordable housing, public parks, and a broad range of other important social and political priorities are derailed, delayed, or made far more costly by CEQA litigation abuse. As many commenters have noted, a powerful political alliance between labor and environmental advocacy groups has prevented CEQA lawsuit abuse reforms.

The editorial board of the *San Francisco Chronicle* recently summarized succinctly the challenge of CEQA reform:[71]

> "The problem: The 40-year-old California Environmental Quality Act is vulnerable to exploitation from interests whose motivations have nothing to do with protecting resources. Lawsuits have been filed by labor unions as leverage for organizing and even by business competitors.
>
> The solution: The law needs to be reformed to provide greater transparency on who is actually bringing a lawsuit, along with faster legal review and tighter guidelines on the basis for litigation.
>
> Who's in the way: Environmental and labor groups are adamantly opposed to substantive reforms."

The need for CEQA reform was identified as a top priority in all 14 regional conferences sponsored by the California Economic Summit, a partnership between California Forward and the California Stewardship Network.

D. CEQA Lawsuits Occur in All California Regions: More Lawsuits are Filed in Large Population Centers, but Major Projects are Challenged Everywhere

California's population is the largest and among the most diverse in the country. California is the third-largest state, and its communities are distributed among exceptionally diverse topographic and climatic zones. Despite this diversity, however, the need for CEQA reform was identified as a top priority in all 14 regional conferences sponsored by the California Economic Summit, a partnership between California Forward (a non-partisan, non-profit organization working to identify common sense steps Californians can take to make government work) and the California Stewardship Network (a civic effort to develop regional solutions to the state's most pressing economic, environmental, and community challenges).[72] One conclusion from the first summit:

While the California Environmental Quality Act (CEQA) has strong benefits to ecosystems, public health, and environmental quality, the CEQA process has been misused, often substantially increasing costs of projects and delaying both private sector job-creating investments and critical public-works projects important to competitiveness and public safety.[73]

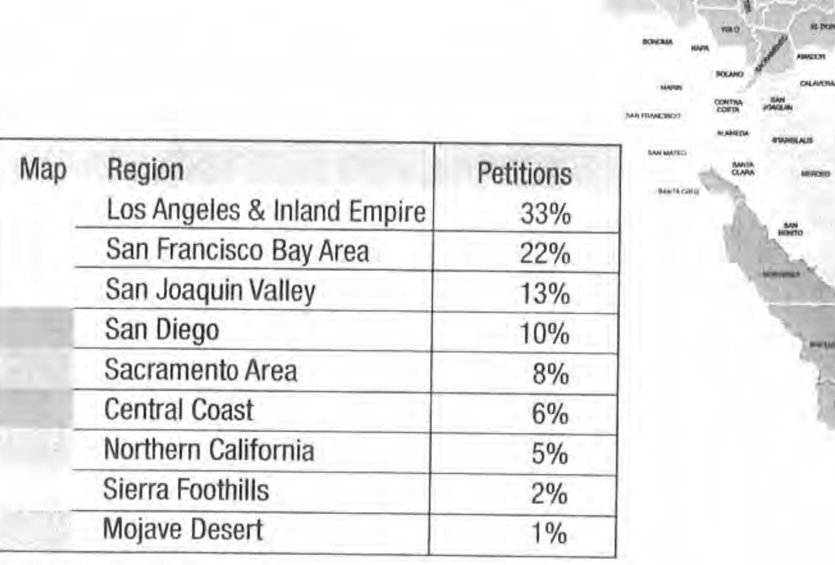
Each region weighed in with its own tales of CEQA litigation abuse, such as "document dumping" tactics used to derail project approvals by parties who ignored what was often a multi-year public review and comment process, greenmail lawsuits by bounty-hunter lawyers, and NIMBY lawsuits over a single-family home on an existing lot in an existing neighborhood.

Consensus CEQA modernization recommendations from this extraordinary collection of regional leaders from government agencies, environmental organizations, businesses, educators and other key stakeholders include:

- Increase transparency and reduce uncertainty in the CEQA administrative and litigation processes.
- Eliminate non-environmental uses of the statute (e.g., thwarting competition, NIMBY challenges to change, leveraging non-environmental monetary benefits and "greenmail").
- Refocus CEQA administrative and litigation processes to improve environmental outcomes.
- Avoid duplicative CEQA review processes.
- Focus CEQA modernization on "3E" outcomes – those that will improve the quality of California's environment, economic competitiveness and community equity.[74]

This study demonstrates how widespread CEQA litigation has become throughout the state. Figure 7 shows the distribution of the CEQA lawsuits filed during the study period in California's major regions.

Figure 7: Distribution of CEQA Lawsuits in California Regions



Map	Region	Petitions
	Los Angeles & Inland Empire	33%
	San Francisco Bay Area	22%
	San Joaquin Valley	13%
	San Diego	10%
	Sacramento Area	8%
	Central Coast	6%
	Northern California	5%
	Sierra Foothills	2%
	Mojave Desert	1%

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E. More Thoroughly Studied Big, Well-Funded Projects Get Sued More Often Than Smaller, Less Well-Funded Projects

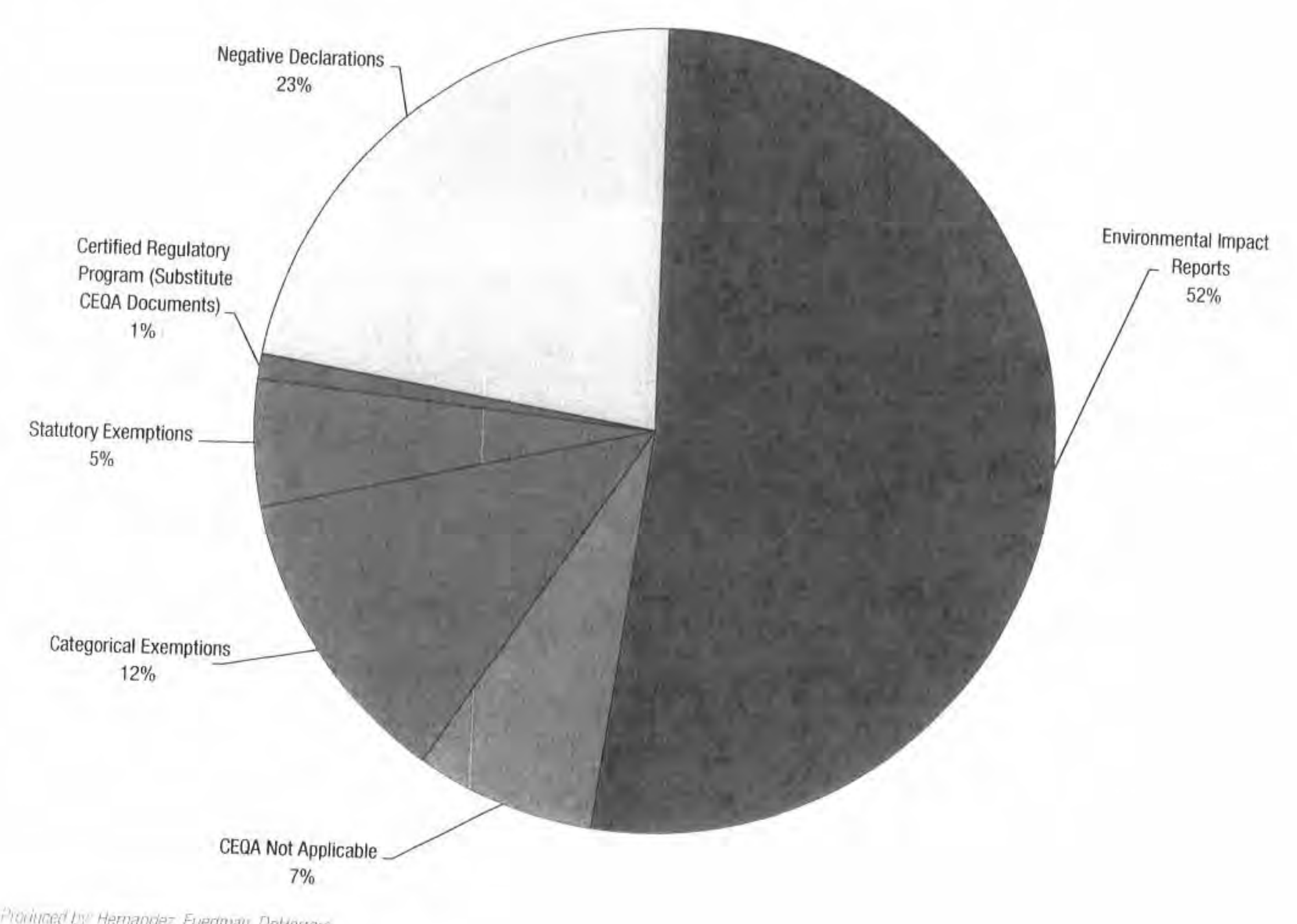
During CEQA reform debates, defenders of the CEQA litigation status quo have cited the thousands of agency decisions made in larger jurisdictions, such as Los Angeles and San Francisco, and the comparatively small number of CEQA lawsuits filed in those cities.[75] The overwhelming majority of CEQA compliance documents, however, involve the use of restricted regulatory exemptions for extremely minor projects,[76] such as repairing single family homes,[77] acquiring park lands,[78] making minor modifications to existing uses such as modifying signage or repairing piping or other infrastructure, etc.[79] Figure 8 shows the categories of CEQA compliance documentation tracks that are challenged in CEQA lawsuits.

As background, because CEQA applies to "discretionary" project approvals, and because many cities require such "discretionary" approvals for even very minor activities (e.g., building a deck in the backyard of a single-family home,[80] or opening a retail store, restaurant or even medical clinic in an existing building[81]), CEQA does indeed apply to hundreds of thousands of agency decisions that are of zero interest, and zero visibility, beyond the permit applicant and the city staffer at the building counter. In the most extreme example, by its charter *all* permits issued in San Francisco are considered "discretionary" and trigger CEQA review.

CEQA also has more than 30 regulatory "exemptions" for projects that do not typically result in any significant environmental impacts; statutory exemptions for politically-connected projects (e.g., stadiums and prisons); exemptions for practically imperative actions that could collapse under the financial, scheduling and litigation risk costs inherent in CEQA (e.g., bus stop locations and fares, groundwater management regimes); and a "common sense" exemption from CEQA reflected in the statute and case law (e.g., whether a public agency buys Coke or Pepsi for its vending machines – even if selecting one product will require longer truck trips and cause more air pollution than another).

Because CEQA applies to "discretionary" project approvals, and because many cities require such approvals for even very minor activities, CEQA applies to hundreds of thousands of agency decisions that are of zero interest, and zero visibility, beyond the permit applicant and the city staffer at the building counter.

Figure 8: CEQA Compliance Tracks Targeted by CEQA Lawsuits



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The study shows that larger projects for which full EIRs are prepared, and the far more detailed environmental studies included in EIRs, get sued much more often than smaller projects that qualify for CEQA exemptions or are processed with a shorter-form "Negative Declaration." Unfortunately, larger projects and EIRs are the norm for the kinds of transformational projects that California's environmental policy mandates and diverse, growing population demand, such as utility-scale solar and wind facilities, transit systems, modifications of city and county land use plans to provide for higher-density and transit-oriented development, and larger-scale urban housing and employment projects that implement such higher-density land use plans. The cost of an EIR can exceed $1 million and require more than a year to complete, presenting a daunting economic hurdle for all but the most well-funded projects. Smaller and much more leanly funded projects, such as park trail renovations and the adaptive reuse and remodeling of existing structures (which also generally include building code upgrades to improve public safety and implement "green" state mandates like water- and energy-conservation fixtures), can spend in excess of $50,000 on less costly alternatives to EIRS such as Negative Declarations, but are also easier to topple with threatened or actual CEQA lawsuits that would cost hundreds of thousands of dollars in legal fees and project delay costs, e.g., loss of grants, bank loans and other funding sources.

The act of simply filing a CEQA lawsuit can kill the most environmentally benign small project, while the destinies of big projects are controlled by the financial appetite of combatants willing to continue writing checks totaling millions of dollars to the legions of by-the-hour consultants and attorneys in the "CEQA industry."

CEQA lawsuits can delay, but typically do not derail, really "big" projects with ample financial resources. On the other hand, CEQA lawsuits can stop "small" projects supported by poorly funded agencies (e.g., parks and schools), non-profits (e.g., workforce training and affordable housing), small businesses (e.g., restaurant and auto repair shops) and individuals (e.g., owners of small businesses and single-family homes). The act of simply filing a CEQA lawsuit can kill the most environmentally benign small project, while the destinies of big projects are controlled by the financial appetite of combatants willing to continue writing checks totaling millions of dollars to the legions of by-the-hour consultants and attorneys in the "CEQA industry."

- **Environmental Impact Reports (EIRs)** are the most elaborate and costly CEQA compliance track, and are required for projects that may cause one or more significant adverse impacts, unless the project qualifies for a statutory or regulatory exemption, or falls within the jurisdiction of an agency that has approval to manage its own version of a CEQA process. There are different types of EIRs,

including an "addendum" process for adding new information to an EIR. All EIRs are grouped together for purposes of this study. Notwithstanding the fact that projects that undertake EIRs get the most elaborate and comprehensive levels of study and public review, they are also the "big" projects that are far more likely to attract a CEQA lawsuit: 52% of challenged CEQA projects involve EIRs. Often-passionate local disagreements about the merits of whether to proceed with the project at all (e.g., for solar and transit projects, and higher-density urban infill projects), and equally determined efforts to secure project labor agreements or delay competitors, play out in CEQA lawsuit challenges that are legally framed as EIR deficiencies, such as alleged problems with traffic or air quality technical calculations.

- **A Negative Declaration** may only be used for a non-exempt project for which there is no "fair argument" in the agency record that one or more significant adverse impacts "may" occur. A small project that does not qualify for a Categorical Exemption most often proceeds with the Negative Declaration compliance track. However – particularly in urban areas with existing environmental challenges like traffic congestion and traffic-related air pollution, or infrastructure challenges relating to water or wastewater, or temporary but bothersome construction noise or traffic diversion impacts – defending a Negative Declaration can be almost futile. Less than a quarter of CEQA lawsuits challenge Negative Declaration CEQA documents.

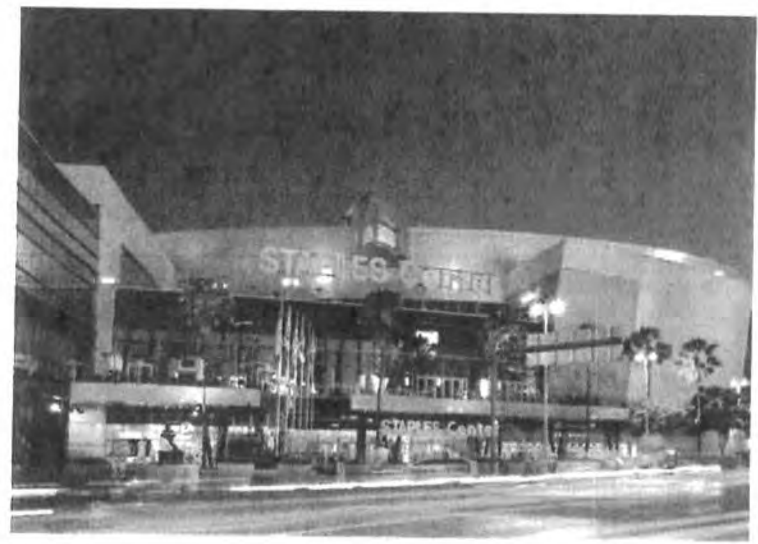
- **A project may be wholly or statutorily exempt** from one or more of CEQA's procedural or substantive projects by the Legislature (subject to the Governor's approval).

- **"Regulatory categorical exemption"** applies to projects which "normally" do not have any significant adverse impacts, and which fit within the parameters of one of more than 30 exemption "classes" included in the regulations implementing CEQA.

- **The common sense "exemption"** from CEQA arose from judicial interpretations of the CEQA statute, and is also reflected in CEQA's regulations.

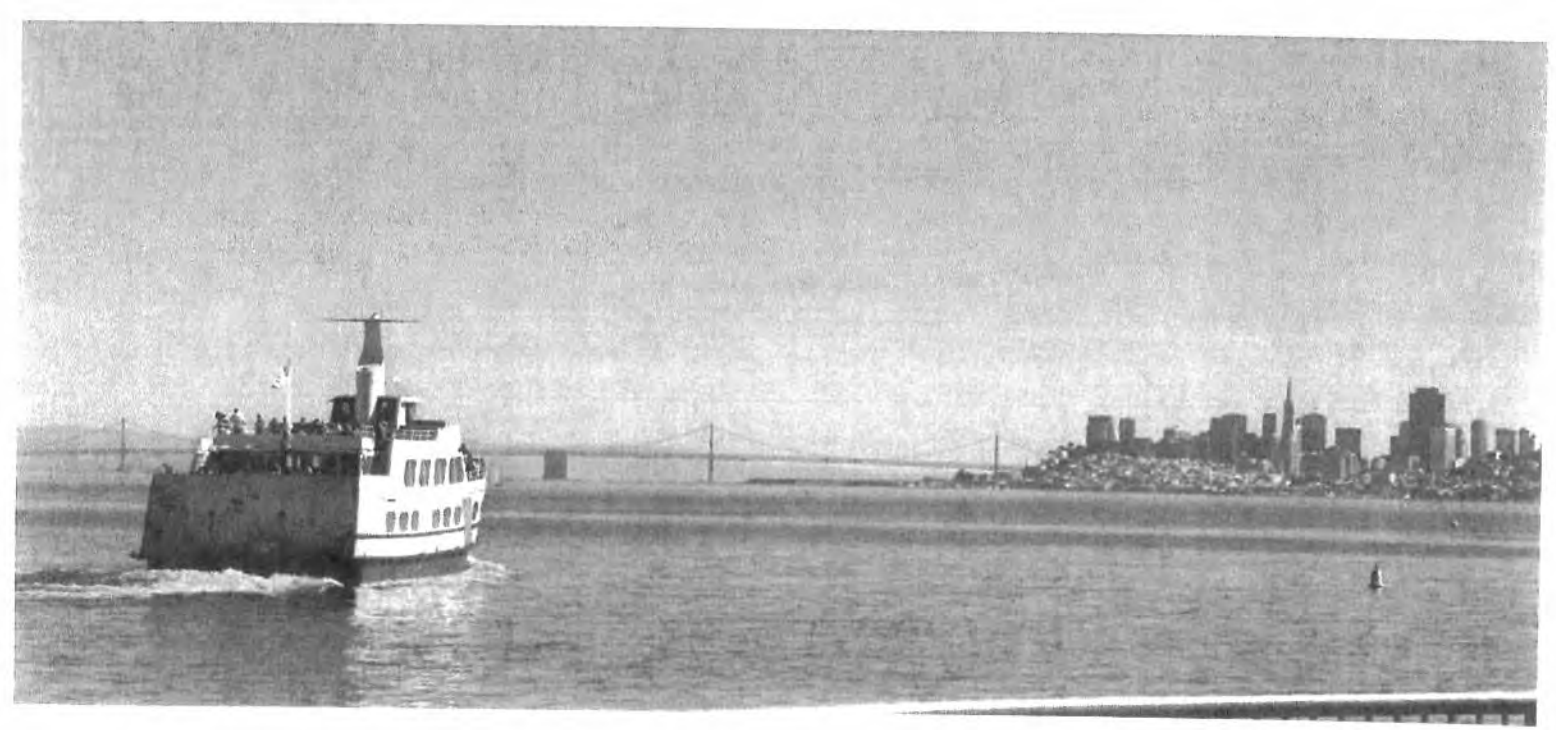
Agencies are encouraged, but not required, to complete CEQA paperwork for projects that are exempt from CEQA under a statutory, categorical, or common sense exemption. CEQA petitions that alleged that agencies completed no CEQA documents were separately tallied for this study, although from our interviews we learned that the agency had concluded that the challenged project qualified for one or more exemptions.

Sometimes agencies used multiple CEQA compliance tracks, including, for example, processing a project with both an Addendum (based on an earlier EIR for an earlier version of the project or for a land use plan) and a Negative Declaration that provided an additional increment of public review processing. In these few cases, the study tally included each compliance track, and this resulted in more tallied CEQA compliance tracks than projects.



While statewide statistics are not compiled on the number of EIRs, Negative Declarations and exemption decisions made annually, there are far fewer EIRs prepared relative to the other CEQA compliance tracks. Nevertheless, EIRs are most frequently challenged and thus a higher percentage of EIRs are challenged than other forms of CEQA documents. As one of the defenders of CEQA's litigation status quo indeed reported, for Los Angeles, "all the big projects are sued."[82] This study confirms that big projects with EIRs get sued most often under CEQA, and shows that CEQA lawsuits are used far more often to nitpick the analytical adequacy of an EIR than to challenge the environmental analyses (or lack thereof) in Negative Declarations or exemption determinations.

As one of the defenders of CEQA's litigation status quo reported, for Los Angeles, "all the big projects are sued." This study confirms that big projects with EIRs get sued most often under CEQA.



PART 2

CEQA Lawsuit Targets – The Stories Behind the Statistics

Comprehensive study statistics tell only part of the CEQA litigation story. Reviewing actual CEQA petitions filed against real projects paint a more vivid picture of the all-too-frequent (and non-environmental) abuse of CEQA as do media and other reports of CEQA administrative appeals seeking to derail projects before final agency approval. These examples illustrate fundamental and sometimes passionate disagreements about the appropriate land use or other policy decision at issue, but none involve avoiding the type of harm to "the environment" envisioned when CEQA was enacted in 1970.

> Comprehensive study statistics tell only part of the CEQA litigation abuse story. Reviewing actual CEQA petitions filed against real projects paint a more vivid picture of the all-too-frequent non-environmental (and anti-environmental) abuse of CEQA.

It is also important to recognize that all of the challenged CEQA projects have already run the gauntlet required to secure lead agency approvals: only approved projects can be sued under CEQA. This approval gauntlet can include bruising and protracted public debates in community meetings, at the Planning Commission, City Council or County Board of Supervisors, and even at the ballot box among the voters in a community. Many CEQA lawsuits, especially NIMBY and labor lawsuits, are filed by the losers in these political battles – and use CEQA litigation as the final leverage they have available to overturn the decision that emerged from the democratic process. Because the act of filing a CEQA lawsuit is enough to block most forms of private and public sector funding, the stakeholders and public agency decision-makers who supported the project then lose (permanently or for the period that the lawsuit is pending) the benefits promised by the project.

Some examples of CEQA litigation in action illustrate that even lawsuits filed for "environmental" purposes involve policy disagreements, not the extent to which the "environmental" impacts of an approved project have been appropriately studied and mitigated.

- ***Stop Affordable Housing in Silicon Valley – Let's Make a Free Farm Instead.*** A Santa Clara infill site located next to a major transit center and regional mall, and bordered by single-family homes, illustrates the democratic decision-making process – and the community's loss of an important project benefit due to a CEQA lawsuit.[83] The site was formerly a small experimental farm owned by the Regents of the University of California. The Regents determined that the site was no longer suitable for this use, and embarked on a planning and development process with extensive community stakeholder engagement. Ultimately the majority of the community favored redevelopment with three components: single-family homes adjacent to the existing single-family homes in the neighborhood, a new neighborhood park for use by local residents, and critically needed market-rate and affordable apartments for seniors. A small but passionate group opposed this plan and instead lobbied for an urban farm that would produce food and provide hands-on farm education in Santa Clara. They had no money to purchase this public property for their desired use, and instead they wanted the cash-strapped UC system to dedicate this surplus property to non-profit urban farming uses. The urban farming advocates unsuccessfully filed administrative appeals to block the city's project approval, and ultimately – and again unsuccessfully – attempted to reverse the project approval through a citywide referendum vote on the project. The group also filed a CEQA lawsuit, which the courts ultimately concluded had no merit.

During the several years that the lawsuit remained pending, the senior housing project first lost critically needed public grant funding, and ultimately lost crucial redevelopment agency funding. About a decade later, the components of the project that remained financially viable – single-family homes and a new neighborhood park – were completed, but the senior project remains derailed by funding shortfalls. The site was never destined to be an urban farm: even had the CEQA lawsuit been successful, the Regents and city would have simply corrected the CEQA study and re-approved the project. In the heart of Silicon Valley – one of the most jobs-housing imbalanced areas of California, where lengthy commutes and costly housing are both norms – seniors who may have voluntarily sold their homes if they could stay in town (thereby making existing homes available for purchase by families) lost. So did seniors in need of scarce affordable housing, and hundreds of families with seniors in need of quality local housing with senior support services. And the people who would have built and staffed the senior housing center lost, too.[84]

This case and others described below help illustrate how a CEQA lawsuit can be used to attempt to thwart the democratic process. In this case, the project was obstructed by passionate opponents who could not persuade The Regents to donate state-owned lands for non-economic uses, could not persuade the city to restrict authorized site uses to urban agriculture instead of housing for seniors and families and a new neighborhood park, and could not persuade the voters to overturn the city's decision to approve the project.

To the extent that CEQA was intended to prevent agencies from approving projects that are harmful to the environment, this and other cases demonstrate that this is simply not the objective of most CEQA litigants today. This part of our report illustrates a sample of the projects behind the statistics, along with projects that did not even make it into the study statistics because the project was killed or withdrawn or never started because of CEQA's inherently unpredictable, lengthy and costly pattern of litigation abuse for any purpose, by any party.

A. Public Agency Projects

As depicted in Figures 1 and 9, about half of CEQA lawsuits target public agency projects, plans or regulations and involve no private sector applicant, resulting in CEQA's compliance and litigation costs and risks being borne solely by taxpayers.[85] It is critical to understand that the cost of CEQA lawsuits is not simply paying attorneys and experts to defend the lawsuit. Once a CEQA lawsuit has been filed (often for well under $10,000 in court filing fees), even if the agency is ultimately determined (after 2-5 years or more of trial and appellate court proceedings) to have complied with CEQA, taxpayers can suffer hundreds of millions of dollars of increased costs. As recently reported by the *San Diego Union Tribune*:

> "[Petitioner Attorney] is big on suing local governments. He has sued San Diego many times. Sometimes he wins, as when he challenged the financing scheme for the expansion of the downtown convention center. Sometimes he accepts financial settlements. Often, he loses. But even when he loses it can cost taxpayers big time. [Petitioner Attorney] sued San Diego last year, twice, seeking to block a $120 million bond issue the city planned for street repair and other infrastructure. He lost the first suit and the second suit never got to trial. The city finally sold the bonds last week, attracting significant investor interest and raising all the cash the city wanted. But because [Petitioner Attorney] appealed the ruling in his first suit, and even though he will likely lose that too, the city had to pay a higher interest rate to the investors, 4.04% compared to the 3.8% that had been estimated. The difference in interest rates will mean an estimated $200,000 a year in additional debt service. For 30 years total, some $6 million. Thanks, [Petitioner Attorney]."[86]

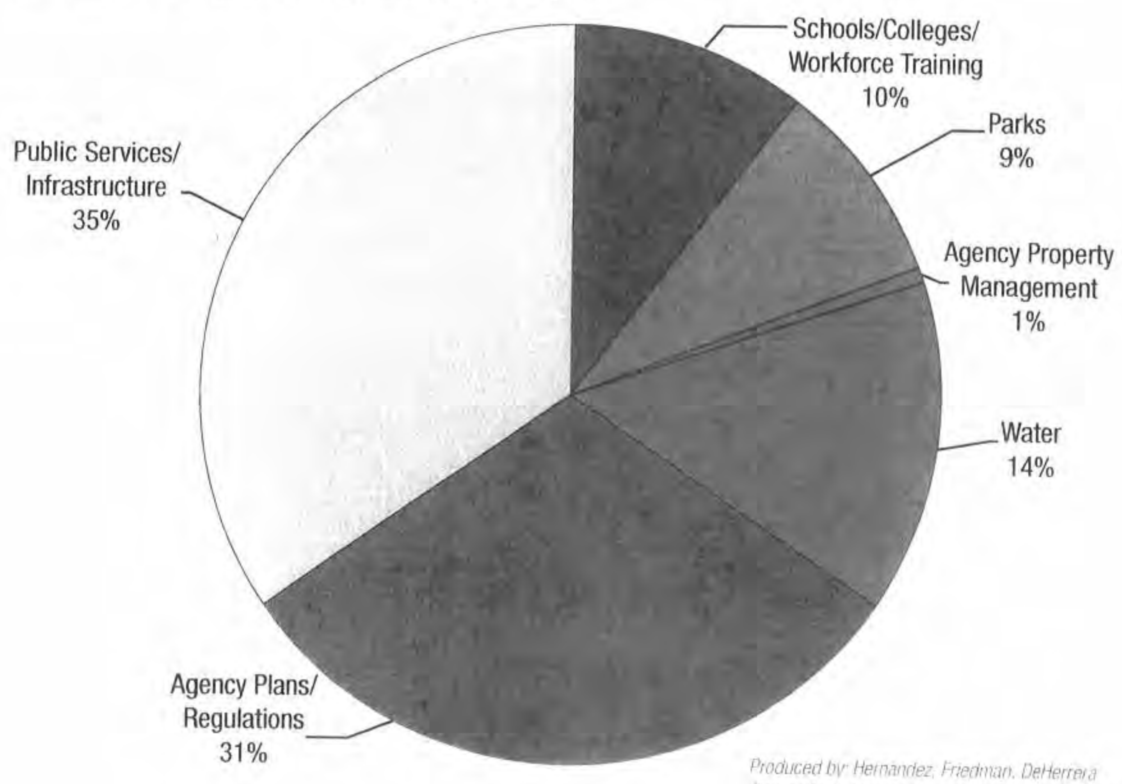
It is critical to understand that the cost of CEQA lawsuits is not simply paying attorneys and experts to defend the lawsuit. Once a CEQA lawsuit has been filed (often for well under $10,000 in court filing fees), even if the agency is ultimately determined to have complied with CEQA, taxpayers can suffer hundreds of millions of dollars of increased costs.

Taxpayers can suffer major financial losses even from threatened CEQA lawsuits. For example, a critical part of the $1.4 billion improvement project to construct a carpool lane and related improvements along a 10-mile stretch of Interstate 405 over the Sepulveda Pass required the replacement of an overpass at Mulholland Drive. A multi-year EIR had been completed to address scores of community concerns – but a small group of wealthy neighbors near the overpass raised aesthetic objections to the overpass design, and wanted a "world class architect" hired to build a prettier overpass. Fighting the neighbors' threatened CEQA lawsuit would have resulted in the loss of critical federal funding and hundreds of construction jobs during the depths of the Great Recession – even if the adequacy of the EIR was ultimately upheld after several years of litigation. Therefore, the agency chose to cave in, and built a modified bridge design that not only caused taxpayers millions of additional dollars, but also required two weekend closures of Interstate 405, which is one of the busiest highways in California.[87]

> Taxpayers can suffer major financial losses even from threatened CEQA lawsuits.

Taxpayer costs tell only a small part of the CEQA litigation abuse story: CEQA lawsuits hurt real people, with real needs, for non-environmental reasons.

Figure 9: CEQA Petitions Targeting Taxpayer/Ratepayer Projects



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1. Schools, Colleges, and Workforce Training Projects

The 2010-2012 study period saw public school funding plunge during the Great Recession.[88] Only limited federal and state funds were available for school capital projects (and public funding is most often unavailable for projects caught up in litigation), and operating budgets were reduced to near-crisis levels. Thirty-one CEQA lawsuits were filed against schools during the study period: 55% targeted K-12 projects, and the remainder targeted college and adult education training projects. Just over 90% of the petitions challenged schools in infill locations, with the vast majority of those lawsuits targeting renovations or expansions of existing campuses.[89]

Almost all school challenges were filed by neighbors objecting to increasing the utilization of existing school facilities. As discussed in detail below, converting an elementary school to a middle school, adding nighttime lighting or artificial turf to school playfields, or objecting to the construction or expansion of a school, led the litany of claims against K-12 schools. A sample of filed and threatened lawsuits against K-12 school projects follows:

- ***Everybody Hates Middle School.*** El Cerrito, a small city in the East Bay, is served by the West Contra Costa School District, which covers several cities and has a substantial student population meeting the poverty criteria required to qualify for free or subsidized lunches, a large population of students for whom English is not their first language, and other challenges common to urban school districts. The middle school serving El Cerrito was determined to be directly above an earthquake fault, and was required to be relocated. The district examined its options, and concluded that a former elementary school (mostly idled) located a short distance away from the middle school was the most suitable alternate location for the relocated middle school. The district completed the CEQA document required for the relocation of the students and reuse of the elementary school site, and – facing a statutory deadline for vacating the seismically unsafe middle school, and an expiration date for funding demolition – demolished the existing middle school and placed students in temporary trailers on the playground for the few months required to complete the relocation. Several years later, the students remain in trailers – victims of a CEQA lawsuit filed by neighbors of the elementary school who adamantly opposed converting their idled elementary school campus to a middle school. The alleged environmental harms were the usual NIMBY litany of traffic congestion and traffic-related air quality and noise, but there were also stark (and unstated, in public debate) demographic contrasts between the mostly older, white NIMBY neighbors and the young, diverse affected students.[90]

- ***Keep Schools Vacant on Nights and Weekends.*** Renovations to an elementary school that included a "multi-purpose room" – a staple of modern school construction on smaller campuses that often combines a cafeteria and an assembly space – were opposed by a passionate group of Mill Valley parents who were concerned that the multi-purpose room would be used for "other" purposes – disturbing the otherwise vacant schoolrooms during bucolic evenings or weekends in the tony Marin County suburb. The settlement cost paid by the challenged school district: more than $100,000, including more than $60,000 paid to the NIMBY group's lawyer.[91]

- ***Too Much Physical Education.*** The single-largest category of CEQA lawsuits against K-12 schools during the study period challenged installation of turf and lighting to increase use of existing sports fields.[92] Athletic facilities in many school districts pre-date the landmark civil rights legislation that ushered in today's era of girls' athletics, and increasing density – and student populations – in urban areas also exceeds the seasonal, daytime hours of availability for traditional turf fields. Add in two more layers of increased land use efficiency – "joint use" of school athletic facilities for youth and adult leagues who typically pay fees to cash-starved school districts, and national and state policy to encourage physical exercise as part of wellness and anti-obesity initiatives – and the result is clear: we must safely increase use of school sports fields. For neighbors facing increases in evening noise levels, and neighborhood parking shortfalls and traffic congestion, these national, state and regional imperatives unfairly burden their neighborhood and families, and spawned numerous CEQA lawsuits.

With neighbors lined up against kids in team uniforms, the politics of these disputes are tough. But should California's signature environmental statute be the costly, multi-year final battlefield for neighborhood opponents with the resources to immediately derail time-limited funding? Should these neighbors be able to persuade the judiciary to upend the school's decision because one expert asserts that the school's experts did the traffic count or noise study incorrectly? Since most of these playfield upgrades were processed with a CEQA Negative Declaration or Categorical Exemption, one expert that disagrees with the school's expert can be enough to derail these projects[93] since CEQA generally requires only a "fair argument" that the playfield upgrades "could" cause even one significant adverse impact (aesthetic, noise, traffic, parking,

disruption of the "character of the community"). A lawsuit loss for the school typically remains in a vacated project approval pending a full EIR costing hundreds of thousands of dollars. And the playfield upgrade battle is fought in the name of "the environment."[94]

Challenges to adult education were also most often attributed to neighbor concerns about increased utilization or changes to existing campus facilities. A sample of workforce training projects targeted in filed and threatened CEQA lawsuits follows:

- ***Preserve My Closed Landfill, Not Workforce Training for Critical Local Jobs***. In Los Angeles, goods movement – the logistics of moving products to and from the huge regional ports in Los Angeles and Long Beach – comprises over 20% of the Southern California economy. The Los Angeles/Long Beach (LA/LB) port complex primarily handles shipping packed in metal containers that automate the cargo loading and unloading processes. The complex is the largest port in the Western Hemisphere, and the ninth-largest port in the world.[95] Approximately 40% of all U.S. container trade, with a cumulative value of approximately $400 billion, passes through the LA/LB ports.[96] The LA/LB port complex is one of the most important economic engines in Southern California and in the state. Based on estimates published by the ports, trade through the LA/LB complex accounts for approximately 1.2 million jobs, or 15% of total employment in Los Angeles, Orange, San Bernardino, Riverside and Ventura counties. Port trade also generates nearly 1.6 million jobs, or 9% of total California employment, as shown in Table A below.

Table A: Regional and State Employment Generated by Trade Through the Los Angeles and Long Beach Ports[97]

	Five-County Region	California
Port of Los Angeles	896,000	1,200,000
Port of Long Beach	316,000	371,000
Total LA/LB Ports	1,212,000	1,571,000
Total Employment	8,091,000	17,200,000
Percent LA/LB Trade-Related Employment	15%	9%

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The LA/LB ports stimulate regional and state transactions and wages that contribute to the state's gross domestic product (economic output) and generate significant state and local tax revenues. Port data indicates that trade through the LA/LB complex produces approximately $116 billion in economic value to the state, including spending for port industry services, port-related transportation, and spending by import and export businesses. This level of economic activity is approximately 5.6% of the total state economic output (approximately $2 trillion). The ports also generate approximately $11 billion in state and local tax revenues per year, or about 11% of the state's total general fund expenditures ($100.7 billion) in 2013.[98]

Truck driving jobs in the goods movement sector are a major employment opportunity in the region, especially for adults lacking high school diplomas or strong English skills. A paved, closed landfill in the City of Los Angeles provided a perfect location for a truck driving training facility: it was proximate to transit service and candidate students from economically disadvantaged nearby areas, and could supply trained drivers to the region's ports.[99] Incensed neighbors, who had worked for years to finally shut down the landfill, objected to this training facility and insisted that there be no new uses on the paved landfill (primarily using the same "environmental" reasoning of traffic and air quality impacts, as well as noise from traffic). Neighbors lost their case with the LA City Council, but defeated the project (and its Latino sponsor) in a CEQA lawsuit. Once the CEQA lawsuit was filed, the all-important federal funding source was compromised, and this workforce housing project died.[100]

- ***Stop Jobs in Imperial County.*** According to the U.S. Bureau of Labor Statistics, Imperial County's unemployment rate in March 2015 was 19.9 %, compared to California's 6.5% statewide unemployment rate in the same month.[101] Imperial County has land – almost 5,000 square miles – and approved using less than 500 acres for a law enforcement training facility that would create 200 jobs serving students from California and other states. The training facility's sponsor also volunteered to permanently preserve more than 550 acres – about 60% of the school site – as permanent open space. The project came to the attention of the same Marin County attorney who was filing CEQA lawsuits against Imperial's solar projects (discussed below), along with a local tribe. Even though a full EIR had been prepared, the sponsors lacked the financial resources to pay to defend the lawsuit (and risk being held liable for the Marin County attorney's legal fees). The project was dropped in 2011, when annual statewide unemployment averaged over 11% and Imperial County was suffering a whopping 29.1% annual unemployment rate.[102]

The final category of school projects – colleges – tell a more diverse but now-familiar story.

- ***Old Fight, New Tactics: Town-Gown Conflicts and CEQA.*** Community colleges, California State University, and the University of California systems are not subject to local government land use permitting or mitigation fee requirements, and disputes between "town" and "gown" over campus projects (and campus contributions to local services provided by the town) have periodically flared up before and after CEQA's 1970 enactment. CEQA lawsuits provide a judicial opportunity to leverage more favorable local government outcomes for these "town-gown" disputes. Two of these (involving Cal State East Bay[103] and San Diego State[104]) are now pending at the California Supreme Court, and involve the determination of the extent to which CEQA requires mitigation for increased demands on police and transit services, as well as the extent to which CEQA can require a public university to raise or divert private funds for CEQA mitigation (instead of scholarships or other educational support purposes) after the California Legislature has declined to approve budgets authorizing universities to pay for these local agency services.

  The appellate court came down squarely against Cal State San Diego, concluding that CEQA's mitigation mandates trumped the University's authority to elect how to spend private donations and public grant funds, and also trumped the decisions of the Legislature and Governor in allocating taxpayer funds to colleges and local governments.[105]

  The appellate courts also extended CEQA's exceptionally elastic definition of "the environment" to recognize as "impacts" requiring mitigation, student use of regional trails (Hayward campus)[106] and transit services (San Diego campus). These cases have remained pending for several years, and there is no deadline by which the Supreme Court must reach a decision. Available funding for campus projects is gone or remains at risk of being redirected to less litigious campus communities.

Community colleges were also targeted by CEQA lawsuits during the study period, including expansions proposed on several campuses with time-limited and competitive state or federal funding, but involved NIMBY rather than host city challenges.[107]

All challenged public college projects involved construction activities limited to "infill" locations on existing campus properties that are expected to increase student populations and efficient use of campus facilities.

Private colleges had their share of CEQA lawsuits, although the study period included the recession, when smaller donations meant fewer campus projects. Two examples from Los Angeles tell startling tales of CEQA litigation abuse:

- ***Keep that Parking Lot Quiet.*** Emerson College proposed to build a small satellite campus on a tiny (0.85 acre) slice of Hollywood used for surface parking; the vertical project would include classrooms, dorm space, and apartments for four faculty members. An adjacent music studio asserted that the construction noise would drive them out of business, but refused to provide access for noise study experts who could evaluate the problem and find a solution. The college ultimately prevailed (a year later) after a costly lawsuit, and the project was completed.[108]

- ***Conquest Housing – the Self-Described "Al-Qaeda of CEQA" – Tries to Conquer All.*** The University of Southern California is perched on the edge of downtown Los Angeles, and has substantially grown in prestige, donations, students – and demand for student housing. Adjacent communities have objected to the "gentrification" of scarce affordable housing by university students who can pay higher rents, and USC responded with a commitment to prioritize construction of new student housing on university property, including a site located across the street from a new regional transit station. USC sought bids from qualified urban housing developers, and chose Urban Partners to complete the EIR and construct the new 421-unit dorm.

Two USC alumni who were buying up community housing for student use (the gentrification practice that had drawn community ire), and doing business for the USC Trojans as "Conquest Student Housing LLC," then attempted to derail this large new project and block their student housing competitor. Conquest filed a CEQA lawsuit against the USC Urban Partners project, but also filed CEQA lawsuits against all other pending Urban Partners projects in California and against two projects by relatives of Urban Partners principals in Washington state (where Conquest had no business operations). The lawsuits nearly destroyed Urban Partners, which had established a track record of building community support for public-private partnerships. USC and Urban Partners ultimately filed a federal racketeering lawsuit against Conquest,[109] citing to media stories reporting Conquest principals commenting on how to use CEQA to "bomb" projects and paying community members to file negative comments against their competitors. Conquest demanded that the racketeering and related claims be dismissed on the grounds that Conquest was only exercising its First Amendment "free speech" rights against the Urban Partners project. However, in a unique outcome among CEQA's competitor lawsuits, the federal district court declined to dismiss the racketeering charges against Conquest – whereupon a settlement was reached and Conquest (or at least its website) appeared to fold up shop. Stopping a transit-oriented dormitory to preserve local housing for non-student use in the name of the environment qualifies as CEQA litigation abuse.[110]

2. Other Public Service and Infrastructure Projects

Another often underreported category of CEQA lawsuits involves projects designed to provide necessary public services and infrastructure to existing communities, to adjust the use of existing facilities to respond to changing demographic or program needs, and to upgrade existing infrastructure to meet new legal mandates or service needs.[111] This category of public agency projects attracted the largest number of CEQA lawsuits during the study period.[112]

The most frequent type of local infrastructure targeted by CEQA "environmental" lawsuits were public transit projects,[113] followed by projects involving highways (all of which involved either High Occupancy Vehicle lanes or modifications to existing interchanges or crossings to address public safety concerns),[114] municipal waste management (all but one of which involved infill transfer and recycling facilities, not new or expanded landfills),[115] stormwater management (all of which were designed to improve water quality and reduce flooding),[116] telecommunications equipment (antennas and cable boxes required for improved Internet and wireless communications),[117] local street and landscaping upgrades,[118] and sewage system upgrades (such as pipe replacements).[119] No form of public infrastructure and service project was apparently too small to escape irritating at least one person enough to draw a lawsuit – a new fire station,[120] and renovations to an existing library[121] and an existing museum[122] – also drew lawsuits in the name of "the environment."

Transit projects attracted the highest number of CEQA lawsuits during the study period. Transit systems in the Los Angeles region were particularly targeted, notwithstanding legal mandates to establish and improve transit services to reduce traffic congestion, improve ambient air quality, and reduce greenhouse gas emissions.

Some samples of these taxpayer-funded public project CEQA lawsuit challenges:

CEQA's Most Frequent Infrastructure Target: Transit

Transit projects attracted the highest number of CEQA lawsuits during the study period. Transit systems in the Los Angeles region were particularly targeted, notwithstanding legal mandates to establish and improve transit services to reduce traffic congestion, improve ambient air quality, and reduce greenhouse gas emissions. Transit system investments were also a key priority of the Obama administration's job creation program during the recession, and a huge amount of federal transit became available – but only for "shovel ready" projects (i.e., funding those not mired in litigation). During the study period, several transit lawsuits were filed by cities unhappy with the location of transit stops, or of mitigation measures. Others were filed by NIMBYs, and one was filed by a property owner who reaped a stunning financial reward of public funds in what was really an eminent domain property value dispute.[123]

- ***More Study Needed of Squeaky Wheels and Grease.*** One of the more notable transit project lawsuits resulted in the invalidation of an EIR based on the alleged incomplete analysis of the potential for increased grease drippage and wheel squeals resulting from putting more passenger commuter trains on existing railroad tracks that were already being actively used for cargo and other trains.[124]

- ***Metro "Gold" Line is "Gold" – for the Holdout Property Owner.*** The Gold Line starts near Pasadena, passes through downtown Los Angeles, and then extends into East Los Angeles. It reduces downtown traffic on several stressed freeways, and serves an exceptionally diverse ridership. The Gold Line maintenance yard is in the City of Monrovia, northeast of downtown. A property owner facing an eminent domain proceeding after having declined to voluntarily sell his property for the maintenance yard responded with six lawsuits filed over a three-year period, one of which alleged that the transit agency responsible for the Gold Line had failed to comply with CEQA.[125] Litigation would have resulted in more than $100 million in delay-related costs, which would have threatened project financing. The agency ultimately settled all six lawsuits for $24 million, more than four times the assessed value of the 4.5-acre property.[126]

- ***CEQA Requires Transit to be Invisible – Right?*** Neighbors opposed to the Expo Line connecting Culver City to downtown Los Angeles (and linking to other transit lines) argued that the new light rail system should be underground to reduce environmental impacts. A surprisingly brisk four-year trip through the trial court (where the NIMBYs lost) and appellate court (where the NIMBYs lost again) culminated in a landmark California Supreme Court decision,[127] which determined that the EIR was indeed fundamentally flawed in its study of air quality and traffic impacts because it failed to analyze the project in relation to the existing environment. Continuing the surprising trajectory of this CEQA case, the court nevertheless concluded that these flawed technical studies and resulting flawed EIR evaluation was nevertheless not sufficiently prejudicial to cause ordinary people to be confused about the short-term traffic, parking, and air quality construction, as well as start-up operational disruption caused by the transit project. To summarize this surprising litigation outcome: extraordinary Supreme Court decision: the EIR was flawed on the two topics that draw the most critical court scrutiny based on the Judicial Outcomes study (traffic and air quality),[128] but the Supreme Court declined to impose CEQA's most common judicial remedy (vacating project approvals pending an EIR re-do).[129]

Other wealthy communities, such as Atherton[130] and Beverly Hills,[131] also sued to halt (or drive to the invisible and financially infeasible underground) transit projects during the study period.

No discussion of CEQA challenges to transit would be complete without the tangled story of the state's High Speed Rail (HSR) project. Although initially approved by the voters, the project has undergone a variety of adjustments based on funding, routing, lawsuits and other factors. An initial "programmatic" EIR was done for the HSR project, which was targeted by several lawsuits.[132]

Supplemental EIRs were also required under the structure of the programmatic EIR. Risking court (and funding) losses, the Brown administration successfully persuaded a federal agency that federal preemption precluded a CEQA judicial remedy that would delay or vacate HSR.[133] A state appellate court subsequently decided that federal preemption did not preclude normal CEQA processing and the full range of judicial remedies, but concluded that the first EIR was legally adequate.[134]

Several HSR CEQA lawsuits remain pending, and, as is true for many complex infrastructure projects (e.g., operation and upgrades of state water project system components, discussed in more detail below), CEQA lawsuits remain pending while subsequent related EIRs and project components or phases are approved, leaving the legal status of the overall project as well as its constituent parts vulnerable to a single adverse judicial decision in any one of several pending proceedings (often heard by different judges and appellate panels). Such uncertainty adversely affects the cost and availability of funding for these public infrastructure projects.

Most Improbable Infrastructure and Public Service Targets of CEQA Lawsuits

No critical public service facility is too critical, or too small, to be targeted by CEQA lawsuits. Again, CEQA also provides a comfortably safe haven for bigots.

- ***Mosques and Churches.*** Religious buildings earned the distinction of being the most frequently challenged non-infrastructure, public service projects. For example, CEQA lawsuits were filed against two mosques,[135] and neighbor opposition to mosques has been successful in blocking mosques without lawsuits.[136] Although the CEQA lawsuits alleged environmental impacts such as traffic and air quality, the reported public debate was more openly hostile – and more openly discriminatory – of Islam.

- ***Libraries, Fire Station, Museums and Medical Care.*** Two CEQA lawsuits challenged libraries.[137] One involved a new fire station long sought by the community but opposed by the nearest neighbors,[138] two fought museums,[139] one (filed outside the study period and thus omitted from the statistical compilation) opposed allowing air ambulance services at an existing airport,[140] and renovations prompted by seismic renovation mandates resulted in four challenges to hospitals.[141] Two of the hospital lawsuits reportedly involved unions seeking bargaining leverage;[142] the remainder of the litigants for this suite of challenges appear to be NIMBY organizations and individuals.

- ***Existing Airports.*** Continued use of airports and runway modifications of existing airports accounted for three CEQA lawsuits during the study period.[143]

- ***Prisons.*** A prison expansion,[144] a prison closure,[145] and gender conversion of a prison,[146] all drew CEQA lawsuits during the study period. The expansion and gender conversion faced community opposition; union involvement was alleged in the prison closure project. Opponents of converting a women's prison to a men's prison presented evidence that male prisons generated more traffic and traffic-related air emissions because (sadly) male prisoners get more visitors than female prisoners.

- ***Non-Vehicular Streetscape Improvements.*** Several CEQA lawsuits targeted sidewalk maintenance and landscaping. These are overwhelmingly NIMBY lawsuits. Neighbors from one street in Beverly Hills sued to block only replacement of the street trees on their side of the street,[147] a landlord sued to block demolition of a closed and crumbling elevated sidewalk based on the potential that he may have to reduce rents,[148] and there have been numerous examples of bike plan and bike path CEQA lawsuits.[149] A generational divide is evident in the bike plan lawsuits, which tend to be filed by older merchants opposed to traffic congestion and reductions in street parking.

- ***Telecommunication Projects.*** NIMBY opposition to visible telecommunication equipment remains vehement in several communities, prompting numerous lawsuits and agency administrative appeals. Local residents object to adverse "aesthetic" impacts, and allege public health risks (e.g., encouraging graffiti or public urination) for surface-mounted equipment.[150]

- ***CEQA and California's Response to 9/11.*** Telecommunication equipment controversies prompted a "one-off" statutory exemption from CEQA for the federally funded communication towers that are designed to allow all emergency response personnel (from multiple agencies) in the Los Angeles area to communicate on the same frequency. The federal funding program to link local first responders was prompted by the World Trade Center attack on September 11, 2001; the substantial federal funds allocated to install the required telecommunication equipment were scheduled to expire (and could not be accessed if litigation was pending and the telecommunication project was not "shovel ready" by the deadline). To avoid losing the federal funds, in 2012 the Legislature exempted this system from CEQA – more than 10 years after 9/11.[151]

- ***High Occupancy Vehicle Lanes and Safety Improvements for State Highways.*** State highway projects were targeted by several CEQA lawsuits; all involved improvements to existing highways such as the installation of High Occupancy Vehicle (HOV) lanes to reduce congestion, promote carpooling and renewable fuel use, and reduce localized air pollution and greenhouse gases.[152] Environmental advocacy groups were more likely to be involved in these lawsuits, which reflect an ongoing policy disagreement about whether to make any improvements to highways at all – or make commuting so painful that people will just stop living in suburbs, or at least start taking transit. Transit utilization is definitely increasing (notwithstanding CEQA lawsuits against transit projects, as discussed above). The Bay Area Rapid Transit system, for example, carried 100,000 more riders in 2014 than it did five years ago, and now lacks adequate capacity to accommodate peak hour demand, recently earning a spot on the *San Francisco Chronicle's* "What's Not Working" list.[153] The extraordinarily high cost of housing in coastal counties also forces many people into less costly inland locations and long commutes; deliberate policies to maintain choking congestion on major freeways disproportionately affects inland areas that tend to have lower educational attainment levels, much lower annual incomes and much greater ethnic diversity than California's coastal enclaves.[154]

- ***Local Streets.*** The same policy debate about whether or when to invest in projects that accommodate automobiles occurs for local street improvement projects, which are more likely to be targeted by NIMBYs that are not affiliated with environmental advocacy organizations. Projects facing objections range from modifying local roads and traffic signals in order to more efficiently manage traffic and reduce congestion (and air pollution and noise from congestion), to repurposing lanes or parking spaces in order to provide more efficient and safe routes for buses and bikes.[155]

- ***Stormwater Management.*** Stormwater and flood management infrastructure – generally related to repair work, upgrades to meet more stringent water quality standards, or climate change adaptation – attracted a handful of CEQA lawsuits.[156] As with highways and streets, the extent to which infrastructure system improvements are needed to appropriately manage stormwater "upstream" (e.g., with measures to capture and reuse stormwater on individual properties) or "downstream" (e.g., with seawall or flood channel stabilization or maintenance) remains an issue of ongoing interest to environmental advocates, who tend to use CEQA in this context to leverage more or different management measures than those mandated by the Legislature or water management agencies.

- ***Solid Waste Management.*** Recycling, composting and transfer facilities in urban locations (many of which manage more than one of these functions), and landfills, were the third-most-likely targets of Public Service and Infrastructure projects (after Transit and Highways). The absence of CEQA lawsuits against hazardous waste treatment, storage and disposal facilities is notable. Many facilities have shut down (causing more waste to be transported for disposal outside California), and permit renewals of existing facilities remain largely mired in bureaucratic and political disputes; until a permit is actually renewed, no CEQA lawsuit can

be filed.[157] One state official reported to the authors that fear of having to complete an EIR on a hazardous waste facility, and the resultant risk of court losses and exposure to liability for payment of attorneys' fees to project opponents, were among the reasons that the Department of Toxic Substances Control (DTSC) had fallen years behind schedule in completing the legally mandated review and permit renewal process for the state's remaining hazardous waste treatment, storage, recycling and disposal facilities.[158]

3. Park Projects

It is tempting to summarize this category of CEQA lawsuits by saying that people who sue park projects don't want to let anyone else use "their" park. Since almost all park funding comes from taxpayer or philanthropic sources, derailing these projects with CEQA lawsuits always puts the continued availability of these fragile funding sources at risk – and can result in near-permanent shackles on the status quo.

Two stories on park projects help provide context for this category of challenged projects. Although one of the two stories occurred prior to the study period, it established the most important judicial guidance for CEQA implementation for existing parks, thus making it worthy of discussion.

- ***Should CEQA Keep Trails Out of Urban Parks?*** Santa Cruz received funding to construct a trail through an urban park and make it handicap-accessible in compliance with the Americans with Disabilities Act. The California Native Plant Society sued, alleging that because the improved trail would be near a protected plant, the environmentally superior – and thus CEQA-mandated – trail alignment needed to skirt around the edge of the park, rather than through the park. Both parties spent years litigating the dispute. Ultimately, the appellate court determined that since the purpose of the project was to construct a park trail, that purpose would not be served – and CEQA did not in fact mandate – construction of a trail around, as opposed to through, the park. Project funding, and the original cost of trail construction, were left in limbo for years.[159]

- ***How Did Climate Change CEQA Litigation Cost a Coastal Park $50 Million in Philanthropic Funding?*** The Playa Vista redevelopment project, sandwiched between the Los Angeles community of Venice and the clifftop home of Loyola University, holds the dubious distinction of being sued more often than any other California project known to the authors. Almost all the lawsuits involved CEQA claims, two of which occurred during the study period. (As noted above, Playa Vista was sued more than 20 times, over more than 20 years, by a determined handful of financially able neighbors.) Decades ago, a negotiated outcome of one of these lawsuits (the only lawsuit filed by major environmental groups) was an agreement to permanently preserve and restore the coastal portion of this site to a coastal wetlands preserve. The Annenberg Foundation committed $50 million in philanthropic funds to restore the coastal marsh, build a network of trails, and construct a visitor center on this major new coastal addition to the Los Angeles park system. Faced with unceasing threats of CEQA lawsuits, and mired in a regulatory permit lawsuit now pending at the California Supreme Court alleging that it improperly considered climate change impacts,[160] the state's CEQA lead agency was unable to commit to when it would be able to finally complete an EIR for the park restructuring project, which would allow for the Annenberg Foundation to fund the completion of planned park improvements. (The agency was also on notice that it would be immediately sued as part of the ongoing pattern of NIMBY challenges to all discretionary agency approvals for the project.) The Annenberg Foundation finally withdrew its $50 million funding commitment late in 2014, and there is no identified funding source that would allow for the public access and coastal marsh restoration project long envisioned for this urban infill site.[161]

The pantheon of 27 CEQA lawsuits filed against park projects sued during the study period were almost evenly divided between open space restoration, habitat projection and related passive park use projects like trails, and active park use projects such as playgrounds and sports fields, equestrian arenas, golf courses and a shooting range.[162] In this category of challenged projects,[163] there were only two golf courses[164] (and one proposal to end golf course use),[165] and the shooting range involved an existing facility that needed to be cleaned up due to lead poisoning risks – the CEQA lawsuit was filed in an attempt to block or amend the cleanup order.[166]

The active recreation park projects, in particular, highlight the dispute between passive park users (hikers, bird-walkers) and active sport team users (derided as "recreationists" in some communities). The urban park project lawsuits also highlight notable differences in the age, class, and ethnicity of park project users versus park project opponents.

- ***Keep Those Sports Fields Idle Most of the Time.*** As with challenges to school playfield projects, high demand for sports field remains an acute, year-round need in many urban areas. Natural turf consumes water, requires fertilizers and other enhancements, cannot be used during and for some time after rainfalls, and must be periodically idled and replanted. Artificial turf, partly produced from waste tires, allows for much higher utilization rates, requires almost no water, and is easier to maintain. Night lighting also increases utilization. These sports field modifications (artificial turf and night lighting) draw concerns about traffic and parking impacts from increased utilization, and also about the relative hazards of artificial and natural turf field surfaces (although both the Environmental Protection Agency and Consumer Product Safety Commission have issued assurances about the absence of adverse health impacts of artificial turf).[167] Installing artificial turf on the Beach Chalet soccer fields in Golden Gate Fields, estimated to triple the available playing time in a location that has no adjacent residential neighbors, was the first project to utilize artificial turf that was subject to a full EIR (an unusual case since most park projects qualify for some level of streamlined CEQA study). The project was first repeatedly challenged politically, then legally in an unsuccessful CEQA lawsuit, then politically again at the Coastal Commission, and finally with a ballot box battle seen as pitting long-term, trusted environmental activist opponents (including the local Sierra Club chapter) against the families and younger residents of California's most expensive large city. The voters rejected opponents' pleas to block the project, which is now under construction after many years (following a brief post-election "sit-in" by project opponents).[168]

- ***CEQA Protects Children – Not Dogs.*** Mission Dolores Park is shared among several densely populated San Francisco neighborhoods and offers tennis courts, a basketball court, a multi-use (soccer/softball) sports field, a children's playground and an operational building that includes public restrooms. All facilities – but most acutely the restrooms, which had been shuttered for many months, leaving restroom service available only from sub-optimal porta-potties – were in acute need of rehabilitation and repair. City taxpayers responded generously and approved bonds to improve this and other parks, kicking off a multi-year planning process. Mindful of passionate feelings about the park from multiple stakeholders, the city used a portion of the bond funding to pay for a full EIR. The resulting park renovation plan had something for everyone, while largely preserving all core elements of the park. Predictably, a CEQA administrative appeal was filed. Less predictably, even in San Francisco, was the fact that the appeal argued that the park should contain two children's playgrounds rather than one playground and one dog play area because children's playgrounds are a public health issue and help combat childhood obesity.[169]

- ***CEQA Protects Eelgrass – Not Children or Dogs.*** Dolores Park was not CEQA's first encounter with dogs and children. Trail use and dogs in another Bay Area park project – a state park located on a former landfill in San Francisco Bay that spans portions of Berkeley and Albany – prompted a lawsuit by a local environmental activist who asserted that any trail (presumably used by children and dogs) could harm eelgrass visible only during low tides in the Bay's chilly waters.[170] This is only the latest chapter in the multi-lawsuit saga that helped create the East Shore State Park project. Prior to the study period, dedication of a portion of the waterfront area, which also hosts a large horse racetrack facility and related barns, to a new soccer field complex prompted a multi-year conflict between the (primarily youth league) soccer playing "recreationists" and the (primarily youth league circa-1960) passive trail/bird-watching "enviro" advocates.[171]

4. Agency Plans and Regulations

This category of CEQA lawsuits challenged decisions by agencies to approve plans, programs and regulations but did not involve physical modifications to public service facilities or infrastructure, or approvals of private sector projects such as housing or commercial development. Fifteen percent of CEQA petitions challenged these taxpayer-funded agency plans and regulations, and this category comprised the second-largest group of CEQA lawsuits filed against public agencies.

Land Use Plans. More than 50% of the challenged regulatory projects involved city or county approvals of land use plans: General Plans, Specific Plans, Community Plans, Area Plans and Airport Land Use Plans, to guide future land use and development activities[172] and, in one case, to guide a regional transportation agency's redirection of funding to transit and higher-density housing to meet the state's ambitious greenhouse gas reduction mandates.[173]

For city and airport land use plans, NIMBYs are the dominant opponents of these plans, although some challenges are brought by environmental advocacy groups and historic preservation advocacy groups. Some communities are nearly frozen by political or legal land use planning disputes, and the cost – in money and political capital (inclusive of CEQA litigation risks) – have proven daunting obstacles to routine preparation of updated land use plans. For example, although state law requires General Plans for most cities to be updated every five years, some cities such as Los Angeles have not comprehensively updated their General Plan in decades and instead update different Plan elements or components over time, with overlapping lawsuits filed against component parts such as "community plan" land use components.[174]

County land use plans are more likely to be challenged in CEQA lawsuits filed by (or joined by) established national and state environmental advocacy groups that want to limit or preclude development outside established communities.

The major regional land use plan challenged during the study period – a lawsuit against the San Diego Association of Governments (SANDAG), which serves as a regional transportation planning agency for the allocation of federal and other funding for transportation infrastructure – is one of two pending CEQA lawsuits at the California Supreme Court regarding the application of CEQA in relation to California's climate change laws such as the Assembly Bill 32 (Pavley)[175] and Senate Bill 375 (Steinberg).[176] SANDAG's regional land use and transportation plan was found by the California Air Resources Board to be in compliance with applicable climate change laws, but the California Attorney General and Sierra Club (among others) sued alleging that CEQA requires more than compliance with statutory greenhouse gas reduction mandates.[177]

Climate change mandates currently play a major role in land use planning. These mandates range from reducing greenhouse gas emissions with renewable energy electric generation, and cleaner cars and fuels, to (of greatest relevance to the land use planning process) redirecting future California growth to higher-density, transit-oriented development patterns (e.g., requirements that communities plan to authorize development of assigned numbers of affordable and market-rate housing units).[178] Senate Bill 375 and other climate-related laws and policies collectively provide a framework mandating that cities and counties fully accommodate predicted population growth levels that are often far higher than has ever been permitted, and requiring higher-density development patterns such as "granny units" (second units in single family homes), more affordable and/or smaller housing types with higher-density (e.g., multi-story apartment and condominium projects), and more transit and fewer accommodations for personal cars (i.e., fewer or separately priced parking spaces, intentionally congested roadways and highways to discourage peak hour automobile use, etc.).

Local stakeholders in many communities oppose the foundational changes that land use plans implementing these climate change mandates will cause, along with the environmental impacts from plan implementation. These impacts – and trade-offs – are required to be disclosed in the EIRs prepared for these land use plans. Several agencies have documented the environmental trade-offs between plans that allow for primarily continuation of California's traditional suburban-scale lower densities, plans that allow for a mix of densities but with a far greater focus on transit corridors and higher-density urban centers, and plans that allow only high density urbanized development and transit.

To date, California's regional planning agencies – and the greenhouse gas reduction targets established by the Legislature – allow for the middle course (the mix, with increased transit and higher densities in urban cores like downtown areas of even smaller towns), acknowledging the panoply of adverse CEQA impacts caused by either of the other two planning extremes. In the California Supreme Court case against SANDAG referenced above, and in a separate case involving a Los Angeles development project that was included in the Southern California Association of Government regional plan that met greenhouse gas reduction goals,[179] environmental advocacy groups have argued that CEQA requires the more extreme plan – transit and high density development – based on climate change imperatives. This fundamental land use policy dispute is being played out in the context of CEQA litigation, while, on a parallel track, the Governor

Opponents of plans currently have endless "second bites" at the CEQA litigation apple, since both the land use plan, and every project undertaken to implement the approved plan, can be separately litigated by the same party under CEQA.

and legislators are debating whether to adopt new greenhouse gas reduction goals, which would be rendered far less relevant if the Supreme Court decides that CEQA itself requires implementation of "all feasible mitigation measures" to achieve an 80% greenhouse gas reduction goal for the state.[180]

Land use plans have definite consequences to the physical environment as well as to the softer "environment" that people identify as the existing character of their community. In most communities, land use plans are funded entirely from general taxpayer funds. Many commenters have noted that the frequency of plan updates, and the quality of plans and accompanying CEQA documents, is necessarily limited given the many competing uses of these general funds. Opponents of land use plans currently have endless "second bites" at the CEQA litigation approved apple since both the plan, and every project undertaken to implement the approved plan, can be separately litigated by the same party under CEQA. Though outside the study period, three lawsuits filed against the Bay Area's regional greenhouse gas reduction plan provide an excellent snapshot of the deep policy divides regarding the ability of existing communities to retain their "character" and the role of CEQA in mandating greenhouse gas reductions to address global climate change. The first lawsuit was filed by a Marin County group alleging that the EIR and plan were defective in that there are other effective ways of reducing greenhouse gas emissions (e.g., greater reliance on electric cars and renewable energy) that had far fewer environmental impacts to existing communities; the second was filed by an association of developers that alleged that the EIR and plan did not provide an enforceable mechanism to require notoriously anti-growth communities (like Marin) to accept the high housing densities required by the plan; and the third was filed by environmental advocates who alleged that the EIR and plan failed to go far enough in removing or otherwise reducing emissions from vehicles – especially heavy trucks – from highways near poor communities.[181] From the authors' perspective, each of these lawsuits present clear policy arguments – none of which are best resolved by a judiciary parsing through thousands of pages of technical studies in the context of a CEQA lawsuit.

- ***Local Regulations: Plastics, Pot and Potpourri.*** Another frequently challenged regulatory agency action during the study period were local ordinances to ban or limit the use of single-use plastic bags, and local ordinances to regulate medical marijuana dispensaries.[182]

  » Plastic bag lawsuits were generally attributed to plastic bag manufacturers and trade associations, who also continue to oppose recently adopted legislation imposing statewide plastic bag restrictions. The Supreme Court has affirmed the right, under existing CEQA legislation, of a non-California plastics manufacturer trade association to file CEQA lawsuits.[183] Dozens of other cities have also prepared CEQA studies and have defended CEQA lawsuits (at substantial taxpayer expense) in support of plastic bag ordinances.[184] Plastic bag use advocates have raised various arguments about the relative impacts and benefits of single-use plastic bags, including for example food safety, and the relative impacts and costs of alternatives such as paper bags.

  » Medical marijuana ordinances have been adopted by some agencies, since local business and occupancy license rules for this previously illegal use did not exist prior to voter approval in 1996 of California's medical marijuana initiative (Proposition 215).[185] Several local agencies that have attempted to adopt ordinances limiting or requiring permits for medical marijuana (similar to those required for adult bookstores or liquor stores) have been targeted by CEQA lawsuits alleging that such an ordinance cannot be adopted without exhaustive environmental studies and a full EIR.[186]

Most other regulatory agency challenges to local agency actions involve other types of ordinances (e.g., regulation of views, billboards, trash and stormwater management, water conservation, etc.).[187] Some are brought by parties objecting to being regulated, others are brought by advocates seeking more stringent regulations, and some are simply "one-off" challenges filed for leverage against the target agency.

- ***Regional Agency Regulatory Challenges.*** Several regional agencies were the target of CEQA lawsuits during the study period,[188] and two of these remain pending after many years of litigation at the California Supreme Court.
  - The San Diego Association of Governments (SANDAG), discussed at length above, is enmeshed in a pending Supreme Court CEQA case regarding the extent to which CEQA imposes a different or more stringent greenhouse gas reduction mandate on regional land use and transportation plans than the greenhouse gas reduction targets established for such plans under SB 375.[189]
  - The Bay Area Air Quality Management District (BAAQMD) established recommended CEQA "thresholds" for determining whether air or greenhouse gas impacts should be considered "significant," and the California Supreme Court is evaluating whether CEQA requires an evaluation of the environment's impact on a project (at issue is a threshold requiring that a project examine and mitigate for pre-existing ambient levels of toxic air contaminants, typically from diesel vehicular exhaust), or whether CEQA applies only to a project's impacts on the environment.[190] (This is a fundamental CEQA issue, since numerous appellate court decisions have concluded that CEQA requires assessing the environment's impact on a project, but several appellate courts have reached opposite conclusions including one of the infamous Playa Vista project lawsuits).[191]

Other CEQA lawsuits targeted regional agency regulatory requirements regarding water quality, such as agricultural runoff.[192]

- ***State Agency Regulatory Challenges.*** State agency regulatory challenges involve challenges either by the target of the regulation, or by environmental advocates seeking a judicial interpretation of CEQA that requires the agency to expand or modify regulations that are otherwise consistent with the statutory mandate.

For example, similar to the pending SANDAG lawsuit, environmental advocates argued that CEQA prohibited, or at least more severely constrained, the California Air Resources Board's ("CARB") proposed cap and trade program for reducing greenhouse gas emissions from the industrial and fuels sectors; CARB lost the first lawsuit, and won the second after completing a more thorough CEQA study of its cap and trade regulations.[193]

Other challenged state regulations involve pesticides, protected species, oil and gas production, mining and maritime resources. It is noteworthy that regulated parties tend to file CEQA lawsuits challenging regulations in Sacramento or Fresno County, and environmental advocates tend to file CEQA lawsuits challenging regulations in Alameda County or San Francisco.[194]

5. Water Projects

Forty-four CEQA lawsuits (7%) challenged water projects during the study period.[195] One involved removing a dam;[196] the remainder all involved disputes about the management, extraction, allocation or transfer of groundwater and surface waters, including surface waters conveyed by the state and federal water systems that link to the Sacramento delta. The intersection between California's byzantine water rights laws and CEQA is, at best, oblique. The California Legislature adopted the most significant new groundwater legislation in California's history in 2014, the Sustainable Groundwater

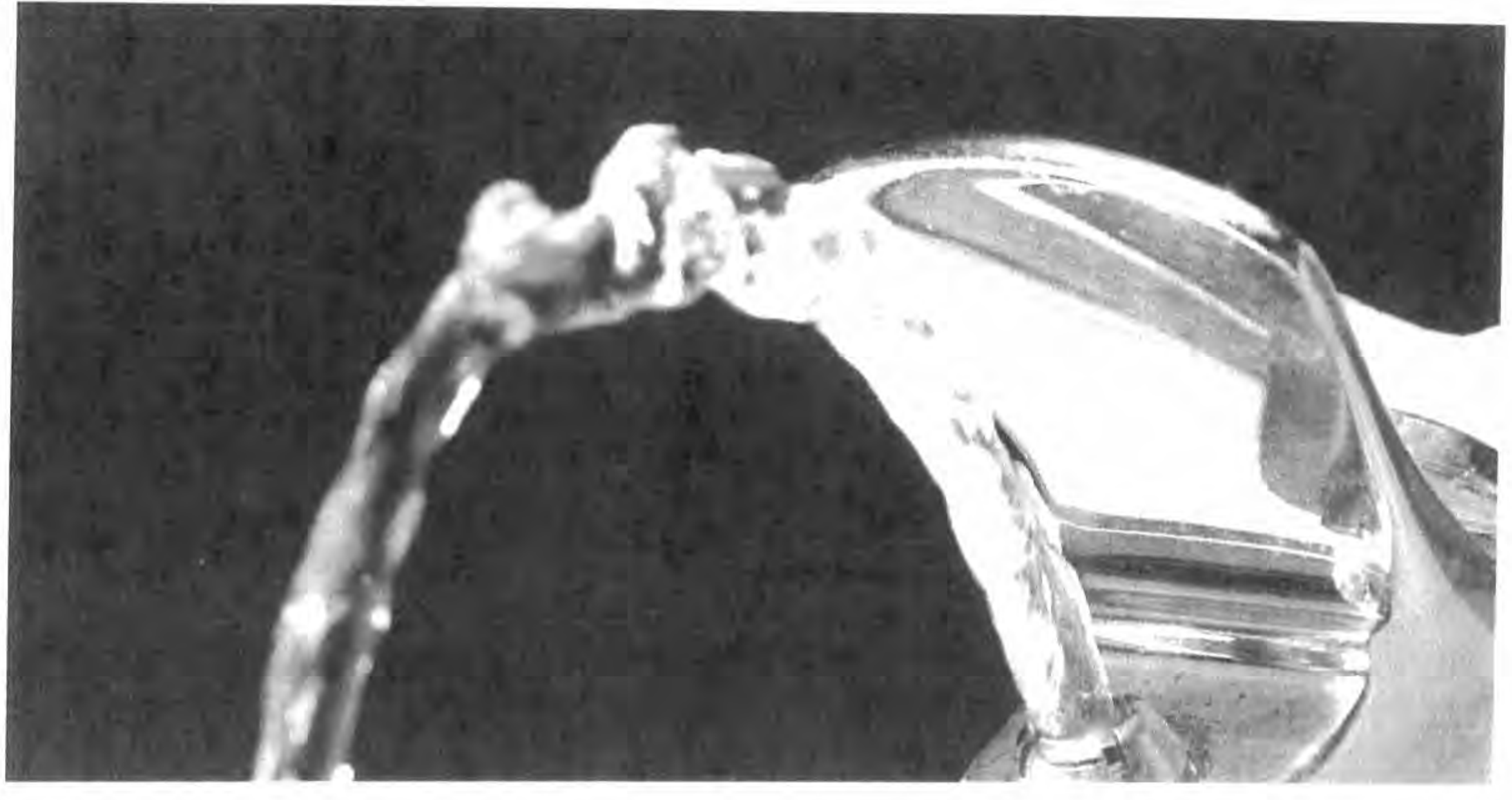
> The current drought emergency has brought renewed attention to water resource management. California's often-bitter water combatants continue to block CEQA reform for any significant water-related infrastructure, including reclaimed water plants, desalination facilities, and new groundwater and surface storage facilities.

Management Act of 2014 (SGMA), which requires, among other features, preparation of groundwater management plans for various groundwater basins.[197] So uncertain is CEQA's application to water rights and management issues, and so cumbersome, costly and unpredictable are CEQA's compliance costs and litigation outcomes, that the Legislature elected to simply exempt the new groundwater management plans from CEQA altogether.[198]

Water lawsuits involve the most frequent use of CEQA litigation by one agency against another agency, and reflect the dire reality – even before the current drought – of California's zero-sum water resource allocation decisions. For every party finding "new" water there is a party who believes it lost a real or perceived right to that water, or were over- or under-compensated – in money or CEQA mitigation – for challenged projects that range from one-time water transfers, to system storage or conveyance modifications, to rights to store and use flood waters from winter storms (often not fully "claimed" under water rights laws), to the use of water for particular purposes. Several of the lawsuits filed during the study period involved the state and federal water projects, both of which draw water from the Delta for transport to the Central Valley and Southern California.[199] More creative, and larger, water projects drew multiple lawsuits. For example, the Cadiz water project, which proposes to transfer groundwater fed by desert mountain stormwater runoff from a remote inland valley to coastal Orange County, drew seven lawsuits, (only four of which were provided to the authors in response to the California Public Records Act request): a labor union group sued, a mining company stripping salts and minerals from shallow valley surface water sued, and two suits were filed by multiple national environmental advocacy groups (the Center for Biological Diversity, Audubon Society, Sierra Club, etc.).[200]

The current drought emergency has brought renewed attention to water resource management. SGMA requires preparation of Sustainable Groundwater Management Plans that include mandatory elements including achievement of sustainable groundwater management practices to avoid potentially catastrophic overdrafting of California's groundwater resources.[201]

It is noteworthy that the Legislature and the broad coalition of key stakeholders – including environmental advocacy organizations – that supported SGMA also quietly concurred that Groundwater Management Plans would be statutorily exempt from CEQA.[202] Similarly, Governor Brown's emergency declarations on the drought have included limited CEQA exemptions imposed under emergency authority.[203] Nevertheless, California's often-bitter water combatants continue to block CEQA streamlining for any significant water-related infrastructure, including reclaimed water plants (which allow for the treatment and reuse of sewage), desalination facilities, and new groundwater and surface storage facilities.



An interesting example of a CEQA water project lawsuit, although not filed during the study period, was removal of sediment buildup in an existing reservoir located in Los Angeles County. Sediment removal would restore the dam's water storage capacity and protect lands downstream from the reservoir from flood risks. To reduce localized impacts, the sediment removal plan was to be implemented over five years – and to avoid impacts to sensitive species and flood-related risks, the sediment removal could only occur between April and October. The local Audubon Society chapters and a neighbor group sued alleging that less sediment removal was really needed, and that the EIR failed to adequately consider traffic, air quality and greenhouse gas impacts.[204]

> CEQA, which in its heyday was used to challenge nuclear plants, coal-fired plants and plants burning hazardous waste or garbage, is now used most frequently to challenge solar and wind renewable energy projects – precisely the "green" projects that are most critical to meeting California's climate change reduction mandates.

6. Energy Projects

Four percent of the CEQA petitions filed during the study period involved energy projects.[205] The highest number of petitions (46%) challenged solar projects, with wind projects coming in second place.[206] Retrofits of existing natural gas and biomass electric generation plants wanting to install cleaner energy or lower-water consuming technology were targeted in 16% of the petitions.[207] Relicensing one hydropower dam, and allowing more geyser-field steam to power an existing electric generation plant, comprised the two challenged hydro projects.[208] One existing biomass project seeking a clean energy retrofit approval was challenged,[209] along with two new biomass facilities, one facility that proposed to repurpose agricultural wood waste for energy consumption was sued,[210] and another facility proposed to gasify sewage sludge for electric consumption.[211]

Natural gas, once considered the environmental gold standard for power plant production, comprises the only non-renewable fuel in an energy production facility targeted by CEQA lawsuits. CEQA, which in its heyday was used to challenge nuclear plants, coal-fired plants and plants burning hazardous waste or garbage, is now used most frequently to challenge solar and wind renewable energy projects – precisely the "green" projects that are most critical to meeting California's climate change reduction mandates.

The challenged solar projects were primarily located in the California desert; the highest number of lawsuits were filed in Imperial County, followed by Kern County.[212] Multiple lawsuits were filed against several projects, including lawsuits filed by two union groups competing for job allocation and wage/benefit agreements (Project Labor Agreements).[213] Many of these projects relied on federal or state funding that required workers to receive "prevailing wages" and related benefits, so the competing union lawsuits were just that – use of CEQA lawsuits to leverage PLAs for each union group.[214]

Labor-aligned economists have made a compelling case for the need for jobs during the recession, especially in hard-hit Imperial County, which had the highest unemployment rate of any county in the United States.[215] One major obstacle to creating new jobs in the county is the fact that a pending CEQA lawsuit generally disqualifies renewable energy facilities from receiving federal grants (and then financially equivalent tax credits) of up to 30% of a facility's capital costs from the federal government under financial incentives programs begun in 2009. While harshly critical of the consequences of losing Imperial County employment opportunities to a proposed solar facility in Mexico, the union groups using CEQA lawsuits against solar projects in Imperial County were comfortable in playing a game of "chicken" with solar developers who could not afford to lose federal subsidies. The story of union use of CEQA lawsuits and litigation threats against solar projects was reported in detail in *The New York Times*:

> "When a company called Ausra filed plans for a big solar power plant in California, it was deluged with demands from a union group that it study the effect on creatures like the short-nosed kangaroo rat and the ferruginous hawk. By contrast, when a competitor, BrightSource Energy, filed plans for an even bigger solar plant that would affect the imperiled desert tortoise, the same union group, California Unions for Reliable Energy, raised no complaint. Instead, it urged regulators to approve the project as quickly as possible.
>
> One big difference between the projects? Asura had rejected demands that it use only union workers to build its solar farm, while BrightSource pledged to hire labor-friendly contractors."[216]

The Times went on to quote several stakeholders in this then-unfolding 2009 story about CEQA lawsuits against subsidized renewable energy projects:

- A representative for the state's contractors asserts that "[t]he environmental challenges are the unions' major tactic to maintain their share of industrial construction – we call it greenmail," and estimates that it raises project costs by approximately 20%.

- A Sierra Club representative who is politically aligned with labor (a "blue-green alliance"): "It's not a warm fuzzy thing they are doing; it's a very self-interested thing they are doing. But it has a large ancillary public benefit."

- A solar developer reports, "Let's just say that it is clear to us from experience that if we do not enter into a project labor agreement, the costs and schedule of the project is interminable."

- An attorney representing the union noted, "We've been tarred and feathered more than once on this issue. We don't walk away from environmental issues."[217] In fact, there are numerous instances of unions "walking away" once a Project Labor Agreement is executed, particularly prior to final administrative agency project approval as was the case with the Los Angeles subway car manufacturing facility dispute.

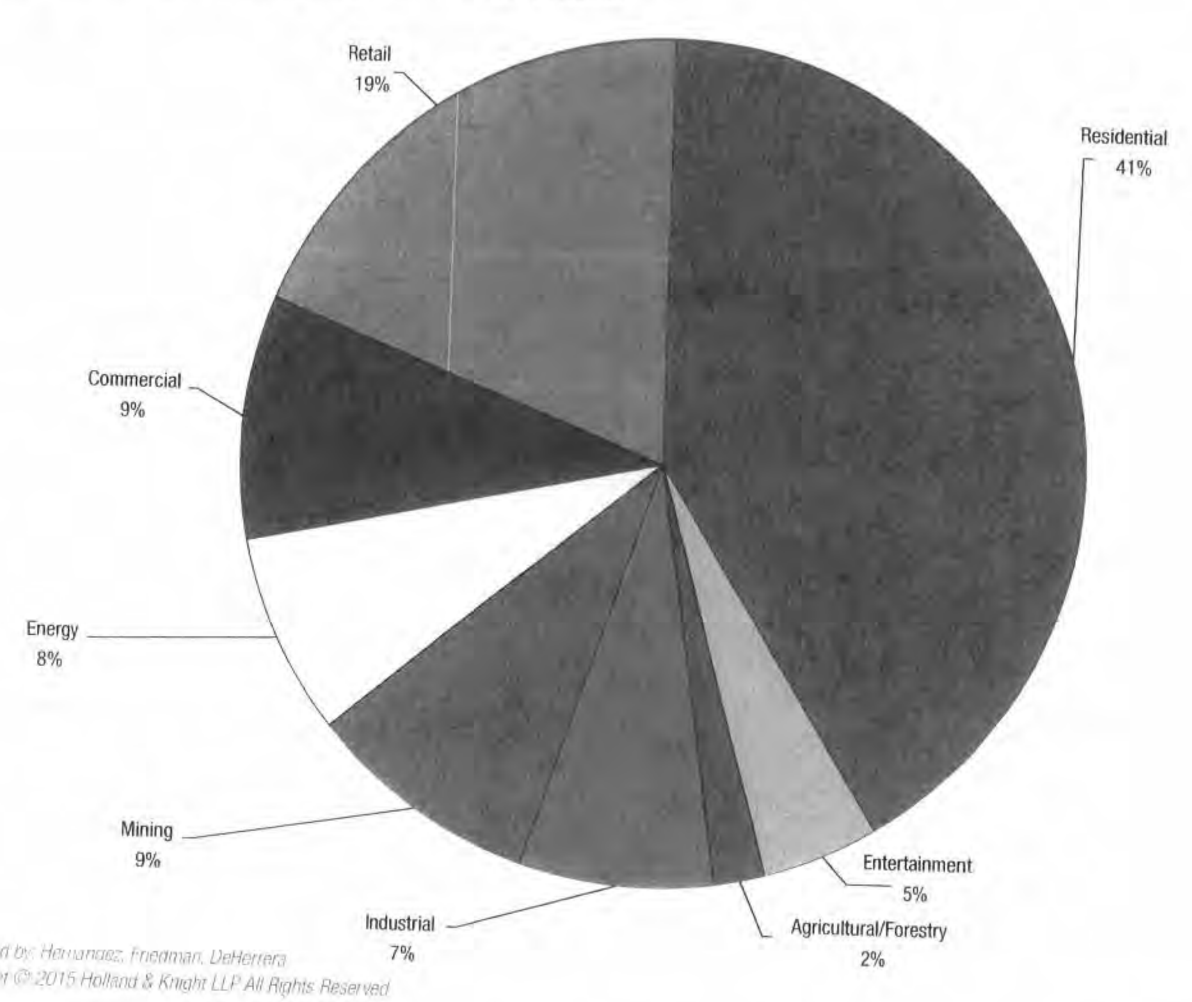
Union use of CEQA litigation threats and CEQA lawsuits continues to focus on projects that are mandated – or at least fully aligned – with California's climate change mandates, including green manufacturing and infill residential development, as described in the next section of this report.

B. Private Sector and Commercial Projects

As shown in Figure 10, approximately 41% of challenged private sector and commercial projects involve housing. In fact, housing projects drew the highest number of CEQA lawsuits during the study period.

A *New York Times* article on union use of CEQA lawsuits against solar projects compared two proposals, both with potential environmental issues. California Unions for Reliable Energy objected to one project where using union-only labor was rejected - but it supported another where the hiring of labor-friendly contractors was promised.

Figure 10: CEQA Petitions Targeting Private Sector Projects



Retail projects were the second most likely privately-funded projects to be challenged (19%); just over 50% of these challenged retail projects involve Walmart or a similar "big box" store, and the challenges were generally attributed to unions representing retail clerks working for Walmart's competitors, with reported involvement in some instances by Walmart competitors and/or NIMBYs.[218]

Commercial projects, such as offices and hotels but excluding warehouses, were the next-mostly-likely project to be challenged, at just under 10%. These were generally attributed to NIMBY opposition, although unions were reportedly involved in a convention center and some hotel challenges.[219]

The study period also included 28 lawsuits against mining and oil and gas extraction projects. Mining projects, most of which involved aggregate mines for gravel extraction and processing, comprise about three quarters of these petitions, with the remainder challenging oil and gas extraction projects. Challenged projects typically involved activities on existing sites, and included both increased extraction activity and environmental reclamation and restoration.[220]

Industrial projects, more than half of which were warehouses linked to the Southern California logistics and goods movement sector that includes the Ports of Los Angeles and Long Beach, comprise 7% of CEQA lawsuits filed against privately funded projects during the study period. All remaining industrial projects were in economic sectors with pricing structures that place a premium on proximity to customers (e.g., asphalt mixing,[221] bakery[222]), and essentially serve proximate populations within California.[223] None of these "industrial" targets of CEQA lawsuits could easily be located outside of California. Industrial projects that have locational flexibility, including both new and existing manufacturing facilities, were not targeted by CEQA lawsuits because it appears that virtually no major

Industrial projects that have locational flexibility, including both new and existing manufacturing facilities, were not targeted by CEQA lawsuits because virtually no major new manufacturing facilities were proposed during this period. This cannot be attributed to the recession or outsourcing manufacturing jobs overseas: the United States has actually experienced a resurgence of manufacturing jobs.

new manufacturing facilities were proposed during this period. This cannot be attributed to the recession or outsourcing manufacturing jobs overseas: the United States has actually experienced a resurgence of manufacturing jobs. As noted in the authors' *Social Equity* report:

> California job growth particularly lags far below the national average in manufacturing, and the state's regulatory system is consistently rated as the worst in the country for business development. In 2010-2014, the state added only 4,400 manufacturing jobs, compared with 672,000 new jobs in the rest of the country. Manufacturing jobs provide some of the highest income opportunities for less educated workers than other working and middle class employment options. In January 2015, for example, the *Los Angeles Times* reported that the state's relatively poor manufacturing employment growth since 2010 (1% versus 6.7% for the U.S., and 15% in many states, such as Indiana and South Carolina) hurts California's middle-class workforce because manufacturing is "the classic path to higher paying jobs for less-educated workers." The state's diminishing ability to sustain quality middle class employment options is consistent with the increases in poverty, inequality and relatively slow growth of high school and community college educated residents California has experienced since 1970.[224]

An assortment of entertainment projects – an amusement park, a tribal casino, an annual fireworks display and other routine community events at public parks, and two dance/music facilities – comprised 5% of private sector project CEQA petitions.[225] These lawsuits were reportedly all linked to either NIMBYs or "greenmail" lawyers.

Two percent of the private sector CEQA petitions involved agricultural projects: primarily wineries (including those with tasting rooms or other visitor-serving facilities); and these lawsuits were filed by NIMBYs.[226] There was also one timber management project (a freight train linkage to more efficiently transport authorized harvested timber, replacing some trucks and resulting in a net decrease in air pollutants and greenhouse gas), filed by an environmental advocacy group opposed to timber harvesting.[227]

Some commercial and entertainment projects are owned and managed by public agencies as part of economic development or related efforts, such as convention centers, fairgrounds and major sports facilities. Because these types of projects are also sponsored by the private sector, they are included in the compilation of private sector projects. As a result, the study slightly understates (by less than 5%) the number of agency projects targeted by CEQA lawsuits.

Finally, energy projects are also categorized as private sector projects, although given the combination of substantial federal and state subsidies, and regulated ratepayer payment structures, these projects were also referenced in the narrative discussion of public sector projects in the preceding section of this report.

1. CEQA and Middle Class Jobs in Signature California Industries: Green Technology and Entertainment

A persistently under-reported result of CEQA's chronic litigation abuse is job loss, particularly in the middle class job sector. Job loss from NIMBY use of CEQA lawsuits (and CEQA lawsuits more generally) – which affects prevailing wage jobs, and both construction and non-construction unions – has been documented by various studies. One such analysis was prepared by the noted Southern California economist John Husing. It evaluated seven projects targeted by CEQA lawsuits and concluded that from just these projects, 3,245 prevailing wage jobs, paying workers an average annual wage of $100,502, were delayed or eliminated on an annual basis. The total affected annual lost wages and benefits of $326.1 million.

Unaffordable housing and wealthy stockholders are a green technology hallmark of California's economic recovery, but two of California's most successful companies passed on the opportunity to create jobs for middle-class workers by choosing to open their new manufacturing plants in Nevada[228] (Tesla) and New York (SolarCity).[229] These companies did not "race to the bottom" at the expense of American workers; they "raced to the market" by siting facilities that they knew could be opened – on time – in America.

Jobs Are A Public Health Priority Ignored by CEQA

Risa Lavizzo-Mourey, MD, MBA, and president and CEO of the Robert Wood Johnson Foundation, joined Mark Pinsky, president and CEO of Opportunity Finance Network, to urge recognition of the relationship between public health and employment:

> "Economic growth and job creation provide more than income and the ability to afford health insurance and medical care. They also enable us to live in safer homes and neighborhoods, buy healthier foods, have more leisure time for physical activity, and experience less health-harming stress."
>
> "We need to recognize that income security and economic opportunities lead to a healthier, more productive workforce and reduced healthcare costs, which in turn, leads to a stronger economy."
>
> "The end goal? Create and sustain job growth across the country. Improve communities. Improve health. Give people the opportunities to make smart, healthy decisions so that they can act in the best interests of their communities, themselves, and future generations."

As noted by the editorial board of the *San Diego Union Tribune*, there is a "manufacturing renaissance in the United States – a phenomenon that stops at the California border."

California job growth lags far below the national average in manufacturing. The *Los Angeles Times* reported that this hurts California's middle-class workforce, because manufacturing is "the classic path to higher paying jobs for less-educated workers.

As noted by the editorial board of the *San Diego Union Tribune*, there is a "manufacturing renaissance in the United States – a phenomenon that stops at the California border."

"Manufacturing jobs are a classic stepping stone into the middle class, paying much better than service or retail work. Such jobs in the aerospace and automobile industries were a central pillar of the state's economy from World War II to the end of the cold war. Then California and the rest of the United States began to hemorrhage millions of manufacturing jobs to lower-cost nations, especially China. In the last half-dozen years, however, as wages soared in China and as exploding U.S. natural gas and energy production drove energy costs down, we've seen a 'reshoring' phenomenon in which dozens of manufacturers have returned to America – sometimes to the states in which they were originally based. Except the Golden State. Returning manufacturers take "a fresh look at the whole country. Unless you're forced to be in California for some reason, increasingly it's hard to find reasons that you have to be here." Manufacturing jobs in California have edged up 1% over the past five years versus about 7% nationally. Unfortunately for the millions of state residents without white-collar job skills, these sorts of statistics don't seem to bother California's dominant Democrats. Environmentalists are more likely to see factory jobs as grubby and unsavory than as welcome. There's also the view offered by Governor Jerry Brown and others that amounts to a shrug – there's nothing anyone can do about the fact that lots of people want to live here, so of course California will be an expensive place to live. That's only partly true. The streamlining and fine-tuning of the California Environmental Quality Act recommended by the past three governors would make building factories much cheaper."[230]

CEQA litigation risks make it impossible for companies with locational flexibility – such as manufacturers – to predict when they can open state-of-the-art manufacturing facilities for green technology, even if they comply with all of California's stringent environmental and labor laws, and earn community support and aging appeals.

California is a Global "Market-Maker" for Electric Vehicles – But Loses the Tesla Battery Manufacturing Plant to Nevada and SolarCity Solar Panel Manufacturing Plant to New York. California was unsuccessful in its effort to persuade Tesla to locate its next major manufacturing facility – building batteries for cars and buildings – in California. SolarCity and Tesla were both offered significant financial incentives by their host states, but California officials were unwilling to commit even the state's newest lucrative revenue sources – cap and trade revenues from the sale of GHG emission allowances – to these major middle-class job creation projects.[231]

The cost to Californians seeking jobs: thousands of long-term middle-class jobs and related economic benefits that would have been created for Californians by the new Tesla and Solar City manufacturing plants.

Manufacturing jobs lost to higher-emitting GHG states is indeed an effective approach to reducing GHG produced in California – but the loss of middle-class manufacturing jobs based on CEQA litigation uncertainty also increases global GHG emissions and deprives Californians (and California taxpayers) of the jobs and revenues sparked by the state's climate policy leadership.[232]

As another example of California's signature "new economy" companies, Google, recently explained that its major fiber facilities would not be built in California "in part because of the regulatory complexity here brought on by CEQA and other rules. Other states have equivalent processes in place to protect the environment without causing such harm to business processes and therefore create incentives for new services to be deployed there instead."[233]

Tesla and SolarCity, along with Google, are building companies and divisions based on the renewable energy and electric car mandates adopted in California. None of these companies have complained about California's stringent air and water pollution regulations, or species protection, water conservation, open space preservation, and workplace safety laws and regulations. CEQA – and specifically the schedule delays and uncertain outcome of often non-environmental use of CEQA litigation – is a unique challenge that can, with no cost to taxpayers, be fixed with the moderate legislative reforms discussed below.

California Has Shrinking Share of Private Sector, Non-Construction Jobs Relative to Other Democratic Party Strongholds

Union use of CEQA litigation as a labor bargaining tool for non-construction private sector employers is subject to different federal labor laws than those that apply to building trades; generally, organized labor cannot use CEQA litigation to secure workplace jobs or negotiate wages or working conditions with manufacturing, office, hospital or other private sector employers. Union use of CEQA outside the building trade sector is nevertheless widely reported in CEQA disputes, especially involving challenges to retail projects (e.g., Walmart), hotels, hospitals and major public venues (e.g., sports stadiums and convention centers). Project Labor Agreements (PLAs) secured by construction trades can also include non-construction job provisions.

Notwithstanding union use of CEQA lawsuits against employers, California's private sector union participation rates remain much lower than other traditionally union-supportive, Democratic Party strongholds such as New York, Hawaii and Michigan, and have even fallen well behind red states such as Alaska, Nevada and Kentucky. For example, California's percentage of union jobs in the manufacturing sector, 7.2%, ranks 20th – behind Alaska, Delaware, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Washington, West Virginia and Wisconsin.

Since none of the states with greater manufacturing sector union participation than California allow anonymous or union use of environmental lawsuits for non-environmental purposes, traditional political organizing, rather than CEQA litigation, appears to account for the greater success of unions in other blue (and even red) states.

— Sources: Barry T. Hirsch and David Macphearson, Current Popuation Survey (CPS Outcoming Rotation Group (ORG) Earnings File (2015)), *available at* http://unionstats.gsu.edu/State%20U_1983.xls and http://unionstats.gsu.edu/State_U_2012.xlsx (accessed April 30, 2014); John Husing, CEQA Working Group, "Misuse of CEQA and Prevailing Wage Workers" (September 12, 2013), *available at* http://ceqaworkinggroup.com/wp-content/uploads/2013/09/Final-Husing-Report.pdf (accessed May 28, 2015).

Another of California's signature "new economy" companies, Google, recently explained that its major fiber facilities would not be built in California "in part because of the regulatory complexity here brought on by CEQA and other rules."

Longstanding California companies have also relocated their headquarters and other facilities outside the state, again resulting in significant middle-class job losses (especially in Los Angeles) that are unlikely to be recaptured given the locational flexibility and shareholder duties of corporations. Some of the companies that shuttered headquarters and major facilities in California under the current Administration include Nestle,[234] Toyota (3000 jobs in Torrance),[235] and Occidental Petroleum.[236] Media reports regarding employers departing to other states indicate that Texas, Arizona, Nevada, Utah and Florida are top destinations; all of these states have significantly higher per capita GHG emissions than California.[237]

Even the environmental "mitigation" programs of the "clean and green" technology sector have been targeted with CEQA lawsuits. Silicon Valley's employment growth has been nothing short of extraordinary, but the Bay Area's housing supply continues to lag far behind demand. Large employers have responded (sometimes voluntarily, and sometimes as a "mitigation measure" imposed under CEQA as part of the project approval process), with programs to reduce employee automobile commutes.

The most visible and costly of these programs are bus fleets that fan out across the Bay Area to transport employees to and from work. (Burbank's movie studios have collaborated on similar bus fleets, as have other large employers, such as some campuses of the University of California.) A coalition of groups alarmed by the influx of technology workers to San Francisco neighborhoods, filed a CEQA lawsuit against the city's regulation of bus stops for this fleet of transit mitigation buses.[238] (A union group seeking to force the employers to use bus contractors with union drivers also joined in the CEQA lawsuit.) The lawsuit alleges "gentrification" as a new environmental impact requiring analysis and mitigation under CEQA (including the argument that lower-paid workers forced out by high housing costs have to commute longer), along with allegations that the bus fleet itself causes unacceptable traffic congestion, noise and air pollution on city streets.[239] A fully occupied bus replaces 120 cars, reduces the need for tech employees to own cars (thereby reducing the need for parking), and has lower collision risks than the fleet of displaced cars. The bus fleet for multiple employers now exceeds 500, resulting in 50,000 fewer round-trip automobile commute trips daily. One major employer agreed to require union drivers, but the CEQA lawsuit remains pending.[240]

Clean and green technology companies are not the only major employment centers targeted by CEQA. Another signature California industry, entertainment, is likewise targeted by a range of CEQA lawsuits.[241]

The wildly successful Harry Potter books and movies hit the market more than 10 years ago, with the last movie in the series released in 2009. Universal Studios acquired the right to develop a Harry Potter theme park ride and related attractions at both its Orlando and Los Angeles amusement parks. The Orlando Harry Potter theme park opened in 2010, and instantly became a top-ranked tourist attraction that helped sustain visitation during the recession. The Los Angeles Harry Potter theme park had a very different adventure: as an integral component of the Universal Studio "Evolution Plan" for the 397-acre studio and amusement park campus, the project first went through nearly a decade of administrative processing, including CEQA studies, and an extensive community outreach process that eventually enlisted 7,500 active supporters.[242] The project was designed to include the Harry Potter ride and other amusement park upgrades, renovated movie and television production facilities and offices for NBCUniversal studios, and 3,000 higher-density, transit-oriented residential units in an urbanized area of Los Angeles County.[243] Bowing to intense neighborhood opposition to higher-density housing, the project's residential component was ultimately dropped (notwithstanding acute housing needs and an affordability crisis in Los Angeles and other parts of Coastal California),[244] and the project was finally approved in 2013.[245] The CEQA lawsuit challenge was filed in 2014, when neighbors who had successfully demanded that park-related traffic be routed away from their neighborhood onto a new freeway interchange sued to stop the closure of the substandard former interchange as part of the freeway improvements.[246] California still does not have a Harry Potter ride – while Florida has reaped five years of Harry Potter jobs and tourism dollars. The Los Angeles Universal Studio project was projected to create 30,000 permanent jobs.[247]

> Clean and green technology companies are not the only major employment centers targeted by CEQA. Another signature California industry, entertainment, is likewise targeted by a range of CEQA lawsuits.

Farther north, in the land of Star Wars, after nearly 10 years George Lucas had finally won approval in 1996 for a long-range Master Plan for the Grady campus in Marin County that hosts LucasFilms, Industrial Light and Magic, and other game design and related Lucas enterprises. After many more years of post-approval processing, in 2012, Lucas was on the verge of receiving final approvals to actually construct just a fraction of the development previously approved in 1996 (by which time he had also agreed to scale back the approved project and instead preserve more open space and restore a creek). Neighbors in notoriously anti-growth Marin County were having none of it, even neighbors who had moved in after the 1996 "vested" approval for the campus Master Plan. Lucas was likewise fed up, and on the eve of project approval – facing the certainty of neighbor CEQA lawsuits, and the uncertainty of the timing and outcome that comes with CEQA lawsuits – he withdrew his application after having spent millions of dollars and many years attempting to complete the two full cycles of CEQA processing required by Marin County.[248] Lucas is one of the county's very few large employers (and corporate taxpayers), but a handful of neighbors could invest a few thousand dollars in a CEQA lawsuit guaranteed to buy years of litigation uncertainty. The final score: neighbors win, Marin (and California) loses 800 construction and permanent jobs, hundreds of millions in tax revenues and other indirect economic benefits, and more than $50 million of environmental restoration work planned for the 78% of the campus proposed for permanent open space preservation.[249] A new skirmish in this neighbor dispute was initiated in early 2015, when Lucas announced he would seek approval to build quality affordable housing in Marin (an extremely high-cost, low-supply housing market) – without seeking scarce federal and state affordable housing funding.[250] His wealthy neighbors immediately voiced their vehement opposition to this new project as well, and the affordable housing proposal has also been abandoned.

2. CEQA and Small Business

The U.S. Small Business Administration reports that small businesses have created about 75% of the net new jobs created in the economy.[251] CEQA litigation abusers, particularly NIMBYs and competitors, have found small business to be an easy target.

One well-reported story involves Moe's Gas Station, a small independent station operating next to a freeway interchange in the heart of Silicon Valley. Moe's decided to add a new pump island (three new gas dispensers), and Moe's neighbor – a competing small gas station – used aggressive CEQA tactics to try to derail Moe's.[252] The competitor first unsuccessfully tried to block the project as part of the city's administrative review and approval process, which included a CEQA study and approval of a "Negative Declaration" confirming that the project would cause no significant adverse impacts. The majority of Negative Declarations fail in reported appellate court cases examined over a 15-year study period,[253] and sure enough, Moe's competitor won its CEQA lawsuit challenge to

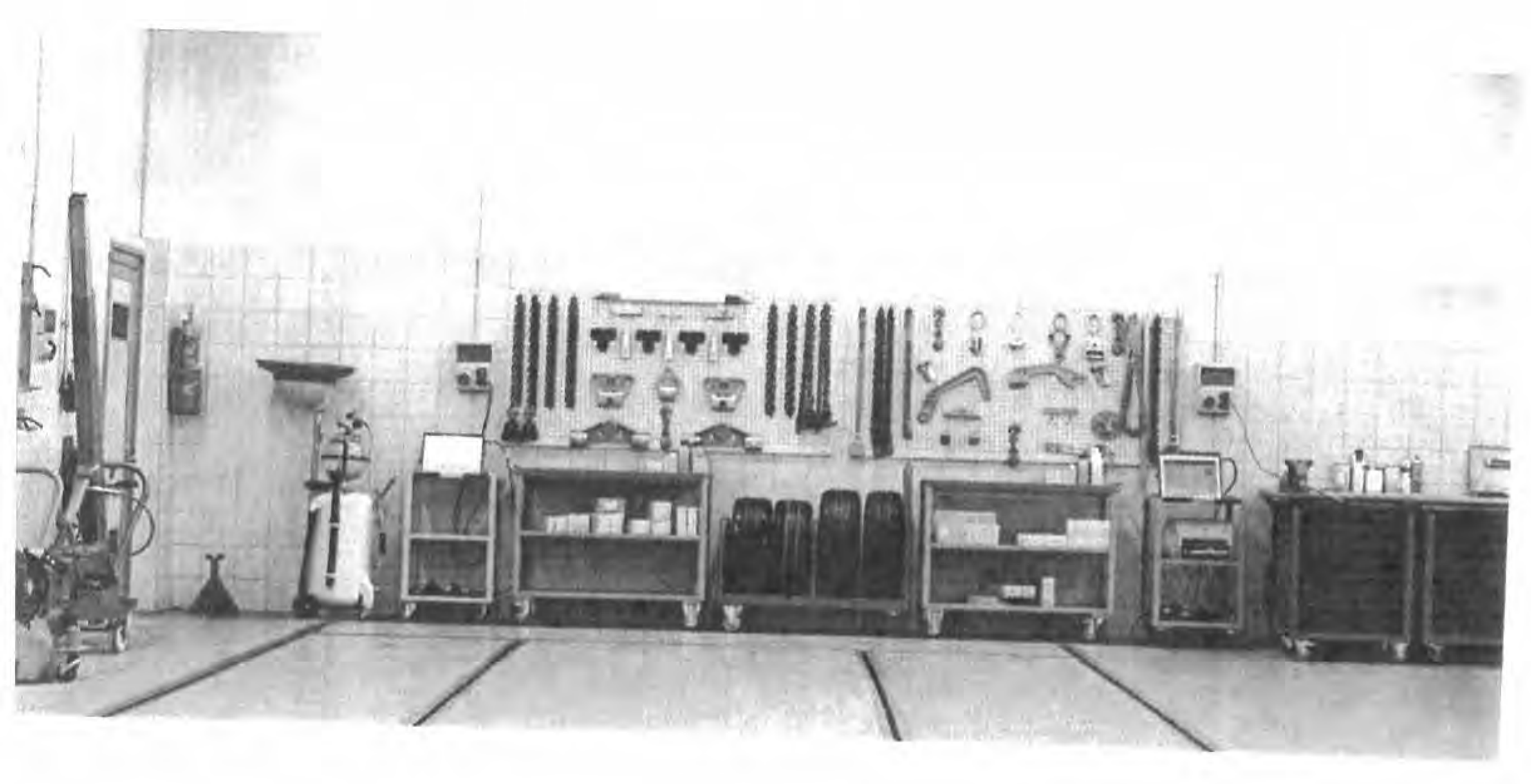
One well-reported story involves Moe's Gas Station, a small independent station operating next to a freeway interchange in the heart of Silicon Valley.

the Negative Declaration – and Moe's approval was rescinded. Moe was next required to prepare an Environmental Impact Report, at a reported cost well in excess of $100,000, and repeat the CEQA administrative process for longer than a year. Moe's competitor filed various objections to increase the cost of the studies and delay completion of the process, but ultimately Moe got his approval – and his competitor promptly responded with another CEQA lawsuit. Moe won the second lawsuit, and got to build the small new pump island. Total costs for this gas station expansion: more than $500,000 for Moe and the city.[254]

In the San Diego County community of Poway, an automotive repair shop decided the neighborhood could not support a new competitor – and filed a CEQA lawsuit challenging the business license (for use of an existing facility) of a new automobile repair shop. Like other Negative Declaration challenges, Poway lost – but the judge (who in that case was fully aware of the competitor's identity and interests) elected to simply order more environmental study rather than shutting down the targeted business. Nearly $200,000 later, the new, minority-owned auto repair shop survived the CEQA gauntlet – notwithstanding an 18-month ordeal, and a disabling increase in its debt burden and other unanticipated business costs.[255]

Similarly competitor-based lawsuits range from freeway interchange "travel plazas" to large regional malls.[256]

In Berkeley, where CEQA was the tool of choice used against a proposed Starbucks occupancy by a Peet's-loving group of neighbors, CEQA remains a favorite for neighbors opposed to new occupants of existing storefronts. The proposed occupancy of vacant storefront proposed by the owners of a very successful downtown Mexican restaurant ran headlong into the wealthy, white reality of the city's tony "Elmwood" district – who also used CEQA to oppose restaurant occupancy of the same space in 2007.[257] This study shows that 17% of lawsuits filed against retail projects involve challenges to the occupancy of existing structures.[258]

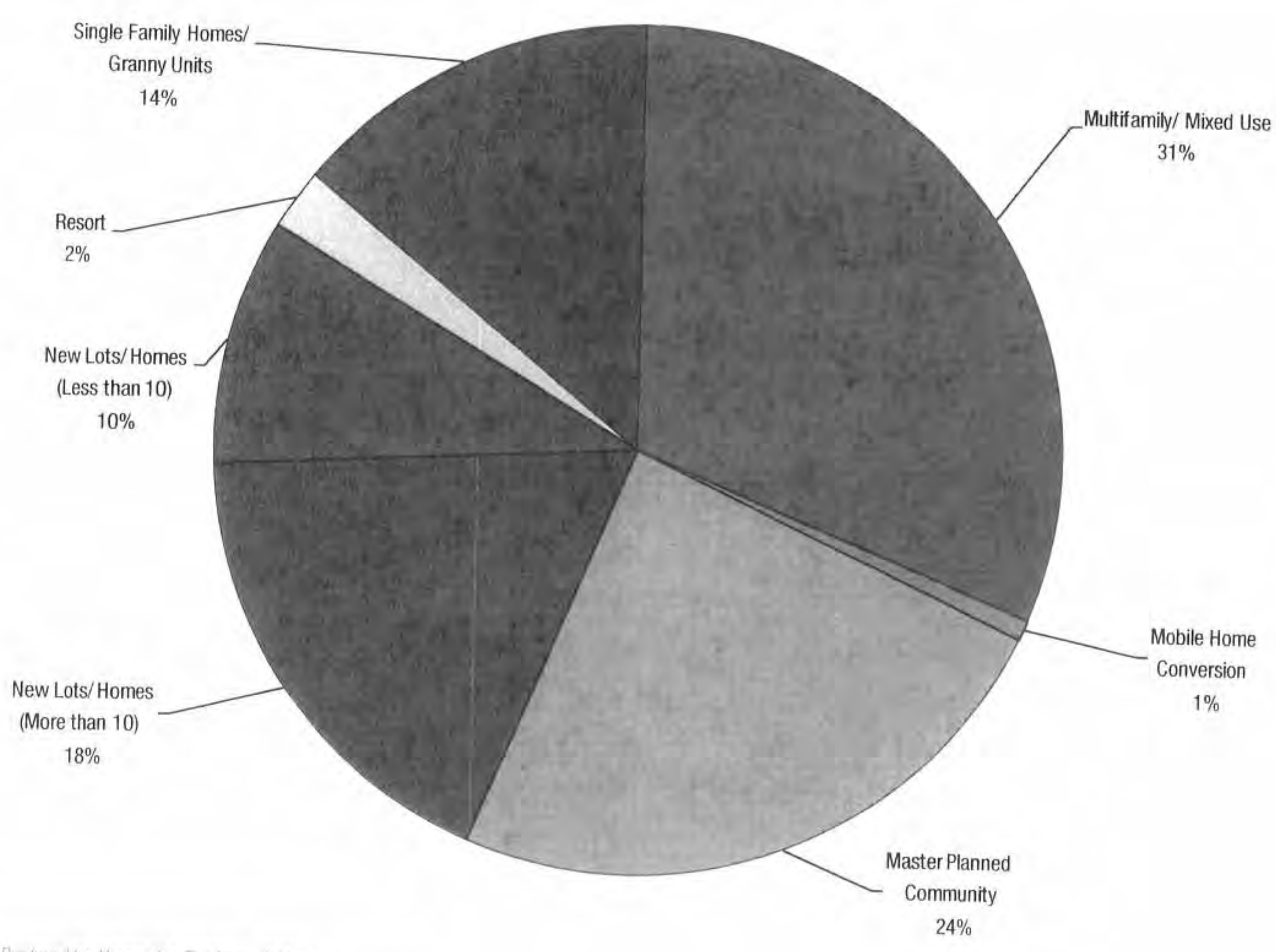


A range of other small commercial businesses – restaurants, neighborhood retailers, the Planned Parenthood clinic in South San Francisco, clinics – were targeted by CEQA lawsuits, even if the project involved only occupancy of existing buildings.[259] The environmental consequences of actually occupying a vacant structure – familiar infill "impacts" like traffic (and traffic-related impacts like air quality, noise, parking and greenhouse gas) – are the focal points of these NIMBY-inspired lawsuits.

3. CEQA and Housing

Housing is the single largest target of CEQA lawsuits. As shown in Figure 1, 21% of lawsuits challenged residential projects. Figure 11 takes a closer look at the various types of housing projects being challenged, and confirms that CEQA lawsuits most often target higher-density housing in urban locations – precisely the type of housing that *must be built* to comply with current California environmental climate change priorities such as AB 32 and SB 375.

Figure 11: CEQA Petitions Challenging Residential (and Mixed Uses Including Residential) Projects



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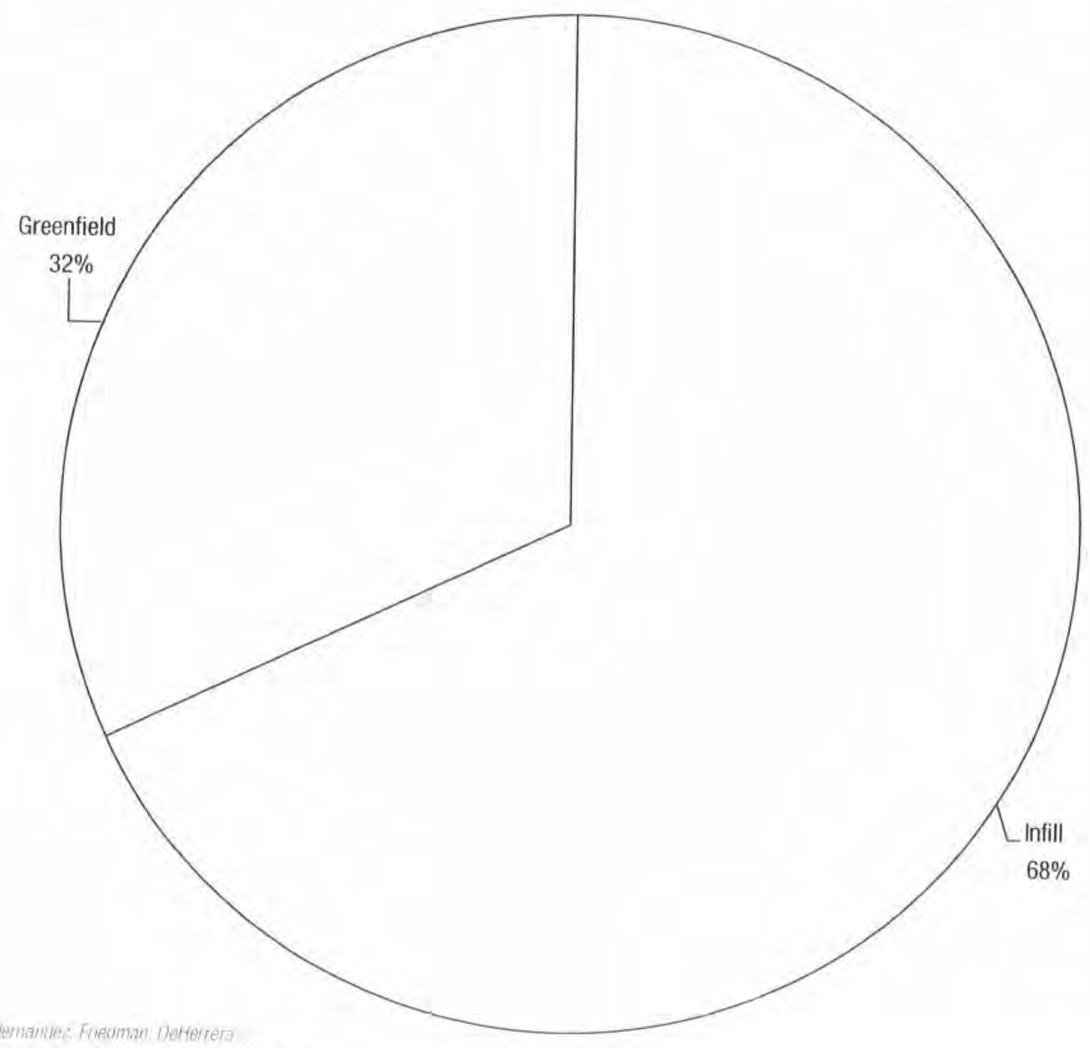
As shown in Figure 12, more than two-thirds of lawsuits challenging residential projects targeted projects in "infill" locations. The infill housing projects targeted by CEQA lawsuits also collectively comprise the vast majority of challenged affordable housing, support service housing, and senior housing projects. The largest challenged infill housing projects are master planned communities on former military bases; the housing types challenged most often are higher-density apartment and condominium apartments.[260]

The infill housing projects targeted by CEQA lawsuits also collectively comprise the vast majority of challenged affordable housing, support service housing, and senior housing projects.

Figure 12: More Than Two-Thirds of CEQA Residential Project Lawsuits Targeted Infill Development



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The most frequently challenged housing type is "multifamily" projects, typically multi-story apartments and condominiums.[261] Some of these projects are also "mixed use" and have, for example, retail stores or office space on lower floors, and residential units on upper floors.[262] Every multifamily project within the survey sample was also an infill project.[263] Climate change policy experts and land use planners love these multifamily, mixed use and attached housing product types because they create the higher population densities needed to support transit service, and create the promise of a "walkable" community where people do not need to get into their car to buy groceries, visit a restaurant or go to work. To further discourage automobile ownership and use, these projects also tend to have fewer and more costly parking places.

Some people who live near areas where higher densities are proposed, however, hate these projects. CEQA lawsuits target these projects in both established high density urbanized areas such as San Francisco and Los Angeles, as well as elsewhere in California where higher-than-existing but still very modest densities are proposed (e.g., a three-story senior housing project in a single-family home area in Sacramento was challenged as "massive" by a NIMBY lawsuit).[264]

Typically these types of higher-density, urban housing projects go through four or five separate, and largely duplicative, rounds of full EIRs in administrative proceedings that can take more than 10 years. The ongoing efforts by the City of Los Angeles to create a higher-density, transit-oriented corridor in Hollywood provides a case study in how CEQA processing delays, duplicative rounds of CEQA studies, and multiple CEQA lawsuits, have empowered a passionate group of neighbors fundamentally opposed to this new urbanized vision for the community – and all at taxpayer expense.

The ongoing efforts by the City of Los Angeles to create a higher-density, transit-oriented corridor in Hollywood provides a case study in how CEQA processing delays, duplicative rounds of CEQA studies and multiple CEQA lawsuits, have empowered a passionate group of neighbors fundamentally opposed to this new urbanized vision for the community – at taxpayer expense.

4. Transit-Oriented Development: Hollywood and Beyond

- ***Welcome to Hollywood.*** Los Angeles is the second-largest city in the nation (after New York). Within the city, the Hollywood and East Hollywood neighborhoods are ranked as "high" density, with over 20,000 and 30,000 people (respectively) per square mile.[265] The adjacent, 1.8-acre independent city of West Hollywood has a slightly lower density, with more than 34,000 additional residents – but nevertheless made it to the 16th-densest city in the United States based on 2010 census data.[266] In short, this area of Los Angeles is already among the most densely populated areas of the United States – more dense than 20th-ranked San Francisco.

- ***EIR Rounds One and Two.*** Los Angeles is well on its way to completing a regional transit system that includes the "Red Line" subway service through Hollywood.[267] Planning and construction of the Red Line, which was informed by EIRs and several lawsuits, took over two decades. Approved EIRs included projections about population increases and higher-density development along the new transit corridor.[268] The primary EIR for the Red Line was completed in 1983, and then subject to a voluminous new supplemental EIR process completed in 1989.

- ***EIR Rounds Three and Four – with Five on its Way.*** With the Red Line approval process nearing a hoped-for end, the city completed a Community Plan to guide future development – and increased density around the new subway – in 1988.[269] Nevertheless, the city then spent another 21 years, ending in 2012, updating its land use plan for the Hollywood community to substantially increase density in this existing urban area.[270] The plan was approved by a unanimous vote of the City Council. Neighborhood opponents called it "Skyscraper Hell" and vowed to sue.[271] They did – three CEQA lawsuits were filed against the plan. (As noted above, land use plans are the most frequent regulatory action targeted by CEQA lawsuits.)

After almost two years in litigation, the trial court – the first of three layers of state judicial review allowed in CEQA lawsuits – ruled that the City's EIR was deficient. Resolving two of the lawsuits, the judge first observed that the:

> "Hollywood Community Plan Update (and its corollary environmental impact report [EIR]), which is a principal subject of this litigation, is a comprehensive, visionary and voluminous planning document which thoughtfully analyzes the potential for the geographic area commonly referred to as Hollywood."

But he also concluded that the EIR was "fundamentally flawed" because it used an expert agency population estimate that was higher than the 2010 census data, which first became available only after the Draft EIR was published (rendering all population-based EIR studies deficient); he also decided that additional alternative land use plans should have been considered.[272] Resolving the second lawsuit, which was brought by an organization called "Fix the City," the trial court also concluded that the city had failed to provide for adequate infrastructure analysis, mitigation and implementation.[273] The trial court judge eventually vacated the city's approval of the Hollywood Community Plan, thereby calling into question all projects approved under the now-vacated plan, and putting all pending projects in limbo.[274] The judge's decision will result in EIR Round Five: pending completion of a revised EIR, the city will continue to implement the 1988 Community Plan and EIR.[275]

- ***EIR Round Six.*** Senate Bill 375 requires California's metropolitan regions to develop land use and transportation plans to meet ambitious California greenhouse gas reduction targets in 2020 and 2035.[276] The Southern California Association of Governments (SCAG) approved the regional plan and accompanying EIR for the state's largest (by geography and population) region in 2012.[277] Substantially increasing density in Hollywood along the transit line is included in the SCAG plan, which was developed with years of coordination with cities and other stakeholders.

- ***Project EIRs – Rounds Seven and Eight, Nine, Ten and Beyond.*** Meanwhile, several projects – higher-density, transit-oriented projects – had been approved, and even constructed, in the area covered by the newly vacated Community Plan and EIR, by the valid Red Line EIR, and by the never-challenged SCAG EIR. These projects were also targeted by CEQA lawsuits filed by the same neighborhood opposition group. The city has suffered a steady string of CEQA losses for challenged projects; two multifamily housing projects ensnared by CEQA include:

  - **Historic Spaghetti.** A completed apartment project that replaced a former "Old Spaghetti Factory" restaurant with surface parking survived its first round of CEQA litigation. Although the vacant restaurant building had been substantially renovated over the years, and was not on either a federal or state register of historic structures, CEQA's ambiguous requirements allowed the restaurant to warrant special treatment as a historic structure – and required the apartment developer to preserve the façade of the restaurant as the facing of the new apartment building. The "façade preservation" mitigation was later determined to be structurally infeasible, so the city instead required the developer to reconstruct a visually identical replacement façade rather than preserve the original wall.

    In the second round of CEQA lawsuits against this project (by which time the original developer had lost its investment), the neighbors won their argument that approval of the replacement façade should have had a new round of CEQA review and the judge ordered the city's approval of this now-completed residential project vacated, a judicial outcome that – left unchallenged – would force existing residential tenants to vacate, and prohibit other completed units from being rented, pending completion of a new historic structure study and CEQA process.[278] For development of this site, this was ***EIR Round Seven*** – soon to be followed based on the CEQA lawsuit outcome by ***EIR Round Eight*** – for increasing development densities based on policies first adopted in 1983.

- **Wrong Millennium.** A mixed use residential apartment project that included hotel, commercial and retail uses was successfully challenged by the same neighborhood group and a hotel competitor[279] – and harshly criticized by the state's transportation agency for having unacceptable impacts on a notoriously congested freeway. The developer waited for the lawsuit outcome before starting construction, and after two years of litigation – preceded by several years of community outreach, planning and environmental studies – a trial court concluded that the EIR's traffic analysis was technically flawed, and project approvals should be vacated.[280] This was ***EIR Round Nine*** – again to be followed by ***EIR Round Ten*** – for increasing development density in the same Hollywood area.

The first Red Line EIR was approved in 1983; 30 years later, the higher-density vision for this transit corridor remains mired in several overlapping CEQA lawsuits. This Hollywood parade of costly EIRs and overlapping CEQA lawsuits illustrates a four-decade debate, which remains ongoing, about the relative policy merits of high-density development, increased congestion, transit utilization policy and increased demands on already-strained urban infrastructure.

- ***"Smart Growth - Beyond Hollywood" – Increasing Densities and Transit Use in Urban Areas.*** Hollywood's urban densification debate, dubbed "Smart Growth" by density advocates, is being repeated in dozens of other California communities. State climate mandates and urban infill advocates believe California's coastal communities must dramatically increase densities, but many residents – with enough resources – strongly disagree. Under CEQA, this very fundamental policy disagreement moves into a multi-year litigation venue where burdened trial court judges are forced to wade through technical and legal arguments about the sufficiency of thousands of pages of studies. Additionally, the most common CEQA judicial remedy – an order to vacate years-old project approvals and restart the environmental study process – does not actually resolve the policy debate but merely restarts the agency/applicant/consultant/attorney churn for still more CEQA studies, to be bickered over in still more judicial sequels of the same densification policy dispute.

As many commentators have observed, there is no end in sight to policy disagreements about the density and character of existing California communities, and the use of CEQA lawsuits by those who lose these policy disputes. As summarized by the website Curbed Los Angeles, and the non-partisan California Legislative Analyst's Office, earlier this year:[281]

> California is a beautiful and desirable place to live, but it's also one of the hardest places to afford to live. Los Angeles is particularly brutal: it's got the biggest disconnect between incomes and rents of anywhere in the nation, and it's the place to be if you're looking to have your dreams of homeownership crushed. Is there any hope? A new report out from the Legislative Analyst's Office shows that the groundwork for LA's housing shortage was laid a long time ago, and it's going to be hard work undoing it. Just how short on housing is LA? In order to keep housing prices in check, California overall would have had to build more (70,000 to 110,000 additional units each year), build denser, and build especially in the coastal areas (including Los Angeles) and central cities (as opposed to building mostly inland and in areas way outside of cities as has been done in the past). California also should have been doing this for decades already. Because it didn't, "the state probably would have to build as many as 100,000 additional units annually—almost exclusively in its coastal communities—to seriously mitigate its problems with housing affordability." And that's in addition to the 100,000 to 140,000 units that the Golden State is already planning to build. If the state had done all that, California's housing prices still would have continued to grow and would still be higher than the rest of the country's now, but the disparity between them would have been less gaping.

Excerpted Figures from California Legislative Analyst's Report, "California's High Housing Costs: Causes and Consequences (2015)"

Figure 3

California Home Prices Have Grown Much Faster Than U.S. Prices

Inflation-Adjusted Median Home Prices in 2015 Dollars

Figure 7

Building More Housing Would Have Slowed Rising Housing Costs

Average Annual Number of New Housing Units Built by Decade, 1980-2010

[a] Estimated new housing construction needed to prevent home prices from growing faster than the rest of the country.

It is also worth noting that the higher-density development favored by California's climate policies require far more costly housing units than traditional single-family homes. While urban density advocates argue that home prices outside the urban core are unfairly priced based on their need for public infrastructure such as roads and sewer systems, costly urban infrastructure upgrades are also often required for major urban projects.[282] And as recently confirmed in a regional conference on the Bay Area Housing Crisis,[283] the data in Table B, below, shows the dramatically different construction pricing structures for lower density and higher-density housing project types in the Bay Area, as well as the smaller living spaces provided by higher-density housing.

Table B: Bay Area Housing Construction Cost Comparison
(May 8, 2015 presentation to MTC Planning Committee/ABAG Administrative Committee by J. Fearn, D. Pinkston, N. Arenson)

Housing Type	Dwelling Units/Acre (Density and Height)	Unit Size	Cost of Material/Labor Compared to Single Family Home
Single Family Home Mid-Sized Lot (SFH)	5 2 Stories	2,750	NORM used for comparison purposes
SFH Small Lot	15 3 Stories	2,400	1.3X higher than mid-size lot SFH)
Townhome (units share common walls)	20 3 Stories	2,000	1.5X higher than SFH (lower consumer price than either SFH)
Townhome/Condo	26 4 Stories	1,900	2.0X higher than SFH (lower consumer price than SFH or townhome)
Midrise Condos	50 5 Stories + (including some Parking)	1,050	3.0-4.0X higher than SFH (feasible only in expensive urban markets)
Highrise	100+ 8-50 Stories + (including some Parking)	1,050	5.5x-7.5X higher than SFH (feasible only in extremely expensive urban markets)

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The higher-density housing (primarily midrise and highrise buildings) typically challenged in these CEQA infill lawsuits already requires home buyers to pay dramatically higher prices for comparatively smaller units. With the exception of the City of San Francisco, however, the Legislative Analyst's Office (LAO) Report concluded that housing density increased in California's coastal metro areas during 2000-2010 by only 4% relative to density increases of 11% in a comparison group that included Boston, Seattle, Washington, D.C., Miami and even traditionally "sprawling" Las Vegas.[284]

When the costs of CEQA-related study preparation and processing are factored in, housing costs in California's NIMBY-rich litigious coastal communities increase even more. The LAO estimates that even absent litigation, CEQA and land use entitlement processing for housing projects in California's ten largest cities between 2004-2013 took, on average, two and one half years to complete -- and sometimes resulted in smaller projects with fewer units.[285]

If higher-density housing is an environmental policy priority, then CEQA litigation undermines this priority. A broad spectrum of stakeholders agree that CEQA reform is needed if higher-density, transit-oriented housing goals needed to achieve California's GHG reduction mandates are to be achieved.

- Two of California's leading environmental advocacy organizations, the Natural Resources Defense Council and the California League of Conservation Voters, co-authored a report on SB 375 which noted that "because CEQA is focused on 'projects,' it faces limitations, especially for achieving effective mitigation of the global warming impacts associated with VMT [vehicles miles traveled].... In fact, in the hands of opponents to a high-density project, CEQA could threaten the implementation of an effective greenhouse gas reduction strategy."[286]

- Planning and real estate development experts from the public and private sectors come together in an Urban Lands Institute report that reached a similar conclusion about the need to reform CEQA to achieve the greenhouse gas reduction goals of SB 375: "Requirements of the California Environmental Quality Act (CEQA) should be reexamined and refined to promote specific land use and transportation projects that help achieve SB 375's desired outcomes. Such refinements can be designed to reduce the burden of excessive documentation while providing desired environmental protection, and fostering development of urban growth patterns and transportation systems that reduce carbon emissions."[287]

As discussed in greater detail in Part 3, notwithstanding widespread recognition of the need for CEQA reform to promote higher-density development, meaningful CEQA reform continues to fall victim to Sacramento special interests. Two more examples of CEQA challenges to higher-density apartment projects, both located adjacent to existing or planned Bay Area Rapid Transit (BART) stations in the Bay Area, help illustrate why:

- ***Transit-Oriented Development Challenged by Unions in Dublin.*** For decades, BART has encouraged communities to adopt plans and policies to encourage higher-density development around BART stations. Communities hosting newer BART stations, such as Dublin, receive additional funding to help plan (and complete EIRs for) station area plans, which are then "built out" as market conditions warrant. One of the few CEQA streamlining provisions that does exist is for residential projects that are consistent with, and implement, a previously-approved form of land use plan called a "Specific Plan." Multifamily housing developer Avalon Bay proposed to build a new apartment complex at the Dublin BART station using this CEQA compliance streamlining statute for an approved Specific Plan, which had its own EIR. A labor union seeking a Project Labor Agreement (PLA) sued under CEQA, asserting that the Specific Plan EIR's failure to expressly address GHG emissions made this transit-oriented, high-density apartment project ineligible for CEQA streamlining. Eventually, the courts ruled against the union (which sued under the banner of the "Concerned Citizens of Dublin" in their CEQA lawsuit).[288]

If higher-density housing is an environmental policy priority, then CEQA litigation undermines this priority. A broad spectrum of stakeholders agree that CEQA reform is needed if higher-density, transit-oriented housing goals needed to achieve California's GHG reduction mandates are to be achieved.

Notwithstanding widespread recognition of the need for CEQA reform to promote higher-density development, meaningful CEQA reform continues to fall victim to Sacramento special interests.

- ***Transit-Oriented Development Challenged by Union in Milpitas.*** The city of Milpitas, which straddles the East Bay and Silicon Valley, suffered a similar ordeal when it approved an apartment project near the new Milpitas BART station. The same union that challenged the Dublin apartment project filed another unsuccessful CEQA lawsuit in an attempt to leverage a PLA for this workforce housing project; the lawsuit resulted in substantial delays and increased costs.[289]

The "Blue-Green" political alliance between powerful unions and environmental organizations, along with union use of CEQA litigation threats and lawsuits to leverage PLAs from higher-density, transit-oriented housing, has virtually neutralized meaningful CEQA reform in Sacramento, as discussed further in Part 3 of this report.

A less reported political schism within the ranks of CEQA's litigation status quo defenders is a disagreement among California environmental advocacy groups about higher-density urban housing projects. Environmental advocacy groups that lobby for land use, transit and housing policies and funding programs to support precisely this type of higher-density, infill residential development have many local environmental activist and attorney members who cherish the right to oppose such high-density projects whenever they are proposed in their localized neighborhood's "environment."

- ***No Residential Project Is Too Small To Challenge.*** Another less-reported pattern of CEQA lawsuits is the extent to which CEQA litigation targets single-family home construction and renovation projects in established neighborhoods: during the study period, 15 CEQA lawsuits challenged single-family home projects, and three more targeted duplexes or second units in single-family neighborhoods.[290] One such single-family home CEQA lawsuit, from Berkeley, was filed against a project that received unanimous neighbor and Planning Commission/City Council support but was opposed by a distant city resident.[291] This CEQA challenge remains languishing "on remand" from the California Supreme Court more than six years after project approval.[292] Some of these single-family home projects involve only repair work or minor modifications, but CEQA litigation abuse is a readily available tool for fence-line neighbor skirmishes.

- ***Adaptive Housing Reuse of Existing Structures.*** CEQA challenges were also lodged against projects that convert approved or existing structures such as office buildings or hotels into housing. In one well-publicized case, in the depths of the recession an approved office building in San Jose was proposed for conversion into critically needed, transit-oriented housing. Local unions filed a CEQA appeal, insisting that they would pursue environmental challenges against the project unless the developer used union labor. The developer was already using union labor, but from a different union local than the union local that filed the CEQA lawsuit.[293] (Hijacking California's premier environmental statute as a proxy to fight a territorial battle among unions was a frequent tactic used during the study period, and most notably targeted solar and other renewable energy projects, as discussed above.[294])

- ***Master Planned Community Challenges.*** "Master Planned Communities" are defined for study purposes as larger projects that include thousands of housing units, community-serving retail, office or other employment uses to provide for a balance between housing units and employment opportunities, and at least one new elementary school. Such projects typically are implemented over a period of 10-30 years, and some are sued by multiple stakeholders on multiple occasions over a period of a decade or more. "Infill" examples of master planned communities range from the redevelopment of former military bases and industrial facilities, to the development of infill areas within existing cities or unincorporated county communities.[295] A slight majority of challenged Master Planned Community projects are located in unincorporated county "greenfield" areas rather than "infill" locations, but it is noteworthy that almost all are located immediately adjacent to existing communities and major infrastructure – and were generally included in regional land use plans that met California's aggressive 2020 and 2035 GHG reduction targets under SB 375. Master Planned Communities represent investment commitments in excess of $1 billion each, and provide thousands of construction and other jobs for decades. These projects are more likely to be challenged by established environmental advocacy groups opposed to virtually all new "greenfield" development.

- ***Subdivision Development Projects*** typically consist of proposals to construct smaller numbers of single-family homes and townhomes, often with neighborhood-scale amenities like retail services and parks. Over 75% of the challenged subdivision projects were in infill locations.[296]

- ***How Much Is CEQA Used to Combat Housing "Sprawl" in California?*** As shown in Figure 12, more than two-thirds of CEQA lawsuits challenging housing targeted infill housing projects. And as the regional greenhouse gas reduction plans completed under SB 375 have demonstrated – and as numerous CEQA lawsuit losses challenging these infill projects show – infill projects also have adverse environmental impacts under CEQA. These impacts include not only traffic congestion and parking but the environmental attributes of traffic and parking (traffic-related air emissions including greenhouse gases, noise and public safety), as well as impacts to aging urban infrastructure and public service facilities that were never designed to accommodate the type of huge density increases that the most radical of the GHG reduction targets – 80% less GHG than 1990 levels notwithstanding population and economic growth – demand.

In the housing project context, CEQA lawsuits are used by anyone for any purpose: by climate activists to challenge EIRs for not doing enough to study and/or reduce GHGs (e.g., the SANDAG lawsuit), by neighborhood activists for not doing enough to study and/or reduce the many consequences of urban congestion, by labor on any topic to leverage PLAs, and by NIMBY or even anonymous parties to stop any change (even repairing the drainage on their neighbor's existing house[299]). CEQA stops, stalls and shrinks housing projects – and is one of the key reasons that California's houses cost 2.5 times more than in the rest of the country and that California rents are double those than elsewhere in the United States. Extraordinarily high housing costs, losses and threatened losses for middle-class jobs accessible to the hundreds of thousands of adult Californians lacking even a high school degree, gas and electricity prices that are also persistently higher than the rest of the country, and California's environmental policies – led by CEQA – have created a perfect pricing storm that lands on the back of the young, the poor, minorities and the under-educated.

Just as CEQA is not a "business v. enviro" debate, it is not a "sprawl" debate. California has already conquered sprawl. As reported by California Planning and Development Report publisher Bill Fulton, recent reports from both the U.S. Census Bureau and the EPA confirm that California has long accommodated more of its population growth in urbanized areas than in rural areas.[297] A recent report by the EPA confirms that California has had a long-term pattern of favoring "infill" over exurban growth, and over a 60-year study period has consistently accommodated a higher percentage of population growth in urbanized areas.[298]

Extraordinarily high housing costs, losses and threatened losses for middle-class jobs accessible to the hundreds of thousands of adult Californians lacking even a high school degree, gas and electricity prices that are also persistently higher than the rest of the country, and California's environmental policies – led by CEQA – have created a perfect pricing storm that lands on the back of the young, the poor, minorities and the under-educated.

5. Other Private Sector Projects

Only 10% of CEQA lawsuits target industrial, forestry, mining, or agricultural projects – in popular understanding, the kinds of projects for which "pollution" or "destruction of sensitive natural environments" warrants the greatest level of concern.

As with much of CEQA lore, a closer look at the actual projects at issue tells a far more environmentally benign story:

- The largest CEQA challenge target in the agricultural and forestry category was wineries, a signature land use supporting a thriving tourist trade and a broad range of employment opportunities for some of California's most productive agricultural lands and picturesque landscapes.[300] The majority of these lawsuits targeted wineries with tasting rooms or other public spaces that would attract more visitors and add traffic to local roads. No non-agricultural operations were targeted. Wineries need to comply with stringent water quality, endangered species, worker protection, and other environmental standards. NIMBY lawsuits against winery-related visitors do not make a compelling case for preserving the CEQA litigation status quo.

- Only one timber-related CEQA lawsuit was filed during the study period, and this project involved using lower-emission rail rather than trucks for the transport of timber.[301] In the 10-year period from 2005-2011, California's timber production volume was only 37% of what it was from 1985-1994, a decrease of more than 60%.[302] Federal and state endangered species and water quality protection permit requirements and lawsuits (including lawsuits filed under CEQA's federal parent law, NEPA, California's Forest Practices Act and related permit requirements, and the politics and policies of public lands management including implementation of sustainable forestry practices) dwarf the role of CEQA litigation in actual timber management mandates. This lawsuit challenges a rail project, and is mired in the same CEQA v. federal law preemption arguments as the California High Speed Rail project.

- There were only 23 CEQA petitions that challenged industrial (manufacturing, assembly, processing) projects statewide – slightly more than the 18 CEQA lawsuits filed against single-family homes and secondary units.[303] The majority – 61% – of these CEQA "industrial" lawsuits challenged warehouse projects. The policy and legal debate over environmental practices in the goods movements sector typically reaches crescendo levels for projects involving the Ports of Los Angeles and Long Beach, where 10 years of CEQA and other lawsuits resulted in various settlements mandating cleaner trucks and other cargo movement practices – and has already resulted in one trip to the U.S. Supreme Court in a case that concluded that CEQA's mitigation mandates do not trump uniform federal laws on interstate trucking and truck emission standards.[304]

  A more recent CEQA port case, filed just after the study period, involves the expansion of the BNSF rail yard, which would shift more cargo onto railcars and off trucks and roadways. The BNSF lawsuit joins CEQA to federal environmental mandates of the Clean Air Act (pursuant to which a regional plan effectively prohibits all new sources of toxic air emissions, including localized emissions that would occur near the rail yard even though regional shipping emissions would decrease with a shift from rail to trucks).[305] The warehouse CEQA lawsuits filed during the study period did not involve these major Port operations, and each involved a single warehouse project – all but one located in the Inland Empire and desert areas of Southern California. CEQA does not provide local land use lead agencies with the authority to regulate trucking (or truck emissions), so these lawsuits tend to fall into either the "greenmail" category or a classic land use dispute by those wanting a different use for the warehouse property.

- There were 28 lawsuits filed challenging mineral resource extraction projects. The majority – 21 – involved "aggregate," which includes materials like sand, gravel and crushed stone, that are used to make concrete and asphalt concrete.[306] Aggregates are the most mined materials in the world, and are a key ingredient in asphalt and cement.[307] EIRs were prepared for all but five of these lawsuits. Seven of these lawsuits involved oil and gas drilling projects: one challenged new state environmental protection regulations relating to hydraulic fracturing and other well stimulation techniques, five challenged continued production (including drilling of new wells) in an existing oil recovery area in Whittier, and one challenged oil exploration testing in Kern County.[308] Neighboring landowners and environmental advocacy groups appear to be the litigants in most of these mining-related CEQA lawsuits.

- All remaining challenged industrial projects were in sectors with economic pricing structures that place a premium on reduced transportation costs and proximity to customers: three asphalt plants and one concrete plant that use, but do not have an onsite mine producing, aggregate materials; two beverage plants; one food processing plant; one gravel plant; and one temporary gypsum stockpile for agricultural use.[309] Several of these projects were sponsored by small business operators; all are also required to obtain land use, air quality, water quality, species protection and other applicable environmental permits – and comply with environmental standards – that did not exist when CEQA was enacted in 1970.

There can be no question that CEQA plays a critical disclosure and analysis role for all of these projects, but do these projects warrant preservation of the CEQA litigation status quo?

PART 3

Curtailing CEQA Litigation Abuse – Restoring CEQA's Role of Assuring Public Transparency and Accountability for Avoiding and Mitigating Adverse Impacts to the Environment and Public Health

CEQA was not etched onto stone tablets or penned with a feather quill centuries ago. Enacted in 1970, CEQA litigation practice has remained essentially unchanged since the California Supreme Court decided that CEQA applies to private as well as public sector projects, and should be "broadly" interpreted to protect the environment.[310] As CEQA critic Governor Jerry Brown has explained, however, over the past four decades the courts have issued hundreds of judicial interpretations of CEQA that have morphed this great environmental law into a "blob" of contradictions and uncertainty – often misshapen, misused, mismanaged and, as shown by this study, used to thwart important environmental policies like climate change.[311]

A. Media Reports of Widespread CEQA Litigation Abuse - and Calls for Meaningful CEQA Reform

The need for CEQA reform has been repeatedly confirmed by all major state editorial boards, by the current and former governors, by local elected officials and – for discrete moments, which quickly pass – by California's legislative leadership. Some excerpts calling for CEQA reform include:

- The ***Los Angeles Times*** concluded that CEQA had received a "black eye" when abused by a union group to leverage jobs for its members (who were already going to be paid prevailing wages), which resulted in abandonment of a major new manufacturing facility in an approved industrial park, and in an area with very high unemployment, for the production of taxpayer-funded Metro cars. As the editorial board noted, "now that [union] IBEW had reached a deal with Kinkisharyo, the company's opponents no longer needed to use the California Environmental Quality Act to beat it into submission."[312] This is not the first time the *Los Angeles Times* editorial board has commented on CEQA abuse:

  > "Many a bad project has been slowed, stopped or greatly improved because of [CEQA] – but many a perfectly acceptable project has withered and died because of the time and cost involved in sometimes frivolous litigation. Those lawsuits can derail a proposal even when the real object isn't environmental protection. Businesses use CEQA to hinder competitors; interests groups litigate for years, even decades, not so much to prevail on a matter of principle as to wear out a proponent."[313]

- The ***San Francisco Chronicle*** has likewise published several editorials on CEQA abuse, especially challenges brought by NIMBYs. *The Chronicle* recently opined that "of all the well-documented abuses of the California Environmental Quality Act, "the most absurd" may well be the lawsuit (languishing after more than 18 months in trial court) filed by abortion protesters against a Planned Parenthood clinic proposed to be located in

CEQA was not etched onto stone tablets or penned with a feather quill centuries ago. Over the past four decades the courts have issued hundreds of judicial interpretations of CEQA that have morphed this great environmental law into a "blob" of contradictions and uncertainty – often misshapen, misused, mismanaged and, as shown by this study, used to thwart important environmental policies like climate change.

an existing building, asserting that the city failed to adequately take into account the noise and public safety disruptions that the protesters themselves promised to create if the clinic was allowed to open. *The Chronicle* concluded:

> "This nonsense must stop. The 40-year-old CEQA has been a critical tool for preserving our natural resources, but it has also been exploited by interests whose motives have nothing to do with the environment, such as businesses that stifle would-be competitors or unions looking for leverage.
>
> We can now add women's health services to the toll of public goods that have been stymied by the California Legislature's refusal to stand up to the interests of special groups who seem to think CEQA should remain carved in stone."[314]

- The ***San Jose Mercury News*** has likewise long recognized the damage caused by CEQA abuse, and called for reform:

> "Economic growth must be a top priority. And one of the best ways to accomplish it is to reform the California Environmental Quality Act..... [CEQA] challenges often prevent development that could create jobs or help businesses survive without harming the environment, and they contribute to California's reputation as unfriendly to business. Four decades after Ronald Reagan signed CEQA into law, it's time for an update."[315]

A broad chorus of editorial boards harshly criticized former Senate President Pro-Tem Darrell Steinberg's sweetheart CEQA relief bill for his hometown basketball team's new arena. The *San Jose Mercury News* called out Senator Steinberg for limiting CEQA reform to his pet project:

> "Senate President Pro-Tem Darrell Steinberg knows the California Environmental Quality Act needs to be reformed. Why else would he make a last-minute push to exempt a proposed NBA arena in Sacramento, a top priority of his, from provisions of the law?
>
> Yet Steinberg won't agree to broader CEQA reforms that would do for the rest of the state what he wants to do for the Sacramento Kings. CEQA reform for me, but not for thee?.... This time, the hypocrisy is hard to take.
>
> [CEQA] is a key reason the state has been able to preserve much of its natural beauty as its economy boomed. But CEQA is regularly abused. Labor unions use it to extract concessions from developers. NIMBYs use it to stop development in their backyards. And businesses use it to stop competitors from expanding. The law needs to be updated to stop these abuses."[316]

The chorus criticizing Senator Steinberg also included the *Sacramento Bee*, which wrote:

> "No doubt, the proposed Sacramento arena could be a crucial catalyst for a more vibrant region and central city. But cities up and down California also have important developments on the drawing boards. Like the proposed arena, many are infill projects that create jobs, reduce sprawl and have few negative environmental impacts. Too often CEQA is exploited to stop good projects. Opponents who care nothing about the environment use the threat of CEQA lawsuits to leverage better labor deals or thwart a competitor."[317]

- ***The San Francisco Chronicle*** agreed, saying that Steinberg was "just plain wrong" and noting that "there are plenty of worthy projects around the state that are threatened by litigation under a law that is being exploited by individuals and special interests with motives that have nothing to do with the environment."[318]
- ***The San Diego Union Tribune*** has a long track record of calling for meaningful CEQA reform, writing in 2007: "CEQA has become... a tool of extortion for a long list of special interest groups that have little – if any – interest in the environment."[319] More recently, the *San Diego Union Tribute* reported on a short-lived CEQA reform proposal that would have integrated this 1970-statute with modern environmental and human health protection standards, curtailed duplicative CEQA challenges for projects that complied with plans that had already gone through CEQA, and ended anonymous CEQA litigation abuse by requiring disclosure for those filing lawsuits:

> "The fact that Governor Jerry Brown, State Senator Darrell Steinberg, and a bi-partisan group of state lawmakers say it's time for substantial reform of the California Environmental Quality Act is good news.... The CEQA proposal that surfaced this week was real reform. It would have streamlined the way projects get approved by eliminating duplicative reviews and limiting "greenmail" – litigation that uses environmental rules to force concessions or de facto payoffs to project opponents."[320]

- The ***Sacramento Bee*** has agreed: "CEQA is ripe for manipulation and needs updating. It is too often abused to slow down projects for reasons that have nothing to do with environmental protection."[321]
- Earlier this year, the ***Sacramento News & Review*** issued "NIMBY Awards" for the worst CEQA abuses (and abusers).[322] In an accompanying editorial, the publisher wrote:

> "I am an environmentalist. I attended the first Earth Day in 1970. I supported cap and trade. I want a carbon tax.... As an environmentalist, I am ashamed that environmental regulation is preventing low-income housing from being built, is significantly increasing the cost of building in California, is allowing groups to blackmail developers into a variety of concessions and is wasting government resources to negotiate an out-of-control process."[323]

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- The ***Orange County Register*** noted that CEQA "[r]eform is long overdue. The environment must be protected, but CEQA has been used as a hammer to unfairly punish even environment-friendly development."[324]

- The ***Fresno Bee*** weighed in with several calls for reforming CEQA, noting that it is "outdated" and specifically criticizing the Legislature for the "bad habit" of "handing out a pass on the troublesome CEQA, which most legislators agree needs reforming, to only a few politically connected people." The editorial board wrote: "Let's reform the act [CEQA] in its entirety, giving the same consideration to everyone falling under CEQA, and not just those who have special access to important legislative leaders, or their pet projects."[325]

- ***The Bakersfield Californian*** observed: "CEQA is a critical and necessary piece of legislation that protects California's varied and fragile environment and ecosystem from abuse, overdevelopment and environmental harm. But when NIMBYs (not in my backyard) use it to stall projects that do not negatively impact the land, CEQA has been abused."[326]

- The ***Santa Cruz Sentinel*** observed: "CEQA... has too often been used by a variety of interests acting out of self-interest more than first wanting to further environmental protections. CEQA lawsuits have contributed to California's reputation as a state unfriendly to business and overly regulated.... The new Democratic supermajority in the Legislature should take up the governor's call to reform the California Environmental Quality Act."[327]

- The ***Petaluma Argus Courier*** noted: "[B]ecause CEQA has not been updated or revised since it went into effect more than four decades ago, the law enables determined development opponents to misuse it to delay or stop projects that would not cause any serious environmental harm."[328]

In an op-ed on January 28, 2013, the *North Bay Business Journal* wrote:

> "Most people would agree that if a school, hospital or road project has been subjected to extensive environmental review and met all federal, state and local environmental laws, including the Clean Water Act, the Endangered Species Act and the Clean Air Act, the project should go forward without being sued for purported environmental reasons. Unfortunately, today, these projects are being delayed and face increased costs – many times to taxpayers – or killed altogether because of abusive litigation that has nothing to do with the environment.
>
> "[L]ike most other tools that are 40 years old, today's CEQA needs to be modernized to ensure that this policy is working in tandem with the myriad of other environmental laws and regulations that have been added since its inception."[329]

B. Elected Leadership Support for CEQA Reform

Existing and former elected leaders have agreed on the need for CEQA reform.

- Early in his first term, ***Governor Jerry Brown*** used his State of the State Address to call for CEQA reform:

  > "We ... need to rethink and streamline our regulatory procedures, particularly the California Environmental Quality Act. Our approach needs to be based on more consistent standards that provide greater certainty and cut needless delays."[330]

The Governor has also called CEQA reform "the Lord's work"[331] and made clear that the Legislature's periodic claims that it has "reformed" CEQA are "illusory": "I've always said about CEQA, it's like a vampire. Unless you strike to put a silver stake through it, there's always a law somewhere that's brought into the process, and the exemptions are more illusory."[332]

Governor Brown – who has called CEQA reform "the Lord's work" – has also expressed exasperation about it. "I've always said about CEQA, it's like a vampire. Unless you strike to put a silver stake through it, there's always a law somewhere that's brought into the process, and the exemptions are more illusory."

- In two op-eds, former ***California Governors Gray Davis, Pete Wilson and George Deukmejian*** joined in making a bipartisan plea for CEQA reform:

  "While CEQA's original intent must remain intact, now is the time to end reckless abuse of this important law; abuses that are threatening California's economic vitality, costing jobs, and are wasting valuable taxpayer dollars."[333]

  "CEQA has also become the favorite tool of those who seek to stop economic growth and progress for reasons that have little to do with the environment. Today, CEQA is too often abused by those seeking to gain a competitive edge, to leverage concessions from a project or by neighbors who simply don't want any new growth in their community – no matter how worthy or environmentally beneficial a project may be."[334]

- Local elected leaders have also decried CEQA abuse. To cite to just one of many examples, former ***Ventura City Manager Rick Cole*** notes that "while there is absolutely no question that the adoption and enforcement of CEQA has produced dramatic improvements in environmental quality," there is also "absolutely no question that it has been shamelessly misused and distorted to stop, delay or make hellishly expensive the infill development that is California's only alternative to suburban sprawl" – and that CEQA is "frequently hijacked to protect the narrow economic interests or personal preferences of well-heeled interest groups."[335]

C. Reforms to Preserve CEQA - Not CEQA Litigation Abuse

Three moderate reforms would restore CEQA to its critical role of assuring transparency and environmental accountability in public agency actions:

1. Require Transparency in CEQA Litigation to Prevent Non-Environmental Litigation Abuse

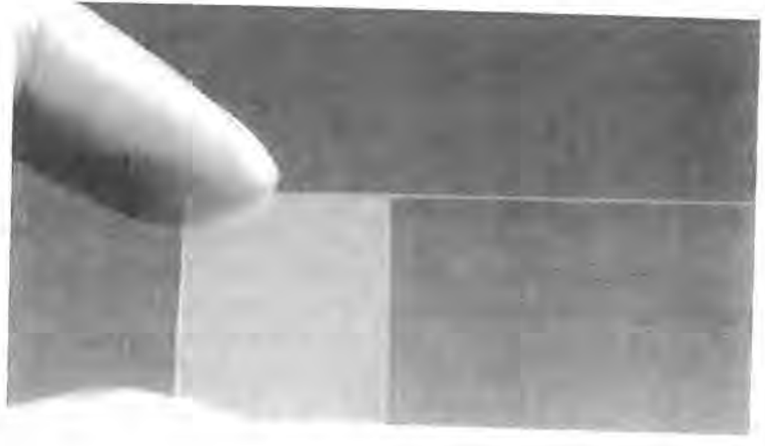
Under current court rules, parties bringing CEQA lawsuits (and on occasion lawyers representing no known party at all) are entitled to conceal their identity and interests, make up a non-existent environmental-sounding group name, and baldly assert that they are suing "to protect the environment." Court rules already require disclosure for parties seeking to file "friend of court" advisory briefs

Transparency to reveal the non-environmental interests of CEQA litigants is a powerful weapon against abuse, and it's a fair and long-overdue CEQA litigation reform.

in CEQA lawsuits,[336] and require disclosure for any party seeking to recover attorneys' fees if they win a CEQA lawsuit.[337] Transparency should extend to all phases of CEQA litigation. However, some CEQA petitioner attorneys have long been criticized in the media for "greenmail" – leveraged financial settlements with little or no environmental benefit included in the settlement agreements – when the petitioner attorney declines to identify a client, when the "client" is located miles away from the challenged project, or when the "client" has no knowledge of any other members of the newly-formed "Committee [Against Change]."[338]

Neither California nor the "environment" benefit from anonymous CEQA litigation abuse, nor are CEQA's non-environmental plaintiffs allowed to sue to enforce federal environmental laws or the CEQA-like laws in effect in many other states. Transparency to reveal the non-environmental interests of CEQA litigants is a powerful weapon against abuse, and it's a fair and long-overdue CEQA litigation reform.

The CEQA Research Council, an informal group of CEQA practitioners from the public and private sectors with an average of more than 30 years of experience with CEQA, requested that the Judicial Council modify court rules to require the same kind of transparency and disclosure at the beginning of CEQA lawsuits (the filing of petitions and answers) that is already required of those seeking to recover attorneys' fees at the end of CEQA lawsuits.[339] After deliberating,



> Reform would not in any manner curtail lawsuits filed by environmental advocacy groups, or by individuals who are actually at risk from a project's adverse environmental impacts.

the Judicial Council suggested that this was a rule change more appropriately decided by the Legislature.[340] However, in another vivid illustration of the power of the entrenched special interests who use (and abuse) CEQA lawsuits, legislative proposals modeled on federal environmental statutes requiring petitioners to disclose their identity and confirm that they are seeking to enforce CEQA for environmental rather than non-environmental purposes have not seen the light of day, and have been withdrawn or sidelined by policy committee leaders. As the influential "Think Long Committee for California" of the Berggruen Institute has noted:

> "Petitioners should be able to bring a CEQA lawsuit only if they have, and can demonstrate in court, a legitimate and concrete environmental concern about a project, as well as the absence of a competitive commercial or economic interest on their part in the project."[341]

It is also important to recognize that this reform would not in any manner curtail lawsuits filed by environmental advocacy groups or by individuals who are actually at risk from a project's adverse environmental impacts. Controversial projects with alleged significant adverse "environmental" impacts – with the potential to cause adverse public health impacts or harm to the natural ecology (e.g., the types of concerns raised by mines and landfills, and large-scale power, water and infrastructure projects) are far more likely to be sued by regional and national environmental advocacy groups and named individuals. The rights of those parties to seek judicial review of agency CEQA compliance practices would remain unchanged.

In contrast, anonymous parties who seek to block improvements to underutilized neighborhood parks, schools, apartment projects and libraries – and business competitors and NIMBYs seeking to protect their economic interests, and lawyers with sham or non-existent clients seeking "greenmail" financial settlements – would lose the right to continue to abuse CEQA litigation for non-environmental purposes.

2. Eliminate Duplicative CEQA Lawsuits: Enforce CEQA Once, Not 20+ Times

CEQA applies to every "discretionary" decision made by a public agency, but many of our laws, regulations and ordinances now require multiple agencies to make separate decisions on the same project, and also require the same agency to make multiple decisions about implementation of the same project over time.

- **Playa Vista** – a single urban redevelopment project in Los Angeles that is in the final phases of converting a polluted aircraft manufacturing facility into a coastal park, medium-density housing, and a "Silicon Beach" mix of employment uses – has been sued under CEQA over 20 times over more than 20 years – including lawsuits filed during the 2010-2012 study period for this report.[342]

- **Newhall Ranch**, long included in Los Angeles County and adjacent city plans as the continuation of adjacent master planned development projects in northern Los Angeles County, and also included in the region's approved (and not litigated) plan to achieve the regional greenhouse gas reduction goals established by SB 375, has been sued almost 20 times in less than 20 years, including two lawsuits during the study period (one of which is now pending at the California Supreme Court).[343]

> Duplicative CEQA lawsuits create a strong deterrent against comprehensive community planning such as General and Community Plans, and can result in a "project-by-project" review and approval pattern that is driven solely by opportunistic private sector development applications.

- Duplicative CEQA lawsuits also create a strong deterrent against comprehensive community planning such as General and Community Plans that assure orderly change with adequate investment and public services, and instead are more likely to result in a "project-by-project" review and approval pattern that is driven solely by development applications. The ongoing, 40-year saga of Hollywood's efforts to adopt and implement a higher-density, transit-oriented development pattern is one of several reasons that the City of Los Angeles has not attempted a comprehensive General Plan update for many decades. Communities that do decide to bite the bullet (and comply with state law mandates) by updating local land use plans find themselves targets of CEQA lawsuits – with the plan and the lawsuit both funded by taxpayers. Forty-nine CEQA lawsuits were filed against city and county land use plans during the study period.[344]

Duplicative CEQA lawsuits delay projects, but they also delay the jobs projects create, increase overall project costs, and contribute to California's extraordinarily high housing costs. Duplicative CEQA lawsuits also impede achievement of important environmental priorities that require long-term commitments and a stable implementation framework, such as reducing greenhouse gas emissions and qualifying for federal transit funding by increasing ridership with higher-density housing and employment uses along designated transit corridors. Passionate people can oppose higher-density and transit, but projects that comply with approved land use plans for which a lawful CEQA process was already completed should not be subject to repeated CEQA litigation by staunch plan opponents.

Supervisor Scott Wiener from San Francisco successfully navigated the city's infamously complex politics to establish a clear deadline for filing CEQA lawsuit challenges once, not multiple times, for the same project.[345] That even San Francisco is ahead of the Legislature in reducing CEQA litigation abuse by curtailing duplicative lawsuits is further evidence of the power of special interests in Sacramento.

3. Insufficiently Detailed Technical Studies Should Be Remedied with Corrected Studies — and More Mitigation and Public Review, If Warranted - Not Rescinded Project Approvals

Lawyers are trained in critical thinking, and there are few lawyers – and fewer judges – who can avoid concluding that a CEQA study could not have been improved in some manner for some topic from an armchair quarterback seat 2-6 years after the study was completed. CEQA currently requires the study of nearly 100 separate topics, each of which also has six separate subparts. In any academic setting, answering 541 questions correctly on a 600-question test would result in an "A" – and answering more than half right would still earn a passing grade. While the courts and Legislature have recognized that CEQA does not demand perfection, in CEQA litigation practice almost 50% of lawsuits result in a finding that an agency missed the mark on only one or two technical study topics – and then usually for just one or two sub-parts of that topic. The most common judicial remedy in CEQA lawsuits, however, is not to fix the part of the study that fell short – e.g., by augmenting a traffic study with more recent traffic counts and, if warranted, more traffic mitigation – but to vacate the agency's approval of the entire project pending unspecified further CEQA compliance steps.

> The appropriate remedy for the vast majority of CEQA lawsuits is to fix the technical study gap, require more public disclosure and comment, require more mitigation if appropriate under the corrected study, and hold decision-makers accountable for their final actions.

Notwithstanding the precedent recently set by the California Supreme Court in the *Smart Rail* decision discussed above, trial and appellate court judges persist in vacating entire project approvals even for apparently trivial errors such as the need to update a traffic count for a single intersection for a San Francisco infill project.[346] CEQA lawsuits should not derail projects getting 90% of 600 questions correct.

The Legislature should extend to all projects – not just donor- and voter-rich projects like the Sacramento Kings arena – CEQA litigation remedy reform that precludes vacating a project approval unless proceeding with the project would cause the type of "irreparable harm" that is normally required for injunctive judicial relief (e.g., project-related pollution could cause a substantial public health risk, or planned construction could damage an irreplaceable tribal resource or cause significant harm to the natural ecology). The appropriate remedy for the vast majority of CEQA lawsuits is to fix the technical study gap, require more public disclosure and comment, require more mitigation if appropriate under the corrected study, and hold decision-makers accountable for their final actions.

Since most CEQA lawsuits either seek to permanently derail a project (the NIMBY objective), or gain maximum leverage against the project sponsor for non-environmental purposes (the objective of greenmail lawyers, labor unions and business competitors using CEQA lawsuit tactics), the current judicial remedy of vacating project approvals after six or more years of public and judicial review is a nuclear threat that stops environmentally beneficial and widely-supported projects (and stops some proposed projects from completing or even beginning the CEQA agency approval process).

Aligning CEQA litigation injunctive remedies with ordinary standards for injunctive relief – as was done for the Kings Arena project by special legislation – preserves CEQA's disclosure framework, still demands careful environmental evaluation and mitigation, and guarantees a second round of public and political review of required fixes to any flawed studies. However, this reform will weed out abusive CEQA litigants by reducing their leverage from stopping or delaying an environmentally benign or beneficial project to requiring corrected studies and additional mitigation.

This reform will also substantially curtail CEQA litigation aimed at stopping infill projects (targeted by the vast majority of CEQA lawsuits), rather than simply assuring that the challenged agency complies with CEQA. A traffic study that misses the mark on measuring impacts to a single intersection may justifiably require correction (and additional mitigation, if required by the corrected study). However, vacating an agency approval for a partially or even fully-built (and occupied!) infill project because of an alleged technical deficiency in a traffic, parking, aesthetics, public service, historic resource, and the myriad other studies now required by CEQA, can delay for years or even derail plans and projects designed to achieve important environmental, equity, economic and other public policy objectives. Agencies that missed the mark on a study should be required to fix the study (and do more mitigation if the study shows increased significant impacts), but the approved project should proceed unless doing so causes a true risk to public health, irreplaceable tribal resources or the natural ecology.

This modified judicial remedy reform would also recognize the important role that other agencies (and environmental laws) play in requiring projects to meet the hundreds of other environmental and public safety standards that are now required by laws that did not exist when CEQA was adopted in 1970. California's regulatory standards are among the most stringent standards in the world (e.g., seismic safety, air quality, hazardous materials, stormwater management, energy and water conservation).

> Vacating project approvals after six or more years of public and judicial review is a nuclear threat that stops environmentally beneficial and widely-supported projects.

Finally, this modified judicial remedy reform would also curtail CEQA litigation abuse for design and lifestyle disagreements between elected majorities of the Legislature and local agencies, and individuals seeking to prevent change in their communities. While these disagreements may be passionate, they are also fundamentally political – not "environmental." As Governor Brown eloquently urged in his *Pocket Protector* amicus mentioned above, allowing CEQA litigation against urban design choices:

> "[I]llustrates the profoundly negative impacts that the escalating misuse of CEQA is having on smart growth and infill housing" and "strikes at the heart of majoritarian democracy and long standing precedents requiring deference to city officials when they are interpreting their own land use rules."
>
> "The [appellate court] found aesthetically degrading the "excessive massing of housing with insufficient front, rear and side yard setbacks [citation omitted]. Just as cogently, other people may well conclude that the close arrangement . . . fostered a cozy, neighborly intimacy. The fact that narrow streets are unfriendly to speeding cars and that neighbors are thrust into close contact may well be viewed as a superior quality of living rather than a negative impact."
>
> "CEQA discourse has become increasingly abstract, almost medieval in its scholasticism. Nevertheless, if you apply common sense and the practical experience of processing land use applications, you will conclude that what is at stake in this case is not justiciable, environmental impacts but competing visions of how to shape urban living."

The California Supreme Court declined to review or reverse the *Pocket Protectors* appellate court decision, which resulted in a two-year delay of partially constructed townhomes pending completion of an EIR that made no changes to the approved project, but did result in the visual blight of tacked-on blue roof tarps to wood-framed, two-story attached townhomes the neighbors had sought to stop entirely. This judicial outcome served no environmental purpose, just as no environmental purpose is served by NIMBY design spats (or lawyers hunting greenmail payouts) over setbacks, parking ratios and private views.

This proposed reform would return CEQA to its original purpose, which is assuring adequate study, disclosure and feasible avoidance or mitigation of significant adverse project impacts after many years of judicial uncertainty.

D. How Previous Legislative CEQA "Reforms" Fell Short: A Short History of Unicorns, Whack-A-Mole, Buddy Bills, Sleight-of-Hand, and Political Panic

As numerous media reports and editorials demonstrate, CEQA litigation abuse for non-environmental (and even anti-environmental) purposes is not "new news." However, this comprehensive study of CEQA lawsuit petitions is the first proof that the majority of CEQA lawsuits are the result of NIMBY-based opposition to localized infill projects that change the status quo to help advance California's climate change policies and address urgent need for housing, jobs, infrastructure and services in California communities. CEQA's litigation abuse status quo defenders have been politically agile, however, in periodically enacting illusory CEQA "reforms" that have no effect – and even expand – opportunities for litigation abuse of CEQA for non-environmental reasons.

- **CEQA's Herd of Unicorns.** Unicorns are well known to children and adults as an attractive creature that is much discussed, but never seen. CEQA "reforms" cynically intended to mute criticism of CEQA litigation abuse similarly target an attractive but mythical "project" that simply does not exist. By far the most noteworthy examples of CEQA reform "unicorns" are statutory provisions branded as "exempting" or "streamlining" infill development projects.[347] The problem is that these statutory "reforms" include qualifying criteria that have been extremely effective in assuring that no project is ever eligible for CEQA streamlining, and even if such projects do miraculously appear, the "reforms" do nothing to curb CEQA litigation abuse by NIMBYs or other stakeholders. Some examples:
  - Senate Bill 375,[348] the landmark statute mandating that California revise its regional transportation and land use plans to meet GHG reduction benchmarks for 2020 and 2035, included what its sponsors trumpeted as a "CEQA exemption" for particular types of infill housing that meet dozens of standards and are located in designated neighborhoods of designated communities. In the seven years since SB 375 has been in effect, and as confidently predicted by land use experts when SB 375 was being debated, no project has qualified for this unicorn exemption. SB 375 also included a lesser level of "CEQA streamlining" – a partial pass on the need to consider impacts like "growth inducement" in EIRs – on a CEQA topic that has not been seriously contested in lawsuits in several decades, while failing to provide any "streamlining" provisions on the litany of CEQA deficiencies alleged in most CEQA lawsuits aimed at infill projects, like noise, congestion, air quality, public services, aesthetics, traffic and parking.

CEQA's litigation abuse status quo defenders have been politically agile in periodically enacting illusory CEQA "reforms" that have no effect – and even expand – abuse of CEQA for non-environmental reasons.

» An earlier "infill" exemption included in CEQA, Senate Bill 1925,[349] fared even worse: in the 13 years since this law was enacted, we were unable to locate a single project statewide that qualified for this infill exemption.

» Senate Bill 226 was yet another attempt to "streamline" CEQA for designated types of infill projects.[350] Again, the criteria for eligible projects are drawn narrowly (e.g., projects that have a significant amount of surface level parking are ineligible), and the level of CEQA "streamlining" again does not target the infill lawsuit litany. Although the statute is silent on this point, the state Office of Planning & Research (OPR) issued regulatory guidance ("CEQA Guidelines") that asserted that the "streamlined" form of CEQA studies that could be used under SB 226 for eligible projects would be subject to a more favorable standard of judicial review: courts should uphold an agency's approval if it is supported by "substantial evidence" like an EIR, rather than vacate the agency's approval if opponents have made a "fair argument" that even one impact "may" be significant under the current CEQA streamlining allowed for any type of project qualifying for a "Negative Declaration."[351] Even if this untested, partial SB 226 streamlining worked perfectly, the litigation failure rate risk for infill projects remains over 40% – far too high to qualify for standard construction loans or other forms of financing critical to infill projects.

Apart from infill-related unicorn exemptions, the Legislature sometimes adopts non-reforms that can be described as – but do not actually work as – efforts to curb CEQA litigation abuse.

» For example, in 2010 the Legislature enacted a statute to prohibit "frivolous" CEQA lawsuits. The impossible statutory criteria for what actually constituted a "frivolous" lawsuit (to be "frivolous," a lawsuit must be "totally and completely without merit") made this another "unicorn" reform – discussed but never seen in practice, notwithstanding the prevalence of well-known "bounty hunter" CEQA[352] lawsuits (lawyers who decline to identify, and may not even have, a client) and projects targeted by over 20 lawsuits filed by the same or related parties.

- A more recent example involves Assembly Bill 900,[353] which created a "fast track" litigation pathway for qualifying types of "leadership projects" which required a capital investment of more than $100 million, and commitments to implement a list of various special interest priorities. Modeled after a "Buddy Bill" to expedite construction of a football stadium in Los Angeles (see below), AB 900's litigation fast track was two-fold. The first level of the judiciary (the trial courts) were skipped entirely, and the second level of the judiciary (the appellate courts) were required by the statute to resolve the lawsuit in 270 days (nine months). Notwithstanding significant legal arguments that the California Constitution forbade "skipping" the trial court, and that the "separation of powers" in the California Constitution precluded the Legislature from imposing a hard deadline on appellate courts, the Legislature enacted AB 900 with the promise of fast-tracking "big" projects during the Great Recession. Not surprisingly, constitutional challenges to AB 900 were successful – and the portion of AB 900 that allowed "skipping" the trial court were held unlawful. The court did not address the nine-month "deadline" that remains in AB 900 – but as bills to expand the list of qualifying projects are considered, the Legislature has been repeatedly reminded by various stakeholders (including representatives of the judiciary) of the complete impracticability and unenforceability of this nine-month deadline for getting through a trial process that generally takes about two years, an appellate court process that generally takes another two years, and a California Supreme Court process that can take 1-3 years. Pretending that a nine-month unenforceable CEQA litigation fast track will bypass the 2-6-plus-year judicial process is another "unicorn" reform – much discussed, but never seen.

Sometimes unicorns never even make it into enacted legislation. Trusted lobbyists can simply tell the California Legislature about what CEQA does – and does not – do, and these assertions then gain a remarkable level of traction, even when there is no basis in law or fact for these statements. In 2015, the award for the most widespread CEQA political falsehood is the entirely mythical assertion that CEQA exempts affordable housing projects. The entirely unicorn affrodable housing "exemptions" have no real world effect, of course, as confirmed by the many examples of affordable housing CEQA lawsuit challenges noted in this study – as well as the LAO's courageous report confirming the problem caused by CEQA to housing affordability.[354]

- **Whack-A-Mole.** Whack-A-Mole is a classic arcade game where "moles" pop up randomly on a nine-hole grid, and players get points for whacking as many moles as possible with an oversized foam hammer. As stories of particularly egregious examples of CEQA litigation abuse reach critical mass outside – and even within – Sacramento, another successful political strategy deployed by CEQA's litigation abuse status quo defenders is to treat each new outrageous example of CEQA abuse as a "mole" to be whacked by an ineffective toy statutory exemption hammer.

> After losing its first Bike Plan CEQA lawsuit, San Francisco could not even paint a bike lane safety stripe for the years it took city staff to prepare a full EIR.

- CEQA lawsuits blocking city plans to make increasingly-congested urban streets safer for bikes, pedestrians and cars reached an outrageous low point when the bike plans approved by San Francisco and other cities were sued by merchants and NIMBYs opposed to the loss of parking spaces to bike lanes. After losing its first Bike Plan CEQA lawsuit, San Francisco could not even paint a bike lane safety stripe for the several years it took city staff to prepare a full EIR for its bike plan.[355] The Legislature responded to this embarrassment with an incomplete (and thus largely ineffective) CEQA exemption for bike plans.[356]

- As public outcry (including criticisms from environmental allies) grew over the use of multiple CEQA lawsuits by unions competing for territory against time-constrained, federally subsidized solar energy projects at the height of the recession, the Legislature enacted a CEQA "reform" bill to encourage solar panel installations on top of existing rooftops.[357] Rooftop solar installations are either statutorily or categorically exempt from CEQA under existing law (depending on the type of permit required by a local agency), and there were no CEQA lawsuits targeting rooftop solar during the study period (which overlapped precisely with the period when warring territorial claims resulted in CEQA lawsuits and CEQA lawsuit threats against utility-scale solar projects). Nevertheless, CEQA's status quo defenders triumphantly pronounced this inconsequential new statute as "CEQA reform."

- **Buddy Bills: CEQA For The Political Elite.** Another time-honored legislative CEQA tradition is to give a CEQA pass to the Legislature's political favorites. While more current examples include three professional sport team facilities (two football stadiums in Los Angeles, both of which remain unbuilt,[358] and one Basketball Arena in Sacramento now under construction),[359] CEQA's 45-year history is tarnished by several of these "Buddy Bills" – such as CEQA exemptions for new state prisons backed by the powerful prison guard union,[360] CEQA exemptions allowing for other professional sports team projects (e.g., early property condemnation by the San Francisco Giants as they prepared to build their new downtown ballpark),[361] and a CEQA exemption covering all activities required for Los Angeles to host the Olympic Games in 1984.[362]

Another time-honored legislative CEQA tradition is to give a CEQA pass to the Legislature's political favorites.

- **Sleight-of-Hand and Misdirection: "Reforms" that Actually Expand CEQA Litigation Abuse**. The most audacious of CEQA's legislative "reforms" are those that actually invite more abusive CEQA lawsuits.

  - So far in 2015, the most audacious bill – hands-down – was authored by Senator Hannah-Beth Jackson. Senator Jackson is from Senate District 19, which is dominated by the wealthy no-growth coastal community of Santa Barbara. Her SB 122[363] originally expanded CEQA by adding a new public comment process to the already-lengthy EIR process, but has since been scaled back to "just" add new litigation compliance pitfalls for ordinary CEQA projects. Existing law allows preparation of the administrative record – the contents of which are the subject of the CEQA lawsuit – to be prepared by the project opponents and certified as complete by the agency, or prepared by the agency and paid for by the project opponents.[364] Since the ever-more-elaborate CEQA studies prepared to try to increase the odds of winning a CEQA lawsuit can run into the thousands – and sometimes tens of thousands – of pages, parties initiating CEQA lawsuits have balked at the cost of either preparing or paying for the preparation of the administrative record. SB 122 allows what is already a common practice – a private party applicant can choose to pay for the cost of preparing the administrative record to help expedite completion of legal briefs and oral argument. However, this legislation also creates two brand new litigation pitfalls by requiring lead agencies to electronically post incomplete and even erroneous draft CEQA documentation, and by imposing new compliance deadlines for electronic posting of comments, applicant-prepared and agency-prepared documents in only 5-7 days, which is months in advance of (and in addition to) current requirements for completing the Final EIR and Negative Declaration process.

  - Senate Bill 743[365] was a Buddy Bill to protect the Sacramento Kings Arena project from the risk of being blocked or delayed by a CEQA lawsuit. Pushed through in the closing days of the Legislative session of 2013, last-minute amendments to SB 743 included two important infill CEQA streamlining provisions. First, infill projects in qualifying locations do not need to consider "aesthetics" or "parking" as CEQA impacts. Second, SB 743 invited OPR to propose an alternative to the "Level of Service" congestion-based metric used to evaluate the significance of project traffic delays, given that traffic congestion, along with traffic-related air quality and public safety impacts, are the most frequently challenged CEQA infill project topic (as well as being the source of the greatest popular frustration with higher-density development proposals). SB 743 could have simply eliminated LOS from CEQA for infill projects, as it did for the parking and aesthetics CEQA impact categories, and substantially curtailed litigation targets for infill projects. It did the opposite, however, by specifically maintaining in CEQA air quality and safety impacts that are a direct function of LOS congestion levels, and by inviting OPR to develop a replacement metric that would then create an untested new CEQA litigation pitfall. In response to this legislation, OPR proposed to expand CEQA by adding yet another new "Vehicle Miles Travelled" impact – and further proposed to require that initially only infill projects comply with this new VMT mandate. OPR's prior decision to add a new regulatory impact to CEQA – for greenhouse gas emissions – has sparked more than a decade of new CEQA litigation claims, two of which remain pending in the California Supreme Court. For infill projects to run a decade-long gauntlet of lawsuits over a new CEQA "VMT" impact, while still being required to evaluate "LOS" congestion for air quality, public safety, noise, plan consistency and other purposes, is an example of a reform that expands CEQA litigation abuse opportunities against the very type of projects that California's climate goals have prioritized.[366]

The most audacious of CEQA's legislative "reforms" are those that actually invite more abusive CEQA lawsuits.

The Legislature's expansion of CEQA has richly rewarded the defenders of the CEQA litigation abuse status quo. The rest of California does not fare as well.

- Politician Panic. Sometimes CEQA litigation abuse is just too hard to defend, even for CEQA's legion of accomplished status quo defenders. What's most remarkable about these bills – enacted in a panic to avoid closer public scrutiny of outrageous fiscal or policy CEQA abuse – is that CEQA litigation *could* be aimed at such environmentally benign projects.

  Assembly Bill 2564 (Ma) created a CEQA exemption for the "maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline" that is less than one mile long and located within a public right-of way. This bill was enacted after a natural gas pipeline ruptured in San Bruno, killing several people and wounding more. The state's pipeline regulatory agency responded in part by ordering utilities to immediately inspect, and repair or replace, deficient pipelines throughout the state. A CEQA process for studying and approving this new statewide mandate would have taken many years, and could have been delayed even longer by CEQA lawsuits. Politician panic set in at the prospect of multi-year delays for the repair of deficient pipelines, and a "1-mile" CEQA exemption was enacted. It is politically impolite to ask how many pipeline segments were repaired or replaced in "1-mile" bites.[367]

  Other examples of Politician Panic exemptions include repairs "initiated within one year of damage" to highways damaged by earthquakes, landslides, and other natural disasters ("What do you mean I can't repair the road?!?");[368] agency decisions to disapprove a project ("What do you mean we have to spend millions to study a project we know we don't want to do!?!");[369] and the "establishment or modification of rates, tolls, fares or other changes needed to maintain or provide adequate" transit service ("We don't have enough money to keep the buses running, and we have to divert millions on environmental studies before raising the fares?!?").[370]

  The Politician Panic bills, like other categories of CEQA legislative exemptions, have helped conceal the absurdity of CEQA's reach – and opportunities for CEQA litigation abuse – into routine management of safety, maintenance and services.

E. Help CEQA Work: Why Ending CEQA Litigation Abuse Helps Californians and the Environment

Defenders of the CEQA litigation status quo launched a "CEQA Works" website as part of a campaign against CEQA reform.[371] The website explains that the mission of the coalition is to defend CEQA's current structure of Transparency, Mitigation, Comprehensive Protection, Public Participation, and Community Enforcement. The three moderate CEQA litigation abuse reforms discussed above are consistent with, and advance, each of these goals:

- **Transparency is expanded.** Not only does transparency continue to apply to all aspects of the CEQA compliance process, which already requires the careful evaluation and disclosure of project environmental impacts, but under the proposed reforms transparency is extended into the CEQA litigation process to assure that this great environmental law is actually being used to protect the environment and public safety, and not simply as a "greenmail" tactic by cloaked parties seeking to advance non-environmental goals.

> The Legislature's expansion of CEQA has richly rewarded the defenders of the CEQA litigation abuse status quo. The rest of California has not fared as well.

- **Mitigation obligations under CEQA remain unchanged by the proposed reforms.**

- **Comprehensive protections of all impacts, including cumulative impacts, remain unchanged by the proposed reforms.**

- **Public participation CEQA compliance procedures are likewise unchanged by the proposed reforms.** Extending the transparency mandate to the litigation process increases public disclosure, and provides the public with meaningful information about who is using CEQA – and why – for approved projects.

- **Community enforcement in the courts is preserved for parties willing to be identified and seeking to protect the environment.** According to CEQA Works, "CEQA must continue to provide the public with the right to sue to enforce its protections, a key tool to protect communities, particularly those in disadvantaged areas." The three recommended reforms will make it much harder to sue projects for non-environmental reasons, and will make it impossible to hide the identity of those seeking to enforce this great California law. Since CEQA lawsuits disproportionately attack infill projects – the kind of projects that will help the disadvantaged by providing employment and public benefits such as transit and water infrastructure, affordable housing and parks, and public services such as schools and urban libraries – ending CEQA litigation abuse for non-environmental purposes will expedite completion of these projects and return California to an era of progress rather than process.

One need look no further than the dismal, multi-decade delays caused by CEQA litigation abuse against transit and multifamily housing projects in Los Angeles to recognize that CEQA currently best serves the defenders of the status quo – often those who are wealthier, whiter, older, and more aligned with the special interests wedded to CEQA litigation abuse for non-environmental purposes – and often to the detriment of the very "disadvantaged" that the CEQA Works coalition agrees should be protected.

The problem of CEQA litigation abuse is clear. The Governor has attempted to navigate his own course through CEQA, arguing that the state's largest transit infrastructure project – High Speed Rail – is exempt from CEQA based on federal preemption of rail operations. Ultimately, ending CEQA litigation abuse is a political question before the Legislature. Despite the strident efforts of special interest defenders of the litigation status quo – and despite the Legislature's non-reform "unicorns" and related tactics to avoid meaningful CEQA reform – the stories of CEQA litigation abuse are now too widespread, and too numerous, to continue to ignore.

> CEQA litigation practice is no longer aligned with California's environmental equity or economic objectives, and CEQA reform is long past overdue. Approval of new bond measures, the extension of higher income taxes, and the expenditure of cap and trade funds, should all be deferred until CEQA is modernized to prevent litigation abuse – which will ensure that taxpayer funds are used on progress and projects, and not on process and posturing.

CONCLUSION

CEQA litigation abuse is real, it is harming people (especially the poor, the working class, and the young), and it is obstructing rather than advancing critical environmental, equity, and economic priorities. We have a choice. We can continue to enrich the armies of consultants and lawyers who make their living from CEQA, and continue to allow projects that comply with California's stringent environmental standards, and have undergone intense public scrutiny and comprehensive environmental studies, to be derailed, delayed, or made far more costly by disgruntled NIMBYs and those using CEQA for non-environmental reasons.

Or, alternatively, we can end the CEQA "arms race" and limit CEQA litigation to its original environmental purpose, where its sister statutes such as NEPA and state versions of CEQA continue to thrive. Under this alternative, environmental advocacy groups can still sue to enforce CEQA and still seek the extraordinary judicial remedy of rescinding a project approval for a deficient CEQA analysis that could allow the project to harm public health, irreplaceable tribal resources or ecological resources. Under this alternative reality, CEQA's analytical and mitigation requirements, and CEQA's public transparency and accountability mandates, would be preserved.

CEQA litigation abuse by anonymous or secret petitioners seeking non-environmental outcomes such as competitive advantage, control of project jobs, and extortionate cash settlements - and to deal with localized neighborhood spats - will end.

CEQA litigation abuse is real, it is harming people (especially the poor, the working class, and the young), and it is obstructing rather than advancing critical environmental priorities.

Using CEQA nomenclature, under this preferred alternative, California will remain an environmental leader, and our Legislature and Governor (and the majority of California voters) can continue to lead on important environmental issues such as climate change and drought.

Today, CEQA litigation practice is no longer aligned with California's environmental objectives, and CEQA reform is long past overdue. Approval of new bond measures, the extension of higher income taxes, and the expenditure of cap and trade funds, should all be deferred until CEQA is modernized to prevent litigation abuse, to make sure taxpayer funds are used on progress and projects, not on process and posturing.

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Publications

Holland & Knight's West Coast Land Use and Environmental Group periodically publishes analyses of California legal and policy data, including information documenting the use, and abuse, of CEQA. Other recent reports on CEQA include the following:

- **CEQA Judicial Outcomes: Fifteen Years of Reported California Appellate and Supreme Court Decisions**, *Holland & Knight alert*, May 2015, *available at* http://www.hklaw.com/files/Uploads/Documents/Articles/0504FINALCEQA.pdf

- **California Environmental Quality Act, Greenhouse Gas Regulation and Climate Change**, *Chapman University Center for Demographics and Policy*, 2015, *available at* http://www.chapman.edu/wilkinson/_files/GHGfn.pdf

- **California's Social Priorities**, *Chapman University Center for Demographics and Policy*, 2015, *available at* http://www.chapman.edu/wilkinson/_files/CASocPrioFnSm2.pdf

- **The National Environmental Policy Act in the Ninth Circuit: Once the Leader, Now the Follower?** *Environmental Practice*, December 2014, *available at* http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9548069

- **Analysis of Recent Challenges to Environmental Impact Reports**, *Holland & Knight alert*, December 2012, *available at* http://www.hklaw.com/publications/Analysis-of-Recent-Challenges-to-Environmental-Impact-Reports-12-01-2012/

- **Is CEQA "Fixed" – Do Infill CEQA Reforms Help or Handicap Your Project?** *Holland & Knight alert*, September 13, 2012, *available at* http://www.hklaw.com/files/Publication/04664546-629b-4477-a59e-c6ee4537a7c7/Presentation/PublicationAttachment/e1e11da8-a7ae-41dc-a105-db1b0210a5f1/IsCEQAFixed.pdf

- **Judicial Review of CEQA Categorical Exemptions from 1997-Present**, *Holland & Knight alert*, August 2012, *available at* http://www.hklaw.com/files/Publication/6c8c1fd0-7a6b-4c2f-822f-19c3ff4b95ec/Presentation/PublicationAttachment/4f319f3a-f238-4e9a-87c3-1a355deb0eaa/JudicialReviewofCEQACategoricalExemptions.pdf

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Holland & Knight's West Coast Land Use and Environment Practice Group periodically analyzes California policy data and court rulings regarding the ways in which CEQA, the California Environmental Quality Act of 1970, is both used and abused. Part of one of the largest law firms in the United States, the group's lawyers have extensive experience and knowledge in all aspects of land use and environmental law, from acquisitions and project development to environmental audits and compliance assessments.

Holland & Knight is a global law firm with more than 1,100 lawyers and other professionals in 22 U.S. offices, as well as Bogotá and Mexico City. Our lawyers provide representation in litigation, business, real estate and governmental law. Interdisciplinary practice groups and industry-based teams provide clients with access to attorneys throughout the firm, regardless of location.

APPENDIX A

CASE NAME	REGION	DATE	LOCATION OF PROJECT	PROJECT TYPE	PROJECT SUBTYPE	AGENCY OR PRIVATE PROJECT	INFILL OR GREENFIELD PROJECT	CHALLENGED CEQA COMPLIANCE TRACK(S)
Golden Gate Land Holdings, LLC v. East Bay Regional Park District	San Francisco	5/11	Multijurisdictional	Park	Passive Recreation	Agency	Infill - Park	Categorical Exemption
Glenn Bell; Bob Fifield; John Freeman; Cynthia Positano v. City of Fremont, et al.	San Francisco	5/11	Fremont	Park	Other Active Recreation	Agency	Infill - Park	Negative Declaration
John Freeman v. City of Fremont, et al.	San Francisco	10/10	Fremont	Park	Other Active Recreation	Agency	Infill - Park	Negative Declaration
Save Strawberry Canyon v. Regents of the University of California	San Francisco	2/11	Berkeley	Schools	College	Agency	Infill	Environmental Impact Report
Sustainability, Parks Recycling and Wildlife Defense Fund v. East Bay Regional Parks District	San Francisco	12/12	Albany	Park	Passive Recreation	Agency	Infill - Park	Environmental Impact Report
Friends of Moraga Canyon v. City of Piedmont, et al.	San Francisco	1/12	Piedmont	Park	Other Active Recreation	Private	Infill - Park	Environmental Impact Report-Addendum
Alameda Creek Alliance v California Department of Transportation	San Francisco	6/11	Alameda County	Public Services & Infrastructure	Highway	Agency	Infill - Infrastructure	Negative Declaration
The Council of Neighborhood Associations, et al. v. City of Berkeley	San Francisco	5/12	Berkeley	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Washoe Meadows Community v. California State Parks and Recreation Commission, et al.	San Francisco	2/12	South Lake Tahoe	Park	Golf	Agency	Greenfield - Park	Environmental Impact Report
Living Rivers Council v. State Water Resources Control Board	San Francisco	2/11	Napa County	Regulatory	Regional - Regulation	Agency	N/A	Certified Regulatory Program
Albany Strollers & Rollers, et al. v. City of Albany, et al.	San Francisco	8/12	Albany	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Parker Shattuck Neighbors, et al. v. Berkeley City Council, et al.	San Francisco	2/12	Berkeley	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
Sustainable West Berkeley Alliance, et al. v. City of Berkeley, et al.	San Francisco	5/11	Berkeley	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Friends of Knowland Park, et al. v. City of Oakland, et al.	San Francisco	7/11	Oakland	Park	Other Active Recreation	Private	Infill - Park	Negative Declaration-Addendum
Center for Biological Diversity, et al. v. California Fish and Game Commission	San Francisco	1/12	State	Regulatory	State - Regulation	Agency	N/A	Statutory Exemption
Pesticide Action Network North America, et al. v. California Department of Pesticide Regulation, et al.	San Francisco	12/10	State	Regulatory	State - Regulation	Private	N/A	Certified Regulatory Program
East Bay Regional Park District, et al. v. City of Alameda, et al.	San Francisco	11/12	Alameda	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report-Addendum
Karuk Tribe, et al. v. California Department of Fish and Game, et al.	San Francisco	4/12	State	Regulatory	State - Regulation	Agency	N/A	Environmental Impact Report
The New 49'ers, Inc., et al. v. State of California, et al.	Norcal	4/12	State	Regulatory	State - Regulation	Agency	N/A	Environmental Impact Report

This Appendix lists all CEQA lawsuits provided to the authors by the California Attorney General's Office in response to a Public Record Acts Request. For some projects, multiple lawsuits were filed, and this Appendix shows the second and subsequent lawsuits in grey shading. The authors also became aware that not all CEQA lawsuits filed during the study period (2010-2013) were provided by the Attorney General's Office. Since there was no ready means of finding all "missing" lawsuits, the Appendix – and the study's statistical compilations – are limited to those cases provided by the Attorney General's Office.

Public Lands for the People, Inc., et al. v. California Department of Fish and Game	SCAG	4/12	State	Regulatory	State - Regulation	Agency	N/A	Environmental Impact Report
Hills Conservation Network, Inc v. East Bay Regional Parks District, et al.	San Francisco	5/10	Alameda County	Park	Passive Recreation	Agency	Infill - Park	Environmental Impact Report
Citizens Committee to Complete the Refuge v. City of Newark, et al.	San Francisco	9/10	Newark	Residential	Master Planned Community	Private	Infill	Environmental Impact Report
Save Strawberry Canyon v. Regents of the University of California	San Francisco	8/10	Berkeley	Schools	College	Agency	Infill	Environmental Impact Report
Living Rivers Council v. State Water Resources Control Board	San Francisco	10/10	Multijurisdictional	Regulatory	Regional - Regulation	Agency	N/A	Certified Regulatory Program
Preserve San Leandro Mobility, et al. v. City of San Leandro, et al.	San Francisco	5/10	San Leandro	Public Services & Infrastructure	Hospital	Private	Infill	Environmental Impact Report
Concerned Library Users v. City of Berkeley, et al.	San Francisco	9/10	Berkeley	Public Services & Infrastructure	Library	Agency	Infill	Negative Declaration
Berkeley Hillside Preservation, et al. v. City of Berkeley, et al.	San Francisco	5/10	Berkeley	Residential	Single-Family Home/ Second Unit	Private	Infill	Categorical Exemption
Stand Up for Berkeley, et al. v. Regents of the University of California	San Francisco	2/10	Berkeley	Schools	College	Agency	Infill	Environmental Impact Report-Addendum
California Building Industry Association v. Bay Area Air Quality Management District	San Francisco	11/10	Multijurisdictional	Regulatory	Regional - Regulation	Agency	N/A	No CEQA Determination
Center for Biological Diversity, et al. v. California Department of Conservation, Division of Oil, Gas & Geothermal Resources	San Francisco	10/12	State	Mining	O&G	Agency	N/A	Negative Declaration/ Categorical Exemption
Carlos Urrutia Felix, et al. v. City of Walnut Creek, et al.	San Francisco	2/12	Walnut Creek	Residential	Multifamily/ Mixed Use	Private	Infill	Categorical Exemption
George Bravos, et al. v. City of Walnut Creek, et al.	San Francisco	11/11	Walnut Creek	Residential	Multifamily/ Mixed Use	Private	Infill	Statutory Exemption/ Categorical Exemption
Lomas Cantadas Groundwater Protection Committee v. City of Orinda, et al.	San Francisco	5/10	Orinda	Residential	Single-Family Home/ Second Unit	Private	Infill	Negative Declaration-Mitigated
Contra Costa Water District v. County of Contra Costa, et al.	San Francisco	7/11	Contra Costa County	Residential	Large Subdivision/ Mixed Use	Private	Greenfield	Negative Declaration-Mitigated
Californians for Alternatives to Toxics v. North Coast Railroad Authority, et al.	San Francisco	7/11	Multijurisdictional	Public Services & Infrastructure	Railroad/ Non-Transit	Private	Infill - Infrastructure	Environmental Impact Report
Friends of the Eel River v. North Coast Railroad Authority, et al.	San Francisco	7/11	Multijurisdictional	Public Services & Infrastructure	Railroad/ Non-Transit	Private	Infill - Infrastructure	Environmental Impact Report
Designers, Engineers, Constructors for Better, Safer Schools, et al. v. Mill Valley School District, et al.	San Francisco	7/11	Mill Valley	Schools	K-12	Agency	Infill	Negative Declaration-Mitigated

Citizens for a Green San Mateo v. San Mateo County Community College District, et al.	San Francisco	7/11	San Mateo	Schools	College	Agency	Infill	Negative Declaration-Mitigated
Friends of Cordilleras Creek, et al. v. City of Redwood City, et al.	San Francisco	10/12	Redwood City	Residential	Small Subdivision	Private	Infill	Environmental Impact Report
City of San Jose v. Santa Clara County Airport Land Use Commission	San Francisco	12/10	Santa Clara County	Regulatory	County - Land Use	Agency	N/A	Negative Declaration
Citizens Against Airport Pollution v. City of San Jose, et al.	San Francisco	7/10	San Jose	Public Services & Infrastructure	Airport	Agency	Infill	Environmental Impact Report-Addendum
County of Santa Clara v. City of Milpitas, et al.	San Francisco	6/10	Milpitas	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Prudential Insurance Company of America v. City of Santa Clara	San Francisco	6/12	Santa Clara	Entertainment	Amusement Park	Private	Infill	Categorical Exemption
Walton CWCA Wrigley Creek 31, LLC v. Santa Clara Valley Transportation Authority, et al.	San Francisco	4/11	Santa Clara County	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Eastridge Shopping Center, LLC v. Santa Clara Valley Transportation Authority	San Francisco	2/12	San Jose	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Hacienda Realty, LLC, et al. v. City of Monte Sereno, et al.	San Francisco	6/12	Monte Sereno	Regulatory	City - Land Use	Agency	N/A	Negative Declaration
Philip Koen, et al. v. City of San Jose, et al.	San Francisco	9/12	San Jose	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
Joy Ogawa, et al. v. City of Palo Alto, et al.	San Francisco	4/11	Palo Alto	Public Services & Infrastructure	Sidewalk/ Streetscape	Agency	Infill - Infrastructure	Negative Declaration
Ross Creek Neighbors v. Town of Los Gatos, et al.	San Francisco	12/10	Los Gatos	Residential	Small Subdivision	Private	Infill	Environmental Impact Report
Lynnbrook-Monta Vista United v. Fremont Union High School District, et al.	San Francisco	5/12	San Jose	Schools	K-12	Agency	Infill	Environmental Impact Report
Lynnbrook-Monta Vista United v. Fremont Union High School District, et al.	San Francisco	1/11	San Jose	Schools	K-12	Agency	Infill	Environmental Impact Report
Lynnbrook-Monta Vista United v. Fremont Union High School District, et al.	San Francisco	5/12	San Jose	Schools	K-12	Agency	Infill	Environmental Impact Report
Stand for San Jose, et al. v. City of San Jose, et al.	San Francisco	12/11	San Jose	Entertainment	Professional Sports	Private	Infill	Environmental Impact Report
Cuesta Annex and Salco Acres Preservation Group v. Santa Clara Valley Water District, et al.	San Francisco	12/12	Mountain View	Public Services & Infrastructure	Stormwater/Flood Management	Agency	Infill - Infrastructure	Environmental Impact Report
People's Coalition for Government Accountability v. County of Santa Clara, et al.	San Francisco	11/12	Santa Clara County	Public Services & Infrastructure	Church	Private	Infill	Negative Declaration-Mitigated
Keep Our Mountains Quiet v. County of Santa Clara, et al.	San Francisco	3/12	Santa Clara County	Agricultural & Forestry	Winery	Private	Mining/ Agriculture/ Forestry	Negative Declaration-Mitigated
Milpitas Coalition for a Better Community v. City of Milpitas	San Francisco	7/11	Milpitas	Retail	Walmart/Big Box Store	Private	Infill	No CEQA Determination

Los Gatos Citizens for Responsible Development, et al. v. Town of Los Gatos, et al.	San Francisco	9/11	Los Gatos	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
Midpenninsula Regional Open Space District v. County of Santa Clara, et al.	San Francisco	11/12	Santa Clara County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
California Clean Energy Committee v. City of San Jose	San Francisco	11/11	San Jose	Regulatory	City - Land Use	Private	N/A	Environmental Impact Report
Town of Hillsborough v. California Public Utilities Commission, et al.	San Francisco	12/12	Multijurisdictional	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Categorical Exemption
Marc Bruno, Representative of Save North Beach v. City and County of San Francisco, et al.	San Francisco	7/12	San Francisco	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Maida B. Taylor, MD, et al. v. City and County of San Francisco, et al.	San Francisco	8/11	San Francisco	Residential	Small Subdivision	Private	Infill	Categorical Exemption
Nob Hill Association v. City and County of San Francisco, et al.	San Francisco	5/12	San Francisco	Entertainment	Dance Hall/Music	Private	Infill	Statutory Exemption
San Francisco Beautiful v. City and County of San Francisco, et al.	San Francisco	5/12	San Francisco	Regulatory	City - Regulation	Private	N/A	Categorical Exemption
San Francisco Baykeeper, Inc v. California State Lands Commission	San Francisco	11/12	Multijurisdictional	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
San Francisco Beautiful, et al. v. City and County of San Francisco, et al.	San Francisco	8/11	San Francisco	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Categorical Exemption
Waterfront Watch v. San Francisco Port Commission, et al.	San Francisco	2/12	San Francisco	Entertainment	Yacht Race Event	Private	N/A	Environmental Impact Report
Save the Plastic Bag Coalition v. City and County of San Francisco, et al.	San Francisco	2/12	San Francisco	Regulatory	Local Plastic Bag Regulation	Agency	N/A	Categorical Exemption
Defend Our Waterfront v. California State Lands Commission, et al.	San Francisco	9/12	San Francisco	Residential	Multifamily/Mixed Use	Private	Infill	Statutory Exemption
Neighbors to Preserve the Waterfront, et al. v. City and County of San Francisco, et al.	San Francisco	7/12	San Francisco	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Neighbors to Preserve the Waterfront, et al. v. City and County of San Francisco, et al.	San Francisco	10/10	San Francisco	Residential	Multifamily/Mixed Use	Private	Infill	No CEQA Determination
Neighbors to Preserve the Waterfront, et al. v. City and County of San Francisco, et al.	San Francisco	8/10	San Francisco	Residential	Multifamily/Mixed Use	Private	Infill	No CEQA Determination
Cow Hollow Neighbors for Livable Communities, et al. v. City and County of San Francisco	San Francisco	11/11	San Francisco	Retail	Store/Center Occupancy	Private	Infill	Categorical Exemption
SF Coalition for Children's Outdoor Play, Education and the Environment et al. v. City and County of San Francisco, et al.	San Francisco	10/12	San Francisco	Park	Other Active Recreation	Agency	Infill - Park	Environmental Impact Report

Divisadero Hayes, LLC v. City and County of San Francisco, et al.	San Francisco	7/10	San Francisco	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
Olivier Charlon v. City and County of San Francisco	San Francisco	2/10	San Francisco	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Categorical Exemption
David Pilpel v. City and County of San Francisco	San Francisco	1/10	San Francisco	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Statutory Exemption/ Categorical Exemption
Wendy Robinson, et al. v. City and County of San Francisco	San Francisco	2/10	San Francisco	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Categorical Exemption
San Francisco Tomorrow, et al. v. City and County of San Francisco, et al.	San Francisco	7/11	San Francisco	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
People Organized to Win Employment Rights, et al. v. San Francisco Planning Department, et al.	San Francisco	9/10	San Francisco	Residential	Master Planned Community	Private	Infill	Environmental Impact Report
Sierra Club, et al. v. City and County of San Francisco, et al.	San Francisco	9/10	San Francisco	Residential	Master Planned Community	Private	Infill	Environmental Impact Report
San Franciscans for Livable Neighborhoods v. City and County of San Francisco	San Francisco	8/11	San Francisco	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
San Franciscans for Livable Neighborhoods v. City and County of San Francisco	San Francisco	8/11	San Francisco	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Neighbors for Fair Planning v. City and County of San Francisco, et al.	San Francisco	8/11	San Francisco	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Citizens for a Sustainable Treasure Island v. City and County of San Francisco by and through its Supervisors, et al.	San Francisco	7/11	San Francisco	Residential	Master Planned Community	Private	Infill	Environmental Impact Report
Yuba Group Against Garbage v. City and County of San Francisco by and through the Board of Supervisors	San Francisco	8/11	Multijurisdictional	Public Services & Infrastructure	Municipal Waste Management	Private	Infill - Infrastructure	No CEQA Determination
Sustainability, Parks, Recycling, And Wildlife Legal Defense Fund v. City and County of San Francisco	San Francisco	8/11	Multijurisdictional	Public Services & Infrastructure	Municipal Waste Management	Private	Infill - Infrastructure	No CEQA Determination
Friends of Appleton-Wolfard Libraries, et al. v. City and County of San Francisco, et al.	San Francisco	7/11	San Francisco	Public Services & Infrastructure	Library	Agency	Infill	Environmental Impact Report
Friends of the Landmark Filbert Street Cottages, et al. v. City and County of San Francisco, et al.	San Francisco	4/11	San Francisco	Residential	Small Subdivision	Private	Infill	Categorical Exemption
Pacific Polk Properties, LLC, et al. v. City and County of San Francisco, et al.	San Francisco	7/10	San Francisco	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Mary Wika v. City of Benicia	San Francisco	6/10	Benicia	Retail	Shopping Center	Private	Infill	Categorical Exemption
Upper Green Valley Homeowners v. County of Solano, et al.	San Francisco	8/10	Solano County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report

Rockville Homeowners' Association v. County of Solano, et al.	San Francisco	8/10	Solano County	Residential	Large Subdivision/ Mixed Use	Private	Greenfield	Negative Declaration-Mitigated
Save Historic Stonedene v. City of Fairfield, et al.	San Francisco	11/10	Fairfield	Residential	Small Subdivision	Private	Infill	Negative Declaration-Mitigated
California Healthy Communities Network, et al. v. City of Vallejo	San Francisco	2/12	Vallejo	Retail	Store/Center Occupancy	Private	Infill	Environmental Impact Report
Yocha Dehe Wintun Nation v. Solano Transportation Authority, et al.	San Francisco	6/10	Solano County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
City of Petaluma, et al. v. County of Sonoma, et al.	San Francisco	2/11	Sonoma County	Industrial	Asphalt Plant	Private	Greenfield	Environmental Impact Report
BCC Holdings, LLC v. City of Petaluma	San Francisco	1/10	Petaluma	Residential	Large Subdivision/ Mixed Use	Private	Infill	Negative Declaration-Mitigated
North Sonoma County Healthcare District, et al. v. County of Sonoma, et al.	San Francisco	11/10	Santa Rosa	Public Services & Infrastructure	Hospital	Private	Infill	Environmental Impact Report
Roy Gordon v. Sonoma County Board of Supervisors, Its Officials, Agents, Employees, or Entities Working on Its Behalf	San Francisco	3/12	Sonoma County	Residential	Single-Family Home/ Second Unit	Private	Greenfield	Categorical Exemption
James L. Duncan v. City of Santa Rosa, et al.	San Francisco	10/12	Santa Rosa	Regulatory	City - Regulation	Agency	N/A	Environmental Impact Report
John Kramer, et al. v. City of Sebastopol, et al.	San Francisco	8/11	Sebastopol	Retail	Walmart/Big Box Store	Private	Infill	Negative Declaration-Mitigated
Starcross Monastic Community v. California Department of Forestry and Fire Protection	San Francisco	6/12	Sonoma County	Agricultural & Forestry	Winery	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Russian River Watershed Protection Committee v. Sonoma County Water Agency, et al.	San Francisco	9/11	Sonoma County	Park	Passive Recreation	Agency	Greenfield - Park	Environmental Impact Report
Russian Riverkeeper, et al. v. County of Sonoma, et al.	San Francisco	1/11	Sonoma County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Citizens for Safe Neighborhoods v. City of Santa Rosa, et al.	San Francisco	7/12	Santa Rosa	Industrial	Asphalt Plant	Private	Infill	Categorical Exemption
Stop the Casino 101 Coalition v. City of Rohnert Park	San Francisco	10/12	Rohnert Park	Public Services & Infrastructure	Streets	Private	Infill - Infrastructure	Statutory Exemption
Friends of Americano Creek v. County of Sonoma, et al.	San Francisco	4/11	Petaluma	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Joseph W. Tresch and Kathleen M. Tresch, Trustees of the Joseph W. and Kathleen M. Tresch Revocable Trust, et al. v. County of Sonoma Agricultural Preservation and Open Space District Board of Supervisors, et al.	San Francisco	1/11	Petaluma	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report

Citizens Advocating for Roblar Rural Quality v. County of Sonoma, et al.	San Francisco	1/11	Petaluma	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
New-Old Ways Wholistically Emerging v. Sonoma County Board of Supervisors	San Francisco	12/12	Sonoma County	Agricultural & Forestry	Winery	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
California Healthy Communities Network v. City of Antioch	San Francisco	10/10	Antioch	Retail	Walmart/Big Box Store	Private	Infill	Negative Declaration-Mitigated/ Addendum
Bodega Bay Concerned Citizens v. County of Sonoma	San Francisco	10/11	County of Sonoma	Water	Storage/ Conveyance/ Extraction	Private	N/A	Negative Declaration-Mitigated
Rincon Valley Environmental & Safety Committee v. City of Santa Rosa	San Francisco	11/11	Santa Rosa	Retail	Shopping Center	Private	Infill	Negative Declaration-Mitigated
Ag Land Trust v. Marina Coast Water District	Central Coast	4/10	Monterey County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report-Addendum
Ag Land Trust v. Monterey County Water Resources Agency, et al.	Central Coast	2/11	Monterey County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report-Addendum
Carmel Rio Road, LLC v. County of Monterey	Central Coast	6/12	Carmel	Residential	Multifamily/Mixed Use	Private	Infill	No CEQA Determination
Carmel Valley Association, Inc. v. Board of Supervisors of the County of Monterey, et al.	Central Coast	11/10	Monterey County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Landwatch Monterey County v. County of Monterey	Central Coast	12/10	Monterey County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Salinas Valley Water Coalition, et al. v. County of Monterey	Central Coast	11/10	Monterey County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
The Open Monterey Project v. Monterey County Board of Supervisors, et al.	Central Coast	11/10	Monterey County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Landwatch Monterey County v. County of Monterey	Central Coast	8/11	Monterey County	Commercial	Office/Business Park	Agency	Infill	Environmental Impact Report
Turn Down the Lights v. City of Monterey	Central Coast	3/12	Monterey	Public Services & Infrastructure	Sidewalk/ Streetscape	Agency	Infill - Infrastructure	Categorical Exemption
Highway 68 Coalition v. Monterey Peninsula Airport District Board of Directors	Central Coast	6/11	Monterey County	Public Services & Infrastructure	Airport	Agency	Infill	Environmental Impact Report
Highway 68 Coalition v. County of Monterey, et al.	Central Coast	3/12	Monterey County	Retail	Shopping Center	Private	Greenfield	Environmental Impact Report
Highway 68 Coalition v. County of Monterey	Central Coast	6/10	Monterey County	Public Services & Infrastructure	Highway	Agency	Infill - Infrastructure	Negative Declaration-Mitigated
The Open Monterey Project v. Monterey County Water Resources Agency	Central Coast	6/10	Monterey County	Public Services & Infrastructure	Stormwater/Flood Management	Agency	Greenfield - Infrastructure	Negative Declaration-Mitigated
Save Our Peninsula Committee v. County of Monterey, et al.	Central Coast	5/11	Monterey County	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated/ Addendum
Save Our Peninsula Committee v. County of Monterey, et al.	Central Coast	2/11	Monterey County	Regulatory	CEQA Enforcement	Agency	N/A	No CEQA Determination
Keep Fort Ord Wild v. County of Monterey, et al.	Central Coast	11/11	Monterey County	Public Services & Infrastructure	Highway	Agency	Infill - Infrastructure	No CEQA Determination

The Protect Our Communities Foundation, et al. v. Imperial County Board of Supervisors	SCAG	12/11	Imperial County	Energy	Renewable - Solar	Private	Greenfield - Energy	Negative Declaration-Mitigated
The Protect Our Communities Foundation, et al. v. Imperial County Board of Supervisors	SCAG	5/12	Imperial County	Energy	Renewable - Solar	Private	Greenfield - Energy	Environmental Impact Report
Prop "A" Protective Association, LLC v. City of Whittier, et al.	SCAG	12/12	Whittier	Mining	O&G	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Mountains Recreation and Conservation Authority v. City of Whittier	SCAG	10/12	Whittier	Mining	O&G	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Los Angeles County Regional Park and Open Space District, et al. v. City of Whittier	SCAG	10/12	Whittier	Mining	O&G	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Open Space Legal Defense Fund, et al. v. City of Whittier, et al.	SCAG	12/11	Whittier	Mining	O&G	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Open Space Legal Defense Fund, et al. v. City of Whittier, et al.	SCAG	7/11	Whittier	Mining	O&G	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Concerned Citizens of Castellammare, et al. v. City of Los Angeles, et al.	SCAG	10/12	Los Angeles	Residential	Single-Family Home/ Second Unit	Private	Infill	Negative Declaration-Mitigated
Gateway Crescent, LLC v. State of California Department of Transportation	SCAG	7/12	Los Angeles County	Public Services & Infrastructure	Highway	Agency	Infill - Infrastructure	Environmental Impact Report
Jerry Ptashkin v. City Council of the City of West Hollywood	SCAG	8/12	West Hollywood	Public Services & Infrastructure	Church	Private	Infill	Categorical Exemption
Paul Roberts, Trustee of the Malibu Sands Realty Trust v. City of Malibu	SCAG	9/12	Malibu	Residential	Single-Family Home/ Second Unit	Private	Infill	Categorical Exemption
Christine Greenberg v. City of Rolling Hills, et al.	SCAG	11/12	Rolling Hills	Regulatory	City - Regulation	Private	N/A	Negative Declaration-Mitigated
Asian Pacific American Labor Alliance, et al. v. City of Los Angeles, et al.	SCAG	8/12	Los Angeles	Retail	Walmart/Big Box Store	Private	Infill	Statutory Exemption
Citizens for Castaic v. William S. Hart Union High School District	SCAG	11/12	Los Angeles County	Schools	K-12	Private	Greenfield	Environmental Impact Report
West Covina Improvement Association v. City of West Covina, et al.	SCAG	7/12	West Covina	Commercial	Office/Business Park	Private	Infill	Negative Declaration-Mitigated
West Covina Improvement Association v. City of West Covina, et al.	SCAG	2/12	West Covina	Commercial	Office/Business Park	Private	Infill	Negative Declaration-Mitigated
View Park Preservation Society, et al. v. Los Angeles County Department of Regional Planning	SCAG	12/12	Los Angeles County	Water	Storage/ Conveyance/ Extraction	Private	N/A	Negative Declaration-Mitigated
City of Beverly Hills v. Los Angeles County Metropolitan Transportation Authority	SCAG	12/12	Los Angeles County	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report

Beverly Hills Unified School District v. Lost Angeles County Metropolitan Transportation Authority	SCAG	5/12	Los Angeles County	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Today's IV, Inc. dba Westin Bonaventure Hotel and Suites v. Los Angeles County Metropolitan Transportation Authority	SCAG	5/12	Los Angeles County	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
515/555 Flower Associates, LLC v. Los Angeles County Metropolitan Transportation Authority	SCAG	5/12	Los Angeles County	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Japanese Village, LLC v. Los Angeles County Metropolitan Transportation Authority	SCAG	5/12	Los Angeles County	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Shanna Ingalsbee, et al. v. City of Burbank, et al.	SCAG	6/12	Burbank	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Fix the City, Inc v. City of Los Angeles, et al.	SCAG	7/12	Los Angeles	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.	SCAG	7/12	Los Angeles	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Angelinos for Culture and a Healthy Environment v. City of Los Angeles	SCAG	6/12	Los Angeles	Commercial	Hotel	Private	Infill	Negative Declaration-Mitigated
Don't Privatize Playa Vista Parks v. City of Los Angeles	SCAG	7/10	Los Angeles	Residential	Master Planned Community	Private	Infill	Statutory Exemption
Woodland Hills Homeowners' Association, et al. v. City of Los Angeles, et al.	SCAG	3/12	Los Angeles	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.	SCAG	10/12	Los Angeles	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Fusion Air Quality v. Los Angeles Metropolitan Transportation Authority, et al.	SCAG	4/12	Hawthorne	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Chatsworth Area Residents Association, et al. v. City of Los Angeles, et al.	SCAG	6/12	Los Angeles	Schools	K-12	Private	Infill	Negative Declaration-Mitigated
Westside of Los Angeles Neighborhood and Community Coalition, et al. v. City of Los Angeles, et al.	SCAG	6/12	Los Angeles	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
Center for Biological Diversity, et al. v. California Department of Fish and Game	SCAG	1/11	Los Angeles County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
California Native Plant Society, et al. v. City of Los Angeles, et al.	SCAG	6/12	Los Angeles County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Gale Banks Engineering v. City of Azusa	SCAG	1/12	Azusa	Public Services & Infrastructure	Municipal Waste Management	Private	Infill - Infrastructure	Environmental Impact Report

City of Irwindale v. City of Azusa	SCAG	9/11	Azusa	Public Services & Infrastructure	Municipal Waste Management	Private	Infill - Infrastructure	Environmental Impact Report
Excalibur Property Holdings, LLC, et al. v. City of Monrovia, et al.	SCAG	9/11	Monrovia	Regulatory	City - Regulation	Agency	N/A	Statutory Exemption
Charmont Partners, LTD, et al. v. City of Santa Monica	SCAG	1/12	Santa Monica	Public Services & Infrastructure	Sidewalk/ Streetscape	Agency	Infill	Categorical Exemption
Yvonne Cooper v. City of Los Angeles South Valley Area Planning Commission, et al.	SCAG	11/11	Los Angeles	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Negative Declaration-Mitigated
Riner Scivally v. City Council for the City of South Pasadena	SCAG	9/11	South Pasadena	Commercial	Office/ Business Park	Private	Infill	Negative Declaration
Crenshaw Subway Coalition v. Los Angeles County Metropolitan Transportation Authority	SCAG	10/11	Los Angeles County	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Homeowners of Angelo Drive to Save the Great Ficus Trees v. Ken Pfalzgraf, et al.	SCAG	11/11	Beverly Hills	Public Services & Infrastructure	Sidewalk/ Streetscape	Agency	Infill	Categorical Exemption
Friends and Alumni of Leuzinger High School v. Centinela Valley Union High School District, et al.	SCAG	9/11	Lawndale	Schools	K-12	Agency	Infill	Categorical Exemption
Community With A Conscience v. City of Los Angeles	SCAG	12/11	Los Angeles	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Residents Against Chandler Ranch v. City of Rolling Hills Estates, et al.	SCAG	8/11	Rolling Hills	Residential	Large Subdivision/ Mixed Use	Private	Infill	Environmental Impact Report
Residents For A Better Slauson v. City of Los Angeles	SCAG	9/11	Los Angeles	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Negative Declaration-Mitigated
City of Burbank v. City of Los Angeles, et al.	SCAG	12/10	Multijurisdictional	Public Services & Infrastructure	Sewage Management	Agency	Infill - Infrastructure	Environmental Impact Report
Los Angeles County Regional Park and Open Space District, et al. v. City of Whittier	SCAG	2/11	Los Angeles County	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Margarita Allen v. Community Redevelopment Agency of the City of Los Angeles	SCAG	1/11	Los Angeles	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
CREED-21 v. City of Glendora	SCAG	3/11	Glendora	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Santa Clarita Organization for Planning and the Environment, et al. v. City of Santa Clarita, et al.	SCAG	6/11	Los Angeles County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Highland Park Heritage Trust, et al. v. City of Los Angeles, et al.	SCAG	7/11	Los Angeles	Public Services & Infrastructure	Museum	Private	Infill	Categorical Exemption
Save the Plastic Bag Coalition v. City of Long Beach, et al.	SCAG	6/11	Long Beach	Regulatory	Local Plastic Bag Regulation	Agency	N/A	Environmental Impact Report
La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.	SCAG	6/11	Hollywood	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report

Pasadena Coalition for Responsible Development v. City of Pasadena, et al.	SCAG	1/11	Pasadena	Commercial	Office/Business Park	Private	Infill	Environmental Impact Report
Residents First v. City of Los Angeles	SCAG	1/11	Los Angeles	Retail	Walmart/Big Box Store	Private	Infill	Negative Declaration-Mitigated
El Monte Citizens for Responsible Government v City of El Monte, et al.	SCAG	3/11	El Monte	Retail	Shopping Center	Private	Infill	Negative Declaration-Mitigated
Concerned Homeowners of Crescent Heights, et al. v. City of Los Angeles	SCAG	2/11	Los Angeles	Residential	Single-Family Home/ Second Unit	Private	Infill	Negative Declaration-Mitigated
Neighbors Organized to Protect the Environment in Beverly Hills, et al. v. City of Beverly Hills, et al.	SCAG	5/11	Beverly Hills	Retail	Store/Center Occupancy	Private	Infill	Categorical Exemption
Coastal Defender v. City of Manhattan Beach, et al.	SCAG	5/11	Manhattan Beach	Retail	Store/Center Occupancy	Private	Infill	Categorical Exemption
City of South Gate v. City of Cudahy, et al.	SCAG	12/10	Cudahy	Entertainment	Dance Hall/Music	Private	Infill	Negative Declaration-Mitigated
City of Culver City, et al. v. Los Angeles Community College District, et al.	SCAG	9/10	Culver City	Schools	College	Agency	Infill	Environmental Impact Report
County of Los Angeles v. City of Los Angeles	SCAG	9/10	Los Angeles County	Public Services & Infrastructure	Sewage Management	Agency	Infill - Infrastructure	Environmental Impact Report
EastWest Studios, LLC v. City of Los Angeles, et al.	SCAG	9/10	Los Angeles	Schools	College	Private	Infill	Environmental Impact Report
Kramer Metals v. City of Los Angeles, et al.	SCAG	8/10	Los Angeles	Retail	Shopping Center	Private	Infill	Negative Declaration-Mitigated
Conejo Wellness Center, Inc. v. City of Agora Hills, et al.	SCAG	10/10	Agora Hills	Regulatory	Local Marijuana Regulation	Agency	N/A	No CEQA Determination
Robert Blue v. City of Los Angeles, et al.	SCAG	7/10	Los Angeles	Retail	Walmart/Big Box Store	Private	Infill	Negative Declaration-Mitigated
La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.	SCAG	7/10	Los Angeles	Retail	Walmart/Big Box Store	Private	Infill	Negative Declaration-Mitigated
Citizens Coalition Los Angeles v. City of Los Angeles	SCAG	12/12	Hollywood	Retail	Walmart/Big Box Store	Private	Infill	Negative Declaration-Mitigated
Norman La Caze v. City of Rolling Hills	SCAG	11/10	Rolling Hills	Residential	Small Subdivision	Agency	Infill	Negative Declaration-Mitigated
Wing Y. Chung v. City of Monterey Park	SCAG	12/10	Monterey Park	Regulatory	City - Regulation	Agency	N/A	No CEQA Determination
Ramirez Canyon Preservation Fund v. Santa Monica Mountains Conservancy, et al.	SCAG	9/10	Malibu	Park	Passive Recreation	Agency	Infill - Park	Environmental Impact Report
LA Neighbors United v. City of Los Angeles	SCAG	12/10	Los Angeles	Regulatory	City - Land Use	Agency	N/A	Negative Declaration
Building an Economically Sound Torrance, et al. v. City of Torrance, et al.	SCAG	12/10	Torrance	Retail	Walmart/Big Box Store	Private	Infill	Statutory Exemption

Central Basin Municipal Water District v. Water Replenishment District of Southern California, et al	SCAG	12/10	Multijurisdictional	Water	Storage/ Conveyance/ Extraction	Private	N/A	Categorical Exemption
City of Maywood v. Los Angeles Unified School District, et al.	SCAG	4/10	Maywood	Schools	K-12	Private	Infill	Environmental Impact Report
MIPCO, LLC, et al. v. Alameda Corridor-East Construction Authority on behalf of San Gabriel Valley Council of Governments	SCAG	3/10	El Monte	Public Services & Infrastructure	Railroad/Non-Transit	Private	Infill - Infrastructure	Environmental Impact Report/ Negative Declaration-Mitigated (Negative Declaration)
Francine Eisenrod v. City of Los Angeles, et al.	SCAG	7/10	Los Angeles	Residential	Multifamily/Mixed Use	Private	Infill	Categorical Exemption
Dr. Lewis A. Einstedt, et al. v. City of Rancho Palos Verdes, et al.	SCAG	1/10	Rancho Palos Verdes	Residential	Large Subdivision/ Mixed Use	Private	Infill	Negative Declaration-Mitigated
Puente Hills Landfill Native Habitat Preservation Authority v. City of La Habra Heights	SCAG	5/10	La Habra Heights	Residential	Single-Family Home/ Second Unit	Private	Infill	Negative Declaration-Mitigated
Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, et al.	SCAG	3/10	Los Angeles-Santa Monica	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
Friends of the Whittier Narrows Natural Area v. San Gabriel River Discovery Center Authority	SCAG	2/10	Los Angeles County	Park	Other Active Recreation	Agency	Infill - Park	Environmental Impact Report
Ballona Ecosystem Education Project v. City of Los Angeles	SCAG	1/10	Los Angeles	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
Van De Kamps Coalition v. Los Angeles Community College District, et al.	SCAG	1/10	Los Angeles	Schools	K-12	Private	Infill	Environmental Impact Report
Comunidad En Accion v. Los Angeles City Council, et al.	SCAG	6/10	Los Angeles	Public Services & Infrastructure	Municipal Waste Management	Private	Infill - Infrastructure	Environmental Impact Report
Community Alliance For Open Space v. City of Los Angeles, et al.	SCAG	7/10	Los Angeles	Schools	Workforce Training	Private	Infill	Negative Declaration-Mitigated
Malibu Colony Neighbors Alliance, et al. v. California Coastal Commission	SCAG	12/10	Malibu	Park	Passive Recreation	Agency	Infill - Park	Environmental Impact Report
Wetlands Defense Funds, et al. v. California Coastal Commission	SCAG	12/10	Malibu	Park	Passive Recreation	Agency	Infill - Park	Environmental Impact Report
Kenneth Mackenzie v. City of El Monte, et al.	SCAG	12/11	El Monte	Commercial	Office/Business Park	Private	Infill	Negative Declaration-Mitigated
City of Duarte v. City of Azusa	SCAG	8/10	Azusa	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Responsible Use of Land at El Toro, et al. v. Saddleback Valley Unified School District	SCAG	12/12	Lake Forest	Schools	K-12	Agency	Infill	Environmental Impact Report
Santa Ana California Lodge, LLC v. City of Santa Ana, et al.	SCAG	3/12	Santa Ana	Public Services & Infrastructure	Sewage Management	Agency	Infill - Infrastructure	Environmental Impact Report

Banning Ranch Conservancy v. City of Newport Beach, et al.	SCAG	5/10	Newport Beach	Residential	Large Subdivision/ Mixed Use	Private	Infill	Environmental Impact Report
Banning Ranch Conservancy v. City of Newport Beach, et al.	SCAG	4/10	Newport Beach	Residential	Large Subdivision/ Mixed Use	Private	Infill	Environmental Impact Report
Banning Ranch Conservancy v. City of Newport Beach, et al.	SCAG	8/12	Newport Beach	Residential	Large Subdivision/ Mixed Use	Private	Infill	Environmental Impact Report
Orange County Fairgrounds Preservation Society v. 32nd District Agricultural Association	SCAG	1/12	Costa Mesa	Entertainment	Fairground	Agency	Infill - Park	Environmental Impact Report
Protect Coastal Huntington Beach, et al. v. City of Huntington Beach, et al.	SCAG	10/12	Huntington Beach	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
Orange County Residents for Open Government v. Orange County Water District, et al.	SCAG	7/12	Anaheim, Fullerton, Placentia	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
Orange County Communities Organized for Responsible Development, et al. v. City of Anaheim	SCAG	2/12	Anaheim	Commercial	Hotel	Private	Infill	No CEQA Determination
The Lamb School Neighborhood Save Our Field Committee, et al. v. Huntington Beach City Council	SCAG	12/12	Huntington Beach	Residential	Large Subdivision/ Mixed Use	Private	Infill	Negative Declaration-Mitigated
Stop the Dunes Hotel v. City of Newport Beach, et al.	SCAG	8/12	Newport Beach	Residential	Multifamily/Mixed Use	Private	Infill	Categorical Exemption
Saddleback Canyons Conservancy, et al. v. County of Orange, et al.	SCAG	10/12	Orange County	Residential	Large Subdivision/ Mixed Use	Private	Greenfield	Environmental Impact Report
Ocean View School District v. City of Huntington Beach, et al.	SCAG	1/12	Huntington Beach	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Friends of the Lacy Historic Neighborhood v. City of Santa Ana, et al.	SCAG	7/10	Santa Ana	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
City of Irvine v. County of Orange, et al.	SCAG	1/11	Orange County	Public Services & Infrastructure	Prison	Agency	Infill	Environmental Impact Report/ Categorical Exemption
City of Tustin v. Tustin Unified School District, et al.	SCAG	8/11	Tustin	Schools	K-12	Agency	Infill	Statutory Exemption/ Categorical Exemption
Bay City Partners, LLC v. City of Seal Beach, et al.	SCAG	4/10	Seal Beach	Public Services & Infrastructure	Sidewalk/ Streetscape	Agency	Infill - Infrastructure	Negative Declaration-Mitigated
Pacific Mobile Home Park, LLC v. City of Huntington Beach acting by and through its elected City Council	SCAG	2/11	Huntington Beach	Public Services & Infrastructure	Streets	Agency	Infill - Infrastructure	Negative Declaration-Mitigated
Back Bay Court Property Company v. City of Newport Beach	SCAG	6/10	Newport Beach	Public Services & Infrastructure	Streets	Agency	Infill - Infrastructure	Categorical Exemption

Paul R. Esslinger v. City of Laguna Beach	SCAG	10/10	Laguna Beach	Residential	Mobile Home Conversion (Rent to Own)	Private	Infill	Statutory Exemption
Arthur E.Stahovich v. City of Anaheim, et al.	SCAG	4/11	Anaheim	Residential	Large Subdivision/ Mixed Use	Private	Infill	Negative Declaration
Daniel L. Friess v. City of San Juan Capistrano, et al.	SCAG	11/11	San Juan Capistrano	Retail	Store/Center Occupancy	Private	Infill	No CEQA Determination
Michael Wilson v. City of Laguna Beach	SCAG	6/11	Laguna Beach	Residential	Single-Family Home/ Second Unit	Private	Infill	Categorical Exemption
Janet Wilson, et al. v. County of Orange, et al.	SCAG	4/10	Orange County	Residential	Single-Family Home/ Second Unit	Private	Greenfield	Categorical Exemption
Lee Strother, et al. v. City of San Clemente	SCAG	9/10	San Clemente	Residential	Single-Family Home/ Second Unit	Private	Infill	Categorical Exemption
Huntington Beach Neighbors v. The City of Huntington Beach, et al.	SCAG	2/10	Huntington Beach	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Foothill Communities Coalition v. County of Orange, et al.	SCAG	4/11	Orange County	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Preserve and Protect North Laguna v. County of Orange	SCAG	4/11	Orange County	Public Services & Infrastructure	Streets	Private	Infill - Infrastructure	Negative Declaration-Mitigated
Save Our Specific Plan, et al. v. County of Orange, et al.	SCAG	11/10	Orange County	Agricultural & Forestry	Winery	Private	Mining/ Agriculture/ Forestry	Negative Declaration-Mitigated
Center for Biological Diversity, et al. v. City of Fullerton, et al.	SCAG	8/11	Fullerton	Residential	Large Subdivision/ Mixed Use	Private	Infill	Environmental Impact Report
Albert Thomas Paulek v. Regional Conservation Authority	SCAG	3/12	Riverside County	Regulatory	City - Regulation	Private	N/A	Categorical Exemption
Albert Thomas Paulek v. California Department of Water Resources	SCAG	12/11	Riverside County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
De Luz 2000 dba Save Our Southwest Hills v. County of Riverside	SCAG	10/12	Riverside County	Regulatory	County - Regulation	Agency	N/A	Statutory Exemption
Friends of Riverside's Hills v. Riverside County Transportation Commission	SCAG	8/11	Riverside County	Public Services & Infrastructure	Transit	Private	Infill - Infrastructure	Environmental Impact Report
CREED-21 v. City of Riverside	SCAG	2/12	Riverside	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
CREED-21 v. City of Murrieta	SCAG	8/12	Murrieta	Retail	Walmart/Big Box Store	Private	Infill	Negative Declaration-Mitigated
Cherry Valley Pass Acres and Neighbors, et al. v. City of Banning	SCAG	4/12	Banning	Residential	Master Planned Community	Private	Infill	Environmental Impact Report
De Luz 2000 dba Save Our Southwest Hills, et al. v. County of Riverside	SCAG	8/12	Riverside County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Smart Neighbors for Smart Growth v. Timothy White, Chancellor of University of California at Riverside, et al.	SCAG	4/12	Riverside	Public Services & Infrastructure	Municipal Waste Management	Agency	Infill - Infrastructure	Environmental Impact Report

Alliance for Intelligent Planning v. City of Wildomar	SCAG	9/11	Wildomar	Retail	Store/ Center Occupancy	Private	Infill	Negative Declaration-Mitigated
Temecula Agriculture Conservation Council v. County of Riverside	SCAG	11/12	Riverside County	Public Services & Infrastructure	Church	Private	Greenfield	Negative Declaration-Mitigated
Sierra Club, et al. v. City of Moreno Valley	SCAG	10/12	Moreno Valley	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
Sierra Club, et al. v. County of Riverside, et al.	SCAG	3/12	Riverside County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Sierra Club v. City of Moreno Valley	SCAG	10/11	Moreno Valley	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
Endangered Habitats League v. City of Murrieta	SCAG	5/12	Murrieta	Regulatory	City - Land Use	Agency	N/A	Statutory Exemption
Center for Biological Diversity, et al. v. County of Riverside, et al.	SCAG	9/10	Riverside County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
City of Riverside v. County of Riverside, et al.	SCAG	4/10	Riverside County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Albert Thomas Paulek v. California Department of Fish and Game, et al.	SCAG	3/11	Riverside County	Park	Passive Recreation	Private	Greenfield - Park	Categorical Exemption
Jayne Abston, et al. v. Mt. San Jacinto Community College District	SCAG	5/11	Banning	Schools	College	Agency	Infill	No CEQA Determination
Craig Britton, et al. v. Mt. San Jacinto Community College District	SCAG	1/11	Banning	Schools	College	Agency	Infill	No CEQA Determination
Center for Biological Diversity, et al. v. County of Riverside, et al.	SCAG	5/10	Riverside County	Industrial	Warehouse/ Logistics	Private	Greenfield	Environmental Impact Report
Center for Biological Diversity, et al. v. City of Riverside, et al.	SCAG	4/10	Riverside County	Industrial	Warehouse/ Logistics	Private	Greenfield	Environmental Impact Report
Friends of Riverside's Hills v. City of Riverside	SCAG	4/10	Riverside County	Industrial	Warehouse/ Logistics	Private	Greenfield	Environmental Impact Report
Friends of Riverside's Hills v. March Joint Powers Authority	SCAG	8/10	Riverside County	Commercial	Office/Business Park	Private	Infill	Environmental Impact Report
CREED-21 v. City of Menifee	SCAG	12/10	Menifee	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Friends of Riverside's Hills v County of Riverside, et al.	SCAG	1/11	Riverside County	Residential	Small Subdivision	Private	Greenfield	Negative Declaration-Mitigated
Rural Communities United Inc v. County of Riverside	SCAG	5/11	Riverside County	Park	Other Active Recreation	Private	Infill - Park	Negative Declaration-Mitigated
Center for Community Action and Environmental Justice, et al. v. City of Perris	SCAG	8/10	Perris	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
Protect Wine Country v. County of Riverside	SCAG	5/11	Riverside County	Regulatory	County - Land Use	Agency	N/A	Statutory Exemption
Health First v. March Joint Powers Authority	SCAG	1/10	Riverside	Industrial	Food Processing Plant	Private	Infill	Environmental Impact Report
Moreno Valley Citizens for Lawful Government v. City of Moreno Valley	SCAG	7/10	Moreno Valley	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
Residents for Responsible Planning v. Moreno Valley Unified School District	SCAG	8/10	Moreno Valley	Schools	K-12	Agency	Infill	Environmental Impact Report

Menifee Residents for Sensible Planning v. City of Menifee	SCAG	2/11	Menifee	Residential	Master Planned Community	Private	Infill	Environmental Impact Report
Residents for a Livable Moreno Valley v. City of Moreno Valley	SCAG	2/10	Moreno Valley	Industrial	Warehouse/ Logistics	Private	Infill	Negative Declaration-Mitigated
Protect Our Wildomar v. City of Wildomar	SCAG	12/10	Wildomar	Retail	New Retail/ Shopping Center	Private	Infill	Negative Declaration-Mitigated
Sierra Club, et al. v. California Department of Fish and Game	SCAG	2/10	Palm Desert	Residential	Small Subdivision	Private	Greenfield	Environmental Impact Report
Center for Community Action and Environmental Justice v. County of Riverside, et al.	SCAG	7/11	Jurupa Valley	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
City of Riverside v. City of Rialto, et al.	SCAG	5/11	Rialto	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
Pilot Travel Centers, LLC v. City of Hesperia by and through its City Council	SCAG	1/12	Hesperia	Commercial	Travel Plaza (Hwy Service Complex)	Agency	Infill	Negative Declaration
Ed Rodriguez v. Town of Apple Valley	SCAG	7/11	Apple Valley	Retail	Shopping Center	Agency	Infill	Environmental Impact Report
Nick J. Constantinides v. City of Big Bear Lake, et al.	SCAG	10/11	Big Bear	Public Services & Infrastructure	Sewage Management	Private	Infill - Infrastructure	Categorical Exemption
Citizens and Ratepayers Opposing Water Nonsense v. Santa Margarita Water District, et al.	SCAG	8/12	San Bernardino County	Water	Storage/ Conveyance/ Extraction	Private	N/A	Environmental Impact Report
Rodrigo Briones, et al. v. Santa Margarita Water District, et al.	SCAG	8/12	San Bernardino County	Water	Storage/ Conveyance/ Extraction	Private	N/A	Environmental Impact Report
Delaware Tetra Technologies v. County of San Bernardino, et al.	SCAG	10/12	San Bernardino County	Water	Storage/ Conveyance/ Extraction	Private	N/A	Environmental Impact Report
Center for Biological Diversity, et al. v. County of San Bernardino, et al.	SCAG	11/12	San Bernardino County	Water	Storage/ Conveyance/ Extraction	Private	N/A	Environmental Impact Report
Center for Biological Diversity, et al. v. County of San Bernardino, et al.	SCAG	8/12	San Bernardino County	Water	Storage/ Conveyance/ Extraction	Private	N/A	Environmental Impact Report
CREED-21, et al. v. City of Victorville	SCAG	10/12	Victorville	Public Services & Infrastructure	Child Support Service Building	Private	Infill	Categorical Exemption
CREED-21 v. City of Upland	SCAG	10/12	Upland	Retail	Walmart/Big Box Store	Private	Infill	Categorical Exemption
Redlands Good Neighbor Coalition v. City of Redlands	SCAG	11/12	Redlands	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
CREED-21 v. City of Victorville	SCAG	6/12	Victorville	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Spring Valley Lake Association v. City of Victorville	SCAG	10/12	Victorville	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
CREED-21, et al. v. City of Victorville	SCAG	10/12	Victorville	Public Services & Infrastructure	Hospital	Private	Infill	Negative Declaration-Mitigated
Ontario Mountain Village Association, et al. v. City of Ontario	SCAG	2/12	Ontario	Regulatory	City - Land Use	Agency	N/A	No CEQA Determination

Helphinkley.org v. County of San Bernardino	SCAG	10/11	San Bernardino County	Public Services & Infrastructure	Municipal Waste Management	Private	Greenfield - Infrastructure	Environmental Impact Report-Addendum
Save Our Uniquely Rural Community Environment v. County of San Bernardino, et al.	SCAG	3/12	San Bernardino County	Public Services & Infrastructure	Church	Private	Infill	Negative Declaration-Mitigated
City of Riverside v. City of Rialto, et al.	SCAG	1/11	Rialto	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
City of Riverside v. City of Rialto, et al.	SCAG	5/11	Rialto	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
Susan Hulse v. All Persons Interested in the Matter of Local Agency Formation Commission for San Bernardino County 3067 A-F; 3072; 3073; 3074; 3075; 3076 Approved on November 18, 2009, with Reconsideration on February 17, 2010, et al.	SCAG	4/10	San Bernardino County	Regulatory	County - Land Use	Agency	N/A	Statutory Exemption
Concerned Community Members and Parents of Redwood Elementary School Students v. County of San Bernardino	SCAG	12/10	Fontana	Entertainment	Car Racing	Private	Infill	Environmental Impact Report
Center for Biological Diversity, et al. v. City of Twentynine Palms, et al.	SCAG	8/10	Twentynine Palms	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Crusaders For Patients' Rights v. Board of Supervisors of the County of San Bernardino	SCAG	4/11	San Bernardino County	Regulatory	Local Marijuana Regulation	Agency	N/A	Statutory Exemption
Citizens for Responsible Equitable Environmental Development v. City of Chino	SCAG	8/10	Chino	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Mike Plater, et al. v. County of Ventura	SCAG	2/12	Ventura County	Public Services & Infrastructure	Municipal Waste Management	Private	Infill - Infrastructure	No CEQA Determination
Venturans for Responsible Growth v. City of San Buenaventura	SCAG	8/11	Ventura	Retail	Shopping Center	Private	Infill	Categorical Exemption
Residents Against Anacapa Development v. City of Oxnard, et al.	SCAG	10/11	Oxnard	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated/ Addendum
Citizens for Balanced Growth v. City of San Buenaventura, et al.	SCAG	12/12	San Buenaventura	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration
Coalition for Responsible Development v. City of Santa Paula, et al.	SCAG	1/10	Santa Paula	Industrial	Gravel Plant	Private	Infill	No CEQA Determination
Sierra Club, et al. v. City of Oxnard, et al.	SCAG	7/11	Oxnard	Residential	Master Planned Community	Private	Infill	Environmental Impact Report
Paul Sayegh v. County of El Dorado, et al.	SACOG	2/10	El Dorado County	Residential	Large Subdivision/ Mixed Use	Private	Greenfield	Negative Declaration-Mitigated
Alto, LLC v. County of El Dorado, et al.	SACOG	2/10	El Dorado County	Residential	Large Subdivision/ Mixed Use	Private	Greenfield	Negative Declaration-Mitigated

Charles Sutton, et al. v. County of El Dorado, et al.	SACOG	3/12	El Dorado County	Retail	Store/Center Occupancy	Private	Infill	No CEQA Determination
Friends of Historic Hangtown v. City of Placerville, et al.	SACOG	3/11	Placerville	Public Services & Infrastructure	Sidewalk/ Streetscape	Agency	Infill - Infrastructure	Negative Declaration-Mitigated
Friends of the Herbert Green Middle School Neighborhood v. County of El Dorado, et al.	SACOG	5/12	Placerville	Commercial	Office/Business Park	Private	Infill	Negative Declaration-Mitigated
Ralph Martinez, et al. v. The City of Roseville, et al.	SACOG	11/11	Roseville	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
California Clean Energy Committee v. County of Placer	SACOG	12/11	Placer County	Residential	Resort	Private	Greenfield	Environmental Impact Report
Town of Loomis v. City of Rocklin, et al.	SACOG	12/10	Rocklin	Residential	Large Subdivision/ Mixed Use	Private	Infill	Environmental Impact Report
Alliance for the Protection of the Auburn Community Environment, et al. v. Placer County	SACOG	10/10	Auburn	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Timeless Investment, Inc., et al. v. California High Speed Rail Authority	SACOG	6/12	Multijurisdictional	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
City of Chowchilla v. California High Speed Rail Authority	SACOG	5/12	Multijurisdictional	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
County of Madera, et al. v. California High Speed Rail Authority	SACOG	5/12	Multijurisdictional	Public Services & Infrastructure	Transit	Agency	Infill - Infrastructure	Environmental Impact Report
City of Grass Valley, et al. v. Nevada County Airport Land Use Commission, et al.	SACOG	10/11	Nevada County	Regulatory	County - Land Use	Agency	N/A	Negative Declaration
Oakdale Irrigation District, et al. v. State Water Resources Control Board	SACOG	9/11	State	Regulatory	Regional - Regulation	Agency	N/A	No CEQA Determination
Environmental Council of Sacramento v. Capital Southeast Connector Joint Powers Authority, et al.	SACOG	4/12	Multijurisdictional	Public Services & Infrastructure	Highway	Agency	Infill - Infrastructure	Environmental Impact Report
California Clean Energy Committee v. Capital Southeast Connector Joint Powers Authority	SACOG	10/11	Multijurisdictional	Public Services & Infrastructure	Highway	Agency	Infill - Infrastructure	Environmental Impact Report
Save Our Heritage Organisation v. California Department of Transportation	SACOG	1/12	San Diego	Agency	Property Disposition/ Management	Agency	N/A	Environmental Impact Report
Galt Citizens for Sensible Planning, et al. v. City of Galt, et al.	SACOG	8/11	Galt	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Picayune Rancheria of Chukchansi Indians v. Edmund G. Brown, et al.	SACOG	11/12	Madera County	Entertainment	Casino	Private	Greenfield	No CEQA Determination
San Joaquin County Resource Conservation District, et al. v. California Regional Water Quality Control Board, Central Valley Region	SACOG	6/12	State	Regulatory	Regional - Regulation	Agency	N/A	Environmental Impact Report

Fort Mojave Indian Tribe v. Department of Toxic Substances Control	SACOG	2/11	San Bernardino County	Water	Storage/ Conveyance/ Extraction	Private	N/A	Environmental Impact Report
PacifiCorp Energy, Inc. v. State Water Resources Control Board, et al.	SACOG	1/11	Multijurisdictional	Regulatory	Regional - Regulation	Agency	N/A	Certified Regulatory Program
Teichert, Inc v. City of Folsom, et al.	SACOG	7/11	Folsom	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Jay Schneider v. Board of Supervisors of the County of Sacramento, et al.	SACOG	1/11	Sacramento County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
City of Rancho Cordova v. County of Sacramento, et al.	SACOG	12/10	Sacramento County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Joseph Hardesty, et al. v. Sacramento County Board of Supervisors, et al.	SACOG	12/10	Sacramento County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
The Protect Our Communities Foundation, et al. v. State Water Resources Control Board	SACOG	2/11	Multijurisdictional	Public Services & Infrastructure	Electric Transmission Line	Private	Greenfield - Infrastructure	Environmental Impact Report
Community Alliance for Fairgrounds Accountability v. State of California *ex rel.* 14th District Agricultural Association	SACOG	6/11	Watsonville	Entertainment	Fairground	Private	Infill - Park	Categorical Exemption
Friends of Madeira v. City of Elk Grove, et al.	SACOG	6/11	Elk Grove	Retail	Walmart/Big Box Store	Agency	Infill	Statutory Exemption
Rocklin Residents for Responsible Growth v. City of Rocklin	SACOG	7/11	Rocklin	Commercial	Office/Business Park	Private	Infill	Environmental Impact Report
Center for Biological Diversity, et al. v. California Department of Parks and Recreation, et al.	SACOG	1/11	State	Park	Other Active Recreation	Agency	Greenfield - Park	Environmental Impact Report
Friends of Swainson's Hawk v. County of Sacramento	SACOG	4/11	Sacramento County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Friends of Swainson's Hawk v. County of Sacramento	SACOG	1/11	Sacramento County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
RRI Energy, Inc, et al. v. State Water Resources Control Board	SACOG	10/10	State	Regulatory	State - Regulation	Agency	N/A	Certified Regulatory Program
Capay Valley Coalition, et al. v. California Department of Transportation, et al.	SACOG	1/10	Yolo County	Public Services & Infrastructure	Highway	Agency	Infill - Infrastructure	Environmental Impact Report
North Coast Rivers Alliance, et al. v. A.G. Kawamura, et al.	SACOG	4/10	Multijurisdictional	Regulatory	State - Regulation	Private	N/A	Environmental Impact Report
Our Children's Earth Foundation, et al. v. A.G. Kawamura, et al.	San Francisco	4/10	Multijurisdictional	Regulatory	State - Regulation	Private	N/A	Environmental Impact Report
Better Urban Green Strategies, et al. v. California Department of Food & Agriculture, et al.	SACOG	1/10	Multijurisdictional	Regulatory	State - Regulation	Private	N/A	Categorical Exemption
Heritage Preservation League of Folsom, et al. v. City of Folsom, et al.	SACOG	6/10	Folsom	Commercial	Hotel	Private	Infill	Environmental Impact Report

Galt Citizens for Sensible Planning, et al. v. City of Galt, et al.	SACOG	5/10	Galt	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Siskiyou County Water Users Association, Inc v. California Natural Resources Agency, et al.	SACOG	8/10	Multijurisdictional	Water	Dam Removal	Agency	N/A	No CEQA Determination
Rosedale-Rio Bravo Water Storage District, et al. v. California Department of Water Resources, et al.	SACOG	6/10	Multijurisdictional	Water	SWP/CVP Management	Private	N/A	Environmental Impact Report
Central Delta Water Agency, et al. v. California Department of Water Resources	SACOG	6/10	Multijurisdictional	Water	SWP/CVP Management	Private	N/A	Environmental Impact Report
Levee District Number One, Sutter County v. Central Valley Flood Protection Board, et al.	SACOG	3/10	Sutter County	Park	Passive Recreation	Private	Greenfield - Park	Categorical Exemption
Brenda Cedarblade v. County of Yolo, et al.	SACOG	11/10	Yolo County	Industrial	Gypsum Stockpile	Private	Mining/ Agriculture/ Forestry	Statutory Exemption
Ernie Gaddini, et al. v. County of Yolo, by and through its Board of Supervisors, et al.	SACOG	10/11	Yolo County	Energy	Renewable - Solar	Private	Greenfield - Energy	Negative Declaration-Mitigated
Citizens Alliance for Regional Environmental Sustainability v. County of Yolo, et al.	SACOG	3/11	Yolo County	Water	Transfer	Private	N/A	Categorical Exemption
Citizens Alliance for Regional Environmental Sustainability v. County of Yolo, et al.	SACOG	1/11	Yolo County	Water	Transfer	Private	N/A	Categorical Exemption
Coalition for Appropriate Port Development v. City of West Sacramento, et al.	SACOG	8/11	West Sacramento	Public Services & Infrastructure	Municipal Waste Management	Private	Infill - Infrastructure	Environmental Impact Report
Citizens for Urban Renewal v. City of Woodland, By and Through the City Council	SACOG	7/12	Woodland	Commercial	Office/Business Park	Private	Infill	Negative Declaration-Mitigated
Greenbelt Neighbors, et al. v. County of Yolo	SACOG	2/12	Yolo County	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Negative Declaration-Mitigated
California Clean Energy Committee v. City of Woodland	SACOG	9/11	Woodland	Retail	Shopping Center	Private	Infill	Environmental Impact Report
City of Fresno v. Fresno County of Local Agency Formation Commission	San Joaquin Valley	11/11	Fresno County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
City of Fresno v. County of Fresno, et al.	San Joaquin Valley	3/11	Fresno County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
San Joaquin River Parkway and Conservation Trust, Inc. v. County of Fresno, et al.	San Joaquin Valley	3/11	Fresno County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Sierra Club, et al. v. County of Fresno, et al.	San Joaquin Valley	3/11	Fresno County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
City of Selma v. City of Kingsburg	San Joaquin Valley	10/12	Kingsburg	Regulatory	City - Land Use	Agency	N/A	Negative Declaration-Mitigated

The Kashian Group, LTD v. City of Fresno, et al.	San Joaquin Valley	1/11	Fresno	Retail	Shopping Center	Private	Infill	Environmental Impact Report
Suzanne Lanfranco, et al. v. City of Fresno, et al.	San Joaquin Valley	1/11	Fresno	Retail	Shopping Center	Private	Infill	Environmental Impact Report
Michael S. Green v. City of Fresno, et al.	San Joaquin Valley	4/12	Fresno	Regulatory	Local Marijuana Regulation	Agency	N/A	Categorical Exemption
Wade Haines, et al. v. County of Fresno, et al.	San Joaquin Valley	10/11	Fresno County	Park	Other Active Recreation	Private	Greenfield - Park	Negative Declaration-Mitigated
Friends of the Swainson's Hawk v. County of Fresno, et al.	San Joaquin Valley	11/12	Fresno County	Energy	Renewable - Solar	Private	Greenfield - Energy	Negative Declaration-Mitigated
Friends of the Kings River v. County of Fresno, et al.	San Joaquin Valley	11/12	Fresno County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Citizens for the Restoration of L Street v. City of Fresno, et al.	San Joaquin Valley	12/11	Fresno	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
North Coast Rivers Alliance, et al. v. Westlands Water District, et al.	San Joaquin Valley	1/12	Multijurisdictional	Water	SWP/CVP Management	Agency	N/A	Statutory Exemption
North Coast Rivers Alliance, et al. v. Westlands Water District, et al.	San Joaquin Valley	8/11	Multijurisdictional	Water	SWP/CVP Management	Agency	N/A	Statutory Exemption/ Categorical Exemption
North Coast Rivers Alliance, et al. v. Westlands Water District, et al.	San Joaquin Valley	3/10	Fresno County	Water	SWP/CVP Management	Agency	N/A	Categorical Exemption
Gongco Fresno, Inc., et al. v. City of Clovis	San Joaquin Valley	7/10	Clovis	Retail	Shopping Center	Private	Infill	Statutory Exemption
Sunnyside Property Owners Association v. City of Fresno, et al.	San Joaquin Valley	9/10	Fresno	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Categorical Exemption
CSA-51-Water-Group, et al. v. County of Fresno, et al.	San Joaquin Valley	6/10	Fresno County	Water	SWP/CVP Management	Private	N/A	Negative Declaration-Mitigated
Consolidated Irrigation District v. City of Selma, et al.	San Joaquin Valley	4/10	Selma	Retail	Shopping Center	Private	Greenfield	Environmental Impact Report
Consolidated Irrigation District v. City of Parlier, et al.	San Joaquin Valley	9/10	Parlier	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Consolidated Irrigation District v. City of Selma, et al.	San Joaquin Valley	11/10	Selma	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Consolidated Irrigation District v. City of Parlier, et al.	San Joaquin Valley	9/10	Parlier	Commercial	Office/Business Park	Private	Greenfield	Negative Declaration
North Kern Water Storage District, et al. v. Kern Delta Water District	San Joaquin Valley	10/12	Kern County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
City of Bakersfield v. Kern Delta Water District	San Joaquin Valley	10/12	Kern County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report

North Kern Water Storage District, et al. v. Kern Delta Water District	SCAG	10/12	Kern County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
Kern Delta Water District v. City of Bakersfield	San Joaquin Valley	10/12	Kern County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
North Kern Water Storage District, et al. v. City of Bakersfield	San Joaquin Valley	10/12	Kern County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
Kern Water Bank Authority v. City of Bakersfield, et al.	San Joaquin Valley	10/12	Kern County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
TCEF, Inc. dba Green Collective, et al. v. County of Kern	San Joaquin Valley	8/12	Kern County	Regulatory	Local Marijuana Regulation	Agency	N/A	No CEQA Determination
Citizens Opposing A Dangerous Environment v. County of Kern, et al.	San Joaquin Valley	10/11	Kern County	Energy	Renewable - Wind	Private	Greenfield - Energy	Environmental Impact Report
Sierra Club, et al. v. County of Kern, et al.	San Joaquin Valley	10/11	Kern County	Energy	Renewable - Wind	Private	Greenfield - Energy	Environmental Impact Report
Tehachapi Area Critical Land Use Issues Group v. Tehachapi Valley Healthcare District	San Joaquin Valley	11/11	Tehachapi	Public Services & Infrastructure	Hospital	Agency	Infill	Negative Declaration-Mitigated
Sierra Club v. California Department of Conservation, Division of Oil, Gas and Geothermal Resources	San Joaquin Valley	7/12	Kern County	Mining	O&G	Private	Mining/ Agriculture/ Forestry	Statutory Exemption
City of Bakersfield v. Buena Vista Water Storage District, et al.	San Joaquin Valley	7/11	Bakersfield	Residential	Master Planned Community	Agency	Infill	Categorical Exemption
Association of Irritated Residents v. County of Kern, et al.	San Joaquin Valley	1/11	Kern County	Energy	Renewable - Biomass	Private	Infill - Energy	Environmental Impact Report
Tehachapi First v. City of Tehachapi	San Joaquin Valley	6/11	Tehachapi	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Sierra Club v. City of Taft, et al.	San Joaquin Valley	7/10	Taft	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Sierra Club v. City of Bakersfield, et al.	San Joaquin Valley	8/10	Bakersfield	Residential	Large Subdivision/ Mixed Use	Private	Infill	Environmental Impact Report
Sierra Club v. County of Kern, et al.	San Joaquin Valley	8/11	Kern County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Sierra Club v. City of Bakersfield, et al.	San Joaquin Valley	9/10	Bakersfield	Commercial	Office/Business Park	Private	Infill	Environmental Impact Report
Tricounty Watchdogs, et al. v. County of Kern, et al.	San Joaquin Valley	6/10	Kern County	Residential	Large Subdivision/ Mixed Use	Private	Greenfield	Environmental Impact Report
Rosedale-Rio Bravo Water Storage District, et al. v. California Department of Water Resources	San Joaquin Valley	6/10	State	Water	SWP/CVP Management	Private	N/A	Environmental Impact Report
Rosedale-Rio Bravo Water Storage District v. Kern County Water Agency	San Joaquin Valley	5/10	Kern County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	No CEQA Determination

Island Cattle Company, et al. v. Angiola Water District	San Joaquin Valley	6/11	Kings County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	No CEQA Determination
City of Chowchilla v. California Department of Corrections and Rehabilitation, et al.	San Joaquin Valley	1/12	Chowchilla	Public Services & Infrastructure	Prison	Agency	N/A	Categorical Exemption
Heavenscent Organic Hortipharm Collective, et al. v. County of Madera	San Joaquin Valley	6/12	Madera County	Regulatory	Local Marijuana Regulation	Agency	N/A	No CEQA Determination
Bates Station Neighbors v. County of Madera, et al.	San Joaquin Valley	7/10	Madera County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Madera Oversight Coalition Inc., et al. v. Madera Irrigation District	San Joaquin Valley	12/12	Madera County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Madera Oversight Coalition, Inc., et al. v. Madera Irrigation District	San Joaquin Valley	8/12	Madera County	Residential	Master Planned Community	Private	Greenfield	Statutory Exemption
California Department of Transportation v. Madera County, et al.	San Joaquin Valley	12/12	Madera County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
City of Fresno v. County of Madera, et al.	San Joaquin Valley	12/12	Madera County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Madera Oversight Coalition, Inc., et al. v. County of Madera, et al.	San Joaquin Valley	12/12	Madera County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Gallo Cattle Company v. Merced Irrigation District	San Joaquin Valley	11/12	Merced County	Water	Transfer	Agency	N/A	No CEQA Determination
San Joaquin Raptor Rescue Center, et al. v. Planada Community Services District, et al.	San Joaquin Valley	3/12	Merced County	Public Services & Infrastructure	Sewage Management	Agency	Infill - Infrastructure	Environmental Impact Report
San Joaquin Raptor Rescue Center, et al. v. County of Merced, et al.	San Joaquin Valley	2/10	Merced County	Residential	Large Subdivision/ Mixed Use	Private	Infill	Negative Declaration-Mitigated
Valley Citizens, et al. v. County of Merced	San Joaquin Valley	10/10	Merced County	Industrial	Concrete Plant	Private	Infill	Negative Declaration-Mitigated
Merced Alliance for Responsible Growth, et al. v. City of Merced, et al.	San Joaquin Valley	1/11	Merced	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Prem Dhoot, et al. v. County of San Joaquin by and through its Board of Supervisors	San Joaquin Valley	2/12	Lathrop	Commercial	Travel Plaza (Hwy Service Complex)	Private	Infill	Negative Declaration-Mitigated
Prem Dhoot, et al. v. City of Lathrop by and through its City Council	San Joaquin Valley	1/12	Lathrop	Commercial	Travel Plaza (Hwy Service Complex)	Private	Infill	Negative Declaration-Mitigated
Dalwinder Dhoot, et al. v. City of Lathrop by and through its City Council	San Joaquin Valley	12/11	Lathrop	Commercial	Travel Plaza (Hwy Service Complex)	Private	Infill	Negative Declaration-Mitigated
City of Lathrop v. City of Manteca by and through its City Council	San Joaquin Valley	11/10	Manteca	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
Harris Properties, LLC v. City of Lathrop, et al.	San Joaquin Valley	6/11	Lathrop	Commercial	Office/ Business Park	Private	Infill	Environmental Impact Report

The Surland Companies, LLC v. San Joaquin County Airport Land Use Commission, et al.	San Joaquin Valley	4/11	San Joaquin County	Regulatory	County - Land Use	Private	N/A	Negative Declaration
Pilot Travel Centers, LLC v. County of San Joaquin by and through its Board of Supervisors	San Joaquin Valley	8/11	San Joaquin County	Commercial	Travel Plaza (Hwy Service Complex)	Private	Greenfield	Negative Declaration-Mitigated
Mary C. Kaehler v. City of Lodi, et al.	San Joaquin Valley	5/11	San Joaquin County	Commercial	Office/Business Park	Private	Greenfield	Negative Declaration-Mitigated
Central Delta Water Agency, et al. v. Semitropic Water Storage District	San Joaquin Valley	10/11	San Joaquin County	Water	Storage/ Conveyance/ Extraction	Private	N/A	Environmental Impact Report
Valley Bio-Energy, LLC v. Modesto Irrigation District, et al.	San Joaquin Valley	11/10	Stanislaus County	Energy	Renewable - Biomass	Private	Infill - Energy	Negative Declaration-Mitigated
Thomas Eakin, et al. v. Oakdale Irrigation District, By and Through the Oakdale Irrigation District Board of Directors	San Joaquin Valley	10/12	Stanislaus County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	No CEQA Determination
Protect Agricultural Land v. Stanislaus County Local Agency Formation Commission	San Joaquin Valley	4/12	Ceres	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Protect Our Agricultural Legacy v. California Department of Transportation	San Joaquin Valley	5/10	Stanislaus County	Public Services & Infrastructure	Highway	Agency	Infill - Infrastructure	Environmental Impact Report
Citizens for Ceres v. City of Ceres, By and through the City Council	San Joaquin Valley	10/11	Ceres	Retail	Shopping Center	Private	Infill	Environmental Impact Report
North Modesto Groundwater Alliance v. City of Modesto, et al.	San Joaquin Valley	12/12	Modesto	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
Ontario Mountain Village Association, et al. v. City of Ontario	San Joaquin Valley	10/12	Ontario	Public Services & Infrastructure	Streets	Private	Infill - Infrastructure	Environmental Impact Report-Addendum
California Clean Energy Committee v. City of Turlock	San Joaquin Valley	10/12	Turlock	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
City of Porterville v. County of Tulare, et al.	San Joaquin Valley	10/12	Tulare County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Sierra Club v. County of Tulare, et al.	San Joaquin Valley	9/12	Tulare County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
County of Tulare v. All Persons Interested in the Adoption of the 2010 Amendment to Redevelopment Plan for the Porterville Redevelopment Project No. 1 as Adopted By Ordinance 1765 on June 15, 2010 by the City of Porterville, et al.	San Joaquin Valley	12/12	Porterville	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Citizens for Responsible Planning v. City of Visalia	San Joaquin Valley	12/10	Visalia	Regulatory	City - Land Use	Agency	N/A	Negative Declaration

Dinuba Citizens for Responsible Planning, et al. v. County of Tulare, et al.	San Joaquin Valley	5/11	Tulare County	Public Services & Infrastructure	Railroad/ Non-Transit	Private	Mining/ Agriculture/ Forestry	No CEQA Determination
California Healthy Communities Network v. City of Porterville	San Joaquin Valley	3/12	Porterville	Retail	Shopping Center	Private	Infill	Environmental Impact Report
Lower Tule River Irrigation District, et al. v. Angiola Water District	San Joaquin Valley	6/11	Multijurisdictional	Water	Storage/ Conveyance/ Extraction	Private	N/A	No CEQA Determination
Friends of the Mother Lode, et al. v. Tuolumne County	San Joaquin Valley	5/11	Tuolumne County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Negative Declaration-Mitigated
County of Amador v. California Department of Corrections and Rehabilitation, et al.	Sierra Foothills	2/11	Ione	Public Services & Infrastructure	Prison	Agency	N/A	No CEQA Determination
Center for Biological Diversity v. County of Amador, et al.	Sierra Foothills	2/11	Amador County	Energy	Renewable - Biomass (Retrofit)	Private	Infill - Energy	Environmental Impact Report
Thomas S. Strout v. County of Amador, et al.	Sierra Foothills	2/11	Amador County	Energy	Renewable - Biomass (Retrofit)	Private	Infill - Energy	Environmental Impact Report
Ione Valley Land, Air, and Water Defense Alliance, LLC v. County of Amador	Sierra Foothills	11/12	Amador County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Colusa Riverbend Estates, LP v. City of Colusa, et al.	Sierra Foothills	8/12	Colusa	Regulatory	CEQA Enforcement	Agency	N/A	Negative Declaration-Mitigated
Elaine Rominger, et al. v. County of Colusa, et al.	Sierra Foothills	4/12	Colusa County	Industrial	Warehouse/ Logistics	Private	Greenfield	Negative Declaration-Mitigated
City of Riverbank v. County of Tuolumne	Sierra Foothills	5/11	Tuolumne County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Negative Declaration-Mitigated
Tuolumne Jobs & Small Business Alliance v. City of Sonora	Sierra Foothills	1/11	Sonora	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Residents of Quail Ridge Ranch v. County of Tuolumne	Sierra Foothills	9/11	Tuolumne County	Residential	Large Subdivision/ Mixed Use	Private	Greenfield	Negative Declaration-Mitigated
Butte Environmental Council v. County of Butte, et al.	Norcal	11/10	Butte County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Friends of Oroville, et al. v. City of Oroville, et al.	Norcal	1/11	Oroville	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
State Water Contractors, Inc. v. South Feather Water and Power Agency	Norcal	5/12	Butte County	Energy	Renewable - Hydro (Retrofit)	Agency	Infill - Energy	Negative Declaration-Mitigated
Aquailiance, et al. v. Butte Water District	Norcal	5/12	Butte County	Water	Transfer	Private	N/A	Negative Declaration
Tony Barnes v. The City of Crescent City, et al.	Norcal	8/11	Crescent City	Public Services & Infrastructure	Stormwater/Flood Management	Agency	Infill - Infrastructure	No CEQA Determination
Save Our Water Resources v. City of Orland, et al.	Norcal	3/10	Orland	Industrial	Beverage Plant	Private	Infill	Statutory Exemption
Friends of Orland, et al.l v. City of Orland, et al.	Norcal	3/10	Orland	Industrial	Beverage Plant	Private	Infill	Statutory Exemption
McKinleyville Community Services District v. County of Humboldt, et al.	Norcal	9/11	Humboldt County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Forster-Gill, Inc. v. County of Humboldt	Norcal	11/11	Humboldt County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report

Robert Sarvey v. North Coast Unified Air Quality Management District Hearing Board, et al.	Norcal	4/10	Humboldt County	Energy	Natural Gas (Retrofit)	Private	Infill - Energy	Negative Declaration
California Farm Bureau Federation v. Humboldt County Resource Conservation District	Norcal	3/11	Humboldt County	Park	Passive Recreation	Private	Greenfield - Park	Environmental Impact Report
Old Muddy II, LLC v. County of Lake, et al.	Norcal	10/12	Lake County	Agricultural & Forestry	Winery	Private	Mining/ Agriculture/ Forestry	Negative Declaration-Mitigated
Friends of Cobb Mountain v. County of Lake, et al.	Norcal	5/11	Lake County	Energy	Renewable - Hydro	Private	Greenfield - Energy	Environmental Impact Report
Friends of Rattlesnake Island v. County of Lake, et al.	Norcal	11/11	Lake County	Residential	Single-Family Home/ Second Unit	Private	Greenfield	Negative Declaration-Mitigated
Mountain Meadows Conservancy, et al. v. County of Lassen, et al.	Norcal	1/10	Lassen County	Residential	Resort	Private	Greenfield	Environmental Impact Report
Masonite Corporation v. County of Mendocino, et al.	Norcal	8/10	Mendocino County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Russian Riverkeeper v. Mendocino County Board of Supervisors, et al.	Norcal	8/10	Mendocino County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Keep The Code, Inc. v. County of Mendocino, et al.	Norcal	9/12	Mendocino County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Environmental Impact Report
Signal Port Creek Property Owners Association v. Ken Pimlott, In His Capacity as Director of the California Department of Forestry and Fire Protection, et al.	Norcal	9/12	Mendocino County	Agricultural & Forestry	Timber Management	Private	Mining/ Agriculture/ Forestry	Certified Regulatory Program
Poonkinney Road Coalition v. County of Mendocino, et al.	Norcal	1/10	Mendocino County	Mining	Aggregate	Private	Mining/ Agriculture/ Forestry	Negative Declaration-Mitigated
Coast Action Group v. County of Mendocino, et al.	Norcal	10/11	Mendocino County	Regulatory	County - Regulation	Agency	N/A	Categorical Exemption
Trevor D. Robbins, et al. v. Nevada Irrigation District, et al.	Norcal	2/10	Nevada County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
Peter Lockyer, et al. v. County of Nevada	Norcal	1/12	Nevada County	Public Services & Infrastructure	Telecommunications	Private	Infill - Infrastructure	Negative Declaration-Mitigated
South County Citizens for Smart Growth v. County of Nevada	Norcal	5/10	Nevada County	Retail	Shopping Center	Private	Infill	Environmental Impact Report
Truckee Donner Public Utility District v. Local Agency Formation Commission of Nevada County, et al.	Norcal	9/11	Truckee	Regulatory	City - Regulation	Agency	N/A	Environmental Impact Report
California Department of Transportation v. Shasta County, et al.	Norcal	9/11	Shasta County	Retail	Shopping Center	Private	Greenfield	Environmental Impact Report
High Sierra Rural Alliance v. County of Sierra, et al.	Norcal	7/10	Sierra County	Regulatory	County - Land Use	Agency	N/A	Statutory Exemption
High Sierra Rural Alliance v. County of Sierra, et al.	Norcal	1/11	Sierra County	Regulatory	County - Land Use	Agency	N/A	Statutory Exemption

Dale La Forest v. County of Siskiyou, et al.	Norcal	7/10	Siskiyou County	Residential	Multifamily/Mixed Use	Private	Greenfield	Negative Declaration-Mitigated
Dale La Forest v. County of Siskiyou, et al.	Norcal	12/11	Siskiyou County	Industrial	Asphalt Plant	Private	Infill	Negative Declaration-Mitigated
Mt. Shasta Tomorrow v. County of Siskiyou, et al.	Norcal	6/11	Siskiyou County	Regulatory	County - Land Use	Agency	N/A	Categorical Exemption
Red Bluff Citizens For Sensible Planning, et al. v. City of Red Bluff, et al.	Norcal	2/10	Tehama County	Retail	Walmart/Big Box Store	Private	Infill	Environmental Impact Report
Owens Valley Committee, et al. v. City of Los Angeles, et al.	Mojave Desert	4/12	Inyo County	Park	Passive Recreation	Agency	Greenfield - Park	Negative Declaration
Center for Biological Diversity, et al. v. Inyo County, et al.	Mojave Desert	6/12	Inyo County	Regulatory	City - Regulation	Agency	N/A	Negative Declaration-Mitigated
City of Los Angeles Acting By and Through the Los Angeles Department of Water and Power v. Mammoth Community Water District, et al.	Mojave Desert	12/11	Los Angeles	Regulatory	City - Regulation	Agency	N/A	Environmental Impact Report
The Otay Ranch, LP, et al. v. County of San Diego	San Diego	10/12	Chula Vista	Entertainment	Shooting Range	Private	Greenfield - Park	Negative Declaration-Mitigated
Inland Industries Group, L.P. v. San Diego Unified Port District, et al.	San Diego	3/12	Chula Vista	Public Services & Infrastructure	Electric Transmission Line	Private	Infill - Infrastructure	Categorical Exemption
Unite Here Local 30 v. City of San Diego, et al.	San Diego	12/12	San Diego	Commercial	Hotel	Private	Infill	Environmental Impact Report
CREED-21 v. City of San Diego	San Diego	5/12	San Diego	Public Services & Infrastructure	Stormwater/Flood Management	Agency	Infill - Infrastructure	Categorical Exemption
CREED-21 v. City of San Marcos	San Diego	3/12	San Marcos	Regulatory	City - Land Use	Agency	N/A	Environmental Impact Report
Save Our Heritage Organisation v. City of San Diego, et al.	San Diego	8/12	San Diego	Park	Other Active Recreation	Private	Infill - Park	Environmental Impact Report
Save Our Heritage Organisation v. City of San Diego, et al.	San Diego	8/11	San Diego	Park	Other Active Recreation	Private	Infill - Park	No CEQA Determination
Save Our Heritage Organisation v. County of San Diego, et al.	San Diego	7/12	San Diego County	Residential	Multifamily/Mixed Use	Agency	Infill	Environmental Impact Report
Torrey Hills Community Coalition v. City of San Diego, et al.	San Diego	7/12	San Diego	Regulatory	CEQA Enforcement	Private	N/A	Environmental Impact Report
Friends of Aviara v. City of Carlsbad	San Diego	2/12	Carlsbad	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
Chollas Restoration, Enhancement and Conservancy Community Development Corporation, et al. v. City of San Diego	San Diego	8/12	San Diego	Park	Other Active Recreation	Agency	Infill - Park	Negative Declaration-Mitigated
Preserve Wild Santee, et al. v. City of San Diego, et al.	San Diego	10/12	San Diego	Public Services & Infrastructure	Municipal Waste Management	Private	Infill - Infrastructure	Environmental Impact Report
Coalition for Safe and Healthy Economic Progress v. City of San Diego	San Diego	4/12	San Diego	Retail	Walmart/Big Box Store	Private	Infill	Negative Declaration-Addendum

Whispering Palms Community Council v. County of San Diego, et al.	San Diego	2/10	San Diego County	Residential	Multifamily/Mixed Use	Private	Infill	Negative Declaration-Mitigated
Whispering Palms Community Council v. County of San Diego, et al.	San Diego	6/12	San Diego County	Residential	Multifamily/Mixed Use	Private	Infill	Environmental Impact Report
La Jolla Shores Tomorrow v. City of San Diego	San Diego	3/12	San Diego	Residential	Single-Family Home/ Second Unit	Private	Infill	Negative Declaration
Alliance for a Cleaner Tomorrow v. San Diego Unified Port District	San Diego	11/12	San Diego	Commercial	Convention Center	Private	Infill	Environmental Impact Report
Coalition for Responsible Convention Center Planning, et al. v. City of San Diego, et al.	San Diego	7/12	San Diego	Commercial	Convention Center	Private	Infill	Environmental Impact Report
Coalition for Responsible Coastal Development, et al. v. San Diego Unified Port District, et al.	San Diego	2/12	San Diego	Commercial	Hotel	Private	Infill	Environmental Impact Report
Sierra Club v. City of San Diego	San Diego	5/12	San Diego	Agency	Property Disposition/ Management	Agency	N/A	No CEQA Determination
Sierra Club v. County of San Diego	San Diego	7/12	San Diego County	Regulatory	Regional - Regulation	Agency	N/A	No CEQA Determination
Helping Hand Tools v. San Diego Air Pollution Control District, et al.	San Diego	3/12	Escondido	Energy	Natural Gas (Retrofit)	Private	Infill - Energy	Categorical Exemption
Rancho Guejito Corporation v. County of San Diego, et al.	San Diego	9/11	San Diego County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
John Baratta v. City of Poway	San Diego	6/11	Poway	Retail	Store/ Center Occupancy	Private	Infill	Categorical Exemption
Megan K. Dorsey v. City of San Diego, et al.	San Diego	2/12	San Diego	Residential	Small Subdivision	Agency	Infill	Negative Declaration
Unite Here Local 30, et al. v. San Diego Unified Port District, et al	San Diego	7/11	San Diego County	Commercial	Hotel	Private	Infill	Environmental Impact Report
Taxpayers for Accountable School Bond Spending v. San Diego Unified School District	San Diego	7/11	Glendale	Schools	K-12	Agency	Infill	Negative Declaration-Mitigated
CREED-21 v. City of San Diego	San Diego	5/11	San Diego	Public Services & Infrastructure	Stormwater/Flood Management	Agency	Infill - Infrastructure	Categorical Exemption
Preserve Calavera v. City of Oceanside	San Diego	6/11	Oceanside	Public Services & Infrastructure	Streets	Agency	Infill - Infrastructure	Environmental Impact Report
San Diegans for Open Government v. City of San Diego	San Diego	11/11	San Diego	Public Services & Infrastructure	Stormwater/Flood Management	Agency	Infill - Infrastructure	Negative Declaration-Mitigated
San Diegans for Open Government, et al. v. City of San Diego	San Diego	11/11	San Diego	Public Services & Infrastructure	Stormwater/Flood Management	Agency	Infill - Infrastructure	Environmental Impact Report
CREED-21, et al. v. City of San Diego	San Diego	1/12	San Diego	Industrial	Warehouse/ Logistics	Private	Infill	Environmental Impact Report
Citizens Against Flower Hill's Excessive Expansion v. City of San Diego	San Diego	5/11	San Diego	Commercial	Office/Business Park	Private	Infill	Environmental Impact Report
Save La Jolla, et al. v. City of San Diego, et al.	San Diego	4/11	La Jolla	Residential	Single-Family Home/ Second Unit	Private	Infill	Statutory Exemption

Sierra Club v. 22nd District Agricultural Association	San Diego	5/11	Del Mar	Entertainment	Fairground	Agency	Infill - Park	Environmental Impact Report
City of Solana Beach, et al. v. 22nd District Agricultural Association	San Diego	5/11	Del Mar	Entertainment	Fairground	Agency	Infill - Park	Environmental Impact Report
San Diego Navy Broadway Complex v. San Diego Unified Port District	San Diego	10/11	San Diego	Public Services & Infrastructure	Museum	Private	Infill	Environmental Impact Report
Cleveland National Forest Foundation, et al. v. San Diego Association of Governments, et al.	San Diego	1/12	San Diego County	Regulatory	Regional - Land Use	Agency	N/A	Environmental Impact Report
CREED-21, et al. v. San Diego Association of Governments	San Diego	11/11	San Diego County	Regulatory	Regional - Land Use	Agency	N/A	Environmental Impact Report
San Luis Rey Band of Mission Indians v. County of San Diego	San Diego	2/12	San Diego County	Residential	Master Planned Community	Private	Greenfield	Environmental Impact Report
Pala Band of Mission Indians, et al. v. County of San Diego Department of Environmental Health, et al.	San Diego	6/11	San Diego County	Public Services & Infrastructure	Municipal Waste Management	Private	Greenfield - Infrastructure	Environmental Impact Report
City of San Diego v. Sweetwater Authority	San Diego	12/10	San Diego County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
City of San Diego v. Sweetwater Authority	San Diego	3/10	San Diego County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Environmental Impact Report
Mary McGuire, Trustee of the McGuire Family Trust v. County of San Diego Department of Planning and Land Use, et al.	San Diego	4/10	San Diego County	Commercial	Spa/Conference Center	Private	Greenfield	Environmental Impact Report
Siempre Viva Business Park West, LLC, et al. v. City of San Diego	San Diego	8/10	San Diego County	Public Services & Infrastructure	Streets	Agency	Infill - Infrastructure	Categorical Exemption
David Odmark v. City of San Diego, et al.	San Diego	8/10	San Diego	Residential	Single-Family Home/ Second Unit	Private	Infill	No CEQA Determination
Mark Gosselin, Trustee of the Mark Gosselin Trust v. City of Coronado, et al.	San Diego	1/11	Coronado	Residential	Single-Family Home/ Second Unit	Private	Infill	No CEQA Determination
Peter L. De Hoff v. City of Poway	San Diego	11/10	Poway	Park	Other Active Recreation	Agency	Infill - Park	Negative Declaration
Lidsay Townley, et al. v. County of San Diego, et al.	San Diego	11/10	San Diego County	Residential	Large Subdivision/ Mixed Use	Private	Greenfield	Environmental Impact Report
San Diegans for Open Government v. City of San Diego	San Diego	10/10	San Diego	Public Services & Infrastructure	Stormwater/Flood Management	Agency	Infill - Infrastructure	Categorical Exemption
CREED-21 v. City of San Diego	San Diego	2/11	San Diego	Public Services & Infrastructure	Stormwater/Flood Management	Private	Infill - Infrastructure	Categorical Exemption
San Diego Citizenry Group v. County of San Diego	San Diego	9/10	San Diego County	Regulatory	County - Land Use	Agency	N/A	Environmental Impact Report
Save Our Heritage Organisation v. City of San Diego, et al.	San Diego	9/10	San Diego	Retail	Store/Center Occupancy	Private	Infill	No CEQA Determination
Friends of Aviara v. City of Carlsbad	San Diego	1/10	Carlsbad	Regulatory	City - Land Use	Agency	N/A	Negative Declaration-Mitigated

Coastal Environmental Rights Foundation, Inc. v. City of San Diego	San Diego	6/10	San Diego	Entertainment	Fireworks Show	Private	Infill	No CEQA Determination
Environmental Law Compliance Group, et al. v. City of San Diego, et al.	San Diego	8/10	San Diego	Retail	Store/Center Occupancy	Private	Infill	Negative Declaration-Mitigated
Calavera Neighborhood Association, et al. v. Carlsbad Unified School District, et al.	San Diego	2/10	Carlsbad	Schools	K-12	Agency	Infill	Environmental Impact Report
Viejas Band of Kumeyaay Indians v. Padre Dam Municipal Water District	San Diego	6/10	San Diego County	Water	Storage/ Conveyance/ Extraction	Agency	N/A	Negative Declaration-Mitigated
Surfrider Foundation v. City of Carlsbad, et al.	San Diego	11/10	Carlsbad	Public Services & Infrastructure	Stormwater/Flood Management	Private	Infill - Infrastructure	No CEQA Determination
United Anglers of Southern California, et al. v. California Fish and Game Commission	San Diego	2/11	State	Regulatory	State - Regulation	Agency	N/A	Environmental Impact Report

ENDNOTES

[1] CEQA requires that the California Attorney General's office be provided with a copy of each CEQA lawsuit "petition," which describes the challenged project and the alleged CEQA compliance deficiencies. Copies of all such petitions filed between January 1, 2010 and December 31, 2012 were obtained by Holland & Knight from the California Attorney General's office, pursuant to a California Public Records Act request. This study includes all 613 CEQA lawsuits (just over 200 lawsuits per year) filed throughout California during the three-year study period.

[2] *See e.g.*, Thomas Law Group Litigation Study (2013).

[3] Jennifer Hernandez et al., Holland & Knight, CEQA Judicial Outcomes: Fifteen Years of Reported California and Supreme Court Decisions (2015), *available at* http://www.hklaw.com/Publications/CEQA-Judicial-Outcomes-Fifteen-Years-of-Reported-California-Appellate-and-Supreme-Court-Decisions-05-04-2015/ (accessed May 26, 2015).

[4] Although this study includes all petitions forwarded to the authors by the office of the California Attorney General (CAG) office in response to a California Public Records Act (CRPA) request for copies of all petitions received by CAG during the study period (2010 to 2012), published media reports include (and the authors have subsequently verified) that not all petitions actually filed were provided in response to this CPRA request. For example, a lawsuit filed by union interests against a transit-oriented development project in Milpitas, and several lawsuits against the high-speed rail project such as the lawsuit filed by the City of Atherton and other Peninsula communities, were not produced pursuant to this CPRA request. These omissions may be attributed either to the fact that these petitioners failed to comply with CEQA's statutory mandate of providing copies of all CEQA petitions to the CAG, or to the inadvertent omission of these Petitions by the CAG staff responding to our CPRA request.

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[6] See Figure 1.

[7] See Appendix A for reference to all "Single-Family Home/Second Unit" projects challenged during the study period.

[8] See discussion of all "Regulatory" projects in Section 3.A.4, infra; *see also* Appendix A for reference to all "Regulatory" projects challenged during the study period.

[9] *See* discussion of all "Schools," "Public Services & Infrastructure," and "Park" projects in Sections 3.A.1, 3.A.2, and 3.A.3, respectively, *infra; see also* Appendix A for reference to all "Schools," "Public Services & Infrastructure," and "Park" projects challenged during the study period.

[10] *City of Chowchilla v. California Department of Corrections and Rehabilitation, et al.* (2012), *see* Appendix A.

[11] *Sierra Club v. City of San Diego* (2012), *see* Appendix A.

[12] *See* discussion of all "Energy" projects in Section 3.A.6, *infra; see* also Appendix A for reference to all "Energy" projects challenged during the study period.

[13] "Projects" that included no physical construction activities (e.g., approval of agency regulations) and construction projects that had no locational optionality as infill community uses (e.g., commercial agricultural and mines) occurred in multiple jurisdictions (e.g., water supply projects where source of water, location of water improvements, and/or use of water, were distributed across multiple locations and jurisdictions). In addition, public agency management of agency-owned properties were not classified as either "greenfield" or "infill" projects.

[14] Jennifer Hernandez et al., Holland & Knight, CEQA Judicial Outcomes: Fifteen Years of Reported California and Supreme Court Decisions (2015), *available at* http://www.hklaw.com/Publications/CEQA-Judicial-Outcomes-Fifteen-Years-of-Reported-California-Appellate-and-Supreme-Court-Decisions-05-04-2015/ (accessed May 26, 2015).

[15] *See* League of California Cities list of all California cities, *available at* http://www.cacities.org/Resources/Learn-About-Cities (accessed May 26, 2015).

[16] *See* Appendix A for reference to all "Regulatory" projects challenged during the study period.

[17] *See* Appendix A for reference to all "Water" projects challenged during the study period.

[18] *See* Appendix A for reference to all "Mining" and "Agricultural & Forestry" projects challenged during the study period.

[19] *See* Figure 2A.

[20] *See* Figure 2B.

[21] *See* e.g., *Ramirez Canyon Preservation Fund v. Santa Monica Mountains Conservancy, et al.* (2010), Appendix A.

[22] *See e.g., Friends of Appleton-Wolfard Libraries, et al. v. City and County of San Francisco, et al.* (2011), Appendix A.

[23] NRDC/CLCV,"Communities Tackle Global Warming" (2009), *available at* http://www.nrdc.org/globalwarming/sb375/files/sb375.pdf (accessed May 26, 2015). "Because CEQA is focused on projects and on mitigating the impacts of those projects, it is not suited to the type of large-scale, comprehensive analysis required to effectively reduce VMT. In fact, in the hands of opponents to a high-density project, CEQA could threaten the implementation of an effective greenhouse gas reduction strategy."

[24] While CEQA demands that tens of millions of dollars of project traffic studies be completed annually, and traffic-related impacts are by far the most litigated CEQA impact issues (especially for infill projects), the fact is that our best effort to carefully predict traffic volumes and patterns from new development is relatively poor. In "Phantom Trips, Overestimating the Traffic Impacts of New Development," academic Adam Millard-Ball reviews the accuracy of the leading national methodology for estimating traffic, the Institute for Traffic Engineers (ITE)'s *Trip Generation*. The author concludes that *Trip Generation* methodology "overestimates trips by 55% – likely because its data represent a biased sample of development in the United States. Moreover, the data in *Trip Generation* are ill-suited to many analyses of traffic impacts, development impact fees, and greenhouse gas emissions, because they do not account for substitution effects. Most trips "generated" by new developments are not new, but involve households reshuffling trips from other destinations. These twin problems – theoretical and practical – are likely to lead to the construction of excessive roadway infrastructure and the overestimation of the congestion, fiscal and environmental impacts of new development." David Levinson, Transportationist, "Phantom Trips," (December 17, 2014), *available at* http://transportationist.org/2014/12/17/8101 (accessed May 26, 2015).

[25] *San Francisco Chronicle*, "Antiabortion group exploiting environmental law to halt clinic" (April 13, 2015), *available at* http://www.sfchronicle.com/opinion/editorials/article/Antiabortion-group-exploiting-environmental-law-6192876.php (accessed May 26, 2015). This report includes factual information presented by this and other referenced media reports, but the authors did not independently investigate the accuracy of these media reports.

[26] *People's Coalition for Government Accountability v. County of Santa Clara, et al.* (2012), *see* Appendix A; *Save Our Uniquely Rural Community Environment v. County of San Bernardino, et al.* (2012), *see* Appendix A; *see also* Pew Research Center, "Controversies Over Mosques and Islamic Centers Across the U.S." (September 27, 2012), *available at* http://www.pewforum.org/2012/09/27/controversies-over-mosques-and-islamic-centers-across-the-u-s-2/ (accessed May 26, 2015).

[27] *See e.g.*, http://ceqaworkinggroup.com/edward2 (accessed May 26, 2015).

[28] *See e.g., Neighbors for Fair Planning v. City and County of San Francisco, et al.* (2011), Appendix A.; *see also*, http://ceqaworkinggroup.com/btwsc (accessed May 26, 2015).

[29] *See e.g., Albany Strollers & Rollers, et al. v. City of Albany, et al.* (2012), Appendix A.

[30] CEQA Working Group, "NIMBY Group Use CEQA Lawsuit to Stop Affordable Housing Project for Seniors," *available at* http://ceqaworkinggroup.com/sseniorhomes (accessed May 26, 2015); CEQA Working Group, "Neighbors Use CEQA In Attempt to Block Expansion of Community Center for Underserved Youth," *available at* http://ceqaworkinggroup.com/btwsc (accessed May 26, 2015); CEQA Working Group, "Marina Homeowners use CEQA to Deter Housing Project for Homeless Teens," *available at*

http://ceqaworkinggroup.com/edward2 (accessed May 26, 2015); Voice of San Diego, "CEQA Can Be a Convenient Weapon" (December 17, 2014), *available at*: http://www.voiceofsandiego.org/topics/economy/ceqa-can-be-a-convenient-weapon/ (accessed May 26, 2015); BetterSolutions4Anaheim, "Legal Objections Raised To Proposed 200-Bed Homeless Shelter" (May 10, 2015), *available at* http://www.bettersolutions4anaheim.com/?p=77 (accessed June 9, 2015); Marin Independent Journal, "Corte Madera Residents Displeased by 'Monster' Apartment Project [180-unit apartment project on 4.7 acres] described as 'towering' and designed to help meet town's affordable housing obligations" http://www.marinij.com/general-news/20131012/corte-madera-residents-displeased-with-monster-apartment-complex (accessed May 26, 2015).

[31] *See* Figure 1.

[32] *Citizens for Castaic v. William S. Hart Union High School District* (2012), see Appendix A.

[33] *See* Figure 2.

[34] Mac Taylor, California Legislative Analyst's Office, "California's High Housing Costs: Causes and Consequences" (2015), *available at* http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf (accessed May 26, 2015).

[35] See Friedman, et al., Chapman University Center for Demographics and Policy, "California's Social Priorities" (2015), *available at* http://www.chapman.edu/wilkinson/_files/CASocPrioFnSm2.pdf (accessed May 26, 2015).

[36] CNNMoney's geographic cost-of-living calculator, *available at* http://money.cnn.com/calculator/pf/cost-of-living/ (accessed May 26, 2015).

[37] *See e.g., Pilot Travel Centers, LLC v. City of Hesperia by and through its City Council* (2012), Appendix A.

[38] *See e.g., Coalition for Responsible Convention Center Planning, et al. v. City of San Diego, et al.* (2012), Appendix A.

[39] *See* Figure 1.

[40] Personal Email Communication (January 9, 2015), Judicial Council Staff (copy available on request).

[41] Jennifer Hernandez et al., Holland & Knight, CEQA Judicial Outcomes: Fifteen Years of Reported California and Supreme Court Decisions (2015), *available at* http://www.hklaw.com/Publications/CEQA-Judicial-Outcomes-Fifteen-Years-of-Reported-California-Appellate-and-Supreme-Court-Decisions-05-04-2015/ (accessed May 26, 2015).

[42] Id. at 3.

[43] Zaring, David, Reasonable Agencies, 96 VA. L. REV. 135, 170-71 (2010); National Taxpayer Advocate – 2011 Annual Report to Congress Volume 1, p. 590, Table 3.0.2, *available at* http://www.taxpayeradvocate.irs.gov/Media-Resources/FY-2011-Annual-Report-To-Congress-Full-Report (accessed May 26, 2015).

[44] Barragan, Curbed Los Angeles, "Everyone Living in Hollywood's Sunset and Gordon Tower Has to Move Out" (March 20, 2015), *available at* http://la.curbed.com/archives/2015/03/sunset_gordon_eviction.php#more (accessed May 26, 2015).

[45] *Center for Biological Diversity v. Department of Fish and Wildlife*, Supreme Court No. S217763 (Review granted July 9, 2014); *Cleveland National Forest Foundation v. San Diego Association of Governments*, Supreme Court No. S223603 (Review granted March 11, 2015).

[46] *City of Hayward v. Board of Trustees of California State University*, Supreme Court No. S203939 (Review granted October 17, 2012)

[47] *City of San Diego v. Board of Trustees of California State University*, Supreme Court No. S199557 (Review granted April 18, 2012); *Cleveland National Forest Foundation v. San Diego Association of Governments*, Supreme Court No. S223603 (Review granted March 11, 2015).

[48] *California Building Industry Ass'n v. Bay Area Air Quality Management District*, Supreme Court No. S213478 (Review granted November 26, 2013).

[49] For example, opponents filed 17 lawsuits against the project between 1993 and 2004. *See* Village at Playa Vista Final EIR, State Clearinghouse No. 2002111065, (April, 2004), *available at* http://planning.lacity.org/eir/PlayaVista/PlayaVistaFEIR/issues/VI_C.pdf (accessed May 26, 2015); *see also*, http://www.laweekly.com/news/playa-vista-quicksand-2150531 (accessed May 26, 2015).

[50] *Don't Privatize Playa Vista Parks v. City of Los Angeles* (2010), *see* Appendix A; *Ballona Ecosystem Education Project v. City of Los Angeles*, *see* Appendix A.

[51] California Code of Civil Procedure, Sec. 425.16.

[52] CEQA Working Group, "Competition uses CEQA to try to stop competing projects and monopolize student housing," *available at* http://ceqaworkinggroup.com/uscgateway (accessed May 26, 2015).

[53] Saint Consulting, "White Paper: Protecting Market Share," *available at* http://tscg.biz/protectingmarketshare (accessed May 26, 2015).

[54] *Delaware Tetra Technologies v. County of San Bernadino* (2012).

[55] *Save the Plastic Bag Coalition v. County of Marin, et al.* (2011), *see* Appendix A; *Save the Plastic Bag Coalition v. City and County of San Francisco, et al.* (2012), *see* Appendix A; *Save the Plastic Bag Coalition v. San Luis Obispo County Integrated Waste Management Authority* (2012), *see* Appendix A; *Save the Plastic Bag Coalition v. City of Santa Cruz, et al.* (2012), *see* Appendix A; *Save the Plastic Bag Coalition v. City of Long Beach, et al.* (2011), *see* Appendix A.

[56] *RRI Energy, Inc. et al. v. State Water Resources Control Board* (2010), *see* Appendix A.

[57] *Conejo Wellness Center, Inc. v. City of Agora Hills, et al.* (2010), *see* Appendix A; *Crusaders For Patients' Rights v. Board of Supervisors of the County of San Bernardino* (2011), *see* Appendix A; *Michael S. Green v. City of Fresno, et al.* (2012), *see* Appendix A; *TCEF, Inc dba Green Collective, et al. v. County of Kern* (2012), *see* Appendix A; *Heavenscent Organic Hortipharm Collective, et al. v. County of Madera* (2012), *see* Appendix A.

[58] *The Protect Our Communities Foundation, et al. v. Imperial County Board of Supervisors* (2012), and *Roman Velasquez, et al. v. County of Imperial, et al.* (2012), *The Protect Our Communities Foundation, et al. v. Imperial Board of Supervisors* (2012) and *Concerned Calipatria Citizens, et al. v. County of Imperial, et al.* (2012), *see* Appendix A.

[59] Unions filing CEQA lawsuits typically seek a "Project Labor Agreement" (PLA) that specifies which and how many jobs are required to go to the union and to its affiliated entities. PLAs also typically include wage and benefit terms, and may include worker training and qualification terms such as requirements for union-based apprentices. Since public and private construction projects receiving public funding subsidies such as the solar projects are generally required to pay prevailing wages, PLA negotiations relate more to union control and/or participation in the project workforce than payment of prevailing wages.

[60] For example, the manufacturer of Metro railcars leased land from the Los Angeles World Airport (LAWA), and as a lessee was required to comply with the County's Living Wage Ordinance, Affirmative Action Program, Contractor Responsibility Program, and Child Support Obligations ordinance. *See* resolution approving lease, *available at* http://clkrep.lacity.org/onlinedocs/2014/14-0707_misc_5-28-14.pdf (accessed May 26, 2015).

[61] *Coalition for Responsible Convention Center Planning, et al. v. City of San Diego, et al.* (2012), *see* Appendix A; *Alliance for a Cleaner Tomorrow v. San Diego Unified Port District* (2012), *see* Appendix A.

[62] *See* Appendix A for reference to all "Walmart/Big Box Store" projects challenged during the study period.

[63] One pattern that emerged in these lawsuits involved submitting to the "lead" CEQA agency a detailed project opposition letter sent by an attorney representing a union, to make clear for political and negotiation purposes a union's CEQA lawsuit threat. The actual CEQA lawsuit, once filed, used arguments raised in the union attorney letter but named a new "group" rather than the union as the party filing the CEQA lawsuit.

[64] *Daily Breeze*, "Mall wars: Redondo Beach sues Torrance over Galleria's possible loss of Nordstrom" (December 3, 2012), *available at* http://www.dailybreeze.com/20121204/mall-wars-redondo-beach-sues-torrance-over-gallerias-possible-loss-of-nordstrom (accessed May 26, 2015).

[65] *See Los Angeles Times*, "Going off the rails on Metro's rail cars" (October 22, 2014), *available at* http://www.latimes.com/opinion/editorials/la-ed-kinkisharyo-labor-dispute-metro-rail-20141023-story.html (accessed May 26, 2015).

[66] A recent study confirmed that California gained fewer than 5,000 of the more than 600,000 manufacturing jobs created in the United States between 2010-2014. Friedman and Hernandez, Chapman University Center for Demographics and Policy, "California's Social Priorities" (2015), *available at* http://www.chapman.edu/wilkinson/_files/CASocPrioFnSm2.pdf (accessed May 26, 2015); John Husing, Chief Economist, Inland Empire Economic Development California's war on the poor, California Poverty Conference Presentation (2014).

[67] *San Fernando Valley Business Journal*, "A.V. Plant Off Track?" (September 22, 2014); *Los Angeles Times*, "Going off the rails on Metro's rail cars" (October 22, 2014), *available at* http://www.latimes.com/opinion/editorials/la-ed-kinkisharyo-labor-dispute-metro-rail-20141023-story.html (accessed May 26, 2015); *Los Angeles Times*, "Kinkisharyo and IBEW win; CEQA loses?" (November 25, 2014), *available at* http://www.latimes.com/opinion/opinion-la/la-ol-kinkisharo-union-deal-ceqa-20141125-story.html (accessed May 26, 2015).

[68] Bloomberg, "Hollywood Deals Stop as David Fights Goliath: Real Estate" (January 14, 2015), *available at* http://www.bloomberg.com/news/articles/2015-01-14/hollywood-deals-stop-as-david-fights-goliath-real-estate (accessed May 26, 2015), quoting Mike Saint, a Nashville, Tennessee-based land use consultant and co-author of the 2009 book, "NIMBY Wars: the Politics of Land Use." About NIMBY CEQA petitioners, Saint continues: "You can't convince [these wealthy petitioners] to support a shopping center across the street from their house just because it's going to create jobs and tax revenue."

[69] *See e.g.*, Brasuell, Curbed Los Angeles, "Leaked Settlement Shows How NIMBYs "Greenmail" Developers" (January 3, 2013), *available at* http://la.curbed.com/archives/2013/01/leaked_settlement_shows_how_nimbys_greenmail_developers_1.php (accessed May 26, 2015); *Easy Reader News*, "Attorney suing Manhattan Village mall refuses to identify clients" (January 27, 2015), *available at* http://easyreadernews.com/90979/attorney-suing-manhattan-village-mall-refuses-identify-clients/ (accessed May 26, 2015); *San Diego Union Tribune*, "Lawyer's credibility unraveling" (September 25, 2007), *available at* http://www.utsandiego.com/news/2007/sep/25/lawyers-credibility-unraveling (accessed May 26, 2015); "Nonprofits Linked to San Diego Attorney Cory Briggs Flout State, Federal Laws (May 28, 2015), *available at* http://www.kpbs.org/news/2015/may/28/nonprofits-linked-san-diego-attorney-cory-briggs/ (accessed May 29, 2015)

[70] *See e.g.*, "Development Agreement" including community benefit agreements entered into in 2012 by the University of Southern California and the City of Los Angeles to benefit several community groups, described in a joint press release *available at* https://pressroom.usc.edu/joint-public-statement-regarding-the-public-benefits-provided-by-the-usc-specific-plan-and-development-agreement/ (accessed May 26, 2015) and between San Francisco and Zendesk, *available at* http://www.sfgsa.org/index.aspx?page=5480 (*accessed May 26, 2015*).

[71] *See e.g.*, "California's Old Political Machine Losing Steam," (May 23, 2015), *available at* http://www.sfchronicle.com/opinion/diaz/article/California-s-old-political-machine-losing-steam-6282052.php (accessed May 26, 2015).

[72] California Forward receives core funding from The William and Flora Hewitt Foundation, The James Irvine Foundation, The David and Lucille Packard Foundation, The California Endowment, and the Evelyn and Walter Haas, Jr. Fund. The California Stewardship Network receives core funding from the Morgan Family Foundation.

[73] California Economic Summit, 2013 Summit Report: Advancing the Triple Bottom Line for All California, December 2013, *available at* http://www.caeconomy.org/resources/entry/2013-summit-report (accessed May 26, 2015). California Forward receives core funding from The William and Flora Hewitt Foundation, The James Irvine Foundation, The David and Lucille Packard Foundation, The California Endowment, and the Evelyn and Walter Haas, Jr. Fund. The California Stewardship Network receives core funding from the Morgan Family Foundation.

[74] California Economic Summit, Action Plan: July 2012, *available at* http://www.bayareaeconomy.org/media/files/pdf/CA_Summit_Action_Plan_JULY2012.pdf (accessed May 26, 2015), page 9.

[75] *See e.g.*, California Attorney General, "Quantifying the Rate of Litigation Under the California Environmental Quality Act: A Case Study" (August 8, 2012), *available at* http://voiceofsandiego.org/wp-content/uploads/2014/12/AGCEQA.pdf (accessed May 26, 2015) (examining the 17 CEQA lawsuits filed in San Francisco during an 18-month period in which 5,203 city compliance determinations were made; however, even city minor building permits for interior renovations trigger CEQA because these are considered "discretionary" rather than "ministerial" under San Francisco's unique charter); *see also*, Natural Resources Defense Council & California League of Conservation Voters, "CEQA – the Litigation Myth" (January 2013), *available at* http://switchboard.nrdc.org/blogs/dpettit/CEQA%20Litigation%20Analysis%20FINAL.pdf (accessed May 26, 2015), which found that 1.5% of Los Angeles CEQA determinations were challenged in court. However, neither of these studies attempted to differentiate between "big" and "small" or environmentally beneficial project challenges (e.g., CEQA lawsuits against plastic bag ordinances and transit projects) or environmentally benign project challenges (e.g., renovations of existing structures).

[76] *See* Appendix A for reference to all projects challenged during the study period that received a "Categorical Exemption" or "Statutory Exemption."

[77] *See e.g., Berkeley Hillside Preservation, et al. v. City of Berkeley, et al.* (2010), Appendix A.

[78] *See e.g., Golden Gate Land Holdings, LLC v. East Bay Regional Park District* (2011), Appendix A.

[79] *See e.g., Ecologic Partners, Inc., et al. v. California Department of Parks and Recreation* (2011), Appendix A.

[80] *Save La Jolla, et al. v. City of San Diego, et al.* (2011), *see* Appendix A.

[81] *See e.g., Daniel L. Friess, et al. v. City of San Juan Capistrano, et al.* (2010) and *Cow Hollow Neighbors for Liveable Communities, et al. v. City and County of San Francisco* (2011), and the Planned Parent clinic in South San Francisco, discussed below.

[82] KQED Forum radio interview (2012), *available at* http://www.kqed.org/a/forum/R201208230900 (accessed May 26, 2015).

[83] *See* http://www.sanjoseinside.com/2015/05/27/community-activist-lobbies-for-urban-agrihood-in-santa-clara/

[84] San Jose Inside, "CEQA Needs Urgent Reform" (August 23, 2012), *available at* http://www.sanjoseinside.com/2012/08/23/8_23_12_ceqa_development_environment_silicon_valley/ (accessed May 26, 2015); CEQA Working Group – CEQA Case Study (copy available from authors on request).

[85] *See* Figure 1.

[86] *San Diego Union Tribune*, "San Diego Lawyer costing taxpayers millions" (April 12, 2015), *available at* http://www.utsandiego.com/news/2015/apr/12/san-diego-lawyer-cory-briggs-taxpayers-millions/ (accessed May 26, 2015).

[87] CEQA Working Group, "Threat of CEQA Lawsuit Causes 'Carmageddon'," *available at* http://ceqaworkinggroup.com/wp-content/uploads/2013/01/CEQA-Misuse-Carmageddon1.pdf (accessed May 26, 2015).

[88] Michael Leachman and Chris Mai, Center on Budget and Policy Priorities, "Most States Funding Schools Less Than Before the Recession" (May 20, 2014), *available at* http://www.cbpp.org/research/most-states-funding-schools-less-than-before-the-recession (accessed May 26, 2015).

[89] *See* Appendix A for reference to all "Schools" projects challenged during the study period.

[90] CEQA Working Group, "Neighborhood Group Uses CEQA to Keep Out Middle School Students," *available at* http://ceqaworkinggroup.com/wp-content/uploads/2013/01/CEQA-Misuse-Portola-School1.pdf (accessed May 26, 2015).

[91] *Designers, Engineers, Constructors for Better, Safer Schools, et al. v. Mill Valley School District, et al.* (2011), *see* Appendix A; *Citizens for Educated Government v. Mill Valley School District, et al.* (2011), *see* Appendix A; *See also* Mill Valley Patch, "Edna Maguire Neighbors Sue School District" (July 19, 2011), *available at* http://patch.com/california/millvalley/edna-maguire-neighbors-sue-school-district (accessed May 26, 2015).

[92] *See e.g., SF Coalition for Children's Outdoor Play, Education and the Environment et al. v. City and County of San Francisco, et al.* (2012), Appendix A; *see also Responsible Use of Land at El Toro, et al. v. Saddleback Valley Unified School District* (2012), Appendix A.

[93] CEQA's unique (and some would say notorious) "fair argument" standard is well established by statute and case law. For projects that would generally qualify for a "Categorical Exemption" because the project meets regulatory criteria for a type of project that typically has no significant adverse impacts, there is a split in appellate court cases as to when and how the "fair argument" standard applies. A potentially decisive case on this topic – involving construction of a single-family home on an existing lot, which received unanimous approval from the Berkeley Planning Commission and City Council as well as support from the project's immediate neighbors, is one of 10 cases pending (as of the time of issuance of this study) before the California Supreme Court, which is currently considering whether to reconsider the split decision issued earlier in 2015. The challenged home has been delayed by more than six years of CEQA litigation. *Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal. 4th 1086; California Supreme Court Case Information Webpage, *available at* http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2009144&doc_no=S201116 (accessed May 26, 2015). *See also, Petition for Rehearing (pending), at* http://www.berkeleyside.com/wp-content/uploads/2015/03/S201116_PFR_BerkeleyHillside-3-17-15.pdf (accessed May 26, 2015).

[94] *See* Appendix A for reference to all "K-12" projects challenged during the study period.

[95] Port of Los Angeles Fact Sheet, *available at* http://www.portoflosangeles.org/about/facts.asp (accessed May 26, 2015).

[96] According to the Port of Los Angeles and Port of Long Beach Fact Sheet, Los Angeles has a 17.4% share of U.S. container trade, and "1 in 5" containers pass through the Long Beach port. *See* Port of Los Angeles Fact Sheet, *available at* http://www.portoflosangeles.org/about/facts.asp (accessed May 26, 2015); Port of Long Beach Fact Sheet, *available at* http://www.polb.com/about/facts.asp (accessed May 26, 2015).

[97] August 2014 regional and state employment totals for August 2014 (state seasonally adjusted; regional unadjusted). *See* State of California Employment Development Department, Labor Market Data Library, *available at* http://www.labormarketinfo.edd.ca.gov/data/labor-market-data-library.html (accessed May 26, 2015); Port of Los Angeles Fact Sheet, *available at* http://www.portoflosangeles.org/about/facts.asp (accessed May 26, 2015); Port of Long Beach Fact Sheet, *available at* http://www.polb.com/about/facts.asp (accessed May 26, 2015); Port of Long Beach, "Economic Impacts: Contributing to the Local, State & National Economies," *available at* http://www.polb.com/civica/filebank/blobdload.asp?BlobID=2103 (accessed May 26, 2015).

[98] California 2013 gross domestic product is reported in the U.S. Department of Commerce, Bureau of Economic Analysis, Real GDP By State Spreadsheet, *available at* http://www.bea.gov/newsreleases/regional/gdp_state/2014/xls/gsp0814_real.xls (accessed May 26, 2015), and the state 2013 general fund expenditures are summarized in the 2014-15 California State Budget, Summary Charts, *available at* http://www.ebudget.ca.gov/2014-15/pdf/Enacted/BudgetSummary/SummaryCharts.pdf (accessed May 26, 2015). The tax revenue estimates published by the Long Beach port include "local, state and general federal taxes from Port-related trade," and do not specify the amount of federal tax revenue in the total. Other published estimates indicate that the port generates as much as $5.9 billion in state tax revenue. *See e.g.*, California Chamber of Commerce, 2014 California Business Issues, "Making California Ports More Competitive Can Help Regional, State Economies," *available at* http://www.calchamber.com/GovernmentRelations/IssueReports/Documents/2014-Reports/California-Ports-2014.pdf (accessed May 26, 2015).

[99] California now leads the nation in the dubious distinction of having the most residents who lack high school diplomas, and is near rock-bottom in high school graduation rates nationally. Friedman and Hernandez, Chapman University Center for Demographics and Policy, "California's Social Priorities" (2015), *available at* http://www.chapman.edu/wilkinson/_files/CASocPrioFnSm2.pdf (accessed May 26, 2015).

[100] *Community Alliance For Open Space v. City of Los Angeles, et al.* (2010), *see* Appendix A.

[101] All references to unemployment rates in this paragraph were found using the interactive Local Area Unemployment Statistics Map, United States Bureau of Labor Statistics, *available at* http://data.bls.gov/map/MapToolServlet?survey=la&map=state&seasonal=s (accessed May 26, 2015).

[102] *Desert Protective Council, et al. v. Imperial County, et al.* (2011), *see* Appendix A. *Quechan Tribe of the Fort Yuma Indian Reservation v. County of Imperial, et al.* (2011), *see* Appendix A.

[103] *City of Hayward v. Board of Trustees of California State University*, Supreme Court No. S203939 (Review granted October 17, 2012).

[104] *City of San Diego v. Board of Trustees of California State University*, Supreme Court No. S199557 (Review granted April 18, 2012).

[105] *City of Hayward v. Board of Trustees of California State University* (2012) 207 Cal. App.4th 446, opinion superseded upon review granted by California Supreme Court.

[106] *City of San Diego v. Board of Trustees of California State University* (2011) 201 Cal.App.4th 1134, opinion superseded upon review granted by California Supreme Court.

[107] *See e.g., Friends of the College of San Mateo Gardens v. San Mateo County Community College District, et al.* (2011), *Citizens for a Green San Mateo v. San Mateo County Community College District, et al.* (2011), *City of Culver City, et al. v. Los Angeles Community College District, et al.* (2010), *Jayne Abston, et al. v. Mt. San Jacinto Community College District* (2011), Appendix A.

[108] Smith, Curbed LA, "The Emerson Hollywood Building Backlash Begins" (September 2009), *available at* http://la.curbed.com/archives/2009/09/the_emerson_hollywood_building_backlash_begins.php (accessed May 26, 2015); CEQA Working Group, "CEQA Tour—Case Study (copy available on request from authors).

[109] *Complaint, University of Southern California et al. v. Conquest Student Housing* (C.D.C.A. 2007), *available at* http://www.usc.edu/ext-relations/news_service/pdf/Complaint.pdf (accessed May 27, 2015).

[110] *See* CEQA Working Group, "Competitor uses CEQA to try to stop competing projects and monopolize student housing," *available at* http://ceqaworkinggroup.com/uscgateway (accessed May 27, 2015); Smith, Curbed LA, "Lawsuit A Distant Memory, University Gateway Breaking Ground" (July 9, 2008), *available at* http://la.curbed.com/archives/2008/07/university_gate_1.php (accessed May 27, 2015); Smith, Curbed LA, "Conquest Banned From Even Thinking About USC Housing" (January 25, 2008), *available at*: http://la.curbed.com/archives/2008/01/conquest_studen.php (accessed May 27, 2015); Curbed LA, "USC Sues Conquest Housing; Terrorist Reference Ups the Ante" (September, 4, 2007), *available at* http://la.curbed.com/archives/2007/09/usc_sues_conque.php (accessed May 27, 2015); Grant, USC News, "Lawsuit Filed Against Conquest Housing" (September 4, 2007), *available at* http://news.usc.edu/17989/Lawsuit-Filed-Against-Conquest-Housing/ (accessed May 27, 2015).

[111] *See* Appendix A for reference to all "Public Services & Infrastructure" projects challenged during the study period.

[112] Projects to manage, store, and transfer water from groundwater and surface water supplies often occur in locations that are distant from the communities receiving the water, and may also supply water to multiple communities. The nature of water projects also varies widely, from dams and treatment plants, to water management plans and programs, to temporary transfers of water contract rights involving no physical construction. Challenged water projects are addressed below.

[113] *See* Appendix A for reference to all "Transit" projects challenged during the study period.

[114] *See* Appendix A for reference to all "Highway" projects challenged during the study period.

[115] *See* Appendix A for reference to all "Municipal Waste Management" projects challenged during the study period.

[116] *See* Appendix A for reference to all "Stormwater/Flood Management" projects challenged during the study period.

[117] *See* Appendix A for reference to all "Telecommunications" projects challenged during the study period.

[118] *See* Appendix A for reference to all "Streets" and "Sidewalk/ Streetscape" projects challenged during the study period.

[119] *See* Appendix A for reference to all "Sewage Management" projects challenged during the study period.

[120] *Montecito Agricultural Foundation v. Montecito Fire Protection District, et al.* (2012), *see* Appendix A.

[121] *Concerned Library Users v. City of Berkeley, et al.* (2010); *Friends of Appleton-Wolfard Libraries, et al. v. City and County of San Francisco, et al.* (2011), *see* Appendix A. *See also*, San Francisco North Beach library replacement challenge, *available at* http://ceqaworkinggroup.com/library (accessed May 26, 2015).

[122] *Highland Park Heritage Trust, et al. v. City of Los Angeles, et al.* (2011), *see* Appendix A.

[123] *See* Appendix A for reference to all "Transit" projects challenged during the study period.

[124] CEQA Working Group, "NIMBY Group Uses CEQA Lawsuit in Attempt to Derail Major Public Transit Extension Project," *available at* http://ceqaworkinggroup.com/perrisline (accessed May 27, 2015).

[125] *Los Angeles County Regional Park and Open Space District, et al. v. City of Whittier* (2011), see Appendix A.

[126] *See* Weikel, *Los Angeles Times*, "Gold Line backers reach accord with Monrovia landowner" (February 15, 2015), *available at* http://articles.latimes.com/2012/feb/15/local/la-me-0215-light-rail-20120215 (accessed May 27, 2015); *see also* Neal Broverman, Curb Los Angeles, "Were Taxpayers Screwed by Gold Line's $24 Million Settlement?"(February 15, 2012), *available at* http://la.curbed.com/archives/2012/02/were_taxpayers_screwed_by_gold_lines_24_million_settlement.php (accessed May 27, 2015).

[127] *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, et al.* (2013) 57 Cal.4th 439.

[128] Jennifer Hernandez et al., Holland & Knight, CEQA Judicial Outcomes: Fifteen Years of Reported California and Supreme Court Decisions (2015), *available at* http://www.hklaw.com/Publications/CEQA-Judicial-Outcomes-Fifteen-Years-of-Reported-California-Appellate-and-Supreme-Court-Decisions-05-04-2015/ (accessed May 27, 2015).

[129] As discussed in greater detail in Part 3.b, Remedy Reform, other appellate courts have declined to extend the *Neighbors for Smart Rail* common sense remedy approach. For example, the 8 Washington Project resulted in a rare CEQA loss for San Francisco, when the trial court judge vacated project approvals concluding that updated traffic counts should have been done – precisely the type of minor technical detail that the Supreme Court was unpersuaded was required in *Neighbors for Smart Rail*. *Neighbors to Preserve the Waterfront, et al. v. City and County of San Francisco, et al.* (2012), *see* Appendix A; *see also* Case No. CPF 12 512356, *available at* http://webaccess.sftc.org/Scripts/Magic94/mgrqispi94.dll?APPNAME=WEB&PRGNAME=ValidateCaseNumberSHA1&ARGUMENTS=-ACPF12512356 (accessed May 27, 2015). Similarly, a judge concluded that a supplemental historic building study should have been done for a demolished building on a site now occupied by a completed residential project with existing tenants – and ordered that the project approvals be vacated (making ongoing occupancy by tenants illegal) pending completion of the new study. *La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.* (2012), *see* Appendix A; *see also* Case No. BS137262, *available at* http://www.lacourt.org/casesummary/ui/casesummary.aspx (accessed May 27, 2015); Zahniser, Los Angeles "Judge's ruling on Sunset/Gordon tower puts tenants in limbo" (October 17, 2014), *available at* http://www.latimes.com/local/cityhall/la-me-hollywood-development-20141018-story.html#page=1 (accessed May 27, 2015).

[130] *Town of Atherton, et al. v. California High Speed Rail Authority* (2010); note, this is one of the petitions that was omitted from the CEQA petitions sent by the California Attorney General (CAG) to the authors pursuant to a California Public Records Act request. For purposes of maintaining the integrity of the statistical database, only those petitions actually provided by the CAG are included in Appendix A. Further information about the Atherton lawsuit, and a useful blog on the several lawsuits still pending or anticipated against the high-speed rail project, please refer to http://www.cahsrblog.com/2013/02/the-original-frivolous-lawsuit-is-finally-dismissed/ (accessed May 26, 2015).

[131] *City of Beverly Hills v. Los Angeles County Metropolitan Transportation Authority* (2012), *see* Appendix A; *Beverly Hills Unified School District v. Lost Angeles County Metropolitan Transportation Authority* (2012), *see* Appendix A.

[132] *Timeless Investment, Inc., et al. v. California High Speed Rail Authority* (2012), *see* Appendix A; *City of Chowchilla v. California High Speed Rail Authority* (2012), *see* Appendix A; *County of Madera, et al. v. California High Speed Rail Authority* (2012), *see* Appendix A.

[133] Sheehan, *Fresno Bee*, "Federal law on high-speed rail trumps state environmental lawsuits" (December 15, 2014), *available at* http://www.fresnobee.com/2014/12/15/4287088/us-board-says-federal-law-trumps.html (accessed May 27, 2015).

[134] *Town of Atherton, et al. v. California High Speed Rail Authority* (2014) 228 Cal.App.4th 314.

[135] *People's Coalition for Government Accountability v. County of Santa Clara, et al.* (2012), *see* Appendix A; *Save Our Uniquely Rural Community Environment v. County of San Bernardino, et al.* (2012), *see* Appendix A.

[136] Pew Research Center, "Controversies Over Mosques and Islamic Centers Across the U.S." (September 27, 2012), *available at* http://www.pewforum.org/2012/09/27/controversies-over-mosques-and-islamic-centers-across-the-u-s-2/ (accessed May 27, 2015).

[137] *Concerned Library Users v. City of Berkeley, et al.* (2010), *see* Appendix A; *Friends of Appleton-Wolfard Libraries, et al. v. City and County of San Francisco, et al.* (2011), *see* Appendix A.

[138] *Montecito Agricultural Foundation v. Montecito Fire Protection District, et al.* (2012), *see* Appendix A.

[139] *Highland Park Heritage Trust, et al. v. City of Los Angeles, et al.* (2011), *see* Appendix A; *San Diego Navy Broadway Complex v. San Diego Unified Port District* (2011), see Appendix A.

[140] Williams, Willits News, "Basis for threatened suit against air ambulance base questioned" (December 17, 2014), *available at* http://www.willitsnews.com/general-news/20141217/basis-for-threatened-suit-against-air-ambulance-base-questioned (accessed May 27, 2015).

[141] *Preserve San Leandro Mobility, et al. v. City of San Leandro, et al.* (2010), *see* Appendix A; *North Sonoma County Healthcare District, et al. v. County of Sonoma, et al.* (2010), *see* Appendix A; *CREED-21, et al. v. City of Victorville* (2012), *see* Appendix A; *Tehachapi Area Critical Land Use Issues Group v. Tehachapi Valley Healthcare District* (2011), *see* Appendix A.

[142] *Preserve San Leandro Mobility, et al. v. City of San Leandro, et al.* (2010), *see* Appendix A; *North Sonoma County Healthcare District, et al. v. County of Sonoma, et al.* (2010), *see* Appendix A.

[143] *Citizens Against Airport Pollution v. City of San Jose, et al.* (2010), *see* Appendix A; *Highway 68 Coalition v. Monterey Peninsula Airport District Board of Directors* (2011), *see* Appendix A; *Watsonville Pilots Association v. City of Watsonville* (2011), *see* Appendix A.

[144] *City of Irvine v. County of Orange, et al.* (2011), *see* Appendix A.

[145] *County of Amador v. California Department of Corrections and Rehabilitation, et al.* (2011), *see* Appendix A.

[146] *City of Chowchilla v. California Department of Corrections and Rehabilitation, et al.* (2012), *see* Appendix A.

[147] *Homeowners of Angelo Drive to Save the Great Ficus Trees v. Ken Pfalzgraf, et al.* (2011), *see* Appendix A.

[148] *Tony Barnes v. City of Crescent, et al.* (2011), *see* Appendix A.

[149] During the study period, bike path renovations were challenged in Seal Beach. *Bay City Partners, LLC v. City of Seal Beach, et al.* (2011), *see* Appendix A. San Francisco's Bicycle Plan had an even more tumultuous path to judicial approval. *Coalition for Adequate Review, et al. v. City and County of San Francisco* (2014) 229 Cal.App.4th 1043. The city initiated the plan to add 34 miles of new bike lanes in order to address the alarming increase in the number of collisions between bicycles and cars in certain locations across the City. After a four-year-long injunction imposed by the trial court costing the city invaluable grant funding, the appellate court validated the EIR and removed the injunction. *San Francisco Examiner*, "S.F. bike plan injunction to cost city $35K" (July 21, 2006), *available at* http://www.sfexaminer.com/sanfrancisco/sf-bike-plan-injunction-to-cost-city-35k/Content?oid=2159056 (accessed May 27, 2015).

[150] *See* Appendix A for reference to all "Telecommunications" projects challenged during the study period.

[151] Assem. Bill No. 1486 (2011-2012 Reg. Sess.).

[152] *See* Appendix A for reference to all "Highway" projects challenged during the study period.

[153] Michael Cabanatuan, *San Francisco Chronicle*, "BART can't keep pace with rising 'crush loads'" (April 13, 2015), *available at* http://www.sfgate.com/bayarea/article/BART-can-t-keep-pace-with-rising-crush-loads-6192950.php (accessed May 27, 2015).

[154] For example, CNNMoney's geographic cost-of-living calculator reports that the cost of housing is 56% higher in the City of Los Angeles than the City of Riverside, CNN Money Calculator, "Cost of living: How far will my salary go in another city?" *available at* http://money.cnn.com/calculator/pf/cost-of-living/ (accessed May 27, 2015); *see also*, Friedman, et al., Chapman University Center for Demographics and Policy, "California's Social Priorities" (2015), *available at* http://www.chapman.edu/wilkinson/_files/CASocPrioFnSm2.pdf (accessed May 27, 2015).

[155] *See* Appendix A for reference to all local "Streets" projects challenged during the study period.

[156] *See* Appendix A for reference to all "Stormwater/Flood Management" projects challenged during the study period.

[157] *See e.g.*, Tony Barboza, et al., *Los Angeles Times*, "Regulators detail Exide battery plant closure after decades of pollution," (March 12, 2015), *available at* http://www.latimes.com/local/lanow/la-me-ln-exide-plant-closure-20150312-story.html#page=1 (accessed May 26, 2015); Communities for a Better Environment Press Release, "Residents Call for Shut Down of Exide" (February 9, 2015), *available at* http://www.cbecal.org/press-release-residents-call-for-shut-down-of-exide/ (accessed May 26, 2015).

[158] Personal Communication (2013) from senior official with the California Department of Toxic Substances Control.

[159] *California Native Plant Society v. City of Santa*, 177 Cal. App. 4th 957 (2009).

[160] *Center for Biological Diversity v. Department of Fish and Wildlife* (2014) 224 Cal.App.4th 1105 review granted July 9, 2014 and opinion superseded sub nom. *Center for Biological Diversity v. California Dept. of Fish and Game* (Cal. 2014) 174 Cal.Rptr.3d 80/.

[161] Martha Groves, *Los Angeles Times*, "Annenberg Foundation suspends plan for Ballona Wetlands visitors center" (December 2, 2014), *available at* http://www.latimes.com/local/california/la-me-annenberg-wetlands-20141203-story.html (accessed May 27, 2015).

[162] *See* Appendix A for reference to all local "Park" projects challenged during the study period.

[163] Fairground, zoos and amusement parks were included in the Commercial-Entertainment category; park projects were limited to outdoor recreational areas with few built structures or amenities.

[164] *Friends of Point Pinos, et al. v. City of Pacific Grove, et al.* (2012), *see* Appendix A; *Washoe Meadows Community v. California State Parks and Recreation Commission, et al.* (2012), *see* Appendix A.

[165] *City of Riverside v. City of Rialto, et al.* (2011), *see* Appendix A.

[166] *The Otay Ranch, LP, et al. v. County of San Diego* (2012), *see* Appendix A.

[167] Hannah Rappleye, NBC News, "Is Rubber Mulch a Safe Surface for Your Child's Playground?" (December 2, 2014), *available at* http://www.nbcnews.com/news/investigations/rubber-mulch-safe-surface-your-childs-playground-n258586 (accessed May 27, 2015).

[168] *SF Coalition for Children's Outdoor Play, Education and the Environment et al. v. City and County of San Francisco, et al.* (2012), *see* Appendix A; *See also* C.W. Nevius, *San Francisco Chronicle*, "Campaign against turf soccer fields may be alive and kicking" (November 6, 2014), *available at* http://www.sfgate.com/bayarea/nevius/article/Campaign-against-turf-soccer-fields-may-be-alive-5874056.php (accessed May 27, 2015); Sara Gaiser, Bay City News, "Construction Starts On Golden Gate Park Soccer Fields Project" (November 6, 2014), *available at* http://sfappeal.com/2014/11/construction-starts-on-golden-gate-park-soccer-fields-project/ (accessed May 27, 2015).

[169] *San Francisco Business Times*, "CEQA abuse hits latest victim: Dolores Park" (April 12, 2013), *available at* http://www.bizjournals.com/sanfrancisco/print-edition/2013/04/12/ceqa-abuse-hits-latest-victim.html (accessed May 26, 2015).

[170] *Golden Gate Land Holdings, LLC v. East Bay Regional Park District* (2011), *see* Appendix A.

[171] *See e.g.*, Berkeley Citizen website, Gilman Street Playing Fields Berkeley CEQA comments, *available at* http://www.berkeleycitizen.org/Parks/freeway3.htm (accessed May 26, 2015).

[172] *See* Appendix A for reference to all "Land Use" projects challenged during the study period, which are identified by their governmental level (i.e., City, County and Regional).

[173] This regional plan was sued twice: *Cleveland National Forest Foundation, et al. v. San Diego Association of Governments, et al.* (2012), *see* Appendix A; CREED-21, et al. v. San Diego Association of Governments (2011), *see* Appendix A; and made its way to California Supreme Court: *Cleveland National Forest Foundation, et al. v. San Diego Association of Governments, et al.*, Supreme Court No. S223603 (Review granted March 11, 2015), *available at* http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2096944&doc_no=S223603 (accessed May 26, 2015).

[174] *See* Los Angeles Planning Department, General Plan of the City of Los Angeles: Prior and Current Elements of General Plan flowchart, *available at* http://planning.lacity.org/cwd/gnlpln/History.htm (accessed May 27, 2015); *see also*, Adrian Glick Kudler, Curbed LA, "More Hollywood Community Plan Lawsuits" (July 20, 2012), *available at* http://la.curbed.com/archives/2012/07/more_hollywood_community_plan_lawsuits.php (accessed May 27, 2015).

[175] California Global Warming Solutions Act of 2006, Cal. Health & Safety Code §38500, et seq.

[176] Sen. Bill No. 375 (2007-2008 Reg. Sess.).

[177] *Cleveland National Forest Foundation, et al. v. San Diego Association of Governments, et al.*, Supreme Court No. S223603 (Review granted March 11, 2015), *available at* http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2096944&doc_no=S223603 (accessed May 26, 2015); *see also Cleveland National Forest Foundation, et al. v. San Diego Association of Governments, et al.* (2012), and *CREED-21, et al. v. San Diego Association of Governments* (2011), Appendix A.

[178] A summary of the state's regional housing needs assessment and allocation system was developed by the Southern California Association of Governments, (January 2011), *available at* http://rtpscs.scag.ca.gov/Documents/rhna/RHNA101primer_Dec2010.pdf (accessed May 26, 2015).

[179] *Center for Biological Diversity v. Department of Fish and Wildlife* (2014) 224 Cal.App.4th 1105 review granted July 9, 2014 and opinion superseded sub nom. *Center for Biological Diversity v. California Dept. of Fish and Game* (Cal. 2014) 174 Cal.Rptr.3d 80/.

[180] Friedman, et al., Chapman University Center for Demographics and Policy, "California Environmental Quality Act, Greenhouse Gas Regulation and Climate Change" (2015), *available at* http://www.chapman.edu/wilkinson/_files/GHGfn.pdf (accessed May 27, 2015).

[181] Halstead, Marin Independent Journal, "Two new lawsuits filed to challenge Plan Bay Area" (August 19, 2013), *available at* http://www.marinij.com/general-news/20130819/two-new-lawsuits-filed-to-challenge-plan-bay-area (accessed May 26, 2015). The second lawsuit, filed by an association of developers, is currently pending in the California Supreme Court: *California Building Industry Ass'n v. Bay Area Air Quality Management District*, Supreme Court No. S213478 (review granted November 26, 2013).

[182] *See* Appendix A for reference to all "Local Plastic Bag" and "Local Marijuana" Regulations.

[183] *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155.

[184] Jennie R. Romer and Shanna Foley, Golden Gate University Environmental Law Journal, "A Wolf in Sheep's Clothing: The Plastics Industry's "Public Interest" Role in Legislation and Litigation of Plastic Bay Laws in California" (2012), (*available at* http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1082&context=gguelj (accessed May 26, 2015).

[185] Compassionate Use Act of 1996, Cal. Health & Safety Code §§ 11357-11362.9.

[186] *Conejo Wellness Center, Inc. v. City of Agora Hills, et al.* (2010), *see* Appendix A; *Crusaders For Patients' Rights v. Board of Supervisors of the County of San Bernardino* (2011), see Appendix A; *Michael S. Green v. City of Fresno, et al.* (2012), *see* Appendix A; *TCEF, Inc dba Green Collective, et al. v. County of Kern* (2012), *see* Appendix A; *Heavenscent Organic Hortipharm Collective, et al. v. County of Madera* (2012), *see* Appendix A.

[187] *See* Appendix A for reference to all local "Regulation" projects challenged during the study period, which are identified by their governmental level (*i.e.*, City and County).

[188] *See* Appendix A for reference to all "Regional – Regulations" Projects.

[189] *Cleveland National Forest Foundation, et al. v. San Diego Association of Governments, et al.*, Supreme Court No. S223603 (Review granted March 11, 2015), *available at* http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2096944&doc_no=S223603 (accessed May 26, 2015); *see also* Cleveland National Forest Foundation, et al. v. San Diego Association of Governments, et al. (2012), and *CREED-21, et al. v. San Diego Association of Governments* (2011), Appendix A.

[190] *California Building Industry Ass'n v. Bay Area Air Quality Management District* Supreme Court No. S213478 (Review granted November 26, 2013), *available at* http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2056930&doc_no=S213478 (accessed May 26, 2015).

[191] *California Building Industry Ass'n v. Bay Area Air Quality Management District* (2013) 218 Cal.App.4th 1171; *Ballona Wetlands Land Trust et al. v. City of Los Angeles* (2011) 201 Cal.App.4th 455; Hernandez, et al., Holland & Knight, "Recommendations for Complying with Ballona Wetlands' Definitive Rejection of 'Converse-CEQA' Analysis" (May 30, 2012), *available at* http://www.hklaw.com/publications/Recommendations-for-Complying-with-Ballona-Wetlands-Definitive-Rejection-of-Converse-CEQA-Analysis-05-30-2012/ (accessed May 26, 2015).

[192] *See e.g., San Joaquin County Resource Conservation District, et al. v. California Regional Water Quality Control Board, Central Valley Region* (2011), Appendix A.

[193] *See Association of Irritated Residents, et al. v. California Air Resources Board, et al.* (2012) 206 Cal. App. 4th 1487 (*Available at* http://www.leagle.com/decision/In%20CACO%2020120619016, accessed May 27, 2015.)

[194] *See* Appendix A for reference to all "State – Regulations."

[195] *See* Appendix A for reference to all "Water" cases.

[196] *Siskiyou County Water Users Association, Inc v. California Natural Resources Agency, et al.* (2010), *see* Appendix A.

[197] Chs. 346-48, Stats. 2014.

[198] Cal. Water Code §§ 10728.6 & 10736.2.

[199] *See e.g., Central Delta Water Agency et al. v. California Department of Water Resources* (2010), *see* Appendix A.

[200] *Rodrigo Briones et al v Santa Margarita Water District, et al (2012), Delaware Tetra Technologies v. County of San Bernadino et al (2012); and two lawsuits filed by the Center for Biological Diversity et al. v. County of San Bernadino et al (2012)*; *see* Appendix A.

[201] *See* Association of California Water Agencies, "Sustainable Groundwater Management Act" Fact Sheet, *available at* http://www.acwa.com/sites/default/files/post/groundwater/2014/04/2014-groundwater-fact-sheet.pdf (accessed May 27, 2015).

[202] *See* August 29, 2014 Senate Floor Report on SB 1168 of 2014, listing numerous environmental organizations, including the Environmental Defense Fund, the Natural Resources Defense Council, and Sierra Club California, as supporters of a bill that provided that CEQA would not apply to the preparation and adoption of groundwater sustainability plans.

[203] *See e.g.*, Governor Jerry Brown, "A Proclamation of a State of Emergency" (January 17, 2014), § 9; Governor Jerry Brown, "A Proclamation of a Continued State of Emergency" (April 25, 2014), § 19.

[204] Favot, *Pasadena Star-News* "Devil's Gate Dam project challenged by area environmentalists" (December 15, 2014), *available at* http://www.pasadenastarnews.com/environment-and-nature/20141215/devils-gate-dam-project-challenged-by-area-environmentalists (accessed May 27, 2015).

[205] *See* Appendix A for references to all "Energy" projects.

[206] *See* Appendix A for references to all "Renewable" projects.

[207] *See* Appendix A for references to all "Renewable – Biomass (R)" and "Natural Gas (R). projects.

[208] *Friends of Cobb Mountain v. County of Lake et al.* (2011) *State Water Contractors, Inc. v. South Feather Water & Power Agency* (2012), *see* Appendix A.

[209] *Ctr. For Biological Diversity v. County of Amador, et al.* (2011), *see* Appendix A); *Strout v. County of Amador, et al.* (2011), *see;* Appendix A.

[210] *Valley Bio-Energy, LLC v. Modesto Irrigation District, et al.* (2010), *see* Appendix A.

[211] *Ass'n of Irritated Residents v. County of Kern, et al.* (2011), *see* Appendix A.

[212] *See* Appendix A for references to all "Renewable – Solar" and "Location of Project."

[213] *Roman Velasquez, et al. v. County of Imperial, et al.* (2012), *see* Appendix A; *Concerned Calipatria Citizens, et al. v. County of Imperial, et al.* (2012), *see* Appendix A.

[214] It is notable that the National Labor Relations Act includes a jurisdictional dispute resolution process (Section 8(b)(4)(D) and 10(k)) for competing unions; use of competing CEQA lawsuits appears to be a "work-around" that effectively bypassed this statutory process, which was designed to "shield neutral employers caught between rival claimants." National Labor Relations Board, "Jurisdictional Disputes," *available at* http://www.nlrb.gov/rights-we-protect/whats-law/unions/jurisdictional-disputes-section-8b4d-10k (accessed May 27, 2015).

[215] Local Area Unemployment Statistics Map, United States Bureau of Labor Statistics, *available at* http://data.bls.gov/map/MapToolServlet?survey=la&map=state&seasonal=s (accessed May 26, 2015); Peter Philips, Ph.D., University of Utah Department of Economics, "Should Green Jobs Be Outsourced?" (March 2013), *available at* http://econ.utah.edu/research/publications/2013_04.pdf (accessed May 26, 2015).

[216] Todd Woody, New York Times, "A Move to Put the Union Label on Solar Power Plants" (June 18, 2009), *available at* http://www.nytimes.com/2009/06/19/business/energy-environment/19unions.html (accessed May 27, 2015).

[217] *Id.*

[218] *See* Appendix A for reference to all retail projects challenged during the study period.

[219] *See* Appendix A for reference to all "Commercial" projects challenged during the study period.

[220] *See* Appendix A for reference to all "Oil and Gas" extraction projects challenged during the study period.

[221] *See e.g., City of Petaluma, et al. v. County of Sonoma, et al.* (2011), Appendix A.

[222] *See e.g., Health First v. March Joint Powers Authority* (2010), Appendix A.

[223] *See* Appendix A for reference to all "Industrial" projects challenged during the study period.

[224] Friedman & Hernandez, Chapman University Center for Demographics and Policy, "California's Social Priorities" (2015), *available at* http://www.chapman.edu/wilkinson/_files/CASocPrioFnSm2.pdf (accessed May 26, 2015).

[225] *See* Appendix A for reference to all "Entertainment" projects challenged during the study period.

[226] *See* Appendix A for reference to all agricultural projects challenged during the study period.

[227] *Signal Port Creek Property Owners Association v. Ken Pimlott, In His Capacity as Director of the California Department of Forestry and Fire Protection, et al.* (9/12), *see* Appendix A.

[228] *U.S. News and World Report*, "Tesla Heads to Nevada" (September 4, 2014), *available at* http://www.usnews.com/news/newsgram/articles/2014/09/04/tesla-motors-to-open-battery-factory-in-nevada (accessed May 26, 2015).

[229] Green Tech Solar, "Another Giga Plant Underway: SolarCity Strikes a Deal With New York for Solar Manufacturing Plant," (September 23, 2014), *available at* http://www.greentechmedia.com/articles/read/another-giga-plant-underway-solarcity-strikes-a-deal-with-new-york-for-sola (accessed May 26, 2015).

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[232] David Friedman, et al., Chapman University Center for Demographics and Policy, "California Environmental Quality Act, Greenhouse Gas Regulation and Climate Change" (2015), *available at* http://www.chapman.edu/wilkinson/_files/GHGfn.pdf (accessed May 27, 2015).

[233] Loren Kaye, Fox and Hounds, "The Mysteries of CEQA" (May 30, 2014), *available at* http://www.foxandhoundsdaily.com/2014/05/mysteries-ceqa/ (accessed May 27, 2015).

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[236] Shan Li, *Los Angeles Times*, "Occidental Petroleum to move HQ to Houston, spin off California assets" (February 14, 2014), *available at* http://articles.latimes.com/2014/feb/14/business/la-fi-mo-occidental-petroleum-california-houston-20140214 (accessed May 27, 2015).

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DATE: May 19, 2016

AGENDA ITEM # 4

TO: Planning and Transportation Commission

FROM: David Kornfield, Planning Services Manager

SUBJECT: 16-D-01, 16-UP-02 and 16-SD-01—LOLA, LLC, 4880 El Camino Real
Proposed Five-Story, 21-Unit Condominium

RECOMMENDATION

Recommend that the City Council approve design review, use permit and subdivision applications 16-D-01, 16-UP-02 and 16-SD-01 subject to the recommended findings and conditions of approval

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PROJECT DESCRIPTION

This project is a multiple-family residential project at 4880 El Camino Real. The project consists of a 21-unit, five-story building with underground parking. The project replaces a vacant restaurant. The following table summarizes the project:

GENERAL PLAN DESIGNATION:	Commercial Thoroughfare
ZONING:	CT (Commercial Thoroughfare)
PARCEL SIZE:	0.45 acres (19,533 square feet)
MATERIALS:	Painted cementitious and plaster cement siding, natural stone veneer, metal overhangs, metal and glass balconies

	Existing	Proposed	Required/Allowed
SETBACKS:			
Front	30 feet	25 feet	25 feet
Rear	145 feet	40/100 feet	40/100 feet
Right side	22 feet	7 to 10 feet	0 feet
Left side	5 feet	7 feet	0 feet
HEIGHT:	n/a	62 feet[1]	45 feet
PARKING:	n/a	48 spaces	47 spaces
DENSITY:	n/a	21 units	21 units[2]

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[1] The 62-foot overall building height is measured by the Municipal Code to the top of the roof deck. Exceptions allow for roof top structures eight feet above the roof, where the project has its elevator tower 11 feet above the roof, for an effective height of 74 feet.

[2] The City's zoning code allows 17 units. The State's density bonus regulations for affordable housing allow four additional units because the project provides three affordable housing units, two of which are designated low-income.

ATTACHMENT 4d

BACKGROUND

On February 4, 2016, the Planning and Transportation Commission held a study session on the project. The Commission indicated a general support for the project and provided comments related to clarifying the design. In response, the applicant:

- Organized a field trip to review the operation of the Klaus Mulitlift parking system;
- Widened the look of the mahogany front door by adding a wood surround and narrowed the awning windows above the entry;
- Enhanced the lobby windows by adding wider wood muntins and mullions and adding a lintel;
- Added natural stone to the parking garage entry wall wrapping around to the east side;
- Lowered the horizontal siding and lengthened a second-level balcony along the west side;
- Differentiated the lower two floors with a darker building color;
- Added an eight-foot tall, sound-attenuating wall along the side property line adjacent to the Jack in the Box restaurant;
- Provided more understory plantings and planting areas at the base of the building;
- Relocated the transformer vault from the entry path to the east side of the driveway;
- Moved the at-grade guest parking space to the garage and created a drop-off/turn-around instead;
- Created a staging area for the trash and recycling bins at the western border of the front yard;
- Expanded the area and relocated the rooftop deck to the south; and
- Provided a larger area for photovoltaics on the roof and indicated prewiring.

On March 23, 2016, the Bicycle and Pedestrian Advisory Commission (BPAC) met regarding the project and provided input to enhance the bicycle and pedestrian circulation. In response, the applicant:

- Increased the number of bike racks in the garage to at least one per unit;
- Omitted the landscape area within the public sidewalk; and

- Specified a bike-friendly trench drain grate at the bottom of the garage ramp.

DISCUSSION

General Plan

The General Plan goals and policies for El Camino Real emphasize fiscal stability, increasing commercial vitality, intensification of development, developing housing, including affordable housing, and ensuring compatibility with adjacent residential land uses (Land Use Element, Economic Development Element, and Housing Element).

The project replaces an approximately 3,600-square-foot restaurant with 21, multiple-family condominiums. Eighteen of the units will be market-rate; three of the units will be below-market rate. The site is a narrow and deep property, which lends itself to infill residential land use.

The Housing Element encourages maximum densities of residential development as well as facilitating affordable housing. The project provides the maximum density allowed for the El Camino Real corridor (38 dwellings per acre) and includes three below-market-rate dwellings. The site was overlooked as an opportunity site in the Housing Element.

The Land Use Element anticipates intensification along the El Camino Real corridor. This intensification is balanced with a policy that development along the corridor will be compatible with the residential land uses to the south. The multiple-family land uses to the south include medium density, two-story apartment buildings. Additionally, the medium density Los Altos Square condominiums are nearby to the south and southwest. The proposed building has stepped massing that lowers as it gets closer to the adjacent residential properties. A strong landscape buffer, including mature trees and an eight-foot tall masonry wall, provides a soft barrier along the rear.

Zoning

Except for the building height, the project meets or exceeds the minimum zoning codes. The front setback is 25 feet, where 25 feet is required. The side setbacks range from approximately seven to 10 feet, where no minimum setback is required from the side property line. The rear setback for the first and second stories is 40 feet, where a minimum setback of 40 feet is required for structures up to 30 feet in height. The rear setback for the third through fifth stories is 100 feet, which meets the minimum 100-foot setback for structures over 30 feet in height. The proposed uncovered decks and balconies may project up to six feet into the rear setback.

As a development incentive for providing affordable housing the applicant seeks an overall height exception to allow: a) a building height of 62 feet, where the Code allows a height of 45 feet; and b) rooftop structures 11 feet above the roof, where the Code allows such structures eight feet above the roof. The development incentives are discussed in more detail in the Affordable Housing section below.

The project meets the City's parking requirements by providing 42 reserved parking spaces, two per unit, and five guest parking spaces. Additionally, the project provides one extra parking space as an unassigned handicapped space. A Klaus Multiparking parking system provides the reserved parking in a mechanical system. The proposed system contains a rack that is two stories tall, which is accessed from the main garage level. The rack stores cars at the garage level and in a basement level below the garage on a series of platforms. The platforms shift up and down and side to side. The parking areas are approximately nine-foot, six inches wide, by 18 feet, six inches deep with the platforms at approximately eight feet, 11 inches wide by 17 feet deep. The system provides a vertical clearance of eight feet on the upper level and six feet, nine inches on the lower level. The parking system is explained in more detail in the attached letter and specifications (Attachment C).

Design Requirements and Findings

The applicable CT District design controls (Section 14.50.150 of the Municipal Code) address such concerns as scale, building proportions, bulk, and screening rooftop mechanical equipment as follows:

- In terms of scale, because of the district's relationship to the larger region, a mixture of scales is appropriate with some elements scaled for appreciation from the street and moving vehicles and others for appreciation by pedestrians;

- The building element proportions, especially those at the ground level, should be kept close to a human scale by using recesses, courtyards, entries, or outdoor spaces;

- At the residential interface, building proportions should be designed to limit bulk and protect residential privacy, daylight and environmental quality; and

- Rooftop mechanical equipment should be screened from public view.

In addition to complying with the General Plan and aforementioned district design criteria, the project must address the standard design review findings (Section 14.78.050 of the Municipal Code) summarized as follows:

- Architectural integrity and appropriate relationship with other structures in the immediate area in terms of height, bulk and design;

- Horizontal and vertical building mass articulation to relate to the human scale; variation and depth of building elevations to avoid large blank walls; and residential elements that signal habitation such as entrances, stairs, porches, bays and balconies;

- Exterior materials that convey quality, integrity, permanence and durability, and effectively define the building elements;

- Generous and inviting landscaping including onsite or offsite substantial street tree canopy, hardscape that complements the building;

- Appropriate signage to reflect the building architecture; and
- Screened rooftop mechanical equipment and architecturally appropriate utility areas.

Design Review

The project reflects the desired development intensity of the Commercial Thoroughfare district. It achieves the maximum housing density permitted, which benefits the City's housing goals. It maintains the required stepped massing from the rear property line to limit bulk and to protect daylight and environmental quality. It maintains and enhances an appropriate landscape buffer of redwood and pine trees in the rear yard to help protect the adjacent residential properties to the south.

The building design reflects an appropriate mixture of scales with some taller vertical elements such as the projecting bays with wood siding for appreciation from the street and moving vehicles and some smaller elements such as the mahogany wood entry door, stone veneer on the front lobby, and metal overhangs for appreciation by pedestrians. The design elements of the building avoid large blank walls.

The building design has appropriate elements that signal habitation such as the human-scaled, wooden front entry door, numerous balconies, overhangs and the vertical orientation of the windowpanes.

The exterior building materials appropriately define the building elements and convey the project's quality, integrity, durability and permanence. For example, the stone veneer on the front lobby is set on thick walls; some of the window bays project from two to four feet from the wall planes. Horizontal siding defines the large projecting window bays. On the sides and rear, a darker color cement siding defines the base of the building. C-channel metal awnings overhang the balconies and entry. Stained wood soffits enrich the detail of the bottom of the metal overhangs and balconies.

The landscape plan appears generous and inviting. The front yard contains two specimen palm trees, a bench, hedges, and ground cover. A staggered linear limestone pathway pavers lead to the front door. Smaller, rectangular pavers cover the driveway. The project replaces a street tree in front of the site and two poor condition street trees in front of the Jack in the Box property with City-standard London plane trees. The rear yard maintains the established redwood trees and a mature pine tree and eight-foot tall buffer wall, and proposed evergreen screening along the perimeter. The rear yard also includes benches and the pathways to allow a passive use. Giant timber bamboo screens the narrow side yards to help buffer the building. Low bollard light fixtures light the pathways around the building.

The four to five foot tall parapets architecturally screen the mechanical equipment that is located in the center of the upper roof. The garage contains the trash and recycling area, which is accessed from each floor by chutes. The western side of the front yard contains a staging area for the refuse on pick-up days.

The project does not propose any signage in the front yard. Large, laser cut metal numbers on the front elevation provide for an appropriate building identification in the larger context of the commercial thoroughfare.

Affordable Housing and Development Incentives

The project exceeds the City's affordable housing regulations by providing three affordable housing units, where two are required. Chapter 14.28 of the Municipal Code requires providing a minimum of 10 percent of the units as moderate income. By Code, if there is more than one moderate-income unit required, then the project must provide at least one of the units at the low-income level. In this case, the base project is 17 dwelling units, meeting the City's objective of maximizing the permitted density at 38 dwellings per acre. Rounding up, under the City's regulations the project must provide two affordable housing units: one moderate-income and one low-income. The project provides one moderate-income unit and two low-income units.

Housing Element program 4.3.2 requires that affordable housing units generally reflect the size and number of bedroom of the market rate units. In this case, the project provides nine, two-bedroom units and 12, three-bedroom units. Of the nine, two-bedroom units, two are designated at the low-income level. Of the 12, three-bedroom units, one is designated as a moderate-income unit. Staff believes that this mix of affordable housing meets the intent of the program since the project provides one of each bedroom size and volunteers an additional low-income housing unit.

Under the State's density bonus regulations (Section 65915 of the California Government Code), the project qualifies for a density bonus if it provides at least 10 percent low-income units. With the second low-income unit, the project provides 11.8 percent low-income units, which allows a density bonus of 21.5 percent. The density bonus adds four units to the base of 17 for 21 permitted dwelling units. Under State law, density bonus units are rounded up when there are fractional units and allowed beyond the City's maximum permitted density.

The two low-income units also qualify the project for at least one development incentive. In this case, the applicant requests a height incentive to allow the project to exceed the maximum height of 45 feet. The proposed building height of 62 feet and rooftop structures 11 feet above the roof allow the project to have a fifth story, taller interior wall heights and elevator service to the roof. The fifth floor allows the applicant to provide three additional market rate units.

Under State law (Section 65915 (d) (1), the City must give deference to the applicant on granting the requested development incentives unless it can make either of the findings:

a) That the development incentive is not required to provide for the costs of developing the affordable units; or

b) That the development incentive would have a specific adverse impact upon public health, safety or the physical environment, or historic resources, for which there is no feasible method to mitigate or avoid the impact without rendering the development unaffordable to low- and moderate-income households.

For reference, the moderate-income housing unit would be limited in cost to be affordable to a household that makes no more than 120 percent of the County's median income. The low-income housing units would be limited in cost to be affordable to a household that makes no more than 80 percent of the County's median income. The County's median income for 2015 was $106,300 for a family of four.

Use Permit

The project requires a use permit to allow the multiple-family residential use. The location of the use is desirable in that it improves an underdeveloped property along the City's major commercial thoroughfare with an appropriate amount of high-quality housing. The project meets other objectives of the zoning code as it relates well to the adjacent land uses, maintains a safe traffic circulation pattern, and provides a high-quality design that enhances the City's distinctive character.

The site has a limited commercial potential. Its relatively narrow frontage on the commercial thoroughfare does not lend itself to a retail development; however, office use may be feasible.

The project adequately buffers its units from the adjacent restaurant and drive-through use by providing an eight-foot tall masonry wall adjacent the restaurant and by providing a landscape plan that has tall bamboo elements.

The project mitigates the noise and air quality impacts from El Camino Real by using special construction and air handling equipment (see Environmental Review below). Appropriate conditions of approval are included to address the noise and air quality impacts.

Subdivision

The project includes a Vesting Tentative Map for Condominium purposes. The subdivision divides the building into 21 residential units and associated common areas. Under State law, a Vesting Tentative Map freezes the City's regulations that apply to the subdivision at the time of entitlement and provides certainty for the subdivider.

The subdivision conforms to the permitted General Plan and zoning densities as modified by State law. The subdivision is not injurious to public health and safety, and is suitable for the proposed type of development. The subdivision provides proper access easements for ingress, egress, public utilities and public services.

Environmental Review

As a small in-fill site substantially surrounded by urban uses, where the development is consistent with the General Plan and zoning, where there is no significant natural habitat for endangered species, where there are no significant effects related to traffic, noise, air or water quality, where the site is adequately served by all required utilities and public services, in accordance with Section 15332 of the California Environmental Quality Act Guidelines the project is exempt from further environmental review.

With regard to traffic, the Implementation Program C8 of the City's General Plan Circulation Element requires a transportation analysis for projects that result in 50 or more net new daily trips. Compared to the property's recently vacant restaurant use the proposed multiple-family residential project results in a net reduction of daily trips. The attached traffic report (Attachment D) calculates the project at 165 daily trips compared to the calculated 324 trips for the restaurant use. Thus, no transportation analysis is required.

With regard to air quality, since the project is located on a State Highway, the project potentially exposes people to air pollution. Additionally, the project's construction has a potential to create air pollution. The project's air quality report (Attachment E) provides appropriate mitigation measures including controlling dust and exhaust during construction, air filtration for the dwellings, and construction equipment guidelines. The report's recommended mitigations are included as conditions of approval. The project is below the significance threshold for creating a significant amount of greenhouse gas. Staff included appropriate conditions of approval to mitigate the air quality impacts.

With regard to noise, the project is located in an area that may expose its residents to higher noise levels. The noise study (Attachment F) recommends certain glazing, exterior wall construction, supplemental ventilation, and mechanical equipment noise controls to mitigate the noise levels to meet the City's standards. Staff included appropriate conditions of approval to mitigate the noise impacts.

With regard to the tree impacts, the applicant commissioned an arborist report. The report catalogs the condition of all of the on-site trees and provides for tree protection measures for the trees to remain. The significant trees to remain in the rear yard are in moderate to high health and suitable for preservation. The report contains tree protection measures for the on-site and off-site trees to remain. Staff included appropriate conditions of approval to mitigate the impacts to the trees.

PUBLIC CONTACT

The applicant held an informal neighborhood meeting on March 16, 2016 at the project site, which was attended by six interested parties.

Staff placed an advertisement in the Town Crier and mailed a post card the 155 surrounding property owners and business owners within a 500-foot radius.

The applicant constructed story poles marking the corners and heights of the building. The taller poles show the height to the top of the parapet (68 feet). Lower flags on the pole indicate the height of a conforming building parapet at 53 feet (45 feet plus eight-foot parapet). The shorter poles at the rear show parapet height at 29 feet.

The applicant provided a four-foot wide by six-foot tall on-site billboard notice located near the front property line.

Staff posted the agenda for a general public notice.

Cc: Lola, LLC, Property Owners
Brett Bailey, Architect, Dahlin Group

Attachments:

A. Application
B. Area Map, Vicinity Map and Notification Map
C. Klaus Parking System Information
D. Traffic Report
E. Air Quality Report
F. Noise Study
G. Arborist's Report

FINDINGS

16-D-01, 16-UP-02 and 16-SD-01—4880 El Camino Real

1. With regard to environmental review, the Planning and Transportation Commission finds in accordance with Section 15332 of the California Environmental Quality Act Guidelines, that the following Categorical Exemption findings can be made:

   a. 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, including incentives for the production of affordable housing;

   b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; there is no record that the project site has value as habitat for endangered, rare or threatened species;

   c. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the completed studies and staff analysis reflected in this report support this conclusion; and

   d. The project has been reviewed and it is found that the site can be adequately served by all required utilities and public services.

2. With regard to commercial design review, the Planning and Transportation Commission makes the following findings in accordance with Section 14.78.040 of the Municipal Code:

   a. The proposal meets the goals, policies and objectives of the General Plan with its level of intensity and residential density within the El Camino Real corridor, and ordinance design criteria adopted for the specific district such as the stepped building massing and the landscape buffer at the rear;

   b. The proposal has architectural integrity and has an appropriate relationship with other structures in the immediate area in terms of height, bulk and design; the project has a mixture of scales relating to the larger street and vehicles and the smaller pedestrian orientation;

   c. Building mass is articulated to relate to the human scale, both horizontally and vertically as evidenced in the design of the projecting bay windows, overhangs and balconies. Building elevations have variation and depth and avoid large blank wall surfaces. Residential projects incorporate elements that signal habitation, such as identifiable entrances, overhangs, bays and balconies;

   d. Exterior materials and finishes such as the stained mahogany entry, natural limestone, cementitious horizontal siding, C-channel steel and architectural glass railings, convey quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, and structural elements;

e. Landscaping such as the specimen palm trees, timber bamboo, hedges and groundcover is generous and inviting and landscape and hardscape features such as the limestone pavers, precast cement planters and benches are designed to complement the building and parking areas and to be integrated with the building architecture and the surrounding streetscape. Landscaping includes substantial street tree canopy including three street trees and two specimen palm trees, either in the public right-of-way or within the project frontage;

f. Signage such as the laser cut building numbers is designed to complement the building architecture in terms of style, materials, colors and proportions;

g. Mechanical equipment is screened from public view by the building parapet and is designed to be consistent with the building architecture in form, material and detailing; and

h. Service, trash and utility areas are screened from public view by their location in the building garage and careful placement to the side of the building consistent with the building architecture in materials and detailing.

3. With regard to use permit, the Planning and Transportation Commission finds in accordance with Section 14.80.060 of the Municipal Code:

   a. That the proposed location of the multiple-family residential use is desirable or essential to the public health, safety, comfort, convenience, prosperity, or welfare in that the zoning conditionally permits it and the project provides housing at a variety of affordability levels;

   b. That the proposed location of the multiple-family residential use is in accordance with the objectives of the zoning plan as stated in Chapter 14.02 of this title in that the project provides for community growth along sound line; that the design is harmonious and convenient in relation to surrounding land uses; that the project does not create a significant traffic impact; that the project helps meet the City's housing goals including affordable housing; that the project protects and enhances property values; and that the project enhances the City's distinctive character with a high-quality building design in a commercial thoroughfare context;

   c. That the proposed location of the multiple-family residential use, under the circumstances of the particular case and as conditioned, will not be detrimental to the health, safety, comfort, convenience, prosperity, or welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity;

   d. That the proposed multiple-family residential use complies with the regulations prescribed for the district in which the site is located and the general provisions of Chapter 14.02;

4. With regard to the subdivision, the Planning and Transportation Commission finds in accordance with Section 66474 of the Subdivision Map Act of the State of California:

   a. That the proposed subdivision is consistent with the General Plan;

b. That the site is physically suitable for this type and density of development in that the project meets all zoning requirements except where development incentives have been granted;

c. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage, or substantially injure fish or wildlife; and no evidence of such has been presented;

d. That the design of the condominium subdivision is not likely to cause serious public health problems because conditions have been added to address noise, air quality and life safety concerns; and

e. That the design of the condominium subdivision will not conflict with public access easements as none have been found or identified on this site.

CONDITIONS

16-D-01, 16-UP-02 and 16-SD-01—4880 El Camino Real

GENERAL

1. **Approved Plans**

   The project approval is based upon the plans received on May 12, 2016, except as modified by these conditions.

2. **Public Right-of-Way, General**

   All work within the public right-of-way shall be done in accordance with plans to be approved by the City Engineer.

3. **Encroachment Permit**

   The applicant shall obtain an encroachment permit, permit to open streets and/or excavation permit prior to any work done within the public right-of-way and it shall be in accordance with plans to be approved by the City Engineer. *Note: Any work within El Camino Real will require applicant to obtain an encroachment permit with Caltrans prior to commencement of work.*

4. **Public Utilities**

   The applicant shall contact electric, gas, communication and water utility companies regarding the installation of new utility services to the site.

5. **ADA**

   All improvements shall comply with Americans with Disabilities Act (ADA).

6. **Sewer Lateral**

   Any proposed sewer lateral connection shall be approved by the City Engineer.

7. **Upper Story Lighting**

   Any upper story lighting on the sides and rear of the building shall be shrouded or directed down to minimize glare.

8. **Indemnity and Hold Harmless**

   The property owner agrees to indemnify and hold City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of City in connection with

City's defense of its actions in any proceeding brought in any State or Federal Court, challenging the City's action with respect to the applicant's project.

9. **Plan Changes**

The Planning and Transportation Commission may approve minor changes to the development plans. Substantive project changes require a formal amendment of the application with review by the Planning and Transportation Commission and City Council.

PRIOR TO FINAL MAP RECORDATION

10. **CC&Rs**

The applicant shall include provisions in the Covenants, Conditions and Restrictions (CC&Rs) that: a) restrict storage on the private patio and decks and outline rules for other objects stored on the private patio and decks with the goal of minimizing visual impacts; and b) require the continued use and regular maintenance of the Klaus Multiparking vehicle parking system. Such restriction shall run in favor of the City of Los Altos.

11. **Public Utility Dedication**

The applicant shall dedicate public utility easements as required by the utility companies to serve the site.

12. **Fees**

The applicant shall pay all applicable fees, including but not limited to sanitary sewer impact fees, parkland dedication in lieu fees, traffic impact fees and map check fee plus deposit as required by the City of Los Altos Municipal Code.

PRIOR TO BUILDING PERMIT SUBMITTAL

13. **Subdivision Map Recordation**

The applicant shall record a final map. Plats and legal descriptions of the final map shall be submitted for review and approval by the City Land Surveyor, and the applicant shall provide a sufficient fee retainer to cover the cost of the final map application.

14. **Public Improvements**

The property owner or applicant shall install remove and replace with current City Standard sidewalk, vertical curb and gutter, and driveway approaches from property line to property along the frontage of El Camino Real. Such work shall restore the existing driveway approach to current City Standard vertical curb and gutter along the northerly corner of the property.

15. **Street Trees**

The street trees shall be installed along the project's El Camino Real frontage and include two trees in front of 4896 El Camino Real, as directed by the City Engineer.

16. **Sidewalk Lights**

The owner or applicant shall maintain and protect the existing light fixture in the El Camino Real sidewalk, as directed by the City Engineer.

17. **Performance Bond**

The applicant shall submit a cost estimate for all improvements in the public right-of-way and shall submit a 100 percent performance bond (to be held until acceptance of improvements) and a 50 percent labor and material bond (to be held until 6 months after acceptance of improvements) for the work in the public right-of-way.

18. **Right of Way Construction**

The applicant shall submit detailed plans for any construction activities affecting the public right-of-way, including but not limited to excavations, pedestrian protection, material storage, earth retention, and construction vehicle parking, to the City Engineer for review and approval. The applicant shall also submit on-site and off-site grading and drainage plans that include drain swales, drain inlets, rough pad elevations, building envelopes, and grading elevations for approval by the City.

19. **Sewer Capacity**

The applicant shall show sewer connection to the City sewer main and submit calculations showing that the City's existing 8-inch sewer main will not exceed two-thirds full due to the additional sewage capacity from proposed project. For any segment that is calculated to exceed two-thirds full for average daily flow or for any segment that the flow is surcharged in the main due to peak flow, the applicant shall upgrade the sewer line or pay a fair share contribution for the sewer upgrade to be approved by the Director of Public Works.

20. **Trash Enclosure**

The applicant shall contact Mission Trail Waste Systems and submit a solid waste, recyclables (and organics, if applicable) disposal plan indicating the type, size and number of containers proposed, and the frequency of pick-up service subject to the approval of the Engineering Division. The applicant shall also submit evidence that Mission Trail Waste Systems has reviewed and approved the size and location of the proposed trash enclosure. The approved trash staging location shall be maintained as required by the City Engineer.

21. **Stormwater Management Plan and NPDES Permit**

The applicant shall conform to the Stormwater Management Plan (SWMP) report showing that 100% of the site is being treated, and in compliance with the Municipal Regional Stormwater NPDES Permit (MRP), in accordance with the C.3 Provisions for Low Impact Development (LID) and in compliance with the November 19, 2015 requirements. The SWMP shall be reviewed and approved by a City approved third party consultant at the applicant's expense. The recommendation from the SWMP shall be shown on the building plans.

22. **Green Building Standards**

The applicant shall provide verification that the project will comply with the City's Green Building Standards (Section 12.26 of the Municipal Code) from a qualified green building professional.

23. **Property Address**

The applicant shall provide an address signage plan as required by the Building Official.

24. **Landscape**

The applicant shall provide a landscape and irrigation plan in conformance to the City's Water Efficient Landscape Regulations in accordance with Chapter 12.46 of the Municipal Code.

PRIOR TO ISSUANCE OF DEMOLITION AND/OR BUILDING PERMIT

25. **Construction Management Plan**

The applicant shall submit a construction management plan for review and approval by the Community Development Director. The construction management plan shall address any construction activities affecting the public right-of-way, including but not limited to: prohibiting dirt hauling during peak traffic hours, excavation, traffic control, truck routing, pedestrian protection, appropriately designed fencing to limit project impacts and maintain traffic visibility as much as practical, material storage, earth retention and construction and employee vehicle parking.

26. **Sewer Lateral**

The applicant shall abandon additional sewer laterals and cap at the main if they are not being used. A property line sewer cleanout shall be installed within 5 feet of the property line within private property.

27. **Solid Waste Ordinance**

The applicant shall comply with the City's adopted Solid Waste Collection, Remove, Disposal, Processing & Recycling Ordinance, which requires mandatory commercial and multi-family

dwellings to provide for recycling, and organics collection programs as per Chapter 6.12 of the Municipal Code.

28. **Air Quality Mitigation**

The applicant shall implement and incorporate the air quality mitigations into the plans as required by staff in accordance with the report prepared by Illingsworth & Rodin, Inc., dated March 18, 2016.

29. **Noise Mitigation**

The applicant shall implement and incorporate the noise mitigation measures into the plans as required by staff in accordance with the report by Wilson Ihrig, dated March 2, 2016 and revised on April 20, 2016.

30. **Tree Protection**

The applicant shall implement and incorporate the tree protection measures into the plans and on-site as required by staff in accordance with the report by The Tree Specialist, dated April 21, 2106.

31. **Affordable Housing Agreement**

The applicant shall offer for 30-year period, one, three-bedroom unit at the moderate-income level, and two, two bedroom units at the low-income level, in accordance with the City's Affordable Housing Agreement, in a recorded document in a form approved by the City Attorney.

PRIOR TO FINAL INSPECTION

32. **Maintenance Bond**

The applicant shall submit a one-year, 10-percent maintenance bond upon acceptance of improvements in the public right-of-way.

33. **Stormwater Facility Certification**

The applicant shall have a final inspection and certification done and submitted by the Engineer who designed the SWMP to ensure that the treatments were installed per design. The applicant shall submit a maintenance agreement to City for review and approval for the stormwater treatment methods installed in accordance with the SWMP. Once approved, the applicant shall record the agreement.

34. **Stormwater Catch Basin**

The applicant shall label all new or existing public and private catch basin inlets which are on or directly adjacent to the site with the "NO DUMPING - FLOWS TO THE BAY" logo as required by the City Engineer.

35. **Green Building Verification**

The applicant shall submit verification that the structure was built in compliance with the California Green Building Standards pursuant to Section 12.26 of the Municipal Code.

36. **Landscaping Installation**

The applicant shall install all on- and off-site landscaping and irrigation, as approved by the Community Development Director and the City Engineer.

37. **Signage and Lighting Installation**

The applicant shall install all required signage and on-site lighting per the approved plan. Such signage shall include the disposition of guest parking, the turn-around/loading space in the front yard and accessible parking spaces.

38. **Acoustical Report**

The applicant shall submit a report from an acoustical engineer ensuring that the rooftop mechanical equipment meets the City's noise regulations.

39. **Landscape Certification**

The applicant shall provide a Certificate of Completion conforming to the City's Water Efficient Landscape Regulations.

40. **Condominium Map**

The applicant shall record the condominium map as required by the City Engineer.

41. **Street Damage**

The applicant shall repair any damaged right-of-way infrastructures and otherwise displaced curb, gutter and/or sidewalks and City's storm drain inlet shall be removed and replaced as directed by the City Engineer or his designee. The applicant is responsible to resurface (grind and overlay) half of the street along the frontage of El Camino Real if determined to be damaged during construction, as directed by the City Engineer or his designee.

42. **Stormwater Management Plan Inspection**

The applicant shall have a final inspection and certification done and submitted by the Engineer who designed the SWMP to ensure that the treatments were installed per design. The applicant shall submit a maintenance agreement to City for review and approval for the stormwater treatment methods installed in accordance with the SWMP. Once approved, the applicant shall record the agreement.

43. **Driveway Visibility**

The applicant shall work with the Engineering Division to indicate a sufficient no parking area along El Camino Real to the north of the driveway to provide adequate sight visibility.

ATTACHMENT A

CITY OF LOS ALTOS
GENERAL APPLICATION

Type of Review Requested: *(Check all boxes that apply)* **Permit #** ____________

	One-Story Design Review	X	**Commercial/Multi-Family**	X	**Environmental Review**
	Two-Story Design Review		**Sign Permit**		**Rezoning**
	Variance	X	**Use Permit**		**R1-S Overlay**
	Lot Line Adjustment		**Tenant Improvement**		**General Plan/Code Amendment**
X	**Tentative Map/Division of Land**		**Sidewalk Display Permit**		**Appeal**
	Historical Review		**Preliminary Project Review**		**Other:**

Project Address/Location: 4880 EL CAMINO REAL

Project Proposal/Use: 21 RESIDENTIAL CONDOS **Current Use of Property:** VACANT (RESTAURANT)

Assessor Parcel Number(s): 170-02-022 **Site Area:** 19,533 SF

New Sq. Ft.: 32,084 NET **Altered/Rebuilt Sq. Ft.:** ALL **Existing Sq. Ft. to Remain:** —

Total Existing Sq. Ft.: 3,400 ± **Total Proposed Sq. Ft. (including basement):** 44,235

Is the site fully accessible for City Staff inspection? YES

Applicant's Name: JEFF TAYLOR

Telephone No.: 408-355-3699 **Email Address:** JEFF@NEWWORLDPROPERTIES.COM

Mailing Address: P.O. BOX B.H.

City/State/Zip Code: LOS GATOS, CA. 95031

Property Owner's Name: LOLA LLC

Telephone No.: 408-354-1980 **Email Address:** JEFF@NEWWORLDPROPERTIES.COM

Mailing Address: 12340 SARATOGA-SUNNYVALE RD (PEGGY@GALEB COMPANIES.COM)

City/State/Zip Code: SARATOGA, CA 95070

Architect/Designer's Name: THE DAHLIN GROUP BRETT BAILEY

Telephone No.: 925-251-7200 **Email Address:** BRETT.BAILEY@DAHLINGROUP.COM

Mailing Address: 5865 OWENS DR.

City/State/Zip Code: PLEASANTON, CA. 94588

** If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finaled prior to obtaining your building permit. Please contact the Building Division for a demolition package. **

(continued on back) 16-D-01, 16-UP-02 and 16-SD-01

ATTACHMENT B

AREA MAP

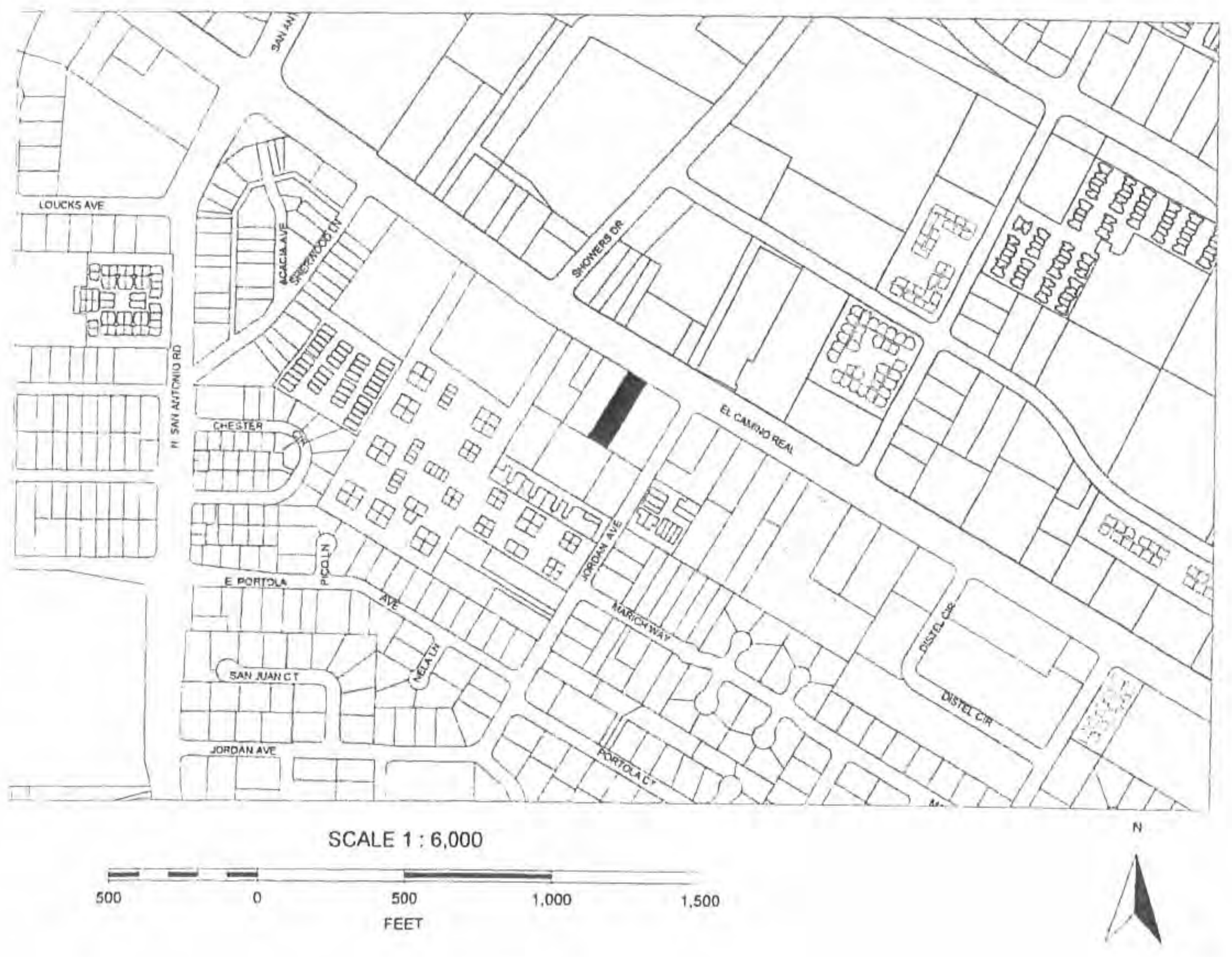
SITE

CITY OF LOS ALTOS

APPLICATION: 16-D-01, 16-UP-02 and 16-SD-01
APPLICANT: LOLA, LLC
SITE ADDRESS: 4880 El Camino Real

Not to Scale

VICINITY MAP



SCALE 1 : 6,000

500 0 500 1,000 1,500
FEET

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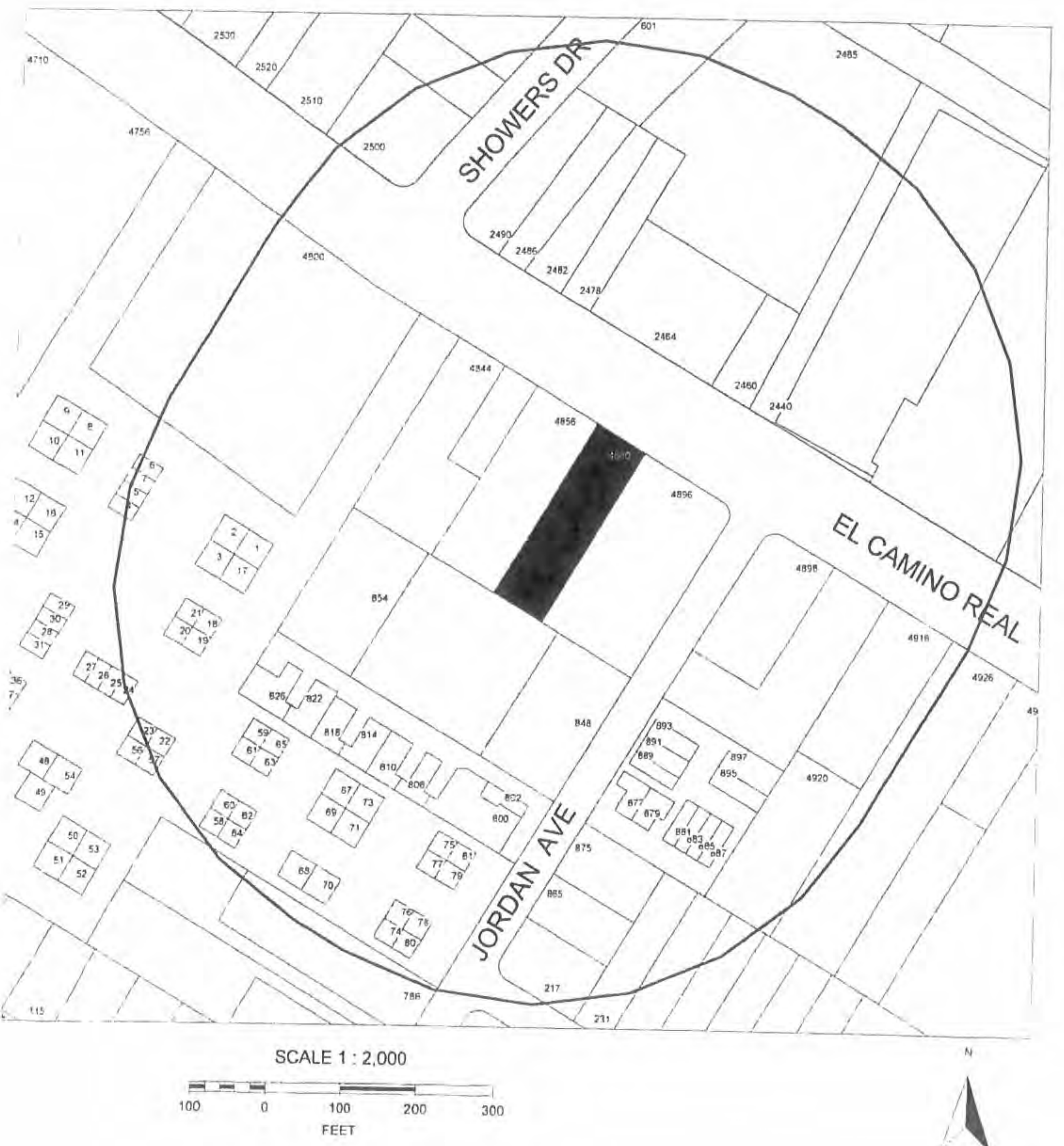
CITY OF LOS ALTOS

APPLICATION: 16-D-01, 16-UP-02 and 16-SD-01
APPLICANT: LOLA, LLC
SITE ADDRESS: 4880 El Camino Real

4880 El Cami..o Real 500-foot ..otification Map



SCALE 1 : 2,000

100 0 100 200 300

FEET

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ATTACHMENT C

April 26, 2016

Mr. David Kornfield
Planning Services Manager
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

RE: Klaus Multilift System – 4880 El Camino Real, Los Altos

Dear David,

This is the supplemental information that I promised you regarding the Klaus Multilift parking system.

We are proposing to use the Klaus Trendvario 4100 on each side of the garage. The development team has chosen Klaus over other manufacturers of multilift systems due to their 40-year proven track record of successfully building and installing these systems. Klaus is considered the best in its industry. Klaus has installed 190 systems in California, a large number of which are located in the Bay Area (a sample list is attached).

The Trendvario 4100 is a 2-story puzzle lift system of which one level is at the ground floor of the garage and the second level is within a pit below the ground floor of the garage. We currently plan for the Trendvario machine to accommodate 19 cars on the west side of the garage and for another Trendvario machine to accommodate 23 cars on the east side of the garage. Each condominium will be assigned two parking platforms. To be accessed, these platforms shift one space, up and down and left and right, as necessary. This shifting operation can be seen on the video that was shown at the informal Planning Commission study session (https://www.youtube.com/watch?v=l-TO89xBh7w). While the precise details of the system installation will be ironed out during the construction documentation phase, we currently anticipate:

- We will upgrade the Trendvario system on both sides of the garage to include an electric, secure, safety-oriented gate to protect the cars and prevent individuals without authorization from walking onto the car platforms. In addition to the manual control panels located within the garage, residents will have the convenience of remote controls to open and close the gates.
- On both sides of the garage, we intend to use the exclusive type Trendvario machine that has a typical stall dimensions of 9' – 6-3/16" wide and 18' – 8" deep. The usable platform width is 8' – 10-5/16" wide and 17' – 0" deep. The depth of the pit will be approximately 7' – 7". The exclusive type Trendvario 4100 allows a maximum vehicle length of 17' and height of 6'-9" on the lower level. No users of the system enter the lower level to enter their vehicle. The head clearance on the upper level will be 8'-0". For reference, the 2016 Escalade with a ski rack is 6'-6" tall and just under 17'-0" long.
- On the west side of the garage we intend to upgrade the Trendvario to have a weight capacity of up to 5,720 pounds which can provide parking for heavier vehicles, such as a 2016 Escalade which weighs 5,552 pounds. The Trendvario platforms on the east side of the garage will handle a weight capacity of up to 4,400 pounds, which is ample capacity for 75% of the vehicles on the road. For example, America's best selling SUV, the Honda CR-V, weighs 3,624 pounds.
- We intend to mount electric charging stations on selected parking platforms in a number sufficient to accommodate 25% of the vehicles.

Rick Rombach, manager of the Klaus Bay Area division, is available to meet Planning Department and Commission members for a show-and-tell at 930 Emerson Street, Palo Alto where a Klaus 11-car puzzle lift system is installed. While the system at 930 Emerson is a 3-level system with a pit (we will be using a 2-level), it does have the gates, which makes it the most relevant viewing example within the Los Altos vicinity. Rick is available Tuesday or Thursday over the next couple of weeks at approximately 10:30 a.m. to meet at 930 Emerson Street. Would you please confer with the Planning Department and Commission and circle back to me as soon as possible on what might work?

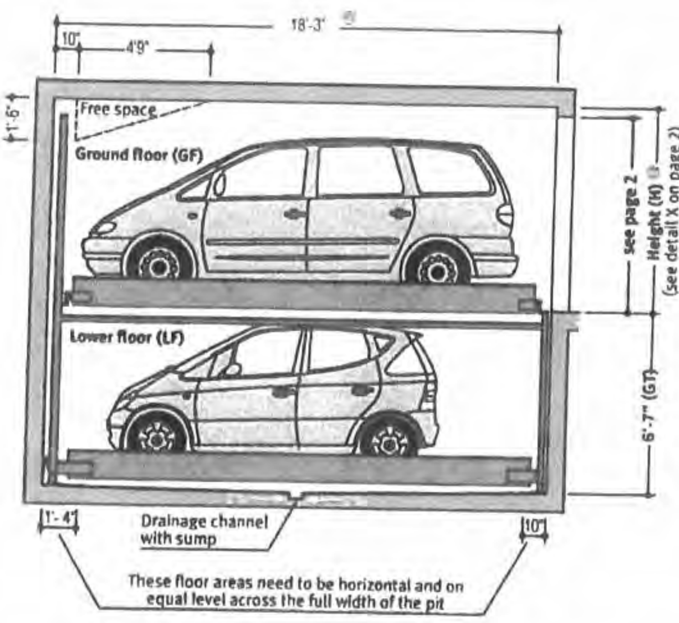
For your reference, I am attaching here, in addition to a redacted Klaus project list, the product data sheet for the Trendvario 4100. I am also attaching an image of what the electric charging station will look like, more or less (we have not decided on the vendor yet).

Please feel free to call me with any questions.

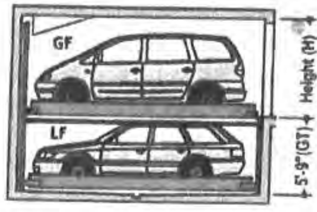
Sincerely on behalf of the Development Team for 4880 El Camino Real,

Peggy Galeb
Manager
LOLA, LLC
12340 Saratoga-Sunnyvale Road
Saratoga, CA 95070

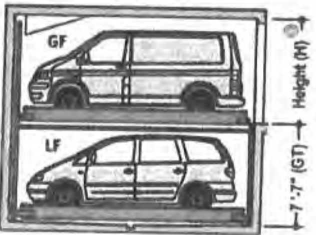
Standard Type 4100



Compact Type 4100



Exclusive Type 4100



Notes

1. Changes in height H will change the car heights on the upper floor or the corresponding clearances on the ceiling, depending on the height of the door
2. Standard is 18'-3" ; 18'-11" available
3. Standard is 4400 lbs; 5720 lbs is available

Product Data TrendVario 4100

Number of parking spaces:
min. 3 to max. 29 vehicles

Dimensions:
All space requirements are minimum finished dimensions. Tolerances for space requirements are plus 1" minus 0.

TYP	GT	H
4100	5'-9"	7'-3"
4100	6'-7"	7'-3"
4100	7'-7"	7'-5"

* = without car

Suitable for:
Standard passenger car, station wagon/ Van. Height and length according to contour.

			CAR HEIGHT	
TYPE	GT	H	EG	UG
4100	5'-9"	7'-3"	6'-7"	4'-11"
4100	6'-7"	7'-3"	6'-7"	5'-8"
4100	7'-7"	7'-5"	6'-9"	6'-9"

WIDTH	6'-3"
WEIGHT	MAX. 4400/5720 LBS
WHEEL LOAD	MAX. 1100/1430 LBS

Standard passenger car

Standard station wagon/Van/SUV**

Standard passenger cars are vehicles without any sports options such as spoilers, low-profile tyres etc.

** = Make sure to observe the weights and dimensions!

KLAUS MULTIPARKING INC.
3652A CHESTNUT STREET
LAFAYETTE CA. 94549

PHONE 925-284-2092
FAX 925-284-3365

WEB PARKLIFT.COM

Garages with sliding doors (standard) | Widths dimensions

Sliding door behind columns

Type	GT	H	H1	H2
4100	175	220	200	210
4100	200	220	200	210
4100	230	235	205	220

Columns per each grid unit

usable platform width	RB	B1	B2
230	250	250	230
240	260	260	240
250	270	270	250
260	280	280	260
270	290	290	270

Columns every second grid unit

usable platform width	RB	B3	B4
230	250	500	480
240	260	520	500
250	270	540	520
260	280	560	540
270	290	580	560

We intend to install the Model 270-- stall width (RB) of 290 cm

Sliding door between columns

Type	GT	H	H1	H2
4100	175	220	200	220
4100	200	220	200	220
4100	230	235	205	230

Columns per each grid unit

Not available!

Columns every second grid unit

usable platform width	RB	B3	B4
230	250	500	480
240	260	520	500
250	270	540	520
260	280	560	540
270	290	580	560

Sliding door in front of columns

Type	GT	H	H1	H2	H3
4100	175	220	200	210	220
4100	200	220	200	210	220
4100	230	235	205	220	230

Columns per each grid unit

usable platform width	RB	B1	B2
230	250	250	230
240	260	260	240
250	270	270	250
260	280	280	260
270	290	290	270

Columns every second grid unit

usable platform width	RB	B3	B5
230	250	500	480
240	260	520	500
250	270	540	520
260	280	560	540
270	290	580	560

Diagram labels: 25, H1, H2, H3, H, GT, 30, 550 (570), RB, 10, (B2), B1, B2, (B4), B3, B4, 20, (25), no. of grids x RB + 20, Carriageway in accordance with local regulations

According to the BGR 232, an inspection book is required for the commercial use of a gate with electric drive. Prior to commissioning, and then once a year, the gate has to be inspected by an expert and the findings entered in the inspection book. The inspection has to be carried out independent of any maintenance work.

For parking boxes on the edges and boxes with intermediate walls we recommend our maximum platform width of 270 cm. Please consider adjoining grids. Problems may occur if smaller platform widths are used (depending on car type, access and individual driving behaviour and capability).

For larger limousines and SUV wider driveways are necessary (in particular on the boxes on the sides due to the missing manoeuvring radius).

- H1 = Heigth of the vehicle on ground floor platform.
- RB = Grid unit width must strictly conform to dimensions quoted!
- Only applies to manually operated doors. The electrically driven doors must have 35 cm.

Garages with roll doors I Widths dimensions

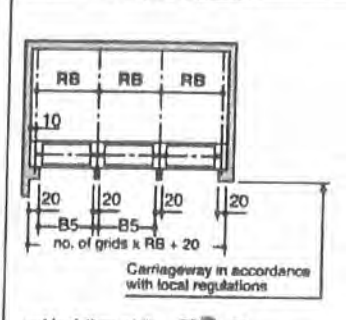
Roll door behind columns

50

220

570 (550)

Columns per each grid unit



usable platform width	RB ●	B5
230	250	230
240	260	240
250	270	250
260	280	260
270	290	270

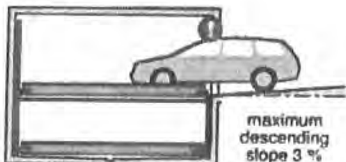
According to the BGR 232, an inspection book is required for the commercial use of a gate with electric drive. Prior to commissioning, and then once a year, the gate has to be inspected by an expert and the findings entered in the inspection book. The inspection has to be carried out independent of any maintenance work.

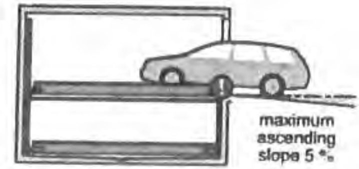
For parking boxes on the edges and boxes with intermediate walls we recommend our maximum platform width of 270 cm. Please consider adjoining grids. Problems may occur if smaller platform widths are used (depending on car type, access and individual driving behaviour and capability).

For larger limousines and SUV wider driveways are necessary (in particular on the boxes on the sides due to the missing manoeuvring radius).

● RB = Grid unit width **must** strictly conform to dimensions quoted!

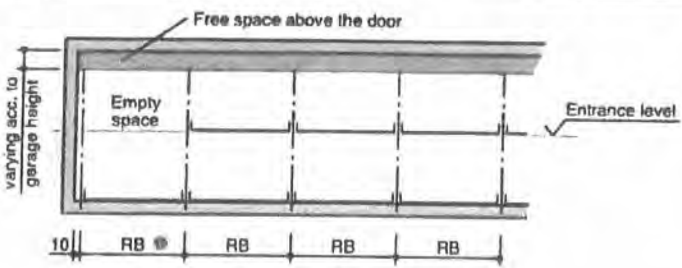
Approach



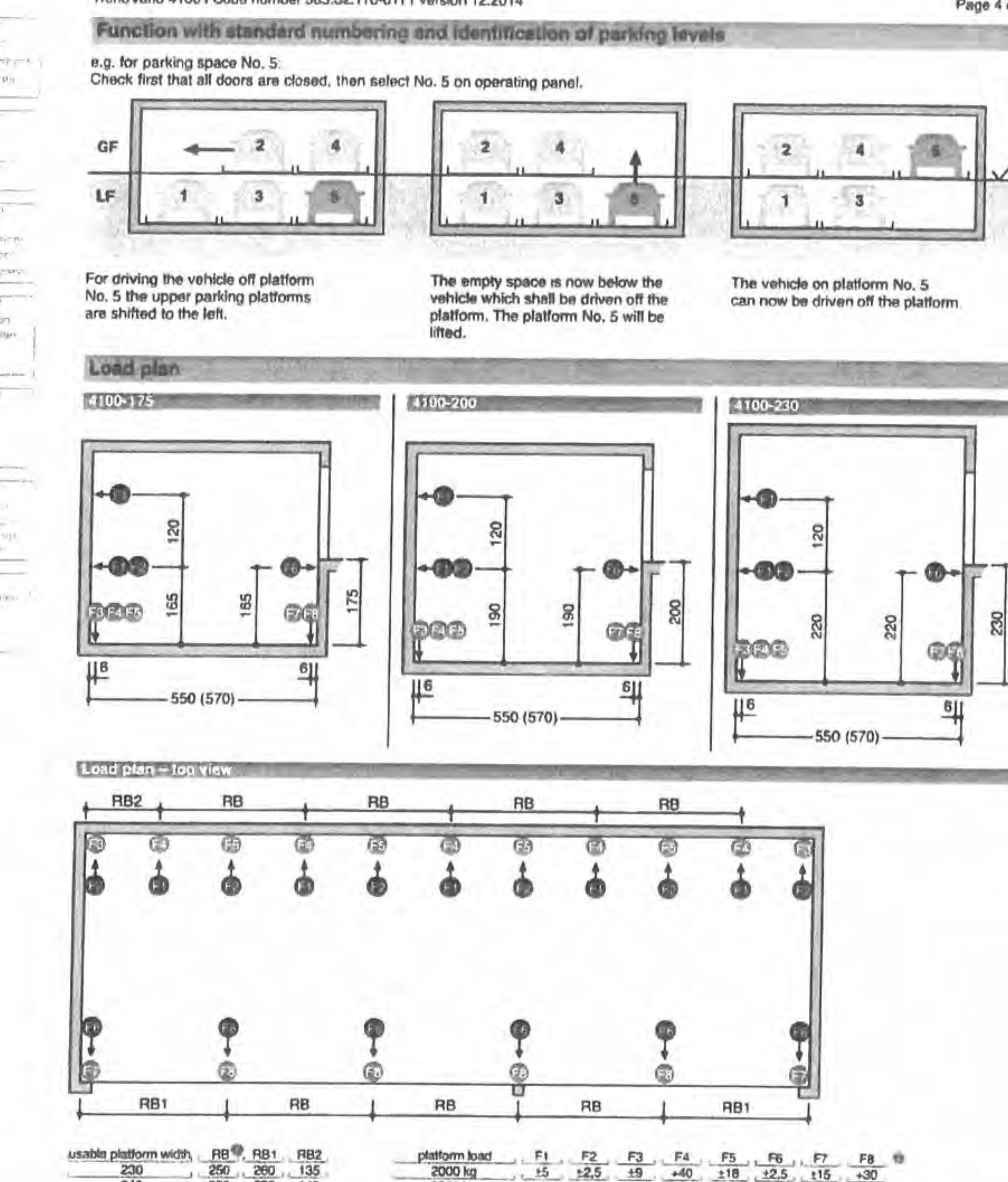


The illustrated maximum approach angles must not be exceeded. Incorrect approach angles will cause serious maneouvring & positioning problems on the parking system for which the local agency of KLAUS Multiparking accepts no responsibility.

Longitudinal free space



● RB = Grid unit width **must** strictly conform to dimensions quoted!



usable platform width	RB	RB1	RB2
230	250	260	135
240	260	270	140
250	270	280	145
260	280	290	150
270	290	300	155

platform load	F1	F2	F3	F4	F5	F6	F7	F8
2000 kg	±5	±2,5	±9	+40	±18	±2,5	±15	+30
2600 kg	±5	±2,5	±9	+45	±18	±2,5	±23	+46

The system is dowelled to floor and walls. The drilling depth in the floor is approx. 15 cm.
The drilling depth in the walls is approx. 12 cm.

Floor and walls are to be made of concrete (grade of concrete min. C20/25)!

The dimensions for the points of support are rounded values. If the exact position is required, please contact KLAUS Multiparking.

RB = Grid unit width must strictly conform to dimensions quoted!

All forces in kN

Project Name	City, State	Model No.	No. of Parking Spaces	Type of Use	Install Date
10th and Market	San Francisco	Simple Stacker	300	Apartments	October-14
Rincon Towers	San Francisco	Simple Stacker	300	Condos	March-14
340 Fremont	San Francisco	Puzzle Lift Two High	260	Apartments	October-15
900 Folsom & 260 5th	San Francisco	Stacker w/pit	250	Apartments	June-14
Ironworks	Sunnyvale	Simple Stacker	232	Apartments	September-15
Equity Potrero	San Francisco	Puzzle Lift Two High	231	Apartments	October-15
10,000 Santa Monica	Los Angeles	Simple Stacker	202	Apartments	October-15
Pine and Franklin	San Francisco	Puzzle Lift Three High	192	Condos	February-15
45 Lansing	San Francisco	Simple Stacker	180	Apartments	September-15
One Henry Adans	San Francisco	Puzzle Lift Two High	141	Apartments	December-15
55 Laguna	San Francisco	Puzzle Lift Two High	150	Mixed Use	March-15
1201 Tennessee	San Francisco	Puzzle Lift Three High	141	Mixed Use	March-16
Manzanita Apts	Mountain View	Simple Stacker	130	Apts	October-15
4th and U	Berkeley, CA	Puzzle Lift Two High	125	Mixed Use	September-09
One Hawthorne	San Francisco	Simple Stacker	114	Condo	October-09
631 Folsom St.	San Francisco	Puzzle Lift Three High	112	Condos	December-08
Stanford Affordable Housi	Palo Alto	Puzzle Lift Two High	95	Apartments	January-16
Vara	San Francisco	Puzzle Lift Two High	89	Apts	January-13
Symphony Towers	San Francisco	Puzzle Lift Three High	86	Condos	November-07

Project Name	City, State	Model No.	No. of Parking Spaces	Type of Use	Install Date
Century Towers	San Jose	Simple Stacker	80	Apts	December-15
1511 Jefferson St.	Oakland, CA	Puzzle Lift Three High	74	Condos	July-06
901 Jefferson St.	Oakland, CA	Stacker w/pit	72	Condos	July-07
2558 Mission	San Francisco	Puzzle Lift Two High	69	Condos	June-14
1844 Market	San Francisco	Puzzle Lift Two High	67	Apts	December-13
Acton Courtyards	Berkeley, CA	Puzzle Lift Three High-	61	Apts. over Commercial	April-03
Delaware Court	Berkeley, CA	Three High Stacker w/pit	60	Condo	June-09
Fine Arts Building	Berkeley, CA	Puzzle Lift Three	59	Apts. over Commercial	May-04
651 Addison	Berkeley	Puzzle Lift Two High	59	Apartments	November-13
77 Van Ness Ave.	San Francisco	Puzzle Lift Three High	56	Condos	February-09
Hillside Village	Berkeley, CA	Three High Stacker w/pit	55	Mixed Use	June-04
Adeline Place	Emeryville, CA	Puzzle Lift Three High	43	Condos	March-09
100 Grand Ave.	Oakland, CA	Simple Stacker	42	Apartments	January-09
Block 76	Salt Lake City	Simple Stacker	40	Mixed Use	November-09
MLK	Berkeley, CA	Puzzle Lift Two High	40	Mixed Use	May-10
3001 Telegraph	Berkeley	Puzzle Lift Two High	40	Apts	August-13
346 Potrero	San Francisco	Puzzle Lift Three High	40	Condos	August-16
2107 Dwight Way	Berkeley, CA	Puzzle Lift Three High	40	Apt	May-16
Gaia Building	Berkeley, CA	Three High Stacker w/pit	39	Apts. over Commercial	June-01
Arioso Oakland	Oakland, CA	Simple Stacker	38	Condos/Valet	August-03
Seacastle	Santa Monica, CA	Simple Stacker	37	Multiple Residential/Val	May-01
The Berkeleyan	Berkeley, CA	Three High Stacker w/pit	36	Apts. over Commercial	September-98

Project Name	City, State	Model No.	No. of Parking Spaces	Type of Use	Install Date
Lion Creek	Oakland	Stacker w/pit	36	Apts	July-11
Kensington	San Francisco	Stacker w/pit	34	Condos	September-08
Oxford Plaza	Berkeley, CA	Puzzle Lift Two High	34	Mixed Use	February-09
University Lofts	Berkeley, CA	Stacker w/pit	30	Apts. over Commercial	July-97
1310 Creekside Dr.	Walnut Creek, CA	Stacker w/pit	30	Apartments	April-07
Sand Hill Rd	San Francisco	Puzzle Lift Two High	30	Office	March-11
River Place Condos	Portland, OR	Simple Stacker	29	Condos	January-07
Bachenheimer Bldg.	Berkeley, CA	Puzzle Lift Three High	28	Apts. over Commercial	May-04
2700 San Pablo Ave.	Berkeley, CA	Puzzle Lift Two High	26	Condos	July-08
16th and P	Sacramento	Puzzle Lift Two High	25	Condos	October-14
1801 Shattuck Ave.	Berkeley, CA	Puzzle Lift Two High	25	Apartments	December-07
Telegraph Bays	Berkeley, CA	Three High Stacker w/pit	24	Mixed Use	March-04
The Loop	Santa Barbara	Puzzle Lift Two High	23	Apts	May-12
Northgate Apts.	Oakland, CA	Stacker w/pit	22	Apartments	July-03
1299 Bush St.	San Francisco	Stacker w/pit/2042	22	Condo	April-09
Crown Renovation	Emeryville, CA	Simple Stacker	21	Offices (exterior)	February-01
Kaiser Housing	San Francisco	Puzzle Lift Two High	20	Apts	June-10
Hyatt	Santa Cruz	Simple Stacker	20	Hotel	March-16
360 Residences	San Jose, CA	Simple Stacker	19	Condo	March-09
2628 Telegraph Ave.	Berkeley, CA	Stacker w/pit	18	Condos	December-06
ICON	Santa Barbara	Puzzle Lift Three High	17	Apts	June-12
ARTech Building	Berkeley, CA	Stacker w/pit	16	Apts. over Commercial	July-02
1825 15th St.	San Francisco	Stacker w/pit	16	Condos/For Sale	July-06

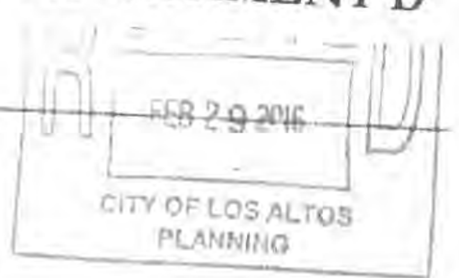
Project Name	City, State	Model No.	No. of Parking Spaces	Type of Use	Install Date
Bloomsbury	San Francisco	Stacker w/pit	16	Condos	October-07

Concept view

Cable Retractor

ATTACHMENT D

HEXAGON TRANSPORTATION CONSULTANTS, INC.



February 25, 2016

Mr. David Kornfield
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

Subject: ***Traffic Report for the Proposed 4880 El Camino Real Residential Development Project in Los Altos, California***

Dear Mr. Kornfield:

Per your request, Hexagon Transportation Consultants, Inc. is submitting this traffic report for the proposed 4880 El Camino Real development in Los Altos, California. The project, as proposed, would include 21 condominium units. It would replace an existing 3,600-square foot restaurant onsite. Because the project is projected to generate fewer than 50 daily trips, City staff have stated that a full transportation impact analysis will not be required. Instead, the report will focus on documenting project trip generation and providing an assessment of onsite circulation and vehicular access.

Project Traffic Estimates

Through empirical research, data has been collected that correlate to common land uses their propensity for producing traffic. Thus, for the most common land uses there are standard trip generation rates that can be applied to help predict the future traffic increases that would result from a new development. The trip generation estimates for the proposed project are based on rates obtained from the Institute of Transportation Engineers' (ITE) publication *Trip Generation*, 9th Edition.

Based on trip generation rates applicable to residential condos, it is estimated that the project would generate 165 daily trips, with 15 trips occurring during the AM peak commute hour and 17 trips occurring during the PM peak commute hour. The peak commute hour is the peak 60 minute period of traffic demand during the commute periods, which are 7:00 AM to 9:00 AM in the morning, and 4:00 PM and 6:00 PM in the evening.

As previously mentioned, the proposed project would replace an existing restaurant of approximately 3,600 square feet. Based on ITE rates, the existing restaurant use generates approximately 324 daily trips, with 3 trips occurring during the AM peak commute hour and 27 trips occurring during the PM peak commute hour. Thus, the replacement of the existing restaurant use with 21 condominiums would result in 158 fewer daily trips, 12 additional AM peak hour trips, and 10 fewer PM peak hour trips. The project trip generation estimates are presented in Table 1. Because the project would result in a traffic reduction on a daily basis, its impact on the greater transportation network in the context of the City's level of service policy would be negligible.

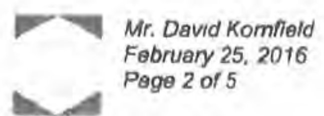


Table 1
Project Trip Generation Estimates

Land Use	Size unit	Land use code	Daily rate	Daily Trips	AM Peak Hour				PM Peak Hour			
					Rate	In	Out	Total	Rate	In	Out	Total
Proposed Project [a]												
Condo	21 d.u	230	7.88	165	0.71	3	12	15	0.80	11	6	17
Existing use [b]												
Restaurant	3.6 ksf	931	89.95	324	0.81	3	0	3	7.49	18	9	27
Total [a] - [b]				-158		0	12	12		-7	-3	-10

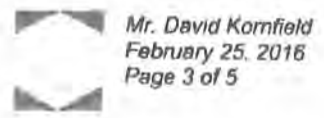
All Rates based on ITE *Trip Generation* , 9th Edition, for Condo and Quality Restaurant uses, regression rates where appropriate

Project Site Circulation and Access

The project's site circulation and access were evaluated in accordance with generally accepted traffic engineering standards based on project plans dated February 4th, 2016. The project would provide a single two-way driveway onto El Camino Real. Additional parking and/or potential loading space for trucks would be provided along the project frontage on El Camino Real. A description of the various design elements of the site circulation and access is provided below.

Street Level. The project driveway would be approximately 20 feet wide and serve a single guest parking stall at street-level directly adjacent to the front lobby. Because this parking stall is located approximately 20 feet from El Camino Real, it may sometimes be blocked by exiting vehicles. In addition, the sight distance between a driver backing out of the parking stall and a vehicle exiting the garage is restricted. For these reasons, this space should not be utilized for vehicular parking. It should be signed and striped as no parking and utilized solely as a turn-around area for vehicles that mistakenly enter the driveway and would otherwise be required to back onto El Camino Real. To improve the ability of a vehicle to back into the space, 3-foot curb radii are recommended between the drive aisle and the stall.

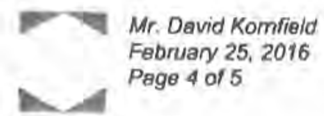
Ramp Design. The proposed garage ramp is approximately 60 feet long with an 18.4% grade and two transitions of 9.2% each at the top and bottom of the ramp. Transitions are generally required when ramp grades exceed 10% to prevent vehicles from bottoming out. Commonly cited parking publications recommend grades of up to 16% on ramps where no parking is permitted, but grades of up to 20% are cited as acceptable when garages are attended, ramps are covered (i.e. protected from weather) and not used for pedestrian walkways. Thus, the proposed 18.4% ramp grade could be adequately traversed by vehicles as designed, but will require a slightly greater level of caution than a less steep ramp. It should be noted that the vast majority of ramp users will be residents, and thus, will quickly become accustomed to the slightly steeper grade.



Gated Garage Entrance. The project driveway would connect directly to a parking garage ramp, which would lead to a below-grade parking structure. A remote controlled gate would be present at the bottom of the ramp. The distance between the gated entrance to the site's parking garage and the sidewalk on El Camino Real would be 75 feet, or enough space for three vehicles to queue. According to ITE, there would be approximately 11 PM peak hour trips inbound at the project driveway, or an average rate of approximately one vehicle every five and a half minutes. According to the publication *Parking* by Weant and Levinson, the typical capacity for a single lane coded-card reader is between 225 vehicles per hour and 550 vehicles per hour. Given this, it is anticipated that the inbound vehicle queues would rarely exceed one or two vehicles during the peak commute period. Thus, the garage gate as located, would most likely provide adequate capacity and vehicular storage to accommodate the proposed demand, and vehicle queues would not spill back to El Camino Real. Prior to final design, the design and operation of the proposed gate system should be reviewed by City staff to confirm the service flow rate and access to guest parking are adequate.

Garage Design. Within the parking structure, all parking would be provided at 90 degrees to the main drive aisle. There is no designated turn around space within the garage if parking cannot be located; the garage is effectively a single dead end aisle that serves mostly reserved parking. In the event that all guest spaces are occupied, vehicles would be required to make multiple point turns to exit the garage. This situation, while not ideal, is generally considered acceptable in urban areas where land is scarce and the traffic volumes are very low. To reduce the likelihood of a vehicle turning around in the garage, a parking guidance sign could be provided outside the garage to alert drivers when guest parking in the garage is full.

Puzzle Parking System. There would be five guest stalls provided in the garage, two of which would be ADA accessible. The remaining 42 parking spaces would be served by a 26-foot wide drive aisle and a puzzle lift system. The lift system shown on the project plans would stack two vehicles in each parking stall – one level of parking at basement level and one below in the "pit." Upon arriving at the garage, future patrons would utilize a remote to open their designated, secured, parking bay. If their vehicle is located in the pit, the puzzle lift system will shift parked vehicles on the upper level laterally, as needed, to make space to raise the vehicle on the lower level. The project applicant has also suggested that a 3-level puzzle lift system could be considered for the project. The differences in operation between a 2-level system and 3-level system are very minor, as vehicles are still being shifted laterally on the base level and moved up or down one level. Hexagon conducted observations at an existing two level lift system at the Avalon Development at 651 Addison Street in Berkeley, California. Based on these observations, the time to access a vehicle in the puzzle lift system can vary from 30 seconds to one minute and 45 seconds, depending on the configuration of vehicles within the system. Hexagon estimates the average time to access a parked vehicle in the puzzle lift system to be approximately one minute, which equates to a service rate of approximately 60 vehicles per hour. To determine whether the proposed lift system would work adequately, it is useful to consider the frequency of vehicles entering and exiting the parking garage during the highest hours of the day. According to ITE, the peak period of traffic generation at the project would be during the PM commute period. During this peak 60-minute period, the project would generate 17 trips, or about one trip every three and a half minutes. Given that the lift system could accommodate up to 60 vehicles per hour, it is anticipated that the proposed lift system would have adequate capacity to accommodate the number of trips into and out of the proposed parking garage. Vehicle queues and person queues (waiting to retrieve their vehicle) would rarely exceed two within the garage.



Access to El Camino Real. Outbound at the project driveway on El Camino Real, the low volume of project traffic would result in brief delays for vehicles. Outbound vehicle queues would rarely exceed one or two vehicles. Sight distance at the project driveway would be adequate provided (1) the landscaping is low level within 10 feet of the curb face on El Camino Real (the height of the planned landscaping is not shown) and (2) it is not blocked by parked vehicles. Parking should be prohibited on El Camino Real within 10 feet west of the driveway (i.e. looking left for an outbound driver from the project driveway).

Truck Access. Provisions for garbage collection and truck loading are not shown on the current plan. Prior to final design, the applicant should work with City staff to ensure truck access is adequately accommodated. Given the current design, truck access would likely occur via the existing curb parking on El Camino Real along the project frontage. A marked loading area may be considered for this location.

Bike Parking. The Valley Transportation Authority (VTA) provides guidelines for bike parking in its publication *Bike Technical Guidelines.* Class I spaces are defined as spaces that protect the entire bike and its components from theft, such as in a secure designated room or a bike locker. Class II spaces provide an opportunity to secure at least one wheel and the frame using a lock, such as bike racks. For multi-family dwelling units, VTA recommends one Class I space per three dwelling units and one Class II space per 15 dwelling units. For the proposed project, this would equate to seven Class I spaces and two Class II spaces. The project site plan shows two Class II bike parking spaces near the building entrance, between El Camino Real and the lobby. The project also provides for ten Class I bike parking spaces in a secured area (keyed gate) under the garage ramp. Thus, the project would exceed the bike parking standards recommended by VTA.

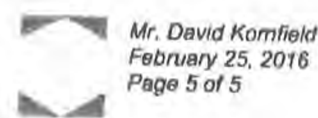
Pedestrian Access. The project would provide a paved walkway between the existing sidewalk on El Camino Real and the building entrance.

Generally, the design of the project site circulation and access is consistent with urban design practices. The presence of the garage ramp, short onsite drive aisle, and "confined" feel of the parking garage will serve to keep vehicles operating at very low speeds. In addition, the low traffic volume onsite, one trip every three and a half minutes, means that the frequency of vehicle conflicts will be relatively low. Under such circumstances, small parking structures usually operate adequately without any operational problems.

Conclusions

This analysis produced the following conclusions:

- Relative to the existing restaurant use, the project would result in a traffic reduction on a daily basis. Therefore, its impact on the greater transportation network in the context of the City's level of service policy would be negligible.
- The project's parking lift and front entrance gate systems would have adequate capacity to accommodate the anticipated traffic demand. Prior to final design, the design and operation of the proposed gate system should be reviewed by City staff to confirm the service flow rate and access to guest parking are adequate.



- Because of its proximity to El Camino Real and restricted sight distance, the street level parking space should be signed and striped as no parking and utilized solely as a turn-around area for vehicles that mistakenly enter the driveway. To improve the ability of a vehicle to back into the space, 3-foot curb radii are recommended between the drive aisle and the stall.
- Commonly cited parking publications recommend grades of up to 16% on ramps where no parking is permitted, but grades of up to 20% are cited as acceptable under certain conditions. The proposed 18.4% ramp grade could be adequately traversed by vehicles as designed, but will require a slightly greater level of caution.
- There is no designated turn around space within the garage if guest parking cannot be located. In the event that all guest spaces are occupied, vehicles would be required to make multiple point turns to exit the garage. While not ideal, this situation is generally considered acceptable in urban areas where land is scarce and the traffic volumes are very low. To reduce the likelihood of a vehicle turning around in the garage, a parking guidance sign could be provided outside the garage to alert drivers when guest parking in the garage is full.
- Outbound at the project driveway on El Camino Real, the low volume of traffic would result in brief delays and short vehicle queues. Sight distance at the project driveway would be adequate provided (1) the landscaping is low level within 10 feet of the curb face on El Camino Real and (2) it is not blocked by parked vehicles. Parking should be prohibited on El Camino Real within 10 feet west of the driveway.
- Prior to final design, the applicant should work with City staff to ensure truck access is adequately accommodated. Given the current design, truck access would likely occur via the existing curb parking on El Camino Real along the project frontage. A marked loading area may be considered for this location.
- The project would exceed the bike parking standards recommended by VTA.

If you have any questions, please do not hesitate to call.

Sincerely,

HEXAGON TRANSPORTATION CONSULTANTS, INC.

Brett Walinski T.E.
Vice President and Principal Associate

ATTACHMENT E

4880 EL CAMINO REAL PROJECT DRAFT AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT

Los Altos, California

March 18, 2016

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Project: 16-038

Introduction

The purpose of this report is to address air quality, toxic air contaminant (TAC), and greenhouse gas (GHG) emission impacts associated with the proposed residential project located at 4880 El Camino Real in Los Altos, California. We understand that the project would demolish the on-site buildings and pavement and construct and operate up to 21 residential units. Air quality and GHG impacts could occur due to temporary construction emissions and as a result of direct and indirect emissions from new residences. The primary issue addressed in this air quality study is localized community risk impacts from emissions of project construction equipment and El Camino Real traffic. This analysis was conducted following guidance provided by the Bay Area Air Quality Management District (BAAQMD).

Setting

The project is located in Santa Clara County, which is in the San Francisco Bay Area Air Basin. Ambient air quality standards have been established at both the State and federal level. The Bay Area meets all ambient air quality standards with the exception of ground-level ozone, respirable particulate matter (PM_{10}), and fine particulate matter ($PM_{2.5}$).

Air Pollutants of Concern

High ozone levels are caused by the cumulative emissions of reactive organic gases (ROG) and nitrogen oxides (NOx). These precursor pollutants react under certain meteorological conditions to form high ozone levels. Controlling the emissions of these precursor pollutants is the focus of the Bay Area's attempts to reduce ozone levels. The highest ozone levels in the Bay Area occur in the eastern and southern inland valleys that are downwind of air pollutant sources. High ozone levels aggravate respiratory and cardiovascular diseases, reduced lung function, and increase coughing and chest discomfort.

Particulate matter is another problematic air pollutant of the Bay Area. Particulate matter is assessed and measured in terms of respirable particulate matter or particles that have a diameter of 10 micrometers or less (PM_{10}) and fine particulate matter where particles have a diameter of 2.5 micrometers or less ($PM_{2.5}$). Elevated concentrations of PM_{10} and $PM_{2.5}$ are the result of both region-wide (or cumulative) emissions and localized emissions. High particulate matter levels aggravate respiratory and cardiovascular diseases, reduce lung function, increase mortality (e.g., lung cancer), and result in reduced lung function growth in children.

Toxic Air Contaminants

Toxic air contaminants (TAC) are a broad class of compounds known to cause morbidity or mortality (usually because they cause cancer) and include, but are not limited to, the criteria air pollutants. TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, fuel combustion, and commercial operations (e.g., dry cleaners). TACs are typically found in low concentrations, even near their source (e.g., diesel particulate matter [DPM] near a freeway). Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, State, and federal level.

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs (based on the Bay Area average). According to the California Air Resources Board (CARB), diesel exhaust is a complex mixture of gases, vapors, and fine particles. This complexity makes the evaluation of health effects of diesel exhaust a complex scientific issue. Some of the chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the CARB, and are listed as carcinogens either under the State's Proposition 65 or under the Federal Hazardous Air Pollutants programs.

CARB has adopted and implemented a number of regulations for stationary and mobile sources to reduce emissions of DPM. Several of these regulatory programs affect medium and heavy duty diesel trucks that represent the bulk of DPM emissions from California highways. These regulations include the solid waste collection vehicle (SWCV) rule, in-use public and utility fleets, and the heavy-duty diesel truck and bus regulations. In 2008, CARB approved a new regulation to reduce emissions of DPM and nitrogen oxides from existing on-road heavy-duty diesel fueled vehicles.[1] The regulation requires affected vehicles to meet specific performance requirements between 2014 and 2023, with all affected diesel vehicles required to have 2010 model-year engines or equivalent by 2023. These requirements are phased in over the compliance period and depend on the model year of the vehicle.

The BAAQMD is the regional agency tasked with managing air quality in the region. At the State level, the CARB (a part of the California Environmental Protection Agency [EPA]) oversees regional air district activities and regulates air quality at the State level. The BAAQMD has recently published California Environmental Quality Act (CEQA) Air Quality Guidelines that are used in this assessment to evaluate air quality impacts of projects.[2]

Sensitive Receptors

There are groups of people more affected by air pollution than others. CARB has identified the following persons who are most likely to be affected by air pollution: children under 16, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases. These groups are classified as sensitive receptors. Locations that may contain a high concentration of these sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, elementary schools, and parks. The closest sensitive receptors are residences adjacent to the project site to the east and south. Additional residences are located to the south, west, and east.

Greenhouse Gases

Gases that trap heat in the atmosphere, GHGs, regulate the earth's temperature. This phenomenon, known as the greenhouse effect, is responsible for maintaining a habitable climate. The most common GHGs are carbon dioxide (CO_2) and water vapor but there are also several others, most importantly methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs),

[1] Available online: http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm. Accessed: June 9, 2015.

[2] Bay Area Air Quality Management District, 2011. *BAAQMD CEQA Air Quality Guidelines*. May.

perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). These are released into the earth's atmosphere through a variety of natural processes and human activities. Sources of GHGs are generally as follows:

- CO_2 and N_2O are byproducts of fossil fuel combustion.
- N_2O is associated with agricultural operations such as fertilization of crops.
- CH_4 is commonly created by off-gassing from agricultural practices (e.g., keeping livestock) and landfill operations.
- Chlorofluorocarbons (CFCs) were widely used as refrigerants, propellants, and cleaning solvents but their production has been stopped by international treaty.
- HFCs are now used as a substitute for CFCs in refrigeration and cooling.
- PFCs and sulfur hexafluoride emissions are commonly created by industries such as aluminum production and semi-conductor manufacturing.

Each GHG has its own potency and effect upon the earth's energy balance. This is expressed in terms of a global warming potential (GWP), with CO_2 being assigned a value of 1 and sulfur hexafluoride being several orders of magnitude stronger with a GWP of 23,900. In GHG emission inventories, the weight of each gas is multiplied by its GWP and is measured in units of CO_2 equivalents (CO_2e).

An expanding body of scientific research supports the theory that global warming is currently affecting changes in weather patterns, average sea level, ocean acidification, chemical reaction rates, and precipitation rates, and that it will increasingly do so in the future. The climate and several naturally occurring resources within California could be adversely affected by the global warming trend. Increased precipitation and sea level rise could increase coastal flooding, saltwater intrusion, and degradation of wetlands. Mass migration and/or loss of plant and animal species could also occur. Potential effects of global climate change that could adversely affect human health include more extreme heat waves and heat-related stress; an increase in climate-sensitive diseases; more frequent and intense natural disasters such as flooding, hurricanes and drought; and increased levels of air pollution.

Significance Thresholds

In June 2010, BAAQMD adopted thresholds of significance to assist in the review of projects under CEQA. These Thresholds were designed to establish the level at which BAAQMD believed air pollution emissions would cause significant environmental impacts under CEQA and were posted on BAAQMD's website and included in the Air District's updated CEQA Guidelines (updated May 2011). The significance thresholds identified by BAAQMD and used in this analysis are summarized in Table 1.

Table 1. Air Quality Significance Thresholds

Pollutant	Construction Thresholds	Operational Thresholds	
	Average Daily Emissions (lbs./day)	Average Daily Emissions (lbs./day)	Annual Average Emissions (tons/year)
Criteria Air Pollutants			
ROG	54	54	10
NO_x	54	54	10
PM_{10}	82	82	15
$PM_{2.5}$	54	54	10
CO	Not Applicable	9.0 ppm (8-hour average) or 20.0 ppm (1-hour average)	
Fugitive Dust	Construction Dust Ordinance or other Best Management Practices	Not Applicable	
Health Risks and Hazards for New Sources			
Excess Cancer Risk	>10 per one million		
Chronic or Acute Hazard Index	>1.0		
Incremental annual average $PM_{2.5}$	>0.3 $\mu g/m^3$		
Health Risks and Hazards for Sensitive Receptors (Cumulative from all sources within 1,000 foot zone of influence) and Cumulative Thresholds for New Sources			
Excess Cancer Risk	>100 per one million		
Chronic Hazard Index	>10.0		
Annual Average $PM_{2.5}$	>0.8 $\mu g/m^3$		
Greenhouse Gas Emissions			
GHG Annual Emissions	Compliance with a Qualified GHG Reduction Strategy OR 1,100 metric tons or 4.6 metric tons per capita		

Note: ROG = reactive organic gases, NOx = nitrogen oxides, PM_{10} = course particulate matter or particulates with an aerodynamic diameter of 10 micrometers (µm) or less, $PM_{2.5}$ = fine particulate matter or particulates with an aerodynamic diameter of 2.5µm or less; and GHG = greenhouse gas.

BAAQMD's adoption of significance thresholds contained in the 2011 CEQA Air Quality Guidelines was called into question by an order issued March 5, 2012, in California Building Industry Association (CBIA) v. BAAQMD (Alameda Superior Court Case No. RGI0548693). The order requires the BAAQMD to set aside its approval of the thresholds until it has conducted environmental review under CEQA. The ruling made in the case concerned the environmental impacts of adopting the thresholds and how the thresholds would indirectly affect land use development patterns. In August 2013, the Appellate Court struck down the lower court's order to set aside the thresholds (Cal. Court of Appeal, First Appellate District, Case Nos. A135335 & A136212). CBIA sought review by the California Supreme Court on three issues, including the

appellate court's decision to uphold the BAAQMD's adoption of the thresholds, and the Court granted review on just one: Under what circumstances, if any, does CEQA require an analysis of how existing environmental conditions will impact future residents or users of a proposed project? In December 2015, the Supreme Court determined that an analysis of the impacts of the environment on a project – known as "CEQA-in-reverse" – is only required under two limited circumstances: (1) when a statute provides an express legislative directive to consider such impacts; and (2) when a proposed project risks exacerbating environmental hazards or conditions that already exist (Cal. Supreme Court Case No. S213478). The Supreme Court reversed the Court of Appeal's decision and remanded the matter back to the appellate court to reconsider the case in light of the Supreme Court's ruling. Accordingly, the case is currently pending back in the Court of Appeal. Because the Supreme Court's holding concerns the effects of the environment on a project (as contrasted to the effects of a proposed project on the environment), and not the science behind the thresholds, the significance thresholds contained in the 2011 CEQA Air Quality Guidelines are applied to this project.

Impacts and Project Measures

Impact 1: Conflict with or obstruct implementation of the applicable air quality plan? ***Less than significant.***

The most recent clean air plan is the *Bay Area 2010 Clean Air Plan* that was adopted by BAAQMD in September 2010. The proposed project would not conflict with the latest Clean Air planning efforts since 1) the project would have emissions well below the BAAQMD thresholds (see Impact 2), 2) the project would be considered urban infill, 3) the project would be located near employment centers, and 4) the project would be located near transit with regional connections. The project is too small to exceed any of the significance thresholds and, thus, it is not required to incorporate project-specific transportation control measures listed in the latest Clean Air Plan.

Impact 2: Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable State or federal ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? ***Less than significant with construction period control measures.***

The Bay Area is considered a non-attainment area for ground-level ozone and $PM_{2.5}$ under both the Federal Clean Air Act and the California Clean Air Act. The area is also considered non-attainment for PM_{10} under the California Clean Air Act, but not the federal act. The area has attained both State and federal ambient air quality standards for carbon monoxide. As part of an effort to attain and maintain ambient air quality standards for ozone and PM_{10}, the BAAQMD has established thresholds of significance for these air pollutants and their precursors. These thresholds are for ozone precursor pollutants (ROG and NOx), PM_{10}, and $PM_{2.5}$ and apply to both construction period and operational period impacts.

Due to the project size, construction- and operational-period emissions would be less than significant. In the 2011 update to the CEQA Air Quality Guidelines, BAAQMD identifies

screening criteria for the sizes of land use projects that could result in significant air pollutant emissions. For operational impacts, the screening project size is identified at 451 dwelling units. For construction impacts, the screening size is identified as 240 dwelling units. Condo/townhouse projects of smaller size would be expected to have less-than-significant impacts. Since the project proposes to develop up to 21 dwelling units, it is concluded that emissions would be below the BAAQMD significance thresholds. Stationary sources of air pollution (e.g., back-up generators) have not been identified with this project.

Construction activities, particularly during site preparation and grading would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5}$. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soils. Unless properly controlled, vehicles leaving the site would deposit mud on local streets, which could be an additional source of airborne dust after it dries. Fugitive dust emissions would vary from day to day, depending on the nature and magnitude of construction activity and local weather conditions. Fugitive dust emissions would also depend on soil moisture, silt content of soil, wind speed, and the amount of equipment operating. Larger dust particles would settle near the source, while fine particles would be dispersed over greater distances from the construction site. The BAAQMD CEQA Air Quality Guidelines consider these impacts to be less than significant if best management practices are employed to reduce these emissions. *Mitigation Measure 1 would implement BAAQMD-required best management practices.*

***Mitigation Measure 1:* Include basic measures to control dust and exhaust during construction.**

During any construction period ground disturbance, the applicant shall ensure that the project contractor implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below would reduce the air quality impacts associated with grading and new construction to a less than significant level. The contractor shall implement the following best management practices that are required of all projects:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

7. 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.

8. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

Impact 3: Violate any air quality standard or contribute substantially to an existing or projected air quality violation? ***Less than significant.***

As discussed under Impact 2, the project would have emissions less than the BAAQMD screening size for evaluating impacts related to ozone and particulate matter. Therefore, the project would not contribute substantially to existing or projected violations of those standards. Carbon monoxide emissions from traffic generated by the project would be the pollutant of greatest concern at the local level. Congested intersections with a large volume of traffic have the greatest potential to cause high-localized concentrations of carbon monoxide. Air pollutant monitoring data indicate that carbon monoxide levels have been at healthy levels (i.e., below State and federal standards) in the Bay Area since the early 1990s. As a result, the region has been designated as attainment for the standard. The highest measured level over any 8-hour averaging period during the last 3 years in the Bay Area is less than 3.0 parts per million (ppm), compared to the ambient air quality standard of 9.0 ppm. Intersections affected by the project would have traffic volumes less than the BAAQMD screening criteria and, thus, would not cause a violation of an ambient air quality standard or have a considerable contribution to cumulative violations of these standards.[3]

Impact 4: Expose sensitive receptors to substantial pollutant concentrations? ***Less than significant with operational and construction period control measures.***

Project impacts related to increased community risk can occur either by introducing a new sensitive receptor, such as a residential use, in proximity to an existing source of TACs or by introducing a new source of TACs with the potential to adversely affect existing sensitive receptors in the project vicinity. The BAAQMD recommends using a 1,000-foot screening radius around a project site for purposes of identifying community health risk from siting a new sensitive receptor or a new source of TACs. Operation of the project is not expected to cause any localized emissions that could expose

[3] For a land-use project type, the BAAQMD CEQA Air Quality Guidelines state that a proposed project would result in a less than significant impact to localized carbon monoxide concentrations if the project would not increase traffic at affected intersections with more than 44,000 vehicles per hour.

sensitive receptors to unhealthy air pollutant levels. No stationary sources of TACs, such as generators, are proposed as part of the project. The project would introduce new sensitive receptors to the area in the form of future residences. There are thresholds that address both the impact of single and cumulative TAC sources upon projects that include new sensitive receptors (see Table 1). Construction activity would generate dust and equipment exhaust on a temporary basis that could affect nearby sensitive receptors that include future planned residences.

Operational Community Risk Impacts

The project would include new sensitive receptors. Substantial sources of air pollution can adversely affect sensitive receptors proposed as part of new projects. A review of the area indicates that El Camino Real (SR-82) is within 1,000 feet of the site and can adversely affect new residences. All other nearby roadways are assumed to have average daily traffic (ADT) of less than 10,000 and, according to BAAQMD guidance, would have a less than significant impact and are not discussed further. A review of BAAQMD's *Stationary Source Screening Analysis Tool* did not identify any stationary sources of TAC emissions within 1,000 feet that could adversely affect the project site.[4]

Refined Highway Community Risk Impacts – El Camino Real

The refined analysis involved predicting traffic emissions for the traffic volume and mix of vehicle types on El Camino Real. These emissions were input to a dispersion model to predict exposure to TACs. The associated cancer risk was computed based on the modeled exposures. *Attachment 1* includes a description of how community risk impacts, including cancer risk are computed.

A review of the traffic information reported by Caltrans indicates that in the vicinity of the project area, El Camino Real has 41,500 ADT, as reported by Caltrans.[5] This includes about 2.6 percent trucks, of which 0.6 percent are considered heavy duty trucks and 2.0 percent are medium duty trucks.[6] The analysis involved the development of DPM and organic TAC emissions for traffic on El Camino Real using the California Air Resources Board (CARB) EMFAC2014 emission factor model and the traffic mix on El Camino Real, based on the Caltrans traffic data. EMFAC2014 is the most recent version of the CARB motor vehicle emission factor model. DPM emissions are projected to decrease in the future and are reflected in the EMFAC2014 emissions data. CARB regulations require on-road diesel trucks to be retrofitted with particulate matter controls or replaced to meet 2010 or later engine standards that have much lower DPM and $PM_{2.5}$ emissions. This regulation will substantially reduce these emissions between 2013 and 2023. While new trucks and buses will meet strict federal standards, this measure is intended to accelerate the rate at which the fleet either turns over so there are more cleaner vehicles on the road, or retrofitted to meet similar standards. With this regulation, older, more polluting trucks would be removed from the roads sooner.

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[4] See http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools , accessed March 17, 2016.

[5] California Department of Transportation. 2015a. *2014 Traffic Volumes on the California State Highway System.*

[6] California Department of Transportation. 2015b. *2014 Annual Average Daily Truck Traffic on California State Highways*

Emission factors for DPM ($PM_{2.5}$ exhaust from diesel vehicles) were developed for the year 2020 using the calculated mix of cars and trucks on El Camino Real. Default EMFAC2014 vehicle model year distributions for Santa Clara County were used in calculating emissions for 2020. Emissions were based on an average speed of 30 mph, 5 miles below the posted speed limit, for all hours of the day. Average hourly traffic distributions for Santa Clara County roadways were developed using the EMFAC model,[7] which were then applied to the site-specific ADT volumes to obtain estimated hourly traffic volumes and emissions for El Camino Real. Year 2020 emissions were conservatively assumed as being representative of future conditions over the time period that cancer risks are evaluated (30 years), since, as discussed above, overall vehicle emissions, and in particular diesel truck emissions will decrease in the future. Emissions of total organic gases (TOG) were also calculated for 2020 using the EMFAC2014 model. These TOG emissions were then used in the modeling the organic TACs. TOG emissions from exhaust and for running evaporative loses from gasoline vehicles were calculated using EMFAC2014 default model values for Santa Clara County along with the traffic volumes and vehicle mixes for El Camino Real.

$PM_{2.5}$ emissions for vehicles traveling on El Camino Real were modeled using the same basic modeling approach that was used for assessing TAC impacts. All $PM_{2.5}$ emissions from all vehicles were used, rather than just the $PM_{2.5}$ fraction from diesel powered vehicles, because all vehicle types (i.e., gasoline and diesel powered) produce $PM_{2.5}$. Additionally, $PM_{2.5}$ emissions from vehicle tire and brake wear and from re-entrained roadway dust were included in these emissions. The assessment involved, first, calculating $PM_{2.5}$ emission rates from traffic traveling on the roadway. These emissions were calculated using the EMFAC2014 model and traffic volumes and were calculated in the same manner as discussed for the TAC modeling. $PM_{2.5}$ re-entrained dust emissions from vehicles traffic were calculated using CARB emission calculation procedures.[8] The emission rates used in the analysis are shown in *Attachment 2*.

Dispersion modeling of DPM and organic TAC emissions was conducted using the CAL3QHCR model, which is recommended by the BAAQMD for this type of analysis.[9] East and west bound traffic on El Camino Real within about 1,000 feet of the project site were evaluated with the model. A five-year data set of hourly meteorological data (1968-1972) from Moffett Field obtained from BAAQMD was used in the modeling. The airport is about 3.5 miles northeast of the project site. Other inputs to the model included road geometry, hourly traffic volumes, and emission factors. The modeling included on-site receptors placed in the project residential areas on the first, second, and third floor levels with 7-meter spacing (23 feet) between receptors. Receptor heights of 1.5 meters (4.9 feet), 5.3 meters (17.4 feet), and 9.1 meters (30 feet) were used for the first, second, and third floor receptors, respectively. The receptors closest to and most affected by El Camino Real traffic are those at the second floor. Figure 1 shows the roadway segments modeled and residential receptor locations used in the modeling.

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[7] The Burden output from EMFAC2007, CARB's previous version of the EMFAC model, was used for this since the current web-based version of EMFAC2011 does not include Burden type output with hour by hour traffic volume information.

[8] CARB, 2014. *Miscellaneous Process Methodology 7.9, Entrained Road Travel, Paved Road Dust*. Revised and updated, April 2014.

[9] BAAQMD, 2012. *Recommended Methods for Screening and Modeling Local Risks and Hazards*. May 2012.

Attachment 1 includes a description of how community risk impacts, including cancer risk are computed. The maximum increased cancer risk for first floor residents was computed as 2.7 in one million and the maximum increased cancer risk for second floor residents was computed as 3.2 in one million for the second floor. This was modeled at a receptor in the residential area closest to El Camino Real, and is shown on Figure 1. Increased cancer risks for residents of the third through fifth floors would be lower than the maximum cancer risk.

The maximum annual $PM_{2.5}$ concentrations for the first, second, and third floor levels would be 0.3 $\mu g/m^3$, 0.4 $\mu g/m^3$, and 0.3 $\mu g/m^3$, respectively. $PM_{2.5}$ concentrations at the higher floors would be less than 0.3 $\mu g/m^3$. The concentration of 0.4 $\mu g/m^3$ would exceed the BAAQMD $PM_{2.5}$ threshold and require mitigation in the form of ventilation systems with high-efficiency filtration (see Mitigation Measure 2). Figure 2 shows the maximum annual $PM_{2.5}$ concentrations across the project for the first and second floors. The third floor would have lower concentrations than the second floor. Shaded areas indicate where annual $PM_{2.5}$ concentrations exceed thresholds. Non-cancer Hazard Index (HI) for El Camino Real traffic at the project site was computed as less than 0.01. The modeling results and health risk calculations for the receptor with the maximum cancer risk from El Camino Real traffic are also provided in *Attachment 2*.

***Mitigation Measure 2:* The project shall include the following measures to minimize long-term toxic air contaminant (TAC) and annual $PM_{2.5}$ exposure for new project occupants:**

The project should install air filtration at residential units on the second floor depicted in Figure 2 where annual $PM_{2.5}$ concentrations are 0.4 $\mu g/m^3$. To ensure adequate health protection to sensitive receptors, a ventilation system is proposed to meet the following minimal design standards:

- Air filtration devices shall be rated MERV13 or higher rating;
- At least one air exchange(s) per hour of fresh outside filtered air; and
- At least four air exchange(s) per hour recirculation.

As part of implementing this measure, an ongoing maintenance plan for the building's HVAC air filtration system will be developed. Recognizing that emissions from air pollution sources are decreasing, the maintenance period will last as long as significant annual $PM_{2.5}$ exposures are predicted. Subsequent studies could be conducted by an air quality expert approved by the City to identify the ongoing need for the filtered ventilation systems as future information becomes available.

In addition, it is important to ensure that the lease agreement and other property documents (1) require cleaning, maintenance, and monitoring of the affected units for air flow leaks; (2) include assurance that new tenants or owners are provided information on the ventilation system; and (3) include provisions that fees associated with owning or

leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed.

Effectiveness of Reduction Measure

The U.S. Environmental Protection Agency (EPA) reports particle size removal efficiency for filters rated MERV 13 of 90 percent for particles in the size range of 1 to 3 µm and less than 75 percent for particles 0.3 to 1 µm.[10] Studies by the South Coast AQMD indicate that MERV 13 filters could achieve reductions of about 60 percent for ultra-fine particles and about 35 percent for black carbon.[11]

A properly installed and operated ventilation system with MERV 13 air filters may reduce $PM_{2.5}$ concentrations from DPM mobile and stationary sources by approximately 60 to 70 percent indoors when compared to outdoors. The U.S. EPA reports that people, on average, spend 90 percent of their time indoors.[12] The overall effectiveness calculations take into effect time spent outdoors and away from home. Assuming 60-percent effectiveness for this filtration, with 21 hours per day of exposure to filtered air and three hours per day to unfiltered air (uncontrolled or 0-percent effectiveness), the overall effectiveness of filtration systems would be about 53 percent. Figure 2 also shows the annual concentrations for second floor exposures (where maximum impacts occur) with the filtration system properly installed and operated. Note that maximum annual $PM_{2.5}$ concentrations are reduced to 0.2 $\mu g/m^3$. Therefore, with implementation of Mitigation Measure 2, this impact would be reduce to a level of less than significant.

[10] U.S. EPA 2009. *Residential Air Cleaners Second Edition. A Summary of Available Information. Indoor Air Quality (IAQ).* EPA 402-F-09-002 | Revised August 2009 | www.epa.gov/iaq

[11] South Coast AQMD. 2009. *Pilot Study of High Performance Air Filtration for Classrooms Applications.* Draft – October.

[12] Klepeis, N.E., Nelsen, WC., Ott, WR., Robinson, JP., Tsang, AM., Switzer, P., Behar, JV., Hern, SC., and Engelmann, WH. 2001. *The National Human Activity Pattern Survey (NHAPS): a resource for assessing exposure to environmental pollutants.* J. Expo Anal Environ Epidemial. 2001 May-Jun;11(3):231-52.

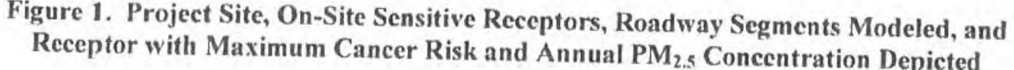


Figure 1. Project Site, On-Site Sensitive Receptors, Roadway Segments Modeled, and Receptor with Maximum Cancer Risk and Annual $PM_{2.5}$ Concentration Depicted

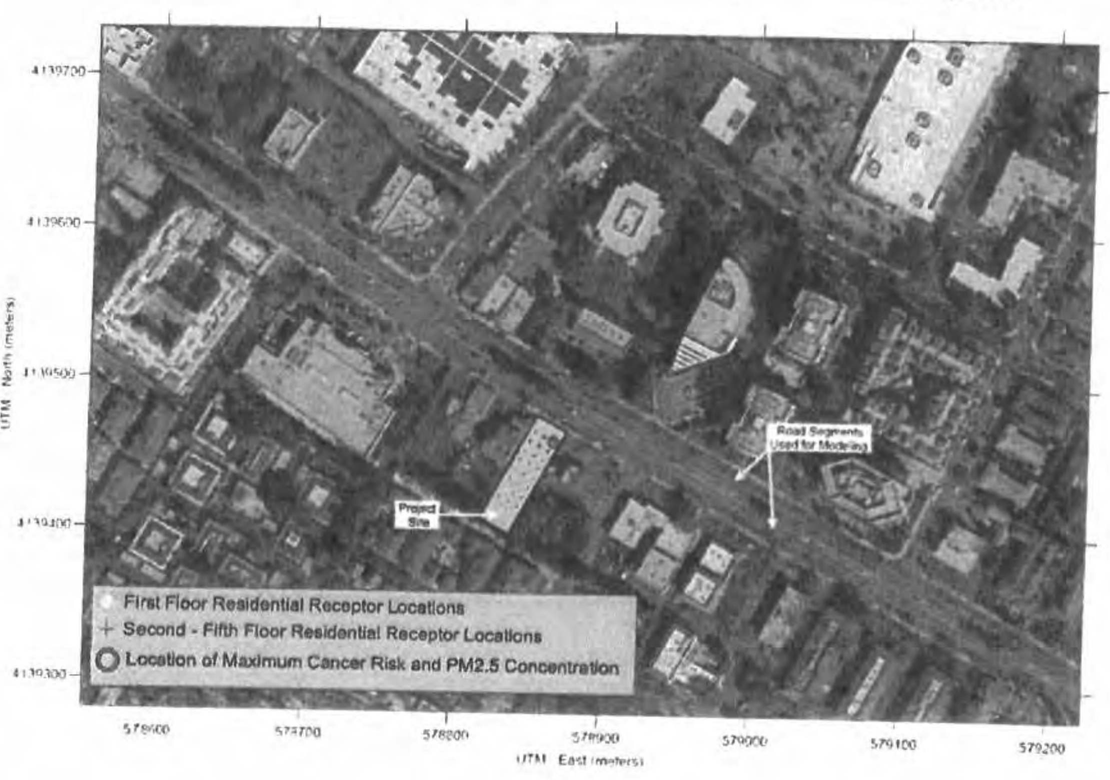
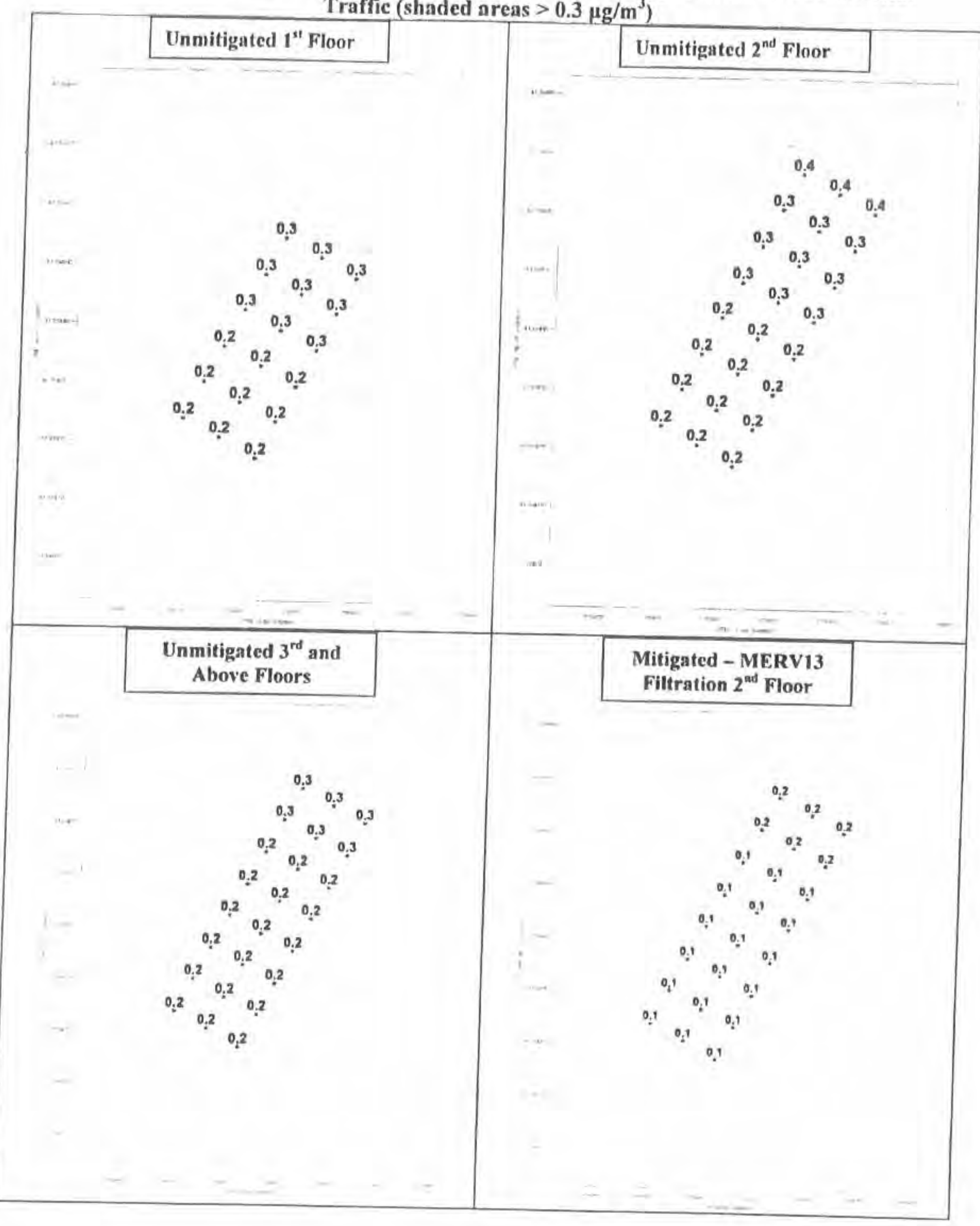


Figure 2. Maximum Annual Total $PM_{2.5}$ Concentrations in µg/m³ from El Camino Real Traffic (shaded areas > 0.3 µg/m³)



Summary of Combined Community Risk

As discussed above, the project site is affected by El Camino Real. There are no other substantial sources of TACs within 1,000 feet of the project site. This would be a less than significant impact.

Project Construction Activity

Construction activities, particularly during site preparation and grading would temporarily generate fugitive dust in the form of respirable particulate matter (PM_{10}) and $PM_{2.5}$. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soils. Unless properly controlled, vehicles leaving the site would deposit mud on local streets, which could be an additional source of airborne dust after it dries. The BAAQMD CEQA Air Quality Guidelines consider these impacts to be less than significant if best management practices are employed to reduce these emissions. *Mitigation Measure 1 would implement BAAQMD-required best management practices.*

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. These exhaust air pollutant emissions would not be considered to contribute substantially to existing or projected air quality violations. Construction exhaust emissions may still pose community risks for sensitive receptors such as nearby residents. The primary community risk impact issues associated with construction emissions are cancer risk and exposure to $PM_{2.5}$. Diesel exhaust poses both a potential health and nuisance impact to nearby receptors. A community risk assessment of the project construction activities was conducted that evaluated potential health effects of sensitive receptors at these nearby residences from construction emissions of DPM and $PM_{2.5}$.[13] The closest sensitive receptors to the project site are residences adjacent to the southern and western boundary of the project site (see Figure 3). Emissions and dispersion modeling was conducted to predict the off-site DPM concentrations resulting from project construction, so that lifetime cancer risks and non-cancer health effects could be evaluated.

Construction Period Emissions

The California Emissions Estimator Model (CalEEMod) Version 2013.2.2 was used to predict annual emissions for construction. CalEEMod provides emission estimates for both on-site and off-site construction activities. On-site activities are primarily made up of construction equipment emissions, while off-site activity includes worker, hauling, and vendor traffic. The proposed project land uses were input into CalEEMod, which included 21 dwelling units entered as "Condo/Townhouse," and 47 spaces entered as "Enclosed Parking with Elevator" on a 0.45-acre site. A construction build-out scenario, including equipment list and phasing schedule was based on model defaults for a project of this type and size. It is expected that 6,300 cubic yard of soil export will be necessary, which was entered into the model. In addition, 380 tons of demolition is anticipated. It is estimated that there would be 8 one-way asphalt truck trips during

[13] DPM is identified by California as a toxic air contaminant due to the potential to cause cancer.

the paving phase. *Attachment 3* includes the CalEEMod input and output values for construction emissions.

The CalEEMod model provided total annual $PM_{2.5}$ exhaust emissions (assumed to be DPM) for the off-road construction equipment and for exhaust emissions from on-road vehicles, with total emissions from all construction stages of 0.0633 tons (127 pounds). The on-road emissions are a result of haul truck travel during demolition and grading activities, worker travel, and vendor deliveries during construction. A trip length of one mile was used to represent vehicle travel while at or near the construction site. It was assumed that these emissions from on-road vehicles traveling at or near the site would occur at the construction site. Fugitive $PM_{2.5}$ dust emissions were calculated by CalEEMod as 15 pounds for the overall construction period. For the purpose of predicting risk levels at or near the site, the CalEEMod modeling included emissions from truck and worker travel, assumed to occur over a distance of one mile at or near the site.

Dispersion Modeling

The U.S. EPA AERMOD dispersion model was used to predict concentrations of DPM and $PM_{2.5}$ concentrations at existing sensitive receptors (residences) in the vicinity of the project site. The AERMOD modeling utilized two area sources to represent the on-site construction emissions, one for DPM exhaust emissions and the other for fugitive $PM_{2.5}$ dust emissions. To represent the construction equipment exhaust emissions, an emission release height of six meters was used for the area source. The elevated source height reflects the height of the equipment exhaust pipes and buoyancy of the exhaust plume. For modeling fugitive $PM_{2.5}$ emissions, a near ground level release height of two meters was used for the area source. Emissions from vehicle travel around the project site were included in the modeled area sources. Construction emissions were modeled as occurring daily between 8 a.m. - 5 p.m.

The modeling used a five-year data set (2009 - 2013) of hourly meteorological data from Moffett Field prepared for use with the AERMOD model by the CARB. Annual DPM and $PM_{2.5}$ concentrations from construction activities in 2017 were calculated using the model. DPM and $PM_{2.5}$ concentrations were calculated at nearby residential locations. Receptor heights of 1.5 meters (4.9 feet) were used in the modeling to represent the breathing heights of nearby residences. Figure 3 shows the construction area modeled, and locations of nearby residential receptors.

Predicted Cancer Risk and Hazards

The maximum-modeled DPM and $PM_{2.5}$ concentrations occurred at a residence just east of the project site. Using the maximum annual modeled DPM concentrations, the maximum increased cancer risks were calculated using the methods previously described. Due to the short anticipated duration of project construction activities (about 1 year), infant exposures were assumed in calculating cancer risks for residential exposures. Because an infant (0 to 2 years of age) has a breathing rate that is greater than the breathing rate for the 3rd trimester the contribution to total cancer risk from an infant exposure is greater than if the initial exposure assumed for the 3rd trimester is assumed. It was conservatively assumed that an infant exposure to construction emissions would occur over the entire construction period.

Results of this assessment indicate that the maximum increased residential cancer risks would be 98.6 in one million for an infant exposure and 1.7 in one million for an adult exposure. The location of the receptor with the maximum increased cancer risk is shown in Figure 3. The maximum residential excess cancer risk would be greater than the BAAQMD significance threshold of 10 in one million and would be considered a *significant impact*

The maximum-modeled annual $PM_{2.5}$ concentration, which is based on combined exhaust and fugitive dust emissions, was 0.7 $\mu g/m^3$, occurring at the same location where maximum cancer risk would occur. This annual $PM_{2.5}$ concentration would be greater than the BAAQMD significance threshold of 0.3 $\mu g/m^3$ and would be considered a *significant impact.*

The maximum modeled annual residential DPM concentration (i.e., from construction exhaust) was 0.6005 $\mu g/m^3$. The maximum computed HI based on this DPM concentration is 0.12, which is lower than the BAAQMD significance criterion of a HI greater than 1.0.

The project would have a *significant impact* with respect to community risk caused by construction activities. *Implementation of Mitigation Measures 1 and 3 would reduce this impact to a level of less than significant.*

Attachment 3 includes the emission calculations used for the area source modeling and the cancer risk calculations.

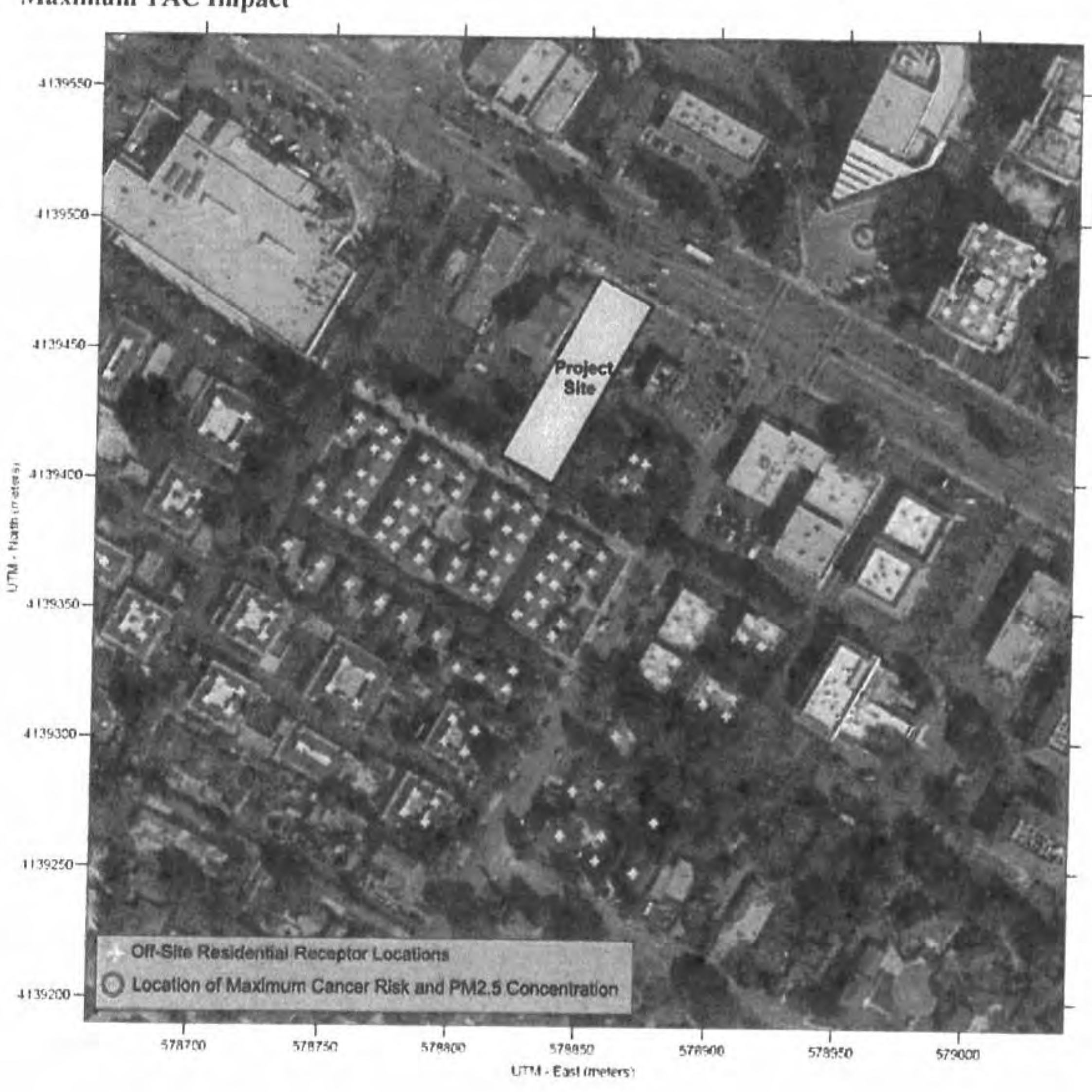
> ***Mitigation Measure 3:* Selection of equipment during construction to minimize emissions. Such equipment selection would include the following:**
>
> All diesel-powered off-road equipment operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent.

Note that the construction contractor could use other measures to minimize construction period DPM emissions to reduce the predicted cancer risk below the thresholds. Such measures may be the use of alternative powered equipment (e.g., LPG-powered lifts), alternative fuels (e.g., biofuels), added exhaust devices, or a combination of measures, provided that these measures are approved by the City and demonstrated to reduce community risk impacts to less than significant.

Implementation of *Mitigation Measure 1* is considered to reduce exhaust emissions by 5 percent and fugitive dust emissions by over 50 percent. Implementation of *Mitigation Measure 3* would further reduce on-site diesel exhaust emissions. With mitigation, the computed maximum increased cancer risk for construction would be 2.6 in one million. The cancer risk would be below the BAAQMD thresholds of greater than 10 per one million for cancer risk. With mitigation, the annual $PM_{2.5}$ concentration would be reduced to 0.03 $\mu g/m^3$, which is below the BAAQMD threshold of 0.3 $\mu g/m^3$. Therefore, *after implementation of these recommended*

measures, the project would have a less-than-significant impact with respect to community risk caused by construction activities.

Figure 3. Project Construction Site, Locations of Off-Site Sensitive Receptors and Maximum TAC Impact



Impact 5: Create objectionable odors affecting a substantial number of people? ***Less than significant.***

The project would generate localized emissions of diesel exhaust during construction equipment operation and truck activity. These emissions may be noticeable from time to time by adjacent receptors. However, they would be localized and are not likely to adversely affect people off site by resulting in confirmed odor complaints. The project would not include any sources of significant odors that would cause complaints from surrounding uses. This would be a *less-than-significant impact*

Impact 6: Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? ***Less than significant.***

GHG emissions associated with development of the proposed project would occur over the short-term from construction activities, consisting primarily of emissions from equipment exhaust and worker and vendor trips. There would also be long-term operational emissions associated with vehicular traffic within the project vicinity, energy and water usage, and solid waste disposal. Emissions for the proposed project are discussed below and were analyzed using the methodology recommended in the BAAQMD CEQA Air Quality Guidelines.[14]

Construction Phase

Neither the City nor BAAQMD have an adopted threshold of significance for construction-related GHG emissions, though BAAQMD recommends quantifying emissions and disclosing that GHG emissions would occur during construction. BAAQMD also encourages the incorporation of best management practices to reduce GHG emissions during construction where feasible and applicable. Best management practices assumed to be incorporated into construction of the proposed project include, but are not limited to: using local building materials of at least 10 percent and recycling or reusing at least 50 percent of construction waste or demolition materials.

Operational Impacts

Due to the project size, operational period GHG emissions would be less than significant. In their May 2011 update to the CEQA Air Quality Guidelines, BAAQMD identified screening criteria for the sizes of land use projects that could result in significant GHG emissions. For operational impacts, the screening project size is identified at 78 dwelling units. Condo/townhouse projects of smaller size would be expected to have less-than-significant impacts with respect to operational period GHG emissions. Since the project proposes to operate 21 dwelling units, it is concluded that emissions would be below the BAAQMD significance threshold of 1,100 MT of CO_2e annually and, therefore, this impact is considered *less than significant*.

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[14] BAAQMD, 2011, *Op cit*

Impact 7: Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases? ***Less than significant.***

The project would be subject to new requirements under rule making developed at the State and local level regarding greenhouse gas emissions and would be subject to local policies that may affect emissions of greenhouse gases.

Attachment 1: Health Risk Calculation Methodology

A health risk assessment (HRA) for exposure to Toxic Air Contaminates (TACs) requires the application of a risk characterization model to the results from the air dispersion model to estimate potential health risk at each sensitive receptor location. The State of California Office of Environmental Health Hazard Assessment (OEHHA) and California Air Resources Board (CARB) develop recommended methods for conducting health risk assessments. The most recent OEHHA risk assessment guidelines were published in February of 2015.[15] These guidelines incorporate substantial changes designed to provide for enhanced protection of children, as required by State law, compared to previous published risk assessment guidelines. CARB has provided additional guidance on implementing OEHHA's recommended methods.[16] This HRA used the recent 2015 OEHHA risk assessment guidelines and CARB guidance. While the OEHHA guidelines use substantially more conservative assumptions than the current Bay Area Air Quality Management District (BAAQMD) guidelines, BAAQMD has not formally adopted recommended procedures for applying the newest OEHHA guidelines. BAAQMD is in the process of developing new guidance and has developed proposed HRA Guidelines as part of the proposed amendments to Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants.[17] Exposure parameters from the OEHHA guidelines and newly proposed BAAQMD HRA Guidelines were used in this evaluation.

Cancer Risk

Potential increased cancer risk from inhalation of TACs are calculated based on the TAC concentration over the period of exposure, inhalation dose, the TAC cancer potency factor, and an age sensitivity factor to reflect the greater sensitivity of infants and children to cancer causing TACs. The inhalation dose depends on a person's breathing rate, exposure time and frequency of exposure, and the exposure duration. These parameters vary depending on the age, or age range, of the persons being exposed and whether the exposure is considered to occur at a residential location or other sensitive receptor location.

The current OEHHA guidance recommends that cancer risk be calculated by age groups to account for different breathing rates and sensitivity to TACs. Specifically, they recommend evaluating risks for the third trimester of pregnancy to age zero, ages zero to less than two (infant exposure), ages two to less than 16 (child exposure), and ages 16 to 70 (adult exposure). Age sensitivity factors (ASFs) associated with the different types of exposure are an ASF of 10 for the third trimester and infant exposures, an ASF of 3 for a child exposure, and an ASF of 1 for an adult exposure. Also associated with each exposure type are different breathing rates, expressed as liters per kilogram of body weight per day (L/kg-day). As recommended by the BAAQMD, 95th percentile breathing rates are used for the third trimester and infant exposures, and 80th

[15] OEHHA, 2015. *Air Toxics Hot Spots Program Risk Assessment Guidelines, The Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments.* Office of Environmental Health Hazard Assessment, February.

[16] CARB, 2015. *Risk Management Guidance for Stationary Sources of Air Toxics.* July 23.

[17] BAAQMD, 2016. *Workshop Report. Proposed Amendments to Air District Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants. Appendix C. Proposed Air District HRA Guidelines*. January 2016.

percentile breathing rates for child and adult exposures. Additionally, CARB and the BAAQMD recommend the use of a residential exposure duration of 30 years for sources with long-term emissions (e.g., roadways).

Under previous OEHHA and BAAQMD HRA guidance, residential receptors are assumed to be at their home 24 hours a day, or 100 percent of the time. In the 2015 Risk Assessment Guidance, OEHHA includes adjustments to exposure duration to account for the fraction of time at home (FAH), which can be less than 100 percent of the time, based on updated population and activity statistics. The FAH factors are age-specific and are: 0.85 for third trimester of pregnancy to less than 2 years old, 0.72 for ages 2 to less than 16 years, and 0.73 for ages 16 to 70 years. BAAQMD recommends using these FAH factors for residential exposures.

Functionally, cancer risk is calculated using the following parameters and formulas:

Cancer Risk (per million) = $CPF \times Inhalation\ Dose \times ASF \times ED/AT \times FAH \times 10^6$

Where:

CPF = Cancer potency factor $(mg/kg\text{-}day)^{-1}$
ASF = Age sensitivity factor for specified age group
ED = Exposure duration (years)
AT = Averaging time for lifetime cancer risk (years)
FAH = Fraction of time spent at home (unitless)

Inhalation Dose = $C_{air} \times DBR \times A \times (EF/365) \times 10^{-6}$

Where:

C_{air} = concentration in air ($\mu g/m^3$)
DBR = daily breathing rate (L/kg body weight-day)
A = Inhalation absorption factor
EF = Exposure frequency (days/year)
10^{-6} = Conversion factor

The health risk parameters used in this evaluation are summarized as follows:

Parameter	*Exposure Type →*	**Infant**		**Child**	**Adult**
	Age Range →	**3rd Trimester**	**0<2**	**2 < 16**	**16 - 30**
DPM Cancer Potency Factor (mg/kg-day)⁻¹		1.10E+00	1.10E+00	1.10E+00	1.10E+00
Daily Breathing Rate (L/kg-day)*		361	1,090	572	261
Inhalation Absorption Factor		1	1	1	1
Averaging Time (years)		70	70	70	70
Exposure Duration (years)		0.25	2	14	14
Exposure Frequency (days/year)		350	350	350	350
Age Sensitivity Factor		10	10	3	1
Fraction of Time at Home		0.85	0.72	0.72	0.73

* 95th percentile breathing rates for 3rd trimester and infants and 80th percentile for children and adults

Non-Cancer Hazards

Potential non-cancer health hazards from TAC exposure are expressed in terms of a hazard index (HI), which is the ratio of the TAC concentration to a reference exposure level (REL). OEHHA has defined acceptable concentration levels for contaminants that pose non-cancer health hazards. TAC concentrations below the REL are not expected to cause adverse health impacts, even for sensitive individuals. The total HI is calculated as the sum of the HIs for each TAC evaluated and the total HI is compared to the BAAQMD significance thresholds to determine whether a significant non-cancer health impact from a project would occur.

Typically, for residential projects located near roadways with substantial TAC emissions, the primary TAC of concern with non-cancer health effects is diesel particulate matter (DPM). For DPM, the chronic inhalation REL is 5 micrograms per cubic meter ($\mu g/m^3$).

Annual $PM_{2.5}$ Concentrations

While not a TAC, fine particulate matter ($PM_{2.5}$) has been identified by the BAAQMD as a pollutant with potential non-cancer health effects that should be included when evaluating potential community health impacts under the California Environmental Quality Act (CEQA). The thresholds of significance for $PM_{2.5}$ (project level and cumulative) are in terms of an increase in the annual average concentration. When considering $PM_{2.5}$ impacts, the contribution from all sources of $PM_{2.5}$ emissions should be included. For projects with potential impacts from nearby local roadways, the $PM_{2.5}$ impacts should include those from vehicle exhaust emissions, $PM_{2.5}$ generated from vehicle tire and brake wear, and fugitive emissions from re-suspended dust on the roads.

Attachment 2: El Camino Real Emissions and Risk Calculations

4880 El Camino Real, Los Altos, CA
El Camino Real (SR 82)
DPM Modeling - Roadway Links, Traffic Volumes, and DPM Emissions
Year = 2020

Road Link	Description	Direction	No. Lanes	Link Length (m)	Link Width (ft)	Link Width (m)	Release Height (m)	Diesel ADT	Average Speed (mph)
EB-El Camino	Eastbound EL Camino	E	3	667	56	17.0	3.4	305	30
WB-El Camino	Westbound El Camino	W	3	664	56	17.0	3.4	305	30

2020 Hourly Diesel Traffic Volumes Per Direction and DPM Emissions - EB-El Camino

Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile
1	2.12%	6	0.0261	9	7.73%	24	0.0197	17	7.35%	22	0.0207
2	1.98%	6	0.0221	10	5.92%	18	0.0244	18	6.59%	20	0.0169
3	1.94%	6	0.0147	11	5.13%	16	0.0226	19	3.55%	11	0.0168
4	0.59%	2	0.0241	12	5.63%	17	0.0238	20	2.82%	9	0.0155
5	0.66%	2	0.0204	13	5.34%	16	0.0238	21	3.76%	11	0.0188
6	0.93%	3	0.0357	14	5.35%	16	0.0232	22	4.47%	14	0.0222
7	4.17%	13	0.0237	15	7.14%	22	0.0202	23	3.98%	12	0.0197
8	5.98%	18	0.0178	16	6.42%	20	0.0185	24	0.44%	1	0.0204
								Total		305	

2020 Hourly Diesel Traffic Volumes Per Direction and DPM Emissions - WB-El Camino

Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile
1	2.12%	6	0.0261	9	7.73%	24	0.0197	17	7.35%	22	0.0207
2	1.98%	6	0.0221	10	5.92%	18	0.0244	18	6.59%	20	0.0169
3	1.94%	6	0.0147	11	5.13%	16	0.0226	19	3.55%	11	0.0168
4	0.59%	2	0.0241	12	5.63%	17	0.0238	20	2.82%	9	0.0155
5	0.66%	2	0.0204	13	5.34%	16	0.0238	21	3.76%	11	0.0188
6	0.93%	3	0.0357	14	5.35%	16	0.0232	22	4.47%	14	0.0222
7	4.17%	13	0.0237	15	7.14%	22	0.0202	23	3.98%	12	0.0197
8	5.98%	18	0.0178	16	6.42%	20	0.0185	24	0.44%	1	0.0204
								Total		305	

4880 El Camino Real, Los Altos, CA
El Camino Real (SR 82)
PM2.5 & TOG Modeling - Roadway Links, Traffic Volumes, and PM2.5 Emissions
Year = 2020

Group Link	Description	Direction	No. Lanes	Link Length (m)	Link Width (ft)	Link Width (m)	Release Height (m)	ADT	Average Speed (mph)
EB-El Camino	Eastbound EL Camino	E	3	667	56	17.0	1.3	21,995	30
WB-El Camino	Westbound El Camino	W	3	664	56	17.0	1.3	21,995	30

2020 Hourly Traffic Volumes Per Direction and PM2.5 Emissions - EB-El Camino

Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile
1	1.07%	236	0.0212	9	7.07%	1556	0.0204	17	7.41%	1629	0.0202
2	0.36%	79	0.0225	10	4.25%	934	0.0209	18	8.33%	1831	0.0201
3	0.29%	63	0.0210	11	4.59%	1009	0.0205	19	5.82%	1280	0.0200
4	0.15%	34	0.0221	12	5.84%	1284	0.0205	20	4.39%	965	0.0200
5	0.44%	96	0.0204	13	6.18%	1359	0.0203	21	3.29%	724	0.0201
6	0.79%	174	0.0217	14	6.04%	1327	0.0204	22	3.31%	727	0.0204
7	3.75%	824	0.0204	15	7.09%	1560	0.0202	23	2.48%	546	0.0203
8	7.93%	1744	0.0200	16	7.25%	1595	0.0201	24	1.90%	418	0.0199
								Total		21,995	

2020 Hourly Traffic Volumes Per Direction and PM2.5 Emissions - WB-El Camino

Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile
1	1.07%	236	0.0212	9	7.07%	1556	0.0204	17	7.41%	1629	0.0202
2	0.36%	79	0.0225	10	4.25%	934	0.0209	18	8.33%	1831	0.0201
3	0.29%	63	0.0210	11	4.59%	1009	0.0205	19	5.82%	1280	0.0200
4	0.15%	34	0.0221	12	5.84%	1284	0.0205	20	4.39%	965	0.0200
5	0.44%	96	0.0204	13	6.18%	1359	0.0203	21	3.29%	724	0.0201
6	0.79%	174	0.0217	14	6.04%	1327	0.0204	22	3.31%	727	0.0204
7	3.75%	824	0.0204	15	7.09%	1560	0.0202	23	2.48%	546	0.0203
8	7.93%	1744	0.0200	16	7.25%	1595	0.0201	24	1.90%	418	0.0199
								Total		21,995	

4880 El Camino Real, Los Altos, CA
El Camino Real (SR 82)
Entrained PM2.5 Road Dust Modeling - Roadway Links, Traffic Volumes, and PM2.5 Emissions
Year = 2020

Group Link	Description	Direction	No. Lanes	Link Length (m)	Link Width (ft)	Link Width (m)	Release Height (m)	ADT	Average Speed (mph)
EB-El Camino	Eastbound El Camino	E	3	667	56	17.0	1.3	21,995	30
WB-El Camino	Westbound El Camino	W	3	664	56	17.0	1.3	21,995	30

2020 Hourly Traffic Volumes Per Direction and Road Dust PM2.5 Emissions - EB-El Camino

Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile
1	1.07%	236	0.0153	9	7.07%	1556	0.0153	17	7.41%	1629	0.0153
2	0.36%	79	0.0153	10	4.25%	934	0.0153	18	8.33%	1831	0.0153
3	0.29%	63	0.0153	11	4.59%	1009	0.0153	19	5.82%	1280	0.0153
4	0.15%	34	0.0153	12	5.84%	1284	0.0153	20	4.39%	965	0.0153
5	0.44%	96	0.0153	13	6.18%	1359	0.0153	21	3.29%	724	0.0153
6	0.79%	174	0.0153	14	6.04%	1327	0.0153	22	3.31%	727	0.0153
7	3.75%	824	0.0153	15	7.09%	1560	0.0153	23	2.48%	546	0.0153
8	7.93%	1744	0.0153	16	7.25%	1595	0.0153	24	1.90%	418	0.0153
								Total		21,995	

2020 Hourly Traffic Volumes Per Direction and Road Dust PM2.5 Emissions - WB-El Camino

Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile	Hour	% Per Hour	VPH	g/mile
1	1.07%	236	0.0153	9	7.07%	1556	0.0153	17	7.41%	1629	0.0153
2	0.36%	79	0.0153	10	4.25%	934	0.0153	18	8.33%	1831	0.0153
3	0.29%	63	0.0153	11	4.59%	1009	0.0153	19	5.82%	1280	0.0153
4	0.15%	34	0.0153	12	5.84%	1284	0.0153	20	4.39%	965	0.0153
5	0.44%	96	0.0153	13	6.18%	1359	0.0153	21	3.29%	724	0.0153
6	0.79%	174	0.0153	14	6.04%	1327	0.0153	22	3.31%	727	0.0153
7	3.75%	824	0.0153	15	7.09%	1560	0.0153	23	2.48%	546	0.0153
8	7.93%	1744	0.0153	16	7.25%	1595	0.0153	24	1.90%	418	0.0153
								Total		21,995	

4880 El Camino Real, Los Altos, CA

El Camino Real (SR 82) Traffic Data and PM2.5 & TOG Emission Factors - 30 mph

Analysis Year = *2020*

Vehicle Type	2014 Caltrans Number Vehicles (veh/day)	2020 Number Vehicles (veh/day)	2020 Percent Diesel	Number Diesel Vehicles (veh/day)	Vehicle Speed (mph)	Emission Factors: Diesel Vehicles DPM (g/VMT)	Emission Factors: All Vehicles Total PM2.5 (g/VMT)	Emission Factors: All Vehicles Exhaust PM2.5 (g/VMT)	Emission Factors: Gas Vehicles Exhaust TOG (g/VMT)	Emission Factors: Gas Vehicles Running TOG (g/VMT)
LDA	24,645	26,123	1.09%	284	30	0.0136	0.0198	0.0020	0.0192	0.051
LDT	15,789	16,736	0.17%	29	30	0.0093	0.0197	0.0019	0.0224	0.071
MDT	831	880	10.35%	91	30	0.0130	0.0233	0.0026	0.0390	0.152
HDT	236	250	82.31%	206	30	0.0357	0.1074	0.0294	0.1330	0.108
Total	41,500	43,990	-	610	30	-	-	-	-	-
Mix Avg Emission Factor						**0.02078**	**0.02029**	**0.00214**	**0.02090**	**0.06090**
Increase From 2014		1.06								
Vehicles/Direction		21,995		305						
Avg Vehicles/Hour/Direction		916		13						

Traffic Data Year = *2014*

Caltrans 2014 Traffic AADTs & 2014 Truck AADTs	Total	Total Truck	Truck by Axle: 2	3	4	5
Rte 82, B Los Altos, San Antonio Ave	41,500	1,067	831	185	9	42
			77.88%	17.34%	0.80%	3.98%
Percent of Total Vehicles		2.57%	2.00%	0.45%	0.02%	0.10%

Traffic Increase per Year (%) = *1.00%*

1701 El Camino Real, Mountain View, CA

El Camino Real Traffic Data and Entrained PM2.5 Road Dust Emission Factors

$E_{2.5} = [k(sL)^{0.91} \times (W)^{1.02} \times (1-P/4N) \times 453.59$

where:

$E_{2.5}$ = $PM_{2.5}$ emission factor (g/VMT)

k = particle size multiplier (g/VMT) [$k_{PM2.5} = k_{PM10} \times (0.0686/0.4572) = 1.0 \times 0.15 = 0.15$ g/VMT][a]

sL = roadway specific silt loading (g/m^2)

W = average weight of vehicles on road (Bay Area default = 2.4 tons)[a]

P = number of days with at least 0.01 inch of precipitation in the annual averaging period

N = number of days in the annual averaging period (default = 365)

Notes: [a] CARB 2014, Miscellaneous Process Methodology 7.9, Entrained Road Travel, Paved Road Dust (Revised and updated, April 2014)

Road Type	Silt Loading (g/m^2)	Average Weight (tons)	County	No. Days ppt > 0.01"	$PM_{2.5}$ Emission Factor (g/VMT)
Major	0.032	2.4	Santa Clara	64	0.01528

SFBAAB[a]

Road Type	Silt Loading (g/m^2)
Collector	0.032
Freeway	0.02
Local	0.32
Major	0.032

SFBAAB[a]

County	>0.01 inch precipitation
Alameda	61
Contra Costa	60
Marin	66
Napa	68
San Francisco	67
San Mateo	60
Santa Clara	64
Solano	54
Sonoma	69

4880 El Camino Real, Los Altos, CA - El Camino Real DPM, PM2.5 & TOG TACs
CAL3QHCR Risk Modeling Parameters and Maximum Concentrations

Receptor Information

Number of Receptors 18
Receptor Heights = 1.5 meter (1st Floor)
Receptor distances = 7 meter (23 feet) grid spacing

Meteorological Conditions

BAAQMD Moffett Field Arpt Hourly Met 1968-1972
Land Use Classification urban
Wind speed = variable
Wind direction = variable

MEI Maximum Concentrations - Receptor Height = 1.5 m

Meteorological Data Year	DPM Concentration ($\mu g/m^3$) 2020	Gas Veh Exhaust TOG Concentration ($\mu g/m^3$) 2020	Gas Veh Evaporative TOG Concentration ($\mu g/m^3$) 2020
1968	0.0026	0.1991	0.5798
1969	0.0024	0.1874	0.5459
1970	0.0023	0.1800	0.5244
1971	0.0023	0.1789	0.5211
1972	0.0023	0.1784	0.5196
Average	**0.0024**	**0.1848**	**0.5382**
Maximum	**0.0026**	**0.1991**	**0.5798**

PM2.5 Concentrations

Meteorological Data Year	Maximum Total PM2.5 Concentration (µg/m3) 2020	Maximum Road Dust PM2.5 Concentration (µg/m3) 2020	Maximum Vehicle PM2.5 Concentration (µg/m3) 2020
1968	0.3389	0.1456	0.1933
1969	0.3190	0.1371	0.1820
1970	0.3125	0.1377	0.1748
1971	0.3046	0.1309	0.1737
1972	0.3037	0.1305	0.1732
Average	**0.32**	**0.14**	**0.18**
Maximum	**0.34**	**0.15**	**0.19**

4880 El Camino Real, Los Altos, CA - El Camino Real Cancer Risks
First Floor On-Site Receptors - 1.5 meter Receptor Heights

Cancer Risk Calculation Method

Cancer Risk (per million) = CPF x Inhalation Dose x ASF x ED/AT x FAH x 1.0E6

Where CPF = Cancer potency factor (mg/kg-day)$^{-1}$

ASF = Age sensitivity factor for specified age group

ED = Exposure duration (years)

AT = Averaging time for lifetime cancer risk (years)

FAH = Fraction of time spent at home (unitless)

Inhalation Dose = C_{air} x DBR x A x (EF/365) x 10^{-6}

Where C_{air} = concentration in air ($\mu g/m^3$)

DBR = daily breathing rate (L/kg body weight-day)

A = Inhalation absorption factor

EF = Exposure frequency (days/year)

10^{-6} = Conversion factor

Values

Cancer Potency Factors (mg/kg-day)$^{-1}$

TAC	CPF
DPM	1.10E+00
Vehicle TOG Exhaust	6.28E-03
Vehicle TOG Evaporative	3.70E-04

	Infant/Child			Adult
Age -->	3rd Trimester	0 - <2	2 - <16	16 - 30
Parameter				
ASF	10	10	3	1
DBR* =	361	1090	572	261
A =	1	1	1	1
EF =	350	350	350	350
ED =	0.25	2	14	14
AT =	70	70	70	70
FAH =	1.00	1.00	1.00	0.73

* 95th percentile breathing rates for infants and 80th percentile for children and adults

Road Traffic Cancer Risk by Year - Maximum Impact Receptor Location

				Maximum - Exposure Information				Cancer Risk (per million)			
		Exposure		Age	Annual Conc (ug/m3)						
Exposure		Duration		Sensitivity		TOG	TOG		TOG	TOG	
Year	Year	(years)	Age	Factor	DPM	Exhaust	Evaporative	DPM	Exhaust	Evaporative	Total
0	2018	0.25	-0.25 - 0*	10	0.0024	0.0000	0.0000	0.03	0.000	0.000	0.03
1	2018	1	1	10	0.0024	0.1848	0.5382	0.39	0.173	0.030	0.59
2	2019	1	2	10	0.0024	0.1848	0.5382	0.39	0.173	0.030	0.59
3	2020	1	3	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.09
4	2021	1	4	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.09
5	2022	1	5	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.09
6	2023	1	6	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.09
7	2024	1	7	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
8	2025	1	8	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
9	2026	1	9	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
10	2027	1	10	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
11	2028	1	11	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
12	2029	1	12	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
13	2030	1	13	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
14	2031	1	14	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
15	2032	1	15	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
16	2033	1	16	3	0.0024	0.1848	0.5382	0.06	0.027	0.005	0.094
17	2034	1	17	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
18	2035	1	18	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
19	2036	1	19	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
20	2037	1	20	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
21	2038	1	21	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
22	2039	1	22	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
23	2040	1	23	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
24	2041	1	24	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
25	2042	1	25	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
26	2043	1	26	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
27	2044	1	27	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
28	2045	1	28	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
29	2046	1	29	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
30	2047	1	30	1	0.0024	0.1848	0.5382	0.01	0.003	0.001	0.010
Total Increased Cancer Risk								1.8	0.8	0.1	2.7

* Third trimester of pregnancy

4880 El Camino Real, Los Altos, CA - El Camino Real DPM, PM2.5 & TOG TACs
CAL3QHCR Risk Modeling Parameters and Maximum Concentrations

Receptor Information

Number of Receptors 24
Receptor Heights = 5.3 meter (2nd Floor)
Receptor distances = 7 meter grid spacing

Meteorological Conditions

BAAQMD Moffett Field Arpt Hourly Met 1968-1972
Land Use Classification urban
Wind speed = variable
Wind direction = variable

MEI Maximum Concentrations - Receptor Height = 5.3 m

Meteorological Data Year	DPM Concentration ($\mu g/m^3$) 2020	Gas Veh Exhaust TOG Concentration ($\mu g/m^3$) 2020	Gas Veh Evaporative TOG Concentration ($\mu g/m^3$) 2020
1968	0.0031	0.2349	0.6842
1969	0.0029	0.2164	0.6304
1970	0.0027	0.2067	0.6020
1971	0.0028	0.2128	0.6199
1972	0.0029	0.2135	0.6217
Average	**0.0029**	**0.2169**	**0.6316**
Maximum	**0.0031**	**0.2349**	**0.6842**

PM2.5 Concentrations

Meteorological Data Year	Maximum Total PM2.5 Concentration (µg/m3) 2020	Maximum Road Dust PM2.5 Concentration (µg/m3) 2020	Maximum Vehicle PM2.5 Concentration (µg/m3) 2020
1968	0.3999	0.1718	0.2281
1969	0.3684	0.1583	0.2101
1970	0.3519	0.1512	0.2007
1971	0.3624	0.1557	0.2066
1972	0.3633	0.1561	0.2072
Average	**0.37**	**0.16**	**0.21**
Maximum	**0.40**	**0.17**	**0.23**

4880 El Camino Real, Los Altos, CA - El Camino Real Cancer Risks
Second Floor On-Site Receptors - 5.3 meter Receptor Heights

Cancer Risk Calculation Method

Cancer Risk (per million) = CPF x Inhalation Dose x ASF x ED/AT x FAH x 1.0E6

Where CPF = Cancer potency factor (mg/kg-day)[1]

ASF = Age sensitivity factor for specified age group

ED = Exposure duration (years)

AT = Averaging time for lifetime cancer risk (years)

FAH = Fraction of time spent at home (unitless)

Inhalation Dose = C_{air} x DBR x A x (EF/365) x 10^{-6}

Where C_{air} = concentration in air ($\mu g/m^3$)

DBR = daily breathing rate (L/kg body weight-day)

A = Inhalation absorption factor

EF = Exposure frequency (days/year)

10^{-6} = Conversion factor

Values

Cancer Potency Factors (mg/kg-day)[1]

TAC	CPF
DPM	1.10E+00
Vehicle TOG Exhaust	6.28E-03
Vehicle TOG Evaporative	3.70E-04

	Infant/Child			Adult
Age -->	3rd Trimester	0 - <2	2 - <16	16 - 30
Parameter				
ASF	10	10	3	1
DBR* =	361	1090	572	261
A =	1	1	1	1
EF =	350	350	350	350
ED =	0.25	2	14	14
AT =	70	70	70	70
FAH =	1.00	1.00	1.00	0.73

* 95th percentile breathing rates for infants and 80th percentile for children and adults

Road Traffic Cancer Risk by Year - Maximum Impact Receptor Location

				Maximum - Exposure Information				Cancer Risk (per million)			
		Exposure		Age	Annual Conc (ug/m3)						
Exposure		Duration		Sensitivity		TOG	TOG		TOG	TOG	
Year	Year	(years)	Age	Factor	DPM	Exhaust	Evaporative	DPM	Exhaust	Evaporative	Total
0	2019	0.25	-0.25 - 0*	10	0.0029	0.0000	0.0000	0.04	0.000	0.000	0.04
1	2019	1	1	10	0.0029	0.2169	0.6316	0.47	0.203	0.035	0.71
2	2020	1	2	10	0.0029	0.2169	0.6316	0.47	0.203	0.035	0.71
3	2021	1	3	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.11
4	2022	1	4	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.11
5	2023	1	5	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.11
6	2024	1	6	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.11
7	2025	1	7	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
8	2026	1	8	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
9	2027	1	9	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
10	2028	1	10	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
11	2029	1	11	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
12	2030	1	12	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
13	2031	1	13	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
14	2032	1	14	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
15	2033	1	15	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
16	2034	1	16	3	0.0029	0.2169	0.6316	0.07	0.032	0.006	0.111
17	2035	1	17	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
18	2036	1	18	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
19	2037	1	19	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
20	2038	1	20	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
21	2039	1	21	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
22	2040	1	22	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
23	2041	1	23	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
24	2042	1	24	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
25	2043	1	25	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
26	2044	1	26	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
27	2045	1	27	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
28	2046	1	28	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
29	2047	1	29	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
30	2048	1	30	1	0.0029	0.2169	0.6316	0.01	0.004	0.001	0.012
Total Increased Cancer Risk								2.1	0.9	0.2	3.2

* Third trimester of pregnancy

Attachment 3: Construction Schedule, CalEEMod Input and Output Worksheets, and Risk Calculations

4880 El Camino Real Construction

Santa Clara County, Annual

1.0 Project Characteristics

1.1 Land Usage

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area	Population
Enclosed Parking with Elevator	47.00	Space	0.00	12,151.00	0
Condo/Townhouse	21.00	Dwelling Unit	0.45	32,084.00	60

1.2 Other Project Characteristics

Urbanization	Urban	**Wind Speed (m/s)**	2.2	**Precipitation Freq (Days)**	58
Climate Zone	4			**Operational Year**	2014
Utility Company	Pacific Gas & Electric Company				
CO_2 Intensity (lb/MWhr)	641.35	**CH_4 Intensity (lb/MWhr)**	0.029	**N_2O Intensity (lb/MWhr)**	0.006

1.3 User Entered Comments & Non-Default Data

Project Characteristics -

Land Use - Lot acreage and sf from construction spreadsheet and plan drawings

Construction Phase - Default

Off-road Equipment -

Off-road Equipment -

Off-road Equipment -

Off-road Equipment -

Off-road Equipment -

Off-road Equipment -

Trips and VMT - Paving. 8 asphalt trips. One mile trip lengths to calculate risk from on- and near-site travel.

Demolition - 380 tons demo

Grading - 6,300cy soil export

Architectural Coating -

Construction Off-road Equipment Mitigation - Tier 4 engines for equip > 50hp. BAAQMD BMPs.

Table Name	Column Name	Default Value	New Value
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	2.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	2.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	2.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	8.00
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstructionPhase	PhaseEndDate	8/18/2017	8/23/2017
tblConstructionPhase	PhaseEndDate	1/13/2017	1/4/2017
tblConstructionPhase	PhaseEndDate	2/17/2017	3/29/2017
tblConstructionPhase	PhaseEndDate	1/5/2017	2/15/2017
tblConstructionPhase	PhaseStartDate	3/30/2017	4/6/2017
tblLandUse	LandUseSquareFeet	18,800.00	12,151.00
tblLandUse	LandUseSquareFeet	21,000.00	32,084.00

tblLandUse	LotAcreage	0.42	0.00
tblLandUse	LotAcreage	1.31	0.45
tblTripsAndVMT	HaulingTripLength	20.00	1.00
tblTripsAndVMT	HaulingTripLength	20.00	1.00
tblTripsAndVMT	HaulingTripLength	20.00	1.00
tblTripsAndVMT	HaulingTripLength	20.00	1.00
tblTripsAndVMT	HaulingTripLength	20.00	1.00
tblTripsAndVMT	HaulingTripLength	20.00	1.00
tblTripsAndVMT	HaulingTripNumber	0.00	8.00
tblTripsAndVMT	VendorTripLength	7.30	1.00
tblTripsAndVMT	VendorTripLength	7.30	1.00
tblTripsAndVMT	VendorTripLength	7.30	1.00
tblTripsAndVMT	VendorTripLength	7.30	1.00
tblTripsAndVMT	VendorTripLength	7.30	1.00
tblTripsAndVMT	VendorTripLength	7.30	1.00
tblTripsAndVMT	WorkerTripLength	12.40	1.00
tblTripsAndVMT	WorkerTripLength	12.40	1.00
tblTripsAndVMT	WorkerTripLength	12.40	1.00
tblTripsAndVMT	WorkerTripLength	12.40	1.00
tblTripsAndVMT	WorkerTripLength	12.40	1.00
tblTripsAndVMT	WorkerTripLength	12.40	1.00

2.0 Emissions Summary

2.1 Overall Construction

Unmitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year	tons/yr										MT/yr					

2017	0.4001	1.0341	0.7110	9.6000e-004	0.0216	0.0683	0.0899	7.5600e-003	0.0633	0.0709	0.0000	88.3227	88.3227	0.0244	0.0000	88.8355
Total	0.4001	1.0341	0.7110	9.6000e-004	0.0216	0.0683	0.0899	7.5600e-003	0.0633	0.0709	0.0000	88.3227	88.3227	0.0244	0.0000	88.8355

Mitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year	tons/yr										MT/yr					
2017	0.3056	0.0585	0.6796	9.6000e-004	0.0104	1.6700e-003	0.0120	1.9500e-003	1.6600e-003	3.6100e-003	0.0000	88.3226	88.3226	0.0244	0.0000	88.8354
Total	0.3056	0.0585	0.6796	9.6000e-004	0.0104	1.6700e-003	0.0120	1.9500e-003	1.6600e-003	3.5100e-003	0.0000	88.3226	88.3226	0.0244	0.0000	88.8354

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio-CO2	Total CO2	CH4	N20	CO2e
Percent Reduction	23.60	94.35	4.41	0.00	52.06	97.56	86.61	74.21	97.38	94.91	0.00	0.00	0.00	0.00	0.00	0.00

3.0 Construction Detail

Construction Phase

Phase Number	Phase Name	Phase Type	Start Date	End Date	Num Days Week	Num Days	Phase Description
1	Demolition	Demolition	1/1/2017	1/4/2017	5	10	
2	Site Preparation	Site Preparation	1/5/2017	2/15/2017	5	1	
3	Grading	Grading	2/16/2017	3/29/2017	5	2	
4	Building Construction	Building Construction	4/6/2017	8/23/2017	5	100	
5	Architectural Coating	Architectural Coating	8/24/2017	8/30/2017	5	5	

6	Paving	Paving	8/31/2017	9/6/2017	5	5	

Acres of Grading (Site Preparation Phase): 0.5

Acres of Grading (Grading Phase): 0

Acres of Paving: 0

Residential Indoor: 64,970; Residential Outdoor: 21,657; Non-Residential Indoor: 18,227; Non-Residential Outdoor: 6,076 (Architectural

OffRoad Equipment

Phase Name	Offroad Equipment Type	Amount	Usage Hours	Horse Power	Load Factor
Demolition	Concrete/Industrial Saws	1	8.00	81	0.73
Demolition	Rubber Tired Dozers	1	1.00	255	0.40
Demolition	Tractors/Loaders/Backhoes	2	6.00	97	0.37
Site Preparation	Graders	1	8.00	174	0.41
Site Preparation	Tractors/Loaders/Backhoes	1	8.00	97	0.37
Grading	Concrete/Industrial Saws	1	8.00	81	0.73
Grading	Rubber Tired Dozers	1	1.00	255	0.40
Grading	Tractors/Loaders/Backhoes	2	6.00	97	0.37
Building Construction	Cranes	1	4.00	226	0.29
Building Construction	Forklifts	2	6.00	89	0.20
Building Construction	Tractors/Loaders/Backhoes	2	8.00	97	0.37
Architectural Coating	Air Compressors	1	6.00	78	0.48
Paving	Cement and Mortar Mixers	4	6.00	9	0.56
Paving	Pavers	1	7.00	125	0.42
Paving	Rollers	1	7.00	80	0.38
Paving	Tractors/Loaders/Backhoes	1	7.00	97	0.37

Trips and VMT

Phase Name	Offroad Equipment Count	Worker Trip Number	Vendor Trip Number	Hauling Trip Number	Worker Trip Length	Vendor Trip Length	Hauling Trip Length	Worker Vehicle Class	Vendor Vehicle Class	Hauling Vehicle Class
Demolition	4	10.00	0.00	38.00	1.00	1.00	1.00	LD_Mix	HDT_Mix	HHDT

Site Preparation	2	5.00	0.00	0.00	1.00	1.00	1.00	LD_Mix	HDT_Mix	HHDT
Grading	4	10.00	0.00	0.00	1.00	1.00	1.00	LD_Mix	HDT_Mix	HHDT
Building Construction	5	20.00	4.00	0.00	1.00	1.00	1.00	LD_Mix	HDT_Mix	HHDT
Architectural Coating	1	4.00	0.00	0.00	1.00	1.00	1.00	LD_Mix	HDT_Mix	HHDT
Paving	7	18.00	0.00	8.00	1.00	1.00	1.00	LD_Mix	HDT_Mix	HHDT

3.1 Mitigation Measures Construction

Use Cleaner Engines for Construction Equipment

Use Soil Stabilizer

Replace Ground Cover

Water Exposed Area

Reduce Vehicle Speed on Unpaved Roads

Clean Paved Roads

3.2 Demolition - 2017

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					1.2200e-003	0.0000	1.2200e-003	1.8000e-004	0.0000	1.8000e-004	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	1.8100e-003	0.0157	0.0129	2.0000e-005		1.0900e-003	1.0900e-003		1.0400e-003	1.0400e-003	0.0000	1.6109	1.6109	3.2000e-004	0.0000	1.6176
Total	1.6100e-003	0.0157	0.0129	2.0000e-005	1.2200e-003	1.0900e-003	2.3100e-003	1.8000e-004	1.0400e-003	1.2200e-003	0.0000	1.6109	1.6109	3.2000e-004	0.0000	1.6176

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	5.0000e-005	1.9000e-004	8.9000e-004	0.0000	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0000	0.0000	0.0000	0.0277	0.0277	0.0000	0.0000	0.0277
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	4.0000e-005	1.0000e-005	1.5000e-004	0.0000	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0000	0.0000	0.0000	0.0121	0.0121	0.0000	0.0000	0.0121
Total	9.0000e-005	2.0000e-004	1.0400e-003	0.0000	2.0000e-005	0.0000	2.0000e-005	0.0000	0.0000	0.0000	0.0000	0.0397	0.0397	0.0000	0.0000	0.0398

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					5.5000e-004	0.0000	5.5000e-004	4.0000e-005	0.0000	4.0000e-005	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	2.0000e-004	8.6000e-004	0.0118	2.0000e-005		3.0000e-005	3.0000e-005		3.0000e-005	3.0000e-005	0.0000	1.6109	1.0109	3.2000e-004	0.0000	1.6176
Total	2.0000e-004	8.6000e-004	0.0118	2.0000e-005	5.5000e-004	3.0000e-005	5.8000e-004	4.0000e-005	3.0000e-005	7.0000e-005	0.0000	1.6109	1.6109	3.2000e-004	0.0000	1.6176

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	5.0000e-005	1.9000e-004	8.9000e-004	0.0000	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0000	0.0000	0.0000	0.0277	0.0277	0.0000	0.0000	0.0277

Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	4.0000e-005	1.0000e-005	1.5000e-004	0.0000	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0000	0.0000	0.0000	0.0121	0.0121	0.0000	0.0000	0.0121
Total	9.0000e-005	2.0000e-004	1.0400e-003	0.0000	2.0000e-005	0.0000	2.0000e-005	0.0000	0.0000	0.0000	0.0000	0.0397	0.0397	0.0000	0.0000	0.0398

3.3 Site Preparation - 2017

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					7.9500e-003	0.0000	7.9500e-003	8.6000e-004	0.0000	8.6000e-004	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	0.0190	0.1903	0.1085	1.4000e-004		0.0116	0.0116		0.0106	0.0106	0.0000	13.0072	13.0072	3.9900e-003	0.0000	13.0909
Total	0.0190	0.1903	0.1085	1.4000e-004	7.9500e-003	0.0116	0.0195	8.6000e-004	0.0106	0.0115	0.0000	13.0072	13.0072	3.9900e-003	0.0000	13.0909

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	1.9000e-004	6.0000e-005	7.7000e-004	0.0000	6.0000e-005	0.0000	6.0000e-005	1.0000e-005	0.0000	2.0000e-005	0.0000	0.0603	0.0603	0.0000	0.0000	0.0604
Total	1.9000e-004	6.0000e-005	7.7000e-004	0.0000	6.0000e-005	0.0000	6.0000e-005	1.0000e-005	0.0000	2.0000e-005	0.0000	0.0603	0.0603	0.0000	0.0000	0.0604

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					3.5800e-003	0.0000	3.5800e-003	1.9000e-004	0.0000	1.9000e-004	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	1.7000e-003	7.3800e-003	0.1050	1.4000e-004		2.3000e-004	2.3000e-004		2.3000e-004	2.3000e-004	0.0000	13.0072	13.0072	3.9900e-003	0.0000	13.0909
Total	1.7000e-003	7.3800e-003	0.1050	1.4000e-004	3.5800e-003	2.3000e-004	3.8100e-003	1.9000e-004	2.3000e-004	4.2000e-004	0.0000	13.0072	13.0072	3.9900e-003	0.0000	13.0909

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	1.9000e-004	6.0000e-005	7.7000e-004	0.0000	6.0000e-005	0.0000	6.0000e-005	1.0000e-005	0.0000	2.0000e-005	0.0000	0.0603	0.0603	0.0000	0.0000	0.0604
Total	1.9000e-004	6.0000e-005	7.7000e-004	0.0000	6.0000e-005	0.0000	6.0000e-005	1.0000e-005	0.0000	2.0000e-005	0.0000	0.0603	0.0603	0.0000	0.0000	0.0604

3.4 Grading - 2017

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e

Category	tons/yr										MT/yr					
Fugitive Dust					0.0113	0.0000	0.0113	6.2100e-003	0.0000	6.2100e-003	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	0.0181	0.1571	0.1287	1.6000e-004		0.0109	0.0109		0.0104	0.0104	0.0000	16.1091	16.1091	3.1700e-003	0.0000	16.1757
Total	0.0181	0.1571	0.1287	1.6000e-004	0.0113	0.0109	0.0222	6.2100e-003	0.0104	0.0165	0.0000	16.1091	16.1091	3.1700e-003	0.0000	16.1757

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	3.7000e-004	1.2000e-004	1.5400e-003	0.0000	1.1000e-004	0.0000	1.1000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.1207	0.1207	1.0000e-005	0.0000	0.1208
Total	3.7000e-004	1.2000e-004	1.5400e-003	0.0000	1.1000e-004	0.0000	1.1000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.1207	0.1207	1.0000e-005	0.0000	0.1208

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					5.0800e-003	0.0000	5.0800e-003	1.4000e-003	0.0000	1.4000e-003	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	2.0000e-003	8.6500e-003	0.1180	1.8000e-004		2.7000e-004	2.7000e-004		2.7000e-004	2.7000e-004	0.0000	16.1090	16.1090	3.1700e-003	0.0000	16.1757

Total	2.0000e-003	8.6500e-003	0.1180	1.8000e-004	5.0800e-003	2.7000e-004	5.3500e-003	1.4000e-003	2.7000e-004	1.6700e-003	0.0000	16.1090	16.1090	3.1700e-003	0.0000	16.1757

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	3.7000e-004	1.2000e-004	1.5400e-003	0.0000	1.1000e-004	0.0000	1.1000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.1207	0.1207	1.0000e-005	0.0000	0.1208
Total	3.7000e-004	1.2000e-004	1.5400e-003	0.0000	1.1000e-004	0.0000	1.1000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.1207	0.1207	1.0000e-005	0.0000	0.1208

3.5 Building Construction - 2017

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	0.0637	0.6337	0.4020	5.7000e-004		0.0428	0.0428		0.0394	0.0394	0.0000	52.5954	52.5954	0.0161	0.0000	52.9339
Total	0.0637	0.6337	0.4020	5.7000e-004		0.0428	0.0428		0.0394	0.0394	0.0000	52.5954	52.5954	0.0161	0.0000	52.9339

Unmitigated Construction Off-Site

Category	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	1.4800e-003	5.8100e-003	0.0213	1.0000e-005	1.8000e-004	5.0000e-005	2.3000e-004	5.0000e-005	4.0000e-005	9.0000e-005	0.0000	0.8487	0.8487	1.0000e-005	0.0000	0.8489
Worker	2.4800e-003	8.2000e-004	0.0102	1.0000e-005	7.4000e-004	1.0000e-005	7.6000e-004	2.0000e-004	1.0000e-005	2.1000e-004	0.0000	0.8044	0.8044	6.0000e-005	0.0000	0.8056
Total	3.9600e-003	6.6300e-003	0.0316	2.0000e-005	9.2000e-004	6.0000e-005	9.9000e-004	2.5000e-004	5.0000e-005	3.0000e-004	0.0000	1.6531	1.6531	7.0000e-005	0.0000	1.6545

Mitigated Construction On-Site

Category	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
	tons/yr										MT/yr					
Off-Road	6.9400e-003	0.0301	0.3849	5.7000e-004		9.3000e-004	9.3000e-004		9.3000e-004	9.3000e-004	0.0000	52.5954	52.5954	0.0161	0.0000	52.9338
Total	6.9400e-003	0.0301	0.3849	5.7000e-004		9.3000e-004	9.3000e-004		9.3000e-004	9.3000e-004	0.0000	52.5954	52.5954	0.0161	0.0000	52.9338

Mitigated Construction Off-Site

Category	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
	tons/yr										MT/yr					

Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	1.4800e-003	5.8100e-003	0.0213	1.0000e-005	1.8000e-004	5.0000e-005	2.3000e-004	5.0000e-005	4.0000e-005	9.0000e-005	0.0000	0.8487	0.8487	1.0000e-005	0.0000	0.8489
Worker	2.4800e-003	8.2000e-004	0.0102	1.0000e-005	7.4000e-004	1.0000e-005	7.6000e-004	2.0000e-004	1.0000e-005	2.1000e-004	0.0000	0.8044	0.8044	6.0000e-005	0.0000	0.8056
Total	3.9600e-003	6.6300e-003	0.0316	2.0000e-005	9.2000e-004	6.0000e-005	9.9000e-004	2.5000e-004	5.0000e-005	3.0000e-004	0.0000	1.6531	1.6531	7.0000e-005	0.0000	1.6545

3.6 Architectural Coating - 2017

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Archit. Coating	0.2892					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	8.3000e-004	5.4600e-003	4.6700e-003	1.0000e-005		4.3000e-004	4.3000e-004		4.3000e-004	4.3000e-004	0.0000	0.6383	0.6383	7.0000e-005	0.0000	0.6397
Total	0.2901	5.4600e-003	4.6700e-003	1.0000e-005		4.3000e-004	4.3000e-004		4.3000e-004	4.3000e-004	0.0000	0.6383	0.6383	7.0000e-005	0.0000	0.6397

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	2.0000e-005	1.0000e-005	1.0000e-004	0.0000	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0000	0.0000	0.0000	8.0400e-003	8.0400e-003	0.0000	0.0000	8.0600e-003
Total	2.0000e-005	1.0000e-005	1.0000e-004	0.0000	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0000	0.0000	0.0000	8.0400e-003	8.0400e-003	0.0000	0.0000	8.0600e-003

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Archit. Coating	0.2892					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	7.0000e-005	3.2000e-004	4.5800e-003	1.0000e-005		1.0000e-005	1.0000e-005		1.0000e-005	1.0000e-005	0.0000	0.6383	0.6383	7.0000e-005	0.0000	0.6397
Total	0.2893	3.2000e-004	4.5800e-003	1.0000e-005		1.0000e-005	1.0000e-005		1.0000e-005	1.0000e-005	0.0000	0.6383	0.6383	7.0000e-005	0.0000	0.6397

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	2.0000e-005	1.0000e-005	1.0000e-004	0.0000	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0000	0.0000	0.0000	8.0400e-003	8.0400e-003	0.0000	0.0000	8.0600e-003
Total	2.0000e-005	1.0000e-005	1.0000e-004	0.0000	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0000	0.0000	0.0000	8.0400e-003	8.0400e-003	0.0000	0.0000	8.0600e-003

3.7 Paving - 2017

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	2.6000e-003	0.0246	0.0181	3.0000e-005		1.5000e-003	1.5000e-003		1.3900e-003	1.3900e-003	0.0000	2.4243	2.4243	6.7000e-004	0.0000	2.4384
Paving	0.0000					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Total	2.6000e-003	0.0246	0.0181	3.0000e-005		1.5000e-003	1.5000e-003		1.3900e-003	1.3900e-003	0.0000	2.4243	2.4243	6.7000e-004	0.0000	2.4384

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	4.0000e-005	1.3000e-004	6.2000e-004	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0194	0.0194	0.0000	0.0000	0.0194
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	1.1000e-004	4.0000e-005	4.6000e-004	0.0000	3.0000e-005	0.0000	3.0000e-005	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0362	0.0362	0.0000	0.0000	0.0363
Total	1.5000e-004	1.7000e-004	1.0800e-003	0.0000	3.0000e-005	0.0000	3.0000e-005	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0556	0.0556	0.0000	0.0000	0.0557

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	7.2000e-004	3.9500e-003	0.0193	3.0000e-005		1.5000e-004	1.5000e-004		1.5000e-004	1.5000e-004	0.0000	2.4243	2.4243	6.7000e-004	0.0000	2.4384

Paving	0.0000					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Total	7.2000e-004	3.9500e-003	0.0193	3.0000e-005		1.5000e-004	1.5000e-004		1.5000e-004	1.5000e-004	0.0000	2.4243	2.4243	6.7000e-004	0.0000	2.4384

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	4.0000e-005	1.3000e-004	6.2000e-004	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0194	0.0194	0.0000	0.0000	0.0194
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	1.1000e-004	4.0000e-005	4.6000e-004	0.0000	3.0000e-005	0.0000	3.0000e-005	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0362	0.0362	0.0000	0.0000	0.0363
Total	1.5000e-004	1.7000e-004	1.0800e-003	0.0000	3.0000e-005	0.0000	3.0000e-005	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0556	0.0556	0.0000	0.0000	0.0557

4880 ECR, Los Altos, CA

DPM Construction Emissions and Modeling Emission Rates - Unmitigated

Construction Year	Activity	DPM (ton/year)	Area Source	DPM Emissions (lb/yr)	DPM Emissions (lb/hr)	DPM Emissions (g/s)	Modeled Area (m²)	DPM Emission Rate (g/s/m²)
2017	Construction	[illegible]	CON_DPM	[illegible]	[illegible]	[illegible]	1,718	[illegible]
Total		0.0633		127	0.0385	0.0049		

Construction Hours
hr/day = 9 (8am - 5pm)
days/yr = 365
hours/year = 3285

4880 ECR, Los Altos, CA

PM2.5 Fugitive Dust Construction Emissions for Modeling - Unmitigated

Construction Year	Activity	Area Source	PM2.5 Emissions (ton/year)	PM2.5 Emissions (lb/yr)	PM2.5 Emissions (lb/hr)	PM2.5 Emissions (g/s)	Modeled Area (m²)	PM2.5 Emission Rate g/s/m²
2017	Construction	CON_FUG	[illegible]	15.2	[illegible]	[illegible]	1,718	[illegible]
Total			0.0076	15.2	0.0046	0.0006		

Construction Hours
hr/day = 9 (8am - 5pm)
days/yr = 365
hours/year = 3285

4880 ECR, Los Altos, CA - Project Construction Health Impact Summary

Maximum Impacts at Off-Site Residences

Construction Year	Unmitigated					
	Maximum Concentrations					
	Exhaust PM2.5/DPM ($\mu g/m^3$)	Fugitive PM2.5 ($\mu g/m^3$)	Cancer Risk (per million) Child	Cancer Risk (per million) Adult	Hazard Index (-)	Maximum Annual PM2.5 Concentration ($\mu g/m^3$)
2017	0.6005	0.1122	98.63	1.72	0.120	0.713
Total	-	-	**98.6**	**1.7**	-	-
Maximum Annual	0.6005	0.1122	-	-	**0.120**	**0.713**

4880 ECR, Los Altos, CA – Construction Impacts - Unmitigated Emissions
Maximum DPM Cancer Risk Calculations From Construction
Off-Site Residential Receptor Locations - 1.5 meters

Cancer Risk (per million) = CPF x Inhalation Dose x ASF x ED/AT x FAH x 1.0E6

Where: CPF = Cancer potency factor (mg/kg-day)$^{-1}$
ASF = Age sensitivity factor for specified age group
ED = Exposure duration (years)
AT = Averaging time for lifetime cancer risk (years)
FAH = Fraction of time spent at home (unitless)

Inhalation Dose = C_{air} x DBR x A x (EF/365) x 10^{-6}

Where: C_{air} = concentration in air ($\mu g/m^3$)
DBR = daily breathing rate (L/kg body weight-day)
A = Inhalation absorption factor
EF = Exposure frequency (days/year)
10^{-6} = Conversion factor

Values

	Infant/Child			Adult
Age -->	3rd Trimester	0 - 2	2 - 16	16 - 30
Parameter				
ASF =	10	10	3	1
CPF =	1.10E+00	1.10E+00	1.10E+00	1.10E+00
DBR* =	361	1090	572	261
A =	1	1	1	1
EF =	350	350	350	350
AT =	70	70	70	70
FAH =	1.00	1.00	1.00	0.73

* 95th percentile breathing rates for infants and 80th percentile for children and adults

Construction Cancer Risk by Year - Maximum Impact Receptor Location

Exposure Year	Exposure Duration (years)	Age	Infant/Child - Exposure Information: DPM Conc (ug/m3) Year	DPM Conc (ug/m3) Annual	Age Sensitivity Factor	Infant/Child Cancer Risk (per million)	Adult - Exposure Information: Modeled DPM Conc (ug/m3) Year	Modeled DPM Conc (ug/m3) Annual	Age Sensitivity Factor	Adult Cancer Risk (per million)	Fugitive PM2.5	Total PM2.5
0	0.25	-0.25 - 0*	-	0.0000	10	-	-	-	-	-		
1	1	0 - 1	2017	0.6005	10	98.63	2017	0.6005	1	1.72	0.1122	0.713
2	1	1 - 2		0.0000	10	0.00		0.0000	1	0.00		
3	1	2 - 3		0.0000	3	0.00		0.0000	1	0.00		
4	1	3 - 4		0.0000	3	0.00		0.0000	1	0.00		
5	1	4 - 5		0.0000	3	0.00		0.0000	1	0.00		
6	1	5 - 6		0.0000	3	0.00		0.0000	1	0.00		
7	1	6 - 7		0.0000	3	0.00		0.0000	1	0.00		
8	1	7 - 8		0.0000	3	0.00		0.0000	1	0.00		
9	1	8 - 9		0.0000	3	0.00		0.0000	1	0.00		
10	1	9 - 10		0.0000	3	0.00		0.0000	1	0.00		
11	1	10 - 11		0.0000	3	0.00		0.0000	1	0.00		
12	1	11 - 12		0.0000	3	0.00		0.0000	1	0.00		
13	1	12 - 13		0.0000	3	0.00		0.0000	1	0.00		
14	1	13 - 14		0.0000	3	0.00		0.0000	1	0.00		
15	1	14 - 15		0.0000	3	0.00		0.0000	1	0.00		
16	1	15 - 16		0.0000	3	0.00		0.0000	1	0.00		
17	1	16-17		0.0000	1	0.00		0.0000	1	0.00		
18	1	17-18		0.0000	1	0.00		0.0000	1	0.00		
19	1	18-19		0.0000	1	0.00		0.0000	1	0.00		
20	1	19-20		0.0000	1	0.00		0.0000	1	0.00		
21	1	20-21		0.0000	1	0.00		0.0000	1	0.00		
22	1	21-22		0.0000	1	0.00		0.0000	1	0.00		
23	1	22-23		0.0000	1	0.00		0.0000	1	0.00		
24	1	23-24		0.0000	1	0.00		0.0000	1	0.00		
25	1	24-25		0.0000	1	0.00		0.0000	1	0.00		
26	1	25-26		0.0000	1	0.00		0.0000	1	0.00		
27	1	26-27		0.0000	1	0.00		0.0000	1	0.00		
28	1	27-28		0.0000	1	0.00		0.0000	1	0.00		
29	1	28-29		0.0000	1	0.00		0.0000	1	0.00		
30	1	29-30		0.0000	1	0.00		0.0000	1	0.00		
Total Increased Cancer Risk						**98.6**				**1.72**		

* Third trimester of pregnancy

ATTACHMENT F

CALIFORNIA
WASHINGTON
NEW YORK

CCR TITLE 24 NOISE STUDY

1880 EL CAMINO REAL

LOS ALTOS, CALIFORNIA

March 2, 2016

Revised April 20, 2016

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WI Project 16-018

1 Introduction

This report presents an acoustical evaluation of the exterior noise and exterior to interior sound isolation for the proposed 4880 El Camino Real multi-family residential project to be constructed along El Camino Real between Los Altos Square and Jordan Avenue in the City of Los Altos, CA. The proposed project is a five story residential development of 21 units over one level of parking garage.

Inter-unit noise mitigation provisions, also required by CCR Title 24, include acoustical design and installation details for party walls, corridor walls, floor-ceiling assemblies, and other components. This design work is not included in this report.

The purpose of this noise study is to assess the exterior noise environment of the subject property and to provide recommendations on the control of exterior-to-interior noise with respect to the requirements of the California Code of Regulations (CCR), Title 24 (included in the California Building Code Section 1207 - Sound Transmission Control) and the City of Los Altos General Plan Environmental Management Element. This report provides a description of the environmental noise survey methodology, a discussion of applicable noise standards, noise survey results, future noise level projections, and exterior-to-interior noise mitigation recommendations. The current Study is based on the Permit Submittal drawing set dated 4 February 2016 by Dahlin Group.

The project site's existing noise environment is primarily dominated by vehicle traffic along El Camino Real (State Route 82) on the north side, and by far away sources such as Showers Drive to the northwest. The City of Los Altos General Plan indicates that traffic volumes along El Camino Real are not expected to increase over the next 10 years and the traffic study for this project by Hexagon Transportation Consultants (dated 25 February 2016) indicates that there will be a net decrease in traffic brought about by the conversion of this parcel from restaurant use to residential use. As such, the measured noise levels at the site today are expected to persist for the next 10 years.

Noise mitigation recommendations for project glazing, exterior assemblies, and exterior doors are presented, along with important installation details.

2 Noise Level Descriptors

The noise exposure at a site, measured using the Day-Night Level (L_{dn}) metric, represents the A-weighted equivalent continuous noise exposure level for a 24-hour period and includes a 10 decibel (dB) penalty added to sound levels during nighttime hours (10:00 pm to 7:00 am). The term "Equivalent Continuous Sound Exposure Level" (L_{eq}) refers to a decibel level that equals the level of a steady noise containing the same total sound energy as the fluctuating community noise level for a given period of time. The 10 dB penalty added to sound levels during the nighttime hours is meant to account for higher sensitivity of people to noise during nighttime and evening hours, relative to the daytime. The A-weighted scale, used for community noise measurements, causes the measuring instrumentation to respond to noise in a manner closely correlated with the auditory

response of the average person. A-weighting is implicit in noise levels reported in terms of L_{dn}.

More complete definitions for these and other acoustical terms can be found in the "Description of Acoustical Terms Relevant to Title 24 Projects" at the end of this report.

3 Applicable Noise Standards – Noise Study Criteria

Noise Insulation Requirements. California Code of Regulations (CCR) Title 24 – included in the amended California Building Code (CBC), Section 1207, "Sound Transmission" – specifies the maximum level of interior noise due to exterior sources allowable for new residential developments. Division II of the CBC, Appendix 12 presents acoustical requirements in general terms, with more specific language provided in Division IIA of Appendix 12. CCR Title 24 also defers to local requirements where applicable.

CCR Title 24 requires that the building be designed to have sound insulation so that, with all exterior doors and windows in the closed position, the interior noise level attributable to exterior sources shall not exceed an annual L_{dn} of 45 in any habitable room.

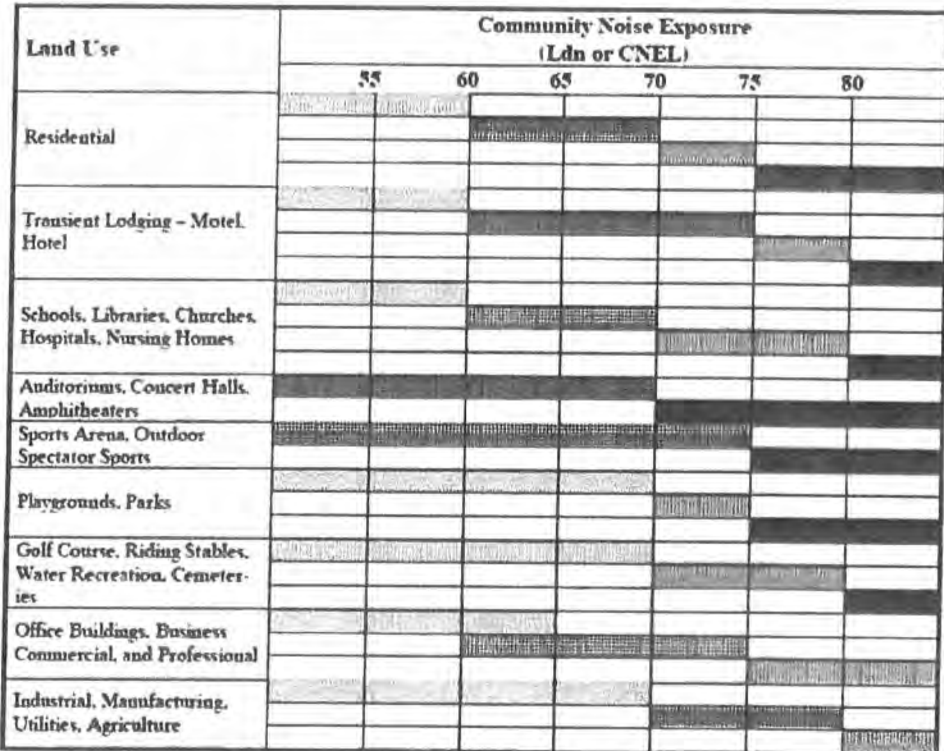
The Natural Environment and Hazards Element of the Los Altos General Plan reference the State of California noise insulation standards, explicitly citing the 45 L_{dn} interior noise standard for residential space. The Element requires acoustical studies such as this one for developments where the noise level exceeds 60 L_{dn} from industrial or transportation sources. The study must demonstrate compliance with the interior noise standard.

The Natural Environment & Hazards Element of the City of Los Altos General Plan also states that new development can be made compatible with the noise environment by utilizing the Land Use Compatibility Guidelines. Land uses and their compatibility with various noise criteria, as adopted by the City of Los Altos, is shown graphically in Figure 1, below, reproduced from the Natural Environment & Hazards Element.

As seen in Figure 1, residential development is considered Normally Acceptable in areas where the exterior noise exposure is less than 60 Ldn. Areas between 60 and 70 Ldn are considered Conditionally Acceptable, and detailed noise analysis is required to substantiate that proper noise reduction measures are included in the project design. Areas between 70 and 75 Ldn are considered Normally Unacceptable for new residential development, but is allowed provided that a detailed noise analysis is done and adequate noise reduction measurements are included in the project design.

The City of Los Altos Municipal Code at Chapter 6, Section 16.050, Exterior Noise Limits, contains absolute noise limits for various categories of land use under differing conditions. For the purpose of this study, these limits will be applied to HVAC and other mechanical noises associated with the project, and we are assuming that this equipment will, at times, have duty cycles that exceeded 30 minutes of use per hour. As such, the most restrictive noise limits will apply. At the neighboring commercial properties (C Zoning), the applicable limits are 60 dBA between 10 PM and 7 AM and 65 dBA between 7 AM and 10 PM [Code Section 6.16.050, Table 1]. For the neighboring residential units, the limits in Section 16.050 Table 1 are modified because they border another type of zoning. Per 6.16.050.A.4, when two zones abut, "the noise level limit applicable to the lower noise zone, plus five

dB, shall apply." As such, the applicable limits at the residential properties are 55 dBA between 10 PM and 7 AM and 60 dBA between 7 AM and 10 PM.



Source: Modified by CBA from 1998 State of California General Plan Guidelines.

Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved meet conventional Title 24 construction standards. No special noise insulation requirements.

Conditionally Acceptable: New construction or development shall be undertaken only after a detailed noise analysis is made and noise reduction measures are identified and included in the project design.

Normally Unacceptable: New construction or development is discouraged. If new construction is proposed, a detailed analysis is required, noise reduction measures must be identified, and noise insulation features included in the design.

Clearly Unacceptable: New construction or development should not be undertaken.

Figure 1: Land Use/Noise Compatibility Chart (from Los Altos' Natural Environment & Hazards Element of the 2002 General Plan, page 10)

Ventilation Requirements. Provision of adequate ventilation falls under the purview of the project mechanical engineer. However, it is related to acoustics because the requirement for acoustically-rated windows also triggers a requirement for mechanical ventilation. Specifically, for areas of the Project where the exterior noise exposure exceeds 60 Ldn, an alternative means of ventilation is usually required. We recommend you bring this to the attention of the project mechanical engineer.

4 Environmental Noise Survey Methodology

The Environmental Noise Survey consisted of both short-term noise recordings and long-term noise measurement efforts at several locations in the project vicinity. Table I summarizes the noise measurement locations, with distances to adjacent sources and the types of measurements performed at each. Figure 2 presents this information in graphical form.

Long-Term Measurements

Long-term, statistical noise levels were measured at the site by means of four precision, calibrated, Type 1 logging sound level meters left unattended at the site to monitor complete days between Thursday, 18 February and Tuesday, 23 February, inclusive. Long-term meters were placed at the locations indicated in Table I and Figure 2 (indicated as LT-1 to LT-4), where they could be secured to light poles and a tree. Microphone heights are approximately 12 ft to 15 ft above grade in this mounting arrangement. The sound meters monitored noise levels continuously during the survey period, providing hourly-averaged and statistical noise levels over six complete days. The hourly equivalent noise data (L_{eq}) were then used to calculate the daily and typical Day-Night Levels (L_{dn}), as required by the CCR Title 24 and the City of Los Altos General Plan Natural Environment & Hazards Element.

Short-Term Measurement

At short-term location ST, calibrated, digital recordings were made on Tuesday, 17 February for approximately 10 minutes to determine the spectral content of the noise.

Table 1: Environmental Noise Survey Measurement Locations

Label	Measurement Type	Location Description
LT-1	Long-Term	Light Pole at North Property Line ~ 75' from El Camino Real CL
LT-2 & ST	Long & Short-Term	Light Pole at North Property Line ~ 72' from El Camino Real CL
LT-3	Long-Term	Tree at East Property Line ~ 175' from El Camino Real CL
LT-4	Long-Term	Light Pole at South Property Line ~ 283' from El Camino Real CL

5 Environmental Noise Survey Results

Exterior-to-interior noise isolation requirements were determined by evaluating the existing and projected future noise levels at the project site.

5.1 Measured Existing Noise Levels

The results of the environmental noise survey reveal that existing noise levels across site range from 71 Ldn near El Camino Real to 58 Ldn near the rear property line. This puts the majority of the site in the Conditionally Acceptable category for residential land use. The day-night noise levels over the course of the long-term noise survey are summarized by location in Table 2. Figure 3A to 3D present the hourly averaged L_{eq} and calculated L_{dn} levels. The data show marginally higher noise levels on weekdays, when car and truck traffic in the vicinity are presumably greater. Lower levels are particularly evident on weekend mornings, due to the absence of a defined commute period.

The noise frequency spectrum provided by the short-term (ST) measurement is consistent with noise environments dominated by vehicle traffic. The spectrum is shown Figure 4.

Table 2: Summary of Measured Existing Day Night Noise Levels By Measurement Location (See also Figure 3A to Figure 3D)

	Location LT-1	Location LT-2	Location LT-3	Location LT-4
Ldn – Tue, 18 Feb	71	72	62	59
Ldn – Wed, 19 Feb	70	72	62	58
Ldn – Thu, 20 Feb	69	70	60	57
Ldn – Fri, 21 Feb	69	70	61	57
Ldn – Sat, 22 Feb	70	72	62	58
Ldn – Sun, 23 Feb	70	71	62	59
Existing Average Ldn	**70**	**71**	**61**	**58**

5.2 Projected Future Noise Levels

According to the City of Los Altos General Plan, average daily traffic along El Camino Real in front of the project site is expected to increase from 44,500 vehicles in 2001 (Table NEH-2) to 50,000 in 2025 (Table NEH-3). The mix of automobiles, medium trucks, and heavy truck is not expected to change. Given this information, the expected increase in noise due to traffic increase over the 24 year period is 0.5 dB. However, because the current date is 15 years into the 24 year period, it is expected that 0.3 dB of this increase has already occurred, implying that the increase between noise and 2025 or 2026 is on the order of 0.2 dB, a negligible amount. Therefore, for the purposes of this study, future noise levels are taken to be the same as today.

The noise contours developed for this study take into account the shielding provided by existing buildings on other properties for each level of the subject project. The lower floors of the project

building benefit more from shielding than the upper levels. Figures 5A to 5C shows the noise contours after development of the project site.

6 Noise Mitigation Recommendations

6.1 Exterior Glazing

Windows are inherently the weak link of a residential project's exterior acoustical envelope. Therefore, proper selection and installation of exterior glazing elements are paramount to achieving CCR Title 24 interior noise limits. Frames of windows and doors must be caulked with resilient, acoustical sealant to provide an airtight seal. Also, a bead of resilient, acoustical caulking must be applied to window casings before installation. Manufacturer's instructions for installation of acoustically rated window assemblies must be followed carefully, so that installed windows retain their rated acoustical performance.

Recommendations are presented in terms of the Outdoor-Indoor Transmission Class (OITC) and Sound Transmission Class (STC) acoustical performance ratings, either of which may be used to specify windows for the project, though the OITC rating is preferable. The window manufacturer shall provide laboratory test data for the specific window assembly types submitted for this project. Laboratory test reports should include third octave band sound isolation performance data for the specific glazing system proposed. Window manufacturers may provide alternative glazing configurations which might be more appropriate for this project, provided that these possess the minimum recommended OITC ratings.

Traditionally, manufacturers of exterior doors and windows have used the single-number Sound Transmission Class (STC) metric to rate the acoustical performance of their products. However, STC is a metric optimized for the spectral shape (or tonal quality) of human speech, as it was originally developed as a means to rate the degree of sound isolation between dwelling units in the late 1950's. The Outdoor-Indoor Transmission Class (OITC), as defined in the ASTM Standard E1332, is the *preferred metric* for rating the sound performance of building shell materials. OITC ratings are tied to a typical noise spectrum shape from transportation sources, which are rich in low frequency, bass-type sounds, as opposed to the frequencies of human speech or television audio. Both OITC and STC rating values are calculated from 1/3-octave band transmission loss data for specific building shell components.

Our acoustical glazing recommendations for the project are shown in Figure 6A for Floor 1, Figure 6B for Floor 2, and Figure 6C for Floors 3, 4, and 5. Two classes of exterior glazing are indicated for windows and balcony doors in Figures 6A to 6C:

- Glazing Class I with a minimum OITC 24 / STC 32 rating
- Glazing Class II with a minimum OITC 22 / STC 30 rating

The recommendations assume that the condominium units will have hard surface finishes, leading to a high level of reverberation in comparison to rooms that are carpeted. If the units in the project are going to be carpeted, the recommend OITC/STC ratings may be relaxed by 2 points. If this is done,

the projects Conditions, Covenants, and Restrictions should prevent future owners from replacing the carpet with hardwood flooring.

These recommendations are only for habitable rooms within residential units ("R" occupancy) and do not apply to common rooms and areas, corridors, public stair wells, storage areas, commercial spaces, garages, etc. All other façade sections where no specific OITC/STC recommendations are given do not require acoustically-rated glazing.

Many glazing configurations are produced that meet the above minimum requirements. In addition, glazing systems with dissimilar thickness panes are strongly recommended, unless one of the layers is made out of *laminated glass*.

6.2 Exterior Walls

The proposed main exterior wall construction per Dahlin Group Architecture is an exterior finish of a four-coat stucco system, , 2x6 wood studs, R19 fiberglass batt insulation in the stud cavity, and one layer of 5/8" gypsum board on the interior face of the wall. Assemblies similar to the assemblies listed above have been tested to have a sound insulation rating of at least OITC 37 (comparable to STC 46), which will not compromise the sound isolation of the building envelope, making it suitable for all noise exposures expected with this project.

The ultimate degree of sound isolation provided by the building shell is highly dependent on the quality of workmanship and attention to detail that is followed during construction. The following recommendations are aimed at delivering the full sound isolating potential of the building shell:

- If possible, avoid electrical outlets in exterior walls. If this is not possible, apply outlet box pads such as those manufactured by Lowry's or Dottie (#68 pads) to all electrical boxes in exterior walls, as one would in all corridor, party and other sound rated interior walls. Thoroughly caulk around all edges of electrical outlet boxes and other penetrations with non-hardening acoustical sealant.
- Carefully caulk the intersection between the interior layer of gypsum wall board at the floor and ceiling with resilient, non-hardening acoustical sealant.
- Fully fill the stud cavities with batt insulation, as the improvement in sound isolation provided by the partition is directly proportional to the percentage of the cavity filled with insulation. For exterior walls constructed with 8" studs, the use of two layers of slightly compressed R-13 batt insulation is highly recommended.

6.3 Supplemental Ventilation

As mentioned above, any habitable room that is required to have an acoustically-rated window (see Figures 6A through 6C are also required to provide for alternative ventilation so that the windows may remain closed for noise reduction purposes. This requirement should be addressed by the project mechanical engineer.

Supplemental ventilation can be provided in several forms. A ducted fresh air system could be incorporated into the HVAC system. Other projects have used passive, ducted air inlets that extend from the building's rooftop to soffits within each unit. Ducted air inlets should be acoustically lined through the first 10 feet in length away from the exterior opening and incorporate one or more 90-degree bends between openings, so as to not compromise the noise insulating performance of the residential unit's exterior envelope. Instead of serving unit stacks with a vertical duct drawing air from the room, air could also be drawn through the floor-ceiling assembly to a register in the ceiling. In either system, ducts should be located within gypsum shafts so as to not create a direct noise path from exterior penetration to the unit interior. We will gladly review and comment on designs provided by the project's architect or mechanical engineer.

Another means of providing fresh air ventilation without compromising the degree of acoustical isolation is to incorporate a "Z-duct" fresh air intake device in the building façade. If a Z-duct method is chosen to provide outside air intake at individual units, the vertical duct should be at least 5 ft in length, and lined with 1/2" or 1" thick acoustical liner. These requirements are essential to make the Z-duct provide adequate noise insulation and not compromise the noise insulating performance of the window and wall assemblies. Commercially available units include the Vibro-Acoustics model CT silencer (http://www.vibro-acoustics.com/).

6.4 Mechanical Equipment Noise Control

The project design is not far enough along at this point to select mechanical equipment that will service the building. Such equipment will include HVAC equipment and may include an emergency backup generator. The current plans indicate that the mechanical equipment will be located in a room at the Garage Level, which will contain most of the noise, but the equipment will also require inlet and exhaust ducts that will themselves be noise emitters. During detailed design of the project, noise mitigation measures will be employed as necessary to ensure compliance with the Municipal Code Section 6.16.050 noise limits. No equipment is anticipated for a project of this scale that would make meeting the applicable noise limits with standard noise control measures difficult.

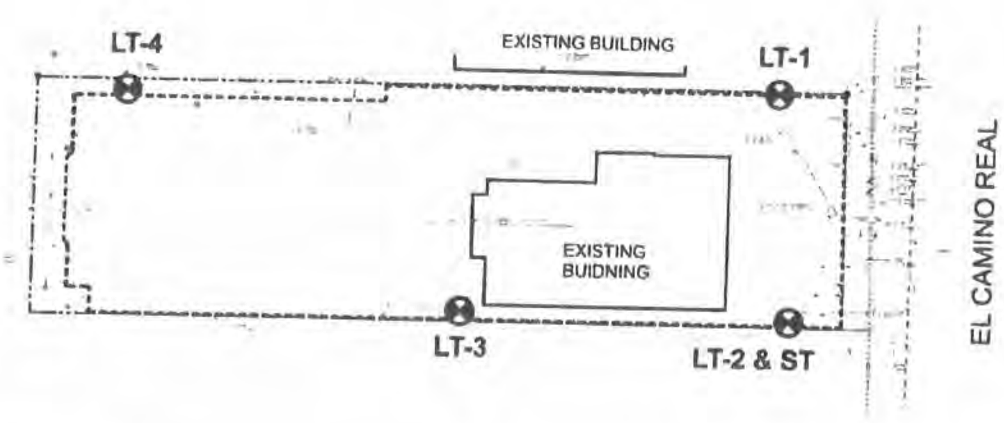


Figure 2: ***Present day, open lot day-night noise levels (Ldn) and noise survey locations***

Sound Level, dBA

100
90
80
70
60
50
40
30

12 3 6 9 Noon 3 6 9 12

———	L_{eq} Thursday, Feb 18	71 L_{dn}
–··–·	L_{eq} Friday, Feb 19	70 L_{dn}
········	L_{eq} Saturday, Feb 20	69 L_{dn}
–·–··	L_{eq} Sunday, Feb 21	69 L_{dn}
······	L_{eq}, Monday Feb 22	70 L_{dn}
––––·	L_{eq}, Tuesday, Feb 23	70 L_{dn}

Figure 3A: ***Hourly Equivalent (Leq) and Day-Night (Ldn) Levels measured at Location LT-1***

Sound Level, dBA

100
90
80
70
60
50
40
30

12 3 6 9 Noon 3 6 9 12

———	L_{eq} Thursday, Feb 18	72 L_{dn}
—··—··	L_{eq} Friday, Feb 19	72 L_{dn}
········	L_{eq} Saturday, Feb 20	70 L_{dn}
—·—·—	L_{eq} Sunday, Feb 21	70 L_{dn}
	L_{eq}, Monday Feb 22	72 L_{dn}
- - - -	L_{eq}, Tuesday, Feb 23	71 L_{dn}

Figure 3B: ***Hourly Equivalent (Leq) and Day-Night (Ldn) Levels measured at Location LT-2***

Sound Level, dBA

100
90
80
70
60
50
40
30

12 3 6 9 Noon 3 6 9 12

———	L_{eq} Thursday, Feb 18	62 L_{dn}
—··—··	L_{eq} Friday, Feb 19	62 L_{dn}
········	L_{eq} Saturday, Feb 20	60 L_{dn}
—·—·—	L_{eq} Sunday, Feb 21	61 L_{dn}
······	L_{eq}, Monday Feb 22	62 L_{dn}
—–—–	L_{eq}, Tuesday, Feb 23	62 L_{dn}

Figure 3C: ***Hourly Equivalent (Leq) and Day-Night (Ldn) Levels measured at Location LT-3***

Sound Level, dBA

100
90
80
70
60
50
40
30

12 3 6 9 Noon 3 6 9 12

L_{eq} Thursday, Feb 18 59 L_{dn}
L_{eq} Friday, Feb 19 58 L_{dn}
L_{eq} Saturday, Feb 20 57 L_{dn}
L_{eq} Sunday, Feb 21 57 L_{dn}
L_{eq}, Monday Feb 22 58 L_{dn}
L_{eq}, Tuesday, Feb 23 59 L_{dn}

Figure 3D: ***Hourly Equivalent (Leq) and Day-Night (Ldn) Levels measured at Location LT-4***

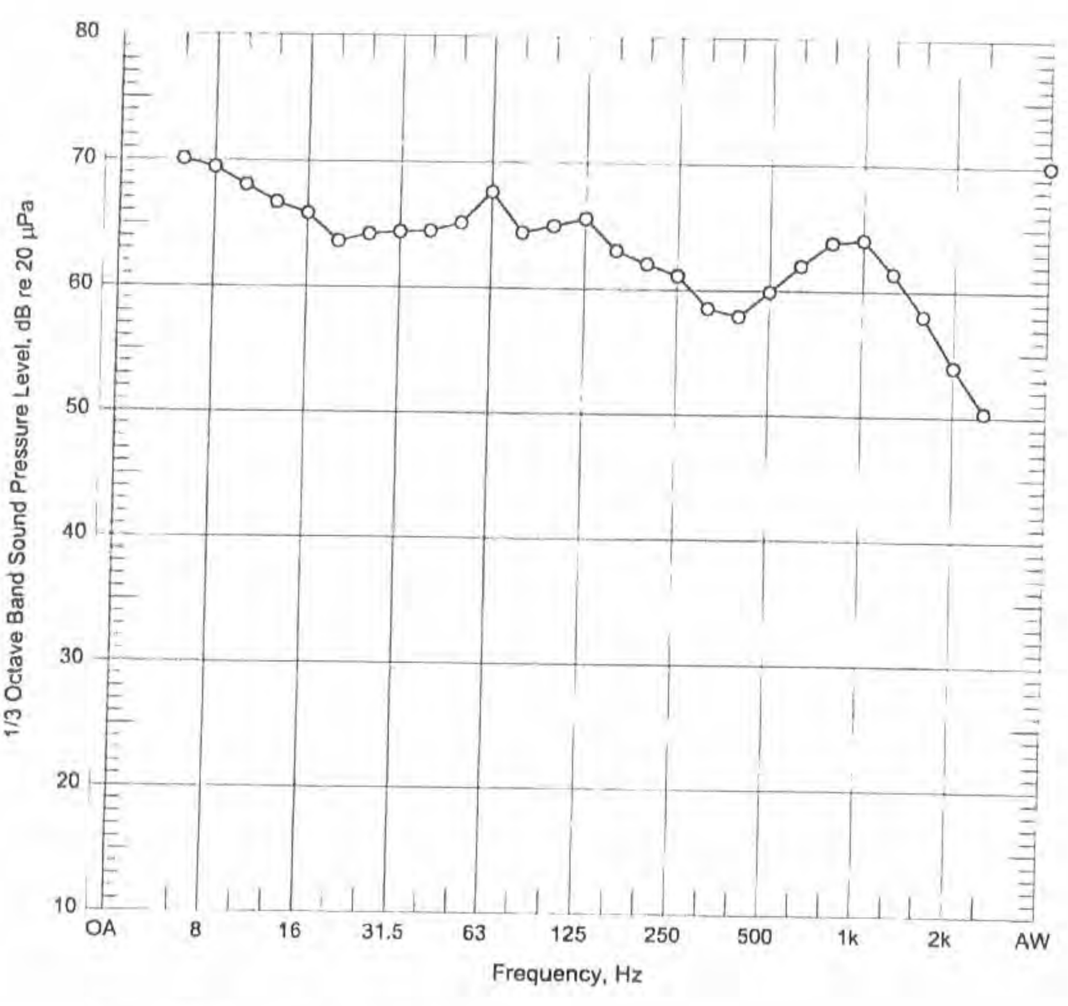


Figure 4: ***Noise Frequency Spectrum measured at ST (10-minute sample)***

58 59 60 61 63 66 68 71

EL CAMINO REAL

Figure 5A: ***Expected Future (2025) Day-Night Levels (Ldn) for Floor 1***

58 59 60 61 62 64 66 68 70 71

EL CAMINO REAL

Figure5B: ***Expected Future (2025) Day-Night Levels (Ldn) for Floor 2***

63 64 65 66 67 68 69 70 71

EL CAMINO REAL

Figure 5C: ***Expected Future (2025) Day-Night Levels (Ldn) for Floor 3, Floor 4, and Floor 5***

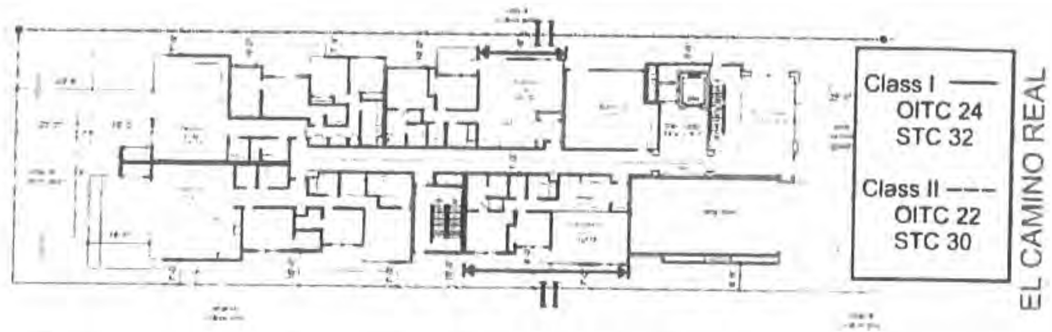


Figure 6A: ***Minimum recommended glazing ratings for Floor 1***
Windows and exterior doors not flagged require no acoustical rating

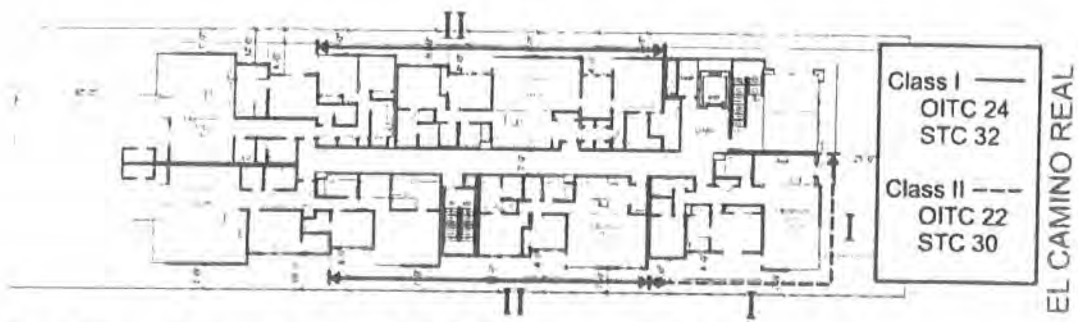


Figure 6B: ***Minimum recommended glazing ratings for Floor 2***
Windows and exterior doors not flagged require no acoustical rating

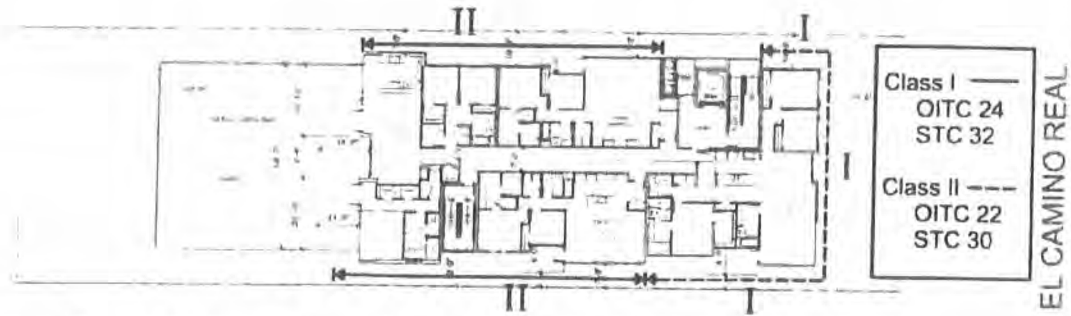


Figure 6C: ***Minimum recommended glazing ratings for Floor 3, Floor 4, and Floor 5***
Windows and exterior doors not flagged require no acoustical rating

Appendix A: Description of Acoustical Terms

A-Weighted Sound Level (dBA):

The sound pressure level in decibels as measured on a sound level meter using the internationally standardized A-weighting filter or as computed from sound spectral data to which A-weighting adjustments have been made. A-weighting de-emphasizes the low and very high frequency components of the sound in a manner similar to the response of the average human ear. A-weighted sound levels correlate well with subjective reactions of people to noise and are universally used for community noise evaluations.

Airborne Sound:

Sound that travels through the air, as opposed to structure-borne sound.

Ambient Noise:

The prevailing general noise existing at a location or in a space, which usually consists of a composite of sounds from many sources near and far.

Community Noise Equivalent Level (CNEL):

The L_{eq} of the A-weighted noise level over a 24-hour period with a 5 dB penalty applied to noise levels between 7 p.m. and 10 p.m. and a 10 dB penalty applied to noise levels between 10 p.m. and 7 a.m.

Day-Night Sound Level (L_{dn}):

The L_{eq} of the A-weighted noise level over a 24-hour period with a 10 dB penalty applied to noise levels between 10 p.m. and 7 a.m.

Decibel (dB):

The decibel is a measure on a logarithmic scale of the magnitude of a particular quantity (such as sound pressure, sound power, sound intensity) with respect to a reference quantity.

Energy Equivalent Level (L_{eq}):

The level of a steady noise which would have the same energy as the fluctuating noise level integrated over the time period of interest. L_{eq} is widely used as a single-number descriptor of environmental noise. L_{eq} is based on the logarithmic or energy summation and it places more emphasis on high noise level periods than does L_{50} or a straight arithmetic average of noise level over time. This energy average is not the same as the average sound pressure levels over the period of interest, but must be computed by a procedure involving summation or mathematical integration.

Field Impact Insulation Class (FIIC):

A single number rating similar to the IIC except that the impact sound pressure levels are measured in the field.

Field Sound Transmission Class (FSTC):

A single number rating similar to STC, except that the transmission loss values used to derive the FSTC are measured in the field. All sound transmitted from the source room to the receiving room is assumed to be through the separating wall or floor-ceiling assembly.

Frequency (Hz):

The number of oscillations per second of a periodic noise (or vibration) expressed in Hertz (abbreviated Hz). Frequency in Hertz is the same as cycles per second.

Impact Isolation Class (IIC):

A single number rating used to compare the effectiveness of floor-ceiling assemblies in providing reduction of impact generated sounds such as footsteps. It is derived from the measurement of impact sound pressure levels across a series of 16 test bands using a standardized tapping machine.

Noise Isolation Class (NIC):

A single number rating derived from measured values of noise reduction between two enclosed spaces that are connected by one or more paths. The NIC is not adjusted or normalized to a standard reverberation time.

Normalized Noise Isolation Class (NNIC):

A single number rating similar to the NIC, except that the measured noise reduction values are normalized to a reverberation time of 1/2 second.

Outdoor-Indoor Transmission Class (OITC):

A single number classification, specified by the American Society for Testing and Materials (ASTM E 1332 issued 1994), that establishes the A-weighted sound level reduction provided by building facade components (walls, doors, windows, and combinations thereof), based upon a reference sound spectra that is typical of air, road, and rail transportation sources. The OITC is the preferred rating when exterior facade components are exposed to noise environments dominated by transportation sources.

Octave Band - 1/3 Octave Band:

One octave is an interval between two sound frequencies that have a ratio of two. For example, the frequency range of 200 Hz to 400 Hz is one octave, as is the frequency range of 2000 Hz to 4000 Hz. An octave band is a frequency range that is one octave wide. A standard series of octaves is used in acoustics, and they are specified by their center frequencies. In acoustics, to increase resolution, the frequency content of a sound or vibration is often analyzed in terms of 1/3 octave bands, where each octave is divided into three 1/3 octave bands.

Sound Absorption Coefficient (∀):

The absorption coefficient of a material is the ratio of the sound absorbed by the material to that absorbed by an equivalent area of open window. The absorption coefficient of a perfectly absorbing surface would be 1.0 while that for concrete or marble slate is approximately 0.01 (a perfect reflector would have an absorption of 0.00).

Sound Pressure Level (SPL):

The sound pressure level of sound in decibels is 20 times the logarithm to the base of 10 of the ratio of the RMS value of the sound pressure to the RMS value of a reference sound pressure. The standard reference sound pressure is 20 micro-pascals as indicated in ANSI S1.8-1969, "Preferred Reference Quantities for Acoustical Levels".

Sound Transmission Class (STC):

STC is a single number rating, specified by the American Society for Testing and Materials, which can be used to measure the sound insulation properties for comparing the sound transmission capability, in decibels, of interior building partitions for noise sources such as speech, radio, and television. It is used extensively for rating sound insulation characteristics of building materials and products.

Structure-Borne Sound:

Sound propagating through building structure. Rapidly fluctuating elastic waves in gypsum board, joists, studs, etc.

Statistical Distribution Terms:

L_{99} and L_{90} are descriptors of the typical minimum or "residual" background noise (or vibration) levels observed during a measurement period, normally made up of the summation of a large number of sound sources distant from the measurement position and not usually recognizable as individual noise sources. Generally, the prevalent source of this residual noise is distant street traffic. L_{90} and L_{99} are not strongly influenced by occasional local motor vehicle passbys. However, they can be influenced by stationary sources such as air conditioning equipment.

L_{50} represents a long-term statistical median noise level over the measurement period and does reveal the long-term influence of local traffic.

L_{10} describes typical or average levels for the maximum noise levels occurring, for example, during nearby passbys of trains, trucks, buses and automobiles, when there is relatively steady traffic. Thus, while L_{10} does not necessarily describe the typical maximum noise levels observed at a point, it is strongly influenced by the momentary maximum noise level occurring during vehicle passbys at most locations.

L_1, the noise level exceeded for 1% of the time is representative of the occasional, isolated maximum or peak level which occurs in an area. L1 is usually strongly influenced by the maximum short-duration noise level events which occur during the measurement time period and are often determined by aircraft or large vehicle passbys.

ATTACHMENT G

The Tree Specialist
Don Araki
ISA Certified Arborist WE-6547A
(408) 209-1007

Pre-Construction Tree Inventory and Certified Arborist's Report

Prepared for:
Jeff Taylor
Lola LLC
408-355-3699

Regarding Property Location:

4880 El Camino Real
Los Altos, CA

April 21, 2016, 2016

CONTENTS

1.0 AFFADAVIT
2.0 EXECUTIVE SUMMARY
3.0 TREE PRESERVATION PRECEPTS
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4.1 Existing Conditions (Tree Inventory)
4.2 Site Plan (Existing Trees Re; property plan prepared by: NAME OF ARCHITECT BUSINESS OFFICE AND LOCATION)
4.3 Basic Tree Preservation Measures (TPMs)
5.0 CERTIFICATION

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1.0
AFFADAVIT

Don Araki of **The Tree Specialist** is an ISA Certified Arborist: WE- 6547A having authority to offer advice and suggestions accumulated from industry standards and working knowledge based on 20 years of experience in residential and commercial tree service. This report is respectfully submitted to Lola LLC. for work to be done at the location: 4880 El Camino Real, Los Altos, CA

Don Araki

Date

2.0
EXECUTIVE SUMMARY

Please be advised that the City of Los Altos, CA has established a strict code of compliance regarding tree work in your area titled "Heritage Tree Ordinance". For more information you may access this three page text at.

http://www.losaltosca.gov/communitydevelopment/page/tree-removal

The Community Development Department's "Permit Submittal Requirements" advise the submittal of two (2) copies of the Arborist Report pertaining to heritage trees in the vicinity. You may also have access to these requirements at

https://www.google.com/?gws_rd=ssl#q=los+altos+heritage+tree+ordinance

Since the design team has planned around this project's significant trees, the Heritage Trees can generally be preserved with the usual tree protection measures.

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TREE PRESERVATION PRECEPTS

{Books have been written on this topic – but if I had to choose three basic concepts to highlight:

Start early to preserve trees that are assets, but preserve whole trees (including roots, not merely trunks.

The owner(s) must have the entire team committed to preserving each tree everyday (from the designer to the project manager to the guys with the nail bags).

Minimize impacts, or the tree will require you to mitigate, lest you destroy its rootlets or its structure or its environment.}

4.0
SITE-SPECIFIC INFORMATION

Location: 4880 El Camino Real, Los Altos, CA 94022

4.1 Existing Conditions (Tree Inventory)

{tree list spreadsheet)

Observation Definition Guidelines

Tree Numbering System: We have tree identifiers attached to the tree with assigned numbers from 1 -10.

Names: We utilize the common Sunset names whenever possible or scientific/botanical to minimize confusion. We may describe a tree using Sunset or McMinn's key when necessary.

DSH: Diameter at Standard Height: This measurement is the trunk diameter measured at the standard height defined by the jurisdiction in which the tree trunk grows. The industry standard is 54 inches above ground level, taken with a standard surveyor's diameter tape, recorded in inches (DBH: diameter at breast height). Exceptions to the 54" level are called out in several jurisdictions (to wit: San Mateo at 48"; Redwood City between 6" – 36"; San Jose at 24"). For multi-trunked trees, measurements were taken below the lowest branch swelling and/or individual stems at 54" inches, or an average depending on which height measurement is deemed to produce the best representative figure.

Crown Radius: The average radius measurement is shown in feet.

Ht (Height): Estimated distance foliage crown extends above grade, recorded in feet.

Vigor: Rigor for tree's growth and vitality as a blend of elements like leaf or bud size and color, twig growth (elongation), accumulation of deadwood, cavities, wound wood development, trunk expansion (growth "cracks"), etc.

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Structure: Structure rating for tree's architecture as a composite of factors like branch attachment, lean and balance, effects of prior breakage, crossing-tangled-twisted limbs, co-dominant trunks and/or branches, decay and cavities, anchorage (roots), etc.

Overall Condition: Percentage rating assessing the tree's overall vigor, recent growth, insects/diseases, and structural defects. Relative text rating included in the same cell as: Excellent, Good, Fair, Poor, Very Poor. This corresponds to the "Condition Percentage" factor in tree valuations per the Council or Tree and Landscape Appraisers (CTLA) system used by the International Society of Arboriculture. (CTLA, 1992) It combines foliage, branches, limbs, and trunk and root ratings into a composite condition score. This rating is used in the calculation of these trees' appraised value required by the City of Palo Alto.

Suitability for Preservation: Considers tree's condition (vigor and structure), longevity/age, adaptability, and aesthetics. This rating takes into account any announced intentions of changes in area/lot use. Degrees: High, Moderate, Low, And Very Low.

High: Tree in great condition and any existing defects or stresses are minor or can be easily mitigated.

Moderate: Notable vigor and/or stability problems but which can be moderated with treatment and /or increased tree protection zone.

Low: Significant problems, including shorter life expectancy. Difficult to retain but has potential with a much larger tree protection zone.

Very Low: Substantial, existing problems, defects, stresses; unlikely to survive the impact of any project.

Age / Longevity: Rates tree's relative age: Young (long) / Semi- Mature / Mature / Over-Mature.

Comment: Notes; most obvious defects, insects, diseases or unique characteristics.

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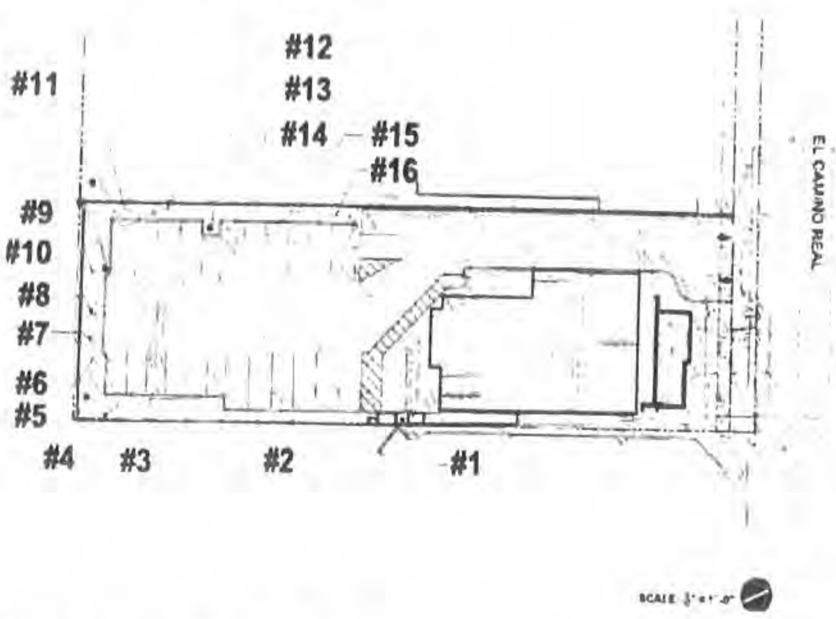
4.2 **Site Plan of Existing Trees based on submitted property plan created by:**

Van Dorn Abed, Landscape Architects, Inc.
81 14th Street. SF. CA. 94103
415-864-1921
hoanglan@valainc.com



Tree Description Table

Created by Scott Araki, Tree Specialist

Table includes Tree Number (corresponding to Previous Page site plan), Species name, Diameter at Standard Height, Canopy height, Canopy Width, Suitability of Preservation Rating, and General Description of tree condition

Tree #	Species	D.B.H. 48" above grade	Canopy Height	Canopy Width	Preservation Suitability	Health/Description
1	Walnut	18"	15'	15'	Fair	low

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2	Coastal Live Oak	33"	20'	25'	High	High
3	Coastal Live Oak	12"	20'	5'	High	Moderate
4	Monterey Pine	18"	35'	15'	low	low
5	Monterey Pine	24"	35'	20'	Moderate	Moderate
6	Coastal Redwood	14"	35'	8'	high	high
7	Coastal Redwood	16"	36'	6'	high	high
8	Coastal Redwood	25"	38'	10'	high	high
9	Date Palm	44"	8'	10'	high	high
10	Ginkgo	8"	25'	5'	low	Moderate
11	Liquid Amber	8"	25'	10'	high	high
12	Liquid Amber	8"	25'	6'	high	high
13	Date Palm	44"	50'	15'	high	high
14	Liquid Amber	8"	25'	8'	high	high
15	Liquid Amber	8"	25'	6'	high	high
16	Liquid Amber	12"	28'	12'	high	high

D.B.H. - Diameter at Breast Height

4.3 Basic Tree Preservation Measures (TPMs)

The basic tree protection fencing is just the first step in tree preservation. Many additional tools and procedures come into play. Usually restriction of space and time curtail the use of the more esoteric ones, but those below are significant. Ideally, the owner or designer makes decisions well ahead of the project's start so that only trees which can realistically be preserved are retained.

Tree Protection Fence (TPF)

· We have inspected the property; Type I fence is to be installed to protect 5, 6, 7, and 8, as shown in attached site plan.

· Keep *fence in tact* until ready for final landscaping.

· Use ***a continuous 6' foot high chain link fence with an allowed 2' foot opening to provide access for inspections***. The Posts = 8 ft. tall X 2" inch diameter galvanized

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posts driven 2 feet into the soil. Post Signs on the fence (8.5" X 11") warning of "penalty for working inside of fence or removal without written permission of Project or City Arborist (specific sign wording can be provided in memo form).

· Fence ***as much of the root zones as possible***, ideally 5' feet beyond the drip lines (branch tips) or including the entire TPZ. For this project's design constraints, the fence locations are pulled back to hardscape perimeters (with supplemental root zone protection described below).

· Prohibit ***all construction impact*** from disturbing the root zone area which can effect tree preservation.

·The "clinical" area of the trees are the trunk and the branch structures that we see above the ground, however to ensure the health of the tree and facilitate preservation we must also acknowledge and take into consideration the complex structures of the root system under the ground responsible for structural and nutritional health; therefore, ***should work be required within the TPZ the advice and guidance of a Project Arborist should be employed.***

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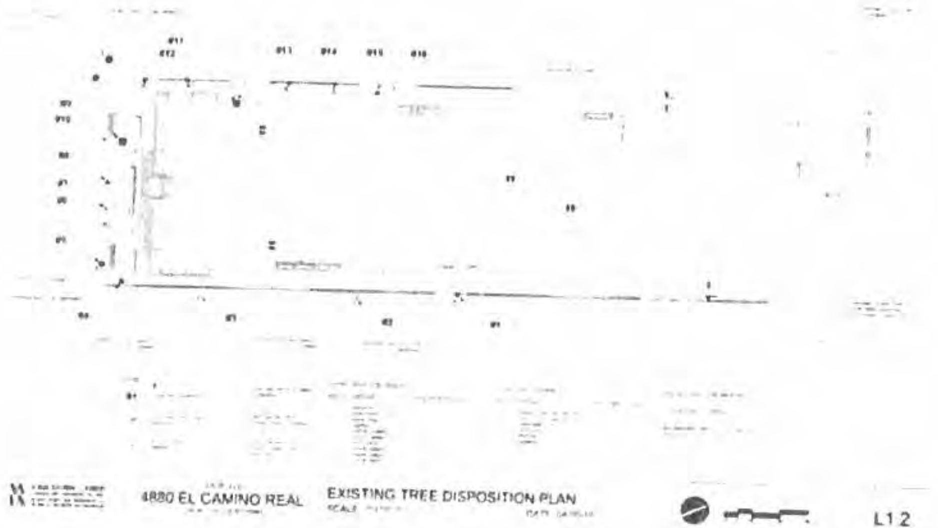

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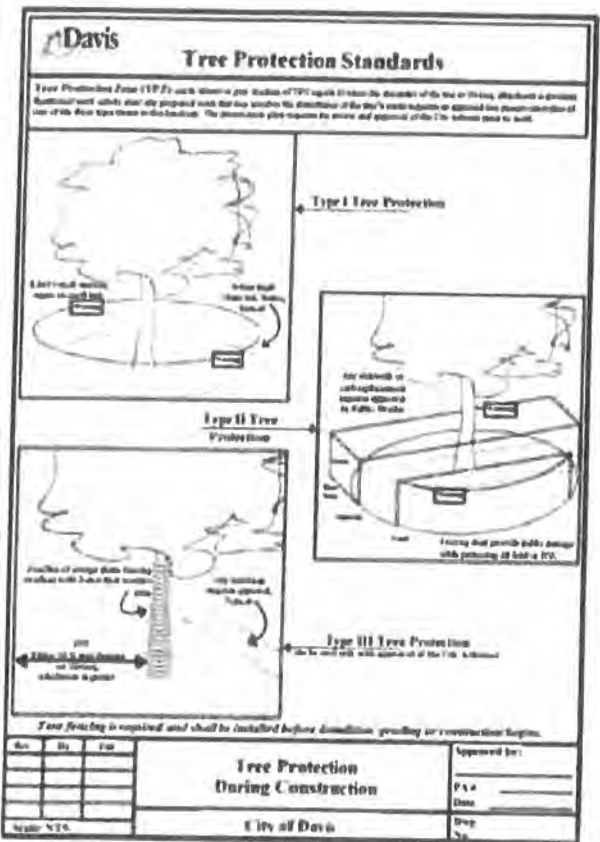

SUPPLEMENTAL PROTECTION – MULCH – ROOT ZONE BUFFER

Wood chip mulch shall be applied over open room zones (beneath trees' drip lines) to a depth of 4-6 inches, tapering to soil level within the 9 inches nearest the tree trunk.

Wood chips from tree pruning operations are ideal – they make a mulch that provides exceptional benefits to all trees – modifying the soil environment to conserve moisture, promote beneficial soil microbes, buffer against weather (desiccating sun, drying winds, pounding raindrops, temperature extremes), cushion the soil structure from foot (or vehicle) traffic.

Provide this for all trees – even inside of TPFs.

Where this buffer is used when TPFs cannot be placed at a drip line, additional supplemental material(s) may be required. When pre-existing driveway asphalt, or

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similar durable surface can be maintained intact, that may suffice. Otherwise for those cases, arborist sign-off is required, but generally depends on the traffic load:

-foot traffic and wheelbarrows: sheets of 5/8-inch plywood tacked together.

-Small bobcat-type vehicles and "Fergie" – size tractors: increase chip depth to 9 inches with 1-inch plywood sheets.

-Occasional full-size vehicles (cars, pickups, service vans): 9-inches of chips.

-Cement trucks, haulers, loaded dump trucks, heavy duty delivery trucks ["construction site temporary access road"]: a layer of biaxial geogrid (e.g. Tensar BX1200, or equal) on top of existing grade, topped with 12 inches of chips with 1-inch trench plate, tack welded together to avoid slipping apart.

Removal of any existing driveway or parking lot asphalt from over root zone areas must be performed with care. The excavator/tractor/trucks must keep all tires/tracks on the existing asphalt, picking it up as it goes. Re-laying the paving surfacing is done in reverse path, again keeping all tires/tracks on the hard surface above any root zone.

ROOT-SENSITIVE DESIGN

Additional preservation suggestions and techniques to consider can include:

-Pier and grade beam (on top of existing grade) to suspend construction above the roots.

-Trenchless technology to place utilities beneath roots without severing by trenching.

-Porous concrete, porous asphalt, open pavers can be used for some surfaces to let both air and water into root zones.

-Re-route the layout in a different location to avoid tree roots.

-Ramp over tree roots to avoid compacting their soil or severing them.

SUPPLEMENTAL WATERING AND FERTILIZING

Objective: To provide moisture to promote vigorous, healthy root growth.
Procedures:

For Heritage Trees Number 5,6,7, and 8, 2-4 inches of mulch is to cover as much of the root system as possible.

Water application hints can be found in the ISA BMPs (Fertilization).

Generally, a basic rule is to provide a deep soaking once a month during the hottest months of the year. Start before construction commences. Continue for a year after project completion. Modify by on-site arborist observations, especially during the "dry season" or in "drought conditions".

One application of water can be made to be included with a fertilizer application by surface application or soil injected to a depth of 6-8 inches.

Rules of thumb:

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-10-20 gallons of water per trunk diameter incher per month, applied evenly over the root zone.

-Applying one inch of water will wet a moderate clay soil to about a depth of 1 ft.

-Soil samples should be lab tested to determine nutrients lacking-lab fertilizer recommendations should be followed.

PRUNING

General: The care of trees is the obvious domain of tree care contractors. Any clearance pruning, removals, aesthetic trimming, removal of limbs, root pruning, stump grinding, and/or remedial repair must be performed by a tree care contractor with a current California Contractor's License – the appropriate classification is C61/D49, with workers being WC-ISA Certified Tree Workers supervised by an ISA Certified Arborist. This includes removal of trees and/or stumps with intertwining/overlapping branches or roots.

Routine: Typically trees would benefit from pruning near the end of a project, sometimes to improve the health and structure of some, but also to remove any deadwood, establishing a benchmark against which one can measure changes n the trees' status (e/g/, accumulation of new deadwood, hence decline).

Project-Critical: Of particular importance here may be a project clearance issues. Depending on the owner's decision about which trees to retain, crown cleaning, thinning and raising may be needed, especially structural pruning for the near at hand perimeter trees.

Standards: All tree work must comply with applicable tree-specific ANSI Standards and be performed within the guidelines of the ISA Best Management Practices – qualified tree care contractors will be thoroughly familiar with those published industry standards.

Typical pruning types to be used are described in the cited standards. Most of the trees would benefit from "cleaning" to remove deadwood and diseased or superfluous branches; plus, they can be improved structurally by "thinning" to reduce foliage branch end weights; many will require "raising" for project clearance.

Over-Pruning: Care must be taken to avoid over-pruning trees that one seriously wants to preserve. Not only does that ruin trees' structure, but it also removes so many food producing leaves that it stresses the trees (puts them on a diet), sometime irrecoverably.

Generally, one can prune 25% from a young, vigorously growing oak or redwood without resulting in a stress reaction. Mature trees usually show stress when 15% is pruned out. Over-mature specimens can readily show decline when even 5% of the live foliage is removed from an area of the foliage canopy.

Pruning Specifications: Objectives and procedures must be project-specific. As project details take shape, the Project Arborist can draft tree-specific pruning specs in line with

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those general guidelines, depending on the extent to which the project is designed to accommodate tree preservation.

Root Pruning: Any roots that must be severed must be cut cleanly (no shatter, rip, tear). A tree care contractor must root prune along any line, cut, or trench will disrupt roots larger that 1-inch in diameter. This root pruning is best scheduled prior to the installation contractor's work – this actually both speeds up the work for the contractor and cause less damage to the trees.

CUTS / FILLS

Cuts into the root zones must be minimized, per roots and root zones discussions above. Preview by Project or City Arborist required before commencing.

ROOT CROWN CHANGES / DISTURBANCES

Root crown: the base of a tree – where the trunk ends and scaffold roots flare off into the surrounding soil. No change or disturbance may occur in any root crown area and all materials inadvertently or intentionally accumulating there must be removed.

ATTACHMENTS

No construction apparatus shall be attached to any tree (braces, signs, slings, etc.).

TRENCHES

Proactively avoid routing any trench under any tree's drip line (including utility, sewer, phone, cable, electric, drainage, irrigation, decorative lighting, pool supply, etc.).

In the unlikely event that a trench must cross a root system, the plan must be reviewed by the Project Arborist before that work can be done.

Consider alternatives – Tunnel with trenchless technology equipment? Hand dig? Trench straight toward a tree's trunk from both sides and then follow tunneling procedures for the short distance between (tree-specific distances recommendations can be made, based on an individual subject tree's size)?

When trenching across a root zone is necessary on-site monitoring by Project Arborist is required.

EQUIPMENT CLEANING

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Establish a "Clean Out" site for such equipment as concrete trucks, cement forums, plastering apparatus, paint tools, etc. This must be located well away from any tree's root zone – or even any future planting areas.

All (sub) contractors must be on-notice that equipment must never be cleaned out over any tree's root zone – only within the designated "Clean Out" site.

STORAGE

No storage of gasoline, oil, or other chemicals over any tree's root zone.
No storage of any construction materials inside of any tree protection fence.

CHEMICAL SPILLS

Promptly confine and clean up any chemical spill over any root zone.

PARKING

No parking under tree canopies unless the root zones are protected. This will be precluded if they can be fenced at the drip lines. Even ore important is the root zone wood chip mulch.

Traffic causes irreparable harm to the soil structure and to the tree's roots due to the compaction.

Root zone compaction under a traffic load can be reduced by thickening the root zone buffer – say, beefing up to 6-8 inches of wood chips. Alternative buffer surfaces might include (alone or in combination): crushed rock, plywood sheets, steel plate, etc.

And one still must be careful of clearances to avoid bark bruising, trunk scrapes and limb breakage.

PUBLICATION & NOTICE

A copy of these tree protection measures must be on site, available to all workers, so they will be on notice regarding the tree's requirements.

One effective method is to paste up these pages on a sheet (usually titled "Tree Preservation Plan, Sheet T-1", or equivalent) and be certain that it is included in every set of construction drawings issued.

LANDSCAPE PLAN

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A well-though-out landscaping plan can be essential. It must take into account the status and longevity of this site's existing trees. Plan for the irrigation lines to be laid on top of existing grade, placed beneath the wood-chip-mulch layer. Expect no irrigation or water-loving plants within 10 feet of any mature tree's trunk.

MONITORING

Project Arborist inspections begin with a sign-off to confirm that initial tree protection measures are in place before commencement of any other part of the project.

The City of Los Altos requires periodic monitoring inspections by the Project Arborist verifying that the tree preservation measures continue to be effective, with monthly reports faxed to the owner and the City Arborist.

PENALTIES

All (sub) contractors and their personnel must understand that they are responsible for their actions around these trees.

Circumventing tree protection measures will most certainly cause the tree(s) additional stress. This can be calculated as a change in the tree's status and there are formulae for assessing damage dollar amounts (see CTLA, Council of Tree and Landscape Appraisers).

Besides penalties derived from action on the City Ordinance, court have required contractors to pay penalties directly to the property owner suffering the damage/loss (diminution in tree value), sometimes assessed as double or triple if intentional action.

5.0 CERTIFICATION

I certify that all the statements of fact in this report are true, complete, and correct to the best of my knowledge, ability, and belief and are made in good faith.

Thank you for the opportunity to be of service to you. Should you have any questions or concerns please feel free to contact me at any time of the day.

Respectfully submitted,

Don Araki
ISA Certified Arborist #WE-6547A
The Tree Specialist
(408) 209-1007

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DISCUSSION ITEMS

Agenda Item # 9

AGENDA REPORT SUMMARY

Meeting Date: August 23, 2016

Subject: 4880 El Camino Real Development Application

Prepared by: David Kornfield, Advance Planning Services Manager
Reviewed by: Jon Biggs, Community Development Director
Approved by: Chris Jordan, Interim City Manager

Attachments:
1. Resolution No. 2016-27 of Findings and Conditions
2. Density Bonus and Concession Analysis, dated August 12, 2016
3. Revised Traffic Report, dated August 12, 2016
4. Memorandum to the Planning and Transportation Commission, dated May 19, 2016

Initiated by:
Applicant

Fiscal Impact:
The project provides three fiscal benefits: traffic impact fees, in-lieu of parkland fees and increased property tax. The traffic impact fees total $79,317 ($3,777 per unit). The park fees total $745,500 ($35,500 per unit). The estimated property tax revenue to the City from the project is approximately $20,000 per year.

Environmental Review:
Categorically exempt per Section 15332 of the California Environmental Quality Act Guidelines

Policy Questions for Council Consideration:
- Do the requested incentives and waivers meet the standards contained in the State's Density Bonus law? Is the requested incentive required to provide for affordable housing costs and are the waivers needed to permit the physical development of the proposed development with a density bonus?

Summary:
- The concession analysis shows that the proposed height concession is needed to offset the cost of the three affordable housing units. The height incentive is economically justified under both the five-story and four-story alternatives.
- The five-story alternative is the preferred alternative by the applicant. From a staff perspective the five-story alternative minimizes the project's impacts on the surrounding residential neighborhood.
- The Planning and Transportation Commission (PTC) held a hearing on the proposed project on DATE and recommended approval by a vote of 6-1.

Staff Recommendation:
In accordance with the recommendation of the PCT, move to approve design review, use permit and subdivision applications 16-D-01, 16-UP-02 and 16-SD-01 subject to the recommended findings and conditions of approval in Resolution No. 2016-27.

Background

This is the continued review for a 21-unit, multiple-family residential condominium building. On June 28, 2016 the City Council reviewed the project and continued its review subject to addressing the following questions:

1. Do requested incentives and waivers meet the standards contained in the State's Density Bonus law? Is the requested incentive required to provide for affordable housing costs, and are the waivers needed to permit the physical development of the proposed project with a density bonus?

2. Can the City require additional affordable housing units?

3. Can the City require a different mix of unit types (e.g., include one bedroom units)?

The Council also raised the following issues/concerns:

4. Consider a four-story alternative that uses exceptions to the rear yard setback area to minimize building height;

5. Clarify the trash service and staging;

6. Provide more landscape planting area in the front yard and reconsider the choice of using palm trees;

7. Clarify the storage unit sizes;

8. Provide more information on the parking system including the maintenance schedule, service response, access timing, etc.;

9. Clarify the location of the loading space;

10. Clarify other Municipal Codes related to the project such as required site area and open space.

In response to the Council's direction, staff commissioned an economic analysis of the requested concession (discussed below) and the applicant prepared a four-story alternative set of plans for consideration. The four story alternative project has: a roof height of 54 feet compared to the roof height of 62 feet in the original proposal; an elevator tower that reaches 69.5 feet versus the 73 feet of the original project; and interior ceiling heights in the units of 12 feet versus the originally proposed 10 feet, nine inches. The four story alternative has its third and fourth floors set back 50

feet from the rear property line, where a minimum of 100 feet is required. The applicant favors the original five-story proposal.

Discussion/Analysis

Density Bonus, Concession, and Waiver Analysis

The applicant's original proposal includes an incentive, or concession, to exceed the overall building height limit by 17 feet (45 feet to 62 feet). The additional height incentive or concession allows the project to have taller internal ceilings than the City's height code would normally permit and allow the four density bonus units on a fifth story. By definition, a development incentive or concession is a reduction in site development standards or change to zoning resulting in "identifiable, financially sufficient, and actual cost reductions." To deny a request for an incentive, the City must find that it "is not required in order to provide for affordable housing costs."

The original proposal also includes a waiver to allow the rooftop structures to exceed eight feet above the rooftop and to exceed the four percent area limit for such structures. By definition, waivers are different from incentives or concessions. Waivers are necessary when a development standard has the effect of physically precluding the construction of the proposed development. In this case, a fifth floor is needed to accommodate the additional four units. The waiver for the height and area of the rooftop structures is necessary since the project relies on taller ceiling heights and rooftop amenities to make up for the development cost of the affordable housing units, where a taller elevator cab and further enclosure of the rooftop structures is necessary to provide for the rooftop amenities.

At the request of the City Council, staff commissioned a Density Bonus and Concession Analysis prepared by Keyser Marston Associates, dated August 12, 2016. The analysis concludes that the proposed height concession is necessary to offset the cost of the three affordable housing units. The report analyzed the original five-story project, the developer's four-story alternative, a conforming project and an alternative without a density bonus. The concession analysis is included as Attachment 2.

According to the analysis, under both of the applicant's project alternatives, a height concession to allow 11 or 12 foot floors is needed to offset the cost to provide the three affordable housing units. According to the analysis, the cost of providing the three affordable housing units is approximately $2 million. Considering the height concession for both alternatives, the report calculates the value increment between $1.35 and $1.7 million. This supports the conclusion that the height concession for taller floors is reasonably necessary to address the cost of the three affordable housing units.

Additional Affordable Units
The application provides enough affordable units to entitle the project to the density bonus requested, and it meets the requirements of the City's affordable housing ordinance. Given this, the City does not have a basis to require additional affordable housing units.

Housing Unit Mix
The City Council inquired about diversifying the housing unit size, or mix of bedrooms, specifically, whether one bedroom units could or should be added to the mix. Although there are no zoning regulations requiring a specific size of housing units, Housing Element Program 2.1.1 supports encouraging a diversity of housing:

> Require diversity in the size of units for project in mixed-use or multifamily zones to accommodate the varied housing needs of families, couples, and individuals. Affordable housing units proposed within projects shall reflect the mix of community housing needs.

The general mix of housing units in each project is dependent on the permitted density and the allowed building area. In Los Altos, typically the lower density districts have smaller units (mostly one and two bedroom units) largely due to the limited building envelope area of the lot, with the exception of single-family districts. Downtown and along El Camino Real, where more building area is allowed, the City has typically seen larger units mostly ranging from two, three and sometimes four bedrooms.

The original five-story plan has nine, two-bedroom units and 12 three-bedroom units. The original plan offers three affordable housing units: one, three-bedroom, moderate income; and two, two-bedroom low income. The applicant revised the original plan to relocate one of the two-bedroom affordable units from the east side to the west side of the third level, which increases the size of the affordable unit by 44 square feet.

The alternative four-story plan has two, one-bedroom units, 10, two-bedroom units, and 9, three-bedroom units. The alternative plan offers the same mix and orientation of affordable housing units as the original: one, moderate-income, three-three bedroom unit; and two, low-income, two bedroom units.

A 17-unit project entirely conforming to the existing zoning could have units averaging 1,545 sf in size. The units in the proposed project average approximately 1,527 sf in size. This supports the need for a fifth story to accommodate the additional four units, in that the increased height is not due to an increase in unit size over what could be included in a conforming project.
Setback Incentive or Concession for Alternative Project
The applicant prepared a four-story alternative for the project at the request of the City Council. The four-story alternative reduces the building size by approximately 1,300 square feet, incorporates

two, one-bedroom units and distributes two full units and four partial units into the required rear yard setback area. The four-story alternative proposes a 50-foot rear yard setback for the third and fourth floors, where a setback of 100 feet is required.

In 2010 the City increased the height limit in the subject Commercial Thoroughfare district to 45 feet to facilitate mixed-use commercial and housing potential. In doing so, the City also increased the setback requirement for buildings over 30 feet tall to a minimum 100-foot rear yard setback. The increased rear yard setback was to help mitigate the more intensive development impacts from the adjacent residences.

Based on the intent of the setback requirement, staff recommends the applicant's original approach that maintains the 100-foot rear yard setback. Although the proposed four-story alternative is eight feet lower than the original proposal, its 54-foot roof height is roughly a one-to-one setback (horizontal to vertical) from the rear property line, which will appear massive and difficult to buffer from the two-story residential apartments behind. From the sides, the approximately 150-foot long four story building is less articulated (more uniform in height appearance) and appears out of context for the scale of the smaller, narrow property.

Trash Service

The applicant clarified that the trash area will use three-yard dumpsters instead of 96-gallon bins. This is to maintain an adequate service for the building and to facilitate and minimize the frequency of pick-up. The trash room is designed to accommodate a service cart to deliver the dumpsters to the street. The dumpster staging area was changed to the street to the east of the driveway where there will be no parking allowed. A condition of approval requires that the dumpsters would only be allowed in the street on their scheduled service days and must be removed before 5 PM on the same day as service. According to Mission Trail Waste Systems, the trash service along El Camino Real occurs from 6 AM to 10:30 AM and mostly on the early side. The on-street staging location to the east of the driveway minimizes disruption to the street and allows the applicant to increase the planting area in the front yard.

Landscape

The applicant added approximately 100 square feet of planting area to the front yard. In addition to replacing the decomposed granite onsite trash staging area with plantings, the applicant minimized the walkway paving. The softscape was increased from 52 to 57 percent in the front yard not including the driveway and turnaround. The Commercial Thoroughfare (CT) District requires landscaping at least 50 percent of the front yard and does not define the term landscape. Other commercial districts such as the OA-1 and CD/R3 define required front yard landscape to allow hard and soft surfaces.

The proposed landscape concept maintains the specimen palm trees. The project landscape architect indicated that the palm trees will not conflict with the London plane street trees noting that

the palm trees are offset enough, their canopy is significantly different, and the palm trees will be taller than the street trees. At the time of planting the palm trees will be 14 to 16 feet tall; the London plane trees will be nine to 10 feet tall.

Storage Units

The project provides 21 storage units, one for each residential unit. Sixteen storage units range from 140 cubic feet to 200 cubic feet. Four are 250 cubic feet; one is 375 cubic feet. They generally reflect the progression in sizes of the residential units. The storage unit access doors are three feet wide. The ceilings are nine feet tall.

The smallest storage unit is 45 percent larger than the 96 cubic feet required in the R3-1.8 District. The zoning code requires the 96 cubic feet of storage in the R3-1.8 District due to the generally smaller dwelling units where it was determined that the storage was a necessary element to help preserve the garage parking for vehicles.

Parking System

The parking lift system is organized into two bays, one on each side of the garage. Each bay allows a minim of one car to access the lift at a time, which makes the minimum parking potential two cars at a time with both bays. According to the manufacturer, more than one car may be accessed at a time if they are located at the parking level. According to the revised traffic report, the parking lift takes approximately two minutes per car, which equates to a maximum service rate of 60 vehicles per hour or one car per minute. The traffic report (Attachment 3) acknowledges that the parking system may have user imposed delays such as for unloading groceries but that they would be infrequent and generally occur during non-commute periods when traffic accessing the garage is lower. The traffic report concludes that the parking system would maintain a sufficient hourly capacity. The applicant has included a battery back-up power supply for the parking system.

Loading Space

Off-street loading spaces are not required for multiple-family residential uses. The City's off-street parking requirements, Municipal Code Section 14.74.160, requires on-site loading spaces for permitted commercial uses when determined necessary. This is to support the typically more frequent and expansive loading associated with such commercial uses. In staff's view, it is appropriate, however, to include an on-street loading space due to the limited potential of on-site parking opportunities. By condition of approval, the project would be required to establish a loading space adjacent the project, which would double as guest parking after normal business hours on weekdays and unrestricted parking on weekends.

Site Area

The site area of the subject property is slightly nonconforming. Section 14.50.070 of the Municipal Code requires a minimum site area of 20,000 square feet and 75 feet of frontage. The subject parcel has 19,533 square feet and 75 feet of frontage. The minimum site area is to ensure an appropriate

parcel size to facilitate development. Municipal Code Section 14.66.030 provides that nonconforming lots may be used but subject to the district regulations.

Open Space
The zoning code has no requirements for open space for projects. Subdivisions, however, require developers to set aside parkland, provide in-lieu park fees, or both, at the discretion of the City (Chapter 13.24 of the Municipal Code). To require a land dedication, however, the City must have an identified need for a park in the General Plan. In-lieu fees are required when there is not an identified need for a park or recreational facility; when dedication is impossible, impractical or undesirable; or when the subdivision contains 50 or fewer parcels. Staff's evaluation is that in-lieu fees are required to satisfy the park land dedication requirement.

Options

1) Approve the project as recommended by the Planning and Transportation Commission and staff.

Advantages: The project replaces an underdeveloped commercial property with a high-quality residential development that helps the City meet its goals for intensive development in the commercial thoroughfare. Also the project helps the City meet its housing and affordable housing goals.

Disadvantages: The project displaces a commercial development opportunity.

2) Remand the project to the Planning and Transportation Commission and require desired changes to meet the required findings including design, use permit and/or subdivision requirements, and/or direct the applicant to consider a mixed-use project that includes commercial development.

Advantages: The changes might provide more commercial area.

Disadvantages: The project might include a difficult to lease or sub-par commercial use and less housing.

3) Approve alternate 'B'. This goes into 100' rear yard setback but eight feet lower than the original proposal

Advantages: Results in a lower building.

Disadvantages: Encroaches 50' into the 100' rear yard setback. Results in a 54' tall building closer to an adjoining residential use than permitted by the site development standards.

4) Request a peer review of the economic analysis.

Advantages: Provides a review of the economic analysis and conclusions reached in that report.

Disadvantages: May result in differing opinions on the need for the requested incentive.

Recommendation

The staff recommends approving the project as originally recommended by the Planning and Transportation Commission.

RESOLUTION NO. 2016-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS FOR DESIGN REVIEW, USE PERMIT AND SUBDIVISION APPLICATIONS FOR A 21-UNIT, MULTIPLE-FAMILY PROJECT AT 4880 EL CAMINO REAL

WHEREAS, the City of Los Altos received a development application from LOLA, LLC for a multiple-family residential condominium building, which includes Design, Use Permit and Subdivision applications 16-D-01, 16-UP-01 and 16-SD-01, referred herein as the "Project"; and

WHEREAS, the applicant LOLA, LLC, offers one Moderate-Income and two Low-Income affordable housing units; and

WHEREAS, the applicant LOLA, LLC seeks a development incentive to allow the building to have a height of 62 feet, where the Code allows a height of 45; and

WHEREAS, the applicant LOLA, LLC seeks waivers to allow a) rooftop structures 11 feet above the roof, where the Code allows such structures to be eight feet above the roof; and c) enclosed roof top structures at six percent of the roof area, where the Code limits such structures to four percent of the roof area; and

WHEREAS, under Government Code 65915 said Project is entitled to a development incentive and 21.5 percent density bonus; and

WHEREAS, said Project is exempt from environmental review as in-fill development in accordance with Section 15332 of the California Environmental Quality Act of 1970 as amended ("CEQA"); and

WHEREAS, the Planning and Transportation Commission held a duly noticed public hearing on Project on May 19, 2016, and recommended approval of the Project; and

WHEREAS, the Design, Use Permit and Subdivision applications were processed in accordance with the applicable provisions of the California Government Code and the Los Altos Municipal Code; and

WHEREAS, the location and custodian of the documents or other materials which constitute the record of proceedings upon the City Council's decision was made are located in the Office of the City Clerk.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos hereby approves the Project subject to the findings and conditions of approval attached hereto as Exhibit "A" and incorporated by this reference.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 23rd day of August, 2016 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jeannie Bruins, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

EXHIBIT A

FINDINGS

16-D-01, 16-UP-02 and 16-SD-01—4880 El Camino Real

1. With regard to environmental review, the City Council finds in accordance with Section 15332 of the California Environmental Quality Act Guidelines, that the following Categorical Exemption findings can be made:

   a. 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, including incentives for the production of affordable housing;

   b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; there is no record that the project site has value as habitat for endangered, rare or threatened species;

   c. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the completed studies and staff analysis reflected in this report support this conclusion; and

   d. The project has been reviewed and it is found that the site can be adequately served by all required utilities and public services.

2. With regard to commercial design review, the City Council makes the following findings in accordance with Section 14.78.040 of the Municipal Code:

   A. The proposal meets the goals, policies and objectives of the General Plan with its level of intensity and residential density within the El Camino Real corridor, and ordinance design criteria adopted for the specific district such as the stepped building massing and the landscape buffer at the rear;

   B. The proposal has architectural integrity and has an appropriate relationship with other structures in the immediate area in terms of height, bulk and design; the project has a mixture of scales relating to the larger street and vehicles and the smaller pedestrian orientation;

   C. Building mass is articulated to relate to the human scale, both horizontally and vertically as evidenced in the design of the projecting bay windows, overhangs and balconies. Building elevations have variation and depth and avoid large blank wall surfaces. Residential projects incorporate elements that signal habitation, such as identifiable entrances, overhangs, bays and balconies;

   D. Exterior materials and finishes such as the stained mahogany entry, natural limestone, cementitious horizontal siding, C-channel steel and architectural glass railings, convey

quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, and structural elements;

E. Landscaping such as the specimen palm trees, timber bamboo, hedges and groundcover is generous and inviting and landscape and hardscape features such as the limestone pavers, precast cement planters and benches are designed to complement the building and parking areas and to be integrated with the building architecture and the surrounding streetscape. Landscaping includes substantial street tree canopy including three street trees and two specimen palm trees, either in the public right-of-way or within the project frontage;

F. Signage such as the laser cut building numbers is designed to complement the building architecture in terms of style, materials, colors and proportions;

G. Mechanical equipment is screened from public view by the building parapet and is designed to be consistent with the building architecture in form, material and detailing; and

H. Service, trash and utility areas are screened from public view by their location in the building garage and careful placement to the side of the building consistent with the building architecture in materials and detailing.

3. With regard to use permit, the City Council finds in accordance with Section 14.80.060 of the Municipal Code:

   a. That the proposed location of the multiple-family residential use is desirable or essential to the public health, safety, comfort, convenience, prosperity, or welfare in that the zoning conditionally permits it and the project provides housing at a variety of affordability levels;

   b. That the proposed location of the multiple-family residential use is in accordance with the objectives of the zoning plan as stated in Chapter 14.02 of this title in that the project provides for community growth along sound line; that the design is harmonious and convenient in relation to surrounding land uses; that the project does not create a significant traffic impact; that the project helps meet the City's housing goals including affordable housing; that the project protects and enhances property values; and that the project enhances the City's distinctive character with a high-quality building design in a commercial thoroughfare context;

   c. That the proposed location of the multiple-family residential use, under the circumstances of the particular case and as conditioned, will not be detrimental to the health, safety, comfort, convenience, prosperity, or welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity;

   d. That the proposed multiple-family residential use complies with the regulations prescribed for the district in which the site is located and the general provisions of Chapter 14.02;

4. With regard to the subdivision, the City Council finds in accordance with Section 66474 of the Subdivision Map Act of the State of California:

   a. That the proposed subdivision is consistent with the General Plan;

   b. That the site is physically suitable for this type and density of development in that the project meets all zoning requirements except where development incentives have been granted;

   c. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage, or substantially injure fish or wildlife; and no evidence of such has been presented;

   d. That the design of the condominium subdivision is not likely to cause serious public health problems because conditions have been added to address noise, air quality and life safety concerns; and

   e. That the design of the condominium subdivision will not conflict with public access easements as none have been found or identified on this site.

5. With regard to requested incentive and waivers, the City Council makes the following findings:

   a. The economic analysis by Keyser Marston and Associates commissioned by the City to evaluate the requested height concession demonstrates that the proposed height concession provides identifiable, financially sufficient, and actual cost reductions and is needed to offset the cost of the three affordable housing units. According to the analysis, a height concession to allow 11 foot floors is needed to offset the cost to provide the three affordable housing units, in that the cost of providing the three affordable housing units is approximately $2 million, and the height concession provides a value increment of $1.7 million. This supports the conclusion that the height concession for taller floors is reasonably necessary to provide for the cost of the three affordable housing units.

   b. The requested waivers to allow the rooftop structures to exceed eight feet above the rooftop and to exceed the four percent area limit for rooftop structures are necessary since the project relies on taller ceiling heights in the dwelling units and rooftop amenities. A taller elevator cab is required to accommodate the taller ceiling heights in the dwelling units and further enclosure of the rooftop structures is necessary to provide for and accommodate the rooftop amenities. Without the requested waivers, the City's development standards would "physically preclude" the development of the project with the density bonus units and the requested height concession.

CONDITIONS

16-D-01, 16-UP-02 and 16-SD-01—4880 El Camino Real

GENERAL

1. **Approved Plans**

   The project approval is based upon the plans received on August 12, 2016, except as modified by these conditions.

2. **Public Right-of-Way, General**

   All work within the public right-of-way shall be done in accordance with plans to be approved by the City Engineer.

3. **Encroachment Permit**

   The applicant shall obtain an encroachment permit, permit to open streets and/or excavation permit prior to any work done within the public right-of-way and it shall be in accordance with plans to be approved by the City Engineer. *Note: Any work within El Camino Real will require applicant to obtain an encroachment permit with Caltrans prior to commencement of work.*

4. **Public Utilities**

   The applicant shall contact electric, gas, communication and water utility companies regarding the installation of new utility services to the site.

5. **ADA**

   All improvements shall comply with Americans with Disabilities Act (ADA).

6. **Sewer Lateral**

   Any proposed sewer lateral connection shall be approved by the City Engineer.

7. **Upper Story Lighting**

   Any upper story lighting on the sides and rear of the building shall be shrouded or directed down to minimize glare.

8. **Indemnity and Hold Harmless**

   The property owner agrees to indemnify and hold City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of City in connection with City's defense of its actions in any proceeding brought in any State or Federal Court, challenging the City's action with respect to the applicant's project.

9. **Plan Changes**

The Planning and Transportation Commission may approve minor changes to the development plans. Substantive project changes require a formal amendment of the application with review by the Planning and Transportation Commission and City Council.

PRIOR TO FINAL MAP RECORDATION

10. **CC&Rs**

The applicant shall include provisions in the Covenants, Conditions and Restrictions (CC&Rs) that: a) restrict storage on the private patio and decks and outline rules for other objects stored on the private patio and decks with the goal of minimizing visual impacts; and b) require the continued use and regular maintenance of the Klaus Multiparking vehicle parking system and a power back up system for the parking system. Such restrictions shall be approved by and run in favor of the City of Los Altos.

11. **Public Utility Dedication**

The applicant shall dedicate public utility easements as required by the utility companies to serve the site.

12. **Fees**

The applicant shall pay all applicable fees, including but not limited to sanitary sewer impact fees, parkland dedication in lieu fees, traffic impact fees and map check fee plus deposit as required by the City of Los Altos Municipal Code.

PRIOR TO BUILDING PERMIT SUBMITTAL

13. **Subdivision Map Recordation**

The applicant shall record a final map. Plats and legal descriptions of the final map shall be submitted for review and approval by the City Land Surveyor, and the applicant shall provide a sufficient fee retainer to cover the cost of the final map application.

14. **Public Improvements**

The property owner or applicant shall design the project to install remove and replace with current City Standard sidewalk, vertical curb and gutter, and driveway approaches from property line to property along the frontage of El Camino Real. Such work shall restore the existing driveway approach to be ADA compliant and to the current City Standard vertical curb and gutter along the northerly corner of the property.

The applicant shall design the project to include no parking red curbs on either side of the driveway, and a loading zone to the west of the driveway as approved by the Transportation Services Manager. Such design shall include appropriate signage including but not limited to

permitting vehicle parking in the loading zone during non-business hours (e.g., 6 PM to 8 AM) on weekdays and anytime on weekends.

15. **Street Trees**

The street trees shall be installed along the project's El Camino Real frontage and include two trees in front of 4896 El Camino Real, as directed by the City Engineer.

16. **Sidewalk Lights**

The owner or applicant shall maintain and protect the existing light fixture in the El Camino Real sidewalk, as directed by the City Engineer.

17. **Performance Bond**

The applicant shall submit a cost estimate for all improvements in the public right-of-way and shall submit a 100 percent performance bond (to be held until acceptance of improvements) and a 50 percent labor and material bond (to be held until 6 months after acceptance of improvements) for the work in the public right-of-way.

18. **Right of Way Construction**

The applicant shall submit detailed plans for any construction activities affecting the public right-of-way, including but not limited to excavations, pedestrian protection, material storage, earth retention, and construction vehicle parking, to the City Engineer for review and approval. The applicant shall also submit on-site and off-site grading and drainage plans that include drain swales, drain inlets, rough pad elevations, building envelopes, and grading elevations for approval by the City.

19. **Sewer Capacity**

The applicant shall show sewer connection to the City sewer main and submit calculations showing that the City's existing 8-inch sewer main will not exceed two-thirds full due to the additional sewage capacity from proposed project. For any segment that is calculated to exceed two-thirds full for average daily flow or for any segment that the flow is surcharged in the main due to peak flow, the applicant shall upgrade the sewer line or pay a fair share contribution for the sewer upgrade to be approved by the Director of Public Works.

20. **Trash Enclosure**

The applicant shall contact Mission Trail Waste Systems and submit a solid waste, recyclables (and organics, if applicable) disposal plan indicating the type, size and number of containers proposed, and the frequency of pick-up service subject to the approval of the Engineering Division. The applicant shall also submit evidence that Mission Trail Waste Systems has reviewed and approved the size and location of the proposed trash enclosure. The approved trash staging location shall be maintained as required by the City Engineer.

The trash staging area shall only be allowed in the street adjacent to the curb to the east of the driveway on scheduled trash and recycling service days only. Any trash and recycling containers staged in the street shall be returned to the on-site storage area in the parking garage by 5 PM of the same day as serviced or be subject to towing.

21. **Stormwater Management Plan and NPDES Permit**

The applicant shall submit a complete Stormwater Management Plan (SWMP), a hydrology and hydraulic report for review and approval showing that 100% of the site is being treated; is in compliance with the Municipal Regional Stormwater NPDES Permit (MRP). The proposed storm water media filter is not considered to be an LID treatment measure per the C.3 Technical Guidance Handbook of the Santa Clara Valley Urban Runoff Prevention Program. The implementation of Low Impact Development ("LID") per the current MRP such as using evapotranspiration, infiltration, and/or rainwater harvesting and reuse shall be used. Applicant shall provide a hydrology and hydraulic study, and an infeasible/feasible comparison analysis to the City for review and approval for the purpose to verify that MRP requirements are met. Please complete in detail the attached Provision C.3 Data Form.

22. **Green Building Standards**

The applicant shall provide verification that the project will comply with the City's Green Building Standards (Section 12.26 of the Municipal Code) from a qualified green building professional.

23. **Property Address**

The applicant shall provide an address signage plan as required by the Building Official.

24. **Landscape**

The applicant shall provide a landscape and irrigation plan in conformance to the City's Water Efficient Landscape Regulations in accordance with Chapter 12.46 of the Municipal Code.

PRIOR TO ISSUANCE OF DEMOLITION AND/OR BUILDING PERMIT

25. **Construction Management Plan**

The applicant shall submit a construction management plan for review and approval by the Community Development Director. The construction management plan shall address any construction activities affecting the public right-of-way, including but not limited to: prohibiting dirt hauling during peak traffic hours, excavation, traffic control, truck routing, pedestrian protection, appropriately designed fencing to limit project impacts and maintain traffic visibility as much as practical, material storage, earth retention and construction and employee vehicle parking.

26. **Sewer Lateral**

The applicant shall abandon additional sewer laterals and cap at the main if they are not being used. A property line sewer cleanout shall be installed within 5 feet of the property line within private property.

27. **Solid Waste Ordinance**

The applicant shall comply with the City's adopted Solid Waste Collection, Remove, Disposal, Processing & Recycling Ordinance, which requires mandatory commercial and multi-family dwellings to provide for recycling, and organics collection programs as per Chapter 6.12 of the Municipal Code.

28. **Air Quality Mitigation**

The applicant shall implement and incorporate the air quality mitigations into the plans as required by staff in accordance with the report prepared by Illingsworth & Rodin, Inc., dated March 18, 2016.

29. **Noise Mitigation**

The applicant shall implement and incorporate the noise mitigation measures into the plans as required by staff in accordance with the report by Wilson Ihrig, dated March 2, 2016 and revised on April 20, 2016.

30. **Tree Protection**

The applicant shall implement and incorporate the tree protection measures into the plans and on-site as required by staff in accordance with the report by The Tree Specialist, dated April 21, 2106.

31. **Affordable Housing Agreement**

The applicant shall offer for a minimum 30-year period, one, three-bedroom unit at the moderate-income level, and two, two-bedroom units at the low-income level, in accordance with the City's Affordable Housing Agreement, in a recorded document in a form approved by the City Attorney.

PRIOR TO FINAL INSPECTION

32. **Maintenance Bond**

The applicant shall submit a one-year, 10-percent maintenance bond upon acceptance of improvements in the public right-of-way.

33. **Stormwater Facility Certification**

The applicant shall have a final inspection and certification done and submitted by the Engineer who designed the SWMP to ensure that the treatments were installed per design. The applicant shall submit a maintenance agreement to City for review and approval for the stormwater treatment methods installed in accordance with the SWMP. Once approved, the applicant shall record the agreement.

34. **Stormwater Catch Basin**

The applicant shall label all new or existing public and private catch basin inlets which are on or directly adjacent to the site with the "NO DUMPING - FLOWS TO THE BAY" logo as required by the City Engineer.

35. **Green Building Verification**

The applicant shall submit verification that the structure was built in compliance with the California Green Building Standards pursuant to Section 12.26 of the Municipal Code.

36. **Landscaping Installation**

The applicant shall install all on- and off-site landscaping and irrigation, as approved by the Community Development Director and the City Engineer.

37. **Signage and Lighting Installation**

The applicant shall install all required signage and on-site lighting per the approved plan. Such signage shall include the disposition of guest parking, the turn-around/loading space in the front yard and accessible parking spaces.

38. **Acoustical Report**

The applicant shall submit a report from an acoustical engineer ensuring that the rooftop mechanical equipment meets the City's noise regulations.

39. **Landscape Certification**

The applicant shall provide a Certificate of Completion conforming to the City's Water Efficient Landscape Regulations.

40. **Condominium Map**

The applicant shall record the condominium map as required by the City Engineer.

41. **Public Improvements and Street Damage**

The applicant shall install all public improvements required herein, and shall repair any damaged right-of-way infrastructures and otherwise displaced curb, gutter and/or sidewalks and City's

storm drain inlet shall be removed and replaced as directed by the City Engineer or his designee. The applicant is responsible to resurface (grind and overlay) half of the street along the frontage of El Camino Real if determined to be damaged during construction, as directed by the City Engineer or his designee.

42. **Stormwater Management Plan Inspection**

The applicant shall have a final inspection and certification done and submitted by the Engineer who designed the SWMP to ensure that the treatments were installed per design. The applicant shall submit a maintenance agreement to City for review and approval for the stormwater treatment methods installed in accordance with the SWMP. Once approved, the applicant shall record the agreement.

43. **Driveway Visibility and Loading Zone**

The applicant shall provide no parking areas on either side of the driveway and a loading zone to the west of the driveway as approved by the City Engineer.

KEYSER MARSTON ASSOCIATES.

ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN:
REAL ESTATE
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
REED T. KAWAHARA
DAVID DOEZEMA

LOS ANGELES
KATHLEEN H. HEAD
JAMES A. RABE
GREGORY D. SOO-HOO
KEVIN E. ENGSTROM
JULIE L. ROMEY

SAN DIEGO
PAUL C. MARRA

To: Jon Biggs
Community Development Director
City of Los Altos

From: Keyser Marston Associates, Inc.

Date: August 15, 2016

Subject: Density Bonus & Concession Analysis - 4880 El Camino Real

In accordance with your request, Keyser Marston Associates, Inc. (KMA) has prepared a real estate economic analysis related to the proposed residential project at 4880 El Camino Real in the City of Los Altos. The economic analysis addresses the proposal by the Developer of the project, LOLA, LLC, to obtain a density bonus and height concession as provided for by the State Density Bonus law (California Government Code Section 65915).

In summary, the finding of the analysis is that the proposed height concession is needed in order to offset the cost of the three proposed affordable units in the project (two at Low Income and one at Moderate Income). In other words, including three affordable units in the project would satisfy the provision of the State Density Bonus law that the height concession is economically justified.

I. Background

The proposed project is located on an approximately 0.45-acre site at 4880 El Camino Real between Los Altos Square and Jordan Avenue. Existing zoning for the site allows for 17 units, a density of 38 units/acre. The building height limit for the site is 45 feet. In terms of affordable housing requirements, the City's inclusionary housing ordinance requires that one of the project's units be sold to a Moderate Income household and one sold to a Low Income household (households earning up to 120% and 80% of area median income respectively).

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The Developer has prepared two project alternatives. In the first alternative, the building would be 5-stories and 62 feet in height, not including rooftop mechanical equipment. Parking would be in a subterranean parking garage with a mechanical parking lift system. The project is proposed to include 21 units, resulting in a density of 47 units/acre. Three affordable units are proposed - two Low Income units required to qualify for the density bonus and one additional affordable unit at Moderate Income.

The Developer's second project alternative is similar to the first alternative except the project would have four stories rather than five. The 21 units are still achieved in this alternative despite the loss of the fifth story by reducing the building setbacks on the rear of the property. It is noted that the 4-story alternative has about 4% less sellable building area than the 5-story alternative (30,768 vs. 32,074 square feet).

The Developer is seeking a density bonus pursuant to the State Density Bonus law to increase the unit count from 17 to 21 units. In addition to the density bonus, the Developer is also seeking a height concession in order to exceed the site's current height limit. The height concession is needed in order for the Developer to achieve approximately 11 foot floor-to-ceiling heights in the proposed 5-story project alternative and 12 foot floor-to-ceiling heights in the proposed 4-story alternative. As described later in this memorandum, the analysis also considers a project alternative under current zoning and an alternative with the density bonus only (without the height concession)[1].

Development Alternatives	Acres	Units	DU/Acre	Bldg Height*	Floors	Fl to Ceiling
Project Under Current Zoning (Base Case)	0.448	17	37.9	45 feet	4 floors	~10 feet
Project w/ Density Bonus Only (no Height Concession)	0.448	21	46.8	~57 feet	5 floors	~10 feet
Proposed 5-Story Project w/ Height Concession	0.448	21	46.8	62 feet	5 floors	11 feet
4-Story Project Option w/ Reduced Setback	0.448	21	46.8	54 feet	4 floors	12 feet

*excludes rooftop mechanical equipment

II. Approach

Government Code Section 65915 requires cities to approve density bonuses when developers provide certain amounts of affordable units. A project qualifying for a density bonus is also eligible for one to three "concessions and incentives". These are defined as modifications of development standards that result in "identifiable, financially sufficient, and actual cost reductions". The proposed project is eligible for one concession and has requested an increase in building height from 45 to 62 feet. The City

[1] The height concession relates to the proposed floor-to-ceiling heights in excess of 10 feet. It is assumed that the fifth floor is needed in order to physically accommodate the 21 proposed units in the project (without the reduction in rear yard setbacks in the Developer's 4-story alternative).

must approve the height increase unless it can make a written finding, based on substantial evidence, of any of the following:

a) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c) of Section 65915.

b) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is 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- and moderate-income households.

c) The concession or incentive would be contrary to state or federal law.

The purpose of KMA's analysis is to analyze the economics of the proposed project in order to determine whether the height concession requested, in addition to the density bonus, is required to fulfill the subsection A criteria noted above. To that end, KMA prepared an analysis which (1) quantifies the affordable housing cost, also known as the below market rate housing (BMR) cost, and (2) quantifies the value increment generated by the density bonus and height concession. This two-step approach is a means of assessing, in as objective a manner as reasonably possible[2], whether the requested height concession is "required in order to provide for affordable housing costs" as specified in the State Density Bonus law.

III. Economic Analysis

The following describes the analysis of the two elements of the pro forma analysis: the BMR cost analysis, and the value increment generated by the density bonus and height concession.

a) BMR Cost

The first task of the analysis is to quantify the cost of the BMR units. The gross BMR cost is the development costs of building the BMR units including direct labor and

[2] The approach taken minimizes the analysis impacts that could result from disagreements with the Developer regarding pro forma inputs (sale prices, costs, returns, etc.).

materials costs of project construction, and indirect (soft) costs of development such as architecture and engineering, fees and permits costs, taxes, insurance, marketing, and financing costs. On this basis, the gross cost of the three BMR units in the 5-story alternative is estimated at $715/square foot of net livable area ($520/square foot of gross floor area[3]), or approximately $2.6 million for the three BMR units (average unit size of 1,225 square feet). A portion of the $2.6 million gross BMR cost is then offset by the sale proceeds from the three BMR units, averaging $215,000/unit (see the attached Table 3 and Table 4 for detail on the sale price estimates). After the sale proceeds have been accounted for, the net cost of the three BMR units in the 5-story alternative is estimated at $1.98 million.

Total BMR Cost*	Units	Net Sq. Ft.	$/Unit	$/NSF	Total
Gross Cost of BMR Units			$875,667	$715 **	$2,627,000
(Less) Low Income Unit Sales (2BR)	2	2,338	($138,000)	($118)	($276,000)
(Less) Moderate Income Unit Sales (3BR)	1	1,337	($369,000)	($276)	($369,000)
Net Cost of BMR Units	3	3,675	$660,667	$539	$1,982,000

*To be conservative, the BMR cost is based on the 5-story alternative. The costs of the alternative without the height concession and the 4-story alternative are slighly lower.
**$520/square foot of gross floor area.

The construction costs of the project are high relative to some lower density projects due primarily to the subterranean parking garage. First class design, construction, and materials are also assumed in the analysis to correspond with the projected market rate sale prices.

b) Value Increment from Density Bonus & Height Concession

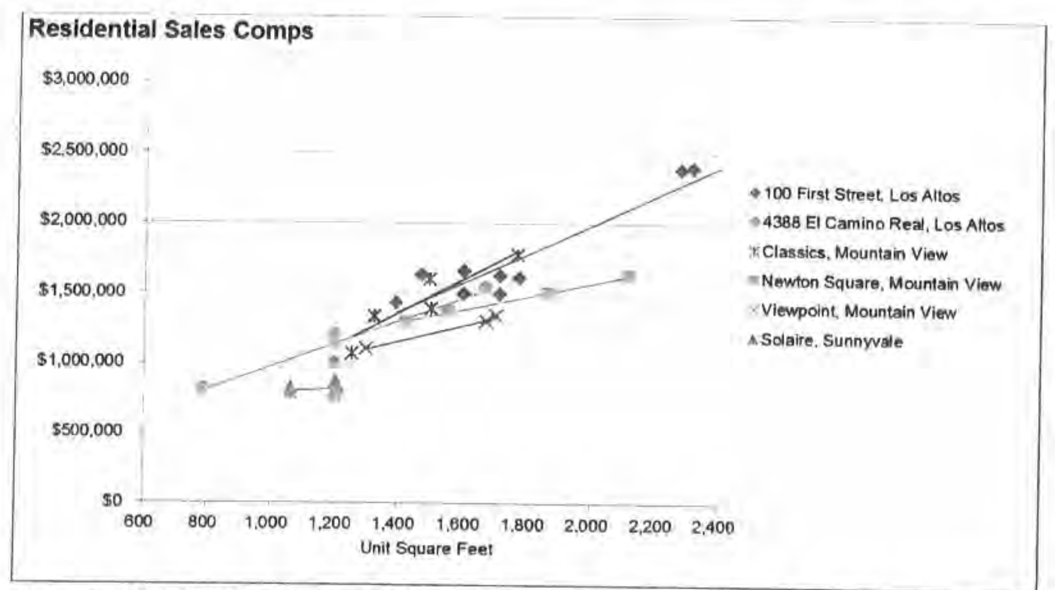
The next step in the analysis is to quantify the value increment (potential additional profit) generated for the Developer as a result of the density bonus and height concession. In order to justify the height concession, the value increment from the density bonus plus height concession should be proportionate to the cost of the BMR units. If the value increment is substantially higher than the BMR cost, the height concession could be determined to be unnecessary.

In order to estimate the value increment, a development pro forma has been run for a project alternative under current zoning (17 units, 4-stories, 45 feet), a project alternative with the density bonus only, i.e. without the height concession (21 units, 5-stories, approximately 57 feet), and the proposed project (21 units, 5-stories, 62 feet). By subtracting the estimated development costs from the estimated condo unit sale

[3] Gross building floor area includes hallways and other common areas but excludes the parking garage.

proceeds, an estimated project return can be calculated for each alternative. The value increment is the amount by which the project return exceeds the project return with the current zoning alternative. In other words, the value increment is the additional profit the Developer could potentially realize by building the project with the density bonus and height concession compared to the project under current zoning.

The development costs have been based on third party construction cost data such as RS Means, by general contractor cost estimates for similar projects in the market, and by project pro formas from other Bay Area projects KMA is involved with (estimates are shown in the attached Table 1A and Table 1B). Condo sale prices have been estimated at approximately $1.17 million for the average 1,200 square foot 2-bedroom unit and $1.7 million for the average 1,800 square foot 3-bedroom unit based on sales of residential units in the market adjusted for time, location, and level of amenities (see chart below). In general, pricing for the project will benefit from its desirable Los Altos address and close proximity to neighborhood services such as Whole Foods and the Village at San Antonio Center, however the project will not have the advantage of a downtown Los Altos location, and pricing will be discounted somewhat to reflect the proposed parking lift system instead of conventional side by side parking.



Source: The Mark Company, Corelogic, Real Estate Economics. Note: 100 First Street and 4388 El Camino Real sales are from 2015.

The following table summarizes the value increment analysis for the Developer's 5-story alternative with three BMR units. As shown, the value increment of the density bonus project only (i.e. the density bonus but not the height concession) over the current

zoning project is estimated at $1.3 million. The value increment of the Developer's 5-story project alternative, including the height concession, over the current zoning project is estimated at $1.7 million. The same figures for the Developer's 4-story alternative are also summarized on the following page (the conclusions from the analysis immediately follow the tables on p. 8).

5-Story Alternative

Value Increment from Density Bonus Only - 5-Story Alternative			
	Project Under Current Zoning	Density Bonus Only (No Height Concession)	Value Increment
Market Rate Units	15 units	18 units	3 units
Low Income Units	1 units	2 units	1 units
Moderate Income Units	1 units	1 units	0 units
Total Units	17 units	21 units	4 units
Sale Revenues	$22,263,000	$26,881,000	$4,618,000
(Less) Development Costs	($19,250,000)	($22,560,000)	($3,310,000)
Development Return	$3,013,000	$4,321,000	$1,308,000

Value Increment from Density Bonus and Height Concession - 5-Story Alternative			
	Project Under Current Zoning	Proposed 5-Story Alternative	Value Increment
Market Rate Units	15 units	18 units	3 units
Low Income Units	1 units	2 units	1 units
Moderate Income Units	1 units	1 units	0 units
Total Units	17 units	21 units	4 units
Sale Revenues	$22,263,000	$27,658,000	$5,395,000
(Less) Development Costs	($19,250,000)	($22,930,000)	($3,680,000)
Development Return	$3,013,000	$4,728,000	$1,715,000

4-Story Alternative

Value Increment from Density Bonus Only - 4-Story Alternative			
	Project Under Current Zoning	Proposed 4-Story Alternative	Value Increment
Market Rate Units	15 units	18 units	3 units
Low Income Units	1 units	2 units	1 units
Moderate Income Units	1 units	1 units	0 units
Total Units	17 units	21 units	4 units
Sale Revenues	$22,263,000	$25,613,000	$3,350,000
(Less) Development Costs	($19,250,000)	($21,820,000)	($2,570,000)
Development Return	$3,013,000	$3,793,000	$780,000

Value Increment from Density Bonus and Height Concession - 4-Story Alternative			
	Project Under Current Zoning	Proposed 4-Story Alternative	Value Increment
Market Rate Units	15 units	18 units	3 units
Low Income Units	1 units	2 units	1 units
Moderate Income Units	1 units	1 units	0 units
Total Units	17 units	21 units	4 units
Sale Revenues	$22,263,000	$26,355,000	$4,092,000
(Less) Development Costs	($19,250,000)	($21,990,000)	($2,740,000)
Development Return	$3,013,000	$4,365,000	$1,352,000

c) Conclusions

As described in Section III.a. of this memorandum, the cost of three BMR units is estimated at approximately $1.98 million. The value increment that could potentially be realized for the Developer's two alternatives with the density bonus only (no height concession) range from $780,000 to $1.3 million. Including the height concession, the value increment is estimated at $1.35 million and $1.7 million. Since the value increment in all cases is less than the cost of the three BMR units, the conclusion of the analysis is that the height concession is reasonably necessary to address the cost of the three BMR units in the both the 5-story and 4-story project alternatives.

Table 1A.
Development Cost Estimate - 5-Story Alternative vs. Current Zoning

Project Under Current Zoning (Base Case)		$/NSF	$/Unit	Total Costs
		26,273	17	
Land Acquisition [1]	$205 /land sf	$152	$235,294	$4,000,000
Direct Construction		$400	$618,235	$10,510,000
Indirects		$140	$216,471	$3,680,000
Financing		$40	$62,353	$1,060,000
Total Costs		$733	$1,132,353	$19,250,000

Project with Density Bonus Only (No Height Concession)		$/NSF	$/Unit	Total Costs
		32,074	21	
Land Acquisition [1]	$205 /land sf	$125	$190,476	$4,000,000
Direct Construction		$400	$610,952	$12,830,000
Indirects		$140	$213,810	$4,490,000
Financing		$39	$59,048	$1,240,000
Total Costs		$703	$1,074,286	$22,560,000

Proposed 5-Story Project w/ Height Concession		$/NSF	$/Unit	Total Costs
		32,074	21	
Land Acquisition [1]	$205 /land sf	$125	$190,476	$4,000,000
Direct Construction		$408	$623,333	$13,090,000
Indirects		$143	$218,095	$4,580,000
Financing		$39	$60,000	$1,260,000
Total Costs		$715	$1,091,905	$22,930,000

[1] Public records indicate the land was purchased in September 2015 for $4,000,000.

Prepared by: Keyser Marston Associates
Filename: 4880 ECR Pro forma 8.3.16.xlsx; Costs1

Table 1B.
Development Cost Estimate - 4-Story Alternative

Project with Density Bonus Only (No Height Concession)				
		$/NSF	$/Unit	Total Costs
		30,768	21	
Land Acquisition [1]	$205 /land sf	$130	$190,476	$4,000,000
Direct Construction		$400	$586,190	$12,310,000
Indirects		$140	$205,238	$4,310,000
Financing		$39	$57,143	$1,200,000
Total Costs		$709	$1,039,048	$21,820,000

Proposed 4-Story Project w/ Height Concession				
		$/NSF	$/Unit	Total Costs
		30,768	21	
Land Acquisition [1]	$205 /land sf	$130	$190,476	$4,000,000
Direct Construction		$404	$591,905	$12,430,000
Indirects		$141	$207,143	$4,350,000
Financing		$39	$57,619	$1,210,000
Total Costs		$715	$1,047,143	$21,990,000

[1] Public records indicate the land was purchased in September 2015 for $4,000,000.

Prepared by: Keyser Marston Associates
Filename: 4880 ECR Pro forma 8.3.16.xlsx; Costs2

Table 2A.
Sale Proceeds Estimate - 5-Story Alternative vs. Current Zoning

Project Under Current Zoning (Base Case)

	Program				Sales Proceeds		
	Units	% Total	Avg. SF	Total SF	Avg. Price	$/SF	Total
Market Rate Units							
2-Bedroom	6	29%	1,199	7,193	$1,127,000	$940	$6,762,000
3-Bedroom	9	43%	1,842	16,574	$1,666,000	$905	$14,994,000
Total	15	71%	1,584	23,767	$1,450,400	$915	$21,756,000
BMR Units							
2-Bedroom - Low	1	5%	1,169	1,169	$138,000	$118	$138,000
3-Bedroom - Moderate	1	5%	1,337	1,337	$369,000	$276	$369,000
Total	2	10%	1,253	2,506	$253,500	$202	$507,000
Total	17	81%	1,545	26,273	$1,309,588	$847	$22,263,000
(Less) Development Costs					($1,132,353)	($733)	($19,250,000)
Development Return					$177,235	$115	$3,013,000
% of Gross Sales							13.5%
% of Development Costs							15.7%

Project with Density Bonus Only (No Height Concession)

	Program				Sales Proceeds		
	Units	% Total	Avg. SF	Total SF	Avg. Price	$/SF	Total
Market Rate Units							
2-Bedroom	7	33%	1,201	8,406	$1,141,000	$950	$7,987,000
3-Bedroom	11	52%	1,818	19,993	$1,659,000	$913	$18,249,000
Total	18	86%	1,578	28,399	$1,457,556	$924	$26,236,000
BMR Units							
2-Bedroom - Low	2	10%	1,169	2,338	$138,000	$118	$276,000
3-Bedroom - Moderate	1	5%	1,337	1,337	$369,000	$276	$369,000
Total	3	14%	1,225	3,675	$215,000	$176	$645,000
Total	21	100%	1,527	32,074	$1,280,048	$838	$26,881,000
(Less) Development Costs					($1,074,286)	($703)	($22,560,000)
Development Return					$205,762	$135	$4,321,000
% of Gross Sales							16.1%
% of Development Costs							19.2%

Proposed 5-Story Project

	Program				Sales Proceeds		
	Units	% Total	Avg. SF	Total SF	Avg. Price	$/SF	Total
Market Rate Units							
2-Bedroom	7	33%	1,201	8,406	$1,175,000	$978	$8,225,000
3-Bedroom	11	52%	1,818	19,993	$1,708,000	$940	$18,788,000
Total	18	86%	1,578	28,399	$1,500,722	$951	$27,013,000
BMR Units							
2-Bedroom - Low	2	10%	1,169	2,338	$138,000	$118	$276,000
3-Bedroom - Moderate	1	5%	1,337	1,337	$369,000	$276	$369,000
Total	3	14%	1,225	3,675	$215,000	$176	$645,000
Total	21	100%	1,527	32,074	$1,317,048	$862	$27,658,000
(Less) Development Costs					($1,091,905)	($715)	($22,930,000)
Development Return					$225,143	$147	$4,728,000
% of Gross Sales							17.1%
% of Development Costs							20.6%

Prepared by: Keyser Marston Associates
Filename: 4880 ECR Pro forma 8.3.16.xlsx; Sales1

Table 2B.
Sale Proceeds Estimate - 4-Story Alternative

Project with Density Bonus Only (No Height Concession)

	Program				Sales Proceeds		
	Units	% Total	Avg. SF	Total SF	Avg. Price	$/SF	Total
Market Rate Units							
1-Bedroom	2	10%	918	1,836	$896,000	$976	$1,792,000
2-Bedroom	8	38%	1,291	10,325	$1,217,000	$943	$9,736,000
3-Bedroom	8	38%	1,864	14,911	$1,680,000	$901	$13,440,000
Total	18	86%	1,504	27,072	$1,387,111	$922	$24,968,000
BMR Units							
2-Bedroom - Low	2	10%	1,169	2,338	$138,000	$118	$276,000
3-Bedroom - Moderate	1	5%	1,337	1,337	$369,000	$276	$369,000
Total	3	14%	1,225	3,675	$215,000	$176	$645,000
Total	21	100%	1,464	30,747	$1,219,667	$833	$25,613,000
(Less) Development Costs					($1,039,048)	($710)	($21,820,000)
Development Return					$180,619	$123	$3,793,000
% of Gross Sales							14.8%
% of Development Costs							17.4%

Proposed 4-Story Project

	Program				Sales Proceeds		
	Units	% Total	Avg. SF	Total SF	Avg. Price	$/SF	Total
Market Rate Units							
1-Bedroom	2	10%	918	1,836	$923,000	$1,005	$1,846,000
2-Bedroom	8	38%	1,291	10,325	$1,253,000	$971	$10,024,000
3-Bedroom	8	38%	1,864	14,911	$1,730,000	$928	$13,840,000
Total	18	86%	1,504	27,072	$1,428,333	$950	$25,710,000
BMR Units							
2-Bedroom - Low	2	10%	1,167	2,334	$138,000	$118	$276,000
3-Bedroom - Moderate	1	5%	1,362	1,362	$369,000	$271	$369,000
Total	3	14%	1,232	3,696	$215,000	$175	$645,000
Total	21	100%	1,465	30,768	$1,255,000	$857	$26,355,000
(Less) Development Costs					($1,047,143)	($715)	($21,990,000)
Development Return					$207,857	$142	$4,365,000
% of Gross Sales							16.6%
% of Development Costs							19.8%

Prepared by: Keyser Marston Associates
Filename: 4880 ECR Pro forma 8.3.16.xlsx; Sales2

Table 3
Estimated Affordable Home Prices - Moderate Income
4880 El Camino Real Project

Unit Size Household Size	2-Bedroom Unit 3-person HH	3-Bedroom Unit 4-person HH
100% AMI Santa Clara County 2016	$96,400	$107,100
Annual Income @ 110%	$106,040	$117,810
% for Housing Costs	35%	35%
Available for Housing Costs	$37,114	$41,234
(Less) Property Taxes	($3,390)	($3,690)
(Less) HOA	($6,300)	($6,900)
(Less) Utilities	($1,524)	($2,400)
(Less) Insurance	($800)	($900)
(Less) Mortgage Insurance	($4,347)	($4,739)
Income Available for Mortgage	$20,753	$22,605
Mortgage Amount	$322,200	$350,900
Down Payment (homebuyer cash)	$16,950	$18,450
Supported Home Price	$339,150	$369,350
Rounded	$339,000	$369,000
Key Assumptions		
- Mortgage Interest Rate [(1)]	5.00%	5.00%
- Down Payment [(1)]	5.00%	5.00%
- Property Taxes (% of sales price)	1.00%	1.00%
- HOA (per month) [(2)]	$525	$575
- Utilities (per month) [(1)]	$127	$200
- Mortgage Insurance (% of loan amount)	1.35%	1.35%

(1) Based on City BMR pricing sheet for 86 Third Street.
(2) Based on 86 Third Street and 100 First Street.

Prepared by: Keyser Marston Associates
Filename: 4880 ECR Pro forma 8.3.16.xlsx; Mod Prices

Table 4.
Estimated Affordable Home Prices - Low Income
4880 El Camino Real Project

Unit Size Household Size	2-Bedroom Unit 3-person HH	3-Bedroom Unit 4-person HH
100% AMI Santa Clara County 2016	$96,400	$107,100
Annual Income @ 70%	$67,480	$74,970
% for Housing Costs	30%	30%
Available for Housing Costs	$20,244	$22,491
(Less) Property Taxes	($1,380)	($1,460)
(Less) HOA	($6,300)	($6,900)
(Less) Utilities	($1,524)	($2,400)
(Less) Insurance	($800)	($900)
(Less) Mortgage Insurance	($1,769)	($1,877)
Income Available for Mortgage	$8,472	$8,955
Mortgage Amount	$131,500	$139,000
Down Payment (homebuyer cash)	$6,900	$7,300
Supported Home Price	$138,400	$146,300
Rounded	$138,000	$146,000
Key Assumptions		
- Mortgage Interest Rate [(1)]	5.00%	5.00%
- Down Payment [(1)]	5.00%	5.00%
- Property Taxes (% of sales price)	1.00%	1.00%
- HOA (per month) [(2)]	$525	$575
- Utilities (per month) [(1)]	$127	$200
- Mortgage Insurance (% of loan amount)	1.35%	1.35%

(1) Based on City BMR pricing sheet for 86 Third Street.
(2) Based on 86 Third Street and 100 First Street.

Prepared by: Keyser Marston Associates
Filename: 4880 ECR Pro forma 8.3.16.xlsx; Low Prices

August 12, 2016 (revised)

Mr. David Kornfield
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

Subject: ***Traffic Report for the Proposed 4880 El Camino Real Residential Development Project in Los Altos, California***

Dear Mr. Kornfield:

Per your request, Hexagon Transportation Consultants, Inc. is submitting this traffic report for the proposed 4880 El Camino Real development in Los Altos, California. The project, as proposed, would include 21 condominium units. It would replace an existing 3,600-square foot restaurant onsite. Because the project is projected to generate fewer than 50 daily trips, City staff have stated that a full transportation impact analysis will not be required. Instead, the report will focus on documenting project trip generation and providing an assessment of onsite circulation and vehicular access.

Project Traffic Estimates

Through empirical research, data has been collected that correlate to common land uses their propensity for producing traffic. Thus, for the most common land uses there are standard trip generation rates that can be applied to help predict the future traffic increases that would result from a new development. The trip generation estimates for the proposed project are based on rates obtained from the Institute of Transportation Engineers' (ITE) publication *Trip Generation*, 9th Edition.

Based on trip generation rates applicable to residential condos, it is estimated that the project would generate 165 daily trips, with 15 trips occurring during the AM peak commute hour and 17 trips occurring during the PM peak commute hour. The peak commute hour is the peak 60 minute period of traffic demand during the commute periods, which are 7:00 AM to 9:00 AM in the morning, and 4:00 PM and 6:00 PM in the evening.

As previously mentioned, the proposed project would replace an existing restaurant of approximately 3,600 square feet. Based on ITE rates, the existing restaurant use generates approximately 324 daily trips, with 3 trips occurring during the AM peak commute hour and 27 trips occurring during the PM peak commute hour. Thus, the replacement of the existing restaurant use with 21 condominiums would result in 158 fewer daily trips, 12 additional AM peak hour trips, and 10 fewer PM peak hour trips. The project trip generation estimates are presented in Table 1. Because the project would result in a traffic reduction on a daily basis, its impact on the greater transportation network in the context of the City's level of service policy would be negligible.

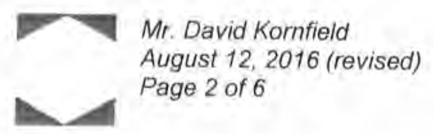


Table 1
Project Trip Generation Estimates

Land Use	Size unit	land use code	Daily rate	Daily Trips	AM Peak Hour				PM Peak Hour			
					Rate	In	Out	Total	Rate	In	Out	Total
Proposed Project [a]												
Condo	21 d.u.	230	7.88	165	0.71	3	12	15	0.80	11	6	17
Existing use [b]												
Restaurant	3.6 ksf	931	89.95	324	0.81	3	0	3	7.49	18	9	27
Total [a] - [b]				-158		0	12	12		-7	-3	-10

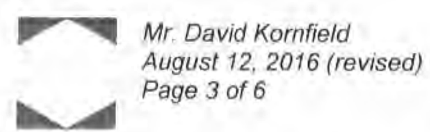
All Rates based on ITE *Trip Generation*, 9th Edition, for Condo and Quality Restaurant uses, regression rates where appropriate

Project Site Circulation and Access

The project's site circulation and access were evaluated in accordance with generally accepted traffic engineering standards based on project plans dated February 4th, 2016. The project would provide a single two-way driveway onto El Camino Real. Additional parking and/or potential loading space for trucks would be provided along the project frontage on El Camino Real. A description of the various design elements of the site circulation and access is provided below.

Street Level. The project driveway would be approximately 20 feet wide and serve a single guest parking stall at street-level directly adjacent to the front lobby. Because this parking stall is located approximately 20 feet from El Camino Real, it may sometimes be blocked by exiting vehicles. In addition, the sight distance between a driver backing out of the parking stall and a vehicle exiting the garage is restricted. For these reasons, this space should not be utilized for vehicular parking. It should be signed and striped as no parking and utilized solely as a turn-around area for vehicles that mistakenly enter the driveway and would otherwise be required to back onto El Camino Real. To improve the ability of a vehicle to back into the space, 3-foot curb radii are recommended between the drive aisle and the stall.

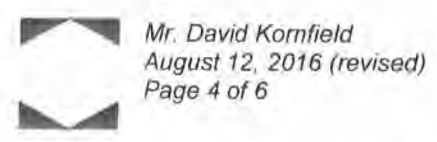
Ramp Design. The proposed garage ramp is approximately 60 feet long with an 18.4% grade and two transitions of 9.2% each at the top and bottom of the ramp. Transitions are generally required when ramp grades exceed 10% to prevent vehicles from bottoming out. Commonly cited parking publications recommend grades of up to 16% on ramps where no parking is permitted, but grades of up to 20% are cited as acceptable when garages are attended, ramps are covered (i.e. protected from weather) and not used for pedestrian walkways. Thus, the proposed 18.4% ramp grade could be adequately traversed by vehicles as designed, but will require a slightly greater level of caution than a less steep ramp. It should be noted that the vast majority of ramp users will be residents, and thus, will quickly become accustomed to the slightly steeper grade.



Gated Garage Entrance. The project driveway would connect directly to a parking garage ramp, which would lead to a below-grade parking structure. A remote controlled gate would be present at the bottom of the ramp. The distance between the gated entrance to the site's parking garage and the sidewalk on El Camino Real would be 75 feet, or enough space for three vehicles to queue. According to ITE, there would be approximately 11 PM peak hour trips inbound at the project driveway, or an average rate of approximately one vehicle every five and a half minutes. According to the publication *Parking* by Weant and Levinson, the typical capacity for a single lane coded-card reader is between 225 vehicles per hour and 550 vehicles per hour. Given this, it is anticipated that the inbound vehicle queues would rarely exceed one or two vehicles during the peak commute period. Thus, the garage gate as located, would most likely provide adequate capacity and vehicular storage to accommodate the proposed demand, and vehicle queues would not spill back to El Camino Real. Prior to final design, the design and operation of the proposed gate system should be reviewed by City staff to confirm the service flow rate and access to guest parking are adequate.

Garage Design. Within the parking structure, all parking would be provided at 90 degrees to the main drive aisle. There is no designated turn around space within the garage if parking cannot be located; the garage is effectively a single dead end aisle that serves mostly reserved parking. In the event that all guest spaces are occupied, vehicles would be required to make multiple point turns to exit the garage. This situation, while not ideal, is generally considered acceptable in urban areas where land is scarce and the traffic volumes are very low. To reduce the likelihood of a vehicle turning around in the garage, a parking guidance sign could be provided outside the garage to alert drivers when guest parking in the garage is full.

Puzzle Parking System. There would be five guest stalls provided in the garage, two of which would be ADA accessible. The remaining 42 parking spaces would be served by a 26-foot wide drive aisle and two puzzle lift systems. The lift systems shown on the project plans would stack two vehicles in each parking stall – one level of parking at basement level and one below in the "pit." Upon arriving at the garage, future patrons would utilize a remote to open their designated, secured, parking bay. If their vehicle is located in the pit, the puzzle lift system will shift parked vehicles on the upper level laterally, as needed, to make space to raise the vehicle on the lower level. The project applicant has also suggested that a 3-level puzzle lift system could be considered for the project. The differences in operation between a 2-level system and 3-level system are very minor, as vehicles are still being shifted laterally on the base level and moved up or down one level. Hexagon conducted observations at an existing two level lift system at the Avalon Development at 651 Addison Street in Berkeley, California. Based on these observations, the time to access a vehicle in the puzzle lift system can vary from 30 seconds to one minute and 45 seconds, depending on the configuration of vehicles within the system. Hexagon estimates the average time to access a parked vehicle in proposed parking garage to be approximately one minute, which equates to a maximum service rate of approximately 60 vehicles per hour (2 lift systems at 2 minutes per lift equates to one vehicle per minute). To determine whether the proposed lift system would work adequately, it is useful to consider the frequency of vehicles entering and exiting the parking garage during the highest hours of the day. According to ITE, the peak period of traffic generation at the project would be during the PM commute period. During this peak 60-minute period, the project would generate 17 trips, or about one trip every three and a half minutes. Given that the garage could accommodate up to 60 vehicles per hour, it is anticipated that the proposed garage would have adequate capacity to accommodate the number of trips into and out of the



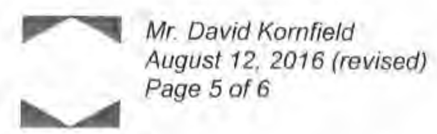
proposed parking garage. Vehicle queues and person queues (waiting to retrieve their vehicle) would rarely exceed two within the garage.

User Imposed Garage Delays. City staff have questioned whether user delays, including time required to load/unload goods, children (including infants/toddlers), elderly and mobility-impaired persons would significantly disrupt garage operations. Mobility impaired individuals could be expected to use one of the two ADA compliant parking spaces provided in the garage. During Hexagon's observations at an existing two level lift system at the Avalon Development at 651 Addison Street in Berkeley, there were no instances where people caused unusual delays when parking. Thus, it is expected that such delays would be somewhat infrequent. Many activities that require longer loading times, such as unloading groceries, occur during non-commute periods when traffic accessing the garage is lower. It is also noteworthy that the project would have two puzzle lift systems, one side of the garage would have a 12 parking bay system, and the other would have 10 parking bay system. Each of the two systems may load vehicles simultaneously. In addition, each parking bay will have its own lift. About half of the users would open the gate in front of the parking stall and enter the stall in the same manner as a typical parking space. These users would have very brief delays. It is only when lift activities are engaged that the time spent in a parking stall significantly affects traffic queues in the garage. During the highest hour of the day, ITE trip rates project that the garage would accommodate 17 vehicle trips. This translates to an average vehicular headway of one trip every 3.5 minutes. While some users may take extra time for the reasons staff have noted, for the garage to provide insufficient hourly capacity, every user would have to take an average of 3.5 minutes, instead of one minute, to access the garage. It is our opinion that, based on Hexagon's observations, this would be unlikely.

Access to El Camino Real. Outbound at the project driveway on El Camino Real, the low volume of project traffic would result in brief delays for vehicles. Outbound vehicle queues would rarely exceed one or two vehicles. Sight distance at the project driveway would be adequate provided (1) the landscaping is low level within 10 feet of the curb face on El Camino Real (the height of the planned landscaping is not shown) and (2) it is not blocked by parked vehicles. Parking should be prohibited on El Camino Real within 10 feet west of the driveway (i.e. looking left for an outbound driver from the project driveway).

Truck Access. Provisions for garbage collection and truck loading are not shown on the current plan. Prior to final design, the applicant should work with City staff to ensure truck access is adequately accommodated. Given the current design, truck access would likely occur via the existing curb parking on El Camino Real along the project frontage. A marked loading area may be considered for this location.

Bike Parking. The Valley Transportation Authority (VTA) provides guidelines for bike parking in its publication *Bike Technical Guidelines*. Class I spaces are defined as spaces that protect the entire bike and its components from theft, such as in a secure designated room or a bike locker. Class II spaces provide an opportunity to secure at least one wheel and the frame using a lock, such as bike racks. For multi-family dwelling units, VTA recommends one Class I space per three dwelling units and one Class II space per 15 dwelling units. For the proposed project, this would equate to seven Class I spaces and two Class II spaces. The project site plan shows two Class II bike parking spaces near the building entrance, between El Camino Real and the lobby. The project also provides for ten Class I bike parking spaces in a secured area (keyed gate) under the garage ramp. Thus, the project would exceed the bike parking standards recommended by VTA.



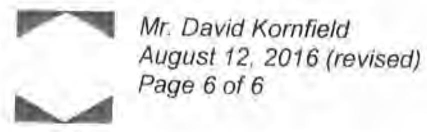
Pedestrian Access. The project would provide a paved walkway between the existing sidewalk on El Camino Real and the building entrance.

Generally, the design of the project site circulation and access is consistent with urban design practices. The presence of the garage ramp, short onsite drive aisle, and "confined" feel of the parking garage will serve to keep vehicles operating at very low speeds. In addition, the low traffic volume onsite, one trip every three and a half minutes, means that the frequency of vehicle conflicts will be relatively low. Under such circumstances, small parking structures usually operate adequately without any operational problems.

Conclusions

This analysis produced the following conclusions:

- Relative to the existing restaurant use, the project would result in a traffic reduction on a daily basis. Therefore, its impact on the greater transportation network in the context of the City's level of service policy would be negligible.
- The project's parking lift and front entrance gate systems would have adequate capacity to accommodate the anticipated traffic demand. Prior to final design, the design and operation of the proposed gate system should be reviewed by City staff to confirm the service flow rate and access to guest parking are adequate.
- Because of its proximity to El Camino Real and restricted sight distance, the street level parking space should be signed and striped as no parking and utilized solely as a turn-around area for vehicles that mistakenly enter the driveway. To improve the ability of a vehicle to back into the space, 3-foot curb radii are recommended between the drive aisle and the stall.
- Commonly cited parking publications recommend grades of up to 16% on ramps where no parking is permitted, but grades of up to 20% are cited as acceptable under certain conditions. The proposed 18.4% ramp grade could be adequately traversed by vehicles as designed, but will require a slightly greater level of caution.
- There is no designated turn around space within the garage if guest parking cannot be located. In the event that all guest spaces are occupied, vehicles would be required to make multiple point turns to exit the garage. While not ideal, this situation is generally considered acceptable in urban areas where land is scarce and the traffic volumes are very low. To reduce the likelihood of a vehicle turning around in the garage, a parking guidance sign could be provided outside the garage to alert drivers when guest parking in the garage is full.
- Outbound at the project driveway on El Camino Real, the low volume of traffic would result in brief delays and short vehicle queues. Sight distance at the project driveway would be adequate provided (1) the landscaping is low level within 10 feet of the curb face on El Camino Real and (2) it is not blocked by parked vehicles. Parking should be prohibited on El Camino Real within 10 feet west of the driveway.
- Prior to final design, the applicant should work with City staff to ensure truck access is adequately accommodated. Given the current design, truck access would likely occur via the existing curb parking on El Camino Real along the project frontage. A marked loading area may be considered for this location.
- The project would exceed the bike parking standards recommended by VTA.



If you have any questions, please do not hesitate to call.

Sincerely,

HEXAGON TRANSPORTATION CONSULTANTS, INC.

Brett Walinski T.E.
Vice President and Principal Associate

DATE: May 19, 2016

AGENDA ITEM # 4

TO: Planning and Transportation Commission

FROM: David Kornfield, Planning Services Manager

SUBJECT: 16-D-01, 16-UP-02 and 16-SD-01—LOLA, LLC, 4880 El Camino Real
Proposed Five-Story, 21-Unit Condominium

RECOMMENDATION

Recommend that the City Council approve design review, use permit and subdivision applications 16-D-01, 16-UP-02 and 16-SD-01 subject to the recommended findings and conditions of approval

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PROJECT DESCRIPTION

This project is a multiple-family residential project at 4880 El Camino Real. The project consists of a 21-unit, five-story building with underground parking. The project replaces a vacant restaurant. The following table summarizes the project:

GENERAL PLAN DESIGNATION:	Commercial Thoroughfare
ZONING:	CT (Commercial Thoroughfare)
PARCEL SIZE:	0.45 acres (19,533 square feet)
MATERIALS:	Painted cementitious and plaster cement siding, natural stone veneer, metal overhangs, metal and glass balconies

	Existing	Proposed	Required/Allowed
SETBACKS:			
Front	30 feet	25 feet	25 feet
Rear	145 feet	40/100 feet	40/100 feet
Right side	22 feet	7 to 10 feet	0 feet
Left side	5 feet	7 feet	0 feet
HEIGHT:	n/a	62 feet[1]	45 feet
PARKING:	n/a	48 spaces	47 spaces
DENSITY:	n/a	21 units	21 units[2]

[1] The 62-foot overall building height is measured by the Municipal Code to the top of the roof deck. Exceptions allow for roof top structures eight feet above the roof, where the project has its elevator tower 11 feet above the roof, for an effective height of 74 feet.

[2] The City's zoning code allows 17 units. The State's density bonus regulations for affordable housing allow four additional units because the project provides three affordable housing units, two of which are designated low-income.

ATTACHMENT 4

BACKGROUND

On February 4, 2016, the Planning and Transportation Commission held a study session on the project. The Commission indicated a general support for the project and provided comments related to clarifying the design. In response, the applicant:

- Organized a field trip to review the operation of the Klaus Mulitlift parking system;
- Widened the look of the mahogany front door by adding a wood surround and narrowed the awning windows above the entry;
- Enhanced the lobby windows by adding wider wood muntins and mullions and adding a lintel;
- Added natural stone to the parking garage entry wall wrapping around to the east side;
- Lowered the horizontal siding and lengthened a second-level balcony along the west side;
- Differentiated the lower two floors with a darker building color;
- Added an eight-foot tall, sound-attenuating wall along the side property line adjacent to the Jack in the Box restaurant;
- Provided more understory plantings and planting areas at the base of the building;
- Relocated the transformer vault from the entry path to the east side of the driveway;
- Moved the at-grade guest parking space to the garage and created a drop-off/turn-around instead;
- Created a staging area for the trash and recycling bins at the western border of the front yard;
- Expanded the area and relocated the rooftop deck to the south; and
- Provided a larger area for photovoltaics on the roof and indicated prewiring.

On March 23, 2016, the Bicycle and Pedestrian Advisory Commission (BPAC) met regarding the project and provided input to enhance the bicycle and pedestrian circulation. In response, the applicant:

- Increased the number of bike racks in the garage to at least one per unit;
- Omitted the landscape area within the public sidewalk; and

- Specified a bike-friendly trench drain grate at the bottom of the garage ramp.

DISCUSSION

General Plan

The General Plan goals and policies for El Camino Real emphasize fiscal stability, increasing commercial vitality, intensification of development, developing housing, including affordable housing, and ensuring compatibility with adjacent residential land uses (Land Use Element, Economic Development Element, and Housing Element).

The project replaces an approximately 3,600-square-foot restaurant with 21, multiple-family condominiums. Eighteen of the units will be market-rate; three of the units will be below-market rate. The site is a narrow and deep property, which lends itself to infill residential land use.

The Housing Element encourages maximum densities of residential development as well as facilitating affordable housing. The project provides the maximum density allowed for the El Camino Real corridor (38 dwellings per acre) and includes three below-market-rate dwellings. The site was overlooked as an opportunity site in the Housing Element.

The Land Use Element anticipates intensification along the El Camino Real corridor. This intensification is balanced with a policy that development along the corridor will be compatible with the residential land uses to the south. The multiple-family land uses to the south include medium density, two-story apartment buildings. Additionally, the medium density Los Altos Square condominiums are nearby to the south and southwest. The proposed building has stepped massing that lowers as it gets closer to the adjacent residential properties. A strong landscape buffer, including mature trees and an eight-foot tall masonry wall, provides a soft barrier along the rear.

Zoning

Except for the building height, the project meets or exceeds the minimum zoning codes. The front setback is 25 feet, where 25 feet is required. The side setbacks range from approximately seven to 10 feet, where no minimum setback is required from the side property line. The rear setback for the first and second stories is 40 feet, where a minimum setback of 40 feet is required for structures up to 30 feet in height. The rear setback for the third through fifth stories is 100 feet, which meets the minimum 100-foot setback for structures over 30 feet in height. The proposed uncovered decks and balconies may project up to six feet into the rear setback.

As a development incentive for providing affordable housing the applicant seeks an overall height exception to allow: a) a building height of 62 feet, where the Code allows a height of 45 feet; and b) rooftop structures 11 feet above the roof, where the Code allows such structures eight feet above the roof. The development incentives are discussed in more detail in the Affordable Housing section below.

The project meets the City's parking requirements by providing 42 reserved parking spaces, two per unit, and five guest parking spaces. Additionally, the project provides one extra parking space as an unassigned handicapped space. A Klaus Multiparking parking system provides the reserved parking in a mechanical system. The proposed system contains a rack that is two stories tall, which is accessed from the main garage level. The rack stores cars at the garage level and in a basement level below the garage on a series of platforms. The platforms shift up and down and side to side. The parking areas are approximately nine-foot, six inches wide, by 18 feet, six inches deep with the platforms at approximately eight feet, 11 inches wide by 17 feet deep. The system provides a vertical clearance of eight feet on the upper level and six feet, nine inches on the lower level. The parking system is explained in more detail in the attached letter and specifications (Attachment C).

Design Requirements and Findings

The applicable CT District design controls (Section 14.50.150 of the Municipal Code) address such concerns as scale, building proportions, bulk, and screening rooftop mechanical equipment as follows:

- In terms of scale, because of the district's relationship to the larger region, a mixture of scales is appropriate with some elements scaled for appreciation from the street and moving vehicles and others for appreciation by pedestrians;
- The building element proportions, especially those at the ground level, should be kept close to a human scale by using recesses, courtyards, entries, or outdoor spaces;
- At the residential interface, building proportions should be designed to limit bulk and protect residential privacy, daylight and environmental quality; and
- Rooftop mechanical equipment should be screened from public view.

In addition to complying with the General Plan and aforementioned district design criteria, the project must address the standard design review findings (Section 14.78.050 of the Municipal Code) summarized as follows:

- Architectural integrity and appropriate relationship with other structures in the immediate area in terms of height, bulk and design;
- Horizontal and vertical building mass articulation to relate to the human scale; variation and depth of building elevations to avoid large blank walls; and residential elements that signal habitation such as entrances, stairs, porches, bays and balconies;
- Exterior materials that convey quality, integrity, permanence and durability, and effectively define the building elements;
- Generous and inviting landscaping including onsite or offsite substantial street tree canopy, hardscape that complements the building;

- Appropriate signage to reflect the building architecture; and
- Screened rooftop mechanical equipment and architecturally appropriate utility areas.

Design Review

The project reflects the desired development intensity of the Commercial Thoroughfare district. It achieves the maximum housing density permitted, which benefits the City's housing goals. It maintains the required stepped massing from the rear property line to limit bulk and to protect daylight and environmental quality. It maintains and enhances an appropriate landscape buffer of redwood and pine trees in the rear yard to help protect the adjacent residential properties to the south.

The building design reflects an appropriate mixture of scales with some taller vertical elements such as the projecting bays with wood siding for appreciation from the street and moving vehicles and some smaller elements such as the mahogany wood entry door, stone veneer on the front lobby, and metal overhangs for appreciation by pedestrians. The design elements of the building avoid large blank walls.

The building design has appropriate elements that signal habitation such as the human-scaled, wooden front entry door, numerous balconies, overhangs and the vertical orientation of the windowpanes.

The exterior building materials appropriately define the building elements and convey the project's quality, integrity, durability and permanence. For example, the stone veneer on the front lobby is set on thick walls; some of the window bays project from two to four feet from the wall planes. Horizontal siding defines the large projecting window bays. On the sides and rear, a darker color cement siding defines the base of the building. C-channel metal awnings overhang the balconies and entry. Stained wood soffits enrich the detail of the bottom of the metal overhangs and balconies.

The landscape plan appears generous and inviting. The front yard contains two specimen palm trees, a bench, hedges, and ground cover. A staggered linear limestone pathway pavers lead to the front door. Smaller, rectangular pavers cover the driveway. The project replaces a street tree in front of the site and two poor condition street trees in front of the Jack in the Box property with City-standard London plane trees. The rear yard maintains the established redwood trees and a mature pine tree and eight-foot tall buffer wall, and proposed evergreen screening along the perimeter. The rear yard also includes benches and the pathways to allow a passive use. Giant timber bamboo screens the narrow side yards to help buffer the building. Low bollard light fixtures light the pathways around the building.

The four to five foot tall parapets architecturally screen the mechanical equipment that is located in the center of the upper roof. The garage contains the trash and recycling area, which is accessed from each floor by chutes. The western side of the front yard contains a staging area for the refuse on pick-up days.

The project does not propose any signage in the front yard. Large, laser cut metal numbers on the front elevation provide for an appropriate building identification in the larger context of the commercial thoroughfare.

Affordable Housing and Development Incentives

The project exceeds the City's affordable housing regulations by providing three affordable housing units, where two are required. Chapter 14.28 of the Municipal Code requires providing a minimum of 10 percent of the units as moderate income. By Code, if there is more than one moderate-income unit required, then the project must provide at least one of the units at the low-income level. In this case, the base project is 17 dwelling units, meeting the City's objective of maximizing the permitted density at 38 dwellings per acre. Rounding up, under the City's regulations the project must provide two affordable housing units: one moderate-income and one low-income. The project provides one moderate-income unit and two low-income units.

Housing Element program 4.3.2 requires that affordable housing units generally reflect the size and number of bedroom of the market rate units. In this case, the project provides nine, two-bedroom units and 12, three-bedroom units. Of the nine, two-bedroom units, two are designated at the low-income level. Of the 12, three-bedroom units, one is designated as a moderate-income unit. Staff believes that this mix of affordable housing meets the intent of the program since the project provides one of each bedroom size and volunteers an additional low-income housing unit.

Under the State's density bonus regulations (Section 65915 of the California Government Code), the project qualifies for a density bonus if it provides at least 10 percent low-income units. With the second low-income unit, the project provides 11.8 percent low-income units, which allows a density bonus of 21.5 percent. The density bonus adds four units to the base of 17 for 21 permitted dwelling units. Under State law, density bonus units are rounded up when there are fractional units and allowed beyond the City's maximum permitted density.

The two low-income units also qualify the project for at least one development incentive. In this case, the applicant requests a height incentive to allow the project to exceed the maximum height of 45 feet. The proposed building height of 62 feet and rooftop structures 11 feet above the roof allow the project to have a fifth story, taller interior wall heights and elevator service to the roof. The fifth floor allows the applicant to provide three additional market rate units.

Under State law (Section 65915 (d) (1), the City must give deference to the applicant on granting the requested development incentives unless it can make either of the findings:

a) That the development incentive is not required to provide for the costs of developing the affordable units; or

b) That the development incentive would have a specific adverse impact upon public health, safety or the physical environment, or historic resources, for which there is no feasible method to mitigate or avoid the impact without rendering the development unaffordable to low- and moderate-income households.

For reference, the moderate-income housing unit would be limited in cost to be affordable to a household that makes no more than 120 percent of the County's median income. The low-income housing units would be limited in cost to be affordable to a household that makes no more than 80 percent of the County's median income. The County's median income for 2015 was $106,300 for a family of four.

Use Permit

The project requires a use permit to allow the multiple-family residential use. The location of the use is desirable in that it improves an underdeveloped property along the City's major commercial thoroughfare with an appropriate amount of high-quality housing. The project meets other objectives of the zoning code as it relates well to the adjacent land uses, maintains a safe traffic circulation pattern, and provides a high-quality design that enhances the City's distinctive character.

The site has a limited commercial potential. Its relatively narrow frontage on the commercial thoroughfare does not lend itself to a retail development; however, office use may be feasible.

The project adequately buffers its units from the adjacent restaurant and drive-through use by providing an eight-foot tall masonry wall adjacent the restaurant and by providing a landscape plan that has tall bamboo elements.

The project mitigates the noise and air quality impacts from El Camino Real by using special construction and air handling equipment (see Environmental Review below). Appropriate conditions of approval are included to address the noise and air quality impacts.

Subdivision

The project includes a Vesting Tentative Map for Condominium purposes. The subdivision divides the building into 21 residential units and associated common areas. Under State law, a Vesting Tentative Map freezes the City's regulations that apply to the subdivision at the time of entitlement and provides certainty for the subdivider.

The subdivision conforms to the permitted General Plan and zoning densities as modified by State law. The subdivision is not injurious to public health and safety, and is suitable for the proposed type of development. The subdivision provides proper access easements for ingress, egress, public utilities and public services.

Environmental Review

As a small in-fill site substantially surrounded by urban uses, where the development is consistent with the General Plan and zoning, where there is no significant natural habitat for endangered species, where there are no significant effects related to traffic, noise, air or water quality, where the site is adequately served by all required utilities and public services, in accordance with Section 15332 of the California Environmental Quality Act Guidelines the project is exempt from further environmental review.

With regard to traffic, the Implementation Program C8 of the City's General Plan Circulation Element requires a transportation analysis for projects that result in 50 or more net new daily trips. Compared to the property's recently vacant restaurant use the proposed multiple-family residential project results in a net reduction of daily trips. The attached traffic report (Attachment D) calculates the project at 165 daily trips compared to the calculated 324 trips for the restaurant use. Thus, no transportation analysis is required.

With regard to air quality, since the project is located on a State Highway, the project potentially exposes people to air pollution. Additionally, the project's construction has a potential to create air pollution. The project's air quality report (Attachment E) provides appropriate mitigation measures including controlling dust and exhaust during construction, air filtration for the dwellings, and construction equipment guidelines. The report's recommended mitigations are included as conditions of approval. The project is below the significance threshold for creating a significant amount of greenhouse gas. Staff included appropriate conditions of approval to mitigate the air quality impacts.

With regard to noise, the project is located in an area that may expose its residents to higher noise levels. The noise study (Attachment F) recommends certain glazing, exterior wall construction, supplemental ventilation, and mechanical equipment noise controls to mitigate the noise levels to meet the City's standards. Staff included appropriate conditions of approval to mitigate the noise impacts.

With regard to the tree impacts, the applicant commissioned an arborist report. The report catalogs the condition of all of the on-site trees and provides for tree protection measures for the trees to remain. The significant trees to remain in the rear yard are in moderate to high health and suitable for preservation. The report contains tree protection measures for the on-site and off-site trees to remain. Staff included appropriate conditions of approval to mitigate the impacts to the trees.

PUBLIC CONTACT

The applicant held an informal neighborhood meeting on March 16, 2016 at the project site, which was attended by six interested parties.

Staff placed an advertisement in the Town Crier and mailed a post card the 155 surrounding property owners and business owners within a 500-foot radius.

The applicant constructed story poles marking the corners and heights of the building. The taller poles show the height to the top of the parapet (68 feet). Lower flags on the pole indicate the height of a conforming building parapet at 53 feet (45 feet plus eight-foot parapet). The shorter poles at the rear show parapet height at 29 feet.

The applicant provided a four-foot wide by six-foot tall on-site billboard notice located near the front property line.

Staff posted the agenda for a general public notice.

Cc: Lola, LLC, Property Owners
Brett Bailey, Architect, Dahlin Group

Attachments:

A. Application
B. Area Map, Vicinity Map and Notification Map
C. Klaus Parking System Information
D. Traffic Report
E. Air Quality Report
F. Noise Study
G. Arborist's Report

FINDINGS

16-D-01, 16-UP-02 and 16-SD-01—4880 El Camino Real

1. With regard to environmental review, the Planning and Transportation Commission finds in accordance with Section 15332 of the California Environmental Quality Act Guidelines, that the following Categorical Exemption findings can be made:

   a. 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, including incentives for the production of affordable housing;

   b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; there is no record that the project site has value as habitat for endangered, rare or threatened species;

   c. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the completed studies and staff analysis reflected in this report support this conclusion; and

   d. The project has been reviewed and it is found that the site can be adequately served by all required utilities and public services.

2. With regard to commercial design review, the Planning and Transportation Commission makes the following findings in accordance with Section 14.78.040 of the Municipal Code:

   a. The proposal meets the goals, policies and objectives of the General Plan with its level of intensity and residential density within the El Camino Real corridor, and ordinance design criteria adopted for the specific district such as the stepped building massing and the landscape buffer at the rear;

   b. The proposal has architectural integrity and has an appropriate relationship with other structures in the immediate area in terms of height, bulk and design; the project has a mixture of scales relating to the larger street and vehicles and the smaller pedestrian orientation;

   c. Building mass is articulated to relate to the human scale, both horizontally and vertically as evidenced in the design of the projecting bay windows, overhangs and balconies. Building elevations have variation and depth and avoid large blank wall surfaces. Residential projects incorporate elements that signal habitation, such as identifiable entrances, overhangs, bays and balconies;

   d. Exterior materials and finishes such as the stained mahogany entry, natural limestone, cementitious horizontal siding, C-channel steel and architectural glass railings, convey quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, and structural elements;

e. Landscaping such as the specimen palm trees, timber bamboo, hedges and groundcover is generous and inviting and landscape and hardscape features such as the limestone pavers, precast cement planters and benches are designed to complement the building and parking areas and to be integrated with the building architecture and the surrounding streetscape. Landscaping includes substantial street tree canopy including three street trees and two specimen palm trees, either in the public right-of-way or within the project frontage;

f. Signage such as the laser cut building numbers is designed to complement the building architecture in terms of style, materials, colors and proportions;

g. Mechanical equipment is screened from public view by the building parapet and is designed to be consistent with the building architecture in form, material and detailing; and

h. Service, trash and utility areas are screened from public view by their location in the building garage and careful placement to the side of the building consistent with the building architecture in materials and detailing.

3. With regard to use permit, the Planning and Transportation Commission finds in accordance with Section 14.80.060 of the Municipal Code:

   a. That the proposed location of the multiple-family residential use is desirable or essential to the public health, safety, comfort, convenience, prosperity, or welfare in that the zoning conditionally permits it and the project provides housing at a variety of affordability levels;

   b. That the proposed location of the multiple-family residential use is in accordance with the objectives of the zoning plan as stated in Chapter 14.02 of this title in that the project provides for community growth along sound line; that the design is harmonious and convenient in relation to surrounding land uses; that the project does not create a significant traffic impact; that the project helps meet the City's housing goals including affordable housing; that the project protects and enhances property values; and that the project enhances the City's distinctive character with a high-quality building design in a commercial thoroughfare context;

   c. That the proposed location of the multiple-family residential use, under the circumstances of the particular case and as conditioned, will not be detrimental to the health, safety, comfort, convenience, prosperity, or welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity;

   d. That the proposed multiple-family residential use complies with the regulations prescribed for the district in which the site is located and the general provisions of Chapter 14.02;

4. With regard to the subdivision, the Planning and Transportation Commission finds in accordance with Section 66474 of the Subdivision Map Act of the State of California:

   a. That the proposed subdivision is consistent with the General Plan;

b. That the site is physically suitable for this type and density of development in that the project meets all zoning requirements except where development incentives have been granted;

c. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage, or substantially injure fish or wildlife; and no evidence of such has been presented;

d. That the design of the condominium subdivision is not likely to cause serious public health problems because conditions have been added to address noise, air quality and life safety concerns; and

e. That the design of the condominium subdivision will not conflict with public access easements as none have been found or identified on this site.

CONDITIONS

16-D-01, 16-UP-02 and 16-SD-01—4880 El Camino Real

GENERAL

1. **Approved Plans**

   The project approval is based upon the plans received on May 12, 2016, except as modified by these conditions.

2. **Public Right-of-Way, General**

   All work within the public right-of-way shall be done in accordance with plans to be approved by the City Engineer.

3. **Encroachment Permit**

   The applicant shall obtain an encroachment permit, permit to open streets and/or excavation permit prior to any work done within the public right-of-way and it shall be in accordance with plans to be approved by the City Engineer. *Note: Any work within El Camino Real will require applicant to obtain an encroachment permit with Caltrans prior to commencement of work.*

4. **Public Utilities**

   The applicant shall contact electric, gas, communication and water utility companies regarding the installation of new utility services to the site.

5. **ADA**

   All improvements shall comply with Americans with Disabilities Act (ADA).

6. **Sewer Lateral**

   Any proposed sewer lateral connection shall be approved by the City Engineer.

7. **Upper Story Lighting**

   Any upper story lighting on the sides and rear of the building shall be shrouded or directed down to minimize glare.

8. **Indemnity and Hold Harmless**

   The property owner agrees to indemnify and hold City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of City in connection with

City's defense of its actions in any proceeding brought in any State or Federal Court, challenging the City's action with respect to the applicant's project.

9. **Plan Changes**

The Planning and Transportation Commission may approve minor changes to the development plans. Substantive project changes require a formal amendment of the application with review by the Planning and Transportation Commission and City Council.

PRIOR TO FINAL MAP RECORDATION

10. **CC&Rs**

The applicant shall include provisions in the Covenants, Conditions and Restrictions (CC&Rs) that: a) restrict storage on the private patio and decks and outline rules for other objects stored on the private patio and decks with the goal of minimizing visual impacts; and b) require the continued use and regular maintenance of the Klaus Multiparking vehicle parking system. Such restriction shall run in favor of the City of Los Altos.

11. **Public Utility Dedication**

The applicant shall dedicate public utility easements as required by the utility companies to serve the site.

12. **Fees**

The applicant shall pay all applicable fees, including but not limited to sanitary sewer impact fees, parkland dedication in lieu fees, traffic impact fees and map check fee plus deposit as required by the City of Los Altos Municipal Code.

PRIOR TO BUILDING PERMIT SUBMITTAL

13. **Subdivision Map Recordation**

The applicant shall record a final map. Plats and legal descriptions of the final map shall be submitted for review and approval by the City Land Surveyor, and the applicant shall provide a sufficient fee retainer to cover the cost of the final map application.

14. **Public Improvements**

The property owner or applicant shall install remove and replace with current City Standard sidewalk, vertical curb and gutter, and driveway approaches from property line to property along the frontage of El Camino Real. Such work shall restore the existing driveway approach to current City Standard vertical curb and gutter along the northerly corner of the property.

15. **Street Trees**

The street trees shall be installed along the project's El Camino Real frontage and include two trees in front of 4896 El Camino Real, as directed by the City Engineer.

16. **Sidewalk Lights**

The owner or applicant shall maintain and protect the existing light fixture in the El Camino Real sidewalk, as directed by the City Engineer.

17. **Performance Bond**

The applicant shall submit a cost estimate for all improvements in the public right-of-way and shall submit a 100 percent performance bond (to be held until acceptance of improvements) and a 50 percent labor and material bond (to be held until 6 months after acceptance of improvements) for the work in the public right-of-way.

18. **Right of Way Construction**

The applicant shall submit detailed plans for any construction activities affecting the public right-of-way, including but not limited to excavations, pedestrian protection, material storage, earth retention, and construction vehicle parking, to the City Engineer for review and approval. The applicant shall also submit on-site and off-site grading and drainage plans that include drain swales, drain inlets, rough pad elevations, building envelopes, and grading elevations for approval by the City.

19. **Sewer Capacity**

The applicant shall show sewer connection to the City sewer main and submit calculations showing that the City's existing 8-inch sewer main will not exceed two-thirds full due to the additional sewage capacity from proposed project. For any segment that is calculated to exceed two-thirds full for average daily flow or for any segment that the flow is surcharged in the main due to peak flow, the applicant shall upgrade the sewer line or pay a fair share contribution for the sewer upgrade to be approved by the Director of Public Works.

20. **Trash Enclosure**

The applicant shall contact Mission Trail Waste Systems and submit a solid waste, recyclables (and organics, if applicable) disposal plan indicating the type, size and number of containers proposed, and the frequency of pick-up service subject to the approval of the Engineering Division. The applicant shall also submit evidence that Mission Trail Waste Systems has reviewed and approved the size and location of the proposed trash enclosure. The approved trash staging location shall be maintained as required by the City Engineer.

21. **Stormwater Management Plan and NPDES Permit**

The applicant shall conform to the Stormwater Management Plan (SWMP) report showing that 100% of the site is being treated, and in compliance with the Municipal Regional Stormwater NPDES Permit (MRP), in accordance with the C.3 Provisions for Low Impact Development (LID) and in compliance with the November 19, 2015 requirements. The SWMP shall be reviewed and approved by a City approved third party consultant at the applicant's expense. The recommendation from the SWMP shall be shown on the building plans.

22. **Green Building Standards**

The applicant shall provide verification that the project will comply with the City's Green Building Standards (Section 12.26 of the Municipal Code) from a qualified green building professional.

23. **Property Address**

The applicant shall provide an address signage plan as required by the Building Official.

24. **Landscape**

The applicant shall provide a landscape and irrigation plan in conformance to the City's Water Efficient Landscape Regulations in accordance with Chapter 12.46 of the Municipal Code.

PRIOR TO ISSUANCE OF DEMOLITION AND/OR BUILDING PERMIT

25. **Construction Management Plan**

The applicant shall submit a construction management plan for review and approval by the Community Development Director. The construction management plan shall address any construction activities affecting the public right-of-way, including but not limited to: prohibiting dirt hauling during peak traffic hours, excavation, traffic control, truck routing, pedestrian protection, appropriately designed fencing to limit project impacts and maintain traffic visibility as much as practical, material storage, earth retention and construction and employee vehicle parking.

26. **Sewer Lateral**

The applicant shall abandon additional sewer laterals and cap at the main if they are not being used. A property line sewer cleanout shall be installed within 5 feet of the property line within private property.

27. **Solid Waste Ordinance**

The applicant shall comply with the City's adopted Solid Waste Collection, Remove, Disposal, Processing & Recycling Ordinance, which requires mandatory commercial and multi-family

dwellings to provide for recycling, and organics collection programs as per Chapter 6.12 of the Municipal Code.

28. **Air Quality Mitigation**

The applicant shall implement and incorporate the air quality mitigations into the plans as required by staff in accordance with the report prepared by Illingsworth & Rodin, Inc., dated March 18, 2016.

29. **Noise Mitigation**

The applicant shall implement and incorporate the noise mitigation measures into the plans as required by staff in accordance with the report by Wilson Ihrig, dated March 2, 2016 and revised on April 20, 2016.

30. **Tree Protection**

The applicant shall implement and incorporate the tree protection measures into the plans and on-site as required by staff in accordance with the report by The Tree Specialist, dated April 21, 2106.

31. **Affordable Housing Agreement**

The applicant shall offer for 30-year period, one, three-bedroom unit at the moderate-income level, and two, two bedroom units at the low-income level, in accordance with the City's Affordable Housing Agreement, in a recorded document in a form approved by the City Attorney.

PRIOR TO FINAL INSPECTION

32. **Maintenance Bond**

The applicant shall submit a one-year, 10-percent maintenance bond upon acceptance of improvements in the public right-of-way.

33. **Stormwater Facility Certification**

The applicant shall have a final inspection and certification done and submitted by the Engineer who designed the SWMP to ensure that the treatments were installed per design. The applicant shall submit a maintenance agreement to City for review and approval for the stormwater treatment methods installed in accordance with the SWMP. Once approved, the applicant shall record the agreement.

34. **Stormwater Catch Basin**

The applicant shall label all new or existing public and private catch basin inlets which are on or directly adjacent to the site with the "NO DUMPING - FLOWS TO THE BAY" logo as required by the City Engineer.

35. **Green Building Verification**

The applicant shall submit verification that the structure was built in compliance with the California Green Building Standards pursuant to Section 12.26 of the Municipal Code.

36. **Landscaping Installation**

The applicant shall install all on- and off-site landscaping and irrigation, as approved by the Community Development Director and the City Engineer.

37. **Signage and Lighting Installation**

The applicant shall install all required signage and on-site lighting per the approved plan. Such signage shall include the disposition of guest parking, the turn-around/loading space in the front yard and accessible parking spaces.

38. **Acoustical Report**

The applicant shall submit a report from an acoustical engineer ensuring that the rooftop mechanical equipment meets the City's noise regulations.

39. **Landscape Certification**

The applicant shall provide a Certificate of Completion conforming to the City's Water Efficient Landscape Regulations.

40. **Condominium Map**

The applicant shall record the condominium map as required by the City Engineer.

41. **Street Damage**

The applicant shall repair any damaged right-of-way infrastructures and otherwise displaced curb, gutter and/or sidewalks and City's storm drain inlet shall be removed and replaced as directed by the City Engineer or his designee. The applicant is responsible to resurface (grind and overlay) half of the street along the frontage of El Camino Real if determined to be damaged during construction, as directed by the City Engineer or his designee.

42. **Stormwater Management Plan Inspection**

The applicant shall have a final inspection and certification done and submitted by the Engineer who designed the SWMP to ensure that the treatments were installed per design. The applicant shall submit a maintenance agreement to City for review and approval for the stormwater treatment methods installed in accordance with the SWMP. Once approved, the applicant shall record the agreement.

43. **Driveway Visibility**

The applicant shall work with the Engineering Division to indicate a sufficient no parking area along El Camino Real to the north of the driveway to provide adequate sight visibility.

CONCURRENCE IN SENATE AMENDMENTS
AB 2501 (Bloom and Low)
As Amended August 19, 2016
Majority vote

ASSEMBLY:	50-11	(May 27, 2016)	SENATE:	34-3	(August 25, 2016)

Original Committee Reference: **H. & C.D.**

SUMMARY: Makes changes to the density bonus law. Specifically, **this bill**:

1) Clarifies that when an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within the jurisdiction of a city or county, that local government shall provide the applicant with waiver and reduction of development standards for the production of housing units and child care facilities, in addition to incentives or concessions, as currently provided in density bonus law.

2) Prohibits a local government from conditioning the submission, review, or approval of an application for a density bonus on the preparation of an additional report or study that is not otherwise described in density bonus law.

3) Allows a local government to require reasonable documentation to establish eligibility for a density bonus, incentives and concessions, waivers of development standards, and parking ratios.

4) Requires, in order to provide for the expeditious processing of a density bonus application, the local government to do all of the following:

   a) Adopt procedures and timelines for processing a density bonus application;

   b) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete, consistent with density bonus law; and,

   c) Notify the applicant for a density bonus whether the application is complete in a manner that is consistent with the Permit Streamlining Act (Act).

5) Modifies the circumstance under which a local government can refuse to grant a concession or incentive to a developer to when a concession or incentive "does not result in identifiable and actual cost reductions" to provide for affordable housing costs or rents for the targeted units rather than when it "is not required in order" to provide for the affordable housing costs.

6) Provides that a local government must bear the burden of proof for the denial of a requested concession or incentive.

7) Clarifies that "density bonus" means the maximum allowable gross residential density.

8) Clarifies that a developer that makes an application for a density bonus may elect to accept no increase in the density of a project.

ATTACHMENT 4e

9) Adds "mixed use development" to the definition of "housing development." Mixed use development means developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to neighborhood commercial use and to the first floor of the buildings that are two or more stories. Neighborhood commercial means small scale-general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

10) Provides that the granting of a concession or incentive cannot, in and of itself, require a special study.

11) Deletes the requirement that incentives or concessions proposed by a developer or local government result in "identifiable, financially sufficient" and actual cost reductions, and instead, require the "identifiable" and actual cost reductions.

12) Clarifies that each component of any density bonus calculation, including base density and bonus density, resulting in fractional units will be separately rounded up to the next whole number. Finds and declares that this provision is declaratory of existing law.

13) Provides that the density bonus law shall be interpreted liberally in favor of producing the maximum number of total housing units.

14) Provides that a request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled.

15) Provides that no reimbursement is necessary because a local agency has the authority to levy service charges, fees, or an assessment sufficient to pay for the program or level of service mandated by this act.

The Senate amendments:

1) Allow a local government to require reasonable documentation to establish eligibility for a density bonus, incentives and concessions, waivers of development standards and parking ratios.

2) Clarify that a city must grant a developer incentives and concessions as part of a request for a density increase if requested by the developer and if the request is consistent with state law.

3) Provide that a request for a parking reduction does not reduce or increase the number of incentives or concessions to which the applicant is entitled.

4) Delete the provision that provides that denial of a requested concession or incentive will be deemed to have exhausted the applicant's existing administrative remedies.

5) Delete the provision that clarifies that the definition of "density bonus" includes any incentive or concessions, or wavier or reduction of development standard, provided to the applicant for the production of housing units and child care facilities.

6) Delete the express prohibition on a developer requesting an increase in density as a concession or incentive.

7) Modify the circumstance under which a local government can refuse to grant a concession or incentive to a developer when a concession or incentive "does not result in identifiable and actual cost reductions" to provide for affordable housing costs or rents for the targeted units.

8) Make clear that incentives and concessions means regulatory incentives and concessions, reduction in site development standards, zoning, or architectural design standards that result in actual identifiable costs reductions to providing for affordable housing costs or for rents for the targeted affordable units.

9) Add conforming changes to avoid chaptering conflicts with AB 2442 (Holden) and AB 2556 (Nazarian), both of the legislative session.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: Density bonus law was originally enacted in 1979, but has been changed numerous times since. The Legislature enacted the density bonus law to help address the affordable housing shortage and to encourage development of more low- and moderate income housing units. Nearly 40 years later, the Legislature faces the same challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100% affordable developments as well. In return for inclusion of affordable units in a development, developers are given an increase in density over a city's zoned density and concessions and incentives. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units. Because of numerous amendments over the years, State Density Bonus Law is confusing and subject to interpretation by both developers and cities as to its meaning.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the cities zoned density in exchange for including extremely low, very low, low, and moderate income housing. Failure to adopt an ordinance does not relieve a local government from complying with state density bonus law. Local governments must grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:

1) Ten percent of the total units for lower income households;

2) Five percent of the total units of a housing for very low income households;

3) A senior citizen housing development or mobilehome park; and,

4) Ten percent of the units in a common-interest development (CID) for moderate-income households.

A developer can submit a request to a local government as part of their density bonus application for incentives and concessions. Developers can receive the following number of incentives or concessions:

1) One incentive or concession for projects that include at least 10% of the total units for lower income households, at least 5% for very low income households, or at least 10% for moderate income households in a common interest development.

2) Two incentives or concessions for projects with at least 20% lower income households, at least 10% for very low income households, or at least 20% for moderate income households in common interest developments.

3) Three incentives or concessions for projects with at least 30% lower income households, at least 15% for very low income households, or at least 30% for moderate income households in common interest developments.

Timeline for reviewing density bonus application: Existing law does not set a timeline by which a local government must process an application for a density bonus. This bill would require a local government to respond to a density bonus application as required under the Permit Streaming Act. Within 30 days of receiving the application, a local government would be required to notify an applicant in writing if the application is complete. If the determination is not made within 30 days then the density bonus application would be deemed complete.

Electing to accept no density increase: State law allows a developer a percentage increase in density in return for inclusion of a corresponding amount of very- low, low, moderate income units. The maximum amount of density increase a developer can seek is 35%. Existing law allows a developer to choose to accept less of a density increase than he or she is entitled under the statute. The statute does not state explicitly that a developer can seek an amount equal to zero above the zoned density, however some have interpreted the law to allow this. This bill would explicitly state that a developer can elect to accept no increase in density.

Determining the value of concessions and incentives: Developers are allowed to submit a proposal for specific incentives and concession as part of the application for a density bonus. Local governments are required to grant the concessions or incentives a developer requests unless they make written findings based on substantial evidence that the concession or incentive is not required in order to provide the affordable housing, would have specific adverse health and safety impacts, or have an adverse impact on a property registered historic property that cannot be mitigated. When seeking a reduction in a site development standard or modification of zoning requirements or architectural design requirements, or other regulatory incentives and concessions, existing law requires that reduction or modification result in "identifiable, financially sufficient and actual cost reductions." This language was added to the statute by SB 1818 (Hollingsworth), Chapter 928, Statutes of 2004. According to the Assembly Committee analysis of SB 1818, "Current law requires local governments to provide applicants for density bonuses with incentives and concessions in addition to a density bonus, but the law does not quantify the value of the incentives and concessions that must be offered. SB 1818 requires that the incentives and concessions "result in identifiable, financially sufficient and actual cost reductions".

According to supporters of this bill, the intent of this language is to ensure that the concessions and incentives are financially sufficient to reduce the cost of the development to make the affordable housing units financially feasible. Further, according to supporters of this bill, in some cases local governments interpret this language to require developers to submit pro formas showing the amount of profit they will make on a project. The question becomes who determines whether or not a concession or incentives is "financially sufficient" to make the

affordable housing units pencil out. This bill deletes "financially sufficient" as the standard and requires the reduction in site development standards, modification of zoning requirements, or concession or incentive, to result in identifiable and actual cost reductions to provide for affordable housing costs or affordable rents.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085 FN: 0004967

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California Environmental Quality Act Lawsuits and California's Housing Crisis

*Jennifer Hernandez**

Summary

The California Environmental Quality Act ("CEQA")[1] continues to play a vital role in assuring that our state and local agencies carefully evaluate, disclose, and avoid or reduce the potentially adverse environmental consequences of their actions. In addition, CEQA ensures that agencies consider and respond to public and agency comments on these environmental issues, and accept the responsibility of disclosing when, even after mitigating adverse impacts, such actions would have significant unavoidable adverse impacts on the environment.

However, in recent years most CEQA lawsuits filed in California seek to block infill housing and transit-oriented land use plans, as well as public service and infrastructure projects in existing California communities. Most of the challenged projects are precisely the types of projects and plans that today's environmental and climate policies seek to promote. The most frequent targets of CEQA lawsuits typically are required to undergo a rigorous environmental analysis and public review process that takes 18 to 36 months or longer. This process involves an Environmental Impact Report and at least three rounds of public notice and comment before being eligible for approval by public votes of elected officials. Projects without the ample economic resources required to pay all costs (including technical and legal experts) are never eligible for an approval, and thus cannot be sued under CEQA. Even the types of infill projects most commonly sued under CEQA that are not ultimately sued must undergo three rounds of costly

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* Jennifer Hernandez practices environmental and land use law in the San Francisco and Los Angeles offices of Holland & Knight. Many other members of Holland & Knight contributed to the study of CEQA lawsuits evaluated in this article, including Elizabeth Lake, Tamsen Plume, Amanda Monchamp, Nicholas Targ, Charles Coleman, David Preiss, Susan Booth, Bradley Brownlow, Tara Kaushik, Chelsea Maclean, Paula Kirlin, Joanna Meldrum, Dan Golub, Stephanie DeHerrera, Rob Taboada, Genna Yarkin, Rachel Boyce, Abigail Alter, and Haley Nieh.

1. Cal. Pub. Res. Code § 21000 (West 2016).

administrative proceedings: (1) local agency staff, (2) appointed planning commissions, and (3) elected city councils or boards of supervisors; planning commission and elected council or board approvals require majority votes from officials who are themselves elected and appointed based on majority votes from elections. CEQA lawsuits may only be filed against the projects that survive this multi-tiered review and approval gauntlet, and are actually approved. There is no data available on the projects that lack the financial resources or the ability to overcome staff or political resistance to complete the entirety of this process, and are thus abandoned or downsized to avoid a CEQA lawsuit, or else, they enter into financial and other settlements to avoid a CEQA lawsuit.

In 2015, I joined with two law firm colleagues and published *In the Name of the Environment*, which was the first comprehensive study of all lawsuits filed statewide under the California Environmental Quality Act.[2] This study reviewed all lawsuits filed over a three-year study period between 2010 and 2012 ("First Dataset"). Our study recommended a "mend, not end" approach to updating CEQA by modifying CEQA lawsuit rules to assure that enforcement of CEQA is again aimed at protecting the environment and public health. We found that too often enforcement of CEQA is aimed at promoting the economic agendas of competitors and labor union leaders, or the discriminatory "Not In My Backyard" (NIMBY) agendas of those seeking to exclude housing, park, and school projects that would diversify communities by serving members of other races and economic classes. We did not suggest any new CEQA exemptions or otherwise "gutting" CEQA or any other environmental, public health, or climate laws or regulations. We made three specific recommendations for amending CEQA's litigation rules:

First, anonymous CEQA lawsuits by parties seeking to conceal their identity and their economic interests in the outcome of lawsuits must end. CEQA's purpose is to protect the environment and human health, not advance economic agendas.

Second, duplicative CEQA lawsuits allowing twenty or more lawsuit challenges for each agency approval for the same project or plan must end. Our communities have and must continue to evolve to meet new environmental, equity, and economic needs without the delays and costs created by serial lawsuits filed over many years (and even multiple decades) that repeatedly attack the same plans and projects.

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2. Stephanie M. DeHerrera, David Friedman, Jennifer L. Hernandez, *In the Name of the Environment: Litigation Abuse Under* CEQA, HOLLAND & KNIGHT (August 2015), https://perma.cc/SV3V-F5L2. To compile the original report as well as this sequel, we filed a Public Records Act request with the Attorney General's office, which by statute is required to be served with copies of all CEQA lawsuits filed statewide. *See* FN 4 in this first report for the lawsuit petition collection methodology.

Finally, we supported expanding "remedy relief" beyond politically favored projects in "transactional" bills that addressed only one or two projects, and instead more broadly limiting the extraordinary judicial remedy of vacating project approvals if a CEQA study is deficient to projects that could actually cause harm to the natural environment or public health. The presumptive remedy for deficient CEQA studies for other projects should be the required correction of CEQA study and imposition of additional feasible mitigation if warranted by the corrected study.

Our study has garnered significant support, and some criticism. No critics found any error in our data. Several commenters asserted that there was not enough CEQA litigation to warrant making any conclusion about the need for modifying CEQA's litigation rules. Notwithstanding efforts to dismiss the need to update CEQA's litigation rules, the political reality is that both before and after publication of our study, several "billionaire" projects, such as professional sports arenas and office headquarter complexes, have sought—and many have received—legislative relief from CEQA's standard litigation framework.

This article presents the next three-year tranche of CEQA lawsuit data (2013-2015) ("Second Dataset"). The pattern of CEQA lawsuits has not changed, although an even higher percentage of CEQA lawsuit challenges were aimed at projects within existing communities. The top lawsuit targets remain infill housing and local land use plans to increase housing densities and promote transit. Given California's extraordinary housing crisis[3] and the shame inherent in having the nation's highest poverty rate in one of the world's most successful economies,[4] the Second Dataset demonstrates even more clearly the need to update CEQA's litigation rules to bring enforcement of CEQA into alignment with the state's environmental, equity, and economic priorities.

I. Introduction

The First Dataset, the 2015 study I coauthored, demonstrated that CEQA lawsuits were most often aimed at infill housing (especially multi-family apartments in urbanized areas), that more transit projects were challenged than roadway and highway projects combined, and that the most frequent "industrial" targets challenged were clean energy facilities like solar and wind projects. As we discussed in our first report, these are the

3. LAO *Housing Publications*, LEGISLATIVE ANALYST'S OFFICE, https://perma.cc/6F87-7NXW.

4. David Friedman, Jennifer Hernandez, *California's Social Priorities*, HOLLAND & KNIGHT, Chapman University Press (2015), https://perma.cc/XKB7-4YK4.

categories of projects—infill housing, transit, and renewable energy—viewed as environmentally beneficial, and each is a critical element of California's climate policies.[5] The First Dataset helped break through political rhetoric about what was—and wasn't—being targeted by CEQA lawsuits. Most importantly, the data showed that the litigation practice that has evolved since CEQA's 1970 enactment date was no longer focused on protecting forests and other natural lands, or fighting pollution sources like factories and freeways. Rather, CEQA has evolved into a legal tool most often used against the higher density urban housing, transit, and renewable energy projects, which are all critical components of California's climate priorities and California's ongoing efforts to remain a global leader on climate policy.

The First Dataset also demonstrated the widespread abuse of CEQA lawsuits for nonenvironmental purposes. State and regional environmental advocacy groups like the Sierra Club brought only thirteen precent of these lawsuits, while newlyminted, unincorporated groups with environmental-sounding names filed nearly half to the most CEQA lawsuits. Unlike the federal environmental laws that allow for "citizen suit" enforcement like the Clean Water Act, Clean Air Act, and Endangered Species Act, CEQA lawsuits can be filed anonymously. Additionally, lawsuits can be filed by parties attempting to advance an economic rather than environmental agenda, such as business competitors, labor unions, and "bounty hunter" lawyers seeking quick cash settlements, even if they have no real client.

This article compiles and analyzes the next three years of statewide CEQA lawsuits, which extend into California's post-recession economic recovery period between 2013-2015. We repeated our original study methodology, but also sorted the data into regional subsets to better understand how CEQA lawsuit patterns differ by region. We also mapped CEQA lawsuit challenges in the six-county Los Angeles region, which is the state's most populous and most CEQA litigious region.

This article also provides more detail on CEQA lawsuits challenging projects to build more housing, given the severity of California's housing crisis. Nonpartisan agencies[6] and outside experts[7] have attributed this crisis to about three decades of severe underproduction of new housing, especially in the coastal employment centers of the Bay Area and Southern California. The housing crisis has produced a cascading sequence of

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5. *See, e.g.*, California Air Resource Board Scoping Plans for achieving greenhouse gas reduction targets, available here: AB 32 *Scoping Plan*, CALIFORNIA AIR RESOURCES BOARD (July 14, 2017), https://perma.cc/B9TH-9R6Y

6. LAO, *supra* note 2.

7. Jan Mischke, Shannon Peloquin, Daniel Weisfield, Jonathan Woetzel, *Closing California's Housing Gap*, MCKINSEY & COMPANY (Oct. 2016), https://perma.cc/QG7Q-U74E.

adverse consequences to working Californians. These consequences include the highest poverty rate in the nation when housing costs are taken into account, extreme commutes of more than three hours per day, billions of dollars in lost economic productivity, and adverse personal and public health outcomes including homelessness (more than 40,000 in Los Angeles alone). These extreme commutes, along with a poorly conceived policy to discourage automobile use by intentionally increasing road congestion on highways, has resulted in adverse environmental outcomes. Despite the most stringent clean car and clean fuel mandates in the nation, California's annual air pollution from vehicles actually increased for the first time since such data was collected as drivers face ever longer—in distance and time—commutes.[8]

The key conclusion from this Second Dataset is that CEQA lawsuit abuse is worsening California's housing crisis, increasing air pollution, increasing the global emissions of greenhouse gas that the state has vowed to reduce, and perpetuating and protecting segregation patterns by class and race. Given the social and political values of Sacramento's elected officials, I have concluded that if these CEQA practices were not pursued by powerful Sacramento special interests "in the name of the environment," they would have been roundly condemned - and ended - many years ago.

In short, the need to update CEQA litigation rules and end lawsuit abuse is stronger than ever.

II. CEQA Litigation by the Numbers (2013-2015): After the Great Recession, Even More Lawsuits Target Projects in Existing Communities, Especially Housing.

Our First Dataset[9] captured the end of the Great Recession, when California's housing market collapsed. During this time, the federal government was issuing substantial grant funding for "shovel ready" public infrastructure (like the California High Speed Rail Project) and green energy upgrades (ranging from LED lighting retrofits for K-12 schools to the construction of large new wind and solar power generation facilities) under the American Recovery and Reinvestment Act of 2009. CEQA lawsuits filed in the First Dataset were about evenly split (49%/51%) between lawsuits targeting public agency projects for which there were no private applicants or "business" sponsor and lawsuits challenging housing or office buildings or other private sector projects sponsored by applicants needing public agency approvals or public funding.

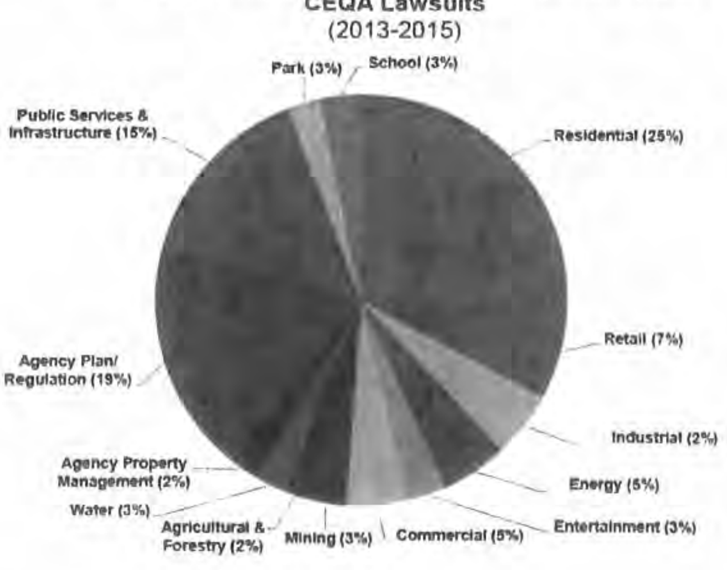
8. Melanie Curry, *Report: CA Emissions Shrinking—Except for Transportation*, STREETS BLOG CAL (Aug. 23, 2017), https://perma.cc/8434-CUP6.

9. DeHerrera, Friedman, & Hernandez, *supra* note 4.

A. Fifty-Nine Percent of CEQA Lawsuits Target Housing, Public Service/Infrastructure Projects, and Agency Plans/Regulations.

In the Second Dataset, as shown in Figure 1, the return of private capital to the market after the recession bumped up the number of private applicants seeking government approvals, and the relative share of CEQA lawsuits targeting private sector projects jumped from 51% to 58%. As was true for the First Dataset, the top three categories of lawsuit challenges were housing projects, followed by agency plans and regulations (most of which are local agency plans to increase housing or improve and diversify transportation infrastructure). Rounding off the top three CEQA lawsuit targets were public service and infrastructure construction projects, most of which were located within and served existing communities. In the First Dataset, these three categories of projects comprised 53% of all CEQA lawsuit targets. In the Second Dataset, these project categories accounted for 57% of all CEQA lawsuit targets.

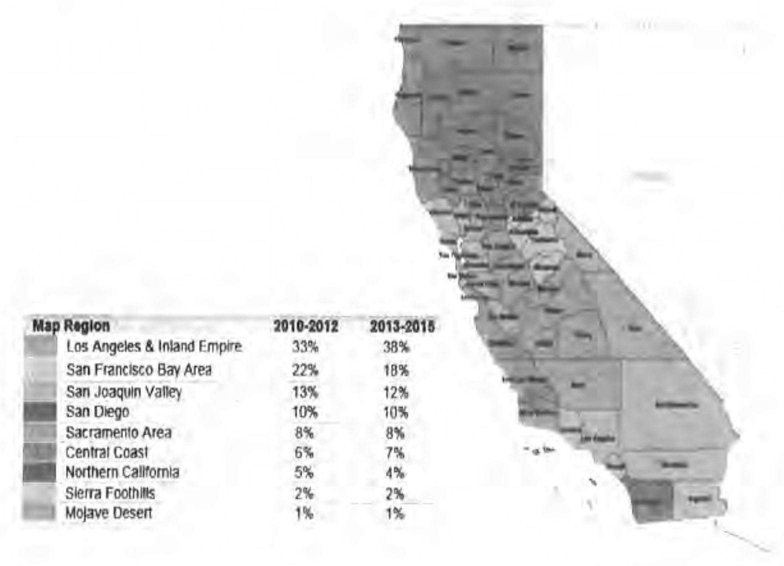
Figure 1: Residential, Public Service & Infrastructure Projects, and Agency Plans and Regulations, Account for 59% of CEQA Lawsuits (2013-2015)



B. Most CEQA Lawsuits Target Projects in Urban Population Centers, Not Rural or Remote Natural Preserve Areas.

Although CEQA lawsuit anecdotes and political rhetoric often focus on protecting natural lands and wilderness areas, in the First Dataset 55% of these lawsuits were filed in the San Francisco and Los Angeles regions, and only 22% of CEQA lawsuits were filed in the combined regions of the Mojave, Sierras, Central Coast, Sacramento, and Northern California (all counties north of San Francisco and Sacramento). In the Second Dataset, the pattern of CEQA lawsuits as a tool used primarily in existing urban population centers increased. The Bay Area and Los Angeles region increased from 55% to 58% of the state's total volumes of CEQA lawsuits. Los Angeles had more than twice as many CEQA lawsuits as the next most litigious region, San Francisco. All 9 regions had some CEQA lawsuits, but the regions with more natural wilderness areas had the fewest CEQA lawsuits: fewer than 10 lawsuits were filed in the Mojave and Sierras, and only 22 CEQA lawsuits were filed in all counties north of Sacramento.

Figure 2: Los Angeles Region Accounts for 38% of CEQA Lawsuits Statewide



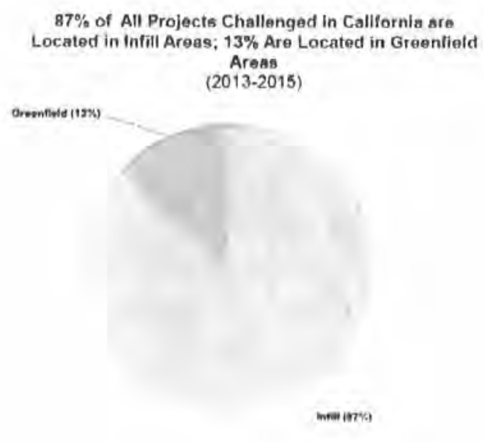
Map Region	2010-2012	2013-2015
Los Angeles & Inland Empire	33%	38%
San Francisco Bay Area	22%	18%
San Joaquin Valley	13%	12%
San Diego	10%	10%
Sacramento Area	8%	8%
Central Coast	6%	7%
Northern California	5%	4%
Sierra Foothills	2%	2%
Mojave Desert	1%	1%

C. The Vast Majority of CEQA Lawsuits Target Infill Projects in Existing Communities, not Greenfield Projects on Undeveloped Lands.

In the First Dataset, about 80% of the CEQA lawsuits challenging projects that involved physical construction were located within the existing development patterns of existing communities, which is a definition of "infill" used by the state agency responsible for CEQA's statewide regulatory "Guidelines," the Governor's Office of Planning & Research.[10] Infill locations either fell within existing city boundaries, or within unincorporated county areas already surrounded by development, such as San Lorenzo in Alameda County and Marina Del Rey in Los Angeles County. Unincorporated county areas at the fringe of existing cities or the edge of unincorporated county communities, even if adjacent to existing development, were tallied as "greenfield" projects, as were projects in agricultural and other undeveloped areas. In the First Dataset, only 20% of CEQA lawsuits filed statewide challenged projects in Greenfields.

In the Second Dataset, the percentage of CEQA lawsuits aimed at infill projects jumped 7%, from 80% to 87% of the CEQA lawsuits challenging construction projects. Projects targeted in Greenfields fell to 12% of CEQA lawsuits filed statewide.

Figure 3: Vast Majority of CEQA Lawsuits Target Projects in Existing Communities



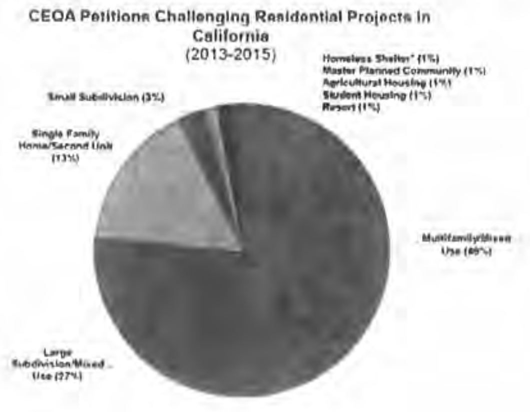
10. Governor's Office of Planning and Research, *Infill Development*, CA.GOV, https://perma.cc/3G99-YTGX.

As part of the regional sorting methodology applied to our Second Dataset, this statewide tally hid more startling statistics: within the 9 counties of the San Francisco Bay Area, for example, 100% of all CEQA lawsuits were filed against projects in infill locations. Even within the Central Valley regions, most often criticized for allowing "sprawl" development, more than 70% of all challenged projects were in infill locations.

D. Infill Housing Remains Top Target of CEQA Lawsuits.

New housing projects were the most frequent target of CEQA lawsuits for which there was a private sector applicant in both the First Dataset and Second Dataset. However, the percentage of CEQA lawsuits against new housing units actually increased—from 21% to 25%—in the Second Dataset, even as California's housing shortage reached crisis dimensions.[11] The percentage of CEQA lawsuits challenging higher density housing projects like apartments and condominiums also increased—from 45% to 49%—while the percentage of CEQA lawsuits challenging single family homes (or second units such as "granny flat" additions to single family homes) dropped from 17% to 13%. In both Datasets, the majority of challenged housing projects statewide were higher density—structures containing multiple housing units like apartments and condominiums—and located in more urbanized areas in regions with higher population densities.

Figure 4: Multi-Family Apartments and Condominium Projects Are Top Target of CEQA Lawsuits Challenging



11. Matt Levin, *California's Housing Crisis – It's Even Worse Than You Think*, MERCURY NEWS (Aug. 28, 2017), https://perma.cc/K49U-4P4P.

The regional subset of CEQA lawsuit housing data in the state's two most populous regions, the San Francisco Bay Area and the Los Angeles/Inland Empire/Orange County region, paints a vivid picture of how clearly CEQA housing lawsuits clash with current policies encouraging higher density urban development and increased transit utilization.

Regional Dataset highlights include:

1. One Hundred Percent of Bay Area CEQA Housing Lawsuits and 98% of the Los Angeles Region's CEQA Housing Lawsuits Target Infill Housing in Existing Communities.

Infill housing was far more likely to be targeted by CEQA lawsuits in all coastal regions of the state. One hundred percent of challenged housing projects in the San Francisco region were in infill locations, and 98% of San Diego's challenged housing, 82% of Northern California's challenged housing projects, and 72% of the Central Coast region's challenged housing projects were infill. Even in the rural expanse of Northern California, which runs from the coastline to the Nevada border and includes vast open spaces and low population densities, 82% of challenged housing projects were infill—and in the Sierra Foothills 100% of challenged housing projects were infill. Only in the San Joaquin Valley—which has a booming rate of housing production filled by displaced Bay Area families forced to "drive until they qualify" for affordable rents or home prices, and then endure daily commutes of three hours or longer—were the primary targets of CEQA housing lawsuits in greenfield rather than infill locations. The two regions with the most CEQA lawsuits, Los Angeles and the San Francisco Bay Area, also top state and national charts on high housing prices, high homeless populations, housing supply shortfalls, and unaffordable housing costs that drive poverty.

2. Los Angeles Region Hit with Far More CEQA Housing Lawsuits Than Any Other Region.

In Los Angeles, 33% of CEQA lawsuits target housing projects, far greater than the 24% of CEQA housing lawsuits filed statewide. In the Second Dataset, 13,946 housing units and a 200-bed homeless shelter were targeted by CEQA lawsuits in the Los Angeles region during the three-year study period. In the state's other major population centers, only 25% of CEQA lawsuits challenged housing projects in the San Diego region, 22% in the Bay Area region, and 16% in Sacramento. CEQA lawsuits targeting housing in more rural areas were much less likely, except in the Central Coast counties of Santa Cruz, Monterey, San Louis Obispo, and Santa Barbara where housing challenges comprised 33% of all CEQA lawsuits.

3. Transit-Oriented Urban Housing – Apartments and Condos – Are Top Target of CEQA Housing Lawsuits in LA Region.

Under one of the state's most important climate laws, Senate Bill 375,[12] regional transit agencies are required to identify parts of the region best served by public transit and adopt plans to encourage higher density housing (like multi-story apartment and condominium complexes) to help create riders for transit systems and discourage private automobile use. The least costly—and most common—of these higher density, transit-oriented housing projects are built with wood frames in a mid-rise range of four to six stories. The costliest—and least common—of these projects are high rise towers, required to be constructed from steel and concrete instead of wood frames. Most of these are rental apartments instead of purchased condominiums, and some include some ground floor retail or other nonresidential uses. Just over half (52%) of California's existing housing units are single-family homes, another 9% are attached products like townhomes and duplexes, and 27% of existing housing units are low and mid-rise apartments or condominiums. Only 1% of Californians live in high rise towers, which are by far the most expensive to construct, rent or buy.[13] Notwithstanding the state's adopted climate and environmental laws and policies to promote higher density transit oriented housing, this form of housing remains the top target of CEQA lawsuits.

We studied the Los Angeles region—the five counties and 191 cities falling within the jurisdiction of the Southern California Association of Governments (SCAG) regional transit agency—to better understand the use of CEQA against housing projects. With SCAG's assistance, we mapped the location of each challenged housing project, as well as the project's approved number of housing units.

In Figure 5, we first depict this information against the backdrop of the region's best transit locations (around rail stations or in High Quality Transit Corridors (HQTC) with frequent commute hour bus service). 70% of the challenged housing units—10,188 housing units—were located within the transit priority areas and high-quality transit corridors where the state's climate and related environmental policies say we should be building most housing.

12. S.B. 375 of 2007-08, Stats. 2008, ch. 728, at 85.

13. Nathaniel Decker, Carol Galante, Karen Chapple & Amy Martin, *Right Type, Right Place: Assessing the Environmental and Economic Impacts of Infill Residential Development Through 2030*, Mar. 7 2017, https://perma.cc/96RY-ECW7.

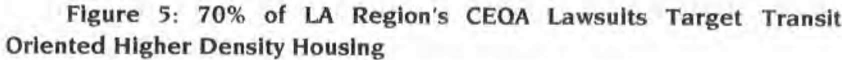
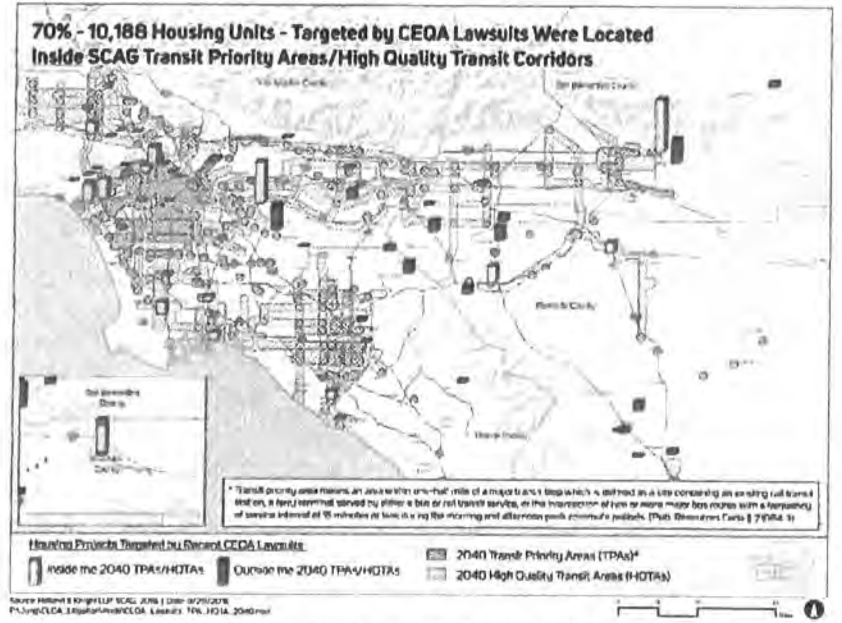


Figure 5: 70% of LA Region's CEQA Lawsuits Target Transit Oriented Higher Density Housing

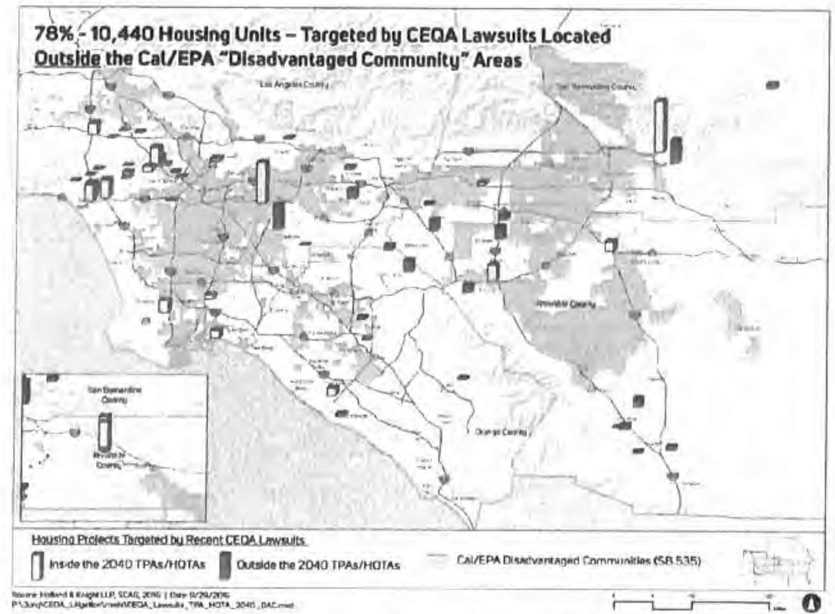


Another inconvenient truth is that LA CEQA housing lawsuits disproportionately target new housing in whiter, wealthier, healthier communities. Some of the political support for protecting the CEQA litigation status quo come from environmental justice advocates who extoll CEQA lawsuits as a tool for protecting poor communities of color that already suffer from disparately high levels of pollution. In response to environmental justice concerns, the Legislature directed California Environmental Protection Agency (Cal EPA) to map environmentally disadvantaged communities.[14] Cal EPA prepared these maps based on metrics that include higher poverty and unemployment rates, lower educational attainment levels, higher populations of non-English speakers, higher rates of asthma and other health conditions associated with pollution, and more nearby sources of pollution such as freeways and contaminated factories.[15] The Second Dataset makes clear that, in fact, CEQA lawsuits are most often filed to challenge projects in whiter, wealthier healthier communities. As shown in Figure 6, 78% of challenged housing units were located outside the boundaries of these mapped disadvantaged communities.

14. Stats. 2012, ch. 830.

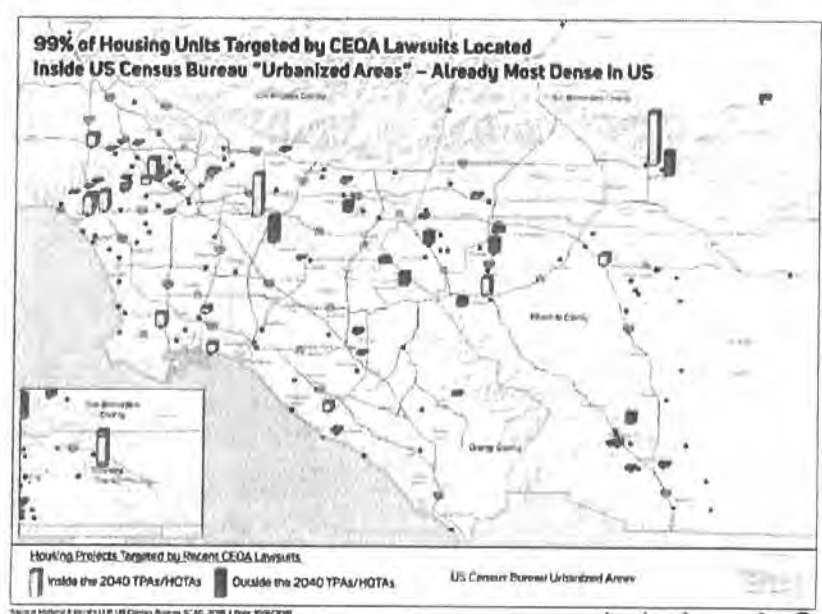
15. S.B. 535, *Disadvantaged Communities*, OEHHA, (Apr. 2017), https://oehha.ca.gov/calenviroscreen/sb535.

Figure 6: 78% of Challenged Housing Units Located in Whiter, Wealthier, Healthier Areas of LA Region



The disparate use of CEQA lawsuits in whiter, wealthier, healthier communities extends beyond housing to other categories of CEQA lawsuits, such as lawsuits challenging transit improvements, school and park renovations, local land use plans, and upgraded infrastructure. Figure 7 includes the housing project lawsuit targets, and depicts in black dots the location of other types of projects targeted by CEQA lawsuits. Less than 2% of lawsuits were outside the developed "urbanized areas" of the region, and most CEQA lawsuits are filed in West LA and in pockets of wealthier communities elsewhere in the region.

Figure 7: More CEQA Lawsuits Challenge Projects in Wealthier West Side Areas



III. CEQA Lawsuits and Equity: Disproportionate Use of CEQA to Target Apartments and Condos Perpetuates Land Use Segregation by Race and Class.

California has a severe housing shortage, and the housing that is available is unaffordable to most California families. One study completed in 2016 by former State Senator Don Perata on behalf of the Infill Builders Federation compared the price of purchasing a home in traditionally less expensive cities in the Bay Area and Los Angeles to the average incomes of traditionally middle class workers like teachers, police and firefighters, retail clerks, UPS delivery drivers, postal workers, truck drivers, and nurses.[16] At the time of the survey, homes in the San Gabriel Valley in Los Angeles had an average housing price of $611,000. A 20% down payment and other one-time expenses required savings of $140,530, and resulted in a mortgage payment of $3,150. The mortgage payment alone was more than 80% of the total after tax income of teachers, police and firefighters and truck drivers

16. *"So You Think You Can Afford A Home in California?"*, Personal Correspondence, Senate Pro Tem Emeritus Don Perata to Jennifer Hernandez, (May 2017) (on file with author).

and was nearly twice the take home pay of retail clerks.[17] The best paid of these middle wage job earners, nurses and UPS delivery drivers, needed to spend more than 70% of their take-home pay on their monthly mortgage.[18] The Perata study confirmed that full-time workers at what were once good jobs simply cannot afford housing in many areas of Los Angeles and San Francisco.[19]

CEQA is one of the well-recognized culprits in California's housing supply and affordability crisis.[20] As UC Berkeley Economics Professor Enrico Moretti, an advocate for increasing density and productivity in urban regions, recently reported in the *New York Times*:

> Look at Silicon Valley. It has some of the most productive labor in the nation, and some of the highest-paying jobs, but remarkably low density because of land-use regulations. . . . Building anything taller than three stories, even on empty lots next to a train station, draws protests from homeowners.
>
> And once a project is approved, it faces an endless series of appeals and lawsuits that can add years of delay. Appeals are remarkably easy and affordable to file and can be done anonymously. This basically gives every neighbor a veto over every new project, regardless of how desirable the project might be. It's as if Blackberry had veto power over whether Apple should be allowed to sell a new iPhone.
>
> To make things worse, well-intentioned regulations are often used by neighborhood groups to further delay projects. The California Environmental Quality Act, for example, was written to protect green areas from pollution and degradation . . . Its main effect today is making urban housing more expensive. It has added millions of dollars of extra costs to a sorely needed high-rise on an empty parking lot on Market Street in downtown San Francisco.
>
> The Bay Area's hills, beaches and parks are part of the area's attractions, but there is enough underused land within its urban

17. *Id.*

18. *Id.*

19. *Id.*

20. Chang-Tai Hsieh and Enrico Moretti, *How Local Housing Regulations Smother the U.S. Economy*, N.Y. TIMES (Sept. 6, 2017), https://perma.cc/W7C6-HKC3].

core that the number of housing units could be greatly increased without any harm to those natural amenities.[21]

Understanding why CEQA is such a problem weaves together two stories: a short history on how the existing land use patterns were set decades ago, and the strong legal bias against change embedded in CEQA.

A. Much of California's Existing Urban Land Use Patterns, the "Setting" Against Which Environmental Impacts Are Measured and Must Be "Mitigated" Under CEQA, Exist As A Result of Historic Race and Class Segregation.

California communities, like many other communities throughout the country, have a long history of resisting higher density apartments that are affordable to workers earning lower wages—especially workers from minority groups such as African Americans, Latinos, and Asians. Former President Obama cited this history, and particularly the expansive use of land use and zoning laws, in a report confirming that racial and economic class segregation had actually increased rather than decreased in recent years.[22]

A recent publication by author Richard Rothstein presents a remarkably thorough history of how zoning and land use laws were designed to promote discrimination against African Americans and other communities of color, recounting disturbing evidence of successful efforts by numerous Bay Area communities to racially segregate.[23] By requiring large lot single family homes, imposing high development fees, and prohibiting or refusing to approve rental apartments or smaller, more affordable homes like duplexes, California communities became segregated by both race and class.[24]

As dispassionately explained in *Color of Law*, during World War II, factories producing ships and other war material hired women and ethnic minorities to fill out their workforce. In the Richmond shipyards in the Bay Area, the federal government helped support the dramatic growth of new workers near wartime factories by helping finance mortgages for single family homes.[25] However, federal policy excluded African American workers

21. Hsieh & Moretti, *supra* note 20.

22. *Housing Development Toolkit*, THE WHITE HOUSE (Sept. 2016), https://perma.cc/3MAW-A8PN.

23. RICHARD ROTHSTEIN, COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017).

24. *Id.* at 2.

25. *Id.* at 8–9.

from both mortgage assistance and home ownership.[26] Instead of accumulating family wealth by making payments on a mortgage, African-American workers paid rent for much smaller rental apartments with far less parkland and other neighborhood amenities. These differential housing programs—single-family home ownership for whites and rental rooming houses for African-Americans—were implemented in compliance with financing and land use agency rules designed to enforce segregation even in California communities that had no prior history of housing segregation.[27] After the war, Richmond's factory workers remained racially integrated with the return of veterans to the workforce, with jobs paying wages that allowed all workers to move up the economic ladder. When Ford Motor Company decided it needed a larger new factory than its wartime Richmond facility, Ford decided to move about forty miles south to Milpitas in Santa Clara County, and the company offered job transfers for its Richmond workers.[28] White workers could trade their equity in Richmond homes to buy new homes in Milpitas and nearby Santa Clara county, and did so.

African-American workers, however, were shut out of proximate housing near the new factory by the combination of newly applied discriminatory financing rules, which denied African Americans access to veterans loans and federally insured mortgages, and local "character-of-community" land use zoning laws, which required larger lots and single-family homes (and prohibiting apartments) that were unaffordable to Richmond's African American community. This was further compounded by a legacy of spending their salaries on rent rather than the wealth accumulation mortgage payments made by their white home owning coworkers.[29]

Milpitas and Santa Clara county both used discriminatory large lot single family home zoning, as well as high development fees, to price out African-American families near the new Milpitas Ford factory. Over time, Ford's African-American workforce—now forced to commute more than eighty miles daily—decreased substantially, and was further tainted by reports of unreliability based on commute-related tardiness. Meanwhile, Ford's white workforce had moved on and up to the next level of home ownership, and any grandchild fortunate enough to have kept that modest three-bedroom ranch home in Milpitas purchased by a white wartime worker scored a financial grand slam given average home values of $909,900.[30]

26. *Id.* at 68.

27. *Id.* at 115.

28. *Id.* at 119-121.

29. *Id.* at 174.

30. *Milpitas Home Prices and Values*, ZILLOW, https://perma.cc/YQY3-ACTQ.

Workers unable to afford housing due to official government actions that discriminated on the basis of wealth and race never took that first step into middle class stability and wealth accumulation. Every three years, the Federal Reserve evaluates consumer wealth, and every year, the family wealth of homeowners has increased in relation to the family wealth of renters.[31] The latest complete survey, which includes data from 2010-2013, showed that a homeowners' net worth is 36 times greater than a renters' net worth ($194,500 v. $5,400).[32] With the latest surge in home prices, the prediction is that the 2014-2016 dataset due to be released later next year will show a wealth differential of 45 times.[33] Homeowners have much more wealth available to deal with college tuition, temporary job loss, illnesses, and other family emergencies. As noted in the *Color of Law*, notwithstanding civil rights reforms in the late 1960s:

> Seventy years ago, many working- and lower-middle-class African American families could have afforded suburban single-family homes that cost about $75,000 (in today's currency) with no down payment. Millions of whites did so. . . . The Fair Housing Act of 1968 prohibited future discrimination, but it was not primarily discrimination (although this still contributed) that kept African Americans out of most white suburbs after the law was passed. It was primarily unaffordability. The right that was unconstitutionally denied to African Americans in the late 1940s cannot be restored by passing a Fair Housing law that tells their descendants they can now buy homes in the suburbs, if only they can afford it. The advantage that FHA and VA loans gave the white lower-middle class in the 1940s and '50s has become permanent.[34]

Implementation of these civil rights reforms cannot be taken for granted, but require the dogged enforcement advocacy and litigation in each of the successive decades by civil rights advocacy groups such as the Greenlining Institute cofounded by John Gamboa,[35] to assure that minority communities get fair access veterans loans, small business loans, insurance

31. Jesse Bricker, et al., *Changes in US Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances*, 100 FED. RES. BULL. 4 (Sept. 2014).

32. *Id.*

33. Lawrence Yun, *How Do Homeowners Accumulate Wealth?*, FORBES (Oct. 14, 2015), https://perma.cc/BP38-XYM7.

34. Rothstein, *supra* note 23, at 182–83.

35. THE GREENLINING INSTITUTE, http://greenlining.org/ (last visited Nov. 8, 2017).

guarantees, and similar middle-class wealth creation programs of the federal and state government. In the forty years since the enactment of the Fair Housing Act, minority home ownership rates and household wealth had substantially improved, and the gap between minority and white families was shrinking.[36] That is, until the Great Recession's predatory lending practices, which disproportionately targeted minority communities to take out mortgages that could never be repaid, wiped out decades of progress and plunged a disproportionately high number of minority families into foreclosure and rental housing.[37]

Our current urban "environment" continues to be dominated by single family homes in neighborhoods consisting of other single-family homes. A recent UC Berkeley study concluded that 62% of California households are single family homes, and another 9% live in town homes or duplexes.[38]

Changing single family home neighborhoods by adding more residents, more traffic, and more kids using schools and parks challenges decades-old housing patterns. Additionally, bringing people who cannot afford to purchase single family homes in what has become million-dollar neighborhoods due to housing shortage challenges these patterns rooted in race and class discrimination. The core legal structure of CEQA, which measures "environmental" impacts against the existing setting, protects the existing characteristics of those neighborhoods and thus perpetuates land use practices founded in race and class discrimination.

It is noteworthy that CEQA was enacted in 1970, in the midst of the same era of civil rights advocacy and legal reforms. CEQA was also among the first of the modern era of environmental laws, and pre-dated scores of later laws that established mandates for the environmental degradation that dominated headlines in the 1960s and 1970s—mandates requiring clean air and water, public access to the coastline, stewardship of public lands, and the management and cleanup of household and industrial wastes. CEQA's much more generalized framework of disclosing and minimizing "harm" to the environment has never been integrated into the fabric of other environmental laws, and over the years has resulted in what Governor Jerry

36. John Gamboa, *Forward Economic Summit Remarks* (2017), COMMUNITY BUILDERS CALIFORNIA; *see also* Laura Gambia, *Homeownership and the Wealth Gap*, COMMUNITY BUILDERS CALIFORNIA, (May, 2016); *see also* Gillian White, *The Recession's Racial Slant*, THE ATLANTIC, (June 24, 2015), https://perma.cc/DVD4-W6AJ; *see also* Carlos Garriga et al., *The Homeownership Experience of Minorities During the Great Recession*, FEDERAL RESERVE BANK OF ST. LOUIS REVIEW (First Quarter, 2017) at 139–68.

37. Gillian B. White, *The Recession's Racial Slant*, THE ATLANTIC (June 24, 2015) https://perma.cc/VDY7-MHHB.

38. Decker, Galante, Chapple & Amy Martin, *supra* note 13.

Brown has called an "amoeba" of law that is constantly expanding and unpredictably evolving—and is now the tool of choice for resisting change that would accommodate more people in existing communities. Meanwhile, CEQA's status quo defenders focus on the anecdotal use of CEQA against traditional industrial and protecting open space lands, but ignore the far more dominant current uses of CEQA against urban housing projects, and the local infrastructure and service facilities required to serve the people who live in these areas.[39] The Second Dataset, with its deeper examination of housing and regions, provides compelling evidence of CEQA litigation abuse to perpetuate racial segregation and economic injustice.

Zoning and other legal obstacles to increasing the supply or cost of homes in existing California communities should be critically scrutinized and updated to address the housing crisis. As demonstrated by the profligated use of CEQA lawsuits against infill housing in existing communities, CEQA has prominent placement on this list of legal culprits.

B. CEQA's Legal Structure is Biased Against Change, and Thereby Perpetuate Historic Racial and Economic Segregation Patterns.

Racially and economically exclusionary zoning and land use regulatory patterns have created California's "existing environment" as defined by CEQA. "Impacts" to this existing environment—ranging from temporary construction noise, to changes in private views, to increases in the number of kids playing in a park, going to school or using a library—are all required to be avoided or reduced to a "less than significant level," to "the extent feasible given the objectives of the project."[40] CEQA does not create clear criteria for any of these terms, nor does CEQA define what can be considered an "impact" to the environment. Since CEQA was enacted in 1970, judges have periodically creatively interpreted the law to discover new "environmental impacts," like changes to private views,[41] or temporary construction noise that complies with construction noise standards required by state and local laws,[42] which then become mandatory under CEQA even if never expressly enacted by the Legislature. Agency regulators also routinely propose expansions to CEQA to include more "impacts" that

39. *See generally* CEQA Works, CEQA *Successes*, http://ceqaworks.org/ceqa-successes (noting several instances of CEQA successes in protecting the environment and public health).

40. Cal. Pub. Res. Code § 15130(a)(2).

41. *Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903, 904 (2004).

42. Keep Our Mountains Quiet v. Cty. of Santa Clara, 236 Cal. App. 4th 714, 716, (2015).

require study and mitigation,[43] which in turn lead to greater compliance costs, and more CEQA lawsuits as the precise scope of CEQA's expanded requirements are litigated over the next decade or longer.

As we discussed in our first study, CEQA lawsuits provide a uniquely powerful legal tool to block, delay, or leverage economic and other agendas after a project is approved. CEQA lawsuits can be filed by anyone (anonymously), pursuing any agenda (including perpetuating or expanding racial and economic segregation, gaining an advantage over a business competitor, or leveraging money or other economic concessions such as a labor agreement from a project sponsor), even if the project causes no harm to the environment or public health. The most common remedy in CEQA lawsuits is for a court to vacate— reverse—agency approval of the challenge project pending a redo of the CEQA process. Since CEQA now requires an evaluation of more than 100 topics and sub-topics, appellate courts have found CEQA compliance deficiencies—typically for one part of one study—in nearly half of the CEQA reported appellate court decisions.[44]

The majority of Californians—two-thirds statewide and even 70% in the notoriously NIMBY Bay Area—support building more housing in their communities.[45] Californians recognize and want to help solve the state's housing crisis, which has adversely affected adults, children, college students, renters, businesses large and small that rely on a stable and diverse workforce, and backbone community contributors like teachers, nurses and firefighters. However, CEQA lawsuits are uniquely anti-Democratic, and uniquely vulnerable to being hijacked for racist and other discriminatory objectives, as well as pursued for economic gains, that would be abhorrent and unlawful if openly acknowledged.

Housing can be built, and it is politically supported by majorities of existing residents, including those who are protective of the character, services, and property values in their community across the country. However, CEQA lawsuits provide California's anti-housing holdouts—the political minority of as few as one anonymous party—with a uniquely effective litigation tool to simply say "no" to change. By filing a CEQA lawsuit alleging that the agency approving the project has made a mistake in analyzing one or more of the nearly 100 impact issues that must be addressed after nearly 50 years of evolving regulatory and judicial

43. Daniel R. Golub & Elizabeth Lake, *New Regulations Could Expand CEQA Review of Impacts to Common Birds*, HOLLAND & KNIGHT (Aug. 24, 2015), https://perma.cc/A8XV-DNLG.

44. DeHerrera, Friedman, & Hernandez, *supra* note 2, at 19–22.

45. Katy Murphy, *A Portrait of Housing NIMBY-ism in California*, MERCURY NEWS (Sept. 27, 2017), https://perma.cc/9XX7-NNXK.

interpretations of CEQA, this political minority can slow projects or stop them all together.

As noted in our first report, it is also very inexpensive to file a CEQA lawsuit, as courts demand only a few hundred dollars to accept a new lawsuit. The outcome of CEQA lawsuits is extraordinarily unpredictable; a metastudy of many types of lawsuits against agencies shows that agencies win about 80% of such lawsuits, and the chaos that would result from a pattern of agency losses prompted Congress to demand that the Internal Revenue Service track lawsuit outcomes and clarify or amend regulations that resulted in lawsuit losses.[46] In contrast, several studies of CEQA lawsuit outcomes show a very different pattern. Agencies lose nearly half of CEQA lawsuits, and further, agencies lose even more than half of lawsuits challenging smaller projects for which the agency concluded would cause no "significant" impacts.[47]

When a judge decides that an agency should have conducted its CEQA preapproval review process differently, even if the error is confined to whether the traffic flow at a single intersection was appropriately counted,[48] the most common CEQA judicial remedy is to "vacate" the project approval until more environmental analyses is completed. This remedy can be applied even to partially constructed or even completed occupied homes. In an infamous example in Los Angeles, for example, a judge vacated the City's approval of a high-rise apartment project that was already occupied, and tenants had to be escorted out. The City's CEQA violation in that case was a court decision that disagreed that the City had appropriately enforced a CEQA mitigation measure requiring the "preservation" of a non-historic building façade as part of the new high rise apartment by allowing the common sense approach of allowing the façade to be temporarily dismantled, and then re-assembled and attached to the new high-rise, which was in fact done.[49] This incident was described in our first report, and the

46. Daniel R. Golub, Jennifer L. Hernandez, & Joanna L. Meldrum, *CEQA Judicial Outcomes: Fifteen Years of Reported California Appellate and Supreme Court Decisions*, HOLLAND & KNIGHT (May 2015), https://perma.cc/PVM7-H2H8.

47. *Id.*

48. David McAfee, *Calif. Appeals Court Affirms SF Win in Waterfront Project Row*, LAW 360 (Aug. 27, 2013), https://perma.cc/GR7A-KS4E.

49. Bianca Barragan, *Anti-Density Lawyer May Have Just Forced 40 People Out of Their New Gomes in Hollywood's Sunset/Gordon*, CURBED L.A. (Oct. 20, 2014), https://perma.cc/VAC8-GTKJ; *see also*, David Zahniser, *Judge's ruling on Sunset/Gordon tower puts tenants in limbo*, L.A. TIMES (Oct. 17, 2014), https://perma.cc/WVD7-PABA.

building remains vacant—more than 3 years later—pending the completion of more CEQA review.[50]

Those who successfully sue under CEQA can seek recovery from the public agency or private applicant their attorneys' fees as well as a multiplier, based on the theory that enforcing CEQA confers a benefit on the environment and thus the public.[51] Those filing CEQA lawsuits anonymously, or even for openly extortionate purposes, are protected from becoming the target of CEQA lawsuits by California's anti-SLAPP (strategic lawsuits against public participation) statute, and are entitled to treble damages if improperly targeted by a lawsuit.[52]

Because of the uncertainty in CEQA's requirements,[53] the time (3 to 5 years, with some examples extending to 9 and 10 years) required to complete the trial and appellate court proceedings, and the extreme consequences of an adverse judicial outcome that vacates project approvals, once a CEQA lawsuit is filed it becomes very difficult for a public or private project to access project financing (bank loans or equity investors) or grant funding. To timely complete politically favored projects, the Legislature has passed "buddy bills" granting remedy reform to CEQA lawsuits involving billionaire sports stadiums, corporate headquarters, and the Legislature's own office building.[54] However, the Building Trades blockade on CEQA reforms that would reduce CEQA's value as a leverage tool to secure Project Labor Agreements has left California's housing crisis at the ongoing mercy of CEQA lawsuits.[55]

The founder of one of the most prolific CEQA plaintiff law firms, Clem Shute, in recently accepting a lifetime achievement award from the environmental section of the California State Bar Association, endorsed the need for CEQA litigation reform:

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50. DeHerrera, Friedman, & Hernandez, *supra* note 2, at 65.

51. Arthur F. Coon, *Successful CEQA Petitioners May Recover Attorneys' Fees for Administrative Proceedings and Are Not Disqualified by Nonpecuniary Stake*, MILLER STARR REGALIA (Nov. 7, 2011), https://perma.cc/YB45-9CG7.

52. Cal. Code Civ. Proc. § 425.16.

53. The uncertainty of CEQA's requirements was most remarkably noted by the California Supreme Court itself, when it decided a lawsuit involving how CEQA should be applied in the context of greenhouse gas and climate change. The Court identified several "pathways" which "may"—or may not—be acceptable under CEQA, and remanded the issue for further consideration by the lower courts. *Ctr. for Biological Diversity v. Dep't of Fish & Wildlife*, 62 Cal. 4th 204, 195 (2015).

54. Asemb. B. X3 5, (2009), https://perma.cc/QK3C-GEHM; S.B. 292, (2011); S.B. 743, (2013); Assemb. B. 1935, (2014).

55. DeHerrera, Friedman, & Hernandez, *supra* note 2.

> Moving to the bad and ugly side of CEQA, projects with merit that serve valid public purposes and not be harmful to the environment can be killed just by the passage of the time it takes to litigate a CEQA case.
>
> In the same vein, often just filing a CEQA lawsuit is the equivalent of an injunction because lenders will not provide funding where there is pending litigation. This is fundamentally unfair. There is no need to show a high probability of success to secure an injunction and no application of a bond requirement to offset damage to the developer should he or she prevail.
>
> CEQA has also been misused by people whose move is not environmental protection but using the law as leverage for other purposes. I have seen this happen where a party argues directly to argue lack of CEQA compliance or where a party funds an unrelated group to carry the fight. These, in my opinion, go to the bad or ugly side of CEQA's impact.[56]

In short, the act of filing a lawsuit, with no showing of harm to people or the environment, and no showing of the likelihood of winning on the merits, should not be the equivalent of winning an immediate injunction against a project—a project that has often been shaped by more than two years of community input and approved by elected leaders—with neither a hearing nor a bond.

This economic and legal model of CEQA lawsuits—concealing the identity of those filing and funding CEQA lawsuits, low lawsuit costs, nearly 50% probability of winning, attorneys and bonus awards for successful challengers, and no material financial costs for unsuccessful litigants—has created a robust cottage industry for lawyers and consultants on both sides of CEQA lawsuits. And because CEQA applies only to new projects that require government approval or funding, CEQA's legal structure provides a fearsome shield against change. CEQA lawsuits put a sword in any opponent of change, motivated by any reason, including but by no means limited to protecting housing patterns rooted in race and class discrimination.

IV. CEQA Lawsuits and Traditional Environmental Values: The Ongoing Fight Against Housing by "Slow/No Growth"

56. E. Clement Shute, Jr., *Reprise of Fireside Chat, Yosemite Environmental Law Conference*, 25 ENVIRONMENTAL LAW NEWS, 3 (2016).

Environmental Advocates.

Although sometimes derisively referred to as "Not In My Backyard" (NIMBY) advocates, "slow growth" has historically been identified as a pro-environmental agenda and is closely aligned with historic preservation advocates as well as "Save Open Space and Agricultural Resources" (SOAR) land use controls directly enacted by voters in numerous California communities.[57] Efforts by slow growth communities to shut down housing production and population growth have been largely successful. For example, Marin County, located immediately north of San Francisco, limited population growth to 2% between 2000 and 2010, even though the state as a whole grew by 10% and the counties immediately north of Marin grew at nearly triple the rate of Marin. It is not coincidental that Marin also had the region's oldest population, earning the top ranking in the number of residents aged 50 or older.[58] Ventura County, another stronghold of no growth politics, had a healthier growth rate at 9%, but this was dwarfed by the non-coastal Riverside and San Bernadino counties that grew by 42% and 19%, respectively.[59] It is no coincidence that Marin County has also been targeted for violating federal fair housing laws enacted to combat racial segregation.[60]

Only one Bay Area county accommodated its fair share of population growth: Contra Costa grew by 10.5%.[61] Meanwhile, immediately outside the 9-county Bay Area region, the Central Valley region's San Joaquin County grew by 22%, while population growth immediately adjacent to the Bay Area region rose to 22%.[62] Growth rates in more distant reaches of the Bay Area have anti-housing policies so severe that both counties actually lost population in the last census round (2000 to 2010) even though the housing supply crisis in both regions was already acute. Numerous commenters

57. *Growth Results Mixed in November Balloting; Ventura Slow-Growthers Succeed, but Others Fail*, CP&DR (Dec. 1, 1998), https://perma.cc/8MSN-RL5N].

58. Association of Bay Area Governments, A *Diverse and Changing Population* (2015), https://perma.cc/SJ9N-TNMT.

59. Census Viewer, *Population of Ventura County, California*, https://perma.cc/JAW6-DCH6; Joe Matthews, *Growth Limits Have a Downside*, THE SACRAMENTO BEE (Aug. 10, 2016), https://perma.cc/49PG-DHMF.

60. Richard Halstead, *Marin Housing Forum Highlights Federal Pressure To Reverse Segregation*, MARIN INDEPENDENT JOURNAL (Apr. 4, 2016), https://perma.cc/VDK4-L2RL.

61. Association of Bay Area Governments, *supra* note 58.

62. *Popluation of San Joaquin County, California: Census 2010 and 2000 Interactive Map, Demographics, Statistics, Graphs, Quick Facts*,CENSUSVIEWER, https://perma.cc/M7QQ-V8QF.

have observed that it is not possible to reconcile the climate priority of encouraging infill housing with anti-housing no-growth communities. However, these communities—like Ventura, Marin and San Francisco's wealthiest old guard anti-housing neighborhoods—also produce stalwart environmental advocates and deep pocket donors for environmental and climate advocacy efforts, and it is at best awkward to challenge the anti-housing sentiments of funders. A new generation of progressive advocates is doing so, including state Senator Scott Weiner and YIMBY (Yes In My Backyard) California co-founders, Sonja Troust and Brian Hanlon.[63]

Even California's premier climate champion, former state Senator Fran Pavley, deferred to her NIMBY neighbors in failing to support 2016 legislation to allow "granny flats" to be built in existing single-family homes.[64] Since many single family homes were built when families were much larger, and homeowners tend to remain in their homes rather than move to smaller homes after their kids leave, these "accessory dwelling units" offer a virtually invisible method for a "win-win" outcome. "Granny flats" create new, lower cost housing—and new income sources for homeowners. Even this most modest of changes to existing neighborhoods has prompted CEQA lawsuits against individual units, and against local zoning regulations that allow such units to be constructed.[65] *The Color of Law* is a remarkable new history of the abuse of presumptively "color-blind" laws and regulations, such as land use zoning, infrastructure, and workface labor, and how they were intended to—and in fact did—discriminate against African Americans in California and other states.[66] Taking a page out of the *Color of Law*, to assure that wealthy enclaves of single family homes remain unblemished by the occasional college student or in-law moving into an existing home with the dignity and privacy afforded by a separate entry door, private bath and galley kitchen, some communities are imposing fees nearing $100,000 to convert an extra bedroom and bathroom into a studio apartment. Additionally, current building standards can cost another $100,000 or more in building retrofit, and even small "granny units" of less

63. Loren Kaye, *You Can Have Infill Housing or an Unreformed* CEQA, *but Not Both*, FOX & HOUND (Apr. 6, 2017), https://perma.cc/TV5Q-GA34; Scott Beyer, *California State Senator Scott Wiener: 'San Francisco's Progressives Lost Their Way on Housing'*, FORBES (Jan. 31, 2017), https://perma.cc/D3YH-ASHW; Brock Keeling, Alissa Walker, *Can a Grassroots Movement Fix Urban Housing Shortages?*, CURBED (July 20, 2017), https://perma.cc/AE7Y-A45U.

64. Mike McPhate, *California Today: A Housing Fix That's Close to Home*, N.Y. TIMES (May 16, 2017), https://perma.cc/KTD8-UPUP.

65. Josie Huang, *Court Ruling Forces LA to Cut Back on 'Granny Flat' Permits*, SCPR (Apr. 7, 2016), https://perma.cc/2777-ABBF.

66. Rothstein, *supra* note 23.

than 700 square feet can cost $300,000 or more—assuming no CEQA lawsuit challenges are filed by neighbors.[67]

The fight between traditional environmental advocates (i.e., older homeowners seeking to protect the character of their communities) and newer environmental advocates (i.e., younger workers unable to afford housing and deeply concerned about climate) has played out in two recent fights over the soul, and control, of local Sierra Club chapters. In Seattle, which has produced far more housing than San Francisco despite occupying a smaller region, a group of primarily millennial environmental advocates nominated each other to leadership positions on the local Sierra Club chapter, and then elected themselves as the new generation of Sierra Club leadership.[68] Overnight, the Sierra Club in Seattle was converted from a preservationist-first, anti-change hammer set to pound any local official tempted to vote for new housing into a pro-housing, pro-transit supporter of evolving mix of higher density urban neighborhoods with multiple ranges of housing prices and lower per capita greenhouse gas emissions. The YIMBYs arrived, and with them, the Sierra Club's endorsement of prolific new housing production in Seattle.

The same tactics failed in two rounds of elections with the fierce old guard leaders of San Francisco's Sierra Club chapter. Although the national headquarters office is located downtown and has long hosted local Sierra Club meetings, the San Francisco chapter has resorted to meeting in the homes of old guard members to try to dissuade YIMBY members from participating in chapter activities, let alone seeking leadership positions. The old guard declined to even allow YIMBY advocates to be included on the ballot for local chapter leadership positions—a decision that was eventually reversed by the national Sierra Club after several rounds of appeals by YIMBY club members. In San Francisco, unlike Seattle, the Sierra Club continues to fight new housing projects—and has never advocated for any new housing project—and woe to the ambitious politician in San Francisco who fails to earn the Sierra Club chapter's endorsement.[69]

For traditional environmentalists committed to preserving the character of their existing community (notwithstanding its probable origin in the race and class based zoning practices of the last century), the awkward truth is that fighting urban density undermines climate leadership. As summarized in a recent Bay Area Sierra Club newsletter article, "How do you convert a NIMBY into a YIMBY?:"

67. Red Oak Realty, *Home Truths: Should You Add an Accessory Dwelling Unit to Your Home?*, BERKELEYSIDE (Feb. 8, 2017), https://perma.cc/F26Q-82GT.

68. Interview with Sonja Trauss, California Yes In My Backyard Party Co-Founder (Oct. 2, 2017).

69. *Id.*

> Studies have established a clear correlation between urban density and reduced carbon emissions. A 2014 report from the University of California, Berkeley . . . found that families living in denser urban cores had a carbon footprint that was half that of families living in suburbs.
>
> YIMBYs want more than just interconnected [smart growth] neighborhoods – they also want housing to be affordable. Such policies can lead to tension with those residents—often older, whiter, and more affluent—who don't want traffic, congestion, and other effects of urban density, such as shadows from high-rise buildings. The conflicts play out before zoning boards, city councils, and other public bodies where young YIMBYs turn out to support large housing projects. The NIMBYs who oppose them are often progressive, environmentally minded individuals who believe in climate action and recognize that sprawl is unsustainable; they just want to preserve the look and feel of the neighborhoods they call home.[70]

CEQA lawsuits are the perfect tool for the holdout NIMBY. These NIMBYs are like the two individuals who disagreed with the majority vote in multiple Berkeley ballot initiatives to increase density near BART, and decided to file a CEQA lawsuit against a downtown apartment project with the desire to maintain enough room on BART for them to sit instead of stand.[71] CEQA also proved to be the perfect tool for the trio who launched more than twenty lawsuits against the same redevelopment project in Playa Vista over a span of nearly thirty years,[72] and for the environmentalist lawyer who halted granny units in all of Los Angeles.[73] There is irony and tragedy in preserving this fealty to status quo of CEQA lawsuit rules in a state that prides itself on innovation, creativity, and creative (and profitable) disruptive technologies, products and services.

70. Jonathan Hahn, *Pro-Housing Urban Millennials Say "Yes In My Backyard"*, SIERRA (Aug. 23, 2017), https://perma.cc/KS4R-VE73.

71. Alexander Barreira, *Residents Sue City Over Environmental Assessment of Harold Way Project*, THE DAILY CALIFORNIAN (Jan. 18, 2016), https://perma.cc/2MCY-7L8F.

72. Patrick Range McDonald, *Playa Vista Quicksand*, L.A. WEEKLY (Sept. 19, 2007), https://perma.cc/4WME-HRWN.

73. Emily Alpert Reyes, *'Granny Flats' Left in Legal Limbo Amid City Hall Debate*, L.A. TIMES (Aug. 28, 2016), https://perma.cc/R967-DHB5.

The fact that NIMBY behavior also effectively discriminates against the minorities barred by law and then practice from many California communities is an uncomfortably racist reality only rarely acknowledged by environmental advocacy groups funded by NIMBYs. As documented in a 2014 University of Michigan study of 191 environmental non-profits, 74 government environmental agencies, and 28 leading environmental grant making foundations, "The State of Diversity in Environmental Organizations," were funded by environmental group supporters. Despite increasing racial diversity in the United States, the racial composition in environmental organizations and agencies has not broken the 12% to 16% "green ceiling" that has been in place for decades. Confidential interviews with environmental professionals and survey data highlight alienation and "unconscious bias" as factors hampering recruitment and retention of talented people of color. Efforts to attract and retain talented people of color have been lackluster across the environmental movement.[74]

Bias begets blindness: NIMBY use of CEQA lawsuits against multi-family infill housing to protect the "character of their community"—too often used as a code word for excluding "those people"—should have been roundly condemned by environmental advocates who routinely espouse a commitment to equity and environmental justice. Instead, support for anti-housing NIMBY-ism remains firmly rooted in the environmental activist world, prompting Professor Enrico Moretti to resign from his multi-decade membership in the Sierra Club:

> Thanks to aggressive lobbying by an odd coalition of Nimby homeowners and progressives – radical county supervisors, tenants' unions, environmental groups – in places like San Francisco and Oakland, it takes years (and sometimes even decades), harsh political battles and arduous appeals to get a market-rate housing project approved.
>
> Some restrictions make sense. Nobody wants skyscrapers poking up among Victorian houses, and nobody wants to tear down historical buildings. But many others don't. There are scores of empty parking lots in San Francisco and Oakland that can't be built on because of political opposition.
>
> Bay Area urban progressives, by fighting new housing in their neighborhoods, cause more sprawl on the rural fringes. I'm a committed environmentalist, and it made me rethink the way I engage with such issues. For example, I was a member of the Sierra Club for more than a decade. But because of all the unwise battles waged by the San

74. Dorceta E. Taylor, *The State of Diversity in Environmental Organizations*, UNIVERSITY OF MICHIGAN, Green 2.0, 1-5, 2 (July 2014).

Francisco chapter against smart housing growth in the city, I quit to support other environmental groups.[75]

V. CEQA Lawsuits and Climate Leadership: Why CEQA Lawsuits and Agency Proposals to Expand CEQA Threaten California's Climate Leadership and Perpetuate Racial and Economic Injustice.

Climate change was not on anyone's radar screen when CEQA was enacted in 1970. Governor Brown and others have described climate change as an "existential" threat to the planet,[76] which requires immediate and dramatic changes in how we power our homes and factories, how we travel every day, and how our entire economy functions.[77] The status quo of CEQA's litigation rules directly and indirectly undermines California's climate leadership.

A. Political Resiliency and Climate Change.

Climate change is important to Californians and our elected leaders.[78] However, the housing crisis, ranging from an explosion in the homeless population, to the unavailability of middle class housing affordable, to teachers and other middle-income workers, now consistently polls much higher than climate change as a priority for Californians—along with other immediate, pragmatic concerns that affect everyone daily, like health care, transportation and schools.[79]

The Governor's climate change regulators have proposed scores of measures to reduce greenhouse gas emissions and help California achieve

75. Enrico Moretti, *Fires Aren't the Only Threat to the California Dream*, N.Y. TIMES (Nov. 3, 2017), https://www.nytimes.com/2017/11/03/opinion/california-fires-housing.html.

76. Evan Halper, Melanie Mason, Patrick McGreevy, *Gov. Brown Unveils Plan for Global Climate Summit, Further Undercutting Trump's Agenda*, L.A. TIMES (July 6, 2017), https://perma.cc/J53B-5S7G.

77. AB 32 *Scoping Plan*, California Air Resources Board (July 14, 2017), https://perma.cc/B9TH-9R6Y.

78. David Kordus, *Californians' Views on Climate Change*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (July 2016), https://perma.cc/9EJB-U7W9.

79. Mark Baldassare, Dean Bonner, David Kordus, Lunna Lopes, PPIC *Statewide Survey: Californians and Their Government*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Sept. 2017), https://perma.cc/NB67-GGZH.

its climate change objectives. While increased transportation[80] and energy costs of climate measures has been extensively documented,[81] measures that substantially raise housing costs are less published (e.g., the fact that "net zero" homes cannot meet ten year cost effectiveness criteria required by statute, as recently confirmed by the California Energy Commission Building Standards division).[82]

Overall, climate regulations already imposed or under consideration for adoption as part of the 2017 "Scoping Plan" to achieve California's greenhouse gas reduction goals place a disproportionately high burden on those households that have had to move further inland, drive longer distances, live in climates requiring more air conditioning and heating, and rent or purchase housing made more costly by CalGreen's new climate-based building codes. Even more astonishing, however, are climate agency proposals to actually expand CEQA—increasing both compliance costs and litigation risks—for all new projects, including desperately needed new housing.

Increasing housing costs and expanding CEQA hit hardest at the same California households that have been priced out of urban housing markets. For example, the Office of Planning and Research (OPR) has proposed to expand CEQA to make driving one mile (even in an electric car) a new CEQA impact requiring "feasible" mitigation.[83] OPR has also proposed to expand CEQA to make building one mile of new highway capacity (even to relieve congestion, or to build a carpool lane) a new CEQA impact.[84] Both new impacts are proposed as part of a climate policy initiative of intentionally increasing traffic congestion to induce people to switch from cars to buses (or where available, to rail).[85] OPR's proposal to expand CEQA has in turn been endorsed by California's lead climate agency, the California Air Resources Board (CARB), in its 2017 Scoping Plan proposal.[86]

80. Dale Kasler & Jim Miller, *Will You End up Paying More for Gas Under California's Cap-and-Trade Extension?*, THE SACRAMENTO BEE (July 18, 2017), https://perma.cc/L25M-8JWR.

81. Kate Galbraith, *On Climate, a Rough Road Ahead for California*, CALMATTERS (July 18, 2015), https://perma.cc/N9RE-KWPU.

82. California Energy Commission, Zero Net Energy Strategy Presentation (8/22/17) (on file with author).

83. Governor's Office of Planning and Research, *Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA* (Jan. 20, 2016), https://perma.cc/8EWJ-MV3Y.

84. *Id.*

85. *Id.*

86. Cal. Air Res. Bd., 2017 Climate Change Scoping Plan Update, at 113 (Jan. 20, 2017), https://perma.cc/853R-6PJ4.

Expanding CEQA as a global climate strategy with the intention of forcing families—and disproportionately minority households—that are already priced out of proximate housing, and already burdened by high housing costs and crushing commutes, will earn a future "Color of Law" dishonorable badge of bureaucratic shame when applied to the reality of hard working Californians who are forced to drive ever longer distances, for ever longer periods of time, to get to housing they can afford. In fact, expanding CEQA to intentionally increase traffic congestion disproportionately hits those households without access to adequate housing the hardest: all Californians have to pay new gas taxes for road maintenance, and all have to pay higher gas prices as part of the cap and trade program, but only aspiring families wanting to purchase their first home or rent housing they can afford will bear the cost of an expanded and vague new "vehicle mile travelled" and "traffic inducement" mitigation mandate that applies only to newly approved plans and projects.

CARB's proposed 2017 Scoping Plan takes an even more expansive approach with CEQA, recommending that "all feasible" mitigation measures reducing greenhouse gas be required for all new projects and plans, with no direction as to how much is enough, or how much more economic burdens should be placed on new greenhouse gas reductions in relation to CEQA's myriad other impacts and mitigation mandates for new housing,[87] like school fees, inclusionary housing fees, and other fees that can add more than $100,000 to the cost of each housing unit (even small rental apartments).[88] Like the OPR CEQA expansion proposal, the CARB CEQA expansion proposal places a disparate (and case-by-case, lawsuit-by-lawsuit) new greenhouse gas reduction obligation on new housing, above and beyond the many greenhouse gas reduction mandates already imposed on new housing construction by regulations such as California's extensive "green" building code, and housing-related climate mandates applicable to other sectors such as electricity generation, transportation, and waste management.[89]

Groups studying the equity impacts of policies to increase urban density have consistently found that those being displaced earn lower incomes than those able to afford the limited numbers of shiny new apartments and condos being built in urban core job centers, and have identified census bureau data supporting their claim. Figure 8 shows the outward migration of African American families from core cities like San Francisco, Oakland, and San Jose to outlying suburbs like Santa Rosa, Fairfield and Antioch—and to even more communities in the San Joaquin Valley.

87. *Id.* at 151–52.

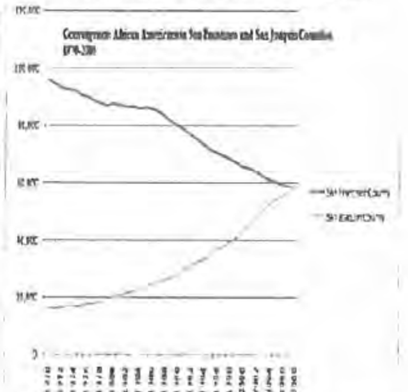
88. *Id.* at 39.

89. Cal. Code Regs. Title 24, Part 11, https://perma.cc/SV9W-B8ZU.

Figure 8: African American Family Migration from Urban Core Cities (2000-2010)

Housing and Transportation: African American Diaspora In Bay Area: Drive Until You Qualify ("SPRAWL!")

African American Migration from Bay Area to Central Valley: Who Pays Per Mile VMT Travel Charges?



The housing crisis has already resulted in severe poverty rates, homelessness, and the diaspora of racial minorities to ever more distant locations. To then use climate policy generally, and CEQA specifically, to charge a fee or otherwise require an unquantifiable level of "mitigation" for every mile travelled for those forced to "drive until they qualify" for housing they can rent or own clearly is precisely the type of disparate impact highlighted in decades of discriminatory government policies in *Color of Law*.

Similarly, to intentionally increase traffic congestion as a climate strategy—which will inevitably result in greater tardiness for those workers forced to live farther away from jobs by the housing crisis—is to replicate the sin of the land use regulators in Milpitas and Santa Clara county faced with the socially unacceptable outcome of accepting a racially integrated change to the character of their community. Whether in the name of climate or community character, minority commuters driving forty miles each way to the Ford factory in Milpitas increased segregation since a reliable and racially diverse workforce simply "can't be counted on" to get to their jobs promptly. Under this latest version of disparate impact government policies, many more workers (especially those with lower educational attainment levels) are likely to suffer from OPR's strategy to use CEQA to intentionally increase road congestion, where the solution is less likely to be a whiter, more proximate workforce and more likely to be robotic workforce with fewer overall workers.

> While some climate advocates have focused on developing and rapidly deploying clean car technologies, OPR and seven other state agencies have proposed to increase their authority over local land use decisions, and impose urban growth boundaries

(which have been proven to increase housing costs and limit supplies), charge development in urban areas an extra fee to pay for natural land conservation stewardship activities, and prioritize new development on the top target of CEQA lawsuits—high density, transit-oriented housing—at the same time they are expanding CEQA into the uncharted and litigious new territory of vehicle mile travelled and traffic inducement "impacts."[90]

Meanwhile, notwithstanding billions of dollars in new investments, ridership on public transit has dropped in all California regions,[91] and the nation's most authoritative transit access study continues to confirm that fewer than 10% of jobs can be accessed even in a 60-minute commute on public transit in any metropolitan region of California.[92]

In a democracy that depends on majority votes, California's climate policy must be politically resilient—and it cannot be blind to the race and class of those targeted with higher cost burdens, nor can it be blind to the hardships felt by the 40% of California's working families living below or near the poverty line.

B. Global Greenhouse Gas Consequences of Housing Crisis Leakage.

California's climate laws mandate dramatic reductions in greenhouse gas emissions (GHG) generated within the geographic boundaries of California.[93] GHG emissions that occur outside California are not counted in California's GHG emissions inventory, nor are these emissions required to be reduced. These GHG emissions include emissions from manufacturing

90. One of the state's most prominent experts on traffic studies, Ron Milam of the firm Fehr & Peers, recently reported that there are numerous competing methodologies for attempting to calculate vehicle miles travelled, that VMT growth tracks population and economic activity growth and is not reduced by current transit systems, and emerging transportation technologies like app-based ride services as well as automated vehicles are actually increasing rather than decreasing VMT. *See* Ronald T. Millam, Fehr & Peers (2017) (on file with author).

91. Laura J. Nelson, L.A. *Bus Ridership Continues to Fall; Officials Now Looking to Overhaul the System*, L.A. TIMES (May 23, 2017), https://perma.cc/PR4R-G5K8.

92. Center for Transportation Studies, *Access Across America*, UNIVERSITY OF MINNESOTA (2017), https://perma.cc/J3CT-V9GA.

93. S.B. 32, 2015–2016 Reg. Sess. (Cal. 2016); Assemb. B. 32, 2005–2006 Reg. Sess. (Cal. 2006).

smart phones, solar panels, computers, and cars bought and used by Californians. Although California has created many "green jobs"—mostly for construction workers installing solar panels—there is also a steady exodus of workers and their families who move to other states. A study by *The Sacramento Bee* of U.S. Census Bureau records found that every year from 2000 to 2015, more people left California than moved in from other states.[94] The *Bee* estimated that the net outward migration during that period was 800,000 people. In a 2017 poll, half of all respondents reported that they were considering moving out of California because of high housing costs.[95]

The top destinations for these Californians are Texas, Arizona, Nevada, Washington, Oregon, and Colorado. However, every time someone moves from California to any of these other states, global GHG emissions actually increase because per capita GHG emissions are much higher in each of these states, as shown in Figure 10. For example, the per capita GHG emissions in Texas are nearly three times higher than California's per capita GHG emissions. California has worked very hard to reduce its GHG emissions and already achieved very significant decreases. However, to reduce the next tranche of GHG emissions by the dramatic levels required by law, California's climate leaders need to decide whether to embrace policies that recognize equity, civil rights, the political need for local resiliency and global effectiveness over time, or are we simply playing a shell game to drive ever more people (and their cars) out of California even if global GHG emissions actually increase?

C. Building Housing Unaffordable to Middle Wage Workers Exacerbates Segregation and Promotes Political Instability, and Threatens California's Climate Leadership.

The core housing priority informing current climate policies is to build smaller housing units in taller existing multi-family buildings. State climate laws seek to reduce single family home construction. Existing cities and areas long included in plans have also complied with California's GHG reduction laws. Even ignoring Fannie Mae's data showing ongoing strong consumer preferences for single family homes, both for empty nest

94. Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, THE SACRAMENTO BEE (Mar. 5, 2017), https://perma.cc/Q6WV-NCGY.

95. Drew Lynch, *Californians Consider moving to rising housing costs, poll finds*, CAL WATCHDOG (Sept. 21, 2017), https://perma.cc/5LNT-ROLH.

households with seniors and for millennials,[96] the archetypal housing produced favored by climate advocates is simply unaffordable to middle income earners. In a recent report by UC Berkeley's Terner Center for Housing Innovation and UC Berkeley School of Law, the authors assumed that the construction cost per square foot of building a 2,000 square foot single family home was generally equivalent to the cost of building an 800 square foot low-rise apartment (generally six stories or less). Thus, the apartment costs 2.5 times more to build compared to a single family home.[97] The construction costs for apartments in high rise buildings (steel and concrete structures) is about twice the cost of building mid-rise units.

Middle income families can still afford (barely) to buy a $400,000 home with three bedrooms, two bathrooms, and a small yard in a distant suburb located north or east of coastal job centers. Middle income families cannot afford, and cannot comfortably fit, in an 800 square foot urban apartment with monthly rents of $3500 to $4000.

Consistent with climate policy priorities, the authors of the study recommend dramatically increasing the density of existing communities.[98] To control costs, the authors recommend cheaper, smaller housing types (duplexes, quadplexes, townhomes, and mid-rise apartments), and development in existing communities for new units.[99] The authors acknowledge that their preferred "Target Scenario" would "not only entail the new construction of 1.9 million units, but also the demolition and redevelopment of tens and perhaps hundreds of thousands of units."[100] These "demolished units would consist disproportionately of those paying "below the median rents for their neighborhoods."[101] The authors then recommend public policy and funding solutions for displaced lower income households.

Displacing hundreds of thousands of existing residents paying "below median" rents falls squarely on the spectrum of other policy proposals by academics and agencies that will disproportionately harm low-income residents, and communities of color. Like the shameful examples described in "The Color of Law," like targeting low income minority communities for large-scale demolition in redevelopment schemes that never seemed to have enough funding to help those it hurt. Another example is promoting

96. Patrick Simmons, *Baby Boomer Downsizing Revisited: Boomers Are Not Leaving Their Single-Family Homes for Apartments* 1 (2015); Patrick Simmons, *Rent or Own, Young Adults Still Prefer Single-Family Homes* 1 (2015).

97. Decker, Galante, Chapple & Martin, *supra* note 12, at 31-33.

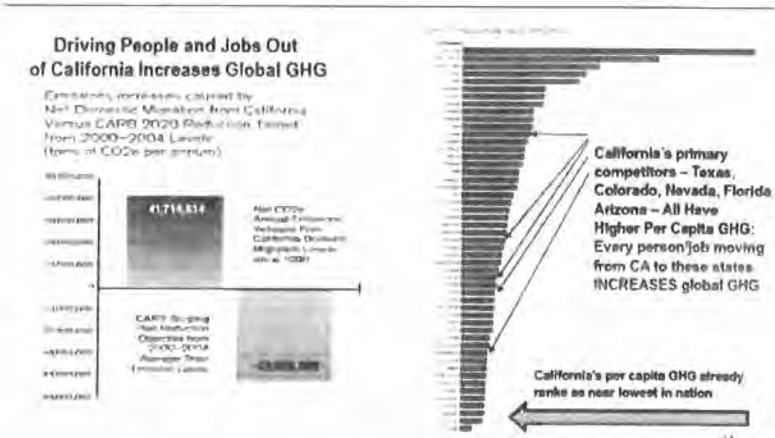
98. *Id.* at (pin cite)

99. *Id.* at 7.

100. *Id.*

101. *Id.* at 25.

community safety by targeting low income communities of color for demolition to make way for interstate highways in cities. The bottom line of this "climate" policy is displacement of those barely hanging on to housing in the midst of an unprecedented housing and poverty crisis in California.



To date, no state agency has acknowledged the global GHG impacts from people moving out of state due to California's housing crisis, or acknowledged that an effective climate policy should keep Californians at home and at work in housing they can afford. Instead, California's CEQA regulators—and a coalition of seven other state agencies—have threatened to intervene in local land use decisions with policies that increase housing costs and target existing urban residents with demolition and displacement. These policies do nothing to increase the housing supply, reduce astronomical housing costs, or overcome the most significant legal barrier to the timely completion of less expensive housing in locally and regionally approved plans that have already been endorsed by state climate regulators as meeting California's climate mandates. Updating CEQA's lawsuit rules as suggested herein would in fact increase the timely production of the types of housing favored by climate policies, and most frequently sued under CEQA. As discussed below, however, these common sense CEQA lawsuit rule reforms run afoul of one of Sacramento's most powerful special interests—the union leaders (and their CEQA law firms) comprising the Building Trades Council.

Functioning infrastructure, quality public services, and more housing all work in tandem along with the land use plans and ordinances that allow for thoughtful integration of these related community needs. When it becomes the norm to have dysfunctional transportation systems and deteriorating parks and libraries, then community resistance to new housing gets even stronger. The environmental and climate policy objectives of encouraging higher density, transit-oriented communities become even less likely to survive the local political approval process. CEQA lawsuits occur

only housing projects that have managed to run this community political gauntlet successfully, and actually get approved. There is no reliable metric for assessing the number of housing projects and housing units that lay on the cutting room floor from projects that never make it to or through the local approval process. Similarly, there is no metric for projects that get substantially downsized as part of the approval process, based on CEQA litigation risks or threats.

VI. Why do CEQA Lawsuit Rules Still Allow Anonymous Lawsuits to be Filed to Advance NonEnvironmental Agendas Against Environmentally Benign or Beneficial Projects Like Housing?

A housing crisis has driven California to have the highest poverty rate of any state in the nation (more than 20%, or nearly 9 million people, according to the US Census)[102] and that leaves 40% of Californians unable to regularly meet basic household expenses (forced to choose between medical care, housing costs, and other routine expenses – and one paycheck or injury/illness away from potential homelessness, according to United Way of California).[103] Combined with 6 years of data demonstrating that infill housing is the top target of CEQA lawsuits statewide, why has one of the most accomplished politicians of his generation and a "progressive" Democratic party supermajority thrown in the towel on ending CEQA litigation abuse?

Governor Jerry Brown—the same man who was so frustrated by CEQA during his term as Oakland Mayor that he penned an amicus brief to the California Supreme Court which unsuccessfully sought to overturn an appellate court decision that elevated private views from private homes as an "impact" deserving of CEQA protection from the horror of viewing four story town homes[104]—promised to reform CEQA, calling it the "Lord's Work." By his fourth term, he had given up. In an interview with UCLA's *Blueprint magazine*, he was blunt in explaining why he couldn't reform CEQA, stating "the unions won't let you because they use it as a hammer to get project labor agreements."[105]

102. Dan Walters, *Why does California have the nation's highest poverty level?*, CALMATTERS (Aug. 13, 2017), https://perma.cc/GMM9-QWUA.

103. Betsy Block et al., *Struggling to Get by The Real Cost Measure in California 2015*, UNITED WAYS OF CALIFORNIA 28 (2016).

104. Hon. J. Brown, amicus brief to the California Supreme Court in *Pocket Protectors v. City of Sacramento* (No. C046247) 2005.

105. Jim Newton, *Gov. Jerry Brown: The Long Struggle for the Good Cause*, UCLA BLUEPRINT (2016), https://perma.cc/QC6D-R6FD.

Governor's Brown's blunt conclusion that certain construction unions—and not the environmental advocacy groups more frequently associated with environmental laws like CEQA—have blocked CEQA reform was demonstrated in the following two legislative CEQA reform efforts in 2016 and 2017.

A. Protect Anonymity - Oppose Transparency.

To try to advance one of the litigation rule changes that would end CEQA abuse, several experienced CEQA lawyers representing both public agencies and private applicants first requested the California Judicial Council—which establishes court rules such as whether parties filing lawsuits need to disclose their identity—to amend the CEQA court rules that require disclosure at the front end of CEQA lawsuits during filing.[106] The Rules of Court already require this disclosure at the back end.[107] The disclosure is required if the party wins the lawsuit and wants to be paid attorney fees and a bonus from taxpayers, if the lawsuit is against a public agency, and if the lawsuit challenges a permit issued to a private party. The Rules of Court also already require those filing "friend of court" briefs when they are not a party to the lawsuit to disclose their identity and interests.[108] The Judicial Council, most of whom are appointed by the Legislature, balked at our request. The rationale was that requiring disclosure of who sues under CEQA was a policy decision to be made by the Legislature.[109] Working with several senior CEQA lawyers who represent both public agencies and private sector applicants, some members of the legal team who filed the Judicial Council request then drafted legislation that would help end manipulative abuse of overburdened superior judges by requiring those filing CEQA lawsuits to disclose their identity and interest. Judges have been directed by the California Supreme Court to interpret CEQA expansively to protect the environment, but are under no such direction to interpret CEQA expansively to advance the economic interests of anonymous litigants.

One of these bills, Assembly Bill 2026 was then considered in a policy committee hearing in the Legislature. The chief lobbyist for the Building Trades (which primarily represents mechanical trade locals like mechanical, electrical and pipefitters), strongly opposed requiring disclosure in CEQA

106. *See* Cal. Code Civ. Proc. § 1021.5

107. *Id.*

108. Cal. R. Ct 8.520 (c).

109. DeHerrera, Friedman, & Hernandez, *supra* note 4, at 78-79.

lawsuits, saying this change would "dismantle" CEQA.[110] All major environmental groups that routinely lobby in Sacramento—like the Sierra Club and California League of Conservation Voters—piled on, inexplicably opposing simple disclosure and transparency by those filing CEQA lawsuits. The hearing was particularly ironic in that these identical labor and environmental lobbyists had just urged expanding the transparency requirements of the Coastal Commission—but irony was in short supply in this tense face-off between political integrity and political patronage. Patronage won: while the Democratic chair chided the labor lobbyist by noting that was hard to see why transparency would "dismantle" CEQA, the legislative amendment was defeated in a party line vote.[111]

Others have documented union use of CEQA lawsuits, but such information is hard to come by—and hard to readily verify using online resources—since unions rarely sue in their own name and instead make use of the anonymous CEQA lawsuit abuse route.[112]

B. Protect Duplicative Lawsuits: Allow Anyone to Litigate Every Approval, Every Time—Unless Projects Pay Prevailing Wages and Use Apprenticeship Program Workers.

California has an elaborate web of laws aimed at requiring every community to adopt land use plans that balance economic growth, environmental protection, and equity (including affordable housing for low income Californians). None of these plans can be approved without first completing the CEQA process, most often an Environmental Impact Report (EIR). Developing these plans and the EIR generally takes 1-3 years, costs hundreds of thousands and sometimes millions of dollars, involves an extensive community outreach process, and advisory vote by appointed planning commissioners, and a final vote by an elected City Council or Board of Supervisors. These plans identify where future housing and transportation improvements are supposed to be located, as well as parks, employers, schools and other land uses. The plans also identify how much housing should go where, often with a range that allows for future

110. *Assembl. Natural Resources Comm.*: Hearing on A.B. 2002 and A.B. 2026 (Apr. 2016) http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=3592.

111. *Assembl. Natural Resources Comm.*: Hearing on A.B. 2026 (Apr. 2016).

112. *Documented Building Trades Union Abuse of California Environmental Quality Act* (CEQA) 2014-2017, COALITION FOR FAIR EMPLOYMENT IN CONSTRUCTION (July 27, 2017), https://perma.cc/3D2F-YTZ6.

adjustments within the range. These plans can then be targeted by CEQA lawsuits, and invalidated if a judge finds that the EIR was deficient.

Even if the EIR is not flawed, and the plan takes effect without a lawsuit or after a lawsuit, most new housing projects will need to go through the CEQA process all over again, and the project can be sued again, even if it complies with the plan. For big projects that require multiple approvals over time for each phase, more CEQA is generally required for each phase, and projects can be sued again for each phase. For some projects, these duplicative rounds of CEQA lawsuits sometimes span twenty years, and twenty lawsuits, or more.

The 2016-2017 Legislative sessions each took a bank shot approach to ending duplicative lawsuits. Here's the bank shot: CEQA already includes a statutory exemption for projects which an agency is required to approve as long as the project satisfies all approval eligibility requirements. For example, if a homeowner wants to replace windows with energy-efficient double-paned windows, some cities require the homeowner to obtain a "building permit." The city does not have the discretion to deny this type of permit as long as the homeowner meets permit approval criteria (e.g., the window is not too close to the next door neighbor).[113] Local agency approvals for apartments and condominium projects are more complicated, and cities have generally retained the discretion to add conditions of approval or exercise their judgement to downsize or even disapprove a project—and CEQA applies to these "discretionary" permit decisions.

In 2016, when the housing crisis was reaching its first political crescendo in Sacramento and the Governor declared that a state funding solution for housing was infeasible —we could not "spend our way out of the crisis"[114]—the Governor attempted to squeeze through the eye of a needle a proposal to create a new state law that would assure that apartments and condominium projects received "ministerial" permits as long as the project complied with all local standards, and set aside some units for low income residents.[115] The Governor's proposal covered only housing projects sized and located to comply with approved city land use plans, and as noted above, these plans have already gone through the CEQA compliance process.

The Governor's "ByRright" proposed permit process—in which an applicant was entitled as a matter of law to receive a permit for a housing

113. *See Window Permit Checklist*, City of Berkeley Permit Service Center (2010).

114. Liam Dillion, *Governor: We Can't Buy Our Way Out of Affordable Housing Problem*, L.A. TIMES (May 31, 2016), https://perma.cc/7TT9-FULD.

115. Liam Dillion, *Why Construction Unions Are Fighting Gov. Jerry Brown's Plan For More Housing*, L.A. TIMES (July 20, 2016), https://perma.cc/P8EK-WJGT.

project that met strict environmental criteria—included low-income housing, complied applicable legal standards, and was consistent with the approved local land use plan for which CEQA had already been completed. It would have sped up housing approvals by avoiding a second round of costly and time-consuming CEQA studies, eliminated the potential for a second round lawsuit against a project that complied with a plan, and used an existing CEQA exemption having to legislatively enact a new CEQA exemption or streamlining process. Avoiding statutory amendments to CEQA was a political necessity, since legislators receiving the endorsement and campaign funding contributions from the powerful Building Trades construction union were required to make a litmus test commitment to avoid amending CEQA. (Building Trades Council members use of CEQA lawsuits as leverage for giving their members construction jobs is described further in our first report, and below.)

The Governor's "By Right" proposal in 2016 died without a single Legislator being willing to endorse it—the proposal was never even put in print and introduced as legislation. Opposition by Building Trades to this proposal was vociferous,[116] and other unions generally remained silent, even though union members—who typically earn too much money to qualify for "low income" housing and not enough to pay for housing near their jobs, especially in the large job markets in the Bay Area and California—would have been the major beneficiary of speeding up the approval of new housing projects without CEQA lawsuit delays. Construction workers would get work, and the creation of a significant new housing supply in existing communities would have helped California catch up with a deficit of more than one million new housing units.[117]

The political buzzsaw the Governor ran headlong into was the fact that only CEQA lawsuits against specific projects which are proposed to be built by a specific agency, company or person, create leverage required to avoid or settle a CEQA lawsuit in exchange for entering into a private contract between the project applicant and the union challenger. The form of private contract is a "Project Labor Agreement," and requires the project applicant to use workers from specific union locals for designated types of work (and to make financial contributions to the union's law firm and central leadership to help fund CEQA lawsuits against other projects).[118] This use of CEQA lawsuits and lawsuit threats is the "workaround" used to avoid applicable federal and state laws that prohibit public agencies from

116. *Id.*

117. Elijah Chiland, *Here's How Serious California's Housing Shortage Has Gotten*, LA CURBED (Mar. 4, 2016), http://perma.cc/27FS-HAGG.

118. Kimberly Johnston-Dodds, *Constructing California: A Review of Project Labor Agreements*, CALIFORNIA RESEARCH BUREAU, CALIFORNIA STATE LIBRARY (Oct. 2001), https://perma.cc/TK9F-REN4.

requiring applicants to enter into contracts with private entities like unions as a condition of receiving agency approval. The courts have upheld a narrower set of laws that allow agencies to require union contracts for projects undertaken by the agency itself, and to require "prevailing wages" for projects receiving public funds.

After 2016's "By Right Fight," Senator Weiner introduced Senate Bill 35, which was quickly dubbed "By Right Light." S.B. 35 also required ministerial approvals of housing projects that complied with plans (and thus greatly irritated "local control" advocates such as the representatives from the cities and counties who wanted to retain their authority to approve, downsize, add conditions, or deny such projects).[119] However, S.B. 35 had the one magic ingredient missing from the Governor's 2016 proposal, which was to require housing projects using this "ministerial" approval process to pay "prevailing wages" and benefits to construction workers, and use construction workers enrolled or trained in apprenticeship programs which are generally run by Building Trades for union members.[120] While the magnitude of cost increase to housing prices caused by paying higher wages and benefits to construction workers are disputed,[121] at the low side estimate prepared by union advocates housing costs increase by 12%,[122] in a middle range as reported by UC Berkeley's Program on Housing and Urban Policy concluded that prevailing wages added 9% to 37% to construction,[123] and a 48% construction cost increase was reported by Beacon Economics in a 2016 study of a prevailing wage ballot initiative enacted in Los Angeles.[124] Since California's average home already costs 2.5 times more than the average home price nationally, and since the US Census has concluded that high housing costs are the reason California has the nation's highest poverty rate, even a 12% increase in housing costs—with no offsetting cost reductions—

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119. *See, e.g.*, League of California Cities opposition to S.B. 35, https://perma.cc/283C-37SW.

120. S.B. 35, Ch 366, 2016-2017 Reg. Sess. (Cal. 2017).

121. Liam Dillion, *Here's how construction worker pay is dominating California's housing debate*, L.A. TIMES (May 12, 2017), http://perma.cc/B42R-TTMK. *See also*, *Affordable Housing Cost Study*, CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, 47 (Oct. 2014); Newman & Blosser, *Impacts of a Prevailing Wage Requirement for Market Rate Housing in California*, CALIFORNIA HOMEBUILDING FOUNDATION, 16 (Aug. 24, 2017).

122. Interview with Bobby Alvarado, Executive Officer, Northern California Carpenters Union (Sept. 27, 2017).

123. Sarah Dunn, *The Effects of Prevailing Wage Requirements on the Cost of Low Income Housing*, 59 INDUS. & LAB. REL. REV. 141 (2005).

124. Christopher Thornberg et al., *Measure JJJ*, BEACON ECONOMICS, 19 (2016).

makes the housing built under S.B. 35 less affordable to prospective residents. S.B. 35 was signed into law on September 29, 2017.[125]

Use of a putatively color-blind law like CEQA to extract labor agreements continues a regrettable history by some unions to seek economic advantages for their members at the expense of African Americans and other minorities, who along with younger Californians are disparately impacted by California's housing crisis and CEQA's structural bias in favor of the status quo. As well documented in *The Color of Law*:

> The construction trades continued to exclude African Americans during the home and highway construction booms of the postwar years, so black workers did not share with whites the substantial income gains that blue collar workers realized in the two big wage growth periods of the mid-twentieth century—war production and subsequent suburbanization. African Americans were neither permitted to live in the new suburbs nor, for the most part, to boost their income by participating in suburban construction . . .
>
> A 1960's executive order covering contractors on federally funded constructed projects prohibited racial discrimination and required affirmative action to recruit African Americans. Yet when a new central post office was authorized for Oakland, California (on land cleared by displacing more than 300 families, mostly African American), not a single black plumber, operating engineering, sheet metal worker, ironworker, electrician or steamfittwer was hired for its construction. When the Bay Area Rapid Transit subway system (BART) was built in 1967, not a single African American skilled worker was hired to work on it. The Office of Federal Contract Compliance blamed the unions, all certified by the National Labor Relations Board, for not admitting black members. The BART general manager allow that although BART was "committed to equal opportunity," it was unwilling to insist on nondiscrimination because that might provoke a work stoppage and "[o]ur prime responsibility to the public . . . is to deliver the system . . . as nearly on time as we possibly can." Although federal regulations provided for termination of a contractor for failing to comply with the non-discrimination order, no penalty was ever imposed."[126]

125. S.B. 35, *supra* note 120.

126. Rothstein, *supra* note 23, at 161, 168–69, and 223–36 (regarding discrimination against Latinos, Asians, and other "non-caucasions").

C. Impose Nuclear Option of Reversing Project Approvals For Minor Glitches in Thousands of Pages of Technical Report; Allow only Good Buddies to Fix Studies While Building Projects.

A parade of what our first report calls "Buddy Bills"—limiting CEQA lawsuit judicial remedies and speeding up lawsuit schedules for politically favored professional sports owners and the Legislature itself—were introduced since we completed our first report, and most were approved. For example, the Legislature decided that its own office building should not be affected by the delays and cost overrun risks that occur with CEQA lawsuits, and in an uncodified budget bill gave itself the same remedy reform deal as it gave its favorite hometown basketball team in the Kings Arena Buddy Bill (S.B. 743) introduced and enacted in the last 72 hours of now Mayor (then Senate leader) Darryl Steinberg. The NBA champion Warriors got a deal to expedite the outcome of their CEQA lawsuit, but bills to give the same expedited lawsuit deal to an office tower, LA basketball arena, and corporate headquarters project remain stalled after the first year of this legislative session.

The Legislature's willingness to shelter itself and favored political cronies from the nuclear option of CEQA's most common judicial remedy has been forcefully and repeatedly criticized by the editorial boards of California's major newspapers, which have demanded the same CEQA judicial remedies for the rest of us.[127] To allow housing projects to be derailed by NIMBY and labor lawsuits, while shielding its own office building and sports venues from CEQA lawsuit delays, shines the brightest of lights on why the much-publicized Legislative "housing package" of 2017 will do little to nothing to get a lot more housing built, and as the Governor noted will actually increase housing costs at a time when housing is already unaffordable to average California households.[128]

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127. CEQA *for thee, but not for me*, THE ORANGE COUNTY REGISTER (June 24, 2016), http://perma.cc/4GCS-UENQ; Liam Dillion, A *key reform of California's landmark environmental law hasn't kept its promises*, L.A. TIMES (Jan. 24, 2017), http://perma.cc/L24V-F5GN; Scott Peters, CEQA *an obstacle for needed housing in California*, SAN DIEGO UNION TRIBUNE (Mar. 3, 2017), http://perma.cc/ZP7K-WCUS; Jim Wunderman, *California can't reach greenhouse-gas targets without* CEQA *reform*, S.F. CHRONICLE (July 23, 2015), http://perma.cc/BQJ8-CJ6L; CEQA *reform bill falls short*, SF GATE (Aug. 16, 2014), http://perma.cc/QLL4-MA9G.

128. Dan Walters, *Walters: Bills would make California housing even more expensive*, THE MERCURY NEWS (Aug. 16, 2017), http://perma.cc/MQ7Q-LBAQ; Liam Dillion, *The housing package passed by California lawmakers is the biggest thing*

VII. Who's Responsible for Perpetuating CEQA Litigation Abuse Against Housing?

Using CEQA lawsuits over and over in the same communities, often for nonenvironmental reasons, remains fiercely defended by an alliance of NIMBY environmental advocates and building trade union leaders—both of which are backbone supporters of the elected legislators in the two-thirds majority Democratic Party in the Assembly and Senate. This coalition has created an iron curtain of opposition to reforming CEQA lawsuit rules to get more housing produced more quickly in locations that have already gone through at least one round of prior CEQA review. Governor Brown, who called CEQA reform "the Lord's work" when he came into office seven years ago—after directly experiencing CEQA delays and cost overruns in his efforts to bring 10,000 new housing units to downtown Oakland during his two terms as Oakland's mayor—conceded last year that the politics of CEQA reform were extremely difficult "because labor likes to use CEQA lawsuits to secure P[roject] L[abor] A[greements]."[129] PLAs are private deals cut between a project sponsor and a particular union local. For projects and in territories where multiple union locals vie for jobs, multiple CEQA lawsuits have been filed against the same project. By threatening or filing and then settling a CEQA lawsuit, union locals gain leverage to demand PLAs that require that its members get a negotiated set of project jobs. Even projects that are required by law, or agree to pay, the "prevailing wages" established by a state agency (which are typically just under three times higher than local wages for comparable work), find themselves targeted with CEQA lawsuits and lawsuit threats by union locals that demand that jobs go to their members – payment of prevailing wages alone is not sufficient.[130]

It is no coincidence that the campaign watchdog organization Maplight has discovered that construction unions are also the largest single donor to Sacramento legislators with campaign contributions in excess of $4 million for the most recent years data is available, with the next five highest interest groups, including state and local government employees and police and fire fighters unions, each falling below $3 million.[131]

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they've done in years. But it won't lower your rent, L.A. TIMES (Sept. 15, 2017), http://perma.cc/Q694-BL8T.

129. Jim Newton, *supra* note 105.

130. *See* Liam Dillion, *Here's how construction worker pay is dominating California's housing debate*, L.A. TIMES (May 12, 2017), http://perma.cc/ B42R-TTMK.

131. *See Interest Groups*, MAPLIGHT, http://perma.cc/9JMC-7C98.

Data showing that the vast majority of California's union workers, who make too much money to qualify for subsidized "low income" affordable housing, but not enough to rent (let alone buy) a home near where they work, suffer most acutely from the housing crisis combination of an acute housing supply shortage, extremely high housing costs, and daily commutes that for many workers (including construction workers) now extend to three hours or more each day (and cause some workers to sleep in pickup trucks near job sites away from their families for much of the week).

Nevertheless, although more than 130 housing bills were introduced to address the housing crisis in 2017, as the *Los Angeles Times* editorial board critically noted:

> [L]egislators and Brown are still avoiding some of the most controversial, and possibly, effective reforms. What about changes to the California Environmental Quality Act, which is too often used to block or shrink infill, transit-adjacent housing developments that are exactly the kind of environmentally-friendly projects the state needs?[132]

Such entreaties, and the housing needs of its members, have not moved building trade leadership to reconsider its "transactional" use of CEQA lawsuit threats to force PLAs. Not since the prison guards union was the most powerful union in Sacramento—powerful enough to secure CEQA exemptions for prisons which then incarcerated generations of young people—has a trade union so completely controlled the "environmental" priorities that CEQA once protected.

Conclusion: Prayer for Relief

In August of 2016, I joined more than 100 fellow Democrats on the lawn of former State Treasurer Phil Angelides in Sacramento in a fundraiser for Hilary Clinton. Former President Bill Clinton spoke at the event, and graciously praised California for its innovation economy, its environmental leadership, and its generous funding of Democratic party candidates. He then gave us all a jolt when, with a sharp eye and serious tone, he explained that when he was growing up in Arkansas, "everyone knew that if you worked hard and played by the rules, you'd do better than your parents. That wasn't true if you were black, and we needed to work on that. But it was true for the rest of us."

Having secured our attention, he went on to explain that for too many Americans—including people living not too far away from where we were

132. *See* Times Editorial Board, *To End the Housing Crisis, California Leaders Can't Be Afraid to Put All Options on the Table*, L.A. TIMES (May 27, 2017), http://perma.cc/BU7S-2783.

standing in the Central Valley—that promise that you'd do better than your parents if you worked hard and played by the rules hadn't been true for far too long, in some areas, for generations. He said what we have now in America just wasn't ok, and we needed to all acknowledge—both parties—that we'd made some mistakes. "None of us knew," he said, "what globalization was going to mean for American workers, for manufacturers." And now that we do know, "we have to acknowledge the pain, we have to work on restoring upward mobility and the American dream, to the huge numbers of people in vast areas in the country that are suffering."

President Clinton spoke to my heart with that speech, and he spoke to my own background as a child of Pittsburg, California, where struggling families are still suffering from the shutdown of so many California factories in the 1980s and 1990s. And in that crowd of Hilary supporters, I saw the silos, the walls we have created between the haves and have-nots, where many in the crowd—including the top ranking environmental regulators in the Brown administration—stiffened with resistance to the notion that they bore any responsibility for creating or solving the suffering of so many. Instead, I saw in the crowd a shudder of rejection—"those people" and "those jobs" are at odds with our politically correct policy priorities, which are best addressed at tony conferences among the well-dressed and well-educated where "those people" are tucked away discretely behind kitchen doors and valet stations.

I saw that rejection in CEQA lawsuits across the state that oppose housing for "those people," like the lawyer challenging a Habitat for Humanity affordable housing project in downtown Redwood City[133] that will block part of the view from the single family home he converted to an office more than twenty years ago.

I saw it in the vitriol of opponents of a Planned Parenthood clinic relocating to an existing office building, in a CEQA lawsuit[134] spanning more than three years, based on the city's failure to evaluate the environmental consequences to noise and public safety that the litigants have themselves promised to cause if the clinic is allowed to open. I see it in the three other

133. Friends of Cordilleras Creek v. City of Redwood City, No. CIV517288, 2013 Cal. Super. LEXIS 11599, at 1, 2 (Nov. 15, 2013).

134. Respect Life South S.F. v. City of South S.F., No. 524437 (Cal. Super. Ct. Filed July 2, 2014); Respect Life South S.F. v. City of South S.F., 15 Cal. App. 5th 449 (2017).

CEQA lawsuits targeting health care facilities in Kern County,[135] San Leandro,[136] and Willits.[137]

I saw the kids that will attend school in trailers, and never experience the school improvements built and funded, but stalled by CEQA lawsuits in El Cerrito,[138] Mill Valley,[139] San Mateo,[140] Mendocino, Los Angeles,[141] and Imperial County.

I saw the kids and grownups sidelined by CEQA lawsuits against parks in Salinas,[142] San Rafael,[143] San Francisco,[144] Newport Beach,[145] Albany[146] and Marina Del Rey.[147]

I saw patrons of San Francisco's library,[148] the Gene Autrey Museum,[149] and the San Martin Mosque as these projects spend their limited funds on

135. Tehachapi Area Critical Land Use Issues Group, (Cal. Super. Ct. Cnty. of Kern. Filed Oct. 19, 2011).

136. Preserve San Leandro Mobility v. City of San Leandro, 2010. Cal. Super. Ct. Cnty. of Alameda. (Filed May 28, 2010).

137. Keep the Code v. City of Willits, (Cal. Super. Ct. Cnty. of Mendocino. Filed May 4, 2015).

138. CEQA Working Group, CEQA *Misuse Case Study: Portola Middle School, El Cerrito*, (Oct. 6, 2017), https://perma.cc/8D3G-W3M9.

139. Citizens for Educated Government v. Mill Valley School District, (Cal. Super. Ct. Marin Cnty. Filed July 18, 2011).

140. Alliance for Responsible Neighborhood Planning et al. v. Burlingame School District, No. CIV 519075 (Cal. Super. Ct. Cnty. of San Mateo. Filed May 15, 2014).

141. Eastwest Studios v. City of L.A., (Cal. Super. Ct. Cnty. of L.A. Filed Sept. 17, 2017).

142. Higashi Farms, Inc. v. City of Salinas, (Cal. Super. Ct. Cnty. of Monterey. Filed Dec. 18, 2014).

143. Gallinas Creek Defense Council v. City of San Rafael, (Cal. Super. Ct. Cnty. of Marin. Filed Jan. 17, 2013).

144. Sierra Club v. City of S.F., Now. CPR-12-512566, 2014 Cal. Super. LEXIS 2773 (Cal. Super. Ct. Cnty. of S.F. Filed Feb. 5, 2013).

145. Banning Ranch Conservancy v. City of Newport Beach, (Cal. Super. Ct. Cnty. Orange. Filed Aug. 24, 2012).

146. Sierra Club v. East Bay Regional Pwarks District, (Cal. Super. Ct. Cnty. of Alameda. Filed July 29, 2015).

147. Ballona Wetlands Land Trust v. California Coastal Commission, (Cal. Super. Ct. Cnty. of Los Angeles. Filed Feb. 11, 2013).

148. Friends of Appleton-Wolfard Libraries v. City of S.F., No. CPF-11-511469, 2012 Cal. Super. LEXIS 4130 (Cal. Super. Ct. Cnty. of S.F. Filed July 26, 2012).

lawyers fussing about the details of traffic studies drag on for years after everyone thought their project was "approved."

I saw the emergency communication services of Los Angles, Google's internet fiber project, metro projects, bicycle plans, shuttle bus services,[150] tree removals in Beverly Hills[151] and tree plantings in Santa Monica,[152] and sediment removal in a water reservoir, all arrayed in front of a harried superior court judge asking—reasonably—what is the environmental problem that brings you to my court, and then diving into thousands of pages of detailed study for that "gotcha" moment when the judge says, "let's vacate this whole approval and just go back to fix this one thing."

And I saw thousands of stalled affordable housing units projects[153] scrambling for funding given the demise of California's redevelopment tax increment laws, apartments next door to new transit stations that cost California's trusting taxpayers billions of dollars to construct, and apartments in neighborhoods in virtually every California community with struggling strip malls and cleaned up industrial lands, perfectly situated for residential use.

These projects—all included in the stacks of more than 1,000 CEQA lawsuits in our offices—don't get any more "environmental" or "equitable" with time. The housing crisis has gotten worse, the migration of Californians to lower cost states with higher per capita GHG has made global climate change worse, and the burden of these misbegotten government policies once again falls disproportionately harder on people of color struggling for a fair shake, not a hand shake and environmental platitudes. The status quo created by CEQA's litigation rules is morally and environmentally unconscionable. Modest reforms, not "buddy bills" or sweeping exemptions, will restore CEQA to its important role in protecting the environment and public health. The housing crisis, and the suffering of

149. Highland Park Heritage v. City of Los Angeles, (Cal. Super. Ct. Cnty. of L.A. Filed July 26, 2011).

150. Coalition for Fair, Legal and Environmental Transit v. City of S.F., (Cal. Super. Ct. Cnty. of S.F. Filed May 9, 2014).

151. Homeowners of Angelo Drive to Save the Great Ficus Trees v. S.C., No. S202955, (Cal. Super. Ct. Cnty. of L.A. Filed June 1, 2012).

152. Charmont Partners v. City of Santa Monica, (Dist. Ct. Cnty. of L.A. Filed Jan. 26, 2012).

153. Bowman, v. City of Berkeley, 122 Cal. App. 4th 572 (2004); Brief for Appellant, Ad-Hoc Committee v. County of Placer, Cal. App. 3 Dist. (2013) WL 2112039; Dessins v. City of Sacramento, (Cal. Super. Ct. Cnty of Sacramento. Filed, Feb. 6, 2014); Stephen Wollmer v. City of Berkeley, (Cal. Super. Ct. Cnty. of Alameda. Filed Apr 1, 2010); Save Tara v. City of West Hollywood, No. BS090402, (Cal. Super. Ct. Cnty. of L.A. Filed July, 2004).

too many Californians, are more important than the special interest campaign contributor defenders of the status quo.

POLICY WHITE PAPER:
CITY OF SANTA ROSA

DENSITY BONUS ORDINANCE UPDATE

ATTACHMENT 4f

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EXECUTIVE SUMMARY

The California State Density Bonus Law (SDBL) was adopted in 1976 to address California's affordable housing needs. As originally enacted, the SDBL sought to increase the production of affordable housing by requiring local agencies to grant an increase to the maximum allowable residential density for eligible projects, and to support the development of eligible projects at greater residential densities by granting incentives, concessions, waivers, and/or reductions to applicable development regulations.

The City of Santa Rosa has adopted a local Density Bonus Ordinance (included in Zoning Ordinance Chapter 20-31) that complied State law at the time the ordinance was adopted and through to the last amendment in 2012. Several updates to SDBL have occurred since 2012 and Santa Rosa's local Ordinance is currently inconsistent with State law. This report provides an overview of the SDBL to highlight its basic provisions, and the six amendments that have been adopted to the law since 2012 (AB-2222, AB-744, AB-1934, AB-2556, AB-2501, and AB-2442). The report clarifies necessary updates to the Santa Rosa Density Bonus Ordinance to comply with State law.

In addition to ensuring compliance with SDBL, this report assists the City with implementing its Housing Action Plan (2016), which provides clear direction on updating the local Density Bonus Ordinance to increase regulatory incentives that promote affordable housing production. Specifically, Program #1 and Program #4 of the Housing Action Plan direct the City to develop a local density bonus ordinance that allows for density beyond the 35% provided by the SDBL. The Housing Action Plan calls for a supplemental density bonus of up to 100%, as well as a structure for processing supplemental density bonus applications.

In Chapter IV of this White Paper, a series of recommendations are provided for a supplemental density bonus program in Santa Rosa. The recommendations provide for additional density bonuses of up to 60%, 80%, and 100% of base density, depending on site suitability, which is determined by evaluating the following factors:

- **Priority Development Areas (PDAs) and Service Capacity**. Larger bonuses are considered if a property is within a PDA. These sites typically are located in areas with larger-scale development, have access to necessary infrastructure, and are close to major transit service routes.
- **Land Use Designations that allow denser residential development**. Where higher density residential development is already permitted, a greater degree of density bonus is considered to incentivize affordable housing production with future projects.
- **Proximity to single-family neighborhoods**. Sites that border predominantly single-family residential developments are proposed to have a lower supplemental density bonuses to ensure an appropriate scale of development is achieved in transition areas.
- **Existing conditions, infrastructure and development patterns**. Sites adjacent to major infrastructure (predominantly major corridors) are considered to have a better capacity to handle higher density development and therefore greater supplemental density bonuses are proposed in these areas.

- **Redevelopment Impediments.** Properties with existing development that would require increased investment to redevelop are targeted with higher supplemental density bonuses to overcome redevelopment barriers.
- **Access to transit.** Proximity to transit reduces parking demand, which enables higher density development, thus greater supplemental density bonuses are proposed in these areas.
- **Proximity to Schools.** Sites within a ½-mile of schools are considered more appropriate for higher density development. Reduced density bonuses are provided for properties located further from schools.
- **Preservation Districts.** Single-family areas in Santa Rosa's preservation districts face excessive redevelopment pressure because they are typically located close to the urbanized core of the city. Supplemental density bonuses are targeted to the periphery of preservation districts if other factors align to support supplemental density bonuses.

The structure for the proposed supplemental density bonus program in Santa Rosa is based on a point system. A request for larger density bonuses results in a larger required number of points to qualify for the bonus. Points are generated predominantly through the production of affordable housing across a range of income levels. A smaller share of the required points may also be generated by providing certain community benefits that may include:

- Open space
- Historic or Landmark Preservation
- Family-sized units
- Infrastructure/Capital improvements
- Public art
- Innovative Community Benefits supported by City Council using a predictable model that balances the degree of community benefit with capital invested.

The next step in developing a supplemental density program in Santa Rosa is to evaluate the proposed structure with the community, to gather feedback and reactions to the program, and to revise the recommendations for an improved policy that is appropriate, viable, and effective in Santa Rosa. Following the community outreach and refinement of the proposed amendments to the City's existing Density Bonus Ordinance, the proposal will be scheduled for review and consideration by the Planning Commission and City Council.

I. INTRODUCTION

The California State Density Bonus Law (SDBL) was adopted in 1976 in recognition of California's acute and growing affordable housing needs. The SDBL has been amended multiple times since adoption in response to evolving housing conditions, to provide clarification on the legislation, to respond to legal and implementation challenges, and to incorporate new or expanded provisions. The SDBL, as originally enacted, sought to address the affordable housing shortage by encouraging development of low- and moderate-income units; over time, the law was expanded to recognize the need for housing for households at a wider range of income levels and with specialized needs.

The SDBL incentivizes affordable and other specialized housing production by requiring local agencies to grant an increase to the maximum allowable residential density for eligible projects, and to support the development of eligible projects at greater residential densities by granting incentives, concessions, waivers, or reductions to applicable development regulations. An example of a concession or incentive is a reduction in the number of parking spaces that may be required for a project, or an increase in the allowable building height that applies to the project. The SDBL applies to projects providing five or more residential units, including mixed-use developments. Density bonuses and associated incentives, concessions, waivers, or reductions are intended to offset the financial burden of constructing affordable or specialized units.

All local governments are required to implement the SDBL or adopt local ordinances that are consistent with State law. Local jurisdictions may adopt an ordinance that allows greater incentives and bonuses than the SDBL. The City of Santa Rosa amended its local density bonus ordinance in 2012; since that time a series of updates were adopted at the state level to amend the SDBL, including three major updates that took effect January 1, 2017.

The purpose of this White Paper is to propose changes to the City's existing Density Bonus Ordinance that will bring it into conformance with SDBL, and to implement the Housing Action Plan.

The Housing Action Plan directs the City to utilize the density bonus program as a key incentive for affordable housing production in Santa Rosa. The Action Plan also directs the City to adopt a supplemental density bonus program that provides for density bonuses of up to 100% where feasible and appropriate in the City.

Based on input from City staff, this White Paper focuses on several key aspects of SDBL for consideration in updating the City's ordinance. These topic areas include:

- Preparing an overview of SDBL
- Identifying updates to the SDBL that are not reflected in local ordinance
- Evaluating SDBL implementation in land use designations with no maximum, base density
- Clarifying density bonus application requirements
- Clarifying the relationship between the City's inclusionary housing ordinance and SDBL
- Understanding opportunities for density bonuses beyond 35% (the SDBL maximum)
- Understanding the bases for denying incentives, concessions, waivers, or reductions
- Clarifying the implementation of SDBL locally with respect to environmental review, preservation districts and landmarks, and neighborhood compatibility.

Density Bonus Basics

This chapter begins with an overview of the current SDBL; it highlights the basic provisions of the SDBL and clarifies those updates that have taken effect since adoption of the City's density bonus ordinance in 2012. The chapter concludes with a review of key considerations relevant to SDBL implementation in Santa Rosa.

Basic Provisions: Sliding Scale (Income-Based) Density Bonus

To better understand recent changes to the SDBL it is helpful to begin with an understanding of the basic tenets of the SDBL prior to this date because the City of Santa Rosa was in substantial conformance with these tenets. Prior to January, 2017 a residential project could qualify for a density bonus on a sliding scale proportionate to the allocation of affordable housing units relative to total units in the base project (i.e. prior to receiving the density bonus) as summarized in Table 1.

As illustrated in the example below, a project in which 13% of the total proposed units were designated as low-income units, would qualify for a density bonus of 20% (for meeting the 10% minimum required low-income allocation) plus an additional 4.5% bonus for exceeding the minimum requirement (the density bonus increases at a rate of 1.5% for every 1% of low-income units provided above the minimum). Projects providing for-sale moderate-income units in common interest developments (e.g. condominium, community apartment, planned development, or stock cooperative projects) are also eligible.

DENSITY BONUS PROJECT EXAMPLE:

Base Project Total Units: 66 rental apartment units
Affordable Units: 8 units (targeted to low-income households)
% Affordable Units: 8 units ÷ 66 units = 12.1% = 13% (after rounding up)
Market-Rate Units: 58 units = 87% of total project units

Eligible Density Bonus: For providing the minimum 10% of total project units at the low-income level: 20%
For exceeding the minimum required % of low-income units: (13-10) x 1.5 = 4.5%
13% of the project's units are affordable, 3% higher than the required amount
Each 1% of low-income units over the minimum 10% yields an extra 1.5% bonus
Total Density Bonus = 20% +4.5% = 24.5%

Density Bonus Units: **66 project units x 24.5% = 16.2 units = 17 units**
Total Project Units: **83 units** (58 market-rate, 8 low-income, 17 density bonus units)

Table 1 - Requirements for Density Bonus Eligibility and Associated Density Bonuses

AFFORDABILITY LEVEL OR HOUSING TYPE	MIN. REQUIRED TO RECEIVE BONUS	BONUS FOR MIN. UNITS	ADDITIONAL BONUS PER 1% INCREMENT OVER MIN.	UNITS NEEDED FOR MAX. BONUS OF 35%
VERY LOW-INCOME	5%	20%	2.5%	11%
LOW-INCOME	10%	20%	1.5%	20%
MODERATE-INCOME [A]	10%	5%	1.0%	40%
SENIOR-CITIZEN HOUSING [B]	35 Units	20% of senior units	N/A	N/A
CONDO CONVERSION			N/A	N/A
Moderate Income [C]	33%	25% [C]		
Lower Income [C]	15%	25% [C]		
LAND DONATION [D]	10% of Market Units	15%	1.0% : 1.0%	30%
CHILD CARE FACILITY [C]	N/A	sq. ft.		

[A] *Moderate-income units in common-interest developments (e.g. condos) and offered to the public for purchase*
[B] *Includes senior mobile home parks; project must limit residency based on age requirements pursuant to Section 798.76 or 799.5 of the Civil Code. A Senior Citizen Housing Development is defined in Civil Code Section 51.3(b)(4) as a residential development for senior citizens that has at least 35 dwelling units.*
[C] *Or 1 concession/incentive of equal value at the City's option.*
[D] *Projects must select one income-based, or specialty housing category as the basis for calculating the density bonus. Bonuses for an income or housing category can be combined with a bonus for land donation, up to a maximum of 35%; a square footage-based density bonus may be granted for child care facilities beyond 35%.*

Basic Provisions: Fixed-Rate (Specialized Housing) Density Bonuses

Projects that provide specialized units for senior-citizens may be eligible for flat-rate density bonuses if the minimum qualification criteria are met. A senior-citizen housing project is defined as a development that provides at least 35 units, where 100% of the units are designated for senior-citizens. Qualifying senior-citizen projects are eligible for a fixed density bonus equal to 20% of the number of senior-citizen units provided. For example, a project with 40 such units would receive a bonus of 8 additional units.

In the case of condominium conversion projects, if the project provides at least 33% of total proposed units for low- or moderate-income households, or if 15% of the total proposed units are allocated to very-low income households, the project may be entitled to a fixed 25% density bonus. This density bonus can be exchanged for one concession at the local jurisdiction's or applicant's option.

Basic Provisions: Other Density Bonuses

Projects may also receive a density bonus for donating land for the construction of affordable housing or by providing child care facilities associated with a housing development. To qualify for a bonus through land donation, the land must be of sufficient size to develop at least 40 units, with the appropriate General Plan land use designation and zoning classification for residential development, and must be served by basic utilities.[1] The land must be located within ¼-mile of the boundary of the proposed project within the local jurisdiction. At minimum, the acreage and zoning classification of the donated land must accommodate construction of very-low income units equivalent in number to 10% of the proposed market-rate units. This is determined by examining both the number of market-rate units proposed, and the average square footage of the market units. Affordable units provided on donated land be of equivalent average size to the market rate units in the project.

LAND DONATION PROJECT EXAMPLE:
Project Market-Rate Units: 230 units
Density Bonus Requested: 25%
Base Density for Donated Land: 12 dwelling units/acre

Minimum Land Donation Requirement:

Acres Required for 40 units:	40 units ÷ 12 units/acre = 3.33 acres
10% of Market Rate Units:	230 units x 10% = 23 units
Acres needed for 23 units:	23 units ÷ 12 units/acre = 1.92 acres
Min. Land Donation Requirement:	3.33 acres (larger of 3.33 and 1.92 acres)
Resulting Density Bonus Amount:	15%

Achieving 25% Density Bonus through Land Donation:

Density Bonus Request:	25%
Affordable units for 25% bonus:	10% (for 15% bonus) + 10% for another 10% bonus 20% x 230 units = 46 units
Acres to build 46 units:	46 units ÷ 12 units/acre = 3.83 acres
Min. Land Donation for 25% bonus:	3.83 acres (larger of 3.33 and 3.83 acres)

The eligible density bonus for land donation increases by 1% for each 1% of very-low income units that can be built above 10%. Land donation-based bonuses can be combined with other bonuses up to a maximum of 35%. The land must be transferred to the local government or to an affordable housing developer approved by the jurisdiction. Units constructed on the donated land must be subject to a deed restriction ensuring housing affordability for very low-income households for a period of 55 years. Because of the parcel size requirements for land donation to be eligible under the SDBL, the land donation option is typically only practical for larger (subdivision) developments.

Projects that provide a child care facility may be eligible for a density bonus of equal or greater square footage as the proposed facility. The bonus is a floor area of up to five square feet per square foot in the child care facility in existing buildings (10 square feet per square foot for new construction). To

[1] *The General Plan designation and zoning for the land must allow residential densities in compliance with Government Code Section 65583.2(c)(3), which outlines minimum densities that are appropriate to accommodate housing for lower income households in the local context (ranging from jurisdictions in nonmetropolitan to metropolitan counties).*

qualify, the distribution of children attending the facility that are from very low-, low-, and moderate-income households must match the income distribution of households in the proposed project; the SDBL is silent on the legal framework that is required to demonstrate this compliance.

Basic Provisions: Affordability Restrictions

Subsection 65915(c) details provisions for ensuring the continued affordability of units that qualify a project for density bonuses pursuant to the SDBL. All affordable rental units shall be subject to a recorded affordability restriction for 55 years or longer as may be dictated by another financial partner involved in the project. Rental affordability is subject to following terms:

- Very low-income units: rents may not exceed 30% of 50% of the area median income (AMI)
- Low-income units: rents may not exceed 30% of 60% of the AMI
- *Area median income* is determined annually by the Department of Housing and Community Development based on federal Department of Housing and Urban Development data.
- Rents must include a reasonable utility allowance
- Household size must be suitable to the affordable unit:
  - ✓ Studio Units: 1-member household
  - ✓ 1-Bedroom Units: 2-member household
  - ✓ 2-Bedroom Units: 3-member household
  - ✓ 3-Bedroom Units: 4-member household, etc.

Affordable units offered for sale are subject to following terms:

- Very low-income units: housing costs may not exceed 30% of 50% of the AMI
- Low-income units: housing costs may not exceed 30% of 70% of the AMI
- Moderate-income units: housing costs may not exceed 30% of 110% of the AMI

In for-sale projects, applicants must enter an equity-sharing agreement with the local government to distribute the value of appreciation, improvements made by the property owner, and any subsidies provided by the local government. Value generated to the local government through appreciation and recuperation of initial subsidies are to be used within five years of the sale to promote home ownership.

Basic Provisions: Incentives and Concessions, Waivers, and Reductions

A project that meets the minimum requirements to qualify for a density bonus is eligible for the bonus as summarized in

Table 1, and a certain number of concessions and incentives subject to a sliding scale proportionate to the number of affordable units provided by the project. A concession or incentive is defined as:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum State building standards, such as reductions in setback, square footage, or vehicular and bicycle parking space requirements. The requested concession or incentive must result in an identifiable and actual cost reduction to provide for affordable housing costs or rents.

(2) Approval of mixed-use zoning for housing projects if associated commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the non-residential land uses are compatible with the housing project, and existing or planned development in the immediate area.

(3) Other regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, which may include the provision of direct financial incentives or land for the housing development by the City.

Table 2 summarizes the number of incentives/concessions that a project may utilize depending on the proportion of affordable units included in the development. For example, a project containing 22% low-income rental units qualifies for two (2) incentives or concessions per the SDBL. In the case of projects involving qualified child care facilities, the local government may opt to grant the applicable density bonus or forgo the bonus in exchange for one (1) additional concession or incentive that contributes to the cost of constructing the facility. Land donations and senior-citizen projects that qualify for density bonuses are not entitled to any incentives or concessions under the SDBL.

Table 2 - Schedule for Receiving Development Incentives or Concessions Per SDBL Section 65915(d)

TARGET UNITS	**PERCENT OF TARGET UNITS PROVIDED IN PROJECT**		
VERY LOW-INCOME	5%	10%	15%
LOW-INCOME	10%	20%	30%
MODERATE-INCOME (FOR-SALE)	10%	20%	30%
CONCESSIONS PROVIDED BASED ON PERCENTAGE OF UNITS PROVIDED ABOVE:			
NUMBER OF CONCESSIONS	**1**	**2**	**3**
CONDOMINIUM CONVERSIONS *Very Low- or Low/Moderate-Income*	1 concession/incentive or the prescribed density bonus, at City's option		
DAY CARE CENTER	1 concession/incentive or the prescribed density bonus, at City's option		

Concessions and *incentives* are differentiated from *waivers* and *reductions* in the SDBL. Projects that are eligible for a density bonus, and that are approved for *concessions* or *incentives*, cannot be subjected to any development standard that will have the effect of physically precluding the construction of the project. If a local development standard is found to have this effect, applicants have the option of requesting a *waiver* or *reduction* of any development standard that may preclude completion of the project; there is no limit on the number of waivers that may be requested. *Waivers* or *reductions* do not take the place of *concessions* or *incentives* that the project is qualified to receive. Legislative updates to the SDBL that took effect on January 1, 2017 introduced several amendments affecting the evaluation and granting of incentives, concessions, waivers, and reductions.

Basic Provisions: Alternative By-Right Parking Standards

Beyond incentives, concessions, waivers, and reductions, projects that qualify for a density bonus because they provide affordable housing or are a qualified senior-citizen housing project are also eligible for reduced parking ratios, as presented in Table 3. These reduced parking ratios are inclusive of accessible and/or guest parking requirements, and apply to both market rate and density bonus units. Applicants have the option to request even lower parking ratios as a concession or incentive.

Table 3 - Parking Requirements Available by Request Under Density Bonus Law

UNIT TYPE	MAXIMUM ON-SITE PARKING REQUIREMENT (TANDEM OR UNCOVERED PERMITTED)
0-1 bedroom	1 space/unit
2-3 bedrooms	2 spaces/unit
4+ bedrooms	2.5 spaces/unit

In 2015, AB 744 was passed to amend SDBL and include additional project criteria that would result in reduced parking requirements. These and other amendments to SDBL which have taken effect since adoption of Santa Rosa's local ordinance in 2012 are summarized in the following section.

Post-2012 Regulatory Updates to the SDBL

Since the last amendment to the local density bonus ordinance in Santa Rosa in 2012, State law has been amended substantively through six Assembly Bills.[2] The most sweeping changes were signed in September, 2016 by Governor Brown and took effect January 1, 2017. The following section overviews each update and provides a summary of the updated SDBL provisions in Table 5.

AB 2222 (2014). Expands affordability terms to 55 years; requires affordable unit replacement

In September, 2014, Assembly Bill (AB) 2222 was signed into law to amend several aspects of the SDBL. Prior to the bill, affordable units provided to qualify for density bonuses were subject to affordable income restrictions for a period of 30 years; AB 2222 extended the affordability term to 55 years.

Additionally, AB 2222 introduced an affordable-unit replacement requirement in an effort to help address the potential displacement of existing tenants. The bill requires that projects using a density bonus replace each rental unit that that have been occupied by very low- or low-income households within the five-year period preceding the development application. Applicants could elect to either:

- ✓ provide replacement units of equivalent or greater number to units that are occupied by lower income households or subject to a rent or price control, or
- ✓ ensure that units are affordable to very low-, or low-income households.

The replacement provisions contained in AB 2222 were substantially expanded and clarified in the January, 2017 amendments adopted through AB 2556.

[2] Additional non-substantive technical updates or corrections were adopted through AB 806 (2012) and AB 383 (2013)

AB 744 (2015). Requires local governments to allow reduced parking requirements

Assembly Bill 744 was adopted in 2015. The bill required that local governments, upon request from an applicant developing a rental housing project that is density bonus-eligible, grant further reductions in parking requirements depending on the project's proximity to transit. Table 4 summarizes the maximum parking requirements established under this bill. The provisions of AB 744 expand the parking reduction options available to developers that were provided in the SDBL.

Table 4 - Summary of Maximum Parking Requirements for DB Projects by Type and Transit Access

PROJECT TYPE:	100% Affordable Rental Project	Mixed Income Project with at least: 20% low-Income or 11% v. low income	For Citizens >62yrs	For Special Needs
Unobstructed access within 0.5-miles to major transit stop	•	•		
Project served by Paratransit, or *Unobstructed access within 0.5-miles to major bus stop* [A]			•	•
Maximum Required Parking Ratio	**0.5/unit**	**0.5/unit**	**0.5/unit**	**0.3/unit**

[A] With bus service at least eight times daily

"Unobstructed access:" a resident can access the stop without meeting natural or constructed impediments.

"Major transit stops:" a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service of 15 minutes or less during peak commute periods. Major transit stops includes stops shown in the applicable regional transportation plan. For a property or project to qualify, all parcels within the project must have no more than 25% of their area farther than one-half mile from the stop and not more than 10% of the residential units or 100 units, whichever is less, shall be farther than one-half mile from the stop

Jurisdictions may however require higher parking ratios for housing near transit if the city has completed a parking study within the last seven years that supports the need for more parking.

AB 1934 (2016). Includes a density bonus option for commercial projects with affordable housing.

AB 1934 expanded the SDBL to provide incentives for commercial developers to contribute to affordable housing. The bill provided a bonus for commercial developers that enter an agreement with a housing developer to provide affordable units in a mixed-use joint project, or as two separate but related projects. Commercial developers must define how they are contributing to the affordable housing development; three options are recognized by the SDBL:

- The commercial developer may directly build the units.
- The commercial developer may donate a portion of the development site, or property located elsewhere, to the housing developer to build affordable housing.
- The commercial developer may make a cash payment to the housing developer to offset the construction cost for affordable housing.

To qualify for the density bonus, the proposed affordable units must contain a prescribed number of low- or very-low income units: at least 30% of the total units proposed shall be for low-income households, or at least 15% shall be for very low-income households. If the affordable units are to be constructed off-site (separate) from the non-residential development, the units must be located on a site that is:

- within the local jurisdiction;
- near public amenities, including schools and employment centers; and
- located within one-half mile of a major transit stop.

The provisions of AB 1934 do not prevent an affordable housing developer from utilizing the density bonus, concession or incentives, waivers or reductions, that are available through the SDBL. Furthermore, the amendments did not reduce or waive affordable housing impact fees that may apply to commercial projects in the jurisdiction.

The provisions of AB 1934 are subject to a sunset clause of January 1, 2022. Any projects approved under the bill's provisions must be reported to the Department of Housing and Community Development by the city or county in an annual report.

AB 2556 (2017). Provides clarifying language on addressing replacement units.

As described above, AB 2222 amended the SDBL in 2014 to preserve existing affordable housing units by prohibiting an applicant from receiving a density bonus, incentive, concession, waiver or reduction, if a development removed units that—at any time in the five-year period preceding the application—were occupied by lower-income households or subject to a form of rent control. AB 2222 is reflected in the §65915(c), and includes the stipulation that projects may overcome this restriction by replacing affordable units with units of equivalent affordability, size and/or type. AB 2222 failed to clarify how replacement unit requirements should be determined if resident income level were not verifiable. AB 2556 (2017) provides clarifying language to satisfy the replacement unit requirements in the SDBL:

- Projects shall provide at least an equal number of replacement units of equivalent size and affordability. Equivalent size means providing at least the same total number of bedrooms.
- For currently-occupied units that would be removed, if the income level of the household is not known, it shall be presumed that the building is occupied by the same proportion of *lower income* renter households to all renter households as is the case for the jurisdiction as a whole. The lower-income household share for the jurisdiction shall be based on current Comprehensive Housing Affordability Strategy Database (CHAS) statistics reported by the Department of Housing and Urban Development (HUD).
    - ✓ The current proportion of *lower income* renter households (those earning less than 80% of Area Median Income in the 2010-2014 CHAS data cycle) in Santa Rosa is 55.4%.[3]
- For buildings vacated or demolished within five (5) years of the development application, if the income level of the last occupants in previously existing units is not known it shall be presumed that *very low-* and *low-income* households occupied the units in the same proportion of *very low-* and *low-income* renter households to all renter households in the jurisdiction based on current CHAS statistics report by HUD.
    - ✓ The current proportion of *very low-income* renter households (those earning up to 50% of Area Median Income) and *low-income* households (those earning over 50% but less than 80% of Area Median Income) in the 2010-2014 CHAS data cycle in Santa Rosa are 15.7% and 21.9% respectively.[4]

[3] *Data is current to May 26, 2017. Source: https://www.huduser.gov/portal/datasets/cp.html*
[4] *Data is current to May 26, 2017*

- AB 2222 did not clarify the required rent level for replacement units when the current occupant of a rent-controlled unit was not lower-income (e.g. due to wage increases). If a project would replace rental units in existence within 5 years of the application that are subject to a form of rent or price control, the local government can choose to require that either:
  - ✓ the units are replaced in compliance with a local rent or price control ordinance, subject to agreement by the developer; or
  - ✓ the replacement units shall be made available at an affordable rent or cost for 55 years and shall be occupied by low-income households.

AB 2501 (2017). Streamlines density bonus processing and clarifies application requirements.

AB 2501 streamlines density bonus application processing in recognition of the financial implications for developers caused by permitting delays. Streamlining changes are described in SDBL Section 65915(a)(3; these changes require that local jurisdictions:

- Adopt procedures and timelines for processing density bonus applications.
- Provide a list of all information required to be submitted with the density bonus application for the density bonus application to be deemed complete.
- Issue completeness determinations on applications within 30 days in compliance with Government Code Section 65943.

AB 2501 includes several additional clarifications and procedural amendments to aid in the application and enforcement of the SDBL:

- Provision 65915(q) and others state that any density calculations resulting in fractional units shall be rounded up to the next whole number. This applies to calculating the:
  - ✓ number of affordable units required to be eligible for the density bonus;
  - ✓ base density (i.e. the number of affordable units in the base project);
  - ✓ eligible bonus units;
  - ✓ number of replacement units required (65915(c)(3)(B)(i)); and
  - ✓ required number of parking spaces (65915(p)(4))
- Local governments are prohibited from conditioning the submission, review, or approval of a density bonus application on additional reports or studies that are not described in the SDBL. Cities can however require "reasonable documentation" to establish eligibility for incentives or concessions, waivers or reductions, or reduced parking ratios.
- Developers can forgo an eligible density increase, and accept only concessions or incentives.
- Density bonuses are defined as an increase over the maximum allowable *gross* residential density at the time of application.
- The burden of proof for denying a requested concession or incentive is placed more directly on local jurisdictions, with clarifying language on determining whether a concession or incentive results in cost reductions in support of affordable housing development. The bill amends Section 65915(d)(1)(A)—the first finding of fact to deny a requested concession or incentive. Local jurisdictions must grant the requested concession or incentive unless it "does not result in identifiable and actual cost reductions," to provide for affordable housing. The revised language eliminates ambiguities about who (the developer or the jurisdiction) should determine whether a concession or incentive is financially sufficient.

AB 2442 (2017). Expands the housing categories that could qualify for a density bonus.

Assembly Bill 2442 amends Section 65915(b) to include additional categories of specialized housing that would qualify a project for a density bonus. If at least 10% of the proposed units in a project are designated for very-low income households for a period of 55 years, and are targeted to the following specialized housing types, they may qualify for a density bonus:

- transitional foster youth as defined in Education Code Section 66025.9
- disabled veterans as defined in Government Code Section 18541
- homeless persons as defined in 42 U.S.C. Sec. 11301 et seq.

The density bonus for these projects is 20% of the provided specialized housing units (like the bonus for senior housing); because the specialized units must be income-restricted, the standard density bonus that is available for projects that provide very-low income level units may also be applied.

AB 2442 SPECIALIZED HOUSING DENSITY BONUS PROJECT EXAMPLE:

***Base Project Total Units*:**	66 rental units
***Market-Rate Units*:**	59
***Affordable Units*:**	7 units (very low-income, restricted for 55 years, for disabled veterans)
% Affordable and Specialized:	7 units ÷ 66 total units = 10.6% = 11%
***Eligible Density Bonuses*:**	Specialized housing bonus: 20% of 7 specialized units Standard bonus: 11% very-low income units = 35%
***Total Density Bonus*:**	**Specialized housing: (20% x 7) = 1.4 units = 2 units** **Standard Bonus: 35% x 66 units = 23.1 units = 22 units**
***Total Units with Bonus*:**	**90 units (59 market-rate, 7 specialized, 24 density bonus units)**

Summary of Density Bonus Law Key Features with Amendments Since 2012:

Table 5 below expands on Table 1 to highlight changes to the SDBL that were adopted since 2012.

Table 5 - Updated Requirements for Density Bonus Eligibility and Associated Density Bonuses

AFFORDABILITY	MIN. REQUIRED TO RECEIVE BONUS	BONUS FOR MIN. UNITS	ADDITIONAL BONUS PER 1% INCREMENT OVER MIN.	UNITS NEEDED FOR MAX. BONUS OF 35%
VERY LOW-INCOME	5%	20%	2.5%	11%
LOW-INCOME	10%	20%	1.5%	20%
MODERATE-INCOME [A]	10%	5%	1.0%	40%
SENIOR-CITIZEN HOUSING [B]	35 Units	20% of senior units	N/A	N/A
CONDO CONVERSION *Moderate Income* [C] *Lower Income* [C]	 33% 15%	 25% 25%	N/A	N/A
LAND DONATION [D]	10% of Market Units	15%	1.0%	30%
CHILD CARE FACILITY [C]	N/A	Equal sq. ft.	N/A	N/A
SPECIAL HOUSING [E]	10%	20%	N/A	N/A

[A] *Moderate-income units in common-interest developments (e.g. condos) and offered to the public for purchase*

[B] *Includes senior mobile home parks; project must limit residency based on age requirements pursuant to Section 798.76 or 799.5 of the Civil Code. A Senior Citizen Housing Development is defined in Civil Code Section 51.3(b)(4): as a residential development for senior citizens that has at least 35 dwelling units.*

[C] *Or an incentive of equal value, at the city's option.*

[D] *Projects must select one income-based, or specialty housing category as the basis for calculating the density bonus. Bonuses for an income or housing category can be combined with a bonus for land donation, up to a maximum of 35%; a square footage-based density bonus may be granted for child care facilities beyond 35%.*

[E] *Includes housing for transitional foster youth, disabled veterans, or homeless persons. Such units must be subject to an affordability restriction at the very low-income level for 55 years.*

Local Considerations for SDBL Implementation

The City of Santa Rosa is a large city with a sophisticated land use planning regulatory framework; the community contains a variety of unique neighborhoods, historic resources, and local development conditions that must be assessed with respect to SDBL. In consultation with staff, several pertinent issues were identified for specific analysis to ensure appropriate and efficient implementation of SDBL in the community. These issues are highlighted in this section.

Density Bonuses in Areas with No Maximum Density

Applicants have full discretion to seek and accept any applicable density bonus for an eligible project.[5] It is also the applicant's right to opt for no density bonus or a lesser bonus. Many cities—including Santa Rosa—have Zoning Districts and General Plan Land Use designations with no applicable maximum residential density limit. These are typically associated with dense, mixed-use (downtown) areas. Communities regulate development in these areas through controls on physical form: through setback standards, height restrictions, architectural standards, and design guidelines.

Areas not subject to a residential density limit pose a challenge to interpreting and implementing the SDBL. Three approaches are available to address development in these areas:

1. **Density Bonuses through Concessions and Waivers**. Projects in zones without residential density limits can comply with applicable development standards, forgo the redundant density bonuses that may otherwise apply, and simply seek relief from any development standards that may limit the desired density to offset the cost of building affordable housing. In this approach, the onus is on the developer and local jurisdiction to determine how much of a concession to development standards is justified to offset the cost of affordable housing development.
2. **Density Bonuses Implicitly Defined**. The local jurisdiction may require that an "implicit" residential density is calculated based on a project put forward that meets all applicable development standards. In this approach, a project defines the applicable residential density for itself based on meeting applicable development standards. This strategy requires controls to ensure that base projects that define density do not undermine development quality to maximize base density and the resultant density bonus. The City of Berkeley has pursued this approach; details are provided in the following chapter on local ordinance comparisons.
3. **Expand Density Bonus to Development Standards**. A local jurisdiction may adopt a bonus schedule for development standards that replicates the schedule for residential density bonuses. In this strategy, the local jurisdiction may identify the development standard (such as height or floor area ratios) that are the predominant restriction to larger development projects in areas not subject to residential density limits. For example, a floor area ratio bonus may be provided in exchange for affordable units rather than a residential density bonus. This approach has been adopted in Emeryville and is summarized in the following chapter.

[5] *Gov. Code Section 65915(f)*

Density Bonus Application Requirements

One of the issues that SDBL proponents identified and sought to address through AB 2501 is that several communities—deliberately or inadvertently—had restricted access to density bonuses through onerous application requirements and costly reports that were designed to substantiate applications for bonuses. While AB 2501 inserted provision 65915(a)(2) into the Density Bonus Law to prevent frivolous application requirements, interviews with jurisdictions conducted for this white paper indicate that confusion remains about what local jurisdictions can and cannot require as part of a density bonus application. Section 65915(a)(2) reads that the SDBL "does not prohibit a local government from requiring an applicant to provide *reasonable documentation*"[6] (emphasis added) to establish eligibility for a density bonus, incentives, concessions, waivers, reductions, or parking ratios. Some local governments interpret this language to require developers to submit pro formas showing the amount of profit they will make on a project. However, amendments adopted through AB 2501 are intended to presume that incentives and concessions provide cost reductions, and therefore contribute to affordable housing development. A municipality has the burden of proof of demonstrating that a concession or incentive would not generate cost savings.

Inclusionary Housing Policies

Section 65915(b)(1) outlines the eligibility requirements for density bonuses. The section clarifies that a local jurisdiction must grant a density bonus and associated concessions, incentives, waivers, and/or reductions "*when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section*" that contains affordable units consistent with the schedule outlined in the law. Inclusionary affordable housing units are not units permitted by the density bonus; therefore, inclusionary units have been consistently interpreted as contributing to qualifying a project under SDBL. This interpretation was confirmed in 2013 by the California Court of Appeals in *Latinos Unidos del Valle de Napa y Solano* v. *County of Napa*.

Density Bonus Beyond 35%

Density Bonus Law Section 65915(n) stipulates that local governments have the option to grant density bonuses in excess of 35% for projects that meet the SDBL, or to grant smaller density bonusses for projects that do not meet minimum qualification thresholds in the SDBL. In other words, projects that either fail to fully meet, or projects that exceed the eligibility requirements of the SDBL may be granted proportionate density bonuses at the discretion of the local government. The City of Santa Rosa Housing Action Plan directs the City to develop a supplemental density bonus program for the City that provides a bonus of up to 100% (see Program #1 in the Action Plan, outlined in the following chapter).

Several communities have adopted local ordinances that support density bonus allowances above 35%. Generally, supplemental density bonuses are permitted for projects that provide additional community benefits or amenities that communities have identified as potentially:

[6] *See Section 65915(a)(2)*

- Providing a larger quantity of affordable housing in the base project than required by the SDBL
- Providing affordable housing targeted to extremely low-, or very low-income households
- Providing specialized housing units of relevance or importance in the community, such as workforce housing, family-size units, or other forms of housing.
- Providing a range of public amenities such as:
    - ✓ Donating land or contributing otherwise to enhance or maintain open or public spaces
    - ✓ Providing for public art through fee contributions or in kind
    - ✓ In-lieu payment of fees toward community-benefit projects
    - ✓ Completing or contributing financially towards infrastructure improvements
- Including exemplary design that contribute to enhancing the local neighborhood
- Contributing to climate change adaptation or mitigation
- Improving, maintaining or rehabilitating historical and cultural assets in the community

Denial of Incentives, Concessions, Waivers, or Reductions

The SDBL mandates that local governments provide concessions or waivers for eligible density bonus projects, unless one of the following findings is made based on substantial evidence:[7]

(A) The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs.

(B) The concession or incentive would have a specific, adverse impact upon public health and safety, the physical environment, or on any real property 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.

(C) The concession or incentive would be contrary to State or federal law.

For child care facilities, Section 659515(h)(3) provides that a jurisdiction may deny a bonus or concessions for child care facilities if it can determine, with substantial evidence, that the community has adequate child care facilities in the project area.

Ambiguity remains about determining whether a concession or incentive results in identifiable and actual cost reductions, as well as what constitutes a specific, adverse impact; the SDBL refers to a definition provided in Section 65589.5 for the latter: *a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions at the time of application*. Section 65589.5 notes that inconsistency with zoning regulations or a General Plan Land Use designation does not meet this test. Local density bonus ordinances could address these ambiguities by clarifying local issues that constitute adverse public impacts. This is particularly valuable in that AB 2501 placed the burden of proof on local governments to demonstrate that concessions or incentives meet one of the three findings for denial. If a concession or incentive is denied, applicants have the option to initiate legal proceedings. If a court finds in favor of an applicant in such a suit, the local government is responsible for the applicant's attorney fees and costs of suit.[8]

[7] *Gov. Code Section 65915(d)(1)*

[8] *Gov. Code Section 65915(d)(3)*

Local Integration: CEQA Exemptions, Historical Resources, and Neighborhood Integration

Density bonus projects are not exempt from the California Environmental Quality Act (CEQA). However, two classes of categorical exemption recognized by the Act are often applied to density bonus projects: the *Affordable Housing* exemption (§15194) and the *Residential Infill Projects* exemption (§15195). To qualify for either, the project must be consistent with several threshold criteria established in CEQA §15192, including that the project must be consistent with any applicable General Plan, Specific Plan, or Local Coastal Program (and any related mitigation measures), as well as the local zoning ordinance. Several site-specific conditions must be met to qualify a project for the exemptions; these generally address the presence of ecological and habitat resources on-site, hazardous materials, public health risks associated with excess exposure to hazards such as earthquakes, flooding, wildfires or other hazards. As noted below, properties with historical resources do not qualify for the affordable housing or infill exemptions.

The affordable housing infill exemption is applicable to projects in which 100% of the proposed units are targeted to low-income households. The residential infill exemption is available to projects with mixed income levels, including partial market-rate housing projects.

Properties listed on the California Register of Historical Resources are protected in the SDBL through Section 65915(d)(1)(B), which establishes that a project requesting a density bonus may be denied the bonus and associated concessions or incentives if it would have a specific, adverse impact upon *any real property 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*. While the SDBL does not explicitly extend the same protection to locally-designated or eligible properties, the protection would occur through CEQA review of the project.

II. CITY OF SANTA ROSA DENSITY BONUS REGULATIONS

General Plan and Housing Element

The Santa Rosa General Plan includes several provisions that support affordable housing development, including policies that seek to improve project processing and predictability, promote appropriate and supportive land use and development standards, and related implementing policies. Table 6 summarizes policies contained within the Santa Rosa General Plan that relate to affordable or specialized housing and density bonuses. The Housing Element recognizes several programs aimed at maintaining and expanding affordable housing. The City's Housing Authority—established in 1971—is charged with providing decent, safe, and sanitary housing in Santa Rosa. The Authority has four approaches to meet this goal, the first being "develop new units." The Density Bonus program is a key tool in encouraging greater affordable housing development.

Table 6 - General Plan Policies Related to Affordable and Specialized Housing Density Bonuses

POLICY	DESCRIPTION
FAST TRACK	The City's *Fast Track* policy allows quicker processing of development projects that include affordable units. The City's policy is to process development projects within 90 to 120 days.
OPPORTUNITY SITES	As of the adoption of the General Plan, the City had designated 48 acres of undeveloped land for *Medium High Density* land use designation and 11 acres of undeveloped land as *Transit Village Medium* and *Transit Village Mixed Use* land use designations to provide targeted opportunities for higher-density (affordable) housing development.
LUL-B-1	Promote and participate in cooperative planning efforts with Sonoma County and its cities, especially related to countywide and sub-regional issues such as transportation, waste management, and affordable housing.
LUL-C-9	Preserve and protect the character of older established residential neighborhoods within and adjacent to downtown. Promote the retention of existing housing units when possible, especially those located in structures of architectural or historic interest and significance through a "no net housing loss policy." Permit developments that will result in net loss of housing units only with findings that such loss would be unavoidable and that new development would provide greater public benefits.
LUL-F-1	Do not allow development at less than the minimum density prescribed by each residential land use classification
LUL-F-4	Allow development on sites with a Medium Density Residential designation to have a maximum density of 24 units per gross acre (and up to 30 units per acre provided at least 20 percent of the housing units are affordable, as defined in the Housing Element)
H-A-2	Pursue the goal of meeting Santa Rosa's housing needs through increased densities, when compatible with existing neighborhoods. Development of existing and new higher-density sites must be designed in context with existing, surrounding neighborhoods. The number of affordable units permitted each year and the adequacy of higher-density sites shall be reported as part of the General Plan Annual Review report.
H-A-5	Improve community acceptance of higher-density housing through community-based outreach, recognition of existing livable neighborhoods, and assurance of well-designed high-density projects.
H-C-3	Require projects requesting residential General Plan amendments to rezone for General Plan consistency.

POLICY	DESCRIPTION
H-C-6	Facilitate higher-density and affordable housing development in Priority Development Areas (PDA), which include sites located near the rail transit corridor and on regional/arterial streets for convenient access to bus and rail transit. Implement existing PDA specific plans—the Downtown Station Area Specific Plan and the North Santa Rosa Station Area Specific Plan—and develop new plans, such as the Roseland Specific Plan, to encourage the development of homes that have access to services and amenities.
H-C-13	Encourage the development of units with three or more bedrooms in affordable housing projects.
H-C-15	Encourage new affordable housing development to provide amenities for residents, such as on-site recreational facilities, children's programs (day care or after-school care), and community meeting spaces.
H-C-17	Evaluate reinstatement of zoning code provisions exempting sites designated Medium Density Residential and Medium High Density Residential from rezoning when affordable housing is proposed.
H-D-1	Continue existing programs for persons with special needs, including disabled persons, developmentally disabled persons, elderly, homeless, large families, single parent households, and farmworkers. Programs include the Section 8 Housing Choice Voucher Rental Assistance Program and funding for services and organizations through the use of Community Development Block Grant and HOME funds. When funding is available, serve households with special needs through the Housing High density development projects should include play spaces for children, as shown above at Amorosa Village. Rehabilitation and Conservation Program and the Community Housing Development Organization (CHDO).
H-D-11	Encourage the development of affordable housing for the elderly, particularly for those in need of assisted and skilled nursing care. Continue to provide funding and offer incentives such as density bonuses, reduced parking requirements, design flexibility, and deferred development fees.
H-F-1	Ensure that residential projects are heard by the first decision-making board, within a period not to exceed 120 days of receipt of a complete application for development approval.
H-F-2	Fast track all development projects that fully comprise units affordable to extremely low-, very low-, and low-income households with long-term affordability restrictions. Utilize a fast track schedule mutually acceptable to the project applicant and the City.
H-F-3	Defer payment of development impact fees for affordable units until permanent financing is available.
H-F-4	Continue to implement the City's Density Bonus Ordinance, consistent with state law.

Housing Action Plan

The Santa Rosa Housing Action Plan, adopted in October, 2016, provides a roadmap to address the City's housing needs and implement the Housing Element. It is presented in five program areas, with 31 program elements that represent specific actions to achieve each program. Several policies in the Housing Action Plan relate to updating and implementing the local density bonus program—these policies are associated with Program #1 (Increase Inclusionary Housing), and Program #4 (Improve Development Readiness of Housing Opportunity Sites):

Program #1: Increase Inclusionary Housing

The City's current inclusionary housing policy allows developers to build units in kind or make payments in-lieu of units. Given the nexus-based maximum fee that can be charged in-lieu, density bonuses and other regulatory tools are essential to incentivizing the construction of affordable housing units. The Housing Action Plan directs the City to amend the density bonus ordinance to:

- Appropriate additional density above state-allowed 35%, with consideration of up to 100%;
- Level of affordability to be achieved through the offering of additional density;
- Incentives for creating smaller units that are less expensive by design.
- Whether the additional density bonus will be allowed in all residential districts or vary by residential density category;
- Neighborhood compatibility (i.e., determining locations where bonuses should be available);
- Whether specific areas of the city should be targeted for density bonus (and other areas excluded) through use of an overlay zone;
- Type of affordable units to be included – rental, ownership or both;
- Consideration of and specification of an expanded list of concessions and incentives (as identified in State Law)
- Potential expansion to the list of available concessions or incentives

Program #4: Improve Development Readiness of Housing Opportunity Sites

Program #4 recommends identifying "opportunity sites" with good physical, regulatory, and market potential for multifamily and mixed use development. Regulatory and financial incentives are directed to these areas to maximize affordable housing development. The density bonus program is recognized as one of the key incentivizing tools.

Municipal Code

The Santa Rosa density bonus program was last substantially amended in 2012. As presented in the prior chapter, several amendments to the SDBL have taken effect since that time. Table 7 provides a line-by-line overview of the City's current density bonus regulations and clarifies discrepancies with the State Law. There are 11 consistency gaps identified; these identified consistency gaps do not reflect recommendations to expand on the SDBL, which are outlined in Section IV of this report.

Appendix A provides an overview of density bonus projects processed in the City since 1999. Sixteen projects were completed resulting in 1,107 housing units, of which 195 were affordable density bonus units. Most concessions granted for these projects were related to reduced setbacks and reduced parking requirements. Other concessions include additional height and lot coverage allowances.

Table 7 - Inconsistencies Between Santa Rosa's Current Density Bonus Ordinance and Density Bonus Law

	CITY OF SANTA ROSA DENSITY BONUS REGULATIONS	STATE OF CALIFORNIA DENSITY BONUS LAW - GOV. CODE SECTION 65915
1	Procedures exist but must be updated to be consistent with the SDBL Processing timelines consistent with Gov. Code 65943 are needed Requirements to submit complete density bonus applications are needed	See 65915(a)(3)
2	**Section 20-31.050** *Eligibility criteria for density bonus* Section does not include new specialized housing categories that qualify for density bonuses consistent with amendments adopted through AB 2442	65915(b)(E) allows density bonuses for qualifying projects where 10% of the total units are for transitional foster youth, disabled veterans, or homeless persons.
3	**Section 20-31.050.4** *Eligibility criteria for density bonus* References units in "*condominium or planned unit developments*"	65915(b)(D) The SDBL references the broader term "*common interest developments*"[9]
4	**20-31.60** *Project specific density bonus* & **20-31.100** *Required Density Bonus Agreement and terms of agreement.* Affordability terms must be 55 years; they are currently set to 30 years.	See 65915(c)(1)
5	**Section 20-31.060.D** *Project specific density bonus* Moderate income density bonus schedule does not include 29% level	See Section 65915(f)(4)
6	**Section 20-31.060** *Project specific density bonus* Land donation density bonus schedule does not include 28% level	See Section 65915(g)(1)
7	**Section 20-31.020** *Definitions* does not include: • *Development standard* • *Maximum allowable density*	See Section 65915(o)
8	Santa Rosa ordinance does not include any provisions responding to amendments in AB 2222 and AB 2556 dealing with replacement units	See Section 65915(c)(3)
9	Santa Rosa ordinance does not include provisions responding to amendments in AB 744 dealing with reduced parking standards based on unit income levels and proximity to transit.	See Section 65915(p)
10	Santa Rosa ordinance does not include provisions for commercial development partnered with affordable housing in response to amendments adopted through AB 1934.	See Section 65915.7
11	Santa Rosa ordinance does not include complete provisions related to density bonuses for child care facilities.	See Section 65917.5

[9] *Common interest development is defined as defined in Civil Code Section 4100 means (a) A community apartment project; (b) A condominium project; (c) A planned development; (d) A stock cooperative.*

III. LOCAL DENSITY BONUS ORDINANCE COMPARISON

To inform the Santa Rosa density bonus ordinance update, local density bonus programs in several Bay Area jurisdictions were analyzed. Comparable cities were identified by City staff for their relevance to the Santa Rosa context, and their unique approaches to encouraging affordable housing development through density bonuses. Ten cities were selected for in depth review and one-on-one interviews; in addition to the ten staff-selected jurisdictions, local density bonus ordinances for Santa Rosa's official "comparable cities" were also reviewed. The complete list of comparable cities that were reviewed are outlined below:

- Ordinance review with one-on-one interviews (10 jurisdictions):
    - Berkeley
    - Emeryville – density bonus provisions exceed state-mandated 35% maximum
    - Hayward
    - Napa
    - Oakland
    - Richmond
    - Sacramento – density bonus provisions exceed state-mandated 35% maximum
    - San Francisco – density bonus provisions exceed state-mandated 35% maximum
    - Santa Cruz
    - Sonoma County – density bonus provisions exceed state-mandated 35% maximum
- Ordinance review (7 jurisdictions):
    - Antioch – density bonus provisions exceed state-mandated 35% maximum
    - Concord
    - Daly City
    - Fairfield
    - Fremont
    - San Mateo
    - Vallejo

Interviews followed a preliminary review of local ordinances and available public materials on local experiences with density bonuses. Follow-up interviews were designed to clarify provisions in the local ordinance and provide insight into the impact and implementation experience of the local jurisdiction. A list of interview questions is provided in Appendix B.

A summary of ordinance findings is provided at the end of this section in Table 14.

Berkeley

Number of Density Bonus Applications Received: Unknown.
Affordability Levels Targeted for Density Qualification: Unknown.
Types of Projects Requesting Density Bonuses: Multi-family residential.
Location of Density Bonus Projects: Unknown.
Requests for Density Bonus Regulatory Changes from Developers: Unknown.
Requests to Update the Local Ordinance to Comply with State Law: Unknown.
Is the Community Considering Densities Over 35%: Unknown.

Berkeley currently enforces the SDBL; a local ordinance that exceeds the 35% density bonus allowance has not been adopted. Berkeley has, however, adopted a detailed approach to address one of the challenges the city faces when implementing the SDBL: evaluating and granting bonuses within zoning districts and General Plan Land Use designations where there is no specified maximum residential density limit. To interpret and implement the SDBL in these areas, the City developed a process to define the *implicit* residential density limit. Applicants are required to prepare project plans that substantially conform to development standards; the number of units achieved in a conforming design establishes the implicit density for the property. Bonuses are granted based on the implicit density. The City's procedure for reviewing density bonus applications includes four broad steps:

1. calculate and define the "Base Project;"
2. calculate the requested density bonus using the base project to define the density maximum;
3. review concessions and assess their fiscal impact on the project;
4. review requested waivers/reductions.

Table 8 - City of Berkeley Procedure for Evaluating Density Bonus Applications

STEP	ITEM	EXAMPLE
1.1	Calculate residential floor area (must substantially comply with standards)	40,000 sq. ft.
1.2	Calculate *Average Unit Size* (total residential floor area ÷ total number of units)	2,000 sq. ft.
1.3	Calculate number of base project units (step 1.1 ÷ step 1.2), deduct fractions	20 units
2.1	Determine proposed number and income level of *below market rate* (BMR) units	4, *v. low-income*
	Determine percentage of BMR units relative to total units in the base project	20%
2.2	Calculate the eligible density increase (%) based on 65915(f)	35%
2.3	Calculate the number of bonus units (step 2.2 X step 1.3)	7 units
3.1	Review written statement describing requested concessions/incentives	9' ceilings
3.2	Verify that the project qualifies for the requested number of concessions	3 concessions
3.3	Applicant submits "pencil out pro forma," using the following scenarios: A. *Base Project, 100% market rate* (pays City's affordable housing impact fee) B. *Base Project*, with proposed BMR units C. *Density Bonus Project*, with BMR units and density bonus units D. *Proposed Project*, with requested concessions/incentives	
3.4	Pro forma is peer-reviewed by a qualified consultant (at a rate of $180/hour)	
3.5	Determination whether the concession is necessary pursuant to 65915(d)(1)(A)	
3.6	Review written request for waivers	

Emeryville

Number of Density Bonus Applications Received: Several in the local density bonus program
Affordability Levels Targeted for Density Qualification: Diverse, per local requirements
Types of Projects Requesting Density Bonuses: Multi-family residential.
Location of Density Bonus Projects: In defined overlay zones outlined in the local program.
Requests for Density Bonus Regulatory Changes from Developers: None.
Requests to Update the Local Ordinance to Comply with State Law: None.
Is the Community Considering Densities Over 35%: Already available and highly popular.

The City of Emeryville enforces two, mutually exclusive density bonus programs. One is the State's Density Bonus Law, the second is a local program (Section 9-4.204 of the local ordinance) designed to allow for bonuses above 35%. Developers choose to apply one or the other. If a project is seeking a bonus of 35% or less, it is less onerous to choose the SDBL. Bonus requests over 35% must use the local program, which allows up to a 100% bonus. The local program also provides for a floor area ratio, and/or height bonus that can be used independently or together with residential density bonuses as needed.

Density Bonuses that Exceed 35%

The local density bonus program divides the city into floor area ratio (FAR), height, and residential density area designations. The areas were designated in consultation with property owners and the broader community. Each designation is ascribed a "base" maximum for the applicable standard (FAR, height, or density) as well as a "bonus" maximum. Requests for a bonus in FAR, height, or density within the maximum permitted amount may be granted through a conditional use permit. The base and bonus density limits for each residential density area designation are shown in Table 9. Figure 1 shows a map of the residential density area designations.

Emeryville's program is based on earning points that reflect the size of the density, height, or floor area bonus that is requested. Points are earned by providing affordable housing and other community benefits (explained in detail below). The larger the density bonus request, the more affordable housing and community benefit that a project must provide to receive the bonus. The required number of points that a project must provide is determined by the following formula:

Points Required = (Bonus Request ÷ Bonus Increment) x 100
Bonus request is the amount of FAR, height, or density requested above the base level for the zoning district
Bonus Increment is difference between the maximum bonus and maximum base amount in the designation.

Emeryville Density Bonus Example:
A multi-family project located in the *"70/135"* residential density area designation proposes to build 87 units on a one acre property, which exceeds the base density maximum of 70 units per acre by 17 units. To grant the density bonus of 17 units, the project would need to generate 26 density bonus points. At least half, or 15 points, must be generated through the provision of affordable housing units, as outlined below:

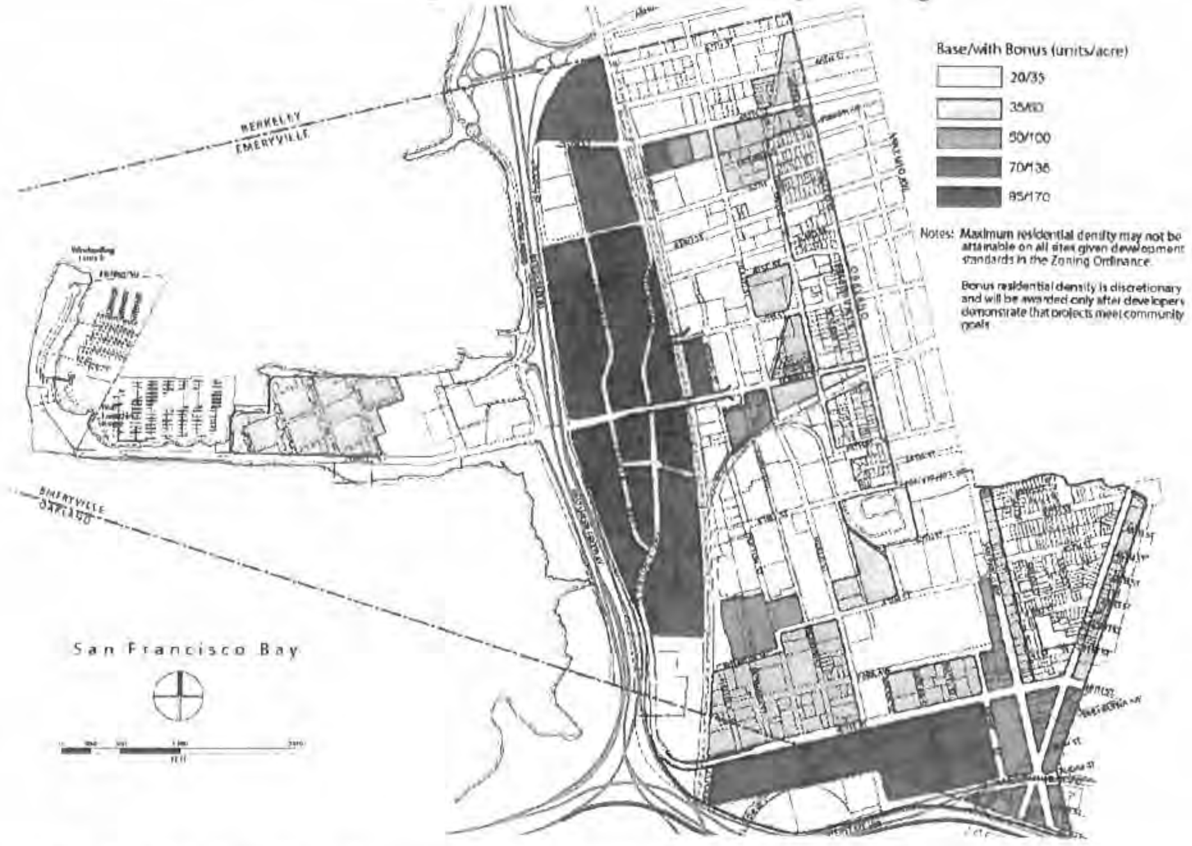
Base Project:	**87** Unit multi-family development
Area Designation:	***"70/135"***
Bonus "Request":	(Units Requested less "Base" Units in the Area Designation) = 87 – 70 = **17**
Bonus "Increment":	(Maximum Bonus less Base Density in the Area Designation) = 135 – 70 = **65**
Points Required:	(Bonus Request ÷ Bonus Increment) x 100 = (17 ÷ 65) x 100 = **26**

Affordable Housing must account for *__at least__* half of required point total, rounded up to a factor of 5:
Points through Affordable Housing = 26 ÷ 2 = **13, rounded up to 15**

Table 9 - Emeryville Municipal Code Table 9-4.203(a): Residential Density Area Designations

AREA DESIGNATION	MAX PERMITTED RESIDENTIAL DENSITY (UNITS/ACRE)		MAX BONUS INCREMENT	
	BASE	BONUS	AMOUNT	PERCENT
20/35	20	35	15	75%
35/60	35	60	25	71%
50/100	50	100	50	100%
70/135	70	135	65	93%
85/170	85	170	85	100%

Figure 1 - Emeryville Municipal Code Figure 9-4.203(a): Residential Density Area Designations



At least half of the required number of "points" must be earned by providing affordable units in the project (rounded up to a factor of 5). Points generated through affordable units are gained by providing a defined number of units across multiple affordability levels (Table 10). This ensures that a variety of housing sizes and types are constructed. For example, to secure 15 bonus points, a rental project would need to provide very low-, low-, and moderate-income units at 3.1%, 4.7%, and 5.8% of total project units respectively, for a total of 13.5% of affordable units. In a for-sale project, moderate-income level units would need to represent 21.5% of total base project units to get the same 15 points.

Table 10 - Emeryville Municipal Code Table 9-4.204(d)(1): Bonus Points Schedule for Affordable Units

POINTS AWARDED	RENTAL PROJECTS				FOR-SALE
	TOTAL	VERY LOW INCOME	LOW INCOME	MODERATE INCOME	MODERATE INCOME
5	12.5%	2.8%	4.3%	5.3%	20.5%
10	13.0%	2.9%	4.5%	5.5%	21.0%
15	13.5%	3.1%	4.7%	5.8%	21.5%
20	14.0%	3.2%	4.9%	6.0%	22.0%
25	14.5%	3.3%	5.0%	6.2%	22.5%
30	15.0%	3.4%	5.2%	6.4%	23.0%
35	15.5%	3.5%	5.4%	6.6%	23.5%
40	16.0%	3.6%	5.6%	6.8%	24.0%
45	16.5%	3.7%	5.7%	7.0%	24.5%
50	17.0%	3.9%	5.9%	7.2%	25.0%

Nonresidential projects that seek an FAR or height bonus can earn points by paying an additional affordable housing impact fee on a sliding scale: a 10% incremental increase to the standard housing impact fee for the project generates 5 points up to a maximum of 50 points if the fee is doubled. Commercial projects that are exempt from housing impact fees can pay the increment portion as if a fee was levied (without paying the base fee) and earn points at the same rate.

After providing at least half of the points through affordable housing, any remaining points can be earned by providing a variety of community benefits. The maximum number of points available through community benefits is 50. The point schedule for community benefits is outlined below:

- Between 20 and 50 points can be earned by providing public open space on a sliding scale. 50 points are earned for open space equal to the greater of 15% of site area or 2,000 sq. ft., 20 points are earned for open space equal to the greater of 5% of site area or 1,000 sq. ft.
- 50 points can be earned for buildings that generate zero net energy load
- 10 points can be earned for every 1% of project construction valuation contributed toward:
    - The Citywide Parks Fund to provide and improve open spaces
    - Public improvements, not including required improvements for the project
    - The Citywide Utility Undergrounding fund, not including required undergrounding
    - The Citywide Small, Local-Serving Businesses Fund
    - Unique, exemplary community benefit proposals negotiated directly with City Council
- 5 points can be earned for each 5% of total units that are "Family-Friendly" (contain 2 or more bedrooms), where at least 1% of total project units must have 3 or more bedrooms.

Virtually all density bonus applications processed by the City used the local program to take advantage of bonuses over 35%. The local program has resulted in "significant affordable housing development" according to interviews with staff. The most attractive aspects of the program are its flexibility, and the ability to potentially double base density. Defined community benefits that generate a predictable number of points make the process transparent and predictable. No single benefit is used most often; applicants select benefits that are most desirable to them. Another strength is that bonuses for density, height, and FAR can be combined. If multiple bonuses are requested for a project, the point formula is applied to each of the bonus requests and the highest point total is applied. If a project

required 45 points for density and 49 points for height, the project would need to generate 49 points to receive both bonuses; not a combined or averaged point total.

Hayward

Number of Density Bonus Applications Received: 2.
Affordability Levels Targeted for Density Qualification: Very Low Income.
Types of Projects Requesting Density Bonuses: Multi-family residential.
Location of Density Bonus Projects: Transit-oriented development near major transit.
Requests for Density Bonus Regulatory Changes from Developers: None.
Requests to Update the Local Ordinance to Comply with State Law: None.
Is the Community Considering Densities Over 35%: Yes, for energy efficient construction.

The City of Hayward enforces the SDBL as its local ordinance. No tailored policies are provided beyond state regulations. The SDBL has had extremely limited impact on affordable housing construction in the City. Staff planners suggest that educational campaigns targeted to developers about density bonus options available through the SDBL could increase utilization.

Napa

Number of Density bonus applications received: Very limited, last application in 2005.
Affordability Levels Targeted for Density Qualification: Based on County funding requirement.
Types of Projects Requesting Density Bonuses: Multi-family, 100% affordable housing.
Location of Density Bonus Projects: Infill sites and undeveloped areas.
Requests for Density Bonus Regulatory Changes from Developers: None.
Requests to Update the Local Ordinance to Comply with State Law: None.
Is the Community Considering Densities Over 35%: Already provided.

The City of Napa enforces the State Density Bonus Law with adjustment to reflect the local context. The City also provides for a density bonus exceeding 35%. In the local ordinance, Napa has provided expanded information to clarify application requirements for density bonuses to supplement the State policy. In addition to identifying the basis for the density bonus, and any concessions, incentives, waivers, or reductions with substantiating evidence, Napa requires that density bonus applications:

1. Provide a preliminary sketch plan showing:
    - the context and compatibility of the project within the surrounding area
    - the number, type, size, and location of buildings, and parking
    - the design of affordable units is compatible with market-rate units in the project.
2. Provide information to enable the City to determine whether the SDBL and local code has been satisfied by the applicant. This may include:
    - the cost per unit
    - how requested incentives or concessions make housing economically feasible.
    - summaries of capital costs, equity investment, debt service, projected revenues, operating expenses, and other information deemed necessary by the Director.

Overall, Napa has seen very little market-rate development that utilizes State or local density bonus provisions. Nearly all projects that have utilized the density bonus program in Napa were 100% affordable projects that were predominantly incentivized by County funding. Projects with density bonuses are varied and range from infill development in the developed core, to undeveloped sites

further out of the downtown area. Projects seek a wide range of concessions but parking is the most commonly requested reduction, followed by various waivers for indoor and site improvements (e.g. mandatory laundry facilities in each unit, guest amenities, and carports).

A unique aspect of Napa's ordinance is their approach to density bonuses in lower-density residential areas and transition areas. Napa is a community defined by an iconic medium-scale urban core, surrounded by residential neighborhoods. The local ordinance provides an avenue for applying density bonuses to projects that are below the threshold of five dwelling units established in the SDBL. Density bonus application review in Napa is divided into two categories: large projects (i.e. traditional SDBL projects involving five or more units) require review and recommendation by staff, with City Council having ultimate decision-making authority. Small projects, those that involve fewer than five units in duplexes or triplexes in à district that allows for duplexes and triplexes (i.e. the R-I, R-T, and R-M districts), require Council review only if needed for a concurrent entitlement. The "small project" designation takes advantage of the SDBL provision 65915(n) to effectively extend the SDBL to projects with less than five dwelling units. While this is a unique approach, it has failed incentivized affordable housing production due to the economies of scale that are achieved with larger development projects.

Density Bonuses that Exceed 35%

Napa also provides a provision for exceeding the State-mandated 35% density bonus allowance. Section 17.52.130.F enables density bonuses to upwards of 100% at the discretion of the decision-making body. The language qualifying how an applicant can achieve a supplemental density bonus is left vague (a strict schedule is not provided). The decision-making body weighs the merits of the application in recognition of the following:

1. the provision of affordable units in excess of the SDBL requirements
2. high quality design that fits within the surrounding neighborhood
3. superior mitigation of potential impacts on neighborhoods
4. provision of on-site underground parking
5. other project amenities or public benefits that contribute to the surrounding neighborhood
6. support of Chapter 15.94 (Affordable Housing Impact Fees)
7. the inclusion of attractive and functional common space areas.

Oakland

Number of Density Bonus Applications Received: Unknown.
Affordability Levels Targeted for Density Qualification: Unknown.
Types of Projects Requesting Density Bonuses: Unknown.
Location of Density Bonus Projects: Unknown.
Requests for Density Bonus Regulatory Changes from Developers: Unknown.
Requests to Update the Local Ordinance to Comply with State Law: Unknown.
Is the community Considering Densities Over 35%: Unknown.

Because permitted residential densities are relatively high in Oakland, the City does not consider the development standards in the Planning Code to be a constraint to the production or rehabilitation of housing. The City has adopted a Density Bonus Ordinance that mirrors State law, and has incorporated other tools (such as inclusionary housing policy, and an expedited approach to achieving a 35% density bonus within defined Retail Priority Zones). The City does not currently allow density bonuses above 35%. The expedited 35% density bonus is available in each of the city's 5 Retail Priority Zones outlined in the Broadway Valdez District Specific Plan and implemented through the D-BV Broadway Valdez District Commercial Zones. The program seeks to encourage vibrant mixed-use development by requiring a defined square footage of retail space that is required to receive the right to construct residential units on upper floors of a proposed building. When an appropriate retail square footage threshold is met, and the resultant residential units include 15% affordable housing units targeted to either very low- or low-income households, or moderate-income households in a common interest development, the project is entitled to a 35% density bonus through the issuance of a Conditional Use Permit. The program is "expedited" in that meeting the 15% affordable requirement immediately qualifies the project for a 35% bonus.

The City's version of the SDBL includes minor modifications to reflect local conditions, including:

- An expanded list of qualifying concessions and incentives to reflect local development requirements (required open space, and required courtyards, for example).
- An expanded basis for the City's right to deny a project that includes:
    - The ability to deny a project if the City maintains an up-to-date and certified Housing Element, and the City has met all applicable Regional Housing Need Allocation requirements for affordable housing for the current period.
    - The development project is proposed on land zoned for agriculture or resource preservation and is surrounded on at least two sides by land zoned for the same.
    - The development project is proposed on land which does not have adequate water or wastewater facilities to serve the project.
    - The development is inconsistent with both the zoning ordinance and general plan land use designation, and the City has adopted an up-to-date Housing Element. This provision appears to conflict with the SDBL and Oakland Municipal Code Section 17.107.115(2), which stipulate that inconsistency with the zoning ordinance or general plan land use designation does not constitute a specific, adverse impact.

Richmond

Number of Density bonus applications received: 1-2 annually, virtually all 100% affordable.
Affordability Levels Targeted for Density Qualification: Varies, extremely low-income target.
Types of Projects Requesting Density Bonuses: 100% affordable, multi-unit residential.
Location of Density Bonus Projects: Transit corridors and hubs, Priority Development Areas.
Requests for Density Bonus Regulatory Changes from Developers: Lower Impact Fees.
Requests to Update the Local Ordinance to Comply with State Law: None.
Is the Community Considering Densities Over 35%: Already granted, no density bonus cap.

The local density bonus ordinance in Richmond expands State law considerably. The program seeks to address several local concerns, including: providing housing for extremely low-income households, providing flexibility for affordable housing developers and the City to approve projects with significant community benefits, and addressing the financial challenges faced by affordable housing developers in the absence of Redevelopment Agency funding.

Richmond's local ordinance recognizes that the community has a large share of low-income households with families. As a result, the local density bonus ordinance incorporates a more aggressive bonus schedule for projects that incorporate units at the extremely low-income level, income-restricted senior-citizen housing, as well as income-restricted units with 4 or more bedrooms. Table 11 below summarizes the expanded density bonus schedule in Richmond. In addition to the more aggressive density schedule for extremely low-income, income-restricted senior, and income-restricted family units, the City enables more concessions for projects with these units as outlined in Table 15.04.602.030-D of the Zoning and Subdivision Regulations of the Richmond Municipal Code.

Table 11 - Affordability-Based Sliding Scale Density Bonus Schedule in Richmond

AFFORDABILITY LEVEL OR HOUSING TYPE	MIN. REQUIRED TO RECEIVE BONUS	BONUS FOR MIN. UNITS	ADDITIONAL BONUS PER 1% INCREMENT OVER MIN.	UNITS NEEDED FOR MAX. BONUS
EXTREMELY LOW-INCOME	5%	30%	1.0% up to 40%	15%
VERY LOW-INCOME	5%	20%	2.5% up to 35%	11%
LOW-INCOME	10%	20%	1.5% up to 35%	20%
MODERATE-INCOME [A]	10%	5%	1.0% up to 35%	40%
SENIOR HOUSING [B]	100%	20%	N/A	All senior units with:
Extremely Low-income	10%	40%		10%
Very Low-Income	15%	40%		15%
Low-Income	20%	40%		20%
FAMILY UNITS (4BR+)			N/A	
Extremely Low-income	5%	35%		5%
Very Low-Income	10%	35%		10%
Low-Income	15%	35%		15%

The City of Richmond also establishes standards for incorporating below market rate units within mixed-income developments to protect against segregation. The local ordinance requires that affordable housing units are integrated with market-rate units in housing developments; units granted through a density bonus, however, may be concentrated in one area.[10]

[10] *See Section 15.04.602.030.F.4*

Density Bonuses that Exceed 35%

Subdivision 15.04.602.030.E effectively establishes Richmond as one of the most liberal density bonus jurisdictions of the cities reviewed. The provision establishes that the City has the authority to grant a density bonus and number of incentives or concessions of any amount above what is described in the local density bonus ordinance for a development that meets the requirements of the ordinance. In practice, this provision allows the City complete latitude to consider unique or creative proposals that are in the community's best interests. Unlike the provisions for bonuses over 35% in other jurisdictions, Richmond does not establish criteria or findings that must be made to grant the additional bonus.

Sacramento

Number of Density bonus applications received: None.
Affordability Levels Targeted for Density Qualification: Virtually no projects processed.
Types of Projects Requesting Density Bonuses: 1 multi-unit 100% affordable project.
Location of Density Bonus Projects: No projects processed.
Requests for Density Bonus Regulatory Changes from Developers: None.
Requests to Update the Local Ordinance to Comply with State Law: None.
Is the Community Considering Densities Over 35%: No. Available for energy efficiency.

The City of Sacramento has received and processed no density bonus projects since the adoption of the SDBL. According to City staff, the primary reason is that the City maintains a growth-friendly zoning ordinance, with development standards that achieve many of the goals that the SDBL sought to achieve through density bonusing, concessions, incentives, waivers, reductions, or parking requirement reductions. The City has eliminated minimum parking standards in several zoning districts, and promoted higher density development generally. The city recently also revised its variance review process, replacing variances with "deviations" that can be reviewed administratively if they involve a modification that is equal to less than 50% of the standard; the Planning Commission reviews deviations of greater than 50%. The findings to grant a deviation are also less onerous than typical variance review findings.

Density Bonuses that Exceed 35%

The City currently permits a density bonus above the state-mandated 35% for projects that meet the SDBL requirements and a local green building standard. The green building standard was incorporated into the density bonus program to avoid undermining the affordable housing density bonus incentive by granting density bonuses for energy-efficient construction when no affordable units are included in the project. To date, no projects have utilized the green building density bonus incentive.

San Francisco

Number of Density bonus applications received: Limited density bonus utilization.
Affordability Levels Targeted for Density Qualification: Limited density bonus utilization.
Types of Projects Requesting Density Bonuses: Limited density bonus utilization.
Location of Density Bonus Projects: N/A.
Requests for Density Bonus Regulatory Changes from Developers: Increased density bonus.
Requests to Update the Local Ordinance to Comply with State Law: New ordinance adopted in July, 2017 that buildings on State law.
Is the Community Considering Densities Over 35%: July, 2017 establishes an unlimited bonus.

Until recently, the City of San Francisco neglected to adopt a local density program compliant with State law for several reasons. Chiefly, the City has sought to address affordable housing through an aggressive and expanded inclusionary housing policy. One of the key concerns for the City was that local decision-makers felt the State law fails to adequately address the middle-income housing gap.

In July, 2017 the City adopted its first local density bonus program, which builds substantially on State law. The local program provides applicants requesting a density bonus with one of three options, depending on what zoning district their project is located in:

- In all zoning districts except RH-1 or RH-2:
  - "State Density Bonus: Individually Requested" (Sec. 206.6)
- In zoning districts where density is controlled by a ratio of units to lot area and the RH-3 zone:
  - *Housing Opportunities Mean Equity-SF* (HOME-SF) (Sec. 206.3)
  - "State Density Bonus: Analyzed" (Sec. 206.5)

The "State Density Bonus: Individually Requested" (henceforth "Individualized") program is essentially the SDBL. It is designed for projects that meet State requirements but are not consistent with the pre-vetted concessions and waivers approved for the HOME-SF and "Analyzed" program as described below.

Like other highly urbanized areas, San Francisco's experience is that most development is occurring in areas where no residential density limits apply. In these instances, the City has adopted Berkeley's approach of calculating *implicit* density based on a project design that substantially conforms to applicable development standards for the site.

Density Bonuses that Exceed 35%

The HOME-SF and "State Density Bonus: Analyzed" (henceforth "Analyzed") programs provide for density bonuses over 35%. HOME-SF is designed for new construction projects of three or more units that request a density bonus greater than 35% (with no density bonus limit). 30% of total proposed units in the project must be affordable across a prescribed income categories:

- 12% of units at 55% of AMI (rental) or 80% of AMI (owner);
- 9% of units at 80% of AMI (rental) or 105% of AMI (owner); and
- 9% of units at 110% of AMI (rental) or 130% of AMI (owner).

In addition, the projects must meet the following unit size criteria:

- At least 40% of the units must be two and three bedroom units, with at least 10% as three bedroom units; or any unit size mix that includes three bedroom or larger units such that 50% of all bedrooms within the project are provided in units with more than one bedroom.
- Units sizes shall be at least 200 sq. ft. for studios, 500 sq. ft. for 1-bedroom units, and 750 sq. ft. for 2 bedroom units.

The HOME-SF program provides three options for the type of bonus that an applicant can receive:

1. Form-Based Bonus – applies no residential density limit but restricts a development to height, bulk, unit mix, and other development standards established in the Planning Code.
2. Height Bonus – up to 20 feet above the height limit (equal to two 10-foot stories).
3. Ground Floor Ceiling Bonus – up to 5 feet for 14-foot ceilings or walk-up dwellings units.

The "Analyzed" program adopts the same eligibility, affordability, and unit design requirements as the HOME-SF program except that projects must include five or more units (to match State law) and request no more than 35% density bonus (except for senior-citizen housing, which allows up to 50%). The "Analyzed" program density bonus matches State law except for the following:

- senior-citizen housing projects are eligible to receive a bonus of 50% instead of 20%.
- Applicants may combine bonuses from different affordability levels, up to a maximum of 35%. State law requires that projects select one income-based category to define the bonus.

The HOME-SF and "Analyzed" programs include a pre-vetted menu of concessions, incentives or waivers for applicants to select. The menu was developed through an independent study commissioned by the City; each pre-vetted item was deemed consistent with the SDBL, recognized as being generally required to provide for affordable housing costs, and assessed by the City to not have a specific, adverse impact. The menu of concessions and waivers for the HOME-SF and "Analyzed" program is provided in Table 12:

Table 12 - Pre-Approved Concessions and Waivers in San Francisco

CONCESSION	AMOUNT
Rear Yard Setback	Reduced to greater of 20% of lot depth or 15 feet
Dwelling Unit Exposure	Exposure requirements may be met with windows facing an open area within 25ft
Off-street Loading	Requirement can be waived
Automobile Parking	Up to 50% reduction (up to 75% in the HOME-SF program)
Open Space	Up to a 5% reduction in common open space requirements
Open Space 2	A second 5% reduction in common open space requirements
Inner Court Open Space	HOME-SF Only: a space at least 25ft. x 25ft. can qualify as common open space

Santa Cruz

Number of Density bonus applications received: Limited density bonus utilization.
Affordability Levels Targeted for Density Qualification: Limited density bonus utilization.
Types of Projects Requesting Density Bonuses: Limited density bonus utilization.
Location of Density Bonus Projects: N/A.
Requests for Density Bonus Regulatory Changes from Developers: None, low familiarity.
Requests to Update the Local Ordinance to Comply with State Law: Exploring an update.
Is the Community Considering Densities Over 35%: Considered as part of pending update.

The City of Santa Cruz is currently working on an update to the local density bonus ordinance as the current ordinance, which mirrors State law, is out of date. The City has processed only one density bonus project (in 2016) that was a 100% affordable housing project. The economic downturn, and density bonus impediments incorporated into the local density bonus ordinance in 2006 have resulted in limited use of density bonus in the city. Staff have indicated that developers generally are not familiar with the SDBL and how it may be applied to their projects. City-led efforts to broaden understanding of the law and encourage its implementation have been positive, however developers continue to struggle to identify ways to apply the law.

The City's 2006 ordinance was adopted reluctantly as density bonus was perceived to undermine the local zoning ordinance and its provisions to ensure compatibility with existing neighborhoods. To limit excessive deviations from design review standards established in local code, the City applied a tiered process to review concessions that made it onerous for applicants and limited predictability in the process. Concessions that were deemed to have heightened sensitivity were subject to Planning Commission or Council review (e.g. increases in height, bulk, and floor area), which stalled project processing and effectively deterred applicants. The City also required developers to submit detailed pro formas to justify requested incentives, concessions, waivers, or reductions.

Density Bonuses that Exceed 35%

Density bonuses over 35% are being contemplated in the current update to the local density bonus ordinance, however the City is also considering implementing these bonuses through an update to the local inclusionary housing policy (also currently underway). The City is also seeking to achieve the intent of the SDBL by revising base zoning standards in targeted areas that have a greater capacity to support development, such as along primary corridors.

Sonoma County

Number of Density bonus applications received: 11 applications, 492 units.
Affordability Levels Targeted for Density Qualification: Very Low- and Low-Income.
Types of Projects Requesting Density Bonuses: Multi-family, some subdivisions.
Location of Density Bonus Projects: Within urban service areas.
Requests for Density Bonus Regulatory Changes from Developers: Fee reductions.
Requests to Update the Local Ordinance to Comply with State Law: No, in County workplan.
Is the Community Considering Densities Over 35%: 80% apply through the local program versus State law to take advantage of extra density bonuses.

Sonoma County provides four density bonus programs for applicants, although not all can be correlated to the State Density Bonus Law:

1. State law, granting bonuses up to 35%
2. *County Supplemental* Density Bonus, augmenting SDBL for bonuses up to 50%
3. Type A or *Rental*, granting bonuses up to 100% by right (not related to SDBL), but not exceeding 30 dwelling units per acre.
4. Type C or *Small-Lot Conversion*, grants density bonus in low-density areas, allowing development of up to 11 units per acre (not related to SDBL)

Most density bonus applications processed by the County take advantage of density bonuses beyond State law. Most applicants choose the Type A or *Rental* program, which provides a 100% density bonus by right when 40% of total proposed units are designated as affordable units. Projects that are eligible under any of the four density bonus programs are entitled to guaranteed and additional discretionary incentives as follows:

- Guaranteed Incentives:
  - Fast-track permit processing; rental projects take precedence over for-sale projects;
  - Concurrent processing when projects require multiple permits
  - Preference to affordable housing developments in priority development areas.
- One of the following discretionary incentives per project:
  - Elimination of covered parking requirements;
  - A 20% reduction of any open space requirements;
  - 20% reduction in the minimum parcel size or minimum parcel width;
  - A 5-foot reduction in side setbacks, and a 10-foot reduction in front setbacks
  - Another incentive that results in identifiable cost reductions for the construction of affordable housing.

Up to two additional incentives are available in compliance with the concession table outlined in the SDBL for projects that provide more than the minimum required number of affordable units (see Table 2). The County is also authorized to grant two or more additional incentives for projects that meet other Housing Element goals (e.g., provision of housing for seniors or individuals special housing needs, including the provision of housing meeting Universal Design standards), provide greater or longer-term affordability, or projects that provide a greater number of affordable units than are otherwise required. Additional incentives that may be granted are proportional in number to the additional affordable and/or special needs housing that is provided.

Density Bonuses that Exceed 35%

The *County Supplemental* program augments the SDBL by allowing bonuses of up to 50% for projects that provide a certain number of affordable units and other specialized housing units as summarized in Table 13. For example, a project providing 30% low-income units, where 10% of the units in the project overall are "family units," would qualify for a density bonus of up to 50%.

Table 13 – Features of Housing Projects that Qualify Projects for Supplemental Density Bonuses

Project Housing Income Level and Type:	% of Project Units	Accessible Units	Family Units (3Br+ & 5persons+)	Energy Efficiency A	3 tenets of Universal Design
Extremely low-income	10%				
Very low-income	20%				
Low-income, senior	30%				
Low-income	30%	10%			
Low-income	30%		10%		
Low-income	40%				
SDBL-eligible				•	
Low-income	30%				100%

A: 33% or more of total units are powered by on-site renewable energy that generates at least 70% of the projected electrical energy demand of the units or results in an equivalent reduction in utility costs

The Type A or *Rental* program is design for projects with two or more rental units that are located within the Type A overlay zones (areas that correspond to the R-2 (Medium Density Residential) and R-3 (High Density Residential) zoning districts that allow up to 12 and 20 dwelling units per acre, respectively). The *Rental* program provides a 100% density bonus by right so long as the resultant density does not exceed 30 units per acre. A significant benefit cited by County staff is that rental applicants have consistently chosen to utilize the Type A density bonus in-lieu of paying the County's inclusionary housing rental impact fee. This program has served as a tool for the County to achieve on-site affordable rental units within the parameters of the Costa-Hawkins Rental Housing Act.

The Type C or *Small-Lot Conversion* program is designed for projects of four or more base dwelling units, located areas designated in the General Plan as Urban Residential with a density of two to six dwelling units per acre, and that are zoned R-1 or R-2. Eligibility for the Type C program is established by providing a minimum of 20% of the for-sale units for very low- or low-income households, with remaining units reserved for sale to low- and moderate-income households.

The Type C *Small-Lot Conversion* program is available only in low- and medium-density residential areas (where the permitted densities range from four to six dwelling units per acre). The Type C program allows for small-lot subdivisions at a density of up to 11 units per acre in these areas. Depending on the base density of the site, the Type C program could translate into a density bonus of between 183% (in areas zoned for six dwelling units per acre) and 275% (in areas zoned for 4 dwelling units per acre). To qualify under the program, projects must comply with site development standards that regulate minimum parcel sizes and parcel orientation.

Applicants may also choose incentives that the Planning Commission bases on the level of affordability provided. The applicant is always allowed two incentives; however, if the project provides more than the minimum number or level of affordability, additional incentives are available. Applicants typically provide family-size units, over other amenities, to qualify for the additional incentives.

Summary of Findings

Table 14 below provides a summary table of the density bonus ordinance review conducted with interviewed jurisdictions and other comparable cities. For planning purposes in Santa Rosa, the table also includes a basic overview of the maximum density bonus permitted in jurisdictions in the immediate vicinity of the City: Novato, Petaluma, Rohnert Park, Cotati, Windsor, and Healdsburg. Table 15 provides an overview of application requirements for density bonus projects across the ten interviewed cities.

It is important to note that few jurisdictions have adopted updates to their ordinances to reflect the most recent changes in SDBL which took effect January 2017.

Table 14 - Summary Table of Density Bonus Regulations for Comparable Cities to Santa Rosa

JURISDICTION	Pop. 2015 Est.[1]	RHNA[2]	Date DB Adopted	Max Density (Max DB %)	Area Subject to DB >35%	Affordable Units Built (Anecdotal Impression from Staff if "High/Low")		Ordinance Reference	Comments
						2007-14[3]	Due to DB:		
Antioch	107,501	768	2016	35 du/acre **(Add 70% w/ DB)**	SH, R-6, R-10, R-20, R-25, R-35	862	N/A	9-5.35	• *DB >35% tied to housing type*
Berkeley	117,384	1,558	2017	100 du/acre (Add 35% w/ DB)	N/A	193	N/A	23C.12	
Concord	126,268	1,801	2015	85 du/acre (Add 35% w/ DB)	N/A	10	N/A	18.185.050	
Daly City	104,930	809	2014	145 du/acre (Add 35% w/ DB)	N/A	170	N/A	17.52	
Emeryville	10,830	746	2015	85 du/acre **(Add 100% w/DB)**	Overlay Districts	141	High	9-4.204	• *DB >35% with CUP, unless part of PUD* • *Point-based system*
Fairfield	109,468	1,639		22 du/acre (Add 35% w/ DB)	N/A	33	N/A	25.38	
Fremont	225,221	3,618		70 du/acre (gross) (Add 35% w/ DB)	N/A	492	N/A	18.165.100	
Hayward	152,401	1,766	2005	55 du/acre (net) (Add 35% w/ DB)	N/A	296	Low	10-19.100-280	
Napa	79,113	432	2011	60 du/acre **(Add 100% w/ DB)**	Discretionary	276	Low	17.52.130	• *DB >35% with CUP, tied to affordability, design, public benefits, or amenities*
Oakland	408,073	6,949	unknown	103 du/ac (Add 35% w/DB)	Retail Priority	1,689	N/A	17.107	
Richmond	107,597	1,153	2016	120 du/acre **(No DB Max.)**	Discretionary	470	High	15.04.602	• *DB >35% with CUP and PC review*
Sacramento	480,566	12,893	unknown	175 du/acre (net) **(Add 50% w/ DB)**	Discretionary	N/A	Low	17.704	• *DB >35% for "green" building standard* • *DB >35% with CUP review*
San Francisco	840,763	16,333	2017	218 du/acre **(No DB Max.)**	Density controlled by units:lot area and the RH-3 zone	6,635	N/A	206.3, 26.5, 206.6	• *DB >35% with CUP and PC review*
San Mateo	101,335	1,858	2008	50 du/acre (Add 35% w/ DB)	N/A	324	N/A	27.16.060	
Santa Cruz	62,752	434	2006[4]	27.5 du/acre (Add 35% w/ DB)	N/A	N/A	Low	24.16	
Sonoma (County)	495,078	936	2014	20 du/acre **(Add 100% w/ DB)**	Urban-Residential Zones	417	492	26-89-050	

JURISDICTION	Pop. 2015 Est.[1]	RHNA[2]	Date DB Adopted	Max Density (Max DB %)	Area Subject to DB >35%	Affordable Units Built (Anecdotal Impression from Staff if "High/Low")		Ordinance Reference	Comments
						2007-14[3]	Due to DB:		
Vallejo	118,995	672	2015	27 du/acre (defers to SDBL)	N/A	29	N/A	N/A	*Density bonus permitted for PUD, however this is not compliant with SDBL*
Santa Rosa	172,066	2,287	2012	40 du/acre (Add 35% w/ DB)	N/A	1,450	195	20-31	*See notes above*
Maximum Density Bonus Available in Communities near Santa Rosa that may constitute the City's competitive housing development market (as identified with City Staff)									
Novato	54,133			SDBL	*19.25.040: The City shall grant a local Senior Density Bonus to 30 dwelling units per acre (may exceed 35% SDBL maximum) for a senior housing development located in and compliant with the Affordable Housing Opportunity Overlay District pursuant to Section 19.16.070.*				
Petaluma	59,340			SDBL	*Implementing Zoning Ordinance Chapter 27: No provisions provided for supplemental density bonuses.*				
Rohnert Park	41,651			SDBL	*Zoning Ordinance Section 17.07.020: No provisions provided for supplemental density bonuses.*				
Cotati	7,376			SDBL	*Zoning Ordinance Chapter 17.32: The city may choose to grant a density bonus greater than SDBL for a development that meets the requirements of this section. No clarification is provided on supplemental bonuses*				
Windsor	27,205			SDBL	*Zoning Ordinance Section 27.22.030: Density bonuses of up to 50% may be granted for projects that are 100% affordable to low and/or very low income.*				
Healdsburg	11,539			SDBL	*Zoning Ordinance Section 20.20.035: Additional unspecified density bonus percentages may be granted for projects that meet SDBL and all units are at least affordable to moderate-income households*				

1. *Source: U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates*
2. *Sources: Association of Bay Area Governments, Regional Housing Need Plan San Francisco Bay Area 2014-2022; Sacramento Area Council of Governments, Regional Housing Needs Plan 2013–2021; Association of Monterey Bay Area Governments, Regional Housing Needs Allocation Plan: 2014 - 2023; Units represent Regional Housing Needs Allocation for Very Low, Low, and Moderate Income levels only. Above Moderate income level units are not included.*
3. *Source: Association of Bay Area Governments (2015) San Francisco Bay Area Progress in Meeting 2007-2014 Regional Housing Need Allocation (RHNA)*
4. *Density bonus ordinance update currently underway.*

Table 15 - Summary of Application Requirements for Density Bonus Projects

Application Requirements	Santa Rosa	Berkeley	Emeryville	Hayward	Napa	Oakland	Richmond	Sacramento	San Francisco	Santa Cruz	Sonoma County
Project description	X		X	X		X	X				X
Requested concession/incentive	X	X	X	X		X	X			X	X
Requested waivers/modifications		X								X	X
Additional incentives/concessions & rationale		X		X				X			X
Justification	X	X	X	X	X		X				X
Core project Info (e.g. bedrooms/unit, tenure, parking spaces, type of unit)	X										
Density Bonus Application Type (e.g. affordable, senior, land donation, etc.)	X	X		X	X	X	X	X	X	X	X
Number of affordable units (and affordability level)	X	X		X					X	X	X
Location of existing utilities/facilities	X										
Number of base units		X								X	
Financial pro forma statement		X				X				X	
Percent density bonus requested		X	X		X	X		X		X	
Schematic plans of 'base project' that complies with zoning requirements		X									
Maps (vicinity, context, bonus units and affordable units)	X			X							
Environmental Assessment	X										
Indemnification Agreement	X										
Site Plan	X			X	X		X		X		X
Documentation that applicant has given written notification to affected existing commercial tenants									X		
Density bonus/concession for child care facility must show location and square footage										X	
Density bonus/concession for land donation must show location of land to be dedicated										X	
City's may waive development fees to support affordable housing aspect of the development			X			X			X	X	
Applications for Density Bonuses are processes concurrently with related entitlements			X	X		X	X	X		X	X
Provides a Bonus Over 35%			X		X		X	X	X		X
Conditional Use Permit Required for Bonuses over 35%			X		X		X	X	X		

IV. RECOMMENDATIONS FOR THE SANTA ROSA DENSITY BONUS ORDINANCE

The following recommendations are provided for the update to the Santa Rosa density bonus program based on the research outlined above and feedback received from peer jurisdictions. Reference tables and figures are provided with each item, and supplemental material is provided in Appendix C (mapping of key factors that contributed to the Area Designation where supplemental density bonuses are recommended in Santa Rosa), and Appendix C (renderings of hypothetical density bonus projects, with supplemental density bonuses for illustrative purposes).

1. **Consistency**. Update the local density bonus ordinance to comply with state law (Table 7).
2. **Areas with No Density Limits**. Develop a structure, modelled after Berkeley's methodology to assess density bonus applications in areas with no residential density maximum, and:
   - eliminate the requirement for scenario-based pro formas as these additional studies undermine recent amendments to State law pertaining to application requirements.

   Table 16 summarizes the recommended process in areas with no density maximum:

Table 16 - Proposed Santa Rosa Worksheet for Density Bonus Projects in Areas without Density Limits

STEP	ITEM	EXAMPLE
	Applications must submit a project designs that illustrates the base project, and density bonus components. The base project design shall: ▪ substantially conform to Santa Rosa development standards and design guidelines ▪ comply with building and fire codes The density bonus component shall: ▪ be substantially consistent with the footprint, setbacks, and ceiling heights of the base project (not including concessions/incentives/waivers/reductions). The design shall clearly identify residential and non-residential floor area. Residential floor area shall include living spaces and related utility, circulation, and amenity areas.	
A	Identify the floor area dedicated to residential uses	*15,000 sq. ft.*
B	Identify the proposed number of dwelling units in the base project	*17 units*
C	Calculate *Average Unit Size* (**B** ÷ **A**), round down to whole number *As a condition of approval for the project, the average unit size must be maintained in the project unless a concession is granted that allows otherwise.*	*882 sq. ft.*
D	Calculate average number of project units (**A** ÷ **C**), round down to whole number	*17 units*
E	Define the number and income level of *below market rate* (BMR) units, round up	*3 (low income)*
F	Determine percentage of BMR units relative to total units (**E** ÷ **D**), round up	*17%*
G	Calculate the eligible density increase (%) based on **F** using SDBL tables *e.g. 17% low-income BMR units = 20% density bonus + (1.5% x 7) = 30.5%*	*30.5%*
H	Calculate the number of bonus units granted for the project (**G** X **D**), round up	*6 units*
I	Determine the eligible number of concession based on **F** and SDBL §65915(d)	*1 concession*
J	Review written request for concession(s)/incentive(s), determine if it may be denied per SDBL 65915(d)(1)	
K	Review written request for waivers and determine whether it may be denied per SDBL 65915(d)(1)	

3. The Santa Rosa Housing Action Plan directs the City to adopt supplemental density bonuses that exceed the State-mandated 35% with consideration of bonuses up to 100% (see Program #1, and page 22). The following recommendations are provided for structuring the supplemental density bonus program (i.e. bonuses above the SBLD's 35% maximum):

    - **Location**. Supplemental density bonuses should be targeted to neighborhoods in compliance with Santa Rosa General Plan objectives, notably the Priority Development Areas (Policy H-C-6). Supplemental density bonuses should be reduced in neighborhoods identified for preservation or those that may be subject to excessive development pressure (Policy LUL-C-9).

      The City should pursue a three-tiered program that establishes Supplemental Density Bonus Area Designations allowing bonuses of up to 60%, 80%, and 100% in appropriate areas reflecting local development patterns. Several factors—taken together—should determine the boundaries of the Area Designations within city limits. Appendix C provides a detailed review of each of the factors highlighted below (including maps) that have been identified as relevant to defining the boundaries for the supplemental density bonus Area Designations in Santa Rosa:
        - Priority Development Areas (PDAs) and Service Capacity
        - Land Use Designations that allow denser residential development
        - Proximity to single-family neighborhoods
        - Existing conditions, infrastructure and development patterns
        - Redevelopment Impediments
        - Access to transit that enables reduced parking per AB 744 updates to SDBL
        - Proximity to Schools
        - Preservation Districts

      Table 17 provides a summary of the structure of the Area Designations for Santa Rosa based on these factors and Map 4 shows the boundaries of the Area Designations within the city. Community input is needed to refine these boundaries.

Table 17 - Recommended Supplemental Density Bonus Area Designations Based on Locational Factors

General Plan Land Use Designation *Color Code Matches Map 1, Appendix C*	Base General Plan Density (du/acre)	In Relation to Adopted Priority Development Areas:		Property Located within an -H Overlay	Relevant Adjustment Factors [3]		
					Properties Located within 0.5 miles of a Major:		Located >0.5miles from a School
		Inside	Beyond		Bus Route [1]	Transit Stop [2]	
Residential Land Use Designations							
Med.-Low Density Residential	8-13	60%	35%	35%			
Med. Residential	8-18	80%	60%	35%		+20%	
Med.-High Residential	18-30	100%	80%	35%		+20%	-20%
Mixed-Use Land Use Designations							
Retail/Med. Residential	8-18	100%	80%	35%		+20%	
Office/Med. residential	8-18	100%	80%	35%		+20%	
Office/High Residential	18-30	100%	80%	35%		+20%	
Public Institutional/Med. Residential	8-18	100%	80%	35%		+20%	
Light Industrial/Med. Residential	8-18	100%	80%	35%		+20%	
Non-Residential Land Use Designations that Allow Residential Development							
Transit Village Med.	25-40	100%	100%	100%			
Transit Village Mixed Use	40 min.	100%	[illegible]	100%			
Retail & Business Services	-	100%	100%	60%			

Note: 0% designations indicate the property is not eligible for a supplemental density bonus; standard bonuses (up to 35%) still apply
1: Bus Route (Major) includes bus routes in Santa Rosa that provide service at least eight (8) times per day.
2: Transit Stop (Major) includes SMART stations and intersections of bus routes providing 15-minute service (i.e. routes 1, 3, and 5)
3: The relevant adjustment factors in the final three columns augment the supplemental density designations derived from location within PDAs and preservation districts. For example, A property in a Med.-High Residential Land Use Designation located outside of PDA, but within ½-miles of a major transit stop would be placed in the 100% Area Designation. If the property is located further than ½ -mile from a school, the property is placed in a lower, moving from the 80% to the 60% area designation. Only the relevant land use designations that are affected by these adjustment factors are listed (i.e. blank cells indicate the occurrence doesn't exist in Santa Rosa. For example, there is no case where a property is in the Transit Village Med. Land use designation and not located near a major transit stop.)

MAP 4 - SUPPLEMENTAL DENSITY BONUS AREA DESIGNATIONS
City of Santa Rosa
Max Bonus Permitted: 60%
Max Bonus Permitted: 80%
Max Bonus Permitted: 100%
0 0.25 0.5 1 Miles
Data source: City of Santa Rosa; Sonoma County
College Ave
North St
Healdsburg Ave
Mendocino Ave
9th St
B St
4th St
E St
Wilson St
3rd St
1st St
Sonoma Ave
Santa Rosa Ave

- **Processing.** Applications for supplemental density bonuses (exceeding the SDBL provisions) should be reviewed through a Conditional Use Permit process to evaluate compliance with the supplemental density bonus provisions outlined below.
- **Points-Based Eligibility System.** Once a project has met the requirements of the SDBL (by meeting affordable and or specialized housing criteria and other standard SDBL requirements), a point-based system modelled on Emeryville's approach should be used. The following formula should be used to calculate the number of points that are required to be eligible for a requested supplemental density bonus within the Area Designations shown in Map 4:

  Points Required = (Supplemental Bonus Request ÷ Bonus Increment) x 100
  Results must be rounded up to the next whole number factor of 5.
  Bonus Request: the percentage amount of density requested above the SDBL maximum
  Bonus Increment: the difference between the maximum supplemental bonus amount available in the area designation (60%, 80%, or 100%) and the SDB maximum of 35%.

  Proposed Supplemental Density Bonus Example:
  A project located in the 80% Supplemental Density Area Designation has established eligibility under SDBL by meeting the low-income housing requirements to achieve a 35% density bonus (i.e. 20% of the total units proposed are designated for low-income households). The project would like to receive a total density bonus of 75% (i.e. add a supplemental density bonus of 40% to the 35% bonus from SDBL). The number of points that the project will need to generate under the proposed supplemental density bonus program in Santa Rosa would be:

  Points = (40% ÷ (80%-35%)) x 100 = (40% ÷ 45%) x 100 = 88.89 points
  88.89 rounds up to **90 points**.

- **Generating Points.** Applicants must meet the required point total established by the formula above by providing affordable housing; a portion of the point total may be met by providing certain community benefits consistent with community needs and the General Plan, as defined below.
  i. **Points through Affordable Housing.** A minimum of 60% of the required number of points must be met through affordable housing using the schedule outlined in Table 18. The schedule ensures that affordable housing provided to generate points toward a supplemental density bonus are provided across a spectrum of affordability levels for rental units. Specialized housing that is restricted for very low-income households generate points more effectively in order to incentivize the production of those units pursuant to General Plan Housing Element Policy H-D-1.

Table 18 - Supplemental Density Bonus Point Generation Schedule for Affordable Housing

POINTS AWARDED	TOTAL	RENTAL PROJECTS: INCOME LEVEL			SPECIALIZED	FOR-SALE
		VERY LOW	LOW	MODERATE	V. LOW INCOME	MODERATE INCOME
5	12.5%	2.8%	4.3%	5.3%	5.5%	20.5%
10	13.0%	2.9%	4.5%	5.5%	6.0%	21.0%
15	13.5%	3.1%	4.7%	5.8%	6.5%	21.5%
20	14.0%	3.2%	4.9%	6.0%	7.0%	22.0%
25	14.5%	3.3%	5.0%	6.2%	7.5%	22.5%
30	15.0%	3.4%	5.2%	6.4%	8.0%	23.0%
35	15.5%	3.5%	5.4%	6.6%	8.5%	23.5%
40	16.0%	3.6%	5.6%	6.8%	9.0%	24.0%
45	16.5%	3.7%	5.7%	7.0%	9.5%	24.5%
50	17.0%	3.9%	5.9%	7.2%	10.0%	25.0%
55	17.5%	4.1%	6.2%	7.7%	10.5%	25.5%
60	18.0%	4.2%	6.5%	7.9%	11.0%	26.0%
65	18.5%	4.3%	6.6%	8.1%	11.5%	26.5%
70	19.0%	4.4%	6.8%	8.3%	12.0%	27.0%
75	19.5%	4.6%	6.9%	8.6%	12.5%	27.5%
80	20.0%	4.6%	7.1%	8.7%	13.0%	28.0%
85	20.5%	4.7%	7.3%	8.9%	13.5%	28.5%
90	21.0%	4.8%	7.5%	9.1%	14.0%	29.0%
95	21.5%	5.0%	7.6%	9.4%	14.5%	29.5%
100	22.0%	5.2%	7.8%	9.5%	15.0%	30.0%

iii. **Point-Generation Alternatives to Affordable Housing**. Once at least 70% of the required points are generated through affordable housing, the remaining 30% can be met through additional affordable housing per Table 18, or through community benefits outlined in Table 19 at the applicant's discretion. The community benefits outlined in Table 19 are consistent with community goals as expressed in the General Plan

Table 19 Affordable Housing Alternative: Point Generation Schedule

Community Benefit	Point Calculation	Notes
Public Open Space [1]	Greater of 5% of site area or 1,000 s.f.: 20 points	Must be in addition to open space requirements necessary for Design Review approval, other entitlement approvals, and standard impact fees.
	Greater of 10% of site area or 1,000 s.f.: 30 points	
	Greater of 15% of site area or 1,000 s.f.: 40 points	
	1% of project construction valuation to Park Impact Fee: 10 points per 1%	
Historic or Landmark Preservation	1% of project construction valuation toward rehabilitating or improving a landmark property: 10 points per 1%	If property is not owned, joint rehabilitation-improvement agreement must be submitted with landmark property owner.
Infrastructure/ Capital Improvement	1% of project construction valuation to Capital Facilities/Utilities Impact Fees: 10 points per 1%	Must be in addition to improvements required for Design Review or other entitlement approvals.
Providing family-sized rental units (Housing Policy H-C-13).	10% of the number of affordable units supplied to generate the points for the supplemental density bonus: 5 points for each 10% increment	To meet the 10% provision, the required units must be rounded up to a whole number.
Innovative Community Benefit	The City Council may determine the number of points to grant for a proposed, innovative community benefit based on schedule of 10 points per 1% of project construction valuation	The benefit must be significant and substantially beyond normal requirements.

1: Design must comply with applicable provisions of the Santa Rosa Design Guidelines and be approved as part of design review for the project. Open space must be accessible to the public at all times. Provision must be made for ongoing operation and maintenance in perpetuity.

4. **Concession or Incentive Vetting.** A clear system for vetting concessions and incentives is crucial to avoid legal challenges and costs, and to avoid inadvertently undermining the density bonus program. Clear vetting procedures and standards provide transparency for developers, the City, and the community. Pre-vetted concessions are, as is provided in San Francisco's HOME-SF and "Analyzed" programs, provide ultimate clarity and allow the community more control over how density bonus projects are integrated architecturally into neighborhoods.

   However, relying solely on pre-vetted concessions and preventing other modifications to development standards can be exceedingly restrictive. Therefore, a hybrid approach is recommended for Santa Rosa. Pre-approved concessions in Santa Rosa provide transparency and predictability; but applicants should have the option to request other concessions or incentives and submit the requests for review. Table 20 outlines four concessions that Santa Rosa could consider as pre-approved; these concessions or incentives are based on requests granted for completed density bonus projects (Appendix A), as well as an analysis of Santa Rosa design guidelines and development standards.

Table 20 - Recommended Pre-Approved Concessions for Supplemental Density Bonus Projects

CONCESSION	AMOUNT
Setback Areas	Reduction of up to 25%, but not to be less than 20% below the average of the developed lots on the same block face.
Automobile Parking	Up to 50% reduction where SDBL reduced parking ratios are not already applied; does not apply on rights-of-way with narrow travel lane widths where on-street parking could impair emergency access at the determination of the Planning and Economic Development Director in consultation with emergency services providers.
Coverage	Increase in allowable lot coverage by up to 10% of lot area
Height	Increase of the larger of up to 12 feet or 10% beyond current maximum permitted; all floors above two stories shall be stepped back a minimum of 6 feet.

5. Adopt expanded definitions or procedural clarifications to ambiguous or narrowly-defined policy language in the SDBL, including:
    - Clarifying what constitutes a significant, adverse impact when reviewing concession and waiver requests. Recommendations include:
        - The development project is proposed within a Preservation District and the proposed concession would irreparably alter a historic resource, either individual or district, in a manner that is inconsistent with the *Secretary of The Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*.
        - The development project is proposed on land which does not currently have adequate water or wastewater facilities to service the development, or the provision of such services infeasible at the level of residential density proposed in the development.
    - Pursuant to the SDBL amendments adopted in SB-2501, the City is prohibited from conditioning the submission, review, or approval of a density bonus application on additional reports or studies not described in the SDBL. Santa Rosa may require "reasonable documentation" to ***establish eligibility*** for incentives or concessions, waivers or reductions, or reduced parking ratios. To clarify application requirements, the City of Santa Rosa should not require a pro forma in conjunction with applications for concessions and incentives unless the City furnishes—in writing—a rationale for questioning the financial support that the concession or incentive will provide toward the production of affordable housing.

APPENDICES

Appendix A – Summary of Density Bonus Projects and Applicable Concessions in Santa Rosa

Project #	Application Name	Bonus Units	Total Units	No.	Street Name	Opened
PRJ16-018	Farmers Lane Senior Housing	5	26	201	FARMERS LANE	07/19/2016
PRJ16-003	Oak Park Village	1	7	1550	RIDLEY AVENUE	07/13/2016
PRJ16-015	The Farmstead	3	20	1315	LIA LANE	06/13/2016
PRJ16-012	DeTurk Winery Village	48	185	8	W 9TH STREET	05/24/2016
PRJ15-004	Benton Veteran's Village	2	7	1055	BENTON STREET	09/08/2015
MNP10-001	Kawana Springs Family Apts	6	42	786	KAWANA SPRINGS RD	01/06/2010
MNP09-019	Acacia Lane Senior Apts	4	43	657	ACACIA LANE	07/20/2009
MJP08-065	Lantana Place	28	96	2975	DUTTON MEADOW	06/27/2008
MJP06-017	DeTurk Winery Village	19	73	806	DONAHUE STREET	04/04/2006
MNP05-054	Colgan Meadows	13	84	3000	DUTTON MEADOW	12/08/2005
MJP04-028	Jennings Avenue Burbank Housing	2	162	1080	JENNINGS AVENUE	06/28/2004
MJP03-031	Olive Grove	47	128	1789	MARLOW ROAD	11/04/2003
MNP02-014	Transitional Housing	3	10	623	ASTON AVENUE	03/01/2002
MJP00-020	McBride Apartments	NA	80	2350	MCBRIDE LANE	07/11/2000
MNP99-046	Rossi Apartments	6	24	1503	RANGE AVENUE	08/04/1999
MJP99-022	La Esplanada	8	120	275	COLGAN AVENUE	06/03/1999

Issues or concessions identified for each project:

- **Farmers Lane Senior Housing**: Includes rezoning to Senior Housing and tentative map
  - Concessions for parking reduction.
- **Oak Park Village**: Approved with a small lot subdivision
  - Concessions for setbacks, site coverage, lot size, building height requirements.
- **DeTurk Winery Village**: Concession for reduced setback to 0 feet to match adjacent historic building.
- **Benton Veteran's Village at Firehouse 2**: Concessions for parking and setback reductions.
- **Kawana Springs Family Apartments**: Concessions for setback and parking reductions.
  - Issues identified included noise and aesthetic impacts.
- **Acacia Lane Senior Apartments**: Concession for parking reduction.
- **Lantana Place**: Concessions for setback, parking reductions, and density increase of 39%.
- **DeTurk Winery Village**: Included a rezoning to Residential. Concessions for setbacks.
- **Colgan Meadows**: Concessions for parking and setbacks.
- **Jennings Avenue Burbank Housing**: Concessions for setbacks and parking.
- **Olive Grove**: Concessions for setbacks, height limit, lot coverage, and parking.
- **Transitional Housing**: Included rezoning to PD district. Concessions for parking
  - Health risk study required to address soil contamination.
- **McBride Apartments**: Required annexation and a rezone to PD. Concessions for parking.
- **Rossi Apartments**: Included rezone to PD district with reduced setbacks.
- **La Esplanada**: No issues or concessions identified.

Appendix B – Interview Questions for Comparable Cities

Interviews conducted with local jurisdictions on their density bonus programs were discussion-based. Beyond confirming basic information about local ordinances and policies the interviews addressed the following specific questions:

1. Provide feedback on the local density bonus program:
    a. How many density bonus applications have been received since the density bonus provisions were adopted in your jurisdiction?
    b. How many affordable units have been created through the density bonus program?
    c. What affordability levels are typically provided in base projects to qualify for density bonuses in your jurisdiction?
    d. What types of development applications are taking advantage of density bonuses (i.e. subdivisions, multi-family residential, mixed-use, etc.)?
    e. Where are density bonus projects typically locating? Are the majority in areas where base density is highest?
    f. What revisions to the density bonus program are developers seeking?
    g. If your ordinance has not been updated to comply with January 1, 2017 changes, has the jurisdiction received requests from developers to do so?
2. If the ordinance does not allow a bonus above the state-mandated 35%:
    h. Has the community started exploring policies that allow more than 35% density bonus? Under what conditions is the extra bonus being considered?
    i. Under what conditions is the extra bonus considered?
3. If the ordinance allows a bonus above the state-mandated 35%:
    j. Have projects been taking advantage of the additional bonus provisions?
    k. How have projects been qualifying for the additional bonus if there is more than one option to do so?
4. What improvements or modifications to your local density bonus program has the jurisdiction considered to address local needs or concerns?

Appendix C – Basis for Establishing Supplemental Density Bonus Area Designations

- **Priority Development Areas (PDAs) and Service Capacity**: The City has adopted six PDAs where increased residential development is expected around existing or planned transit infrastructure. All else being equal, properties within PDA boundaries should include greater supplemental density bonus opportunities. PDAs also signify areas where municipal services can accommodate increase demand. See ***Map 1***
- **Land Use Designations**. The Santa General Plans includes a variety of land use designations. Supplemental density bonussing should be concentrated in areas with land use designations that support multi-family and mixed-use development. This includes the following designations:
  - Medium-Low Density Residential
  - Medium Density Residential
  - Medium-High Density Residential
  - Transit Village Medium
  - Transit Village Mixed-Use
  - Retail/Medium Density Residential
  - Office/High Residential
  - Office/Medium Residential
  - Public Institutional/Medium Residential
  - Light Industrial/Medium Residential
  - Retail and Business Services

  See *Map 1*

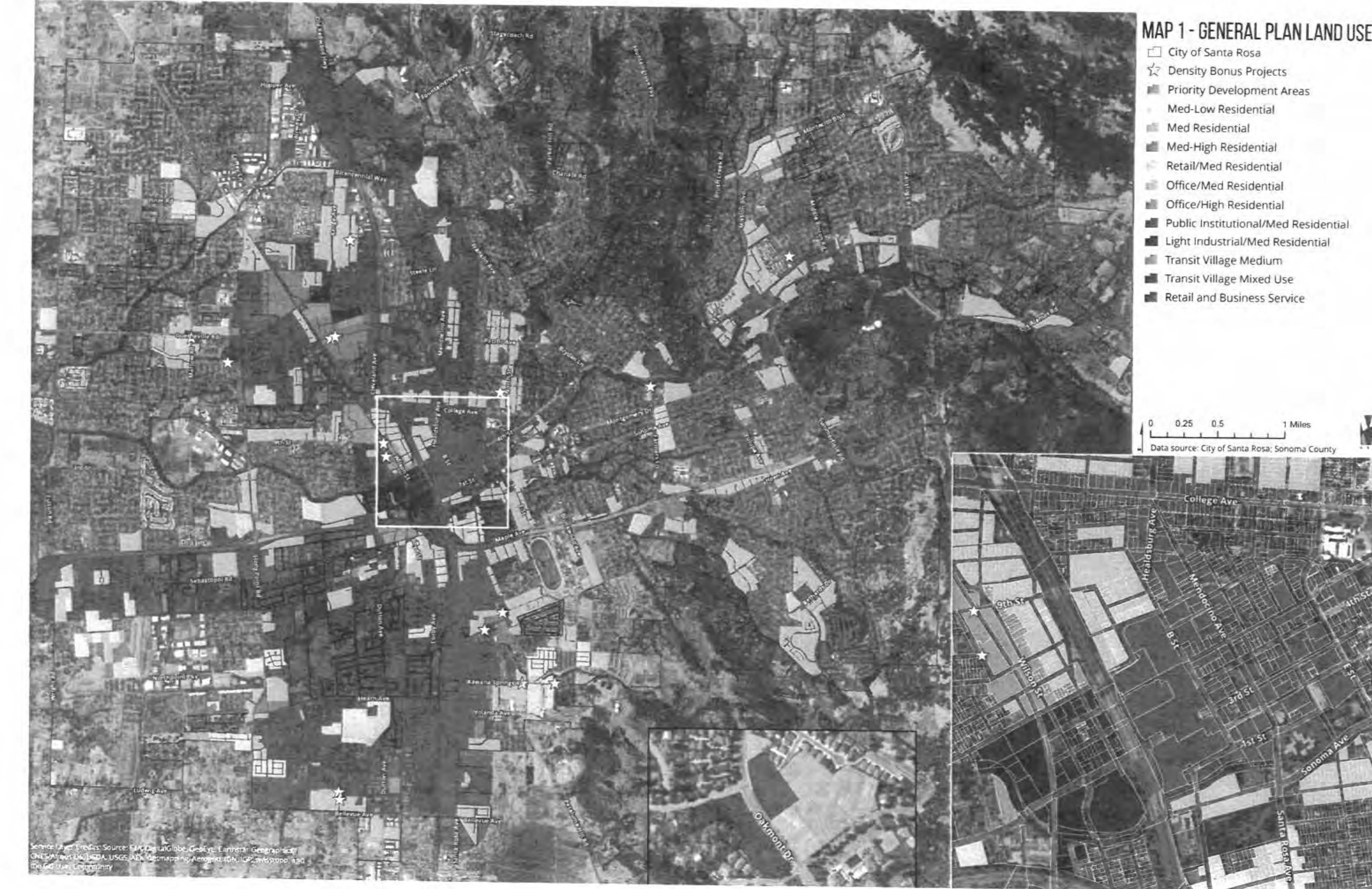
  Proximity to single-family neighborhoods. Supplemental density bonuses should be scaled down in closer proximity to predominantly single-family neighborhoods. See ***Map 1***
- **Existing conditions, infrastructure and development patterns**. Areas in the city that provide natural or man-made buffers between high-density development and single-family residential areas can typically support greater density bonuses because of the buffering effects of physical features in the area (wide separation, screening, etc.). For this reason, Santa Rosa properties along major corridors are more suitable for greater density bonuses; these are reflected in mixed land use and higher density residential land use designations in the City's General Plan. See ***Map 1***
- **Redevelopment Impediments**. Areas that are otherwise appropriate for increased residential density but that would require greater investment to be redeveloped into attractive residential or mixed-use environments should be provided with greater supplemental density bonuses to incentivize investment. Areas within the City's PDAs as well as properties in mixed-use and Retail and Business Service land use designations outside of PDAs, are allocated higher supplemental density bonus potential. See ***Map 1***
- **Access to Transit**: Based on past density bonus projects (see Appendix A) in the City, parking is a common impediment to development and a frequently-requested concession. AB 744 (2015) introduced reduced parking standards for eligible density bonus projects by-right. Higher density bonuses should be available in areas that are within transit service areas as outlined in AB 744 and Density Bonus Law §65915(p). This reinforces the City's goal of focusing development near transit infrastructure. There are two broad distinctions that can be made regarding transit access:

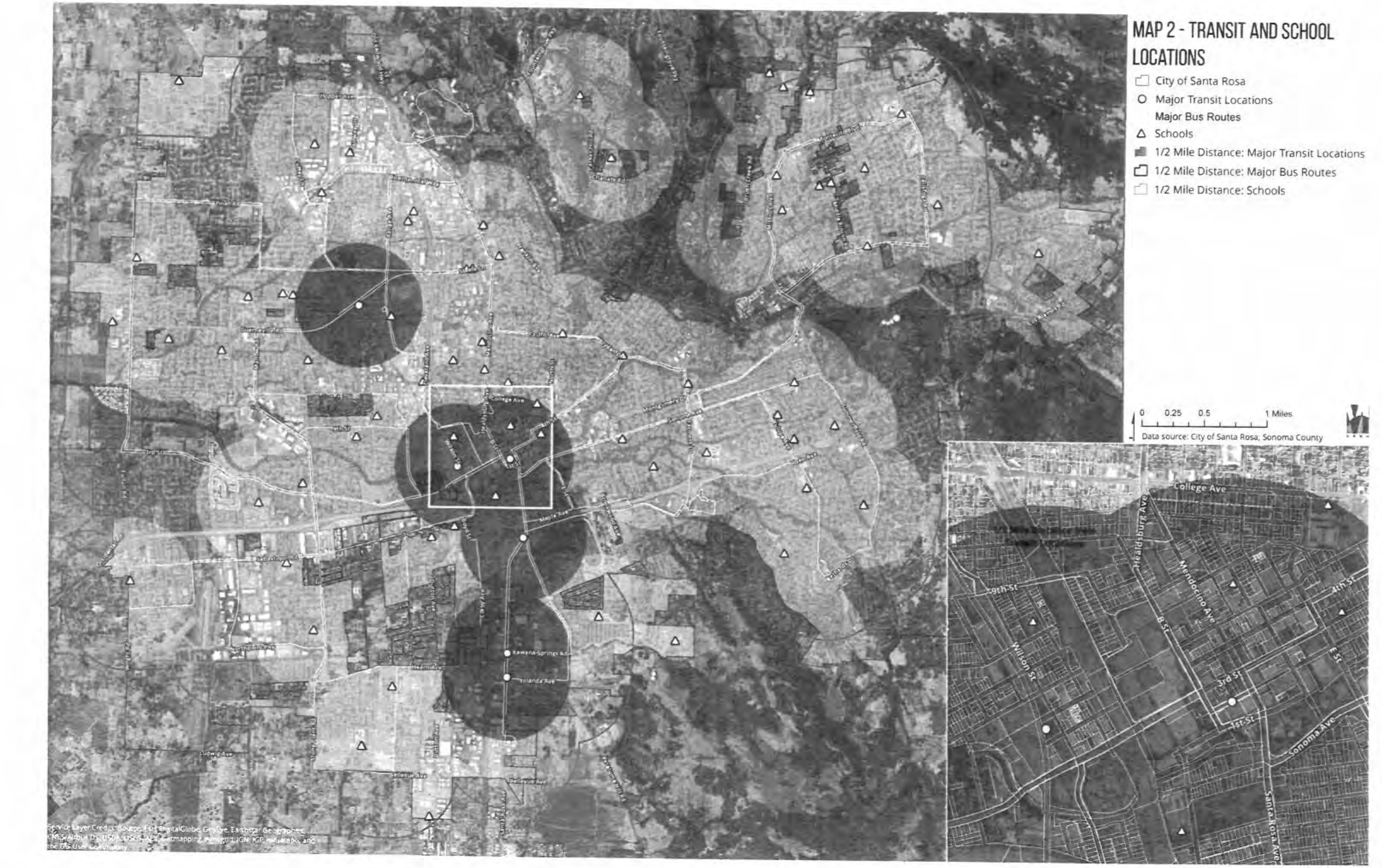
- Proximity to bus routes with service at least 8 times daily. This is relevant to density bonus projects targeted to seniors or specialized housing (see Table 4).
- Proximity to major transit stations (SMART stations, and intersections of bus routes providing at least 15-minute service). This is relevant to projects with 100% affordable units and that are eligible for the maximum density bonus per the SDBL for providing very low- and low-income housing. If properties are located outside of PDAs, but within ½-mile of a major transit stations, the supplemental density bonus could be increased.

  See ***Map 2***

Proximity to Schools. Supplemental density bonuses should be encouraged in areas located within a half-mile distance of the city's schools. See ***Map 2***

- **Preservation Districts**. The character and prevailing development pattern in Santa Rosa's preservation districts, which are clustered near the city's densest areas, should be protected. A comfortable transition from higher-density development (through reduced supplemental density bonuses) should be encouraged to limit out of scale development near predominantly single-family residential sections of the City's preservation districts. Properties on the peripheries of preservation districts, that front on major rights-of-way, or that abut larger development could be appropriate for modest supplemental density bonuses. See ***Map 3***


MAP 1 - GENERAL PLAN LAND USE
City of Santa Rosa
Density Bonus Projects
Priority Development Areas
Med-Low Residential
Med Residential
Med-High Residential
Retail/Med Residential
Office/Med Residential
Office/High Residential
Public Institutional/Med Residential
Light Industrial/Med Residential
Transit Village Medium
Transit Village Mixed Use
Retail and Business Service
0 0.25 0.5 1 Miles
Data source: City of Santa Rosa; Sonoma County
College Ave
Healdsburg Ave
Mendocino Ave
9th St
Wilson St
B St
3rd St
1st St
4th St
E St
Sonoma Ave
Santa Rosa Ave
North St
Oakmont Dr



MAP 2 - TRANSIT AND SCHOOL LOCATIONS
City of Santa Rosa
Major Transit Locations
Major Bus Routes
Schools
1/2 Mile Distance: Major Transit Locations
1/2 Mile Distance: Major Bus Routes
1/2 Mile Distance: Schools
0 0.25 0.5 1 Miles
Data source: City of Santa Rosa, Sonoma County
College Ave
Healdsburg Ave
Mendocino Ave
B St
9th St
Wilson St
3rd St
1st St
4th St
E St
Sonoma Ave
Santa Rosa Ave

MAP 3 - HISTORIC DISTRICTS

☐ City of Santa Rosa

General Plan Land Use Designation

- Med-Low Residential
- Med Residential
- Med-High Residential
- Retail/Med Residential
- Office/Med Residential
- Office/High Residential
- Public Institutional/Med Residential
- Light Industrial/Med Residential
- Transit Village Medium
- Transit Village Mixed Use
- Retail and Business Service

Historic Districts:

Ridgeway Historic District
McDonald Historic District
St. Rose Historic District
Cherry Street Historic District
West End Historic District
Railroad Square Historic District
Olive Park Historic District
Burbank Gardens Historic District

0 0.075 0.15 0.3 Miles

Data source: City of Santa Rosa; Sonoma County

Getting it Right:

Examining the Local Land Use Entitlement Process in California to Inform Policy and Process

Working Paper
February 2018

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Center for Law, Energy & the Environment

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EXECUTIVE SUMMARY

California's housing affordability crisis has rightly received a great deal of attention by state lawmakers, the press, academics, and ordinary Californians. Important questions raised in this discussion are: What laws or regulations might impede housing construction in high-cost areas? What solutions might help reduce those barriers with a minimum impact on other important values, such as environmental protection, public participation, and equitable treatment of low-income communities of color? More specifically, does state environmental law (the California Environmental Quality Act, CEQA), or local land-use regulations, constrain housing development?

To help answer that last question, we collected data on all residential development projects (of more than five units) over a three-year period in five Bay Area cities (San Francisco, Oakland, San Jose, Redwood City, and Palo Alto). We analyzed the law applicable to these residential development projects, including the local zoning ordinances, and interviewed important actors in the residential development process in each of these five cities.

We found that these local governments are imposing discretionary review processes on all residential development projects of five or more units within their borders. That means even if these developments comply with the underlying zoning code, they require additional scrutiny from the local government before obtaining a building permit. This triggers CEQA review of these projects. In other words, what drives whether and how environmental review occurs for residential projects is local land-use law. Our data shows that in many cases, these cities appear to impose redundant or multiple layers of discretionary review on projects.

We also found that the processes by which local governments review residential development projects under their zoning ordinances and under CEQA varies from city to city. As a result, developers seeking to construct residential projects often must learn to navigate very different and complicated land-use systems, even if they work in the same region. This appears to particularly burden smaller development projects. Our data also shows that these cities rely on streamlined CEQA procedures for the majority of their residential projects, including many large projects. The effectiveness, however, of those streamlined procedures in terms of reducing timeframes for project approval varies greatly from city to city, indicating that a range of non-legal factors (such as practices in planning departments, or the amount of resources dedicated to planning) may impact development timelines.

Finally, our own research process also revealed that the kind of project level data that we collected, while essential to crafting effective solutions to the California housing crisis, is not easily available. We therefore recommend that the legislature develop a consistent and uniform data reporting program for this data, which will benefit policymakers, developers, and the public as a whole.

WHAT IS AT STAKE?

Housing costs throughout California continue to rise—particularly in metro areas. As the state legislature responded last fall with the passage and signing of housing bills[1] meant to address escalating housing costs, legislators and others acknowledged that more is needed to address California's housing crisis.[2] One recurring theme in the ongoing coverage and discussion of the housing crisis is an argument that state-mandated environmental review under the California Environmental Quality Act (CEQA) is a significant contributor to the housing crisis because it adds time and money to the development process.[3] Local land-use regulations might also play a significant role. Existing research correlates the overall stringency of a jurisdiction's land use regulations with high housing costs.[4] While this research recognizes that multiple components contribute to increased costs, it does not identify which specific elements of local land use regulation or state environmental review contribute disproportionately to housing costs. As economists have observed, the "heterogeneity in land use restrictions across localities is so extensive that it is almost impossible to describe the full complexity of the local regulatory environment."[5] Despite these limitations, the impact of this research and similar work has been far reaching, surfacing in statewide policy briefs.[6]

We assume that regulation of land-use development in California contributes to the state's housing crisis by increasing development approval timelines, which in turn drives up the cost of development. But that still leaves the question of which aspects of state and local regulation are the primary barriers to additional residential development. Answering that question is essential to developing effective legal reforms, and it requires careful analysis of how individual land-use regulations operate within local contexts. CEQA is only one part of the overall regulation of California's land-use development. In general, constructing a major housing development requires local government approval at multiple stages. The approval process to obtain a building permit is referred to as the entitlement process, and CEQA applies to a development if the local government's entitlement process is discretionary. If the development is "as of right"—meaning a development meets certain zoning and planning requirements and does not need any additional scrutiny by the local government to get a building permit—as a general matter, no CEQA compliance is required. In addition, CEQA can take a range of forms and impose different levels of burden on the developer. Local governments often have significant ability to shape the kinds of CEQA compliance that individual developments must satisfy.

If CEQA poses a significant obstacle to housing development, then legal reform that minimizes the loss in environmental protection while allowing for increased housing production might be the right approach. But because CEQA comes into play where a local government has the discretion to approve/disapprove a proposed project, targeting a state environmental review statute may do little to address the housing supply crisis if local regulation of land-use development through planning and zoning is the real issue. Misguided CEQA reform could undermine environmental protection throughout the state without providing meaningful improvements to our housing situation.

WHAT ARE WE STUDYING?

Determining whether a state law like CEQA drives delays in entitlements within local jurisdictions requires answering two important questions: (1) How much development is actually occurring as of right, and how much development is subject to discretionary government review within local jurisdictions? (2) If CEQA environmental review is occurring, in what form does it take?

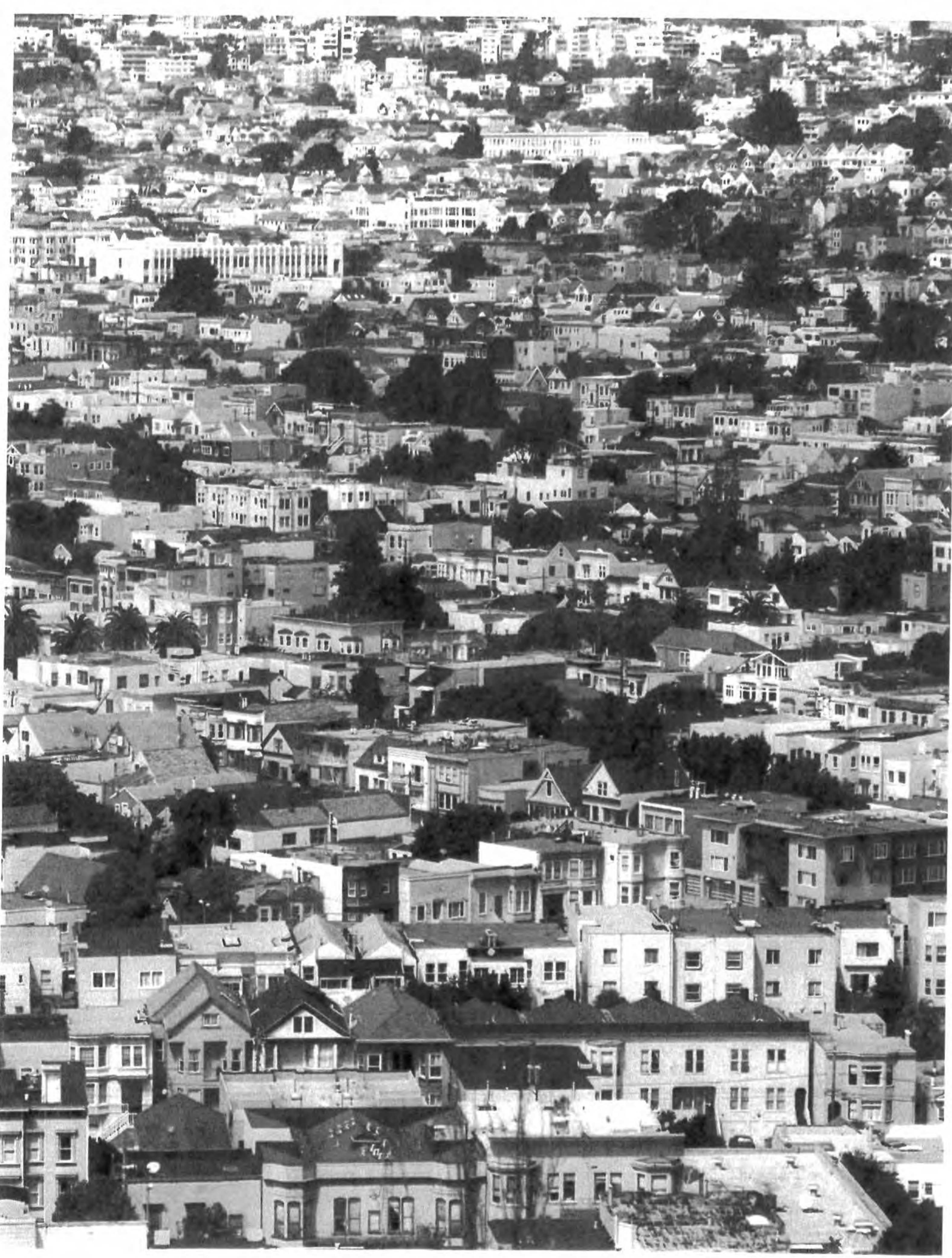
To answer these questions, we used case studies[7] to better understand a local problem with regional and statewide implications. For our first set of case studies, we selected charter cities* of various sizes within the same strong market region—the Bay Area in Northern California.

All five cities, Oakland, Palo Alto, Redwood City, San Francisco, and San Jose, are located within the same regional economy characterized by robust economic growth, high housing demand that outstrips supply and acute affordability issues.[8] All of the cities have the capacity for Transit Oriented Development (TOD).[9] Housing development within this region would therefore promote sustainable growth goals.

We also chose our first cities from the Bay Area because the California Legislative Analyst's Office has attributed high housing costs statewide in large part to the lack of housing supply in California's coastal communities.[10] That report specifically identified the San Francisco Metropolitan Division (MD) and the San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area (MSA) as having the first and second highest housing costs in the state in 2015, with the Oakland-Hayward-Berkeley MD having fourth highest housing costs statewide. And all five cities have complex local land use ordinances that typify the type of stringent regulation called out by existing research. These five cities therefore offered an excellent starting point for this research.

Each of our case studies began with a review of local ordinances[11] that contain planning and zoning rules, followed by careful analysis of how each residential development of five or more units navigated the entitlement process in 2014, 2015, and 2016.[12] Next, we completed a total of 29 in depth interviews with city planners, market rate and affordable housing developers, consultants, private counsel, city attorneys, and representatives from community-based organizations, across these five cities.[13] These interviews uncovered local perceptions of the approvals process, the role of community in the public approvals process, and important project context (including the local political climate and community tensions at play) not immediately obvious in the specific project data. While we are continuing our research and adding jurisdictions to our data set, we present initial findings from our research on these five cities below. This is only the first in a series of reports that will detail our findings, and these findings are limited to data pulled from our first set of cities. We are collecting additional data from other cities throughout the state.

* Charter cities within California enjoy some freedom to legislate at the local level over "municipal affairs" even if a conflict with State law may exist under Article XI, section 5 of the California Constitution. Although the California Constitution does not expressly define "municipal affair," land use and zoning are consistently classified as exempt from the planning and zoning provisions of the California Government Code unless the city's charter indicates otherwise. See e.g., CAL. GOV'T CODE §§ 65803, 65860(d); *City of Irvine v. Irvine Citizens Against Overdevelopment*, 25 Cal. App. 4th 868, 874 (1994).



WHAT HAVE WE LEARNED SO FAR?

Key Finding #1: All residential development over five units is discretionary in each jurisdiction.

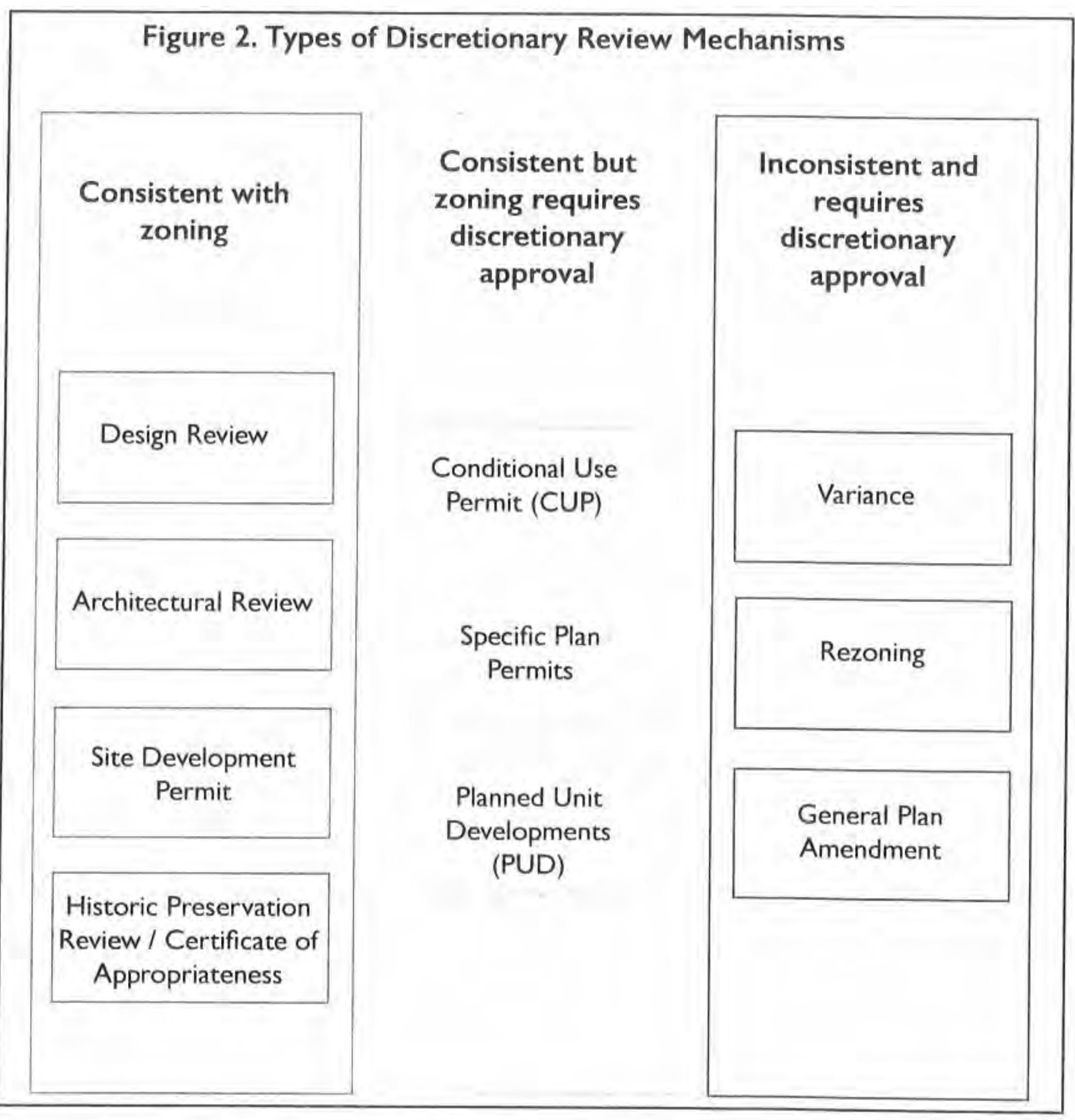
All of the jurisdictions we examined require discretionary review for residential developments of five or more units. In fact, in four of our five Bay Area jurisdictions, residential developments of two or more units require discretionary approval. That means even if these developments comply with the underlying base zoning district's use and density requirements, they require additional scrutiny from the local government before obtaining a building permit. The table in Figure 1, below, provides an overview.

Figure 1. Discretionary Review of Developments Consistent with Base Zoning

Jurisdiction	Primary Discretionary Review Mechanism	Residential Developments Exempt from Discretionary Review
San Francisco	Building Permits	None
San Jose	Site Development Permit	Single-family homes in limited circumstances[14]
Redwood City	Architectural Permit	One-story single family homes and duplexes
Palo Alto	Architectural Review	Up to two single-family homes and two duplexes[15]
Oakland	Design Review	Secondary units

Key Finding #2: The mechanisms by which cities require discretionary review are extremely different, and usually redundant.

California land use law offers cities a range of tools to review and approve housing development. Cities typically choose among these tools to ensure discretionary review of residential development. These five cities demonstrate how varied those choices are. Though cities generally draw on land-use law tools to ensure discretionary review, San Francisco's city charter imposes discretionary review on all new developments.[16]



The first column lists tools that impose discretionary review that are applied even where a proposed project is consistent with the underlying base zoning district's use and density requirements. The second column lists requirements for discretionary review for categories of projects that are built within the framework of the zoning ordinance—in other words, the zoning ordinance itself contemplates that some projects must obtain one of these types of permits. The third column provides categories of discretionary review that attach to a project when the proposed project would not comply with the zoning ordinance; this includes when the developer is seeking an exemption from the zoning ordinance (variance), or asking the city to zone the project site differently (rezoning), or change or update the General Plan to allow for the proposed project.

Figure 3. Instances of Discretionary Review across Jurisdictions

	Design / Site Plan Review	Historic Preservation	CUP	Specific Plan Permit	PUD	Variance	Rezoning	General Plan Amendment	Total Number of Projects
San Francisco	N/A	N/A	26	46	2	29	1	1	85
San Jose	13	3	0	N/A	52	0	48	5	67
Oakland	66	0	31	N/A	1	26	2	0	67
Palo Alto	5	1	0	N/A	0	3	0	0	5
Redwood City	9	4	0	4	4	2	0	0	13

As the table in Figure 3 shows above, the total numbers of land use/planning approvals (such as rezonings, conditional use permits, or General Plan amendments) are greater than the number of overall development projects in each jurisdiction. This suggests there are significant redundancies in the way these jurisdictions map discretionary review to residential developments. A single project might need to obtain Design Review approval and a Minor Variance from the Director of the Planning Department and a rezoning from the City Council.[17] This requires navigating multiple levels of local government where only one approval process would be sufficient to pull the project within the scope of local discretion. It should also be noted that if the development requires the subdivision of land into smaller parcels, additional discretionary review by local governments generally applies as well.

Key Finding #3: How these jurisdictions apply environmental review under the California Environmental Quality Act varies.

These cities take a diverse range of approaches to comply with CEQA requirements. As Figures 5 and 6 show, relatively few projects within these five cities require a full Environmental Impact Report process (or EIR). Many of these jurisdictions appear to be making good faith efforts to increase their supply of housing by engaging in specific planning strategies that link housing and jobs to transportation and facilitate environmental review for developers. This means that the city is tapping into state-level sustainable development initiatives and doing the bulk of the work to comply with state environmental review requirements, rather than imposing additional time and costs on to developers to comply with CEQA. Like the discretionary review mechanisms discussed above, many projects are receiving multiple CEQA exemptions, which leaves open the question of exploring why planners take these additional measures.

Analyzing project size as a function of CEQA, our data shows that projects with EIRs in these cities generally tend to be larger than projects that undergo other types of CEQA review (see Figure 7). Nevertheless three jurisdictions—San Francisco, Oakland, and Redwood City—did not prepare an EIR for their single largest project in our dataset years. Significant variations in other categories also persist. Project and Tiering-Based Exempt* projects in San Jose tend to be larger on average than EIR projects in Oakland. Projects with (Mitigated) Negative Declarations** in San Jose are smaller than Exempt projects in all jurisdictions but Palo Alto.

Because so many projects complete CEQA review via mechanisms other than EIRs, a large majority of all approved units did not require an EIR for project-level CEQA review. Our data indicates that compliance routes other than EIRs are not reserved for extremely minor projects, and are a key component of infill residential development in California.

* Tiering is way to streamline environmental review under CEQA by allowing environmental review of a proposed project to focus on a narrow set of issues that have not already been evaluated in a prior EIR. It necessarily requires a prior EIR that is usually connected to a prior and large-scale planning approval (for a community plan or specific plan, for example).

** A Mitigated Negative Declaration is a CEQA document where a developer recognizes that a project as originally proposed would have had significant environmental impacts, so the developer proposes modifications that instead will take certain steps to eliminate the risk of significant environmental impacts.

Figure 4. Types of CEQA Review Mechanisms

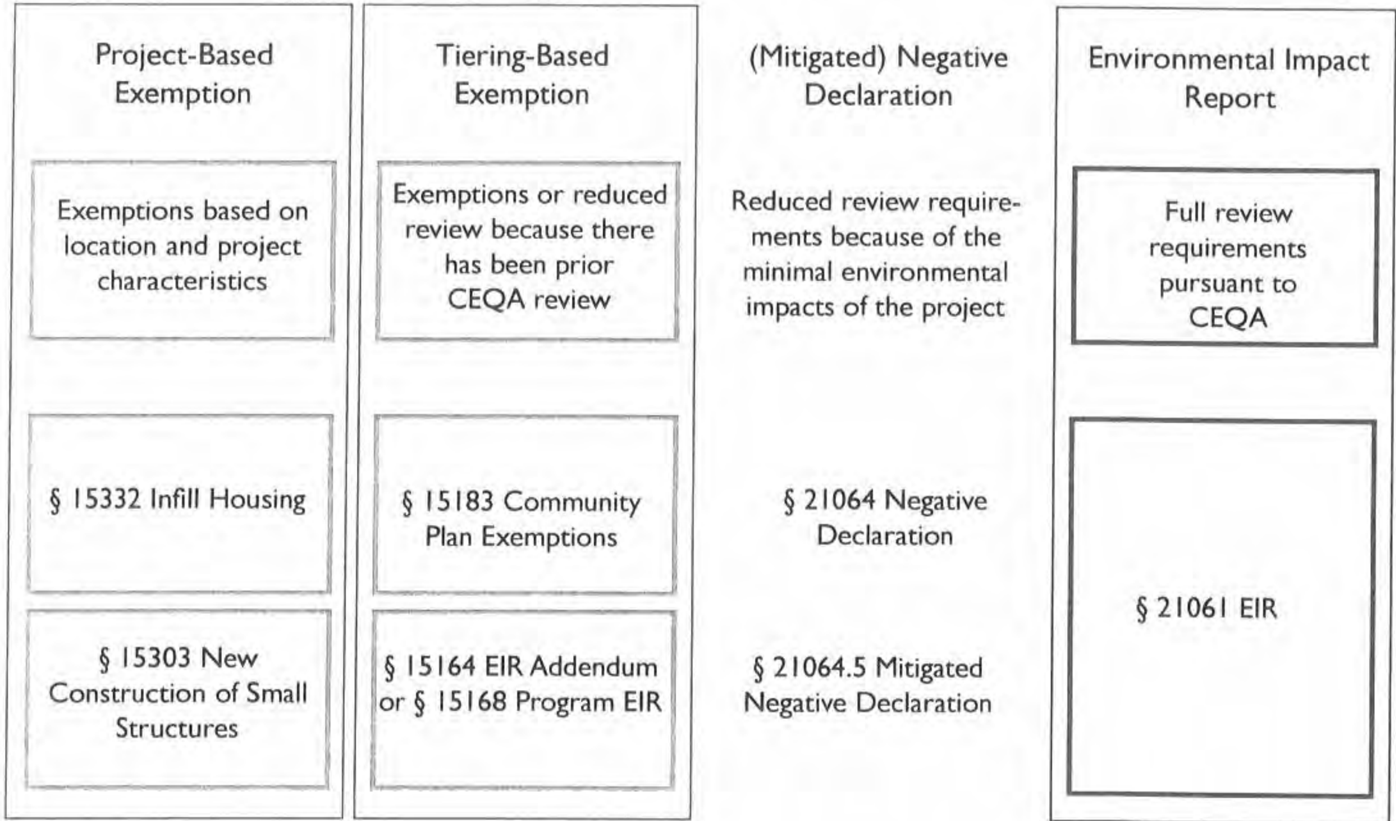


Figure 5. Instances of CEQA Review across Jurisdictions

	Project- Based Exemptions	**Tiering-Based Exemptions**	**Mitigated Negative Declaration**	**Negative Declaration**	**EIR**	**Total Number of Projects**
San Francisco	4	68	7	2	6	85
San Jose	1	30	23	4	13	67
Oakland	56	66	0	0	2	67
Palo Alto	2	1	1	0	1	5
Redwood City	2	9	1	4	1	13

Figure 6. Percentages of CEQA Review Type by Project

	Project-Based and Tiering Exemptions	MND/ND	EIR
San Francisco	82%	11%	7%
San Jose	44%	38%	18%
Oakland	98%	0%	2%
Redwood City	65%	29%	6%
Palo Alto	60%	20%	20%

Figure 7. Mean Project Size (Units) by CEQA Review Type

	Project-Based and Tiering Exemptions	MND/ND	EIR
San Francisco	92	140	229
San Jose	186	66	382
Oakland	78	0	172
Redwood City	96	105	8
Palo Alto	30	8	180[18]

Figure 8. Total Number of Units Per CEQA Review Type[19]

	Project-Based Exemptions	Tiering-Based Exemptions	MND/ND	EIR	Total Number of Units
San Francisco	269	5,885	1,260	1,121	8,534
San Jose	15	5,310	1,778	4,473	11,575
Oakland	1,797	4,071	0	284	6,152
Redwood City	102	696	268	8	1,074
Palo Alto	19	70	8	180	277
Total	2,202	16,031	3,314	6,065	27,612

Key Finding #4: There are significant variations in timeframes for entitlements across jurisdictions and across project sizes within the same jurisdiction.

Figures 9 and 10 show the mean and median approval timelines for projects of varying sizes in each jurisdiction. Projects that experienced unusually slow or fast approval timeframes heavily influence the mean approval timeline. Median time frames more accurately reflect the time frames a typical project would experience.

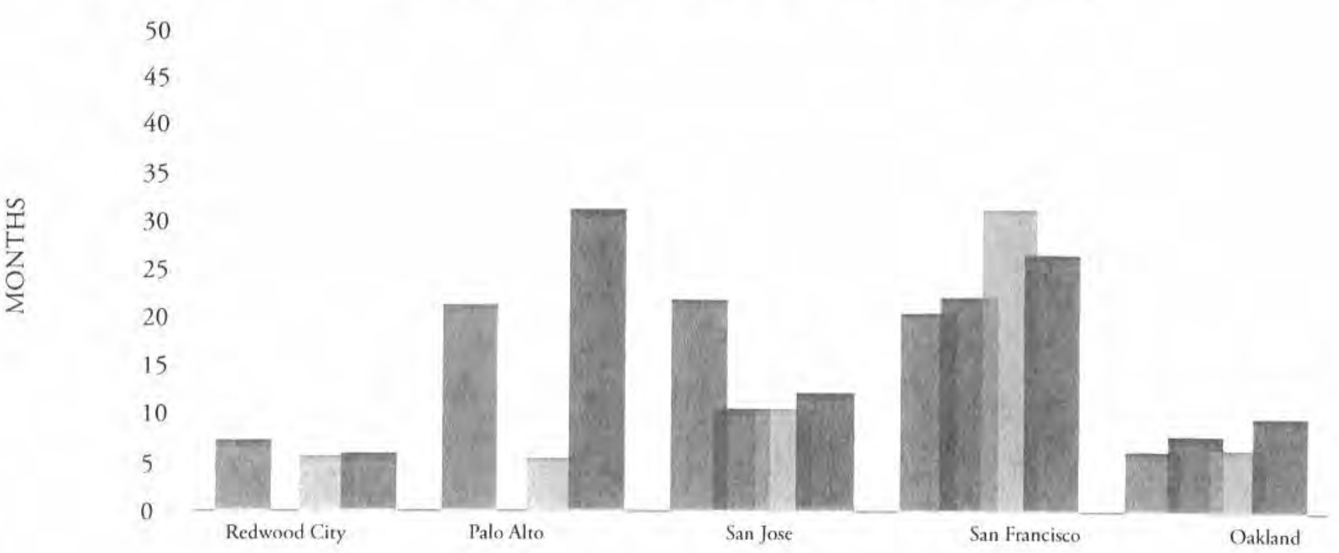
Figure 9. Mean Approval Time by Project Size

MONTHS

50
45
40
35
30
25
20
15
10
5
0

Redwood City | Palo Alto | San Jose | San Francisco | Oakland

Figure 10. Median Approval Time by Project Size



0-25 Units | 26-50 Units | 51-100 Units | 101+ Units

Key Finding #5: Even when jurisdictions use similar state law provisions to facilitate environmental review, the timeframes can vary.

These cities apply the same environmental review provisions in different ways—with significant variations in the timelines for entitlement. For example, the City of Oakland and the City of San Francisco both use the § 15183 Community Plan Exemptions (CPE) to reduce CEQA compliance obligations for proposed projects within plan areas* that have a relatively recent full EIR that the respective city completed. But Oakland's CPE process moves much faster than San Francisco's. The median CPE entitlement in Oakland is 7 months. In San Francisco, a CPE takes 23 months (nearly two years). In contrast, a full EIR in San Jose, for which no prior study has occurred, takes 24 months. [20]

Key Finding #6: There is significant variability across jurisdictions in terms of total projects entitled, total number of units entitled, total number of units entitled per capita, and density of dwellings entitled per acre.

Measuring the time it takes to entitle a project is one way to understand how entitlement processes enable development in a jurisdiction. Counts of actual projects and units are another. The table below provides a summary of how many projects and how many units these five cities entitled in 2014, 2015, and 2016. Project and unit count alone cannot convey a complete picture of how entitlement processes operate within each city. By calculating how many units each city is entitling per capita,[21] we can get a better sense of how many units each city is entitling relative to their respective sizes measured by population. Examining the data this way, we see that Oakland entitles the most units given its population size, followed by Redwood City, then San Jose, San Francisco, and Palo Alto (see Figure 11).

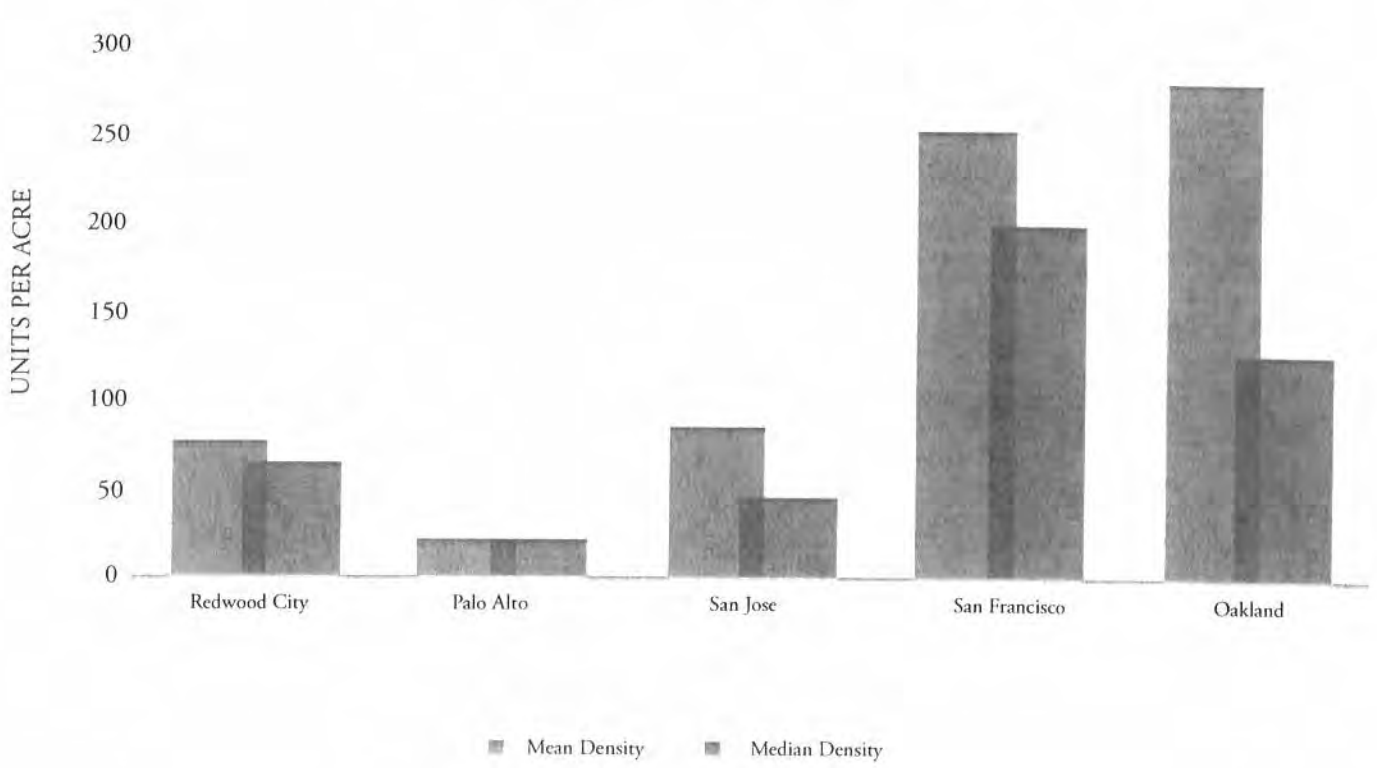
Calculating both the mean and median number of dwelling units per acre in each jurisdiction can also allow us to compare projects entitled in each jurisdiction in terms of density, which has important implications for state level sustainability goals.[22] Our data indicates that projects entitled in San Francisco, generally, during this three year period are of a higher density than the other jurisdictions we examined (see Figure 12); however, high mean density values observed in jurisdictions like Oakland suggests that there are a small number of very dense projects being approved, despite lower overall density. San Jose—which on average entitles the largest projects of our case study jurisdictions—has relatively low density even when compared to smaller jurisdictions like Redwood City.

* Plan Area terminology varies according to jurisdiction and the size of the plan area. Redwood City refers to these plans as "Precise Plans." San Jose and Oakland both use the terms "Area Plans" and "Specific Plans," and San Francisco calls them "Area Plans."

Figure 11. Project and Units Entitled Per Capita

	Total Projects	Total Units	Units Per 1,000 People
Oakland	67	6,152	15
Redwood City	13	1,074	13
San Jose	67	11,575	11
San Francisco	85	8,534	10
Palo Alto	5	277	4

Figure 12. Dwelling Units Per Acre



WHAT ARE THE IMPLICATIONS?

In these cities, the pace of housing development appears to be driven by the amount and sequence of discretionary review, not the CEQA process. These five local governments are choosing to opt into CEQA through their choice to embed discretionary review into the entitlement process. The problem (and potential costs) associated with environmental review do not appear to originate with state environmental regulation. Also, some of our interview participants discussed the necessity of "bullet-proof EIRs"[*] to forestall CEQA litigation from neighborhood groups. But we have not observed many of these EIRs in these five cities, suggesting that the variation in entitlement process timelines between these five cities may not be easily attributed to neighborhood groups abusing state regulation in response to proposed project characteristics. While op-eds, research, and reform proposals often focus on EIRs and CEQA litigation,[23] the data from these five cities indicates that some of the largest projects, those that are the most likely to have significant environmental impacts, did not require EIRs (although EIR projects do tend on average to be larger than non-EIR projects).

This data also shows how these cities, while preserving their discretionary review, are often employing tools to facilitate CEQA compliance. As Figures 9 and 10 above show, large projects do not always take longer to entitle than small projects, which suggests local practices in a given jurisdiction—rather than project-specific characteristics—are driving the entitlement timeline. These practices vary, but they tend to be outside the control of the developer-applicant. Examples we observed in our cities range from staff-level variations in performing application intake and departmental pre-selection of environmental consultants, to higher-level decisions about the amount of commercial development that must occur before a developer-applicant can even propose residential development. These choices in practice might also be a response to political and fiscal pressures that also prompt cities to embed discretionary review into the entitlement process. We are pursuing additional research now to better understand this issue, and to explore what is occurring in other jurisdictions throughout the state.

The lack of consistency in the entitlement process across these jurisdictions makes it difficult to navigate development within each of these cities unless you have substantial local knowledge. Though entitlement processes remain fairly consistent within a given jurisdiction, the variation across these jurisdictions presents informational barriers for newcomers to the market—even for some working within the same region. This complexity and variation may also impact the capacity of planning staff to help developers understand the entitlement process. Our interview data also confirms that well-capitalized developers with existing relationships and experience in specific jurisdictions are the best situated to navigate these complex local contexts, providing them a competitive advantage. Also, as noted, larger projects do not necessarily take more time, and often take less time, than smaller projects. If environmental review were the issue, this is not intuitive. This suggests that larger projects—to the extent that they benefit from expertise and better capitalization—can navigate the process in these cities in less time than smaller-scale developments. This could raise concerns about monopolization as the cost of acquiring local knowledge keeps new market participants out. The difficulty in accessing this data for our research purposes, described below, also lends support to this proposition.

[*] "Bullet-proof" refers to an EIR document that has sufficient analysis of environmental impacts and technical information to withstand judicial review should the project be challenged in court.

Dealing with process is a necessary but insufficient approach to reform. There is variability in outcomes across jurisdictions because of different local processes and local planning practices. The data shows that even where two cities use identical state law provisions to facilitate the environmental review process, the approval timelines still vary considerably. The example provided above, comparing San Francisco and Oakland, illustrates this. Oakland's code, while similar to San Francisco's, appears more inflexible.* And yet the entitlement process employed in Oakland still takes considerably less time. Interview data also suggests that local politics informs local interpretation and application of state law and local land-use ordinances. This suggests that proposed reforms should contemplate standardizing more planning practices across jurisdictions.

In other cases, local process and planning practice are not even the issue. San Francisco, for example, is unique in that it does not impose design or site development review on all projects. Absent its city charter that renders building permits discretionary, San Francisco would have permitted as of right eight projects — each ranging from 8 to 22 units. As Figure 1 shows, no other planning code in our other four case studies would permit this level of development without a discretionary approval. This is an example of how a charter city can impose discretionary review through a mechanism outside of the formalized planning process.

The variation in processes at the local level is substantial enough that without good data, there is a risk of unintended negative consequences when attempting to reform local process at the state level. Extracting project-level data is time and resource intensive. We know from our ongoing research that few jurisdictions statewide have development approval data in one centralized repository. Requiring jurisdictions to provide access to project-specific data on land use approvals, CEQA compliance, and overall time frames will help inform top down policy making in critical ways.

For example, recently enacted legislation such as SB-35[24] attempts to lift the Conditional Use Permit (CUP) requirement for certain projects consistent with zoning, but the complexity of the entitlement processes may prevent this legislation from accomplishing what is needed in these five cities. One such example is the myriad of specific plan approvals imposed on zoning compliant projects that happen to be located within a specific plan area.[25] Though these approvals are functionally similar to CUPs, on paper they are different processes. San Jose provides another example. Most projects in San Jose go through the Planned Unit Development (PUD) process, which requires a rezoning and renders a project ineligible for SB-35. Yet the same PUD process in San Francisco and Oakland can occur without a rezoning. Even though the PUD process is accomplishing the same goals in these jurisdictions, the application is markedly different. Without knowledge of these nuances, lawmakers cannot draft legislation that accurately targets the problem and provides clear guidance to local stakeholders. Moreover, without an understanding of the distribution of non-zoning compliant projects entitled each year, lawmakers might find their legislative tools are not solving the right problems. Also, our data shows that local governments want to retain discretion over new development. SB-35 may not be able to avoid cities downzoning or enacting more inflexible design criteria to force all approvals through a rezoning or variance process that is not subject to state streamlining.

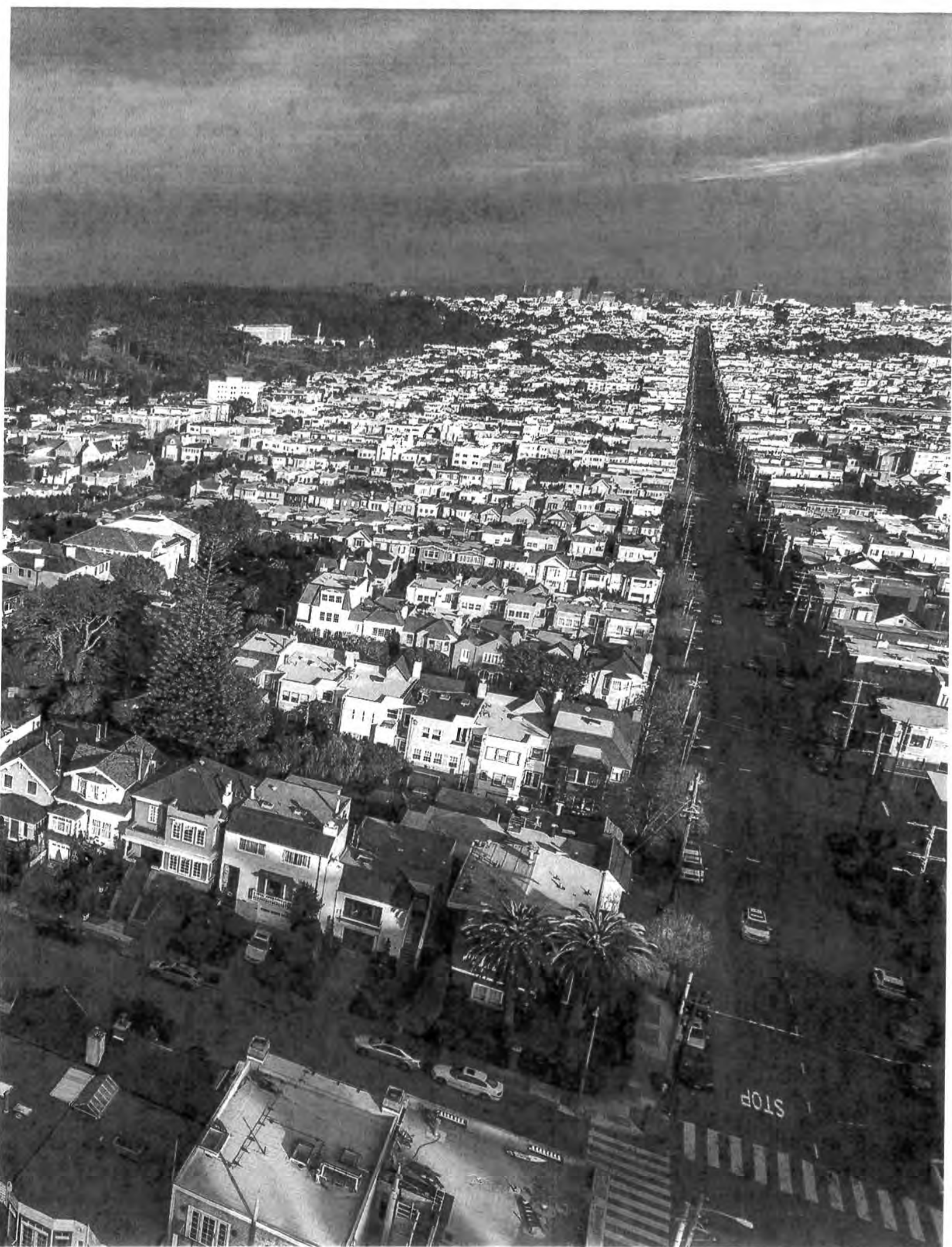
* Flexibility refers the degree to which developers must obtain relief from the zoning use and design controls to build their projects. The high occurrence of variances and CUPs in Oakland — both of which provide relief from design controls — are indicative of an inflexible code in that developers must frequently obtain relief from its requirements.

The risks of policymaking without access to data also implicate broader concerns than a simple housing production metric. The recently proposed SB-827[26] targets all local land use discretion for certain kinds of infill development near transit. Though this is arguably the most effective approach to address the constraints that local land use regulation imposes on housing production, our data also highlights potential shortcomings. Here, we identify two. First, there is a potential impact on environmental protections. A significant number of projects are subject to CEQA processes that impose mitigation measures.* In some instances, this environmental review and mitigation process is much more than a formality. The classic example of this is the Mitigated Negative Declaration (MND) process. Jurisdictions like San Francisco and San Jose use tiering or community plan exemptions to impose project-level mitigations; this suggests that infill developments are having impacts on air, water, and traffic significant enough for jurisdictions to require mitigation. Unless there are environmental protections already embedded in local ordinances or state law to address the environmental impacts requiring these mitigations, eliminating discretionary review might allow for environmental impacts that these mitigations would have prevented. If discretionary review goes away, lawmakers should contemplate how to replicate these protections at a state level or mandate that local governments address these issues through non-discretionary local regulatory standards.

Second, there is a risk of harming the least empowered and most vulnerable within cities. Eliminating discretionary review impacts community voice. Discretionary review typically requires a public hearing, which enables community participation. Existing research shows that updating the General Plan or enacting specific plans are costly endeavors typically funded from a city's general fund.[27] For jurisdictions that do not regularly engage in these macro-level planning processes, project-level approvals provide one of the few mechanisms for the community to participate in the development of their city. And even in jurisdictions that do use these planning processes, not all community members are equally empowered to participate in the planning process. So long as issues of inequity in the planning process persist because some residents and neighborhoods have substantially more political power than others, any proposed reform that targets discretionary review without a clear focus on equity risks disproportionately harming vulnerable populations with the least amount of political power.

To be clear, our interview data suggests that contemplating equity in a proposed reform does not mean that retaining all current local discretion over development is the best path forward. Our interview data suggests that in some instances, taking away a measure of local control can offer a shield to local officials that have demonstrated a willingness to approve sustainable affordable housing development despite substantial pushback from affluent and powerful neighborhood groups unwilling to contemplate any development within their community. But not all of our five cities are situated similarly. They are diverse in not just in terms of population size, but in terms of land values, public resources, and demographics. Just as some cities cannot afford to engage community in the same way as others, some cities must pursue cost-sharing with developers to promote affordable housing development and infrastructure improvements. Thus, legal reform should not be blunt; it should be carefully tailored to address the imbalance of power that exists within cities and within the region (between cities).

* Mitigation is a feature of a proposed project design that reduces what would have been a significant environmental impact by avoiding, minimizing, or compensating for a potential adverse effect that would have otherwise created a significant environmental impact.


STOP

WHAT DO WE RECOMMEND RIGHT NOW?

The value of improving access to good data cannot be overstated. Although top-down state reform of environmental regulations (or local regulation over land use) may encounter substantial difficulties, something the state could do now would be to provide guidance to jurisdictions on how to provide better access to accurate project-specific data on land use approvals, and require all jurisdictions to maintain relevant data in a central repository. Improving the quality of data and access to data would help researchers and policymakers identify how long these processes take, and identify inefficiencies and redundancies that exist in local processes. Being able to determine how long each process takes could in turn immediately help affordable housing developers determine what necessary funding is required for the entitlement process.

Each jurisdiction we studied readily provided any requested data to the extent they had it (without a public records request), and it was clear that each jurisdiction works to make data publicly accessible. Still, we discovered in our own research process that our findings are limited both by the availability and accuracy of data in the various planning databases of any given jurisdiction. In Oakland for example, some projects elect to go through a pre-application process prior to formally submitting their application for review, which could influence approval timelines.[28]

In other jurisdictions, the complexity of the planning process is not fully reflected in the data that is publicly accessible. San Francisco employs a streamlined application process that integrates processes that constitute distinct approval pathways in other jurisdictions, like design review and historic resources review. Just because there are no formal design review or historic resources approvals in San Francisco does not mean these processes are not happening. San Francisco's various specific plan permits also combine what is essentially a CUP and variance process into one, which reduces the number of CUPs and variances in that jurisdiction. More projects are receiving variances than these numbers suggest. Jurisdictions like San Jose, on the other hand, employ very distinct approval processes, which also influences timeline. The majority of developments in San Jose go through the PUD process, which involves a rezoning and a permit approval that happen sequentially rather than in tandem. Our interviews suggest that often developers complete the rezoning and sell the land to a different developer who then secures the permit phase of the approval. The time lag between the two milestones might slightly exaggerate approval timelines in San Jose for PUD projects.

Though all our five cities make efforts to provide access to project approval data, this access could be greatly improved by providing the information in a centralized repository that uses consistent terminology across jurisdictions. To the extent that processes are so dissimilar that they cannot be analogized, this centralized repository should contain explanations. Smaller steps would also be welcome. Linking existing geographic information systems (GIS) or zoning data with assessor parcel information and building permit systems, for example, would be a great first step, particularly because housing element law at the time only required annual reporting based on building permits issued not numbers of units entitled. In our experience, it is not always easy to cross-check housing element reporting obligations with building entitlements because not everything that gets entitled is immediately built. Linking these systems to provide this data could make housing element reporting more robust.

ENDNOTES

[1] Governor Brown Signs Comprehensive Legislative Package to Increase State's Housing Supply and Affordability. (Sept. 29, 2017). Retrieved February 10, 2018, from https://www.gov.ca.gov/2017/09/29/news19979/.

[2] Liam Dillon, *Gov. Brown Just Signed 15 Housing Bills. Here's How They're Supposed to Help the Affordability Crisis*, L.A. TIMES (Sep. 29, 2017), http://www.latimes.com/politics/la-pol-ca-housing-legislation-signed-20170929-htmlstory.html; Angela Hart, *Jerry Brown Signs New California Affordable Housing Laws*, SACRAMENTO BEE, (Sep. 29, 2017), http://www.sacbee.com/news/politics-government/capitol-alert/article176152771.html; Liam Dillon, *The Housing Package Passed by California Lawmakers is the Biggest Thing They've Done in Years. But it Won't Lower your Rent*. L.A. TIMES, (Sep. 15, 2017), http://www.latimes.com/politics/la-pol-ca-housing-legislation-deal-impact-20170915-story.html.

[3] *See* Jennifer Hernandez, David Friedman & Stephanie Deherrera, In the Name of the Environment, Holland & Knight (2015); Carolina Reid & Hayley Raetz, Perspectives: Practitioners Weigh in on Driver of Rising Housing Construction Costs in San Francisco (2018).
For a contrary position, see Janet Smith-Heimer et al., CEQA in the 21ST Century, Rose Foundation for Communities and the Environment (2016). For discussion, see Chang-Tai Hsieh & Enrico Moretti, *How Local Housing Regulations Smother the U.S. Economy*, N.Y. TIMES (Sep. 6, 2017), https://www.nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html; Liam Dillon, *Which California Megaprojects Get Breaks from Complying with Environmental Law? Sometimes, it Depends on the Project*, L.A. TIMES (Sep. 25, 2017), http://www.latimes.com/politics/la-pol-ca-enviromental-law-breaks-20170925-story,amp.html; Angela Hart, *Here's Why California's Historic Housing Legislation Won't Bring Down Costs Anytime Soon*, *Sacramento Bee* (Sep. 27, 2017), http://www.sacbee.com/news/politics-government/capitol-alert/article175541676.html.

[4] See e.g., Edward L. Glaeser & Joseph Gyourko, *The Impact of Zoning on Housing Affordability 17* (National Bureau of Economic Research Working Paper No. 8835, 2002); John Quigley, Steven Raphael & Larry A. Rosenthal, *Measuring Land Use Regulations and Their Effects in the Housing Market, in Housing Markets and the Economy 282* (Lincoln Institute of Land and Policy ed., 2009).

[5] Joseph Gyourko, Raven Molloy, *Regulation and Housing Supply 13* (National Bureau of Economic Research Working Paper 20536, 2014).

[6] Chas Alamo, Brian Uhler & Marianne O'Malley, California Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences (2015).

[7] Robert Yin, Case Study Research: Design and Methods (5 ed. 2014).

[8] Malo Hutson, The Urban Struggle for Economic, Environmental and Social Justice: Deepining Their Roots (2016); Paul Knox & Linda McCarthy, Urbanization: An Introduction to Urban Geography (2012).

[9] Peter Calthorpe, Urbanism in the Age of Climate Change (2010).

[10] Chas Alamo, Brian Uhler & Marianne O'Malley, California Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences (2015).

[11] These ordinances include the San Francisco Planning Code, the Oakland Planning Code, the Redwood City Zoning Ordinance, the San Jose Zoning Ordinance, and the Palo Alto Zoning Ordinance.

[12] Because residential development larger than 5 units in Palo Alto rarely occurs, our findings for this jurisdiction are based on an extremely limited sample size.

[13] In some instances, individuals we interviewed worked in, or for, two or more of the cities within our group of five.

[14] To be exempt from site development permit, single family homes must meet height, FAR, and lot size requirements and cannot be located in riparian areas. San Jose Municipal Code § 20.100.1030(A)-(C).

[15] To qualify for design review exemption, the proposed development cannot be located in a conservation zone. Palo Alto Municipal Code § 18.76.020(b)(2)(D).

[16] A city charter is the constitution for that local government. The provision of San Francisco's charter rendering all permits discretionary can be found in the San Francisco Business and Tax Regulations Code § 26(a).

[17] Although in many jurisdictions, Zoning Administrators and Planning Directors can allow the Planning Commission to issue variances for certain projects.

[18] The MND/ND and EIR processes in Palo Alto only have one project each, so we are unsure of how representative these projects are generally of the process. The 180-unit EIR development, for example, which will provide faculty housing for Stanford as part of the larger Mayfield Development Agreement, is out of scale with the typical development pattern in Palo Alto.

[19] Because many projects undergo more than one CEQA review type, we weighted units across the total number of CEQA review types. For example, a 100-unit project that received both a Community Plan Exemption (CPE) and an EIR was weighted 50 units in each category.

[20] Some jurisdictions apply different types of CEQA review to a single project. A CPE in Oakland is often combined with a § 15332 exemption. EIRs in San Jose are often paired with later addendums or supplemental EIRs. A CPE in San Francisco can be paired with a Focused EIR. The numbers above do not control for these multiple types of CEQA review due to the small sample sizes that would result. Even controlling for types of CEQA review, the general trends holds true. Projects that only received a CPE in Oakland took 7 months; projects in San Francisco that only received a CPE still take 23 months; projects that only received an EIR in San Jose took 14 months.

[21] Population data is from ACS 2016 5-Year Estimates.

[22] See S.B. 375, 2007–08 Leg., Reg. Sess. (Cal. 2008).

[23] See Jennifer Hernandez, David Friedman & Stephanie Deherrera. In the Name of the Environment, Holland & Knight (2015).

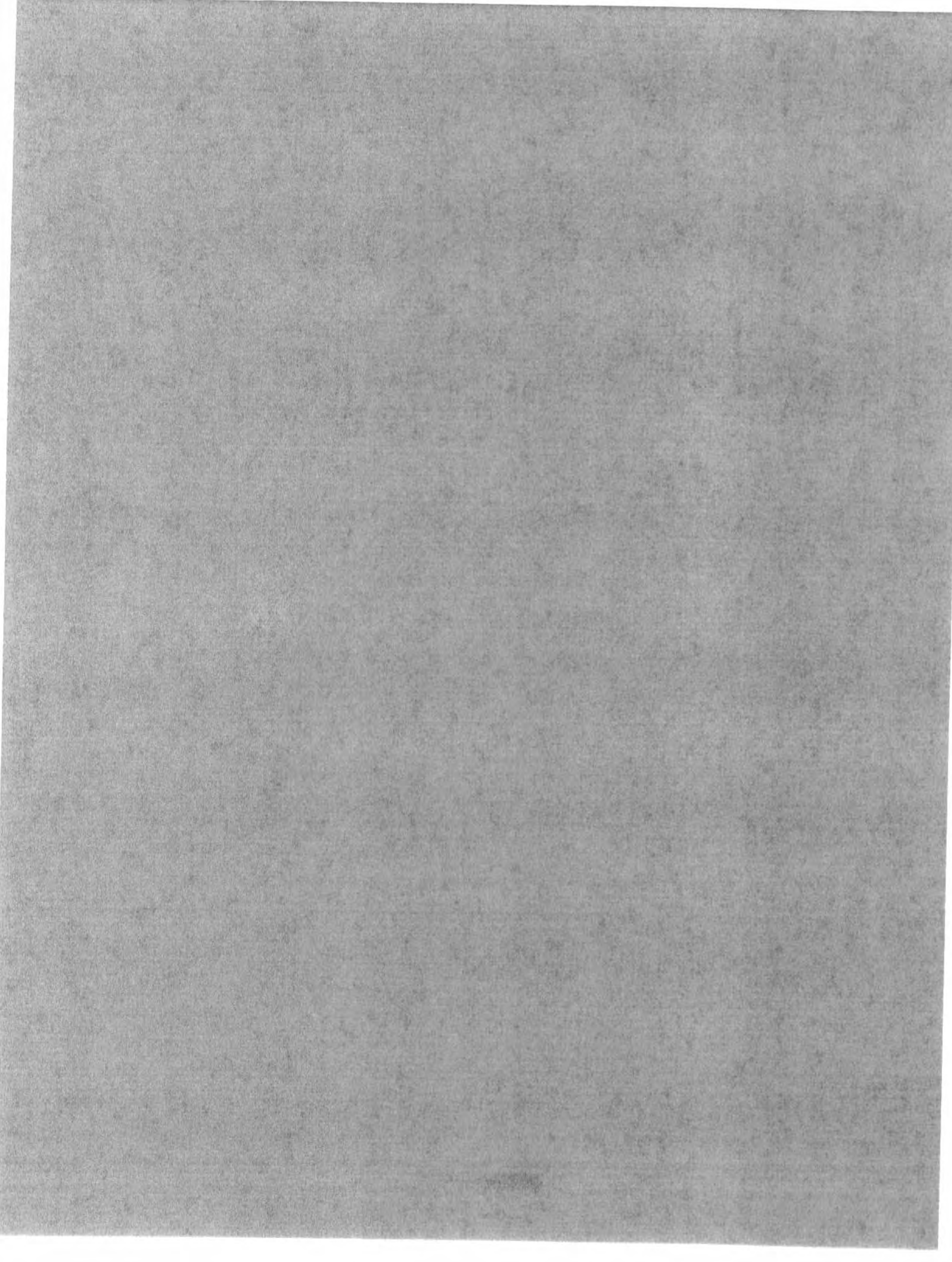
[24] See S.B. 35, 2017–18 Leg., Reg. Sess. (Cal. 2018).

[25] Examples of this include the Large Project Authorization in certain use districts of San Francisco's Eastern Neighborhoods plan area or the Planned Community Permit in Redwood City's Downtown Precise Plan. San Francisco Planning Code § 329; Redwood City Zoning Code § 47.1-47.5.

[26] See S.B. 827, 2017–18 Leg., Reg. Sess. (Cal. 2018).

[27] Robert B. Olshansky, *The California Environmental Quality Act and Local Planning*, 62 J. AM. PLAN. ASS'N 313, 319-320 (1996).

[28] Oakland's pre-application dates were not consistently available in the system. This means that what appears to be relatively fast approval times in Oakland might be influenced by these incomplete database entries. Similarly, in Oakland, some projects had the same approval date as initial application date. Where possible, we found the underlying approval documents to correct for this inaccuracy in the system. But the approval documents for three projects were unavailable, so we removed them from our data set, which slightly decreased the total unit and project numbers for Oakland.



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Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates

Moira O'Neill,[1] Giulia Gualco-Nelson,[2] and Eric Biber[3]

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Introduction

Reducing vehicle miles traveled through increasing the use of public transit and improving transit access is critical to reduce greenhouse gas ("GHG") emissions in California. Housing development properly focused in infill areas with transit accessibility (transit-oriented development or "TOD") may significantly reduce greenhouse gas emissions if it increases transit usage and results in reducing vehicle miles traveled. Senate Bill 375[4] recognizes that meeting GHG reduction targets through increased transit use requires the adoption of sustainable, integrated regional transportation and community planning strategies to promote TOD.

But housing costs in the coastal communities of California near major regional economic centers and transit are too high for many families. Low-income families that cannot afford housing near their work commute ten percent further than commuters elsewhere[5] which may directly undermine the goals of recent legislation intended to address climate change. Research also links high housing costs within coastal communities, like the Bay Area, to the resegregation of the region,[6] a crisis with major implications for public welfare and public health outcomes.[7] Infill development in transit accessible neighborhoods within these coastal communities must therefore occur equitably to avoid the risk of displacing low-income populations from these neighborhoods or exacerbating current cost barriers to entry for low-income populations into highly desirable neighborhoods with substantial transit accessibility or transit investment.[8] The goals of reducing GHG emissions and equity are thus linked; emissions reductions cannot occur if commute times are increasing because low- and middle-income communities are pushed to farther rings of the suburbs and forced to drive to access economic centers of opportunity.

Even as California's state legislature responded in 2017 with the passage and signing of housing bills[9] meant to address escalating housing costs, legislators and

4. *See* S.B. 375, 2007–2008 Leg., Reg. Sess. (Cal. 2008).

5. CHAS ALAMO, BRIAN UHLER & MARIANNE O'MALLEY, LEGIS. ANALYST'S OFF., CALIFORNIA'S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES (2015) ("LAO REPORT").

6. *See Rising Housing Costs and Re-segregation*, URB. DISPLACEMENT PROJECT (Oct. 26, 2018), https://perma.cc/8N88-F3CV.

7. For a general discussion of the relationship between racial residential segregation and health outcomes, *see* David R. Williams & Charles O. Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 PUB. HEALTH REP. 404, 404–16 (2001). For an analysis on the impact of racial residential segregation on life outcomes in Oakland, California, *see* Matt Beyers et al., *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County*, ALAMEDA CTY. PUB. HEALTH DEP'T i, i–142 (2008).

8. Throughout this article we use the term "equitable infill development" to describe TOD or infill development that considers equity through affordability components or other mechanisms that would address the risk of displacement of low-income populations or exclusion of low-income populations.

9. *Governor Brown Signs Comprehensive Legislative Package to Increase State's Housing Supply and Affordability*, OFF. OF GOVERNOR EDMUND G. BROWN JR. (Sep. 29, 2017), https://perma.cc/6R5X-VHGD.

others acknowledged that more is needed to address California's housing crisis.[10] One recurring theme in the ongoing coverage and discussion of the housing crisis is an argument that state-mandated environmental review under the California Environmental Quality Act ("CEQA") is a significant contributor to the housing crisis because it adds time and money to the development process, and that given the persistent housing crisis, CEQA merits legal reform.[11] Others advance that local land use regulations significantly constrain housing development[12] and have proposed legislation to narrow local authority over infill development near transit.[13]

Existing urban planning and urban economics research correlates the overall stringency of a jurisdiction's land use regulations with high housing costs and income segregation.[14] But this research, though important, cannot answer the question of which specific elements of local land use regulation or state environmental review contribute disproportionately to either the cost of housing or the exclusion of low-income communities from these metro areas. Despite these limitations, the impact of this research and similar work has been far reaching, surfacing in statewide policy briefs[15] and political debates about proposed legislation.[16]

10. Liam Dillon, *Gov. Brown Just Signed 15 Housing Bills. Here's How They're Supposed to Help the Affordability Crisis*, L.A. TIMES (Sep. 29, 2017), https://perma.cc/9Y9V-C2AX; Angela Hart, *Jerry Brown Signs New California Affordable Housing Laws*, SACRAMENTO BEE (Sep. 29, 2017), https://perma.cc/9XXU-A4Q2; Liam Dillon, *The Housing Package Passed by California Lawmakers is the Biggest Thing They've Done in Years. But it Won't Lower Your Rent*, L.A. TIMES (Sep. 15, 2017), https://perma.cc/4WL9-4L6R.

11. Chang-Tai Hsieh & Enrico Moretti, *How Local Housing Regulations Smother the U.S. Economy*, N.Y. TIMES (Sep. 6, 2017), https://perma.cc/9DBQ-28JF; Liam Dillon, *Which California Megaprojects Get Breaks from Complying with Environmental Law? Sometimes, It Depends on the Project*, L.A. TIMES (Sep. 25, 2017), https://perma.cc/Y4BS-FBZQ; Angela Hart, *Here's Why California's Historic Housing Legislation Won't Bring Down Costs Anytime Soon*, SACRAMENTO BEE (Sep. 27, 2017), https://perma.cc/P8FT-8T2P.

12. *See* Hsieh & Moretti, *supra* note 11; THE WHITE HOUSE, HOUSING DEVELOPMENT TOOLKIT 2 (Sep. 2016), https://perma.cc/P4YM-LYPK.

13. *See* S.B. 827, 2017–2018 Leg., Reg. Sess. (Cal. 2018); Scott Wiener, *My Transit Density Bill (SB 827): Answering Common Questions and Debunking Misinformation*, MEDIUM (Jan. 16, 2018), https://perma.cc/GN94-NFAK.

14. Edward L. Glaeser & Joseph Gyourko, *The Impact of Zoning on Housing Affordability* 17 (Nat'l Bureau of Econ. Research, Working Paper No. 8835, 2002); John Quigley, Steven Raphael & Larry A. Rosenthal, *Measuring Land Use Regulations and Their Effects in the Housing Market*, *in* HOUSING MARKETS AND THE ECONOMY 282 (Lincoln Inst. of Land and Policy ed., 2009).

15. *See* LAO REPORT, *supra* note 5.

16. *See* Letter from Sheryll D. Cashin et al. to Mike McGuire & Jim Beall (Apr. 5, 2018), https://perma.cc/4DPJ-UCWP (letter from fair housing experts endorsing SB 827 as "a major step towards promoting integration and reducing racial residential segregation"); Letter from Amanda Eaken et al. to Scott Wiener (Mar. 23, 2018), https://perma.cc/S84A-8YTX (endorsing SB-827 as "a key element in achieving California's climate goals" on behalf of the Natural Resources Defense Council, Climate Resolve, and Environment

Recognizing the limits of existing data sets and past research applicable to California, and the importance of the current policy debate, we began a case study of land use development within specific cities in California. We undertook this study to better understand what specific regulations of land use development in California may contribute to the state's housing crisis by increasing development approval timelines.[17] We also examined the specific impact of local and state mandated processes on all housing development, including affordable housing development, supply, and access.

This article proceeds in four parts. Part I of our article will cover the elements of land use law we identify as having the closest relationship to the ongoing policy reform debate, and then will explain the findings and limitations of existing research in relationship to current California policy reform proposals. Part II of this article provides details about our methods and research approach to respond to this gap in the research. Part III of our article presents detailed findings from our research on the first set of cities within our study. Part IV of our article places our findings within the context of other research and offers the policy implications of what we have learned so far, and the research still necessary.

Part I: Background

We first situate our research in a legal and scholarly context by providing a brief overview of the specific provisions of state and local law that are particularly relevant to infill residential development, and then we provide an overview of the academic literature that explores how land use regulation may have impacts on housing production, housing affordability, and on equity in housing outcomes.

A. Navigating the law applicable to entitlement processes in California[18]

State law governs the regulatory landscape for housing construction in California in two important ways. First, state law empowers and mandates local governments to develop their own regulatory processes to control development.

California); *cf.* Letter from Kyle Jones to Scott Wiener (Jan. 18, 2018), https://perma.cc/9HCE-2RS4 (opposing SB-827 on behalf of the Sierra Club California as "a heavy-handed approach . . . that will ultimately lead to less transit being offered and more pollution generated"); Letter from Rich Gross & Jaqueline Waggoner to Scott Wiener (Apr. 9, 2018) (on file with authors) (opposing SB-827 on behalf of Enterprise Community Partners "unless it is amended to explicitly serve the housing needs of low-income Californians"); Letter from Brian August et al. to Scott Wiener (Mar. 20, 2018) (on file with authors) (opposing SB 827 on behalf of California Rural Legal Assistance Foundation, Housing California, and Western Center on Law & Poverty "unless it is amended to address the proposal's impact on gentrification and exclusion").

17. Approval timeframes have generally been connected to higher costs of development. *See* discussion *infra* Section I.B.1.

18. The approval process to obtain a building permit is referred to as the entitlement process.

Second, state law imposes additional procedural and substantive requirements on local government regulatory processes—we discuss one of the most important of those state law components, the California Environmental Quality Act.

1. Local law governing infill development

California law permits cities to employ a range of tools to review and approve housing development based on a hierarchical system of land use law.[19] The General Plan—likened to a "constitution" for long-term physical development of the city or county[20]—sits at the top of "the hierarchy of local government law regulating land use" in California.[21] State law requires that each jurisdiction have a General Plan, and the General Plan must include comprehensive language that describes the city's long-range vision, policies, and objectives for development. The General Plan codifies the city's planning law, but it may do so with varying degrees of specificity. Also, with one exception, California law does not require that jurisdictions update their General Plan according to a set schedule; the law only suggests "periodic" updates.[22]

Although not required by state law, some cities may also incorporate provisions within the General Plan for Specific Plans to address anticipated growth. Particularly relevant for infill development in major cities, Specific Plans may direct development to particular locations. Specific Plans may also be extremely detailed and direct nearly every aspect of development[23] by codifying acceptable land uses[24] and requiring review of proposed development for compliance with the Specific Plan.

Next within this hierarchy are zoning ordinances. Zoning ordinances (defined generally) include maps and text that when combined provide specificity as to the type of development (type and intensity of use and form) permissible

19. We focus exclusively on components of California land use law that are specifically implicated in this research study. We do not attempt to discuss the breadth and applicability of the complex body of law that practitioners and academics describe as "land use law" within California. For relevant treatises, *see* CECILY BARCLAY & MATTHEW GRAY, CURTIN'S CALIFORNIA LAND USE & PLANNING LAW (Solano Press 2014); STEPHEN KOSTKA, PRACTICE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEB 2014). For a guide intended for planning professionals that summarizes California land use law, *see* WILLIAM FULTON & PAUL SHIGLEY, A GUIDE TO CALIFORNIA PLANNING, (Solano Press 5th ed. 2018).

20. CAL. GOV'T CODE §§ 65300, 65302(g)(7) (2010); *see also* MILLER & STARR CALIFORNIA REAL ESTATE DIGEST, *Zoning and Planning* § 10 (3d ed. 2018); *see* DeVita v. Cty. of Napa, 889 P.2d 1019, 1023–25 (Cal. 1995) (citing Lesher Commc'ns, Inc. v. City of Walnut Creek, 802 P.2d 317, 321–22 (Cal. 1990)).

21. DeVita, 889 P.2d at 1023–25 (citing Neighborhood Action Grp. v. Cty. of Calaveras, 203 Cal. Rptr. 401, 406–07 (Ct. App. 1984)).

22. The General Plan is comprised of seven elements: land use, open space, noise, circulation, housing, conservation, and safety. *See* CAL. GOV'T CODE § 65302. The Housing Element, which details how the jurisdiction will satisfy its allocation of the regional housing need, is the only element that must be updated according to a planning schedule.

23. *See* KOSTKA, *supra* note 19, § 4.2.

24. *See* CAL. GOV'T CODE § 65451(a); *see also* Hafen v. County of Orange, 26 Cal. Rptr. 3d 584, 591 (Ct. App. 2005).

within specific neighborhoods.[25] Zoning in California operates to restrict development while also incentivizing development proposed in the General Plan[26] or mandating exactions.[27]

State law also carves out some local government land-use authority through specific mechanisms that are directly related to housing development.[28] Notable examples include Density Bonuses[29] intended to incentivize and increase affordable housing production and an Accessory Dwelling Unit[30] law intended to increase housing production in otherwise low-density residential neighborhoods.

But how each city employs these tools is varied. In some cities, the General Plan may contain very specific language that not only guides development policy, it may also closely regulate the form of land use designations.[31] Likewise,

25. For a definition of zoning, *see* KOSTKA, *supra* note 19, § 4.1. *See infra* Sections II–IV for a discussion of "base zoning." By "base zoning" we mean the underlying zoning district and use (residential, commercial, or industrial) provided for in the text of the ordinance and zoning map.

26. See *id.* § 4.

27. *See generally* CAL. GOV'T. CODE §§ 66000–66025; Williams Commc'ns, LLC v. City of Riverside, 8 Cal. Rptr. 3d 96, 107–08 (Ct. App. 2003). California law broadly defines exactions as a monetary fee or dedication of land to the public that local governments require of developers as a condition of development approval. The value of the exaction cannot exceed "the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed" if it is a condition of development approval. *See* CAL. GOV'T. CODE § 66005(a); KOSTKA, *supra* note 19, §§ 18.7, 18.51. The definition of "public facilities" is also broad, encompassing "public improvements, public services and community amenities." *See* CAL. GOV'T. CODE § 66000(d). In short, exactions are a response to the limits on a California city's ability to generate revenue and offer a "nontax" way for local governments to get money or land from developers to support needed infrastructure and services. *See* KOSTKA, *supra* note 19, § 18.7.

28. For a list of state laws limiting local authority in zoning, *see* KOSTKA, *supra* note 19, § 4.28.

29. *See* CAL. GOV'T CODE §§ 65915–65918. Density bonuses are incentives to encourage developers to propose new development providing for specific types of senior housing or affordable housing; the incentive operates by allowing the developer a "density increase over the maximum allowable gross residential density" where the proposed new development provides for senior or affordable housing. *See id.* § 65915(f). It also operates to provide waivers from specific development standards (detailed within the local or state law—often referred to as "on menu") in exchange for the developer providing specific types (and percentages) of senior housing or affordable housing.

30. Accessory Dwelling Units, otherwise known as ADUs, are "an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons" that is an accessory to an existing residential use on the parcel. *See* CAL. GOV'T CODE § 65852.2. State law grants local governments authority to enact local laws to permit ADUs that comply with a set of criteria (addressing form) even within zoning districts that are limited to single-family dwellings. More significantly, it imposes a requirement on local governments to provide a streamlined development process for proposed ADUs that meet specified criteria. *See id.* § 65852.2(a)(3).

31. The General Plan of the City of San Jose is illustrative. *See e.g.*, City of San Jose, *Envision San Jose 2040 General Plan* Chapter 5 at 9, http://www.sanjoseca.gov/DocumentCenter/View/474 (prescribing use districts, density and Floor Area Ratio (FAR) ranges, and height limits).

a Specific Plan may be very general in some cities—and in other instances it may closely regulate development. To complicate things even more, California treats charter cities and general law cities differently on the issue of whether the city's zoning ordinances must be consistent with the city's General Plan.[32] This sometimes results in inconsistency between a charter city's zoning and its General Plan, or more specifically, the continued presence of outdated zoning ordinances even as the city's policy on specific types of development changes.[33]

State law also grants California cities substantial latitude in how they approve residential development within the framework of the relevant plans and zoning ordinances. We group the land use tools into four general categories. First, cities can allow for an objective ministerial process (or "by-right" process) when proposed development conforms to the underlying base zoning district's use and density requirements.[34] Cities can also impose requirements for subjective discretionary review for categories of projects that are still built within the framework of the zoning ordinance—in other words, the zoning ordinance itself contemplates that at least some property owners would propose these projects, but they must meet a certain set of conditions to obtain one of these types of permits. Examples include conditional use permits or specific plan permits.[35] Cities also impose discretionary review when the proposed project would not comply with the

32. Zoning ordinances within general law cities must be consistent with the general plan, but these same consistency requirements do not apply to charter cities unless the city's charter requires consistency with the general plan. *See* CAL. GOV'T. CODE §§ 65803; 65860(d). Charter cities within California enjoy freedom to legislate at the local level over "municipal affairs" even if a conflict with State law may exist under Article XI, section 5 of the California Constitution. This directly impacts zoning in California charter cities. Although the California Constitution does not expressly define "municipal affair," land use and zoning are consistently classified as exempt from the planning and zoning provisions of the California Government Code, unless the city's charter indicates otherwise. *See* City of Irvine v. Irvine Citizens Against Overdevelopment, 30 Cal. Rptr. 2d 797, 799–800 (Ct. App. 1994). But the provisions of a general plan within every city must be internally consistent. *See* CAL. GOV'T. CODE §§ 65302, 65300.5.

33. The City of San Jose is illustrative. Of the forty-six rezonings in the City of San Jose, fifteen involved wholesale changes in use district—for example from Light Industrial to a residential designation—and many others involved more intensive escalations in residential density. Only one of these fifteen rezonings required a General Plan Amendment; only three of the remaining thirty-one rezonings required a General Plan Amendment. The fact that General Plan Amendments were not necessary shows that the General Plan permitted the desired use and intensity of the development. This suggests that the base zoning in some locations had not been updated after the most recent General Plan enactment.

34. Ministerial approvals are approvals in which a government agency simply applies law to fact without using subjective judgment. In Friends of Westwood Inc. v. City of Los Angeles, 235 Cal. Rptr. 788, 793 (Ct. App. 1987), the Court of Appeal held that "the touchstone" of the discretionary-ministerial distinction "is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report."

35. *See e.g.*, S.F. MUNI. CODE § 329 (describing Large Project Authorizations for Eastern Neighborhoods Plan Area); S.F. MUNI. CODE § 303 (describing Conditional Use Authorization requirements applicable across all zones); REDWOOD CITY MUNI. CODE § 47.1–47.5 (describing Planned Community permits for areas with a Precise Plan in place).

applicable zoning ordinance; this includes when the developer is seeking an exemption from the zoning ordinance (variance) or asking the city to zone the project site differently (rezoning), or to change or update the General Plan to allow for the proposed project.

Finally, cities in California can also impose discretionary review even when a proposed project is consistent with the underlying base zoning district's use and development controls; in other words, cities can provide for development standards (including density and use), while also imposing aesthetic controls that may impose discretionary review that is particularly subjective in nature.[36] Examples of this include design review, architectural review, site development review, and historical preservation review/certificate of appropriateness.[37]

Another important feature within local law relevant to infill development is the regulation of subdivision, or the process of dividing land into two or more parcels for the purpose of sale, lease, or financing.[38] Subdivision can be horizontal—dividing a single parcel of land into two or more units—or vertical—dividing the airspace above the land into two or more units.[39] Also important for infill development within central cities are Development Agreements, which allow for cities to enter into agreements with developers through a local legislative act that "freezes" the applicable land use regulations (including zoning) for the property to protect the developer from any adverse impacts imposed by changes to the development standards during the development process.[40] Development Agreements are relevant to large phased development projects.

36. *See* BRIAN BLAESSER, DISCRETIONARY LAND USE CONTROLS: AVOIDING INVITATIONS TO ABUSE OF DISCRETION xix, xx, 11 (6th ed. 2003) (noting that many of the discretionary provisions involve "community character" components that are highly subjective, that design codes increasingly involve subjective standards that "emphasize flexibility over precision" and that "[a]rchitectural design review ordinances provide some of the worst examples of vague statements of purpose and overbroad standards that invite abuse. Such ordinances frequently lack sufficiently clear standards and vest too much subjective decision making in the architectural review board officials.").

37. For design review-related provisions, *see* REDWOOD CITY MUNI. CODE § 45.2(A); PALO ALTO MUNI. CODE § 18.76.020(b)(2)(D); OAKLAND MUNI. CODE §§ 17.136.040(3)-(4). For a historic preservation-related provision, *see* S.F. MUNI. CODE § 1006. For site development review, see SAN JOSE MUNI. CODE § 20.100.010.

38. *See* CAL. GOV'T CODE § 66424.

39. The California Subdivision Map Act regulates the design and improvement of subdivision; however, local governments control these design and improvements through the enactment of a local subdivision ordinance. *Id.* § 66411. The process begins when a developer seeking to create five or more units of land files a Tentative Map application. *Id.* § 66428(b). After the approval of the Tentative Map, the developer must comply with any imposed conditions before filing for Final Map approval. *Id.* § 66457. For the purposes of the California Environmental Quality Act (*see* discussion *infra* Section I.A.2), the Tentative Map is the discretionary trigger—Final Maps are not typically discretionary actions. *Id.* § 66474.1. For this reason, we have tracked Tentative Map approvals, not Final Map approvals. State and local law also governs the consolidation or merger of lots into a single lot, termed a lot line adjustment. *Id.* § 66412(d). Certain lot line adjustments do not require tentative maps. *Id.* § 66412(d).

40. *See* CAL. GOV'T. CODE § 65867. For a general description, *see* KARL E. GEIER & SEAN R. MARCINIAK, MILLER AND STARR CALIFORNIA REAL ESTATE § 21:29 (4th ed. 2015).

2. Environmental review under the California Environmental Quality Act

Modeled after the National Environmental Policy Act ("NEPA"), CEQA combines mandatory information disclosure with public participation to "open[] government decision-making to public scrutiny."[41] CEQA is "[o]ne of California's most cherished institutions and one of its most controversial."[42] CEQA's focus is on government projects and approvals that produce significant environmental impacts.[43]

a. Local governments often determine CEQA's applicability

CEQA applies to any residential development project that requires a public agency's discretionary approval.[44] In the context of urban land development, the lead public agency is usually the local Planning Department[45] and with some exceptions, it is the lead agency that determines whether the required approval is discretionary or ministerial.[46] Though building permits are presumptively ministerial (or "by right"), local agencies can specify otherwise in their laws.[47] Conditional or special use permits, variances, Development Agreements, subdivision maps, or zoning changes are typically discretionary approvals[48] because Planning Departments are not legally obligated to grant these types of

41. Bradley C. Karkkainen, *Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance*, 102 COLUM. L. REV. 903, 913 (2002).

42. *See* JOHN LANDIS, ROLF PENDALL, ROBERT OLSHANSKY & WILLIAM HUANG, FIXING CEQA: OPTIONS AND OPPORTUNITIES FOR REFORMING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT 1 (Cal. Pol'y Seminar ed., 1995).

43. CAL. PUB. RES. CODE § 21002.

44. CAL. PUB. RES. CODE § 21080.

45. State law requires each city and county to have a planning agency—either an administrative body or a commission—to carry out the state planning laws, which include General Plan laws discussed in this Part. *See* CAL. GOV'T. CODE §§ 65100, 65101. Planning agencies generally enforce the local zoning code and make land use determinations. *See* MILLER & STARR, 7 CAL. REAL EST. § 21:1 (4th ed., 2015).

46. *See* CEQA GUIDELINES § 15369 (2016) (codified at 14 C.C.R. § 15369 (2016)). "CEQA Guidelines" refers to Title 14 of the California Code of Regulations, which implement PUB. RES. CODE § 21080 et seq. *See Friends of Westwood Inc.*, 235 Cal. Rptr. at 793 (finding building permits to be presumptively ministerial).

47. *See* CEQA GUIDELINES § 15268(b). San Francisco is one city that makes building permits discretionary through their charter. *See* discussion *infra* Section IV.

48. *See* CAL. GOV'T CODE § 65583.2 ("the phrase 'use by right' shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a 'project' for purposes of [CEQA]"). Another example is provided through the state law that requires that Development Agreements be adopted by a local legislative act, preventing them from being ministerial approvals. *See supra* note 33.

approvals; instead, they use discretionary judgment to evaluate the project based on subjective criteria.[49]

Discretionary projects may still be exempt from CEQA. The legislature has carved out statutory exemptions in the Public Resources Code, and thirty-three categorical exemptions have been developed in the California Code of Regulations, which are more commonly referred to as the CEQA Guidelines.[50] In this article, we focus on the exemptions most relevant to infill development. For example, a lead agency can use the Class 32 infill exemption for infill development; if an urban infill project satisfies five conditions, it can bypass CEQA review.[51] Other common forms of exemptions are the Class 3 exemption for new construction or conversion of small structures and the Class 1 exemption for existing facilities.[52]

Tiering is a way to streamline environmental review under CEQA by allowing environmental review of a proposed project to focus on a narrow set of issues that have not already been evaluated in a prior Environmental Impact Report ("EIR"). If all the issues have been evaluated in a previous EIR, then no further study is necessary. Tiering necessarily requires a prior environmental review document (generally an EIR) that is usually connected to a prior and large-scale planning approval; however, the source of the document can vary. A Community Plan Exemption, for example, is a tiering-based exemption available to projects consistent with a community plan, general plan, or zoning.[53] Another form of tiering is the Program EIR, which can exempt future development activity from environmental review, provided that no underlying conditions have changed.[54] An EIR Addendum is commonly used for projects that will be built out in phases under a master plan and master EIR where the underlying conditions of approval have not changed.[55] If some of these conditions have changed, then the lead agency can prepare a Supplemental EIR, which only needs to contain information necessary to make the original EIR adequate.[56]

49. *See* CEQA GUIDELINES §15357.

50. *Id.* §§ 15300–15333.

51. *Id.* § 15332. These factors are: (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; (2) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (3) the project site has no value, as habitat for endangered, rare or threatened species; (4) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (5) the site can be adequately served by all required utilities and public services.

52. *See id.* §§ 15303, 15301.

53. *See* CEQA GUIDELINES § 15183.

54. *See id.* § 15168.

55. *See id.* § 15162.

56. *See id.* § 15163.

Figure 1: Types of Environmental Review

Project-Based Exemption	Tiering-Based Exemption	(Mitigated) Negative Declaration	Environmental Impact Report
Exemptions based on location and project characteristics	Exemptions or reduced review because there has been prior CEQA review	Reduced review requirements because of the minimal environmental impacts of the project	Full review requirements pursuant to CEQA
§ 15332 Infill Housing	§ 15183 Community Plan Exemptions	§ 21064 Negative Declaration	§ 21061 EIR
§ 15303 New Construction of Small Structures	§ 15164 EIR Addendum or § 15168 Program EIR	§ 21064.5 Mitigated Negative Declaration	

b. The disclosure requirements under CEQA

For projects that are not categorically exempt or exempt based on prior EIR analysis, the lead agency conducts an Initial Study[57] to assess whether the project will have a significant effect on the environment. If not, the agency issues a Negative Declaration ("ND").[58] If the project will have a significant effect on the environment, but the developer can incorporate mitigations that reduce their significance, then the agency issues a Mitigated Negative Declaration ("MND").[59] A lead agency must prepare an EIR where there is substantial evidence that the project will have a significant effect on the environment[60] and where it is not clear from the Initial Study that these impacts can be mitigated below a significance threshold.[61]

An important debate in the context of CEQA implementation is over the merits of project-specific CEQA review (which focuses on individual projects) and plan- or program-level CEQA review (e.g., review focused on Specific Plans, neighborhoods, or city-wide programs). One issue is the effectiveness of project-specific review. On the one hand, CEQA's information mandate when applied at the project level can force agencies to "identify and confront the environmental consequences of their actions" in that particular project.[62] CEQA's procedural

57. *See* CEQA GUIDELINES § 15063(a).
58. *Id.* § 15070(a).
59. *Id.* § 15070(b)(2).
60. *Id.* § 15063(b)(1), § 15060 (indicating a project may also bypass the Initial Study to proceed directly to the EIR).
61. *See* CAL. PUB. RES. CODE § 21064.5; CEQA GUIDELINES § 15070.
62. Karkkainen, *supra* note 41, at 904.

requirements can enable cost-effective mitigation, because agencies can take into account "the site-specific circumstances" of the project "in a flexible manner" and propose feasible mitigations in a way that applying blanket regulations would not.[63] CEQA also operates to mitigate project-specific environmental problems where there are lapses in regulation because its procedural framework is sufficiently flexible to mitigate environmental problems that other, more general laws are slower to address.[64] A project-specific EIR, however, cannot inform a long-term perspective or mitigate the regional and cumulative effects of development that are better suited to the general plan process.[65]

The other issue relates to cost. As noted above, plan or program-level EIRs can generally reduce the costs of subsequent CEQA review through tiering: prior research has found the differences between a Categorical Exemption, MND, and EIR, in time and cost, can be great.[66] Therefore, tiering that allows project-level review to occur at the MND or Categorical Exemption level can reduce project-level costs substantially. However, cities generally pay the costs of plan- or program-level CEQA review, while developers pay for the costs of project-specific CEQA related documents and studies.[67] For cash-strapped jurisdictions, particularly in the wake of Proposition 13, which reduces the amount of property taxes that stay within local jurisdictions,[68] the project-specific EIR presents a more economically feasible way of considering environmental effects than an update to

63. ELISA BARBOUR & MICHAEL TEITZ, CEQA REFORM: ISSUES AND OPTIONS 4 (Pub. Pol'y Inst. of Cal. ed., 2005) (emphasis omitted).

64. *See id.* for a further discussion of how CEQA fills these regulatory gaps; Giulia Gualco-Nelson, *Reversing Course in California: Moving CEQA Forward*, 44 ECOL. L. Q. 155, 164 (2017).

65. *See* Robert Olshansky, *The California Environmental Quality Act and Local Planning*, 62 J. AM. PLAN. ASS'N. 313, 317 (1996). EIRs are very effective tools to analyze project-specific impacts but many environmental effects are cumulative in that they are not traceable to a single project. Traffic, for example, is a regional issue stemming from historic patterns of land use and disinvestment in public transportation. Unfortunately, instead of promoting long-term planning, CEQA often "burden[s] a single project with all of a region's problems"—a nearly impossible undertaking. *Id.*

66. *See* Kenneth Bley, *Beware of Planners Bearing Gifts*, COX CASTLE NICHOLSON (Jan. 20, 2015), https://perma.cc/HD4K-MDNH (noting that "[p]reparing an MND . . . also requires significant time and money, although, in the short run, less than an EIR). Substantively, EIRs must contain more detail and studies than an MND. EIRs require (1) detailed information about the proposed project's significant effects on the environment; (2) ways in which the significant effects of such a project might be minimized; and (3) alternatives to the project. *See* CAL. PUB. RES. CODE § 21061. However, in long the run, as Bley notes, if there are legal challenges, MNDs might end up costing more because they are potentially less defensible in court. *See* Bley, *supra* note 66 (discussing the standards of review for an MND and EIR).

67. *See* Olshansky, *supra* note 65, at 319-20.

68. Passed as a voter initiative in 1978, Proposition 13 is an amendment to the California Constitution that froze property tax values at 1976 assessed value levels and fixed tax increases at a maximum of two percent per annum. CAL. CONST. art. XIIIA, §§ 1(a), 2(a). This has led to a sharp decline in the revenue local governments receive from property tax revenue. *See* LEGISLATIVE ANALYST'S OFFICE, COMMON CLAIMS ABOUT PROPOSITION 13 at 2 (2016).

the General Plan because it effectively shifts the costs of CEQA compliance to individual developers.[69] The cost of a project-specific EIR, for example, is significantly lower than the cost of a General Plan update (typically financed from the city's general fund), and the project applicant bears most of the cost.[70]

Critics have also attacked the way agencies unpredictably apply CEQA both within the same jurisdiction and across the state, an inconsistency that critics say increases not only the time and money spent on CEQA review, but also the risk of litigation.[71] And some critics question whether or not CEQA actually leads to meaningful mitigation of harm.[72] Because CEQA leaves implementation entirely to local control, agencies can weigh environmental harms and social or economic benefits differently.[73]

c. The public participation requirements of CEQA

Public participation is the democratic cornerstone of CEQA. CEQA has strict notice provisions that enable the public to participate in every major phase of environmental review. The notice requirements are demanding for an EIR. Immediately after determining that an EIR is necessary, the lead agency must issue a Notice of Preparation.[74] After posting this notice, the agency begins work on the Draft EIR. The agency must then notice and post the Draft EIR for public review for at least thirty days.[75] During this period, the public submits comments about the agency's findings. The lead agency must review and prepare a written response to all comments received during this period.[76] The agency incorporates these responses into the Final EIR and then recirculates it to the public.[77] Within five days of certifying the Final EIR, the agency will file a public Notice of Determination ("NOD") with the county clerk.[78]

The Office of Natural Resources promulgates CEQA guidelines for implementation, but no state agency substantively oversees CEQA.[79] Citizen suits are the sole enforcement mechanism to ensure a lead agency's compliance. NODs trigger the statute of limitations to bring suit,[80] and CEQA lawsuits are easy to file. Filing fees are relatively inexpensive, and courts limit proceedings to the administrative record, which obviates the need for a lengthy discovery process.[81]

69. *See* Olshansky, *supra* note 65, at 320.
70. *Id.* at 319–20. In 1996, the average cost of an EIR was $38,214. The average cost of a General Plan was $208,000.
71. *See* BARBOUR & TEITZ, *supra* note 63, at 15.
72. *Id.* at 25.
73. *Id.*
74. CEQA GUIDELINES § 15082.
75. *Id.* § 15105.
76. *Id.* § 15088.
77. *Id.* §§ 15088, 15132.
78. *Id.* § 21152(a).
79. CAL. PUB. RES. CODE § 21083.
80. *Id.* at § 21167.
81. *See* KOSTKA, *supra* note 19, § 23.48 (discussing admissibility of extra-record evidence).

CEQA also allows plaintiffs to easily satisfy standing requirements.[82] The ease of CEQA litigation has been a source of significant criticism of the statute, with critics arguing that it increases uncertainty and costs for developers.[83]

B. What prior research has told us about the impact of California's land use regulations on housing supply and spatial equality

Meeting California's statewide goals to reduce GHG emissions requires equitable infill development. Housing development properly focused in infill TOD areas may significantly reduce emissions in part by increasing transit usage[84] and reducing vehicle miles traveled.[85] The state legislature has recognized that meeting GHG reduction targets through increased transit use requires the adoption of sustainable, integrated regional transportation and community planning strategies.[86] Research suggests, however, that law promoting sustainable urban development without an equity focus may lead to "environmental gentrification"[87] and may directly undermine intended policy goals of reducing GHG emissions.[88]

82. In Save the Plastic Bag Coalition v. City of Manhattan Beach, the California Supreme Court refused to apply the federal "zone of interests" test for CEQA litigation. 254 P.3d 1005, 1012–13 (Cal. 2011). Limiting standing under CEQA has been proposed as a way to reduce the proliferation of CEQA litigation. *See* Eric Biber, *Could Standing Save CEQA?* LEGAL PLANET (Apr. 9, 2012), https://perma.cc/7CHE-HKR3.

83. *See* BARBOUR & TEITZ, *supra* note 63, at iii.

84. NATHANIEL DECKER, CAROL GALANTE, KAREN CHAPPLE & AMY MARTIN, RIGHT TYPE, RIGHT PLACE: ASSESSING THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF INFILL RESIDENTIAL DEVELOPMENT THROUGH 2030 11–12 (Next 10 ed., 2017).

85. Arefeh Nasri & Lei Zhang, *The Analysis of Transit-Oriented Development (TOD) in Washington, DC and Baltimore Metropolitan Areas*, 32 TRANSPORT POL'Y 172, 179 (2014).

86. CAL. GOV'T CODE § 65400.

87. *See, e.g.*, MALO HUTSON, THE URBAN STRUGGLE FOR ECONOMIC, ENVIRONMENTAL AND SOCIAL JUSTICE: DEEPENING THEIR ROOTS 20 (Routledge ed., 2016) (citing Melissa Checker, *Wiped Out by the "Greenwave": Environmental Gentrification and the Paradoxical Politics of Urban Sustainability*, 23 CITY & SOC'Y 210, 210 (2011) ("While it appears as politically-neutral, consensus-based planning that is both ecologically and socially sensitive, in practice, environmental gentrification subordinates equity to profit-minded development")); Hamil Pearsall, *Moving out or Moving in? Resilience to Environmental Gentrification*, 17 LOC. ENV'T 1013, 1013 (2012) ("Sustainability initiatives and environmental improvements that lack adequate attention to the social justice dimension of environmental change produce environmental gentrification").

88. Notably, the characteristics of ridership also suggest that if low-income communities that have historically lived in central city neighborhoods and used transit at the highest rates are displaced from central cities, TOD investment may not achieve its intended policy goals. *See* Robert Cervero, *Transit-Oriented Development's Ridership Bonus: A Product of Self-Selection and Public Policies*, 39 ENV'T & PLAN. 2068, 2083–84 (2007). The decline of transit ridership in Los Angeles, despite new investments in public transportation and upzoning around these stations, is an acute example of this issue. *See* MICHAEL MANVILLE ET AL., FALLING TRANSIT RIDERSHIP: CALIFORNIA AND SOUTHERN CALIFORNIA (S. Cal. Ass'n of Gov'ts ed., 2018). Also, the LAO reported that low-income

Multiple studies examine the relationship between land use regulation and its specific impacts on housing supply and housing costs as well as its impacts on spatial equality. We thus discuss and summarize the findings and methods of two research areas: (1) studies that explore the relationship of land use regulation on housing supply and costs (indirect or direct impact on housing costs), and (2) studies that explore the relationship of land use regulation on spatial equality (indirect or direct impact on segregation/exclusion).[89] Our summary identifies the key conclusions of that literature, and how the current methodological approaches of that literature limit the ability to either generalize from the study findings or identify specific policy solutions.

1. Understanding land use regulation as a constraint on supply

California's home prices and rents are higher than anywhere else in the country; home prices are 2.5 times the national average and rents are fifty percent higher.[90] Using basic supply and demand economics, urban economists posit that a sharp decline in supply beginning in the 1970s has led to the affordability crises in many of the nation's coastal cities, like those in California, where the labor market is strong and demand for housing is high.[91] Building on the work of William Fischel—who coined the term "homevoter hypothesis" to describe a home owner's

families that work within coastal communities, but cannot afford housing near their work, commute ten percent farther than commuters elsewhere and concluded that high housing costs that result in longer commutes risk undermining the goals of recent legislation intended to address climate change. *See* LAO REPORT, *supra* note 5, at 3.

89. We focus here only on research that directly touches on the debates over housing costs and regulation in California. The relevant literature that engages with the impact of land use regulation (defined broadly to encompass both local land use regulations and state law) on both housing costs and spatial equality is large. For a comprehensive literature review that focuses on an econometric analysis of land use regulation *see* generally, Joseph Gyourko & Raven Molloy, *Regulation and Housing Supply* (Nat'l Bureau of Econ. Research Working Paper No. 20536, 2014). For a summary of studies and writing on how stringency within land use regulation impacts supply, *see* Vicki Been, *City NIMBYs*, 33 J. LAND USE & ENVTL. L. 217, 223 n.24 (2018). For a review of the literature that engages public investment (related to land use) and gentrification and displacement, *see* Miriam Zuk et. al, *Gentrification, Displacement and the Role of Public Investment: A Literature Review*, URBAN DISPLACEMENT (Mar. 3, 2015), https://perma.cc/QER4-XC2H.

90. *See* LAO REPORT, *supra* note 5, at 3.

91. *See* LAO REPORT, *supra* note 5, at 7 ("Beginning in about 1970, however, home prices throughout the state began to accelerate. Prices were eighty percent above U.S. levels by 1980, and by 2010, the typical California home was twice as expensive as the typical U.S. home"); *see also* Edward L. Glaeser, Joseph Gyourko & Raven Saks, *Why is Manhattan So Expensive? Regulation and the Rise in Housing Prices*, 48 J. L. & ECON. 331, 337 (2005) (beginning in the 1970s, the U.S. experienced a sharp decline in the supply of housing nationwide). Other studies have found a sharp decline in building permits beginning in the 1990s. *See* CAL. DEPT. HOUSING & CMTY. DEV., CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES 6 (2018).

inherent motivation to maximize the value of their property[92]— much urban economics research attributes the change in housing production to the rise of "historical preservationists in New York City [and] conservationists in California. . . ."[93] In this literature, supply constraints are the primary cost of land use regulation. These studies reach this result by measuring the gap between the physical costs of producing the housing unit and the sales price for the housing unit.[94] If the gap between production costs and sales price is narrow, the market is efficient and affordable; where the gap between sale price and production costs is wider, housing is unaffordable. Large disparities between price and production cost are generally understood as indirect evidence of the costs of land use regulation.[95] Because of the difficulty of measuring the impact of particular land use policies, [96] urban economists use proxies such as declining permitting levels, declining heights and densities, and increasing sale prices, which together provide indirect evidence for a "regulatory tax."[97]

In 2002 Glaeser and Gyourko found that generally home sale prices are within forty percent of hard construction costs nationwide, but California's housing prices were substantially higher than construction costs.[98] They concluded the gap between hard costs and sale price is not a function of higher land costs,[99] and found that stringent land use regulation which imposes longer than average[100] lag times between permit application and approval creates an "implicit zoning tax."[101] However, for our purposes a key limitation of this research is that it is unable to isolate which land use regulations might impose the lag time in development.[102]

92. WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS 5 (Harvard Univ. Press ed., 2001); William A. Fischel, *A Property Rights Approach to Municipal Zoning*, 54 LAND ECON. 64, 68 (1978).

93. Edward L. Glaeser & Joseph Gyourko, *The Economic Implications of Housing Supply* 3 (Zell/Lurie, Working Paper No. 802, 2017).

94. *See id.* at 5; Glaeser, Gyourko & Saks, *supra* note 91, at 336.

95. Glaeser, Gyourko & Saks, *supra* note 91, at 336.

96. *Id.* at 333.

97. *Id.* at 335.

98. Glaeser & Gyourko, *supra* note 14, at 21.

99. *Id.* at 17. Because the cost of a house on a 10,000 square foot lot versus an identical house on a 15,000 square foot lot is close in value, if high land values were a real driver of cost, the house on the larger lot would be worth more. But high prices were not associated with higher densities. A classic free market land model would suggest that densities would increase as land becomes more expensive due to an exogenous scarcity, but in California the researchers found that high cost areas were associated with lower not higher densities. One notable caveat to this study is that the authors only use data from single-family home sales and exclude all multifamily, cooperative or condominium sales. Thus, their approximation of "density" will likely skew lower. More expensive, but comparatively less dense, housing presents indirect evidence of stringent land use regulation

100. Defined as six months based on the underlying survey. *Id.* at 19–20.

101. *See* Glaeser & Gyourko, *supra* note 14, at 17. Glaeser & Gyourko derive this data from the 1989 Wharton Land Use Control Survey, a precursor to the Wharton Residential Land Use Regulatory Index ("WRLURI"). *See* discussion *infra* Section I.B.1(a).

102. These studies also employ national averages to describe very local issues. For example, some studies use RS Means Construction data for hard construction costs, which

a. Exploring stringency and constraints on housing supply through national surveys

In an effort to understand how regulations might shape housing costs, in the 2000's two groups of researchers completed two national surveys that both contributed to the analysis of the financial cost of land use regulation and produced

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reflects national averages of construction costs per square foot rather than actual costs. To adjust these national averages for certain metro regions, RS Means inflates them by a set percentage. This inflation, however, does not consider higher than average labor cost or equipment costs in a particular location. Building in expensive metro areas is spatially constrained and requires higher costs for staging, storage, and transportation. *See About RSMeans Data*, RSMEANS DATA (Oct. 23, 2018, 4:00 PM), https://perma.cc/A37F-2ANS. Labor markets also tend to be stronger in high cost areas, which increases construction costs. According to the California Legislative Analyst's 2015 report, these factors heavily influence the cost of housing construction in California. *See* LAO REPORT, *supra* note 5, at 14. Also, a recent McKinsey study suggests that low construction productivity is a major driver of construction costs and time delays. FILIPE BARBOSA ET AL., REINVENTING CONSTRUCTION: A ROUTE TO HIGHER PRODUCTIVITY 2–3 (McKinsey Global Inst. ed., 2017). (noting that in its sample "over the past ten years less than one-quarter of construction firms have matched the productivity growth achieved in the overall economies in which they work, and there is a long tail of usually smaller players with very poor productivity. Many construction projects suffer from overruns in cost and time.").

In addition, while the studies assume efficient market conditions, in reality, home sale prices include all the transaction costs that the developer needs to recoup, such as the cost of financing (carrying capital, lender origination fees, issuance fees, insurance), investor ROI (which is typically higher in high cost metro areas), legal fees, taxes, and developer and contractor profit. *See, e.g.*, Memorandum from Keyser Marston Assoc., to Pleasant Hill BART Station Leasing Auth., (Nov. 12, 2014) http://www.co.contra-costa.ca.us/DocumentCenter/View/34410/Condominium-Feasibility-Study (describing a developer's pro forma feasibility analysis for condominiums adjacent to the Pleasant Hill BART station: "The output of the pro forma is the average condo sale price required for project feasibility. The pro forma estimates the costs to build the project including land acquisition, direct construction costs, and indirect and financing costs." These costs must be recouped for the project to be feasible.)

Though land use regulation can certainly increase these costs by prolonging the approvals process, many of these costs exist independent of land use regulation.

In 2005, Glaeser, Gyourko, and Saks made a better case for the regulatory tax formula as applied to the housing market in Manhattan. In Manhattan, where most people live in dense multifamily structures, the cost of adding an additional floor of units is the marginal cost of building up rather than the cost of purchasing additional land. This implies that choosing to add an additional floor would be a function of regulatory approvals rather than the availability of land. The study found that buildings today are on average shorter than they were from the beginning of the century to the 1970s. Moreover, the ratio of sales price to construction costs fluctuated between 1.5 and 1.7 throughout the 1980s and 1990s. This suggests that regulation prevents developers from maximizing density, which would tie the sale price to construction cost. The authors also suggest that the regulatory tax is not solely a product of laws on the books, but rather how these laws are applied and supplemented their data with case studies of wealthy New York constituents that organized to block a 17-story apartment building on the Upper East Side. Though the underlying zoning actually permitted the 17-story height, the wealthy neighborhood constituents used landmark preservation law to reduce the building height to nine stories. *See* Glaeser, Gyourko & Saks, *supra* note 91, at 334.

important datasets that other researchers would rely on.[103] In 2006 Pendall, Puentes, and Martin published the results of their survey of land use in 1,844 jurisdictions from the fifty largest metropolitan areas. The survey asked planning staff about their perceptions of the jurisdiction's use of zoning, comprehensive planning, growth containment measures, impact fees, building permit caps, or affordable housing incentives, and for perceptions of regulation (more or less) from the 1970s to 1990s.[104] The team then coded these results to create "regulatory clusters" (groups of jurisdictions with similar land use typologies) on a spectrum—traditional (typically the most exclusionary), reform, and deregulated jurisdictions.[105] To gauge the level of exclusionary land use regulation, the survey asked whether a jurisdiction would allow construction by right or by special permit of a forty-unit two-story apartment building sitting on five acres.[106]

In terms of permissive zoning, the most exclusionary jurisdictions were in the Northeast, whereas San Francisco, San Diego, Seattle, and other western metro areas were the least exclusionary.[107] At that time, nearly two-thirds of the Western metro regions surveyed had affordable housing incentive programs and nearly half had dedicated affordable housing funds.[108] Although zoning in Western metro regions might have been the most permissive in terms of density and variety of housing stock (in some cases even rivaling New York), these western jurisdictions used other regulatory tools—like urban growth containment measures, impact fees, and permit caps—that made it more expensive and difficult to develop housing.[109]

Pendall's 2006 study does not explain how affordable housing incentives can modify an underlying exclusionary land use system (for example, by exempting affordable housing from certain impact fees), but the study results suggest that some metro regions, though ostensibly committed to constructing affordable housing, are actually employing regulatory tools that decrease supply, or that there could be a mismatch between means and ends. Housing prices were highest in "reform" jurisdictions that have permissive underlying zoning but employ a variety of land use tools that include growth control (e.g., San Francisco and Denver).[110] And housing costs in these areas are higher than in the North East where traditional exclusionary zoning is employed.[111]

103. *See, e.g.*, Rothwell & Massey *infra* FN 196.

104. Rolf Pendall, Robert Puentes & Jonathan Martin, *From Traditional to Reformed: A Review of the Land Use Regulations in the Nation's 50 Largest Metropolitan Areas*, THE BROOKINGS INSTITUTION 7–8 (2006), https://perma.cc/3CKU-PZAK. The survey tool is also available at https://perma.cc/VG98-SWAM.

105. *Id.* at 19.

106. *Id.* at 7.

107. *Id.* at 13.

108. Since the time of the Pendall study, California has dissolved its Redevelopment Agencies—a primary source of affordable housing funding, which has negatively impacted many of these funds. *See* discussion *infra* Section III.

109. *See id.* at 14 (containment), 17 (impact fees), 19 (permit caps).

110. *Id.* at 31.

111. *Id.* at 30. Unsurprisingly Houston and Dallas-San Antonio, which the study considered nearly unregulated with the exception of impact fees, had the lowest housing

The Pendall study does not examine whether the jurisdiction requires environmental review, which in California impacts the type of housing that can be built regardless of the underlying zoning controls. Because of the national scope, the study also did not focus on how land use regulations are applied. For example, Pendall notes that San Francisco has permit caps, but fails to note that they apply only to certain commercial developments and not residential or mixed-use properties.[112] These issues are likely applicable to other jurisdictions as well.

At around the same time as the Pendall survey, Gyourko, Saiz, and Summers conducted another major national survey of land use practices to build the Wharton Residential Land Use Regulatory Index ("WRLURI") with the aim of determining the "average" degree of land use regulation in the nation by focusing on process and outcomes, rather than just the presence of regulatory constraints.[113] The WRULRI distributed a fifteen-question survey to planning officials in 2,649 jurisdictions.[114] Participants ranked their perception of the importance of certain factors that influence local government decisions on how to regulate the rate of residential development on a 1-5 scale.[115] They also ranked the involvement of certain organizations—including local councils, communities, state legislature, and local courts—in the land use regulation process. The survey asked respondents to (a) identify how much the cost of land development has increased in the last ten years as well as the average length of the entitlement process as compared to ten years ago; (b) provide the number of board and commission approvals required to approve projects with zoning changes versus projects without zoning changes; (c) identify whether the community has permit caps, minimum lot size requirements, and open space or affordable housing or infrastructure exactions; and (d) identify the number of applications for zoning changes filed and approved in the last year. To assess each state legislature's involvement in the planning process and the involvement of the state courts, Gyourko, Saiz, and Summers used Foster and Summers's fifty state survey[116] that determined the features typical of judicial

prices. While Pendall 2006 notes that housing prices were once low in Austin, the study notes that the growth of the high-tech sector has increased housing costs above Houston and San Antonio. Housing prices aside, reform jurisdictions and Texas had more in common in terms of social demographics. Both have higher concentration of college graduates in their central city than in their suburbs. Low-income people and people of color were dispersed more evenly throughout the suburbs in reform areas and Texas, whereas they are primarily concentrated in the central city in traditional jurisdictions.

112. *See, e.g.*, S.F. Planning Dep't, *Office Development Annual Limitation Program*, (Oct. 23, 2018, 4:00 PM), https://perma.cc/DN94-CDKW. In 1985, San Francisco enacted the Annual Office Limit Program which caps the annual permitting of office space on a square foot basis; this square footage limitation does not apply to residential housing.

113. Joseph Gyourko, Albert Saiz & Anita Summers, *A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index*, 45 URB. STUD. 693, 694 (2008).

114. *Id.* at 696.

115. *Id.* at 719–21. Some of these factors included supply of land, cost of new infrastructure, density restrictions, impact fees, opposition to growth, and school crowding.

116. *See* DAVID FOSTER & ANITA SUMMERS, CURRENT STATE LEGISLATIVE AND JUDICIAL PROFILES ON LAND-USE REGULATIONS IN THE US 3–8 (2007) (surveying land use laws—such as legal standards for exactions—in all 50 states).

review for exactions, fair share development requirements, building moratoria, and spot zoning.[117] They also used data on ballot box planning measures from a database that tracks initiatives nationwide.[118] The authors then created an index of eleven land use stringency indicators: local political pressure, state political involvement, state court involvement, local zoning approval (includes environmental review), local project approval, local assembly (democracy), supply restrictions, density restrictions, open space, exactions, and approval delay.[119]

The WRLURI's stringency index provided policymakers a general assessment and comparative analysis of whether a jurisdiction's land use system is more or less "stringent" and whether it imposes more lag time to approvals. In the least regulated community nationally, density restrictions were relatively permissive, open space requirements were unlikely to be imposed, and the lag time between application and issuance of a building permit was approximately three months.[120] The average community required two levels of approvals to grant a zoning change and at least one approval for a project without a zoning change, but did not put project approvals to a popular vote by the community, and minimum lot sizes, open space, and exactions were not onerous.[121] The typical lag between application and permit issuance was six months.[122] The most stringently regulated communities required a local popular vote to approve a project and one more level of approval for a project even without a zoning change; density restrictions and high minimum lot sizes were also more prevalent.[123] The average approval timeline in stringently regulated communities was 10.5 months.[124] Stringently regulated communities tended to have high stringency values for all the land use indicators.[125] Stringency was also strongly correlated with community wealth.[126] Interestingly, regulations were highly variable even within the same state, highlighting the ubiquity of local rather than state control.[127]

117. Gyourko, Saiz & Summers, *supra* note 113, at 701. *See also* FOSTER & SUMMERS, *supra* note 116, at 3. The Foster and Summers 50 state survey ranked states on a scale of 1 to 3; states that scored a 1 gave little deference to local municipalities; states that scored a 3 nearly always defer to the municipality. The number of cases consulted per state ranges from one in Alaska to a high of fifteen in California. Foster & Summers also used information on new legislative enactments and governor's actions to rank the state legislative involvement on the same scale.

118. Gyourko, Saiz & Summers, *supra* note 113, at 698 (citing TRUST FOR THE PUBLIC LAND, LANDVOTE DATABASE, https://tpl.quickbase.com/db/bbqna2qct?a=dbpage&pageID=10 (last visited Oct. 24, 2018)).

119. Gyourko, Saiz & Summers, *supra* note 113, at 698–701.

120. Gyourko, Saiz & Summers, *supra* note 113, at 709, 714.

121. *Id.* at 707.

122. *Id.* at 708.

123. *Id.* at 708.

124. *Id.* at 710.

125. Gyourko, Saiz & Summers, *supra* note 113, at 710.

126. *Id.* at 710.

127. *Id.* at 712 ("For example, in Massachusetts which has a state average that is 1.56 standard deviations above the national mean, 10 per cent of the communities (8 out of 79) still have WRLURI values below zero and thus are more lightly regulated than the average place in the country").

In 2018, the WRLURI continues to remain highly influential. The finding that stringency is associated with higher housing costs is particularly important because it drives much of the policy debate around land use in California.[128] The index also has been used in subsequent studies[129] and informs survey design for related research.[130]

For instance, many researchers have used the WRLURI to examine relationships between housing supply and other variables. In 2010, Saiz used the WRLURI and satellite data to establish that the most geographically constrained jurisdictions—meaning the jurisdictions with the least available land to develop[131]—also had the highest stringency values on the WRLURI.[132] Saiz found that regions with the most inelastic supply are also the most geographically constrained in terms of mountainous topography and internal water (e.g., flood plains, wetlands).[133] Areas with the most geographic constraints also had the highest stringency values on the WRLURI.[134] Housing and population growth were also predictive of more stringent regulation.[135] Though this does not establish causality, Saiz's results evoke the homevoter hypothesis, suggesting that people who invest in expensive high growth areas want more regulation to retain value in their investment.[136]

128. In an effort to drive down housing costs, the California legislature has aimed to reduce the number of local regulations for certain types of residential developments. SB 35 requires local jurisdictions not in compliance with RHNA obligations to approve certain residential developments containing ten to fifty percent affordable housing through a ministerial process. S.B. 35, 2017–2018 Reg., Leg. Sess. (Cal. 2017). SB 827—which would have created a by-right process to approve residential developments exceeding underlying height limitations in transit zones—failed last year; however, the bill will likely be resurrected in some form during the next legislative cycle. *See* Alissa Walker, *Sen. Scott Wiener Will Introduce New Version of Transit Density Bill*, CURBED LA (Oct. 9, 2018), https://perma.cc/R5KK-S4HP.

129. *See e.g.*, Michael C. Lens & Paavo Monkkonen, *Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?* 82 J. AM. PLAN. ASS'N 11 (2016) (using the WRLURI to analyze levels of spatial segregation); Albert Saiz, *The Geographic Determinants of Housing Supply*, 125 Q. J. ECON. 1253 (2010) (using the WRLURI to analyze geographic constraints and housing supply restrictions); Matthew A. Turner, Andrew Haughwout & Wilber van der Klaauw, *Land Use Regulation and Welfare*, 82 ECONOMETRICA 1341 (2014) (using the WRLURI to gauge supply constraints).

130. *See e.g.*, QUIGLEY, RAPHAEL & ROSENTHAL, *supra* note 14, at 280; Kristoffer Jackson, *Regulation, Land Constraints, and California's Boom and Bust*, 68 REGIONAL SCI. & URB. ECON. 130 (2018); Terner Center, *Terner Residential Land Use Survey* (on file with the author).

131. To determine what land is unavailable, Saiz used satellite data to calculate areas lost due to water and mountains (any slope above fifteen percent). Saiz, *supra* note 129, at 1254.

132. *Id.* at 1282.

133. *Id.* at 1253.

134. *Id.* at 1261.

135. *Id.* at 1282.

136. Albert Saiz, *The Geographic Determinants of Housing Supply*, 125 Q. J. ECON 1253 (2010), at 1255.

A few key limitations of the WRLUI study make reliance on that study problematic. First, the authors assign stringency variables to metropolitan statistical areas ("MSAs").[137] This index tells us that San Francisco was more highly regulated than the national average.[138] But the stringency level for San Francisco, for example, is composed of thirteen observations drawn from five counties. The stringency value might not necessarily characterize the regulatory process across those five counties. Second, the WRLURI only focuses on the approval process in theory. This approach is ill-suited to understanding and distinguishing drivers of delays that could be related to local variations in planning practice rather than what the law mandates. Third, the WRLURI identifies stringency at a single point in time in 2005. Using the data (or findings) to describe current conditions risks ignoring changes in the regulatory process that occurred after the point in time of the survey or data collection.[139] Fourth, the sub-index values derive from inherently subjective survey questions submitted to only one planning official per jurisdiction; the bias or perspective of a single person could substantially skew the stringency measurement.[140] Finally, although areas with the most stringent regulation have the highest housing costs, all regulations might not impact that cost in the same way.

b. Exploring stringency and constraints on housing supply through a statewide or regional survey

National surveys provide a big picture of the regulatory environment across the country, but regional and statewide surveys may more effectively identify the regulatory determinants of housing inelasticity,[141] and are necessary to understand how land use affects housing supply given the local and heterogeneous nature of land use regulation.[142] Local metropolitan surveys require more resources than a national survey, and "the enormity of [this] effort prevents it from being easily replicated in many . . . markets."[143] California has benefited from at least five regional and state-specific studies.[144]

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137. Gyourko, Saiz & Summers, *supra* note 113, at 713.

138. *Id.* at 714 (finding that the least regulated jurisdictions were located within the Midwest, whereas the most regulated jurisdictions were in the coastal metro areas, with the most stringent land use systems located in the North East).

139. *See* Been, *supra* note 89, at 227 for a similar argument.

140. The potential for these types of biases is further explained in the context of CEQA in LANDIS, PENDALL, OLSHANKSY & HUANG, *supra* note 42, at 116. The authors note that planners' "livelihoods depend in no small part on administering [CEQA]."

141. Glaeser & Ward 2008, for example, used a highly resource-intensive method that enabled them to disaggregate minimum lot sizes, wetlands, and infrastructure regulation as the major determinants of permitting and costs in the Boston metro area. Edward L. Glaeser & Bryce Ward, *The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston*, 65 J. OF URB. ECON. 265 (2008).

142. GYOURKO & MOLLOY, *supra* note 89, at 13.

143. *Id.*

144. We omit discussion of several earlier California focused surveys conducted in 1989 (MADELYN GLICKFELD AND NED LEVINE, REGIONAL GROWTH AND LOCAL REACTION:

Quigley, Raphael & Rosenthal 2009 used a method similar to WRLURI to create a regulatory stringency index for the San Francisco Bay Area. The authors surveyed building officials in eighty-six jurisdictions in 2007, and then supplemented their data with surveys of land use officials conducted between 1992–1999.[145] The 2007 survey addressed a variety of factors that affect housing development, including duration, timing, specific regulations, political influence, project approval procedures, delays, inclusionary zoning, and open space.[146] Building officials provided information on the number of approvals required for certain types of projects and the presence of certain types of regulation connected to restricted growth.[147] They also conducted online surveys of professional builders and environmental consultants, who provided self-reported data on a total of 37 single-family (121 units) and 25 mixed-use developments (331 units) in 33 land use jurisdictions.[148] These questions asked about "perceived level of controversy" associated with certain project types, "regulatory reasonableness," "transparency," and "estimates [of] the 'all-inclusive cost of the entire entitlement process."[149] Indexing the results of both surveys, the authors created the Berkeley Land Use Regulation Index ("BLURI").[150]

The BLURI does not necessarily contradict the findings of the WRLURI, but highlights that local context is important when assessing land use regulation in California. The BLURI indicated that the average approval lag between application and permit was 2 years for a multifamily development and 2.5 years for a single-family home development.[151] Within this time frame, environmental approvals took 2.3 years for single-family homes and 1.9 years for multifamily.[152]

Other findings from the BLURI closely track the WRLURI. The numbers of approvals required to build a unit of housing closely correlated with high housing costs.[153] Regulatory stringency was consistently associated with higher costs for construction, longer delays in completing projects, and greater uncertainty about the elapsed time to completion of residential developments.[154] Political

THE ENACTMENT AND EFFECTS OF LOCAL GROWTH CONTROL AND MANAGEMENT MEASURES IN CALIFORNIA (Cambridge, MA: Lincoln Institute of Land Policy ed., 1992)) and 1992 (Ned Levine, Madelyn Glickfeld & William Fulton, *Home Rule: Local Growth Control, Regional Consequences*, (Report to the Metro. Water Dist. of S. Cal. & the S. Cal. Ass'n of Gov'ts 1996) (unpublished)).

145. John Quigley, Steven Raphael & Larry A. Rosenthal, *Measuring Land Use Regulations and Their Effects in the Housing Market*, HOUSING MARKETS AND THE ECONOMY 272, 280 (Lincoln Institute of Land and Policy ed., 2009). For the 1992–1999 surveys, *see* Glickfield & Levine, *supra* note 13; Ned Levine, *The effects of local growth controls on regional housing production and population redistribution in California*, 36 URB. STUD. 2047 (1999).

146. Quigley, Raphael & Rosenthal, *supra* note 14, at 280.

147. *Id.* at 282–85.

148. Quigley, Raphael & Rosenthal, *supra* note 14, at 287–289.

149. *Id.* at 288–89.

150. *Id.* at 289.

151. *Id.* at 292.

152. *Id.* at 292–93.

153. Quigley, Raphael & Rosenthal, *supra* note 14, at 295.

154. *Id.* at 297.

influence was another important factor, with jurisdictions in Marin County, the City of Richmond, and the consolidated City and County of San Francisco reporting the strongest political influence.[155] Berkeley and mixed-income cities like San Jose and Vallejo ranked in the middle in terms of political influence.[156]

Another more recent California-focused survey includes the California Land Use Regulatory Index ("CaLURI"). The CaLURI provides better insight into the geographic variability of land use stringency across California. Jackson sent surveys to planning staff in 540 cities and counties, and 420 jurisdictions responded.[157] The survey asked questions about the land use process and policies, including specific residential development standards like bulk, height, setback requirements, and floor area ratio restrictions.[158] The survey also asked whether the jurisdiction permitted low-cost housing alternatives, like mobile homes, as well as whether the jurisdiction restricts growth through its General Plan.[159] Other questions asked about affordable housing requirements, average approval times, permit caps, and planners' perceptions of the groups that wield the most political influence, as well as the main drivers of development regulation.[160] Jackson aggregated the sub-indices to create a stringency measure for each responding jurisdiction.[161]

Jackson found that the San Francisco Bay Area is the most stringently regulated region in California.[162] Whereas Southern California is more likely to restrict the form of new development, the Bay Area tends to prohibit development outright.[163] Notably, Jackson also found that the variation in regulatory stringency between coastal and inland communities was not statistically significant.[164] One major variation between coastal and inland communities is affordable housing mandates and low-cost housing alternatives. Coastal jurisdictions, where housing is the most expensive, are more likely to have affordable housing mandates and are more likely to permit mobile home parks than inland communities.[165] Jackson also found that contrary to previous studies, regulatory stringency is not a proxy for supply elasticity.[166] Instead geographic constraints are a more appropriate proxy.[167]

155. Quigley, Raphael & Rosenthal, *supra* note 14, at 297.

156. *Id.*

157. Jackson, *supra* note 130, at 131. The responding jurisdictions comprised more than ninety percent of California's population.

158. *Id.* at 133.

159. *Id.* at 142.

160. *Id.* at 143.

161. *Id.* at 132.

162. Jackson, *supra* note 130, at 133.

163. *Id.*

164. *Id.* at 134.

165. *Id.* at 145.

166. Jackson, *supra* note 130, at 141.

167. *Id.* Note that unlike Saiz who used GIS tools to measure geographic constraints, Jackson relies on planner's identification of "land supply" as a primary driver of land use regulation in the survey instrument.

c. Exploring supply constraints through the case study approach

Surveys focused within metropolitan regions or a single state may more effectively pinpoint the actual regulations that might constrain supply than national surveys. But even localized surveys cannot easily evaluate how laws are implemented at a project level. Mixed method case studies offer more insight. John Landis's 2000 report for the Department of Housing and Community Development ("HCD Landis Report") illustrates the value of case studies to explore land use regulations and residential development in California.

The HCD Landis Report is comprised of a case study of 46 housing developments approved between 1995-1997 in 31 cities and counties.[168] The authors selected the jurisdictions based on shared strong demand for housing, policies that were not anti-growth, and extensive experience processing high volumes of development applications.[169] The authors sent surveys to these pre-selected jurisdictions asking planners to identify a "typical" development in their community.[170] The authors next traveled to the community, reviewed and copied the case file for the typical development, sent the case file to the developer to make any needed corrections, and conducted in-person interviews to supplement any gaps in information.[171]

Landis found that the average approval time for the 24 single-family home case studies was 11 months, with each project subject to an average of 3.3 reviews.[172] For multifamily units, this timeline shrunk to 6.7 months, with only 2.3 separate reviews.[173] One of these reviews was typically non-legislative—meaning the approval did not require a rezoning or a General Plan Amendment—such as design review or approval by a neighborhood group.

Notably, this work explored the role of CEQA on lag times.[174] Some results were unsurprising. For example, the type of CEQA review directly coincided with approval timeline, with average delays of three years and twelve continuances for EIRs.[175] But other results were surprising. Of the twenty-two

168. JOHN D. LANDIS ET AL., RAISING THE ROOF: CALIFORNIA HOUSING DEVELOPMENT PROJECTIONS AND CONSTRAINTS 1997–2020, 95–96 (Cal. Dep't of Housing and Cmty. Dev. ed., 2000).

169. *Id.*

170. LANDIS ET AL., *supra* note 167, at 95. The authors specified a typical project in their survey instrument as: single or multi-family projects larger than 25 units; projects for which the review process had been fully completed; and projects that had experienced a typical approval process.

171. *Id.* at 96.

172. *Id.* at 101. The authors define 'review' as "the number of separate discretionary actions by the local planning commission, city council (or board of supervisors) or any other . . . review body, such as a design review board."

173. *Id.* at 107.

174. Landis had specifically explored the role of CEQA in earlier work. *See* LANDIS, PENDALL, OLSHANSKY & HUANG, *supra* note 42.

175. LANDIS ET AL., *supra* note 168, at 102. For a discussion of CEQA review, *see* Part I.A.2 *supra*.

multi-family case studies, only one project had to conduct an EIR.[176] Eight projects received NDs, six received MNDs, and six projects were processed under a tiered EIR from a prior Specific Plan.[177] In contrast, three single-family home projects conducted an EIR, twelve projects used a tiered EIR, and eight projects were issued NDs and MNDs.[178]

This study's CEQA results have interesting implications for the overall planning process. A third of multifamily projects were processed under a Specific Plan, compared to two-thirds of single-family homes that went through the Planned Unit Development ("PUD") process.[179] The difference in approval times suggests that Specific Plans can significantly cut down on approval delays, although single-family home PUDs were approved much faster than re-zones or General Plan Amendments.[180] The case studies also suggested that certain jurisdictions were not complying with the California Permit Streamlining Act (Cal. Gov. Code § 65950 et seq.), which required all jurisdictions—including charter cities[181]—to approve projects within certain time windows.[182]

Development selection for this case study limits the capacity for generalizations from the findings. First, the authors selected the jurisdictions based on their openness to new development, which likely skews the approval timeline, causing it to appear shorter. Second, the individual project case studies themselves were selected by local planners, who could import certain biases into the projects they recommend for analysis. Third, the study only looked at one project in each jurisdiction, limiting the ability to assess variance around the "typical" project.

Although the data is over twenty years old, and the contemporary development climate has drastically changed in the intervening years, the McKinsey Global Institute recently used the HCD Landis Report to predict the

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.* Planned Unit Development (PUD) in California refers to a zoning classification and a type of development that is intended to provide cities a degree of flexibility not typical of "conventional" zoning by, for example, permitting development of differing form and uses on a single or associated parcels. The definition and operation of the PUD will vary considerably depending on the city and local ordinance. *See* KOSTKA, *supra* note 19, § 7.40. The cities we studied, discussed in Parts II, III and IV, illustrate its diverse meaning at the local level. A PUD in San Jose, for example, always requires a re-zoning followed by a second permit that solidifies the design requirements. SAN JOSE MUN. CODE § 20.120.110 (2013). PUDs in Palo Alto—called Planned Community Districts—also require a rezoning but not a subsequent permit. *See* PALO ALTO MUN. CODE § 18.38.065 (2014). But a Planned Unit Development in Oakland, San Francisco, and Redwood City operates much more like a conditional use permit. *See* S.F. MUN. CODE § 304; REDWOOD CITY MUN. CODE §§ 46.1–46.7 (2005); OAKLAND MUN. CODE § 17.142.004.

180. LANDIS ET AL., *supra* note 168, at 102.

181. CAL GOV'T CODE § 65921 (1977).

182. LANDIS ET AL., *supra* note 168, at 108–09. For example, Negative Declarations must be adopted within 180 days from when the project application is accepted as complete, with certain extensions acceptable for applicant delays. CAL. PUB. RES. CODE § 21151.5 (1997); CEQA GUIDELINES § 15107 (2010). A Final EIR must be certified within one year of the project application's acceptance as complete. CAL. GOV'T CODE § 6595 (1985).

costs of current land use approval processes and the monetary benefits of reform.[183] Basing these projections on the HCD Landis Report as well as undisclosed expert interviews, McKinsey estimated the current approvals process at six months for simple projects and more than three years for complex projects.[184] The McKinsey study found that shortening the approval process in California could reduce the cost of housing by more than $12 billion through 2025 and accelerate project approvals by an average of four months.[185] The most significant gains of improving land use processes would accrue to projects that require a zoning change or a General Plan Amendment and projects that require an EIR.[186] Savings to projects undergoing streamlining under a Specific Plan are minimal, indirectly suggesting that streamlined approval processes are working efficiently.[187] McKinsey likely drew those last conclusions directly from Landis's study, which found that amongst the case study projects, use of long-term planning like Specific Plans reduces delay.[188] These results suggest that jurisdictions should consider investing in Specific Plans that enable streamlined review for discretionary projects and/or ministerial approvals.[189] These results also suggest that land use regulations may be stringent but still efficient in terms of approval times when there is a comprehensive plan for future growth in place.

Remarkably, although developers frequently refer to CEQA as "the third rail of California politics,"[190] current empirical research into how CEQA constrains supply continues to be fairly limited. The California Legislative Analyst's Office ("LAO") has identified CEQA as a culprit in delaying or reducing residential construction in the state.[191] The LAO conducted an independent review of CEQA documents submitted to the state between 2004-2013 and found that agencies took 2.5 years to approve a project-specific EIR.[192] While this figure includes non-residential projects that could potentially provoke more controversy, it is not inconsistent with the findings of the BLURI survey. But as noted in the Landis

183. *See e.g.*, Jan Mischke et al., *A Tool Kit to Close California's Housing Gap: 3.5 Million Homes by 2025*, MCKINSEY & COMPANY 28–29 (Oct. 2016); CAL. DEPT. HOUSING & CMTY. DEV., CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES (2017).

184. MISCHKE ET AL., *supra* note 183, at 28. The report does not define a simple or complex project.

185. *Id.* at vi.

186. *Id.* at 28–29 (2016) (finding that improving approvals for zoning or general plan amendment projects would reduce the timeline from 9 to 6 months, or about thirty-three percent. Improving the process for EIRs would reduce the timeline from 21 to 15 months, or about thirty percent). McKinsey also used undisclosed expert interviews in reaching these conclusions. *See id.* at 28.

187. *Id.* at 28–29.

188. LANDIS ET AL., *supra* note 168, at 110 ("[T]wo-thirds of the single-family case studies were processed as part of a pre-approved specific, community, or area plan . . . . [F]or many of the reviewed projects, the most onerous, time-consuming, and controversial part of the development approvals process had already been completed.")

189. MISCHKE ET AL., *supra* note 183, at 29–30.

190. Bill Allen & Maura O'Connor, *CEQA: That 70's Law*, L.A. TIMES (Mar. 30, 2011), https://perma.cc/9GS9-VVWK.

191. *See* LAO REPORT, *supra* note 5, at 15.

192. *Id.* at 18.

study and as discussed below, an EIR is not the only CEQA outcome.[193] In 2016, BAE Economics published a study that concluded that no evidence supported arguments that CEQA was a barrier to development (defined to include more than housing), examining four development projects involving environmental review and finding that direct environmental review costs ranged from .025 to .05% of total project costs.[194]

In summary, the relevant research on the relationship between regulation and housing costs has found a strong connection, but that research has relied on inferences drawn from the gap between construction costs and sales prices or on surveys of planners and other stakeholders about their understanding of the regulatory process. While some research uses mixed method case studies, the methods still limit generalizability. Overall, the research has also found correlations between high-income levels and property values with regulation, significant variation across jurisdictions in terms of regulatory frameworks and stringency, high levels of complexity in the land-use regulatory process, and possible benefits for facilitating approvals through the use of specific or neighborhood-level planning processes.

2. Understanding land use regulation as a tool of exclusion

Another important line of research examines whether stringency in land use regulation is associated with racial and/or economic exclusion, which in turn can contribute to spatial inequality.[195] For example, using income and racial segregation data and the Pendall 2006 land use survey, Rothwell and Massey in 2010 found a strong relationship between density and income segregation.[196] The higher a metropolitan area's density score, the lower the degree of class segregation.[197] These findings support the exclusionary suburb paradigm, in which wealthy suburbs use zoning to maintain low-density development that effectively excludes low-income people and minorities.[198]

193. MISCHKE ET AL., *supra* note 183, at 28–39.

194. Janet Smith-Heimer et al., *CEQA in the 21st Century*, ROSE FOUND. FOR COMMUNITIES & THE ENV'T (2016).

195. We define spatial inequality to refer to scholarly work that finds that where a person lives may limit a person's access to economic, educational, and quality housing opportunities, and may impact health and life outcomes. This incorporates research that explores racial residential segregation, exclusion, and gentrification.

196. Jonathan T. Rothwell & Douglas S. Massey, *Density Zoning and Class Segregation in U.S. Metropolitan Areas*, 91 SOC. SCI. Q. 1123, 1123 (2010).

197. *Id.*

198. *See* John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL'Y REV. 91, n.2 (2014). ("Decades of scholarship—legal and sociological—outline how these policies left low-income families stranded in faltering cities whose abandonment by suburban homeowners-to-be at least left behind a large supply of low-cost housing") (citing FISCHEL, *supra* note 92); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990); Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L. J. 385, n.3 (1977); *see also* S. Burlington Cty. NAACP v. Twp. of Mount Laurel (Mount Laurel II), 456 A.2d 390 (N.J.

Spatial inequality, however, is not limited to exclusive suburbs within metropolitan areas. Gentrification within central cities, for example, is associated with segregation, exclusion, discrimination,[199] and the displacement of low-income communities.[200] Discussing spatial inequality thus requires consideration of exclusionary strong-market cities[201] and the growing suburbanization of the poor.[202] One theory (built on prior legal and economic studies) about exclusionary zoning within the strong market central city might explain the persistence of spatial inequality as more affluent populations move into formerly low-income neighborhoods: Demand for development controls increases as cities become denser and richer, evidenced by the tightening of development controls as affluent individuals return to cities, reversing decades of urban flight. [203] Gentrification, under this theory, would stem from the gradual tightening of restrictions that reflect the preferences of newly arrived affluent urban workers who prefer wealthier established neighborhoods that disallow new development and who flock to the lower-income neighborhoods adjacent to these wealthy anti-development areas, driving up the rents and disrupting the normal filtering process.[204] This theory of

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1983); S. Burlington Cty. NAACP v. Twp. of Mount Laurel (Mount Laurel I), 336 A.2d. 713 (N.J. 1975). *See also* BEEN, *supra* note 89, at 218.

199. *See generally* john powell, *Sprawl, Fragmentation, and the Persistence of Racial Inequality*, *in* URBAN SPRAWL: CAUSES, CONSEQUENCES, AND POLICY RESPONSES, 104–15 (Gregory D. Squires ed., 2002); Elvin K. Wyly & Daniel J. Hammel, *Gentrification, Segregation, and Discrimination in the American Urban System*, 36 ENV'T AND PLAN. A, 1215–39 (2004) (finding evidence of intensified discrimination in lending and exclusion in gentrified neighborhoods).

200. *See* The Urban Displacement Project, *Executive Summary* (2015) (using statistical analysis of demographic and land use datasets to find that "more than half of low-income households, all over the nine-county region, live in neighborhoods at risk of or already experiencing displacement"); *but see* Lance Freeman, *Displacement or Succession*, 40 URB. AFF. REV. 463, 467 (2005) (using longitudinal survey data to find that "there is relatively little in the way of persuasive empirical evidence that suggests [that displacement] is indeed how gentrifying neighborhoods change")

201. *See* HUTSON, *supra* note 87, at 13–14; Been, *supra* note 89, at 219–23 (discussing the scholarly works exploring exclusionary zoning within cities); MANGIN, *supra* note 197.

202. Elizbeth Kneebone & Emily Garr, *The Suburbanization of Poverty: Trends in Metropolitan America, 2000 to 2008*, BROOKINGS INST. (2010) (finding that "while poverty has grown on the whole, the most recent data also make clear that American poverty is becoming an increasingly suburban phenomenon").

203. MANGIN, *supra* note 198, at 92.

204. *Id.* at 95. Filtering is a theory based on supply-side solutions to the inadequate supply of affordable housing stock, in which the construction of middle- to upper-quality housing stock opens up opportunities for lower-quality housing stock as middle to upper-income households occupy better housing. *See* William C. Baer & Christopher B. Williamson, *The Filtering of Households and Housing Units*, 3 J. OF PLAN. LITERATURE 127, 128–29 (1988). However, economists have noted that filtering may be an inefficient tool to support increased housing for low-income households in markets with high development costs. In such contexts, any gains in affordable housing stock might be accompanied by harms associated with downgrading and abandonment of neighborhood environments providing the low-income housing stock. *See* Galster & Rothenberg, *Filtering in Urban*

exclusionary zoning in central cities influences current legal research in this arena.[205]

Based on this theoretical framework, by opposing market-rate development in their neighborhoods and rejecting a supply-side solution to the gentrification problem, some anti-gentrification advocates, community development, and affordable housing practitioners may be working against their own interests.[206] The author did not propose inclusionary housing incentives as a response to the exclusionary zoning within the central city but suggested reducing regulation incrementally—particularly aesthetic and historical preservation.[207] Easing local control over land use and supporting a supply-side solution (even for market-rate development) to gentrification and displacement is a dominant theme in California's public policy debate and public discourse about potential solutions to the housing crisis, but it is not without controversy.[208]

For some, the term "exclusionary zoning" suggests that the remedy would be more permissive density. But a 2015 study suggests a more complex problem.[209] Comparing land use stringency data from the WRLURI survey with a segregation index, Lens and Monkkonen found that the overall WRLURI score—a measurement of local regulatory stringency—did not correlate with income segregation, which suggests that not all land use regulations contribute to class

Housing: A Graphical Analysis of a Quality-Segmented Market, 11 J. OF PLAN., EDUC. & RES. 37, 48–49 (1991).

205. *See e.g.*, Been, *supra* note 89, at 222; Wendall Pritchett & Shitong Qiao, *Exclusionary Megacities*, 91 S. CAL. L. REV. 34 (2018) (forthcoming).

206. *See* MANGIN, *supra* note 198, at 93–94. Others have made similar arguments but acknowledge the methodological challenges of determining whether increasing supply contributes to increased housing costs. *See* Vicki Been, Ingrid Gould Ellen & Katherine O'Regan, *Supply Skepticism: Housing Supply and Affordability*, NYU FURMAN CTR (Draft Oct. 26, 2017), https://perma.cc/YDU7-PJNX; *see also* Been, *supra* note 89, at 244–45.

207. MANGIN, *supra* note 198, at 119–20.

208. The Yes In My Backyard (YIMBY) movement is an example. *See Let's End California's Housing Crisis: Support SB 827 – Sen. Wiener's Transit Rich Housing Bonus Bill*, CAL. YIMBY (Oct. 27, 2018), https://perma.cc/J5LA-3G6A; *see also* LAO REPORT, *supra* note 5 (using data from The Displacement Project to conclude that increasing supply of market-rate housing would curtail displacement of low-income households); *but see* Miriam Zuk & Karen Chapple, *Housing Production, Filtering and Displacement: Untangling the Relationships*, BERKELEY IGS RES. BRIEF (May 2016), https://perma.cc/SJX5-YP3S (responding to this report and offering a more nuanced analysis: the data showed market-rate and subsidized housing reduce displacement pressures at the regional level, but not at the block level, at least not in San Francisco, and that market-rate production is associated with higher housing costs for low-income households, but lower median rents, in subsequent decades). *See also* Miriam Zuk, Ian Carlton, & Anna Cash, *SB 827 2.0, What are the implications for communities in the Bay Area?* THE URB. DISPLACEMENT PROJECT (Oct. 1, 2018) https://perma.cc/3H9A-AJKT (finding that the SB-827 proposal, to reduce discretionary review of certain types of infill development near transit, would have resulted in a six-fold increase in feasibility of market-rate housing in affluent areas, and a seven-fold increase in inclusionary housing in moderate income areas, but that 60% of the financially feasible development was located in gentrifying or low-income areas, and over 65% of residential demolitions for development would have occurred in these neighborhoods).

209. LENS & MONKKONEN, *supra* note 129, at 12.

segregation.[210] Density restrictions are strongly correlated with income segregation and seclusion of the super elite.[211] But the correlation was equally strong for jurisdictions that mandated high minimum densities as well as those that kept densities low.[212] Understood within the context of the Rothwell & Massey work, this suggests that other restrictive forces are at play even in areas with permissive density—like central cities. Notably, income segregation is higher where local governments are more involved in entitlement approvals and communities put more pressure on the government to control growth[213] and lower in places with a higher degree of state involvement in local planning decisions.[214] Jurisdictions that require multiple levels of government approvals to build are more segregated.[215] Finally, the authors observed higher levels of income segregation in MSAs with central cities that regulate land use more stringently than surrounding suburbs.[216] The authors concluded that inclusionary incentives and reduced local control might be the most effective at reducing segregation.[217]

There is little research that aims to identify *which* land use regulations may be contributing to exclusion within cities generally, and insufficient recent research that focuses specifically on California.[218] There are two recent reports that explore the role of CEQA litigation as a tool to block infill development, although both examine CEQA's impact on more than housing development. In 2015, the law firm Holland & Knight produced a widely circulated report analyzing all CEQA lawsuits filed within a fifteen-year period and found that eighty percent of CEQA litigation in the past fifteen years targeted infill development.[219] While scholars have criticized this report for its overly inclusive definition of infill development,[220] this observation finds some support in earlier studies that found most CEQA litigation to occur in large cities.[221] Although it does not focus

210. *Id.* at 11.

211. *Id.*

212. *Id.* at 11–12.

213. LENS & MONKKONEN, *supra* note 129, at 12.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.* at 11–12.

218. Anika Singh Lemar, *Zoning as Taxidermy: Neighborhood Conservation Districts and the Regulation of Aesthetics*, 90 IND. L. J. 1525, 1563 (2015). Lemar, for example, explored the use of aesthetic regulations within walkable "conservation neighborhoods" with close proximity to the urban center and transit—specifically conservation districts— to constrain supply, but none within California. Lemar posits that urban residents are using conservation districts as a new public law form of private Covenants, Conditions, and Restrictions ("CC&Rs")—a hypothesis she finds support for in factual findings from published state opinions. Unlike CC&Rs, however, which must be adopted unanimously, a vocal minority of the neighborhood can organize to form a conservation district.

219. Jennifer Hernandez, David Friedman & Stephanie DeHerrera, *In the Name of the Environment*, HOLLAND & KNIGHT (2015).

220. *See* Sean Hecht, *Anti-CEQA Lobbyists Turn to Empirical Analysis, but are Their Conclusions Sound?*, LEGAL PLANT (Sept. 28, 2015), https://perma.cc/B7P3-7MB8.

221. *See* LANDIS, PENDALL, OLSHANSKY & HUANG, *supra* note 42, at 110–11 (1995).

exclusively on housing development, it appears consistent with the observations of Mangin 2014 and Lens & Monkkonen 2016 that dense cities are using land use regulation as an exclusionary tactic. The 2016 report from BAE Economics, however, found low rates of litigation and infrequent use of EIRs.[222]

C. How the limits of past research make it challenging to inform proposed legal reform

Past research tells us that stringency in land use regulation is correlated with certain outcomes—be it reduced housing supply and increased housing costs, or increased income segregation and spatial inequality. But it does not establish causation, nor does it identify which land use regulations, specifically, are correlated with these outcomes. It may be that increasing housing supply across multiple income levels or redressing spatial inequality within our urban communities is not as simple as drastically reducing regulation. And yet proposed legal reforms continue to target process, advancing solutions like reducing the number of approvals, more state oversight over local zoning decisions,[223] and CEQA reform.[224] Each of these elements of process serve important goals, like open government, public participation, and disclosure and mitigation of potential environmental harms. If we are uncertain which element of process increases

222. *See* JANET SMITH-HEIMER ET AL., *supra* note 194. A much earlier study used a survey and found that responses indicated CEQA litigation is relatively rare, with fifty-eight percent of the responding communities reporting no CEQA litigation between 1985-1990. *See* LANDIS, PENDALL, OLSHANSKY & HUANG, *supra* note 42, at 90. Eighty percent of jurisdictions reported zero or one lawsuits within that five-year timeframe. The authors estimated that across California, there is one lawsuit per 354 CEQA reviews. Attempts to find demographic variables driving the variation across communities were unsuccessful; the only statistically significant correlation showed that CEQA litigation is more common in larger cities, in white-majority cities, and in Democratic-majority cities. But this data predates recent CEQA streamlining initiatives as well as case law that made business, rather than environmental interests, easier to leverage. *See e.g.*, Save the Plastic Bag Coalition 254 P.3d at 1011-12 where the California Supreme Court refused to apply the federal "zone of interests" test for CEQA litigation.

223. For example, decisions at the state-level—although perhaps less biased towards local political power players—could take much longer than decisions at the local level. *See e.g.*, FISCHEL, *supra* note 5, at 276 (regional governance structures in Oregon and Washington have had mixed results, and New Jersey Mt. Laurel Fair Share requirements have failed to yield integrated demographic mixes). Research shows that Massachusetts Chapter 40B has been effective, although it is difficult to disentangle the coercive threat of state action with local incentives to construct affordable housing. *See* Carolina K. Reid, Carol Gallante & Ashley F. Weinstein-Carnes, *Borrowing Innovation, Achieving Affordability: What We Can Learn from Massachusetts Chapter 40B*, TERNER CTR. FOR HOUSING INNOVATION (2016).

224. *See* Dan Walters, *Brown Talks CEQA Reform, but Hasn't Done It*, CALMATTERS (Aug. 2, 2018) https://perma.cc/EF2X-VD2Y (discussing Governor Brown's call for comprehensive CEQA reform). Moderate reforms have succeeded in the legislature. *See e.g.*, A.B. 2341 2017–2018 Leg., Reg. Sess. (Cal. 2018) (reducing significance of certain aesthetic impacts); A.B. 2782 2017–2018 Leg., Reg. Sess. (Cal. 2018) (allowing an EIR to discuss non-environmental benefits of a proposed project).

housing costs, or exacerbates or contributes to segregation or gentrification, eliminating or curtailing process may sacrifice one set of policy goals without achieving another.

The research showing that permissive density does not equate with spatial equality is particularly troubling for California. California's signature housing legislation, the Housing Element of the General Plan, requires jurisdictions to plan for and zone for density to accommodate their portion of their regional housing need.[225] In addition to well-noted problems, (for example, Housing Element law places no affirmative production requirement on the jurisdiction beyond re-zonings),[226] this model implicitly assumes that density is a proxy for affordability.[227] As the most recent work around exclusionary central cities suggests, zoning for density does not necessarily result in opening up access to cities, as there are likely non-zoning barriers to development within exclusionary central cities.

More inquiry into how the land use approval process plays out within individual cities is therefore necessary to implement effective state-level reform. In essence, we are grappling with a series of local problems that have regional and statewide implications. Unlike surveys that often depend on generalizations across multiple jurisdictions and necessarily depend on perceptions of the regulatory process by the surveyed stakeholders, case studies can effectively unpack the local variation and the potential impacts of specific regulations within these local contexts and ground-truth actual outcomes of land-use regulatory processes. And because land use planning has changed over the past twenty years, current data that reflects these changes is needed to explore these issues.

Part II: Methods

Crafting effective and targeted policy interventions to promote equitable infill development requires understanding what legal barriers to increased housing production exist; what legal tools afford meaningful participation in land use planning; and how current development patterns are affecting affordable housing opportunities within TOD areas or areas receiving substantial transit investment. Our study seeks to address these issues by examining whether local land use law and/or environmental regulations governing infill development individually, or in conjunction, present significant obstacles to equitable infill development. Based on our review of existing research (discussed in Part I) we hypothesized that:

225. *See* CAL. GOV'T. CODE § 65583 et seq. The affirmative rezoning obligation only applies, however, if a jurisdiction has failed to meet certain obligations—for example, by failing to zone for sufficient sites to meet its share of the Regional Housing Needs Assessment (RHNA) for the prior planning period.

226. Paul G. Lewis, *California's Housing Element Law: The Issue of Local Noncompliance* 10, PUB. POL'Y INST. OF CAL. (2003).

227. *Id.* (finding that "cities with significant housing unit goals are left with . . . rezoning existing neighborhoods for higher density housing").

1. There are significant legal, planning, and regulatory barriers to advancing equitable infill development within transit-accessible neighborhoods in high cost coastal cities;
2. The most significant barriers will emerge in local land use regulations that limit or slow infill development in transit-accessible neighborhoods and *not* in state environmental regulation; and,
3. State law aimed at incentivizing infill development in transit-accessible neighborhoods is applied differently (and sometimes ineffectually) within these local contexts.

Based in part on these descriptive hypotheses, we also began with a baseline hypothesis that future policies to advance state-level GHG reduction goals in a way that also promotes equitable infill development will require policy interventions that meet a number of important requirements, including (a) accounting for the heterogeneity of local regulations; (b) accounting for varied application of state streamlining provisions (or varied planning practice) in relationship to the political culture and revenue demands of the specific local context; and (c) either are (i) constructed at the local level to advance equitable infill development in transit-accessible locations; or (ii) are carefully targeted approaches to reducing local discretion over proposed infill development in transit-accessible locations that nonetheless protect the voice of vulnerable communities, minimize or prevent displacement of existing low-income residents, and ensure access to transit for future low-income residents. To test our hypotheses, we employed a case study approach that joins qualitative[228] and legal research methods, employing overlapping phases of data collection and sequenced analysis.[229]

A. Choosing study sites: focusing first on the Bay Area

Our first phase of research involved selecting strong market charter cities[230] of various sizes within California major metropolitan areas (specifically, urban core cities and first ring suburban communities) experiencing robust

228. *See* JOHN W. CRESWELL, RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES, 185-204 (Vicki Knight et al. eds., 4th ed. 2014).

229. *See* ROBERT K. YIN, CASE STUDY RESEARCH: DESIGN AND METHODS (SAGE Publications, Inc. 6th ed. 2014); BRUCE L. BERG & HOWARD LUNE, QUALITATIVE RESEARCH METHODS FOR THE SOCIAL SCIENCES 325 (Pearson ed., 8th ed. 2011).

230. Charter cities within California enjoy some freedom to legislate at the local level over "municipal affairs" even if a conflict with state law may exist under Article XI, section 5 of the California Constitution. Although the California Constitution does not expressly define "municipal affair," land use and zoning are consistently classified as exempt from the planning and zoning provisions of the California Government Code, unless the city's charter indicates otherwise. *See e.g.* CAL. GOV'T CODE §§ 65803, 65860(d); City of Irvine, 30 Cal. Rptr. 2d at 799–800.

economic growth. The cities also needed to have transit accessibility or have capacity for TOD[231] and be in high demand.[232]

We began our work within the Bay Area, with a focus on San Francisco and San Jose. In 2015, the California Legislative Analyst's Office attributed high housing costs statewide in large part to the lack of housing supply in California's coastal communities.[233] This report identified the San Francisco-Metropolitan Division ("MD") and the San Jose-Sunnyvale-Santa Clara MSA as having the first and second highest housing costs in the state in 2015, respectively. Using American Community Survey data and California Department of Housing and Community Development's State Income Limits for 2017, we selected additional cities within the San Francisco-Oakland-Hayward MSA and San Jose-Sunnyvale-Santa Clara MSA using multiple criteria, including: demographic criteria, (population size, average household income, percentage of the population living in poverty, and area median income), land area, and population density.[234] To be considered for the study, each city needed a minimum population of 50,000 people and a minimum land area of 7 square miles.[235]

We used California's Regional Housing Need Allocation ("RHNA")[236] to steer us towards jurisdictions that have transportation and other infrastructure in place or planned, and can sustainably support increased housing supply[237] including infill development.[238] All of our first five selected cities face acute

231. PETER CALTHORPE, URBANISM IN THE AGE OF CLIMATE CHANGE (Island Press ed., 2d ed. 2010).

232. MALO HUTSON, *supra* note 87, at 20; PAUL KNOX & LINDA MCCARTHY, URBANIZATION: AN INTRODUCTION TO URBAN GEOGRAPHY (Pearson, 3d 2012).

233. LAO REPORT, *supra* note 5, at 3.

234. Area Median Incomes, or AMI, are provided by California's Department of Housing and Community Development State Income Limits, which provides income eligibility criteria for affordable housing programs. *See generally*, Memorandum from Jennifer Seeger, Assistant Deputy Director Division of Housing Policy Development to Interested Parties (June 9, 2017), https://perma.cc/T9EU-AK4E.

235. Cities that are too small (in population or land area) may not provide enough data for any meaningful analysis.

236. RHNA is a goal of housing production that each jurisdiction within the state is mandated to achieve through the local jurisdiction's Housing Element of its General Plan.

237. Senate Bill 375 mandates that each of the state's 18 Metropolitan Planning Organizations develop a Sustainable Communities Strategy that links housing development with transportation investments. The Association of Bay Area Governments' (ABAG) Regional Housing Need Plan: San Francisco Bay Area 2014-2022, states its RHNA allocation methodology complies with SB-375 because it uses factors that "aim to expand housing and transportation options; increase access to jobs, particularly for low-income workers; and promote housing growth in places with high quality services, such as parks and schools. . . . [with] a fair share distribution between large cities and medium cities with high job growth and transit access." *Regional Housing Need Plan for San Francisco Bay Area: 2014-2022*, ASS'N OF BAY AREA GOV'TS at 3, https://perma.cc/B2V6-9UCP.

238. We used the RHNA to identify areas with adequate infrastructure (or planned infrastructure) but are mindful of the potentially disparate racial impact of housing allocation. *See* Press Release, Haas Institute for a Fair and Inclusive Society, New Research Shows Racial Disparities in Bay Area Housing Allocation Methodology (Aug. 23, 2017), https://perma.cc/VRL8-BWED.

affordability issues, and all cities have complex land use approvals processes that typify the type of "stringent" regulation called out by existing research. Our first five cities were San Francisco, San Jose, Oakland, Redwood City, and Palo Alto.[239]

B. Analyzing the law: creating planning and development ordinance summaries

We first researched local ordinances and planning code provisions most relevant to residential/mixed use development approvals, starting with the most macro planning tools (the General Plan) and then drilling down to the micro level (use and development controls). We created a summary of planning and development controls in each jurisdiction, including permitted and restricted uses, height limitations within specific neighborhoods, maximum commercial and residential density and lot coverage, minimum parking requirements, exactions, and other dedication requirements. We also identified and cataloged all characteristics of local processes that would appear to increase affordable housing supply within the city, or preserve existing affordable housing, including inclusionary housing ordinances, local referenda to generate affordable housing supply, rent stabilization ordinances, anti-demolition ordinances, and neighborhood planning that taps into state-level streamlining initiatives. This step also identified the extent of a jurisdiction's "as of right" development—meaning development that does not require a discretionary permit from a local approval body. For the vast majority of developments that require a discretionary approval, these code summaries also helped identify general approaches to density and other building form controls that drive the discretionary approval process, the internal process for obtaining a building entitlement, and the extent to which cities use long term planning to expedite environmental review. These summaries informed development data collection, later analysis, and interview questions.

C. Analyzing the projects: building the entitlement database

After completing the planning code summary for a city, we built a database for each selected jurisdiction that allows us to analyze land use and environmental review requirements for residential developments along with important characteristics, such as time to entitlements completion and size. This process required an emergent design, and went through three iterations to address variation in data access across cities and newly available data.

1. Defining five or more residential units

We chose the five-unit threshold in order to capture projects that most impact California's housing and climate goals. The five-unit threshold does not

239. We limit our findings in this article to these five cities, but are currently completing research within Los Angeles, Long Beach, Pasadena, and Santa Monica.

capture scattered site single-family homes, duplexes, or accessory dwelling units that are not developed as part of a larger development project. These scattered developments move through entitlement differently; they do not consistently present the type of dense infill development that can be the subject of the policy or political debate, and likely warrant their own research study.[240]

We have gathered data on single-family subdivisions or duplexes where they are part of a larger development that produces more than 5 units of housing because on net they are adding substantially more housing and density than what was there before (typically vacant or commercial land in our project years). This in turn, potentially advances housing supply and climate goals. For example, Oakland's mini lot ordinance allows a developer to subdivide a single lot to create "mini" lots that would not otherwise satisfy minimum lot requirements.[241] Developers in our data years used this process frequently to subdivide a lot that would normally only permit one or two single-family homes to create five or more single-family homes. This is an important process that significantly densifies neighborhoods.

We included all projects that contained an addition of five units to the housing stock. We did not net out demolished units from the new addition of units. Frequently, the exact number of units being demolished was not available, so for consistency, we chose to capture that the project would include demolition but disregard demolished units for the purposes of total unit count. For example, a proposal to demolish a duplex and replace it with a ten-unit building would be counted as ten units, not eight units, although we would also capture that the prior use was residential and involved demolition. If the proposal was to add five or more units to an existing residential development, we would not count the existing units in the total unit count. This would apply where there was a proposal to the convert commercial space to residential units in an existing mixed-use building, or build new units on a vacant portion of a residential site. These types of developments occurred infrequently in our database years.

We defined residential units broadly, encompassing live-work spaces, single room occupancy hotels, deed-restricted affordable housing, and student housing. We did not include facilities for the elderly dedicated to providing medical care or hospice care. We also did not include residential facilities constructed by hospitals to house patients' families.

240. The entitlement processes for individual single-family homes and duplexes are quite different than for larger projects. Individual homes and accessory dwelling units go through more streamlined processes than larger developments, frequently because they don't require the land divisions that a larger single-family subdivision would require. *See infra* Figure 4; *see also* S.B. 1069, 2015-2016 Leg., Reg. Sess. (Cal. 2016); A.B. 2299, 2015-2016 Leg., Reg. Sess. (Cal. 2016) (streamlining approval processes for accessory dwelling units).

241. OAKLAND MUNI. CODE § 17.142.010.

2. Defining project years: 2014, 2015, and 2016

We included projects that received all the entitlements necessary to file for a building permit in 2014, 2015, and 2016. Entitlement includes any discretionary planning approval, including subdivision approvals.

We chose our project years in order to minimize impact from the Great Recession years, but many jurisdictions extended pre-Great Recession entitlements during our study years. We did not count entitlements that were extensions of prior approved projects in our database. Post-entitlement developer-initiated modifications present a related issue. Sometimes a developer will receive an entitlement and then seek to modify it months or years later. We do not include the modification in our time frame calculations because it may not be reflective of planning process or law, but instead external factors related to the developer. Some data related to the Great Recession impacts could not be excluded. San Jose frequently uses the PUD Process, which begins with a rezoning later follow by a Planned Development Permit. In some instances, the delay between the rezoning and the permit was many years. This might be related to the Great Recession, but without more data it was impossible to solely attribute the delay to economic circumstances.

For appealed projects, we used the date of the original approval and not the date the project was upheld on appeal. Some jurisdictions have large appeals dockets and appeals are not always heard within a certain statutory timeframe. We wanted to ensure we were measuring the planning process, not how long it takes to schedule and hear an appeal. That being said, we are analyzing timeframes for appeals resolutions that will be forthcoming in future publications.

For jurisdictions that bifurcate more than one project approval—San Jose for example—we use the earliest application date and the latest approval date to bookend the entire process. San Francisco also differs from the other Bay Area jurisdictions in two important respects. The San Francisco Planning Code gives the Planning Commission the power to hear an appeal of a building permit application.[242] This process is known as Discretionary Review, and it was initiated for ten projects during our timeframe. Unlike the appeals process, Discretionary Review is internal to the approvals process in that it remains within the purview of the Planning Commission, as opposed to the Board of Supervisors or the Board of Appeals. The Planning Commission did not resolve Discretionary Review for six of these projects during our timeframe, which means none of them could have filed for a building permit in our project years. Thus, we could not include these projects in our final database. These projects are also small, 38 units on average, and highly unlikely to affect our overall data. Subdivision presents an additional issue. Unlike other jurisdictions that typically approve the Tentative Map (for both horizontal subdivision and condominium/airspace subdivision) concurrently with the underlying land use approvals, in San Francisco, we frequently observed Tentative Map approvals for condominiums that occurred months to years after the approval of the underlying entitlements. Unlike other jurisdictions where the Planning

242. S.F. MUNI. CODE §§ 311(d); 312(e).

Department usually manages subdivision review, in San Francisco the Department of Public Works primarily manages the Tentative Map approval process.[243] While Tentative Maps are an important part of the residential development process, we did not want to inflate planning approval timeframes due to factors outside the Planning Department's control. Thus for San Francisco, we only included subdivision approvals necessary to pull a building permit (for example, lot merger or horizontal subdivision) and not condominium maps that can be approved after obtaining a building permit. While projects that obtained condominium maps figure in our total approval counts, they do not factor into our overall approval timeframes.

San Francisco's response to the dissolution of the Redevelopment Agencies in 2011 also creates a distinct entitlement path that differs from the other selected jurisdictions.[244] San Francisco designated a successor agency—the Office of Community Investment and Infrastructure ("OCII")—after the dissolution of the Redevelopment Agencies in 2011 to fulfill the former Redevelopment Agency's outstanding obligations.[245] These obligations include development in redevelopment areas like Mission Bay, Transbay, and Bayview Hunters Point.[246] This entity is legally distinct from the City of San Francisco.[247] OCII approves the entitlement of new developments within these plan areas pursuant to protocols

243. *See* S.F. Department of Public Works, Subdivision Regulations § IV(D)(2015) (describing that once Planning issues the CEQA determination, "the Director of Public Works shall approve, conditionally approve, or deny the application within 50 days . . . ").

244. The Community Redevelopment Act gave local governments the authority to declare areas as blighted and in need of urban renewal, which enabled the city or county to distribute most of the growth in property tax revenue for the project area to the relevant Redevelopment Agencies as tax-increment revenues. *See* CAL. HEALTH & SAFETY CODE §§ 33020 et seq. In 2011, the California legislature dissolved the Redevelopment Agencies. *See* A.B. X126, 2011-2012 (Cal. 2011). Dissolution has severely constricted local governments' ability to finance affordable housing. *See* Casey Blount et al., *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure* 7 (Working Paper No. EMAD-2014-01, 2014), https://www.huduser.gov/portal/publications/Redevelopment_WhitePaper.pdf (estimating a statewide average annual loss of 4,500 to 6,500 new affordable units).

245. San Francisco, Cal., Ordinance 11-12 (Jan. 26, 2012) (resolution transferring Redevelopment assets to successor agency); San Francisco, Cal., Ordinance 215-12 (September 25, 2012) (resolution designating Office of Community Investment and Infrastructure as successor agency).

246. *See* Office of Community Investment and Infrastructure, *Affordable Housing Production Report Fiscal Year 2016-2017* 2, https://sfocii.org/sites/default/files/2017%20ANNUAL%20REPORT%20-%20FY%2016%20-17%20FINAL.pdf. Outstanding obligations include the major approved developments in Hunters Point Shipyard/Candlestick Point, Mission Bay North and South and Transbay; disposition of former Redevelopment assets; and ensuring the development of affordable housing in the major approved developments.

247. *See* San Francisco, Cal., Ordinance 215-12 §3 (September 25, 2012).

outlined in each plan area document.[248] OCII also utilizes remaining tax increment funds within the plan areas to fund affordable housing development.[249]

The OCII approval process differs from projects approved through the Planning Department. The process varies depending on the Redevelopment Area, but generally OCII in partnership with a horizontal developer—which can be a public or private entity—selects the vertical developer for each parcel within the plan area.[250] Once the developer is selected, the developer submits a Basic Concept Plan that is responsive to the highly prescriptive design standards set forth in the area plan.[251] After approval of Basic Concept Plan, the developer submits for Schematic Review, which the agency must approve within 45 days of its submission.[252] In approving the schematic design, OCII makes CEQA determinations based on the master EIR for each Redevelopment Area.[253]

248. *See generally*, San Francisco Office of Community Investment and Infrastructure, Mission Bay North Design Review and Document Approval Procedure, https://sfocii.org/sites/default/files/FileCenter/Documents/771-DRDAP%20MBN.pdf; San Francisco Office of Community Investment and Infrastructure, Mission Bay South Design Review and Document Approval Procedure, https://sfocii.org/sites/default/files/FileCenter/Documents/772-DRDAP%20MBS.PDF.

249. *See* Office of Community Investment and Infrastructure, *Affordable Housing Production Report Fiscal Year 2016-2017* 2.

250. A horizontal developer builds out all the required infrastructure for a development; the vertical developer constructs the improvements. *See e.g., Transbay Redevelopment Project Implementation Agreement* 3, https://sfocii.org/sites/default/files/FileCenter/Documents/4039-TB%20Implementation%20Agreement_5.2006Fully%20Executed.pdf ("Under the Cooperative Agreement, City and Authority title to the State-Owned Parcels is subject to a deed restriction requiring that any such parcel may be sold for development only when" certain financial conditions are met); First Amendment to Mission Bay South Owner Participation Agreement (Feb. 17, 2004), https://sfocii.org/sites/default/files/FileCenter/Documents/4089-15%20MBS%20OPA%20 Amendments%201%262.pdf (detailing obligations of Redevelopment Agency and Master Developer for Mission Bay South).

251. San Francisco Office of Community Investment and Infrastructure, Mission Bay South Design Review and Document Approval Procedure 7-10; https://sfocii.org/sites/default/files/FileCenter/Documents/772-DRDAP%20MBS.PDF. These prescriptive design standards are known as the "Design for Development."

252. *See e.g.*, San Francisco Office of Community Investment and Infrastructure, Mission Bay South Design Review and Document Approval Procedure 7-9, https://sfocii.org/sites/default/files/FileCenter/Documents/772-DRDAP%20MBS.PDF.

253. San Francisco Office of Community Investment and Infrastructure, Mission Bay South Design Review and Document Approval Procedure 3, https://sfocii.org/sites/default/files/FileCenter/Documents/772-DRDAP%20MBS.PDF.

OCII is approving a substantial number of units,[254] including the majority of San Francisco's affordable housing units.[255] Our calculations in this paper do not include this process for several reasons. First, within our selected jurisdictions, no other successor agency is approving residential development entirely outside the jurisdiction's Planning Department. Omitting this pipeline of units enables us to provide a comparison of planning and entitlement processes by type and number of approvals; the OCII process would be a standalone process within our analysis. Second, this process is slowly being discontinued. By law, successor agencies cannot continue beyond the current redevelopment plan areas; redevelopment dissolution law requires obligations to sunset once the outstanding obligations are fulfilled.[256] Finally, these projects are not tracked within the Planning Department, and OCII has more limited data tracking than the Planning Department, so the type of data required to attempt analysis (in terms of number of total units entitled, number of approvals and timelines) is unavailable.[257] OCII's unique approval process will, however, be discussed in future publications as we continue to gather the required data, as it may be an example of expeditious approvals of affordable housing development that should be contemplated (even as redevelopment is being discontinued).

Phased projects present an additional complexity for measuring project time frames. Most notably Oakland entitles many projects under a single master EIR and Development Agreement that is phased over many years; in some cases phased projects crossed decades. Prior to filing for a building permit for each phase, the developer must obtain final design review from the City. For these projects, we did not measure the entire process from the date of the application for the master EIR and Development Agreement because the project was intentionally designed to be phased. In other words, the delay is not a product of law or planning process but rather market economics. This is consistent with the way we measure

254. *See* San Francisco Office of Community Investment and Infrastructure, Transbay Neighborhood (Transbay Project Area), https://sfocii.org/sites/default/files/TB%20Project%20Area%20Summary%20Sheet%20010418.pdf (stating that the Transbay redevelopment plan will lead to 4,150 new housing units, 35% of which will be affordable); San Francisco Office of Community Investment and Infrastructure, Bayview Hunters Point Redevelopment Projects and Rezoning FEIR Summary S-3, https://sfocii.org/sites/default/files/ftp/uploadedfiles/Projects/BVHPFEIRSum.pdf (estimating 3,700 net new units in the Bayview plan area); *See* San Francisco Office of Community Investment and Infrastructure, Mission Bay, https://sfocii.org/mission-bay (stating Mission Bay redevelopment area will produce 6,404 new housing units, 1,806 of which are affordable).

255. *See* Office of Community Investment and Infrastructure, *Affordable Housing Production Report Fiscal Year 2016-2017* 4 (noting that 552 funded affordable housing units and 51 inclusionary units were completed in fiscal year 2016-2017).

256. *See* Cal. Health & Safety Code § 34179.7 (specifying final conditions for completion of enforceable obligations and Redevelopment dissolution).

257. The data is unavailable primarily because the current data tracking system in San Francisco tracks planning entitlements not approvals from OCII. Although overall production counts are available for these redevelopment plan areas, additional work is needed to identify timelines and to disaggregate approvals on annual basis. We note that San Francisco has worked to make all relevant data points available to facilitate future comparative analysis of housing production..

time frames for projects entitled under a Specific Plan—the developer's entitlement application kicks off the entitlement process, not the adoption of the Specific Plan.

Finally, some developers will obtain a project approval and later withdraw it, with the intent of filing for a new application. Despite the fact that this approval was later withdrawn, we still count the entitlement in our database because it successfully completed the planning process, regardless of whether it will ever be built.

3. Extracting the project data

To collect this data, we reviewed a jurisdiction's website to see what information could be readily obtained by reviewing public notices for all environmental review documents, lists of approved developments, parcel information maps, among other relevant information. We also searched property addresses within a jurisdiction's database to gather parcel-level information, such as lot size, census tract, and assessor data. To obtain information on property tax assessment and land transaction records, we searched by street address in Lexis/Nexis Public Records. We tracked any obvious holes in the data to confirm with planning department staff, and in some cases, we requested additional data through public records requests.

To analyze how each residential development of five or more units navigated the entitlement process, we gathered approximately twenty-five characteristics per development, relating to current site usage, proposed project characteristics, types of entitlements and environmental review, and approval timeline, including appeals. Where projects received more than one entitlement, we noted all entitlements, which is why the total land use approvals per jurisdiction are far greater than the number of projects. Similarly, many jurisdictions processed projects under more than one CEQA pathway—combining multiple project-based exemptions or a project-based exemption with review that tiered off a prior document. Depending on the accessibility of public data, these characteristics are drawn from project approval documents, zoning geographic information systems ("GIS"), tax assessor records, and city council and planning commission meeting minutes. This data revealed how local governments apply their planning code and other relevant ordinances at a micro level.

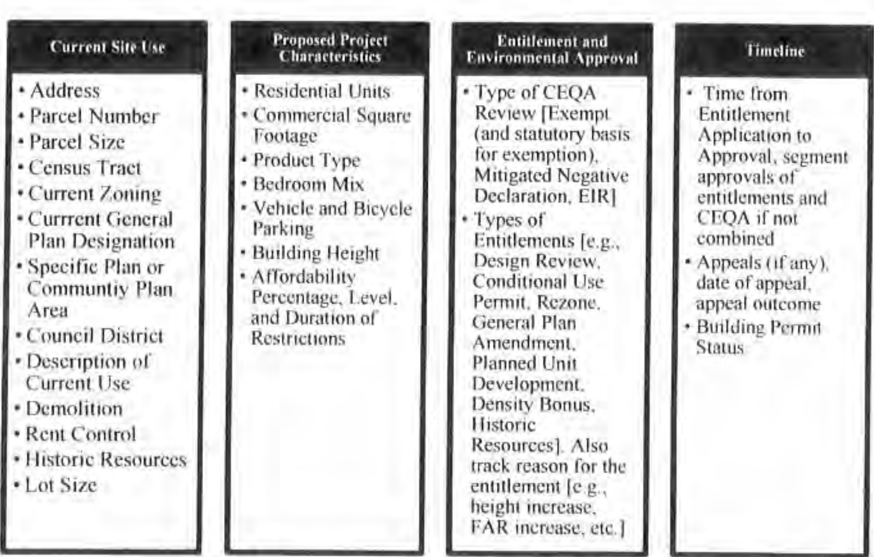
We entered this project specific data into an excel spreadsheet, retaining assigned project identifiers, all original descriptors, dates, and all unit counts. We then assigned a numeric code to specific project characteristics, use of local land use processes, and types of environmental review documents/exemptions to enable analysis of timeframes and frequency of certain approval types. To determine timeframes, we counted days from the application file date through the approval of the last discretionary entitlement, and then converted them into months by dividing by 30.5.

To provide a comprehensive assessment of all litigation against the entitled development projects of five or more units, we searched state and county records to identify all writs filed against each of our selected cities in the timeframe

of 2014 through 2017. We then pulled the records associated with litigated projects of five or more residential units entitled during our study period.

To spatially analyze this data, we mapped all city boundaries using data available from the city (San Francisco, Oakland) or Stanford's Digital Repository (San Jose, Redwood City, Palo Alto). Mapping of San Francisco plan areas uses GIS data from the San Francisco Planning Department. Area plan polygons for Redwood City, Oakland, and San Jose use georeferencing planning documentation maps to street centerline data for each municipality. BatchGeo provided geocoding for project addresses.

Figure 2: Project Characteristics



We then conducted initial analysis of our residential development database to identify possible entitlement patterns and inform the scope of interviews. We identified the land use characteristics that appeared to be associated most frequently with protracted development approval timelines, as well as the development characteristics that appeared to be associated with contentious approvals processes. This analysis yielded potential patterns of either accelerated timelines, protracted timelines, or contentious approval processes for residential development within certain areas.

We supplemented gaps in available online data with requests to planning staff officials. After the publication of our first working paper in February 2018,[258] San Francisco Planning Department provided us with more data, which enabled us to add ten developments that were not previously in our database. While

258. Moira O'Neill, Giulia Gualco-Nelson & Eric Biber, *Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process* (Working Paper Feb. 2018), https://perma.cc/P68H-XY5E.

researching appeals, we discovered another large discrepancy with Oakland, which led us to add twenty-three new developments to our database that were not available to us when performing our initial search. Still, for reasons described in Part III, Oakland data access is limited. Of the ninety total developments in Oakland, we were only able to obtain final approval documents for forty-nine of these developments. San Jose also dropped two projects since the time of our prior paper due to duplicate projects that had separate entitlements filed under different addresses. While these new projects influenced the entitlement rates in these jurisdictions, they did not significantly alter our findings.

D. Diving deeper into local context: in-depth interviews with key informants

To explore how law is applied in ways that project-level data could not, alone, reveal, we conducted in-depth interviews with key informants from each jurisdiction we chose to study. Building on our professional expertise in the field of land use, we used purposive sampling[259] to generate a list of potential participants across four stakeholder groups across all five cities: (1) public agency staff (including local planning staff, housing and community development staff, and city attorneys), (2) developers (market-rate and non-profit affordable), (3) community-based organizations and advocates, and (4) consultants (design, legal, and entitlement).[260] We identified seventy potential interview participants through examination of websites, professional reports, and project-level data. We successfully recruited twenty-nine participants for in depth interviews, with at least one participant within each stakeholder group and within each city. Some participants sat for more than one interview and had more than one role, which is why the totals do not add up to twenty-nine.

259. Although not engaging with a survey tool, we wanted to make sure that the participants were in some way representative of both stakeholders that directly interact with entitlement processes and stakeholders engaged with local-level policy reform that directly influences entitlement processes within these five cities. We therefore considered various forms of "sampling" used in survey methods when constructing our research design. *See Purposive Sampling*, in ENCYCLOPEDIA OF SURVEY RESEARCH METHODS (Paul J. Lavrakas ed., 2008), http://methods.sagepub.com/reference/encyclopedia-of-survey-research-methods/n419.xml.

260. In some cases, a single participant could represent more than one stakeholder group. In some instances, individuals we interviewed worked in, or for, two or more of the cities within our group of five.

Figure 3: Research Interviews by Category

	Public Agency Staff	Developers	Community-Based Organizations /Advocates	Consultants	Total
San Francisco	3	4	2	3	12
San Jose	3	2	3	4	12
Oakland	3	3	2	1	9
Redwood City	3	3	3	2	11
Palo Alto	3	3	3	4	13
Total	15	15	13	14	57

We conducted semi-structured interviews[261] with open-ended questions to collect perceptions of: the jurisdiction's approvals process, land use taxonomies that contribute most to delays and cost, the role of community in the public approvals process, social-economic-political factors that shape development patterns including important context (such as the local political climate and community tensions at play), and technical details not immediately obvious in the development data. We concluded interviews by sharing preliminary findings from our datasets with participants to gather feedback.

We transcribed our interviews verbatim and used open coding[262] to identify themes that emerged from the interviews. We then analyzed the interviews to identify perceptions about both local and state-level obstacles to advancing equitable infill development and whether proposed (and relevant) statewide legislative action might succeed in reducing time lags caused by local regulatory processes and the potential trade-offs (if any) of reducing those time lags. We then triangulated the data from our planning and development code summaries and development database (including identified patterns within the project-level data) with the themes emerging from interviews to test potential explanations of patterns and themes that we extracted from the interviews.

261. *See* BERG & LUNE, *supra* note 229, at 112–14.
262. *See* BERG & LUNE, *supra* note 229, at 364–72.

Part III:Findings

While our research continues, and we will be adding jurisdictions to our data set, we can provide an overview of completed research within our first Bay Area jurisdictions.

A. All residential development of five or more units is discretionary in these cities, and each city imposes discretionary review at multiple points in the entitlement process

All five jurisdictions we examined require discretionary review for residential developments of five or more units. These discretionary review processes apply even if these developments comply with the underlying zoning code.[263] Four of these cities use aesthetic controls as a primary discretionary review mechanism. Oakland uses Design Review,[264] whereas Redwood City and Palo Alto employ Architectural Review.[265] San Jose chooses to use a Site Development Permit.[266] Among these five cities, San Francisco is unique in that it does not impose design or site development review on all projects. But San Francisco, through its city charter, imposes discretionary review on *all* proposed projects.[267] Absent its city charter that renders building permits discretionary, San Francisco would have permitted as of right nine projects — each ranging from eight to sixty-seven units. As Figure 4 shows, no other planning code in our case studies would permit this level of development without a discretionary approval. This is an example of how a charter city can impose discretionary review through a mechanism outside of the formalized planning and zoning process.

263. For a discussion of discretionary review, *see* Part I *supra* note 34.

264. OAKLAND MUNI. CODE §§ 17.136.040(3)–(4), 17.136.025(B)(1)(d).

265. REDWOOD CITY MUNI. CODE § 45.2(A); PALO ALTO MUNI. CODE § 18.76.020(b)(2)(B).

266. SAN JOSE MUNI. CODE § 20.100.010.

267. A city charter is the constitution for that local government. The provision of San Francisco's charter rendering all permits discretionary can be found in S.F. BUS. AND TAX REGULATIONS CODE § 26(a).

Figure 4: Discretionary Review of Developments Consistent with Zoning

Jurisdiction	Primary Discretionary Review Mechanism	Residential Developments Exempt from Discretionary Review
San Francisco	Building Permits	None
San Jose	Site Development Permit	Single-family homes in limited circumstances.[268]
Redwood City	Architectural Permit	One-story single-family homes and duplexes
Palo Alto	Design Review	Up to two single-family homes and two duplexes.[269]
Oakland	Design Review	Secondary units

It is also notable that within these five cities, the total numbers of land use/planning approvals are greater than the number of overall development projects in each jurisdiction. A single project might need to obtain Design Review approval and a Minor Variance from the Director of the Planning Department and a rezoning from the City Council.[270] Figure 5 illustrates. This requires a project to navigate multiple levels of local government review, which means that there is more than one step in the approval process that would pull the project within the scope of local discretion and trigger environmental review. It should also be noted that if development requires the subdivision of land into smaller parcels, additional discretionary review by local governments generally applies as well, which is accounted for in these numbers.[271] As Figure 5 also shows, the number of discretionary reviews per project does not differ dramatically across our jurisdictions, with Redwood City requiring, on average, the highest number of discretionary approvals.[272]

268. To be exempt from site development permits, single-family homes must meet height, FAR, and lot size requirements and cannot be located in riparian areas. SAN JOSE MUNI. CODE § 20.100.1030(A)–(C).

269. To qualify for design review exemption, the proposed development cannot be located in a conservation zone. PALO ALTO MUNI. CODE § 18.76.020(b)(2)(D).

270. *See* S.F. MUNI. CODE § 305 (limiting review of variances to the Zoning Administrator and Board of Appeals). In practice, many jurisdictions do permit concurrent review of entitlement applications. *See e.g.*, SAN JOSE MUNI. CODE § 20.100.140 (permitting concurrent review of multiple entitlement applications); OAKLAND MUNI. CODE § 17. 136.040(D) (permitting the Director to refer design review applications to the Planning Commission when coupled with certain types of variances).

271. For more information on subdivision, *see supra* notes 38–39.

272. To determine the number of discretionary approvals required per jurisdiction, we calculate total approvals and divide by the number of projects and then add one extra approval for CEQA.

Figure 5: Types of Discretionary Review per Jurisdiction

Entitlement Types	San Jose	San Francisco	Oakland	Palo Alto	Redwood City
Site Development Permit/Design Review	13	0	89	5	9
Planned Development Permit	50	5	9	0	4
Conditional Use Permit ("CUP")	0	33	55	0	1
Tentative Map Permit	36	59	33	4	8
Rezoning	46	4	1	0	0
Historic Preservation Permit/Certificate of Appropriateness	3	2	0	1	4
GP Amendment	5	1	0	0	0
State or Local Density Bonus	1	3	2	0	1
Specific Plan Permit	0	50	0	0	4
Specific Plan Exception	0	32	0	0	0
Variance	0	34	39	3	1
Development Agreement	0	0	0	0	4
Other Approval	4	6	1	0	0
Total	158	229	229	13	36
Average Approvals per project	**2.43**	**2.41**	**2.54**	**2.60**	**2.77**
Average Approvals with CEQA	**3.43**	**3.41**	**3.54**	**3.60**	**3.77**

B. Four of these cities are all employing state-level statutory provisions to facilitate and expedite environmental review for developers

State law allows cities to take a diverse range of approaches to comply with CEQA requirements.[273] EIRs—the most onerous form of CEQA review—

273. For a discussion of the various environmental review options, *see supra* Part I.A.2.

occurred infrequently across all jurisdictions.[274] Relatively few projects within these five cities require a full EIR process primarily because jurisdictions are taking advantage of project- or tiering-based exemptions.[275] The figure below demonstrates that exemptions are the most common type of CEQA review for projects in most jurisdictions, with EIRs and MNDs in second and third place, respectively.[276] The most common forms of project-based exemptions included the Class 32 (infill), Class 3 (small structures), and Class 1 (existing facilities) exemptions discussed in Part I supra.

Figure 6: Percentage of Projects by CEQA Review Type

	San Jose	San Francisco	Oakland	Redwood City	Palo Alto
Exempt (Tiering)	46%	69%	106%	69%	0%
Exempt (Project Based)	3%	11%	83%	15%	40%
ND	2%	2%	0%	0%	0%
MND	46%	9%	0%	8%	20%
EIR	22%	8%	3%	8%	40%

Even when adjusting by number of units, relatively few units go through EIRs with the exception of Palo Alto; however, more units are going through EIRs than MNDs. Additionally, more units go through tiering than project-based exemptions, with the exception of Oakland.

274. These are similar findings with LANDIS ET AL., *supra* note 168, at 99, 105.

275. For a discussion of tiering, *see supra* Part I.A.2.

276. As discussed below, a single project can undergo more than one type of CEQA review. Figures 6 and 7 do not back out these projects that receive multiple exemptions, which is why the percentages exceed 100 percent of the total number of projects and units. Oakland in particular will apply multiple tiering and project-based exemptions to a single project.

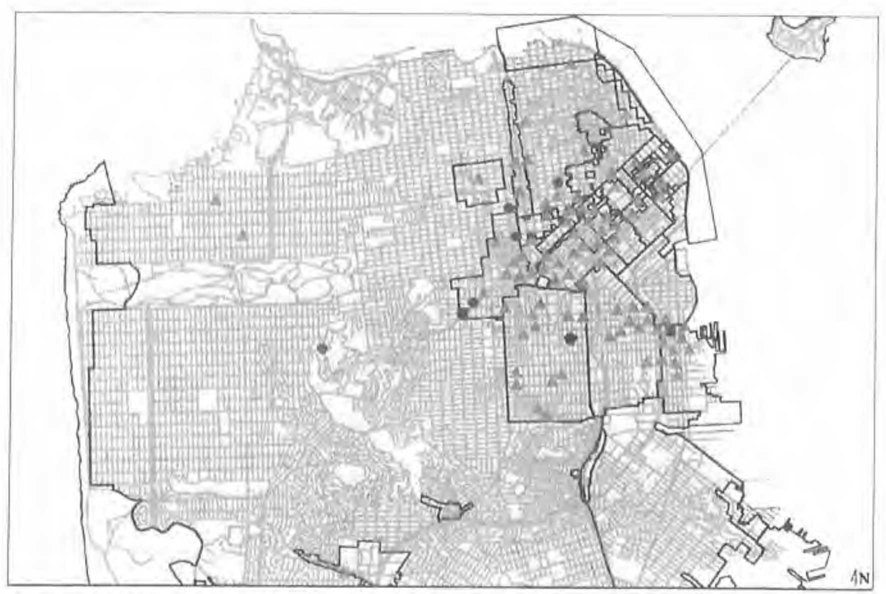
Figure 7: Percentage of Units by CEQA Review Type

	San Jose	San Francisco	Oakland	Redwood City	Palo Alto
Exempt (Tiering)	54%	64%	89%	89%	0%
Exempt (Project Based)	0%	3%	52%	9%	7%
ND	0%	3%	0%	0%	0%
MND	14%	11%	0%	1%	3%
EIR	49%	24%	9%	1%	90%

Four of these jurisdictions appear to be making good faith efforts to engage in strategies that link housing and jobs to transportation and facilitate environmental review for developers. This means that each of these four cities is tapping into state-level statutory provisions designed to promote sustainable development by doing the bulk of the work to comply with CEQA, rather than imposing additional time and costs on developers. For example, the vast majority of relevant projects entitled within San Francisco and Oakland are also within specific plan areas that rely on these state-level statutory provisions to facilitate environmental review.[277]

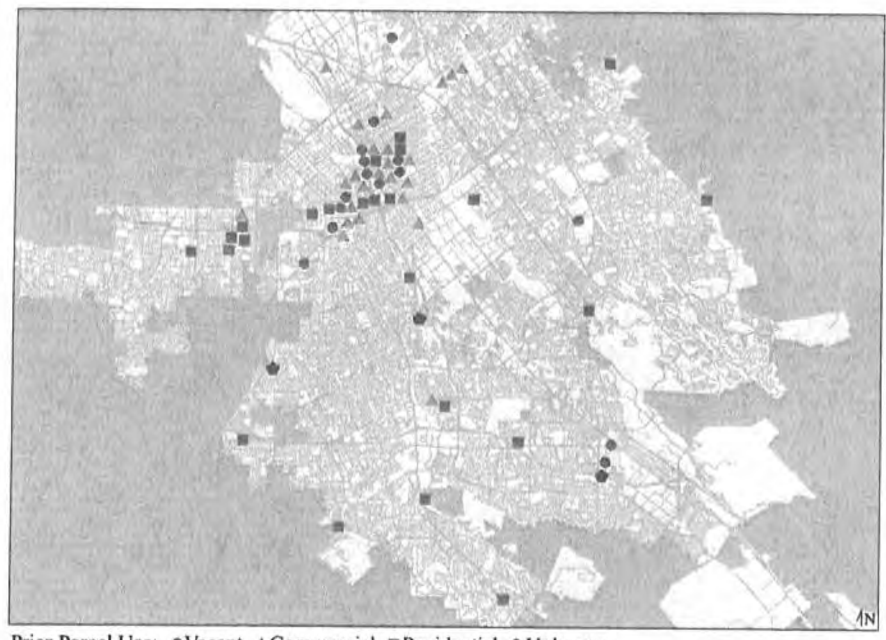
277. For similar findings in the prior literature, *see* LANDIS ET AL., *supra* note 168, at 107–08.

Figure 8: San Francisco Project Locations and Prior Uses[278]



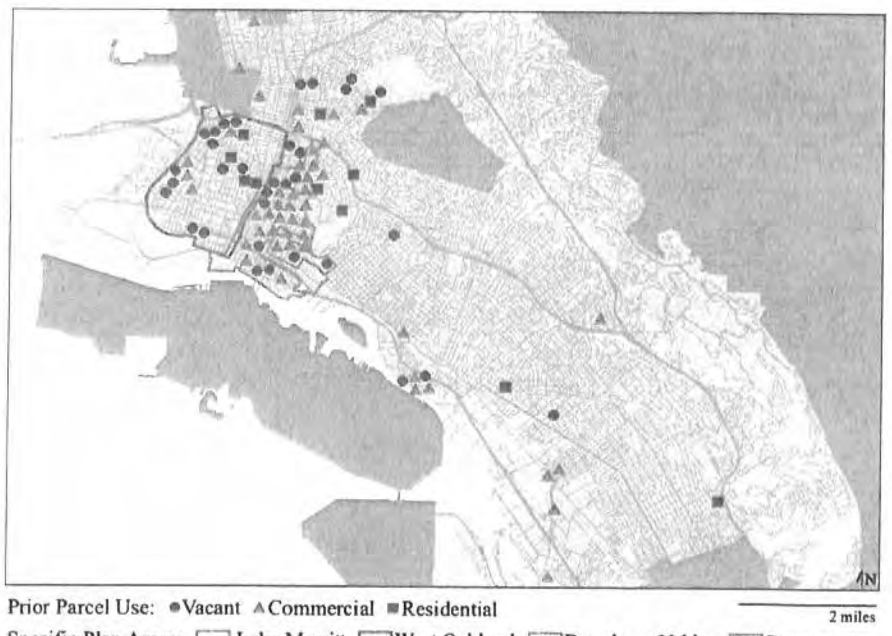
278. This map does not include residential development that OCII would be responsible for; however, this development is occurring in the eastern part of San Francisco, which does not alter our analysis that permissive density is not spread across the City evenly.

Figure 9: San Jose Project Locations and Prior Uses



Prior Parcel Use: ●Vacant ▲Commercial ■Residential ⬟Unknown

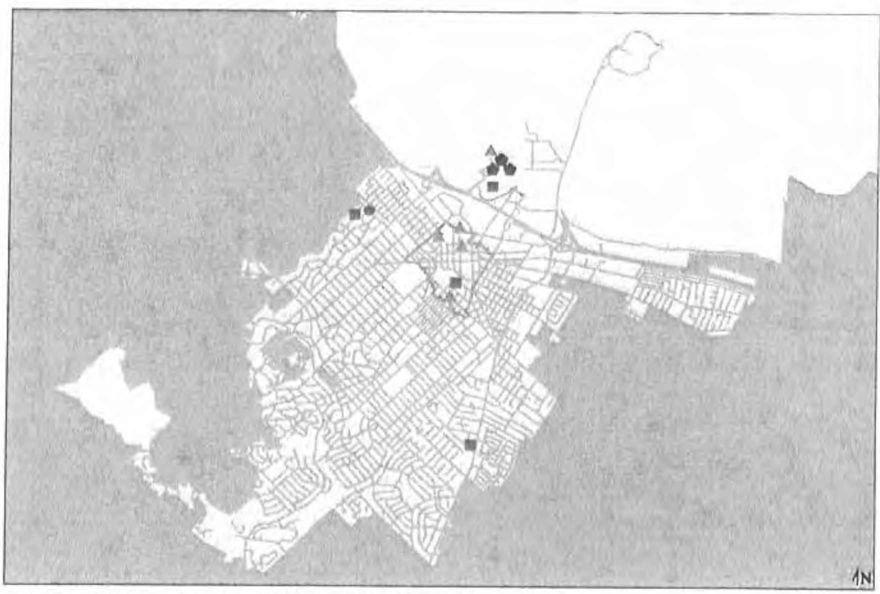
Figure 10: Oakland Project Locations and Prior Uses



Prior Parcel Use: ●Vacant ▲Commercial ■Residential

Specific Plan Areas: ☐ Lake Merritt ☐ West Oakland ☐ Broadway Valdez ☐ Downtown

Figure 11: Redwood City Project Locations and Prior Uses

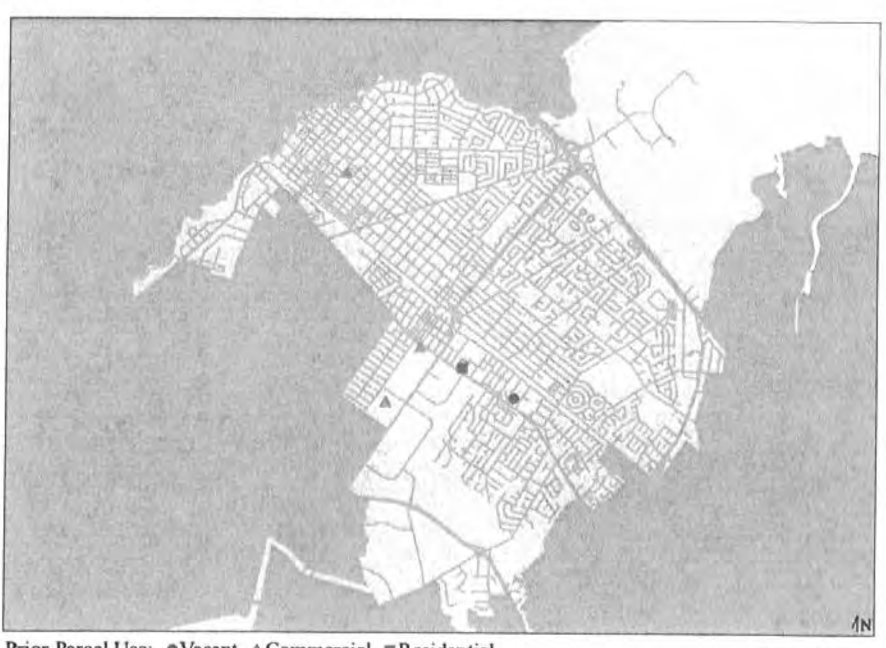


Prior Parcel Use: ●Vacant ▲Commercial ■Residential ●Unknown

☐ Downtown Precise Plan

1 mile

Figure 12: Palo Alto Project Locations and Prior Uses



Prior Parcel Use: ●Vacant ▲Commercial ■Residential

1 mile

C. Use of CEQA exemptions varies across cities

Like the discretionary review mechanisms discussed above, many projects in Oakland are receiving multiple CEQA exemptions, which leaves open the question of why planners take these additional measures. Interview data suggests planners are doubling up on CEQA exemptions to forestall against perceived political challenges to the project. If a project qualifies for more than one CEQA exemption, planners will evaluate the project under each possible exemption. Other jurisdictions, however, rarely make use of exemptions outside of tiering situations. For example, given that most development in these jurisdictions is infill, the fact that so much development receives the Class 32 exemption in Oakland, but not San Francisco or San Jose, is peculiar. Interview data also indicates that within Palo Alto, Redwood City, and San Jose there may be some confusion within planning departments and amongst developers about which types of CEQA documents are the most legally vulnerable on appeal. Perception of legal defensibility may in turn inform decisions on which type of CEQA review to undertake.

Analyzing project size as a function of CEQA, data shows that projects with EIRs in these five cities generally tend to be larger than projects that undergo other types of CEQA review. All jurisdictions with the exception of Redwood City prepared an EIR for their single largest project. Nonetheless, the projects going through the exemption process are not small, averaging over fifty units for four of our five jurisdictions.[279]

Yet significant inter-jurisdictional variations still persist.[280] Projects that received a project-based exemption in Oakland are on average, twice the size as projects that received a project-based exemption in San Francisco. In Redwood City, projects that use tiering are larger than projects that use tiering in both San Francisco and Oakland. Figure 7 shows that even with a larger mean size for EIRs, EIRs are a small fraction of the total capacity being entitled in most jurisdictions.

279. *Cf.* Hernandez, Friedman & DeHerrera, *supra* note 219, at 31 ("the overwhelming majority of CEQA compliance documents, however, involve the use of restricted regulatory exemptions for extremely minor projects, such as repairing single-family homes, acquiring park lands, making minor modifications to existing uses such as modifying signage or repairing piping or other infrastructure, etc.").

280. The variability in environmental review processes is consistent with Gyourko, Saiz & Summers, *supra* note 113, at 694, who found significant variability in local land use regulation.

Figure 13: Mean Project Size By CEQA Type

	San Jose	San Francisco	Oakland	Redwood City	Palo Alto
All Types of Exemption	193	84	93	98	10
Tiering Exemptions	205	94	96	109	0
Project Based Exemptions	8	24	67	51	10
ND	10	125	0	0	0
MND	69	117	0	12	8
EIR	403	291	282	8	125

D. There is substantial variation in entitlement timelines across these five cities that does not appear to correspond with stringency in either environmental regulation or local entitlement processes, or project size

Timeframes for entitlements vary significantly across jurisdictions for similar projects and across different project sizes within the same jurisdiction. Focusing first on environmental review processes, the difference in timeframes does not appear immediately attributable to environmental review legal requirements. Instead, it appears these cities apply the same environmental review provisions to similar projects in different ways—with significant variations in the total timelines for entitlement. For example, both the City of Oakland and the City of San Francisco use the section 15183 Community Plan Exemptions ("CPE") to reduce CEQA compliance obligations for proposed projects within plan areas[281] that have a relatively recent full EIR that the respective city completed. However, Oakland's CPE process moves much faster than San Francisco's. The median CPE entitlement in Oakland is seven months. In San Francisco, a CPE takes over twenty-four months. In contrast, a full EIR in San Jose, for which there is no prior study, takes nearly thirty months, just six months longer than a CPE in San Francisco.[282]

281. Plan Area terminology varies according to jurisdictions and the size of the plan area. Redwood City refers to these plans as "Precise Plans." San Jose and Oakland both use the terms "Area Plans" and "Specific Plans," and San Francisco calls them "Area Plans."

282. Some jurisdictions apply different types of CEQA review to a single project. A CPE in Oakland is often combined with a section 15332 exemption. EIRs in San Jose are often paired with later addendums or supplemental EIRs. A CPE in San Francisco can be paired with a Focused EIR. The numbers above do not control for these multiple types of CEQA review due to the small sample sizes that would result. Even controlling for multiple types of CEQA review, the general trends hold true. Projects that only received a CPE in Oakland took 7 months; projects in San Francisco that only received a CPE still take 23

Interview data attributes the delay in environmental review within cities to planning practice and the level of attention put into staff reports, rather than the complexities of particular project proposals. Jurisdictions vary in a developer's ability to manage and communicate with their CEQA consultants during the preparation of the environmental documents. Interview participants shared the perception that the inability to directly select or manage consultants can lead to lower quality environmental documents, as well as time delays.[283] These results also indicate the potential importance of political context in the approval process.[284]

Figures 14 and 15 together indicate that the number of approvals required (often used as one important metric for stringency) does not necessarily correspond to entitlement timelines.[285] All five cities impose discretionary review on all projects through multiple local regulations, and all require, on average, more than three approvals (including environmental review). But, the variability in timelines for similarly sized projects is great. Redwood City had shorter timeframes for entitlement, particularly compared to San Francisco and San Jose. Interview participants highlighted how variability in entitlement timelines tends to be related to local practice. Examples include staff-level variations in performing application intake, to higher-level decisions on the amount of commercial development that must occur before a developer-applicant can even propose residential development in certain neighborhoods.[286] These choices in practice may be a response to political and fiscal pressures that prompt cities to embed discretionary review into the entitlement process.

Project size also does not appear to explain delay in approval timelines. Large projects do not always take longer to entitle than small projects. In San Jose,

months; projects that only received an EIR in San Jose took 14 months (measuring by the median).

283. *See e.g.*, SAN FRANCISCO PLANNING DEP'T, *Environmental Review Process Summary* 5 (2011), https://perma.cc/8BLP-B4T4 ("While the project sponsor pays all costs for preparation of the necessary consultant-prepared documents, the Department scopes, monitors, reviews, and approves all work completed by consultants").

284. *See* John Quigley, Raphael & Rosenthal, *supra* note 14, at 281–282.

285. These results are consistent with Jackson, *supra* note 130, at 141, who found that regulatory stringency did not affect supply elasticity, and are in tension with Gyourko, Saiz & Summers, *supra* note 113, at 695, who found that regulatory stringency did correlate with timeframes. *See also*, *supra* Figure 5.

286. San Jose's Urban Villages, for example, are transit-oriented, mixed-use neighborhoods that aim to balance job and housing growth. San Jose, *Envision San Jose 2040 General Plan*, Chapter 1 at 18 (2018). To achieve this, Urban Villages utilize "Growth Horizons" that stipulate certain commercial and office targets before residential development can be unlocked (with the exception of 100% affordable housing developments). *Id.* at Chapter 7 at 6, 19. While San Jose has long shouldered much of the region's housing burden without commensurate increases in job growth, these policies can impede residential growth in transit-accessible locations. *See* Memorandum from Harry Freitas and Kim Walesh to Honorable Mayor and City Council (Apr. 3, 2015), https://perma.cc/LM39-GC3T (noting that San Jose is the only major city in the US with more residents leaving San Jose during the day to go to work than non-residents commuting in for work).

projects between five to twenty-five units take nearly seven months longer to entitle than projects with more than 150 units. In Redwood City the difference is about five months, which is significant given Redwood City's entitlement timeframe is seven months across all projects. Figure 14 shows the mean and median entitlement timeframes across jurisdictions by project size.[287] The extreme intra-jurisdictional variation skews mean timeframes higher.

Figure 14: Total Entitlement Time Frames by Project Size

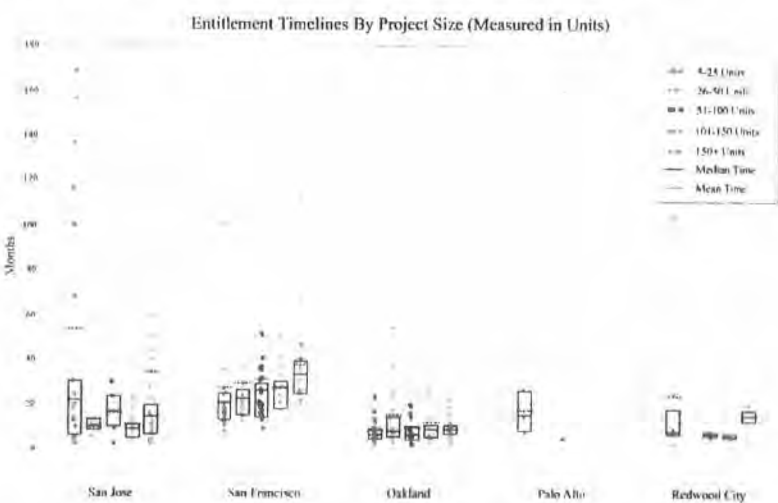
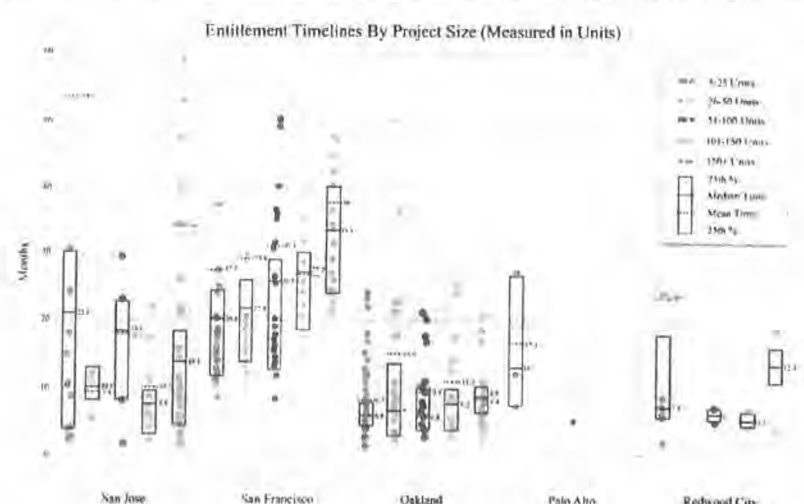


Figure 15 below narrows the approval timeframe to sixty months—in the process removing some outlier projects visible in Figure 14—but provides a better representation of means and medians across all jurisdictions.

287. When referencing timeframes in this Article we refer to the median unless otherwise noted.

Figure 15: Entitlement Timelines Within 60 Months by Project Size



Although we are pursuing additional research to better understand issues with project size, multiple explanations for the different outcomes emerged in interviews. One potential explanation is that smaller projects are occurring in areas that do not benefit from prior environmental review and thus cannot tier off a prior environmental document. Another potential theory is that the type of developer building in the twenty-five-unit range lacks the capital and sophistication to navigate the approval process as efficiently as developers undertaking larger projects. In interviews, small developers expressed feelings of being shut out from the Bay Area development boom because of a lack of access to key planning departmental staff or the inability to afford the right consultants with well-established relationships in the planning department.

E. Substantial variation in housing project entitlement across these five cities exists despite regulatory stringency

Similarly, housing entitlement—both as a measure of land area and population—varies dramatically. As a measure of land area, San Francisco entitles the most housing despite it having the longest approval timeframe. [288] San Francisco is also the most geographically constrained jurisdiction in our dataset years; when measuring land area as a function of population, San Francisco has the densest existing development. This is not entirely consistent with research in Part I that linked more geographically constrained regions with supply constraints.[289]

288. As discussed in Part II, entitlement numbers for San Francisco do not include units approved through OCII—the successor to the former Redevelopment Agency—in Redevelopment Plan Areas. This data is still unavailable.

289. *See* Saiz, *supra* note 129, at 1254.

Redwood City has the second-fastest approval timeline, but entitles less housing per square mile than San Francisco, Oakland, and San Jose. Redwood City is also one of the least geographically constrained cities. Interview data suggests that market barriers, such as the differential cost of construction and sale or rental prices, do not entirely explain this discrepancy. In low-density communities, developers are also factoring in the political feasibility of proposing a denser product, even where that density is permissible under the base zoning. This suggests that in jurisdictions with overall low-density development patterns, a streamlined approval process may be insufficient to entitle substantial housing, if barriers like lack of appropriately zoned land and/or lack of political will are present.[290]

Figure 16: Entitlement Production by Land Area and Population Intensity

	Land Area (mi^2)[291]	Total Entitled Units	Entitled Units per Square Mile	Population	Population Per Square Mile[292]
San Francisco	47	9,768	208	870,887	18,581
San Jose	177	11,463	65	1,025,000	5,806
Oakland	56	8,958	161	420,005	7,528
Redwood City	19	1,100	57	84,950	4,374
Palo Alto	24	277	12	67,024	2,807

Adjusting on a per capita basis, Oakland and Redwood City—the two jurisdictions with the fastest timelines—are on top in terms of output, with Oakland in a distant lead.

290. This appears consistent with Kristoffer Jackson, *supra* note 130, at 141, who found that regulatory stringency did not affect supply elasticity, and is in tension with Gyourko, Saiz & Summers, *supra* note 113, at 695.

291. Land areas taken from the 2010 Census. *See*, *QuickFacts*, U.S. CENSUS BUREAU, https://perma.cc/L97A-BD8T (last visited Oct. 23, 2018).

292. Population taken from American Communities Survey 2012-2016 estimates. *See American Community Survey Data Profiles*, U.S. CENSUS BUREAU, https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2016/ [https://perma.cc/3T9K-8RPQ] (last visited Oct. 23, 2018).

Figure 17: Units Entitled Per 1,000 People Over 3 Years

	Population	Entitled Units	Units per 1,000 people over 3 years
San Francisco	870,887	9,768	11
San Jose	1,025,000	11,463	11
Oakland	420,005	8,958	21
Redwood City	84,950	1,100	13
Palo Alto	67,024	277	4

Potential explanations for Oakland's lead may be both local context[293] and local government initiatives to accelerate dense infill development.[294] The community's response to concerns of gentrification, increasing housing costs, and displacement have included community based organizations advocating and collaborating with the regional transit agency to support dense TOD with major affordability components.[295] These combined factors involved major phased developments, some beginning in the 1990s, with phases in the 2014, 2015, 2016 data years contributing to the number of units entitled during our study years. Interview participants also shared perceptions of differing political and community pressure around development outcomes and processes across these cities. Interview participants described Oakland as generally welcoming development, San Francisco as welcoming of affordable development but not as favorable to major market-rate development projects, and Palo Alto as welcoming of very little dense development. Some participants who work in multiple cities also shared the perception that the political and community responses to development in Oakland will begin to mirror their observations in San Francisco.

293. Oakland experienced decades of population decline and disinvestment distinguishable from the other cities and has historically had a lower median household income and higher rate of poverty. *See generally* Robert O. Self, AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND (2005); Chris Rhomberg, NO THERE THERE: RACE, CLASS, AND POLITCAL COMMUNITY IN OAKLAND (2007). We draw comparisons of rate of poverty and median household incomes from 2010 census data and American Community Survey estimates. *See QuickFacts*, U.S. CENSUS BUREAU, *supra* note 291.

294. The City of Oakland began its 10K program in the 1990s under former Mayor Jerry Brown, who Professor Rhomberg described as having "offered Oakland as a haven to private developers fleeing overbuilt conditions in San Francisco and promised to expedite approval for market-rate apartments and condominiums built without city subsidies or requirements for affordable housing." Rhomberg, *supra* note 293, at 189. The 10K initiative generated controversy and exacerbated existing concerns about increasing housing costs, gentrification, and the displacement of people of color. Rhomberg, *supra* note 293, at 183–94.

295. For example, the Unity Council in the Fruitvale neighborhood took the lead on several major TOD development projects around the Fruitvale BART station with affordability and community use components—work that began as early as 1992. Rhomberg, *supra* note 293, at 190–92.

F. Most of the projects entitled within these three years involve the development of housing where there was none

Whether proposed development risks displacement through the conversion or elimination of affordable housing—including rent controlled, deed restricted, or naturally affordable housing—presents an important equity consideration. This also implicates important climate concerns if residential demolition is reducing overall density. During these project years, the majority of residential developments of five or more units or more entitled within all cities are on vacant or commercial land,[296] rather than land with a prior residential use. These results are summarized below and displayed in Figures 8–12 above.

Figure 18: Prior Parcel Uses

Prior Parcel Use	San Jose	San Francisco	Oakland	Palo Alto	Redwood City
Residential	23	2	11	1	4
Residential %	35%	2%	12%	20%	31%
Commercial	24	87	45	3	5
Commercial %	37%	92%	50%	60%	38%
Vacant	15	5	34	1	1
Vacant %	23%	5%	38%	20%	8%

Redwood City and San Jose have higher occurrences of entitlement where the prior use was residential. Of the four projects that replaced residential uses in Redwood City, at least two were multifamily structures. In San Jose, the vast majority of these residential uses are single-family homes—and the new developments were substantially denser than the single-family homes that were demolished. In San Jose, four of the twenty-three projects that replaced residential uses were multi-family structures that could potentially have been subject to rent control. One of these multi-family buildings was a 216-unit rent-controlled building whose demolition left many long-time residents with few other affordable rental options.[297] These rent-controlled units were not replaced in the new development, nor did the new development contain inclusionary housing units.[298] From our limited data, it seems this scale of rent-controlled demolition is rare in these cities; however, more research is needed to investigate other potential rent-

296. Vacant land includes lots with no improvements or lots that contain a surface parking lot with no permanent structures. Commercial land includes lots with commercial or industrial uses, such as warehouses, restaurants, storage facilities, or retail. Residential lots include single-family homes, mobile homes, multifamily buildings, single room occupancy hotels, and residential motels.

297. Ramona Giwargis, *San Jose council denies appeal to stop Reserve apartment demolition*, THE MERCURY NEWS (June 22, 2016), https://perma.cc/EN52-FXDE.

298. Ramona Giwargis, *San Jose: Tempers flare over The Reserve displacement*, THE MERCURY NEWS (Mar. 16, 2016), https://perma.cc/5HCX-28AL.

controlled demolitions in our jurisdictions. Lastly, we found no deed-restricted affordable housing that was demolished during our project-years.

G. Deed-restricted affordable housing entitlement is low across all jurisdictions; however, deed-restricted affordable housing benefits from faster approval time frames

Entitlement rates (in terms of units) to support affordable housing production across all jurisdictions are low for these years. San Francisco—the only jurisdiction to apply inclusionary housing requirements to both rental and for sale housing during the project years[299]—has the highest rates of entitlement of affordable housing by units, with 11% of all new units deed-restricted to low and middle income households. 100% of deed-restricted affordable housing in San Francisco is entitled in just over twelve months, which is thirteen months faster than market rate development. In San Jose, an affordable development is entitled nearly ten months faster than market rate development. In Oakland—where the process is compressed relative to San Francisco and San Jose—affordable development is approved about two months faster than market rate development.

Unlike other Bay Area jurisdictions, most of the affordable housing units entitled in San Francisco outside of former Redevelopment Areas came through inclusionary obligations imposed on market-rate developers.[300] While we do not have complete data on inclusionary housing compliance for all our developments in San Francisco, at least twenty-eight developments—30% of projects—elected to pay the in-lieu fee rather than build the housing on-site. As our interviews highlight, the in-lieu fees are important sources of gap finance for nonprofit affordable housing developers especially after the dissolution of the Redevelopment Agency.[301] Interestingly, the jurisdictions with the fastest

299. San Jose's inclusionary housing ordinance was on hold during the first two years of our research due to ongoing litigation. *See Cal. Bldg. Indus. Ass'n v. City of San Jose*, 61 Cal. 4th 435, 443 (2015) (noting that the California Superior Court enjoined implementation of the ordinance). Though the California Supreme Court upheld the inclusionary housing ordinance against a takings challenge, the ordinance only applied to for-sale developments during our project years. *See id.* at 442, 461. The ordinance currently applies to both for-sale and rental developments. *See* SAN JOSE MUNI. CODE § 5.08.400.

300. The opposite is likely true in former Redevelopment Areas managed by OCII. *See* Office of Community Investment and Infrastructure, *Affordable Housing Production Report Fiscal Year 2016-2017* (noting that 552 funded affordable housing units and 51 inclusionary units were completed in fiscal year 2016-2017). Funded projects refer to 100% affordable housing developments as opposed to inclusionary housing units, where the affordable housing units are a smaller percentage of the total units. This also underscores the importance of redevelopment for affordable housing production.

301. The Community Redevelopment Act gave local governments the authority to declare areas as blighted and in need of urban renewal, which enabled the city or county to distribute most of the growth in property tax revenue for the project area to the relevant Redevelopment Agencies as tax-increment revenues. *See* CAL. HEALTH & SAFETY CODE §§ 33020 et seq. In 2011, the California legislature dissolved the Redevelopment Agencies. *See*

entitlement time frames—Oakland and Redwood City—also have the lowest rate of entitlement of affordable units, which may suggest affordable housing developers need more than an efficient process to make deals feasible. Interview data also suggests that high land and labor costs, coupled with the loss of funding from Redevelopment Agency tax increment programs[302] are primary barriers to developing more affordable units within these cities. The interviews yielded differing accounts as to whether discretionary approval imposed significant challenges to affordable development. Notably, interview data indicated that an increasingly elaborate building permit process also poses barriers to the timely completion of affordable developments. While the scope of this study does not address the length and complexity of the actual building permit process, this is an important area for future study.

Figure 19: Affordable Units by Jurisdiction

	San Jose	San Francisco	Oakland	Palo Alto	Redwood City
# Units	11,463	9,755	9,555	277	1,100
# Affordable Units	613	1,110	333	70	11
Affordable %	5%	11%	4%	25%	1%

Given the three-year timeframe of our study, and because 100% affordable housing developments are so infrequently entitled, the rate of entitlement (in terms of percentage number of units entitled) is by itself insufficient to determine a jurisdiction's policy on affordable housing. Palo Alto is emblematic. While Palo Alto had the lowest rate of entitled units across all our Bay Area cities, it had the highest rate of affordable housing entitlements (25%), because a large affordable development happened to be entitled during our project years. Instead, looking at the planning and development codes for the presence of local ordinances that directly incentivize affordable development, the overall rate of entitlement in terms of units entitled, and entitlement timeframes provides a more accurate assessment of a city's affordable housing policy.

A.B. X126, 2011-2012 (Cal. 2011), https://perma.cc/5FSN-AMNH. Dissolution has severely constricted local governments' ability to finance affordable housing. *See* Casey Blount et al., *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure* (2014), https://perma.cc/3QUD-FPTY (estimating a statewide average annual loss of 4,500 to 6,500 new affordable units).

302. These tax-increment revenues were a large source of affordable housing finance. *See* Blount, *supra* note 301.

H. San Francisco, Redwood City, Oakland, and San Jose all provide for density and development incentives to promote transit-oriented development that have caused developers to site most development in these growth incentive zones

Most jurisdictions in our study are easing density and parking restrictions in targeted growth areas near transit and are drawing on Specific Plans to facilitate development in targeted growth areas. Downtown San Jose—with its proximity to Caltrain and light rail—is one example. San Jose's General Plan lifted height limitations in most downtown areas, giving developers more flexibility in design and construction type.[303] The General Plan also allows for up to 800 dwelling units per acre and a 30.0 FAR for mixed-use projects in the downtown area.[304] These are high densities relative to San Jose's Mixed-Use Commercial Districts where residential developments max out at six stories and fifty dwelling units per acre.[305] Parking reductions of up to fifty percent are also available for certain mixed-use projects in downtown.[306] Additionally, San Jose's Diridon Station Area Plan rezoned land including portions of downtown and areas adjacent to the Diridon Caltrain station, to allow for residential use at higher densities than previously allowed, with the goal of connecting transit-accessible housing to jobs.[307]

While Redwood City's historic pattern of land use development is largely auto-centric, the City's current General Plan focuses growth and development in mixed-use activity centers and along pedestrian-friendly transportation corridors that are connected to the regional transit system. The General Plan allows for more intense development (40 to 60 dwelling units per acre) along major thoroughfares, particularly Veterans Boulevard, Broadway, and El Camino Real.[308] Redwood City's Downtown Precise Plan ("DTPP") also seeks to create a "pedestrian friendly, walkable district [with] good transit access."[309] Instead of focusing solely on increased development incentives, like reduced parking or open space requirements or more permissive density, Redwood City accomplishes its vision by improving processes that facilitate faster review and approvals for development

303. SAN JOSE MUNI. CODE § 20.70.200. Because of the downtown area's proximity to the airport, no building can be permitted with a height that exceeds the elevation restrictions prescribed under Federal Aviation Regulations Part 77 (14 C.F.R. Part 77) unless certain conditions are met.

304. *See* City of San Jose, *supra* note 286, at Chapter 5 at 9.

305. *Id.* at Chapter 5 at 6.

306. SAN JOSE MUNI. CODE § 20.70.330.

307. *See* CITY OF SAN JOSE, DIRIDON STATION AREA PLAN, Appendix B (last visited Oct. 26, 2018) https://perma.cc/D9E5-53ZE.

308. *See* CITY OF REDWOOD CITY, GENERAL PLAN, Urban Form and Land Use at BE-39 (2010), https://www.redwoodcity.org/departments/community-development-department/planning-housing/planning-services/general-plan-precise-plans/general-plan/.

309. *See* REDWOOD CITY, DOWNTOWN PRECISE PLAN, Introduction at 3, (2011), https://www.redwoodcity.org/departments/community-development-department/planning-housing/planning-services/general-plan-precise-plans/downtown-precise-plan.

projects within the DTPP. Conformance with the DTPP's prescriptive design and development standards is mandatory; however, participants share the perception that conformance with the guidelines ensures swifter approvals, which is also shown in our project data.[310]

Like Redwood City, San Francisco has used specific planning to concentrate growth in key transit-accessible neighborhoods. The City has lifted traditional density limitations by shifting to a form-based code in these areas so that building envelope and bedroom mix are the primary limitation on density.[311] San Francisco has also attempted to facilitate development in infill, transit-accessible neighborhoods outside the boundaries of these specific plan areas through the use of local density bonus programs like HomeSF that can provide up to an additional two stories of height outside of the specific plan neighborhoods.[312]

Since most development is indeed occurring within these growth areas, we can infer that these efforts have been successful overall—consistent with prior research that found that Specific Plans can facilitate approval processes.[313] Much can also be inferred based on where projects are not sited in these jurisdictions, as shown by the maps in *supra* Part III 4. Indeed, cities are not relaxing density and development standards uniformly within their boundaries. Interviews suggest that the political will to allowing dense development only extends to certain geographic areas. Interview participants from Redwood City, San Francisco, and San Jose have characterized this as the "grand bargain," in which constituents consent to increased density in growth in key areas in return for "leav[ing] the low-density residential neighborhoods alone."

In addition to the obvious equity implications of refusing to site dense development in lower-density areas,[314] the lack of political will also has ramifications in cities like San Francisco, that may undermine efforts to address climate change. San Francisco's western side sees virtually no development, yet is linked to the city's downtown via high quality light rail and bus lines.[315] Interviews have also raised examples of transitional single-family home neighborhoods where a denser residential product could be possible on paper, but not politically. The lack of development in these areas supports the presence of political—not necessarily planning or zoning—barriers.

I. Very few of these entitled projects were challenged in court

A close examination of the projects entitled during our study period in these five cities suggests litigation rates are quite low. At a basic level, our data

310. *Id.* at 25.

311. *See e.g.*, COUNTY OF SAN FRANCISCO, EASTERN NEIGHBORHOODS PLAN: EAST SOMA AREA PLAN.

312. S.F. MUNI. CODE § 206.3.

313. *See* LANDIS ET AL., *supra* note 168, at 95-96.

314. *See* Mangin, *supra* note 198, at 92.

315. *See e.g.*, J.K. Dineen, *In a wealthy SF neighborhood, residents fight low-income housing*, S.F. CHRONICLE (Nov. 16, 2016), https://perma.cc/YN4X-3YNR.

reveals that lawsuits challenging residential and mixed-use projects over five units is more common than the generic CEQA litigation rates reported in prior studies (all estimated at below 1%).[316] Nonetheless, the overall litigation rates are low regardless of whether they were measured with respect to number of projects or number of units. This directly conflicts with the perceptions of our interview participants, many of whom perceived CEQA litigation rates to be much higher within each city.

Figure 20: Litigation Rates by Project and Unit Counts

	Total Projects	Total Units	Litigated Projects	%	Litigated Units	%
All Jurisdictions	268	31,566	7	3%	1,994	6%
San Francisco	95	9,768	3	3%	1,273	13%
San Jose	65	11,463	2	3%	583	5%
Oakland	90	8,958	1	1%	47	0%
Redwood City	13	1,100	1	--	91	8%
Palo Alto	5	277	0	--	0	0%

The total number of projects litigated across all five cities is low. We have omitted the litigation rates by projects in Redwood City and Palo Alto because of the limited number of projects within each city (Palo Alto had no litigated projects; it had only a handful of projects.). For example, in Redwood City, one out of thirteen projects lead to a litigation rate of 8%. Comparing San Francisco (95 entitled projects), Oakland (90 entitled projects), and San Jose (65 entitled projects) gives us more information on the potential impact of CEQA litigation.

Notably, the variation in the number of lawsuits within these jurisdiction does not appear to coincide with overall housing entitlement approval timelines, at least not in these project years. San Jose's environmental review process appears faster than San Francisco's, which is one of the slowest among our jurisdictions. Moreover, not a single CPE was litigated in San Francisco nor in Oakland, therefore the litigation rates likely cannot explain the stark differences in CPE timeframes in these two jurisdictions.

It also appears that only two of the nine litigated projects had affordable housing units within them (one with 11% and the other 33%). Both were located in San Francisco. Notably, none of the 100% affordable housing developments entitled during the study period within these five cities were litigated; however,

316. *See* CAL. OFFICE OF SENATE RESEARCH, POLICY MATTERS (2018), https://perma.cc/34HL-K8SX; Smith-Heimer et al., *supra* note 194; CAL. ST. SENATE ENVTL. QUALITY COMM., CEQA SURVEY (2017), https://perma.cc/9HXP-RFYR.

affordable housing developments have been litigated outside our time frames and remain the subject of substantial press coverage.[317]

Excluding settlement, CEQA defendants have frequently won more cases than plaintiffs.[318] Settlement could be treated as a partial victory for plaintiffs, in which case success rates are about twice as high than for defendants. Of the ongoing cases, the plaintiff lost in the trial court in all three cases and then appealed. The success rates do not appear to vary substantially by type of claim. Of the six lawsuits including CEQA claims, three settled and defendants won once. Of the five lawsuits including non-CEQA claims, three settled and defendants won one.

CEQA and non-CEQA claims were approximately equally likely to be raised by plaintiffs in the lawsuits. Of the seven lawsuits, six raised CEQA claims, but four of those six also raised planning and zoning claims. One lawsuit also raised planning and zoning related claims but did not raise CEQA claims. This means that six projects raised CEQA claims, five projects raised non-CEQA claims, two lawsuits raised CEQA claims only, and one lawsuit raised non-CEQA claims. There are two potential explanations for this. Once a plaintiff decides to sue a project based on planning and zoning violations, the marginal cost of adding an additional CEQA claim is likely not prohibitive. But the reverse is also true—the marginal cost of adding a planning and zoning claim to a CEQA suit is likely not great either. Regardless, non-CEQA claims (for example, that project approvals violated state or local zoning or planning codes) appear to be just as common as CEQA claims. This suggests that CEQA is not the only driver of litigation in this context. It also suggests that eliminating CEQA might not eliminate legal challenges to most of the projects that were litigated during this study period in these cities.[319]

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317. The lawsuit against Habitat for Humanity in Redwood City is illustrative. Two attorneys filed suit against an approved affordable housing development, alleging that the height of the building would block sunlight in their office windows. The project was only half of the allowable height in the Downtown Precise Plan area. The lawsuit eventually settled. *See* Press Release, Holland & Knight, Holland & Knight Achieves Favorable Settlement for Habitat for Humanity in Legal Battle over Proposed Affordable Housing Development (July 26, 2018), https://perma.cc/ZST9-UG3B; *See also* Zachary Carr, *Settlement reached over height of downtown affordable housing*, THE DAILY J. (Jul. 21, 2018) https://perma.cc/UUD8-W9X3.

318. We note that given the small sample size of our litigation data set (seven lawsuits), any conclusions we draw about the nature and resolution of litigation will be limited. We expect to draw firmer conclusions after collecting additional litigation data from the Los Angeles area.

319. One caveat to this conclusion is that different levels of judicial scrutiny to different kinds of claims may mean that non-CEQA land use lawsuits may be less (or more) likely to succeed in court than CEQA lawsuits. If this is the case, then eliminating one kind of lawsuit may have some impact on litigation outcomes and impacts on development. Again, our limited data set from the Bay Area does not allow us to draw firm conclusions on this point, but we will gather more data on this from the Los Angeles area.

Figure 21: Types of Legal Claims

Lawsuits with CEQA claims	6
Lawsuits with non-CEQA claims*	4
Projects that raised only CEQA claims	2
Projects that raised only non-CEQA claims*	1

*non-CEQA claims include procedural violations or violations of planning and zoning law.

J. Administrative appeal rates are much higher than CEQA litigation rates within these five cities

We recognize that litigation rates do not tell the entire story of the threat of litigation and how it impacts the residential development process. CEQA critics have discussed how the threat of litigation may deter developers from even filing entitlement applications; this threat can also lead developers to capitulate to a plaintiff's demands even before a lawsuit is filed. While it is difficult to empirically measure the threat of CEQA litigation given existing datasets, project administrative appeals provide a useful proxy in several ways. First, under state law a project appeal is a prerequisite to filing a CEQA lawsuit, since a plaintiff must first exhaust administrative remedies.[320] Second, a project appeal can provide a potential plaintiff with a hook to leverage settlement before filing suit.

We found that appeals rates in Oakland, San Francisco, and San Jose are significantly higher than the litigation rates across all three of these jurisdictions for these study years. Notably, the appeals rates also more closely approximate our interview participants' estimations of the frequency of CEQA litigation—however, in some cases, interview estimations were still significantly higher. When adjusting for appeals as a percentage of total units entitled, the appeals rate increases in every jurisdiction, showing that larger-than-average projects are being challenged. One potential explanation for the higher rate of appeals is that projects expend significant resources in making projects "bulletproof" in anticipation of future litigation. The lower litigation rates might reflect the fruit of those labors, with the higher appeals rates proxying for the threat of that litigation.

The success rates for administrative appeals are more difficult to determine than litigation, due to the limitations in how certain jurisdictions track appeals in the meeting minutes for their appellate bodies. From the high appeals rates relative to litigation rates, it can be inferred that developers are settling with potential plaintiffs before a lawsuit is filed. An alternative explanation is that if appeals usually fail, that failure may discourage some plaintiffs from filing lawsuits. Further data on how these appeals are resolved will help distinguish between these possibilities. We will be collecting that data in our future research, as well as data on the types of claims raised in appeals.

320. CAL. PUB. RES. CODE § 21177 (2016).

Figure 22: Appealed Projects Per Jurisdiction

Project Characteristics	San Jose	San Francisco	Oakland	Palo Alto[321]	Redwood City
# Projects	65	93	93	5	13
# Appealed Projects	6	15	13	--	2
% of total projects	9%	16%	14%	--	15%
# Units	11,463	9,768	8,958	277	1,100
# Appealed Units	1,631	2,996	1,941	--	493
% of total units	14%	31%	22%	--	45%

Part IV: Discussion

Our findings reveal that all the jurisdictions studied provided for dense infill development but retained discretionary control over new residential developments of five or more units, primarily through aesthetic control. All five cities required a similar number of approvals. Despite these similarities, the local processes yielded widely different results in rates of entitlements, length of approval periods, and implications for equity. These findings are both consistent and in conflict with past research and leave open important questions for future exploration. They also directly inform current political and policy debates.[322]

A. In these cities, time lags in entitlement (and associated costs) are most likely driven by local factors and not CEQA or its requirements

CEQA reform continues to hold the attention of politicians and policymakers.[323] Data collected from these five cities (some of the most expensive cities in the state) suggests that reforming CEQA does little to address time lags in entitlement (and associated costs) within these cities, primarily because the time lag variations across cities does not appear to be driven by CEQA or its

321. We were not able to obtain Palo Alto appeals data at the time of publication.

322. In these conclusions, we emphasize that we will continue to collect data from cities around the state. We limit our conclusions to these five cities and will present comparative analysis across the Bay Area and Los Angeles in future work.

323. Most recently in the 2018 Gubernatorial debate, the Republican candidate (with experience developing housing in the Midwest) attributed the high costs of housing to the law "for slowing project approvals and adding to costs of development" but focused his attention on "overhauling" CEQA as a potential solution to California's persistent housing crisis, noting that the power that cities and counties currently have over land development "is appropriate." *See* Liam Dillon, *Newsom, Cox split on how California governments should respond to the housing affordability crisis*, L.A. TIMES, (Oct. 8, 2018), http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-may-2018-newsom-cox-split-on-how-california-1539020247-htmlstory.html.

requirements. First, data indicates these cities often employ tools to facilitate CEQA compliance, and that neither entitlement timelines nor production appears to coincide with the type of land-use approval processes or environmental review employed. For example, an exempt project in San Francisco takes twice as long as in Oakland, and nearly as long as a full EIR in San Jose. Thus, local practices and context (such as staffing levels, political dynamics and leadership, or planning department practices that respond to political dynamics and directives), appear to more strongly influence environmental review and entitlement timelines, rather than CEQA requirements.[324]

Based on our initial findings, a better focus for the state to improve housing production and reduce delay in approval processes would be changing the local regulatory systems that cities develop for land-use approvals. This might include altering the processes or discretion of local governments to structure and administer local land-use review processes, changing the political and fiscal incentives around housing approval by local governments, and providing stronger and more enforceable legal obligations against cities to use their land use approval processes to facilitate housing entitlements.[325]

Second, it is unclear whether CEQA reform would address the impact of litigation on the housing entitlement process. Some of our interview participants discussed the necessity of "bullet-proof EIRs"[326] to forestall CEQA litigation from neighborhood groups. Nonetheless, we have not observed many of these project-level EIRs in the five cities, which suggests that variations in entitlement process timelines between these five cities may not be easily attributable to neighborhood groups abusing state regulation in response to proposed project characteristics. While op-eds, research, and reform proposals often focus on EIRs and CEQA litigation,[327] the data from these five cities indicates that some of the largest projects, those most likely to have significant environmental impacts, do not

324. *See* Christopher S. Elmendorf, *Beyond the Double-Veto: Land Use Plans as Preemptive Intergovernmental Contracts* 9 (Draft Oct. 10, 2018) ("the actual intensity of regulation is a function not just of the rules that exist on paper but of the interest groups that have organized to enforce them, and the attitudes and priorities of the local officials who implement them.").

325. In this last category, we particularly have in mind continuing efforts to strengthen the obligations of local governments under state law to provide Housing Elements in their general plans that facilitate issuance of housing entitlements. Here the state legislature could build on its efforts in the housing package it enacted in 2017. *See, e.g.*, CAL. GOV'T CODE §§ 65400, 65883.2, 65884.09; *see also* Elmendorf, *supra* note 324, at 41-8.

326. This refers to our interpretation of statements from interview participants, describing the need for an EIR document that has sufficient analysis of environmental impacts and technical information to withstand judicial review should the project be challenged in court in terms similar to the term "bullet-proof" used by Barbour & Michael Teitz, *supra* note 63, at 15.

327. Hernandez, Friedman & DeHerrera, *supra* note 219, at 8; Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, 24 HASTINGS ENVTL. L. J. 21, 23 (2018), https://perma.cc/J7GV-TB48; *see also supra* note 11.

require EIRs (although EIR projects are on average larger than non-EIR projects), and that CEQA litigation is infrequent.[328]

Finally, comparing our findings to the HCD Landis Report reinforces our conclusion that targeting CEQA may not achieve intended policy goals—at least not in these cities—and shows the importance of the increase in discretionary review as a potential driver of timeframes. Landis found a lower overall instance of EIRs in California—about 4% of multi-family developments or 9% of single-family home developments. Our EIR rate is comparatively higher, with around 10% of all projects across all jurisdictions. Our average approval times are also notably longer at 25 months across all cities (with a range of 10 to 34), versus the 11 months for a single-family and 6.7 months for multi-family developments in the Landis study. However, the use of project-based tiering is dissimilar from the rate of 26% in the Landis study; we found a rate of 55% in our project years. Notably, the number of approvals per project is also distinguishable. The Landis study found 2.8 approvals per project on average while our research shows 3.6 on average. Our data suggests that despite more frequent streamlined CEQA review, overall approval time frames within certain cities are increasing as numbers of approvals per project increase. This further illustrates the inability of state CEQA reform to address the issue of time lags in entitlement processes. The local land use regulatory process in general—and the imposition of discretionary review by local governments in particular—is therefore a key issue for policymakers and researchers to consider.

B. Variability and uncertainty in the entitlement process across these jurisdictions may be a more critical factor influencing entitlement timelines than stringency

Our findings generally conform to national surveys like Pendall and WRLURI. These five cities are highly regulated coastal communities that have permissive density, high (and similar) numbers of approvals, and affordable housing incentives. Our findings are also somewhat consistent with the BLURI, in that the BLURI found that the timeframe to complete "permit-review" was about 2 years for multi-family housing and 2.5 years for single-family housing.[329] We found a 25-month review period on average in our jurisdictions across all project types, which is roughly consistent with BLURI's findings, provided their

328. However, we again note the limitations of our current data which can only assess to a limited extent how important the threat of litigation is to whether projects are proposed and how projects are modified in the approval process. We hope to further investigate those questions once we gather additional data on litigation and administrative appeal data from across the state. In particular, one question is whether projects go through EIRs not because of higher environmental risk, but because of higher political risk. Projects that face significant community opposition require EIRs because of the nature of the entitlement process that political opposition creates. Those projects in turn are therefore more likely to be litigated. Again, with additional data from more projects, we hope to explore this question.

329. Quigley, Raphael & Rosenthal, *supra* note 14, at 289.

timeframes do not include the issuance of building permits,[330] but again, we found that the range is great (10 to 34 months). We also found, similar to the Pendall study, that aesthetic controls can be an important factor in the number of units entitled.

However, these are general consistencies that say little about how local regulation, discretionary review, or local process operates. BLURI found that larger cities have more required approvals, which is not entirely supported by our data, as smaller cities like Palo Alto, Redwood City, and Oakland required more approvals than San Francisco and San Jose, which are larger in size.[331] Also, although four of the five cities use aesthetic controls (considered subjective)[332] as the primary mechanism for discretionary review, while also providing for density within the base zoning, and all cities required approximately the same number of approvals, Oakland and Redwood City had comparatively shorter entitlement timelines.[333] This tells us that stringency, if defined by the type and number of discretionary approvals, appears to operate in Redwood City and Oakland in very different ways than in neighboring cities. This also cautions against generalizing state-level policy reform proposals from how land use processes operate within a single city, or even a single region.[334]

In addition, the variation in entitlement processes across these jurisdictions may factor into constraining supply or increasing costs. This variation appears to present informational barriers for newcomers to the market—even for some working within the same region. Variation may impede a developer from navigating the development process within each of these cities without substantial local knowledge. This complexity and variation could also impact the capacity of planning staff to help developers understand the entitlement process. Our interview data confirms that well-capitalized developers with existing relationships and experience in specific jurisdictions are the best situated to navigate these complex local contexts, giving them a competitive advantage. Also, project-level data indicates that larger projects do not necessarily take more time, but often take less time, than smaller projects. If the complexity and requirements of environmental review were the issue, this is not intuitive. This suggests that larger market-rate projects—to the extent that they benefit from expertise and better capitalization—can navigate the processes in these cities in less time than smaller-scale developments. This raises concerns about monopolization, as the cost of acquiring local knowledge forces new market participants out, which could also contribute

330. The BLURI is unclear about whether it is measuring the entire development process from entitlement application to building permit issuance or just the process to obtain a land use entitlement. Depending on how the survey was itself phrased, the vague terminology might have also influenced participants' responses. If the BLURI is including building permit issuance, our timeframes would be much longer.

331. *Id.* at 282. Note that BLURI might have been measuring approvals to obtain a building permit, which might also skew this response.

332. *See* Blaesser, *supra* note 36, at xix.

333. Oakland and Redwood City also had median timelines on certain size projects that were also closer to the 6 months average.

334. This last point emphasizes the importance of collecting additional data from Los Angeles and other areas in California, which we are in the process of collecting.

to increased housing costs. The difficulty in accessing this data for our research purposes also supports this proposition.

A second related issue is the lack of predictability in the process within specific cities. Interviews suggest that unpredictability, as opposed to stringency, in process imposes costs that may keep developers from advancing a project. As discussed in Part III, Redwood City successfully mitigated this unpredictability issue by its Downtown Precise Plan, which imposes more prescriptive development requirements to help with certainty and reduced timeframes. Although prescriptive design requirements have drawbacks,[335] if a jurisdiction is going to impose aesthetic review, explicit design standards can reduce the inherent subjectivity of aesthetic review.[336] As project-level data across all five cities demonstrates, Redwood City moves comparatively quicker, although all five cities have stringent local ordinances. This suggests that Redwood City's approach, which maintains local discretion and a high number of approvals (compared to national averages), could potentially reduce approval timeframes and increase production yields.[337]

Redwood City therefore provides a compelling case study of how to incorporate improvements in discretionary processes in the planning of a new, dense transit-oriented neighborhood, and how to maintain discretionary review and stringency while also expediting entitlement processes. San Francisco, on the other hand, illustrates how the benefits of specific planning tools that promote infill development might be significantly outweighed by the costs of a protracted approval process. This approval process appears related to either San Francisco's unique charter provision (that renders even building permits discretionary actions) or a political culture that influences (and slows) planning practices.

335. Interview participants have noted that highly prescriptive design standards generally give architects less ability to maneuver around building form. They can also have cost impacts if the regulations prescribe more expensive materials, more open space, or a more expensive construction type.

336. *See* e.g., Lemar, *supra* note 218, at 1563 (noting that "whether a building is visually appealing is a subjective inquiry. Whether a building is consistent with the existing architectural context is a *supposedly* objective one) (emphasis added); Brian Soucek, *Aesthetic Judgment in Law*, 69 ALA. L. R. 382, 417 (2017) (noting that aesthetic judgment in land use regulation extends beyond the question of "what types of buildings or uses of land are the prettiest" to judgments about an area's identity and social cohesion).

337. Litigation is another potential source of uncertainty for entitlement processes that can increase costs. However, at least in our current data, litigation occurs at relatively low rates, while all projects go through ambiguous and uncertain design review. Thus, at least initially it appears to us that providing certainty in the design review process is more important for improving the entitlement process than reducing litigation (again with the caveat identified in note 311, *supra*, about the threat of litigation). This is the approach taken by the state legislature when it enacted SB 35, which eliminates much discretionary review for certain qualifying affordable housing developments in cities that have not met their housing goals. *See* CAL. GOV'T CODE § 65400 (West 2018).

C. Uneven land use regulation across a city may operate as a tool of exclusion

Lens and Monkkonen's research indicates that stringency in land use regulation correlates with income segregation, but that this correlation still exists in jurisdictions with permissive density.[338] This suggests that other land use controls, beyond base zoning, contribute to income segregation. Our findings may contribute to an understanding of what may be occurring—at least within these five cities.

As discussed in Part III,[339] all these cities move affordable housing development through entitlement much faster than market rate development. None of the 100% affordable housing developments within our data set were the subject of litigation. This suggests that entitlement processes (in terms of timelines) and environmental review (in terms of opportunity for legal challenge) were likely not the constraint on affordable housing supply during these three years. We emphasize, however, that because these cities approved so few 100% affordable housing developments within our dataset years, it is difficult to ascertain too much about timelines. Moreover, it is possible that opposition to affordable housing might shift if these cities approved substantially more 100% affordable housing developments or approved them in different areas.

Planning and zoning analysis indicates that four of our five cities provide for permissive density and employ tools to incentivize dense residential development near transit, but that permissive density and incentives for growth are not evenly distributed in these same cities.[340] This can create a scarcity issue (in terms of appropriately zoned land within cities) even though these same cities presumably have permissive density. Interview data suggests that the increasing cost of appropriately zoned land presents a major obstacle to affordable housing supply. This combined with drastic reductions in financing available for affordable housing impacts production, because combined, they create fewer opportunities for affordable housing development within these cities. Study participants across all categories repeatedly emphasized that legislative efforts must target both issues, as they operate together to limit deed-restricted affordable development, particularly after the loss of redevelopment funds.

Project data also confirmed that very few affordable units were entitled in our study years across all cities. San Francisco had the highest rate of affordable units entitled, at 11%, which came primarily through its inclusionary ordinance (outside of the former Redevelopment Areas). The lack of financing and suitable zoning for affordable housing developments, along with the importance of affordable housing mandates on market-rate developments in producing affordable units, lends some support to Lens and Monkkonen's recommendation for inclusionary zoning.[341] Still, inclusionary housing is insufficient to solve the

338. *See* Lens and Monkkonen, *supra* note 129.
339. *See supra* Part III.7.
340. *See supra* Part III.8.
341. *See* Lens and Monkkonen, *supra* note 129, at 12.

affordable housing crisis for all segments of the population. The formerly homeless, for example, require service-enriched housing,[342] as do other special needs populations.[343] Inclusionary housing aside, the fact that San Francisco had essentially no development of 5 or more units outside of specific plan areas and former Redevelopment Areas indicates inadequately zoned land may be a barrier to future dense development, both for affordable and market-rate.

D. More data is needed about the risk of displacement through new development

Supply-side solutions have been proposed repeatedly in both the academic and policy literature, as well as proposed legal reforms, with some research identifying potential displacement as an immediate and direct consequent of development. This poses difficult questions for policymakers at both the local and state level on how to promote dense infill development without displacing existing residents, and whether or how local or state proposals are avoiding a tradeoff of displacement for increased future supply.[344] Most of the proposed development in these five cities was on vacant, commercial or industrial land, except San Jose which had one entitled project involving the demolition of a 216 unit rent-controlled building subject to rent stabilization. However, these findings are limited. We only observed five cities in a region, and not all these cities had rent stabilization ordinances. More data across high cost cities with minimal vacant land, particularly those with rent stabilization ordinances, is needed to evaluate the potential impact of any proposed policy that may implicate this issue.

E. State-level reform proposals that would reduce local authority require better data

In these five cities, legal reform to promote equitable infill development may come in the form of state legislative reductions in local discretion over specific types of development; alternatively, legal reform may originate in the electorate or city council of these cities by choosing to reduce the amount of discretionary review for development. State-level action is difficult; there have been successful efforts to reduce local discretion,[345] but two major recent proposals for by-right or

342. *See e.g.*, Kevin Fagan, *Solution to SF's homeless problem starts with supportive housing*, S.F. CHRONICLE (June 29, 2016), https://perma.cc/9EFH-J4U2.

343. The California Tax Credit Allocation Committee defines these special needs populations as "[i]ndividuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental or mental health disabilities; individuals who are survivors of physical abuse; individuals who are homeless . . . ; individuals with chronic illness, including HIV; homeless youth . . . ." *See* 4 C.C.R. § 10325(g)(3) https://perma.cc/J3R4-9SWP.

344. *See e.g.*, Zuk and Chapple, *supra* note 208.

345. *See* S.B. 35, 2017 2017-2018 Leg., Reg. Sess. (Cal. 2018).

limited by-right development have failed.[346] While our case studies suggest that some political will to increase affordable housing supply exists in at minimum four of these cities, it is unclear how broad that impulse extends across the state or how strong it may be.

Assuming a new proposal limiting local discretion over infill development with affordability is politically feasible, the variation in local processes observed in these five cities in a single region is substantial enough that without good data across multiple cities and regions, there is a high risk that state-level reform of local process may not advance intended policy goals.

For example, recent legislation such as SB-35[347] attempts to eliminate the CUP requirement for certain projects consistent with zoning, but the complexity of the entitlement processes may prevent this legislation from accomplishing what is needed in these five cities. For instance, some cities impose a myriad of specific plan approvals on zoning-compliant projects that happen to be located within a specific plan area.[348] Although these approvals are functionally similar to CUPs, on paper they are different processes. HCD has drafted proposed regulations that appear to cover specific plan permits within the ministerial process.[349] San Jose provides another example. Most projects in San Jose go through the PUD process, which requires rezoning and thus renders a project ineligible for SB-35. Yet the same PUD process in San Francisco and Oakland can occur without rezoning. Even though the PUD process accomplishes the same goals in these jurisdictions, the application is significantly different. Without knowledge of these nuances, lawmakers cannot draft legislation that accurately addresses the problem and provides clear guidance to local stakeholders. Moreover, without an understanding of the distribution of non-zoning compliant projects entitled each year, lawmakers may find their legislative tools unable to solve the right problems. Even legislation that is effective when enacted may quickly become ineffective due to local government efforts to restore control over new development. For instance, SB-35 may be unable to avoid cities downzoning or enacting more inflexible design criteria to force all approvals through rezoning or variance processes that are not subject to state streamlining. SB 166—California's "no net loss" law—prohibits jurisdictions from reducing residential density to a lower residential density than what was utilized to determine compliance with housing element law.[350] While this helps mitigate unintended impacts of SB-35, it is unclear if the provision applies

346. *See* CAL. DEP'T OF FIN., STREAMLINING AFFORDABLE HOUSING APPROVALS: TRAILER BILL TECHNICAL MODIFICATIONS (6-10-16) (2016), https://perma.cc/GDS6-XVCR, at 5–6; S.B. 827 Reg. Leg. Sess. (2017-2018) (Cal. 2018).

347. *See* S.B. 35, 2017 Leg., Reg. Sess. (Cal. 2018).

348. Examples of this include the Large Project Authorization in certain use districts of San Francisco's Eastern Neighborhood plan area or the Planned Community Permit in Redwood City's Downtown Precise Plan. *See* S.F. MUNI. CODE § 329; REDWOOD CITY MUNI. CODE § 47.1-47. 5.

349. *See* Memorandum from Cal. Dep't. Housing & Community Dev., Draft SB-35 Regulations § 301(a), Sept. 28, 2018, https://perma.cc/J5U7-KDKN (defining the ministerial process as "non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval").

350. *See* CAL. GOV'T CODE § 65863 (2018).

to charter cities.[351] Moreover, SB-35 may be ineffective in jurisdictions where base zoning has not been updated to reflect General Plan updates.[352] Finally, jurisdictions are increasingly regulating density based on height and building form. In many places, height—not a limit on dwelling units per acre or FAR—is the major barrier to building more units. Future state legislation should consider these evolving zoning standards.[353]

F. The state should not only mandate, but directly support good data reporting

Perhaps the single most important finding explored in this article is also the most obvious—poor data access to project approvals in many jurisdictions. Results are only accurate to the extent that data provided to the public through public portals and commission minutes are accurate. While better-resourced jurisdictions have advanced parcel information tools and sophisticated websites, many rely on outdated online permit systems that are not updated with current data. Oakland is an extreme example of what can result from inadequate resources—their online permit system often contains incomplete information and has no link to approval documents. While we supplemented these shortfalls with minutes from Planning Commission and City Council meetings, some projects go through an administrative, department-level review for which complete data was not available. While we erred on the side of caution and included six projects in our database that do not have complete data, we caution that it is possible that these six projects skew the total number of approved projects higher than what it actually is. Additionally, Oakland's pre-application process that some projects utilize prior to submitting a formal application was also inconsistently logged in their online system, which could influence approval timelines. We cannot infer that Oakland's poor data access is either deliberate or a reflection of local policy; the city's continued work to supplement state requirements around open government suggests the opposite.[354] It is more likely that Oakland, which faces a uniquely persistent budget

351. Section 65803 exempts charter cities from compliance with §§ 65800 – 65912 of the Planning and Land Use Code unless explicitly stated otherwise. The text of SB 166 does not explicitly apply its requirements to charter cities. All of the jurisdictions studied are charter cities. *See* CAL. GOV'T CODE § 65803 (2018). For a legal interpretation that the new requirements do apply to charter cities, *see* Public Interest Law Project, SB 166 (2017) Memorandum at 6, https://perma.cc/TK7V-AMYD. Without an amendment to the Government Code, determining applicability will likely require litigation.

352. *See* discussion of San Jose, *supra* Part I n.33.

353. We note that SB 827, which failed, attempted to do this. *See* S.B. 827, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (the proposed legislation exempted eligible applicants from certain height requirements).

354. In 1997 Oakland passed its own Sunshine Ordinance to supplement Brown Act requirements around open government, developed in partnership with the League of Women Voters and the California First Amendment Coalition. This ordinance covers meeting minutes and agendas relevant to discretionary approvals of residential development. *See* OAKLAND MUNI. CODE §§ 2.20.010 et seq. (Oakland Sunshine Ordinance).

crisis,[355] is severely under-resourced given city initiatives to accelerate development and the growing demand for housing.

In contrast, cities like San Francisco have excellent data access that allows us to determine precisely what was approved each year according to our parameters. However, even good publicly accessible data does not fully reflect the complexity of the planning process. San Francisco employs a streamlined application process[356] that integrates processes that constitute distinct approval pathways in other jurisdictions, like design review. The fact that there are no formal design review approvals in San Francisco does not mean these processes are not happening. San Francisco's various specific plan permits also combine what is essentially a CUP and variance process into one, reducing the number of CUPs and variances in that jurisdiction. More projects are receiving variances than these numbers suggest. Jurisdictions like San Jose, on the other hand, employ very distinct approval processes, which also influences timeline. The majority of developments in San Jose go through the PUD process, which involves a rezoning and a permit approval that happen sequentially, rather than in tandem. Our interviews suggest that developers often complete the rezoning and then sell the land to different developers who later secure the permit. The time lag between these two milestones may slightly exaggerate approval timelines in San Jose for PUD projects.

Although top-down state reform of environmental regulations (or local regulation over land use) may encounter substantial difficulties, improving data access is an important first step to accurately understand the problem. Extracting project-level data is very time and resource intensive. There are few jurisdictions statewide that have development approval data in one centralized repository. Supporting jurisdictions to provide access to project-specific data on land use approvals, CEQA compliance, and overall time frames will help inform top down policy making in critical ways. Improving the quality of data and access to data can also help researchers and policymakers identify how long processes take and identify inefficiencies and redundancies that exist in local processes. This could also immediately help affordable housing developers determine what funding is required for the entitlement process. Finally, publicly available data about approval timeframes and processes may increase public and political pressure on local governments to make processes more effective and efficient.

SB 35 has somewhat advanced this issue some, in that it requires annual data reporting (which includes reporting total number applications received, projects entitled, building permits issued, and total number of certificates of occupancy issued).[357] The state could build on this requirement to support this

355. *See* Daniel Borenstein, *Despite booming economy, Oakland finances deteriorate*, THE MERCURY NEWS (March 3, 2017), https://perma.cc/8MT4-7X3P.

356. In early 2018, San Francisco overhauled its entitlement application process. While this new process would likely impact data collection for projects applying for entitlements post-2018, this new process does not affect our data years. CITY AND COUNTY OF SAN FRANCISCO, CHANGES TO PRELIMINARY PROJECT ASSESSMENT, Apr. 2, 2018, https://pe rma.cc/AEE5-LD4T.

357. *See* CAL. GOV'T CODE § 65400 (2018); *see also* Elmendorf, *supra* note 324, at 47.

work through two additional mechanisms. The first would be funding to support existing data reporting requirements (including those proposed here). As discussed previously, not all jurisdictions are equally resourced, and this appears to have a significant impact on the quality of a city's data. We anticipate that without additional support, at least some city reports will be unreliable. The second would be an enhanced housing element reporting obligation that requires jurisdictions to log information on approval processes and timeframes in a centralized repository with consistent terminology across jurisdictions. To the extent that processes are so dissimilar that they cannot be analogized, this centralized repository could contain explanations. This will aid not only in understanding entitlement processes, but will also help legal organizations to enforce housing element obligations. Housing issues present regional concerns, and current data accessibility and quality presents obstacles to comparative and regional analysis on both trends (rate of entitlement), and processes (which processes may work better).

Smaller steps would also be beneficial. For example, linking existing GIS or zoning data with assessor parcel information and building permit systems is a great first step to understanding how entitlements and building permit processes interact. Linking these systems to provide this data can make housing element reporting obligations more robust. Ideally, improved data access can illuminate more of the internal planning process, by providing detail that is not immediately apparent from approval documents (like the amount of time environmental review adds to the approval process). Interview data suggests that improved entitlement reporting and data can particularly benefit affordable housing developers. Financing affordable housing requires artful layering of state, local, and federal finance—each with their own set of eligibility requirements.[358] Funding applications also happen in cycles. For example, in California, the 9% Low Income Housing Tax Credit has two funding rounds per year.[359] For most of these programs, the site must already be entitled in order to be eligible for funding.[360] Thus, timing entitlements with the funding cycles is very important to affordable housing developers. In an era of limited funding, timing the cycle correctly maybe the difference between a project being funded or not. Improved data can assist developers to improve their predevelopment strategy, especially in areas where they have less experience developing. As discussed above, we observed that these jurisdictions appear to process affordable housing faster than market rate housing.

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358. *See e.g.*, *Affordable Housing and Sustainable Communities Program*, CAL. DEP'T OF HOUSING AND COMMUNITY DEV. (last visited Oct. 26, 2018), https://perma.cc/TBV2-E759; *Low Income Tax Credit Programs*, CAL. TAX CREDIT ALLOCATION COMM. (last visited Oct. 26, 2018), https://perma.cc/C6NE-7N2Q; *See also Affordable Housing Trust Fund*, CITY OF LOS ANGELES AND CMTY. INV. DEP'T. (last visited Oct. 26, 2018), https://perma.cc/99KB-SK5S.

359. *See e.g.*, *Application Information*, CAL. TAX CREDIT ALLOCATION COMM. (last visited Oct. 26, 2018), https://perma.cc/D8CS-8S7H (detailing deadlines for two funding rounds).

360. *See e.g.*, 4 C.C.R. § 10325(f)(4) (2018) ("Applicants shall provide evidence, at the time the application is filed, that the project as proposed is zoned for the intended use and has obtained all applicable local land use approvals which allow the discretion of local elected officials to be applied . . .").

From this, we can infer that some jurisdictions treat affordable housing differently, and nuances in process should be made publicly available. This is especially true in jurisdictions where affordable housing entitlement is slower than comparable market-rate development.

Conclusion: Complex issues require a multi-pronged research approach

Our work continues and we are exploring how entitlement operates within other cities throughout the state. At each turn we are reminded there is no single solution to this perplexing problem. Even within land use regulation, entitlement is not the only issue for housing production in California. Increasingly onerous building safety regulations—ranging from seismic standards to renewable energy mandates—may also impose substantial costs on development. The building permit process itself is highly variable by jurisdiction, and interviews suggest it is another source of time delay. Interview participants also referenced construction and labor costs as a major barrier to feasibility. Labor costs, however, do not stem solely from Project Labor Agreements[361] or prevailing wage requirements;[362] developers have also noted a drop in skilled tradespeople post-Great Recession, which has created labor scarcity and implicates workforce development issues. Further study on these factors is necessary. More information is also required on the demand side of the equation—specifically how income and preferences influence where people live and whether they use transit. In sum, we need a better understanding of both sides of the equation (supply and demand), with a clear focus on equity in order to reduce GHG emissions through equitable infill development.

361. Project Labor Agreements are collective bargaining agreements between building trade unions and contractors that govern terms and conditions of employment for all workers on a construction project. *See Project Labor Agreements*, AFL-CIO, (last visited Oct. 26, 2018), https://perma.cc/C8VX-UC8G.

362. *See, e.g.*, CAL. GOV. CODE § 65913.4(a)(1)-(10) (2004) (defining prevailing wage to be the "general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code").

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Beyond the Double Veto: Land Use Plans as Preemptive Intergovernmental Compacts

DRAFT: February 9, 2019

Christopher S. Elmendorf
Martin Luther King Jr. Professor of Law

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ATTACHMENT 4g

Beyond the Double Veto:
Land Use Plans as Preemptive Intergovernmental Compacts

Christopher S. Elmendorf[1]

February 9, 2018

Abstract. The problem of local-government barriers to housing supply is finally enjoying its moment in the sun. For decades, the states did little to remedy this problem and arguably they made it worse. But spurred by a rising Yes in My Backyard (YIMBY) movement, state legislatures are now trying to make local governments plan for more housing, allow greater density in existing residential zones, and follow their own rules when reviewing development applications. This Article describes and takes stock of the new state housing initiatives, relating them to preexisting Northeastern and West Coast approaches to the housing-supply problem; to the legal-academic literature on land use; and, going a bit further afield, to the federal government's efforts to protect the voting rights of African Americans in the Jim Crow South. Of particular interest, we will see that in California, ground zero for the housing crisis, the general plan is evolving into something that resembles less a traditional land-use plan than a preemptive and self-executing intergovernmental compact for development permitting, one which supersedes other local law until the local government has produced its quota of housing for the planning cycle. The parties to the compact are the state, acting through its housing agency, and the local government in whose territory the housing would be built. I argue that this general approach holds real promise as a way of overcoming local barriers to housing supply, particularly in a world—our world—where there is little political consensus about the appropriate balance between local and state control over land use, or about what constitutes an illegitimate local barrier. The main weakness of the emerging California model is that the state framework does little to change the local political dynamics that caused the housing crisis in the first place. To remedy this shortcoming, I propose some modest extensions of the model, which would give relatively pro-housing factions in city politics more political leverage and policymaking discretion and also facilitate regional housing deals.

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INTRODUCTION

In 1971, Fred Bosselman and David Callies famously described a "quiet revolution" in land-use law.[2] Prodded by the nascent environmental movement, states were fettering local governments with new planning mandates, new requirements for public participation, and new procedures for state-level review of local plans. In some instances, states seemed poised to preempt local land-use authority entirely.

Looking back twenty years later, Callies remarked that the "ancient regime of local land use controls [had been] metamorphosed [rather than] overthrown."[3] The quiet revolution had culminated not in state preemption, but rather in the local embrace, or cooptation, of sensitive-lands and growth-control missions, and an overlay of environmental review and state-permitting requirements[4]—what economist William Fischel dubbed "the double veto."[5] Development opponents who had lost a local battle could now use state law and state tribunals to take another whack.

Callies expressed concern that the "plethora of . . . requirements [might simply] choke off development, the good with the bad."[6] His warning proved prescient. Anti-development interests used the new regulatory frameworks to slow housing production on urban and suburban lands, not just in remote natural areas. In the coastal states that led the "quiet revolution," the supply of new housing was throttled, with devasting equity, economic and environmental repercussions.[7]

But something new is afoot. California, posterchild for the housing crisis, is laying groundwork to make heretofore restrictive local governments allow as much new housing as "healthy housing markets" in "comparable regions of the nation" would produce.[8] Though a number of states have set quantitative targets for the production of subsidized, income-restricted housing units, and a few states have instructed local governments to accommodate projected population growth with new housing at a variety of price points, California will be the first to assign market-rate housing quotas shaped by a nationally normed standard.

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[2] FRED BOSSELMAN & DAVID CALLIES, THE QUIET REVOLUTION IN LAND USE CONTROL (1971).

[3] David L. Callies, *The Quiet Revolution Revisited*, 46 J. AM. PLANNING ASS'N 135, 142 (1980).

[4] *See generally* David L. Callies, *The Quiet Revolution Revisited: A Quarter Century of Progress*, 16 URB. LAWYER 197 (1994).

[5] WILLIAM A. FISCHEL, ZONING RULES!: THE ECONOMICS OF LAND USE REGULATION 54-57 (2015).

[6] Callies, *supra* note 3, at 142.

[7] *See infra* Part I.

[8] *See infra* Part III.A.

These quotas are to be accommodated by local governments through the "housing elements" of their general plans.[9] Belying its nominal status, the California housing element is transmuting into something that resembles less a traditional land-use plan than a preemptive and self-executing intergovernmental compact for development permitting. The parties to the agreement are the state, acting through its housing agency, and the local government whose general plan the housing element revises. Developers may apply for permits on the authority of the housing element itself, irrespective of contrary local ordinances, at least until the jurisdiction has produced its quota of housing for the planning cycle. A local government must provide advance notice to the state before amending its housing element, and the state agency may respond by decertifying the housing element, exposing the local government to financial and regulatory sanctions.

Beyond the planning mandates, state legislators are also trying more directly to preempt local restrictions on housing density.[10] Pro-housing lawmakers have won national media acclaim for bills to upzone land near transit stations; to authorize duplexes or accessory dwelling units (ADUs) on parcels that local governments zoned for single-family homes; and to make local governments zone "reasonable" quantities of land for multifamily housing.[11] Save for the ADU measures, most such bills have died. Yet out of the spotlight, state housing agencies are using rulemaking and general-plan review to advance an upzoning agenda.[12]

This Article describes and takes stock of the new state housing initiatives, relating them to preexisting Northeastern and West Coast approaches to the housing-supply problem; to the legal-academic literature on land use; and, going a bit further afield, to the federal government's efforts to protect the voting rights of African Americans in the Jim Crow South. I shall argue that statutes which directly preempt local restrictions on housing of certain types or densities are prone to failure, but that the emerging California model of the plan as a preemptive intergovernmental compact for development permitting holds some promise.

Local government have, by tradition, very broad authority over land use and housing development, which has come to be exercised through discretionary permitting regimes. This makes it easy for local governments to comply with the letter of a state's density mandates while defeating the state's policy in practice. If the state tells localities to allow accessory dwelling units on parcels zoned for single family homes (for example) and the localities don't want them, the local governments can bring their zoning into compliance while using discretionary review to saddle ADU projects with expensive, ad hoc, and unpredictable conditions. Local governments can also use their residual regulatory authority to

[9] For citations to the code provisions relevant to this paragraph, see *infra* Parts II.B & III.A.

[10] *See infra* Part III.B

[11] *Id.*

[12] *Id.*

enact more systematic barriers to ADUs, such as costly building code amendments, setback or parking requirements, fees, layers of internal appeals, and so on. The history of California's ADU statute illustrates this dynamic all too vividly.[13]

If the state is to intervene effectively under such circumstances, it is not enough to make discrete, liberalizing changes to the local regulatory baseline for housing development. The state also needs some way to *lock in* the new baseline against the retrogressive tactics of local governments, including bad-faith exercises of permitting discretion.

The emerging California model of the general plan positions the state to do precisely this—and to do it in a manner that is politically discreet and responsive to local conditions, and thus suited to a world (our world) in which there is no general political consensus about the proper balance between state and local control over land use, or about what constitutes an illegitimate barrier to housing supply.[14] The baseline change occurs not by state legislative command, but through *the local government's* designation in its housing element of specific developable parcels to accommodate its share of regional housing need, and through *the local government's* articulation in the housing element of a schedule of actions to remove development constraints. These local commitments are made under pressure from the state, as the state determines housing need and penalizes local governments that do not adopt a new, "substantially compliant" housing element every eight years. But the state's hand is not particularly visible, as state-local negotiations over the housing element play out in a low-limelight administrative setting, rather than in the legislative arena.

The housing element's *de jure* status as a locally adopted ordinance, and the obscure process through which state approval is obtained, should help state legislators parry any accusation that they have, through the housing-element framework, imposed a statewide zoning map and development code on local governments. Yet to the extent that housing elements are self-executing and supersede other local law a matter of state law, the aggregate set of housing elements should function much like a statewide zoning and development code, controlling permitting by local governments until such time as the locality has produced its quota of housing for the cycle.

The new regulatory baseline defined by a housing element is substantially, but not completely, locked in. A local government *may* amend its housing element without the state agency's consent, but doing so is costly. The locality must provide advance notice and a justification, and the agency may respond by

[13] *Id.*

[14] For citations to the code provisions relevant to the argument previewed here, see *infra* Parts III & IV.

decertifying the housing element, exposing the local government to fiscal and possibly regulatory sanctions. Much like the procedure for periodically redefining the regulatory baseline (with negotiated housing elements), this lock-in mechanism is just about right for a world lacking political consensus about the appropriate balance between local and state control over land use. It discourages local governments from circumventing the regulatory baseline, while leaving open a path for the most dogged and influential anti-housing jurisdictions to get what they want without bringing down the whole regime.

All in all, the emerging California framework positions a pro-housing governor, acting through the state housing agency, to push very hard against local "NIMBYism" when the political stars align—and also to propitiate locally powerful interests when necessary.[15]

One should not be too Pollyannaish though. The California model is still evolving, and its full realization will require changes to the legal standard for a "substantially compliant" housing element.[16] Legislation may also be needed to refine test for local ordinances' consistency with the housing element, and to clarify that a certified housing element supersedes local laws adopted by popular vote or as charter amendments. And then there is the matter of projecting housing need. The traditional methods reward exclusionary locales with small housing quotas, and although California's new "healthy housing markets" approach sounds promising, in the statutory particulars it leaves much to be desired. Finally, even if California develops sensible housing targets, local governments with superior information about local practices, conditions, and political tolerances may still manage to bamboozle or cow the state agency into accepting dysfunctional housing elements.

This points up the California model's most fundamental weakness: The state-law framework positions an agency to pressure local governments from above, but it does not generate bottom-up political incentives for local officials to heed the outsiders they now ignore (prospective residents).[17] I shall argue, however, that with a few modest tweaks, the California model could be used to redistribute political authority and policymaking discretion at the municipal level toward relatively pro-housing actors—from the voters to the city council, and from the city council to the mayor. The extensions I propose would also facilitate the sort of citywide and regional housing bargains for which Professors Rick Hills and David Schleicher have advocated.[18] In sum, the California framework could easily evolve into a source of bottom-up as well as top-down attacks on local

[15] The acronym NIMBY stands for Not In My Backyard, and is an epithet used to describe anti-development activists who parochially defend current land-use patterns in their neighborhoods.

[16] The reforms previewed in this paragraph are fleshed out in Part IV, *infra*.

[17] The outsiders, of course, are the prospective residents who would benefit from expansion of the housing supply.

[18] *See infra* Part IV.B.

barriers to new housing, and without the need for radical measures such as allowing nonresidents to vote in local elections.

The balance of this Article unfolds as follows. Part I furnishes the motivation, briefly describing the transformation in housing supply and prices that has occurred over the last fifty years, and its social, economic and environmental consequences. This story will be familiar to many readers, who are invited to skip ahead. Part II provides an overview of state frameworks that developed from the 1970s to the 1990s for superintending local regulation of housing supply, and the critiques these frameworks engendered. Part III describes notable recent reforms to the state frameworks, focusing on California but also flagging examples from other states. Part IV offers a tentative defense of planning for housing through preemptive intergovernmental compacts, and explains how the California model could be extended to put bottom-up as well as top-down pressure on local barriers to housing supply. The leitmotif of Part IV is an argument that the problem of overcoming local barriers to housing supply is, structurally, very similar to the problem the federal government faced in the 1960s when it undertook to dismantle Jim Crow. The emerging California model of the plan can be understood as an adaptation of the regulatory paradigm of the federal Voting Rights Act for a structurally similar problem whose solutions are not (yet) the object of a sustaining consensus in the body politic.

I. MOTIVATION: BOOMS WITHOUT BOOMTOWNS

A. The Stylized Facts

For nearly all of American history, economic development unfolded more or less as follows.[19] A new technology or discovery would make certain places suddenly valuable. Entrepreneurs would locate in the high-value places and bid up wages, causing workers to flood in. A construction boom would ensue, furnishing housing to workers who had relocated from other parts of the country. Speculative bubbles or a temporary imbalance between supply and demand occasionally drove the price of housing above the cost of construction, but these fluctuations were temporary.[20]

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[19] The story briefly summarized here is told in much greater depth in David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78 (2017), and Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence in the US Declined?*, 102 J. URB. ECON. 76 (2017).

[20] On the relationship between housing costs, construction costs, and land costs, see generally Edward Glaeser & Joseph Gyourko, *The Economic Implications of Housing Supply*, 32 J. ECON. PERSP. 3 (2018).

This familiar pattern has broken down. The major cities of the West Coast and the Northeast have experienced a massive, decades-long economic shock accompanied by little population growth.[21] The population influx that has occurred in these economically fortunate places is concentrated among high earners. Wages for low-skilled labor have been bid up too, yet without occasioning the usual inflow of working-class people seeking a better life. The long-term trend toward interstate convergence in wages slowed in the 1980s and has now stopped.[22] A big part of the story is that local land-use restrictions have prevented the housing supply in economically successful regions from expanding to accommodate more workers.[23] The price of the existing stock of dwelling units was bid up by high-human-capital types to the point that it's no longer worthwhile for low-skill workers to emigrate from low-wage regions.

Proving the point that the escalation of metro-area housing prices is not a nationally uniform phenomenon, economists Edward Glaeser and Joseph Gyourko estimate that as of 1985, about 6% of metropolitan regions had a median home price exceeding 1.25 times the cost of production.[24] By 2013, it had doubled to 13%, still only a modest fraction of the nation's metro regions as a whole.[25] Yet the small subset of metro regions afflicted by high housing prices is very economically significant. Los Angeles, San Francisco, New York, Seattle, the District of Columbia, Boston, and Denver are all in the high-cost bins.[26] They have barely expanded their housing supply, even as the affordable metropolises of the South and Southwest—cities such as Atlanta, Charleston, Orlando, Houston, Phoenix, and Las Vegas—issued building permits between 2000 and 2013 totaling 30%-60% of their year-2000 housing stock.[27]

Geomorphology is an obvious difference between the high-cost coastal cities and their still-affordable counterparts in the South and Southwest, but regulation rather than "oceans and slopes" seems to be the principal barrier to expanding the housing supply in high-cost regions.[28] In a careful study of Manhattan, Glaeser and co-authors found that the cost of adding a new floor to an existing building, while very expensive, was only about half of what the additional living space would sell for.[29]

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[21] *See* David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1675 (2013).

[22] Ganong & Shoag, *supra* note 19.

[23] While a big part of the story, this is not all of it. *See* Schleicher, *supra* note 19 (discussing other barriers to migration).

[24] Glaeser & Gyourko, *supra* note 20, at 13 tbl. 2.

[25] *Id.*

[26] *Id.* at 14 n. 8.

[27] *Id.* at 19 fig. 3.

[28] *See, e.g.*, Edward L. Glaeser & Bryce A. Ward, *The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston*, 65 J. URB. ECON. 265 (2009).

[29] Edward L. Glaeser et al., *Why Have Housing Prices Gone Up?*, 95 AM. ECON. REV. 329 (2005).

The scholarly consensus holds that regulatory barriers to new housing have become much more stringent in the high-cost regions since the late 1960s or early 1970s.[30] Exactly how much more stringent is hard to say, because it is difficult to quantify regional and over-time variation in the intensity of land-use regulation. Local regulations can take an almost innumerable number of forms—height limits, density and lot-size limits, setback requirements, design guidelines, neighbor notification requirements, development fees and in-kind exactions, historical preservation, price restrictions, open space preservation, environmental review requirements, prevailing-wage and local-workface labor requirements, and so forth.

Moreover, while the original theory of zoning presupposed that conforming projects would be approved as of right, development permitting in the high-cost states has become thoroughly discretionary, requiring project-by-project negotiations over design, scale, public benefits, affordable housing set asides, and so much more.[31] Local governments and neighborhood NIMBYs use this discretion to kill projects they dislike, and though some projects make it through, the delays and uncertainties can be very costly.[32] The actual intensity of land-use regulation is a function not just of the rules that exist on paper, but of the interest groups that have organized to enforce them, and the attitudes and priorities of the local officials who implement them.[33]

In an attempt to quantify and compare land-use regulations, economists have surveyed nationally representative samples of local public officials and aggregated the results into indices.[34] The general finding, unsurprisingly, is that metro areas with more stringent regulations also have higher housing prices.[35] In theory, this could reflect the internalization of aesthetic and congestion externalities from new development, but studies that attempt to quantify benefits

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[30] For leading reviews, see FISCHEL, *supra* note 5; Joseph Gyourko & Raven Molloy, *Regulation and Housing Supply*, 5 HANDBOOK OF REGIONAL & URBAN ECON. 1289 (2015).

[31] *See generally* Daniel P. Selmi, *The Contract Transformation in Land Use Regulation*, 63 STAN. L. REV. 591 (2010). For an in-depth look at discretionary development permitting in the San Francisco Bay Area, see Moira O'Neill, Giulia Gualco-Nelson & Eric Biber, *Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates*, 25 HASTINGS ENVT'L L.J. 1 (2019).

[32] *Id. See also* Edward L. Glaeser & Joseph Gyourko, The Impact of Zoning on Housing Affordability (NBER Working Paper No. 8835, Mar. 2002), https://www.nber.org/papers/w8835.

[33] *Cf.* Glaeser & Ward, *supra* note 28, at 266 (concluding from detailed study of Boston-area suburbs that one of the most basic facts about land use regulations is that they are "often astonishingly vague").

[34] For a review, see Gyouko & Molloy, *supra* note 30.

[35] *Id.*

as well as costs have largely found that the costs of density restrictions far outweigh the benefits.[36]

There is no national time-series dataset on land use regulation in metro areas, but scholars have assembled detailed time series for California, the Boston area, and a few other locales. Difference-in-difference studies using these data corroborate the national, cross-sectional analyses: the adoption of most types of development restrictions reduces the number of housing units permitted in the next time period, relative to "control" jurisdictions that did not enact such restrictions.[37] The over-time studies also confirm that there was a dramatic upswing in the number and variety of land-use regulations at the local level starting in the late 1960s or 1970s, in what are now the expensive coastal regions.[38] Other studies have shown that state environmental review laws (of similar vintage) are used by neighboring homeowners, unions, and other non-environmental interests to stop, slow, or extract concessions from housing developers.[39]

There is, however, one important commonality between the high-cost metro areas of the West and Northeast, and the low-cost metros of the South and Southwest: Extant residential neighborhoods have experienced little "densification," except by filling in vacant lots.[40] This represents a significant

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[36] *See* David Albouy & Gabriel Ehrlich, *Housing Productivity and the Social Cost of Land-Use Restrictions*, J. URB. ECON. (forthcoming 2018), and sources cited therein.

[37] *See, e.g.*, Kristoffer Jackson, *Do Land Use Regulations Stifle Residential Development? Evidence from California Cities*, 91 J. URB. ECON. 45 (2016).

[38] *See, e.g.*, Glaeser & Ward, *supra* note 28, at 269-71; Jackson, *supra* note 37. Using Google's ngram service, Fischel shows that in the corpus of written work known to Google, references to "growth management" were very scarce before 1970 and shoot upward after then. *See* FISCHEL, *supra* note 5, at 194-96.

[39] Jennifer L. Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, 24 HASTINGS ENVT'L L.J. 21 (2018); Stephanie M. DeHerrera et al., In the Name of the Environment: Litigation Abuse Under CEQA, Holland & Knight (Aug. 2015), https://perma.cc/SV3V-F5L2. These studies show that roughly 80% CEQA suits are filed against infill housing. They have been criticized for implying that CEQA litigation is frequent, notwithstanding that the studies do not estimate the probability of an infill (or other) project facing a CEQA suit. *See, e.g.*, Moira O'Neill, Giulia Gualco-Nelson & Eric Biber, *Developing Land Use Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates*, 25 HASTINGS ENVT'L L.J. 1, 34-35 (2019). However, even if only a small fraction of infill projects are litigated on CEQA grounds (as O'Neill et al. find), it doesn't follow that CEQA is an insignificant source of delay and costs. The litigation rate may be low precisely because developers go to great lengths to "bulletproof" environmental review documents or to pay off groups that could bring a CEQA suit. *Cf.* Vicki Been, *Community Benefits: A New Local Government Tool or Another Variation on the Exactions Theme*, 77 U. CHI. L. REV. 5 (2010) (describing emergence of contracts between developers and community groups whereby the groups agree not to sue or otherwise oppose a project, in return for benefits from the developer).

[40] Issi Romen, *America's New Metropolitan Landscape: Pockets Of Dense Construction In A Dormant Suburban Interior*, BUILDZOOM, Feb. 1, 2018, https://www.buildzoom.com/blog/pockets-of-dense-construction-in-a-dormant-suburban-

change from patterns of development prior to the Great Depression, as it used to be common for single-family homes in growing regions to be torn down and replaced by small apartment buildings.[41] When housing starts picked up again after World War II, the old pattern of intensification did not materialize. Whether due to the spread of Euclidian zoning,[42] the interstate highway system,[43] or the increasing popularity of private covenants,[44] housing development since the 1940s and especially post-1970 has occurred mostly through building on vacant land.[45]

The principal difference in the pattern of development between expensive coastal metro regions and their affordable inland counterparts is that less raw land has been converted from non-housing uses in the former areas. Oregon and Washington have had some success prodding cities to repurpose residentially-zoned lots for denser housing, yet "the increase in [Portland and Seattle's] rate of housing production pales in comparison to what similarly-sized cities like Phoenix and Atlanta have achieved through outward expansion."[46] As for the much-ballyhooed "return to the cities" that started in the 1990s, the cities that increased their housing supply have done so largely by accommodating denser development in a few small pockets, often in formerly commercial or industrial zones, rather than by permitting higher-density construction in extant residential neighborhoods.[47]

B. Causes

Why did some metro regions throw up the barricades to new housing while others continued to welcome development, at least in previously non-residential areas? A standard view, popularized by economist William Fischel in his 2001 book *The Homevoter Hypothesis*, is that suburban governments are de facto homeowner cartels, dominated by "homevoters" who seek to restrict

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interior. Romem notes that the 1960s saw a modest upswing in densification, but this was choked off by the 1970s.

[41] *Id.*

[42] On which see William A. Fischel, *An Economic History of Zoning and a Cure for Its Exclusionary Effects*, 41 URBAN STUD. 317 (2004).

[43] CLAYTON NALL, THE ROAD TO INEQUALITY: HOW THE FEDERAL HIGHWAY PROGRAM POLARIZED AMERICA AND UNDERMINED CITIES (2018).

[44] Erin A. Hopkins, *The Impact of Community Associations on Residential Property Values*, 43 HOUSING & SOC'Y 157 (2016) (reviewing literature).

[45] Romem, *supra* note 40, notes that some densification did occur in the 1960s but this was largely choked off by the 1970s.

[46] Issi Romem, *Can U.S. Cities Compensate for Curbing Sprawl by Growing Denser?*, BUILDZOOM (Sept. 14, 2016), https://www.buildzoom.com/blog/can-cities-compensate-for-curbing-sprawl-by-growing-denser.

[47] *See* Romen, *supra* note 40.

development as a way of avoiding changes that might jeopardize the value of their most important asset.[48] There are some puzzles though. No one suburb can exercise much power over the overall supply (and hence price) of housing in a metro region composed of numerous suburbs. And why would suburban homeowner "cartels" vote *en masse* against housing starting in the 1970s, but not beforehand, and why in the Northeast and the West, but not in the South?

Fischel posits that general price inflation, and the environmental movement, largely explain the 1970s inflection point. Inflation made homes into more economically important assets.[49] The environmental movement engendered local open-space and "small is beautiful" initiatives, particularly in affluent, topographically interesting communities, which raised the real price of existing homes. This may have triggered a vicious spiral, as homeowners observing rising prices became more focused on protecting the value of their ever-more-important asset. Corroborating Fischel's hypothesis, Saiz finds that metro areas whose natural geography most constrains housing production—and which therefore "naturally" experience larger housing-price runups during local economic expansions—are also the metro areas with the tightest regulatory constraints.[50] The small size of towns in the Northeast, and the availability of the ballot initiative in the West, made local governments in these areas particular easy for homeowners to control.[51]

Empirically, the enactment of growth controls in a given suburb makes it more likely that nearby suburbs will do the same.[52] Thus do the decentralized decisions of many politically independent subdivisions cumulate into region-wide barriers to new housing. Developers are pushed outward, into rural exurbs where owners of undeveloped land (farms) tend to have more political power,[53] or inward, into central cities, which were long thought to be controlled by "growth machine" business coalitions.[54]

If growth machines truly dominated urban politics, the deflection of development pressure from the suburbs might not constrain the region-wide supply of housing very much. But in economically productive coastal cities, the

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[48] WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES (2001).

[49] For homeowners who purchased with a fixed rate mortgage and are still leveraged, a nominal increase in the price of housing translate into real increases in the homeowner's wealth.

[50] Albert Saiz, *The Geographic Determinants of Housing Supply*, 125 Q.J. ECON. 1253, 1272-82 (2010).

[51] FISCHEL, *supra* note 5, at 163-218.

[52] Jan K. Brueckner, *Testing for Strategic Interaction Among Local Governments: The Case of Growth Controls*, 44 J. URB. ECON. 438 (1998). This is consent with strategic behavior by participants in a cartel, though it might be innocent copycatting.

[53] Michelle Wilde Anderson, *Sprawl's Shepherd: The Rural County*, 100 CAL. L. REV. 365 (2012).

[54] FISCHEL, *supra* note 5, at 296-98.

growth machine ran out of steam.[55] In 1960, Los Angeles was zoned for four times its then-current population.[56] Today, it's zoned for the number of people it has.[57] Using parcel-level data from New York, Been and colleagues find that the probability of a parcel being upzoned for higher-density development is inversely correlated with the proportion of owner-occupied parcels nearby.[58] Anti-development "homevoters" are clearly exercising sway in the central city, not just in little homogeneous suburbs.[59]

One might think that renters, who comprise a large share of the voting-eligible population in many cities, would be stalwart allies of developers. But renters vote at much lower rates than homeowners,[60] and though renters are generally more pro-development than homeowners—consistent with the homevoter hypothesis[61]—renters in expensive cities have classic "NIMBY" preferences. They oppose projects in their neighborhood, even though they would favor citywide measures to increase housing development.[62] Alas their neighborhood-level preferences are likely to be more consequential for new development (or its absence), since upzoning and project-approval decisions tend

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[55] *See generally* Vicki Been, *City NIMBYs*, 33 J. LAND USE & ENVTL. L. 217 (2018); Schleicher, *supra* note 21.

[56] Greg Morrow, The Homeowner Revolution: Democracy, Land Use and the Los Angeles Slow-Growth Movement, 1965-1992, fig. 3 (UCLA Electronic Theses and Dissertations, 2013), https://escholarship.org/uc/item/6k64g20f#page-1.

[57] *Id.* (more precisely, for 92% of the number of people that it has).

[58] Vicki Been, Josiah Madar & Simon McDonnell, *Urban Land-Use Regulation: Are Homevoters Overtaking the Growth Machine?*, 11 J. EMPIRICAL LEG. STUD. 227 (2014). The same pattern occurs in Los Angeles. *See* C.J. Gabbe, *Why Are Regulations Changed? A Parcel Analysis of Upzoning in Los Angeles*, 38 J. PLANNING EDUC. & RESEARCH 289 (2018).

[59] *See* Morrow, *supra* note 56, for a detailed, 30-year case study of Los Angeles, showing that "local groups of largely affluent, white homeowners used the community planning process to effectively re-direct growth away from their communities towards lower-income, minority areas that did not have strong local organizations to resist these changes." *Id.* at 14.

[60] For a review of the literature and new estimates that plausibly identify the causal effect of homeownership on turnout, see Andrew Hall & Jesse Yoder, Does Homeownership Influence Political Behavior? Evidence from Administrative Data (working paper, 2018). *See also* Brian J McCabe, *Are Homeowners Better Citizens? Homeownership and Community Participation in the United States*, 91 SOC. FORCES 929 (2013) (finding that homeownership positively correlates with turnout in elections but not with forms of civic participation that do not affect value of home).

[61] Michael Hankinson, *When Do Renters Behave Like Homeowners? High Rent, Price Anxiety, and NIMBYism*, 112 AM. POL. SCI. REV. 473 (2018); William Marble & Clayton Nall, Where Interests Trump Ideology: Homeownership's Persistent Role in Local Housing Development Politics (Oct. 4, 2018).

[62] Hankinson, *supra* note 61.

to be made on a neighborhood-by-neighborhood basis, with councilmembers deferring to one another on projects in their districts.[63]

Finally, anti-gentrification activists have become a fixture of urban politics in expensive cities,[64] and have used discretionary permitting regimes and state environmental review laws as leverage to demand expensive "community benefit agreements" from developers.[65] The costs, delays, and uncertainties involved in negotiating a community benefit agreement constitute a large, de facto tax on new housing development in the urban core.

C. Consequences

Barriers to housing development in the expensive coastal metro areas have at least three types of deleterious impacts: they exacerbate socioeconomic inequality; they induce pollution, particularly greenhouse gas emissions; and they undermine national economic welfare.

1. Inequality

The runup in housing costs in economically productive coastal regions has made incumbent homeowners rich.[66] One study finds that returns to housing account for nearly all of the much-discussed increase in capital's share of national income since 1970.[67] Other studies show that land-use restrictions exacerbate segregation within metropolitan regions.[68]

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[63] Schleicher, *supra* note 21.

[64] Nancy H Kwak, *Anti-Gentrification Campaigns and the Fight for Local Control in California Cities*, 12 NEW GLOBAL STUDIES 91 (2018).

[65] Been, *supra* note 39.

[66] *See, e.g.*, Glaeser & Gyourko, *supra* note 20, at 20-23 ("The big winners from the reduction in housing supply are a small number of older Americans who bought when prices were much lower"); David Albouy & Mike Zabek, Housing Inequality (NBER Paper No. w21916, 2016) (documenting increase in housing-consumption inequality since 1970, and showing that it is mostly due to location-specific changes in dwelling-unit value rather than more dispersion in the size and other observable characteristics of dwelling units consumed by the rich and the poor).

[67] *See* Matthew Rognlie, *Deciphering the Fall and Rise in the Net Capital Share: Accumulation or Scarcity?*, 2015 BROOKINGS PAPERS ECON. ACTIVITY 1. To be sure, a more liberal regime of land use in expensive coastal cities would not necessarily reduce returns to capital. Liberalization would probably reduce the value of the existing housing stock, but increase the value of land.

[68] Michael C. Lens & Paavo Monkkonen, *Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?*, 82 J. AM. PLANNING ASS'N 6 (2016) (showing strong correlation between land use regulation and income segregation across metro areas); Jessica Trounstine, The Geography of Inequality:
How Land Use Regulation Produces Segregation and Polarization (July 2018) (showing that restrictive land use policies exacerbate racial segregation).

There are also serious implications for intergenerational socioeconomic mobility. Using income-tax microdata, Raj Chetty and co-authors have shown that intergenerational mobility in the United States varies greatly with geography.[69] "Some [locales] have . . . mobility comparable to the highest mobility countries in the world, such as Canada and Denmark, while others have lower levels of mobility than any developed country for which data are available."[70] This is not just the byproduct of chance variation in the distribution of, say, "good families" across localities. Comparing siblings who moved to high-mobility zones at different ages, and examining the subset of people who were displaced by adverse economic shocks, Chetty and Hendren estimate that one-half to two-thirds of the geographic variation is causal.[71] Children who had the bad luck of growing up in a low-opportunity community would have fared much better if their parents had relocated to a high-opportunity region.[72]

Many of the high-opportunity communities are found in the expensive coastal areas.[73] If more poor families could afford to emigrate from the South and the declining regions of the Midwest, more poor children would reach the middle class.

2. *Environment*

Regulatory barriers to housing production in coastal cities displace growth to regions with less temperate climates and more autocentric commuting patterns, resulting in greater greenhouse gas emissions.[74] Americans who move to opportunity nowadays are mostly moving to the Atlantas, Houstons, and Phoenixes of the world, not to the mild coastal climes of Los Angeles, San Francisco, Portland, and Seattle. Within metro regions, development restrictions in city cores and inner suburbs push growth to outlying rural areas, gobbling up land that may have value as natural habitat or parkland, and relegating the new homeowners to greenhouse-gas-intensive commutes.[75]

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[69] Raj Chetty et al., *Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States*, 129 Q.J. ECON. 1553 (2014); Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility II: County-Level Estimates*, 133 Q.J. ECON. 1163 (2018).

[70] *Id.* at 1556.

[71] Chetty & Hendren, *supra* note 69, at 2-4.

[72] Chetty & Hendren, *supra* note 69, at 6.

[73] Arthur Acolin & Susan Wachter, *Opportunity and Housing Access*, 19 CITYSCAPE 135 (2017).

[74] *See generally* EDWARD GLAESER, TRIUMPH OF THE CITY (2011).

[75] NATHANIEL DECKER ET AL., RIGHT TYPE, RIGHT PLACE: ASSESSING THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF INFILL RESIDENTIAL DEVELOPMENT THROUGH 2030 (Mar. 10, 2017), https://ternercenter.berkeley.edu/right-type-right-place.

California is famous in environmental circles for its ambitious greenhouse-gas emission targets. So far, the state is making impressive progress—except in the transportation sector.[76] California has little hope of meeting its 2030 and 2040 targets without a huge reduction in transportation emissions, and this is unlikely to be achieved unless urban and suburban communities start accommodating a lot of new, higher-density housing, particularly near transit stations.[77]

3. National Economic Welfare

As David Schleicher and others have emphasized, barriers to new housing in economically successful metropolitan regions have national economic consequences.[78] They deprive would-be residents of the "agglomeration" benefits of dense labor markets, where stiff competition among firms for workers raises wages; where workers have insurance (in the form of many fallback job options) in the event that they prove to be a bad fit with one employer; and where innovation is nurtured by the everyday exchanges that occur when people live and work close to others who are similarly engaged.[79] Schleicher also observes that mobility barriers make it harder for the Federal Reserve Bank to establish sensible monetary policies.[80] A lax monetary policy, calibrated to regions of the United States that have suffered negative shocks, would cause inflation in the thriving regions, whereas a tighter policy suited to the successful regions would perpetuate unemployment in other areas.

Economists have tried to quantify the national-welfare losses from underproduction of housing in expensive coastal markets. These efforts are model-dependent and rest on strong assumptions, but by most estimates GDP would be at least a couple of percentage points higher if housing supply could expand to the "natural" equilibrium point where price equals the average (non-regulatory) cost of production.[81]

Finally, there is some evidence that people underestimate losses to their own welfare from long commutes.[82] Causal claims about this alleged cognitive bias

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[76] CALIFORNIA AIR RESOURCES BOARD, 2018 PROGRESS REPORT: CALIFORNIA'S SUSTAINABLE COMMUNITIES AND CLIMATE PROTECTION ACT, https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf.

[77] Liam Dillon, *California Won't Meet Its Climate Change Goals Without a Lot More Housing Density in Its Cities*, L.A. TIMES, Mar. 6, 2017; David Roberts, *California Has a Climate Problem, and Its Name Is Cars*, VOX, Aug. 22, 2017.

[78] *See, e.g.*, Schleicher, *supra* note 19; Glaeser & Gyourko, *supra* note 20; Chang-Tai Hsieh & Enrico Moretti, Why Do Cities Matter? Local Growth and Aggregate Growth (2015).

[79] *Id.*

[80] Schleicher, *supra* note 19, at 88-96.

[81] *See* Glaeser & Gyourko, *supra* note 20 (reviewing literature).

[82] The seminal paper is Alois Stutzer & Bruno S. Frey, *Stress that Doesn't Pay: The Commuting Paradox*, 110 SCAN. J. ECON. 339 (2008).

are a bit suspect, since researchers have not been able to randomly assign commutes to workers and compare workers' projected well-being with their realized well-being. But whether or not they undervalue time lost to commuting, buyers and renters in expensive coastal markets are clearly willing to pay big premiums for housing near jobs and transit—if only the market would provide it.

II. HOW THE EXPENSIVE STATES HAVE TRIED (?) TO MAKE HOUSING MORE AFFORDABLE

State efforts to check unduly restrictive zoning in the now-expensive coastal metropolises got underway in the late 1960s and 1970s, around the same time that housing prices in these areas began to separate from prices elsewhere in the nation. Though each state followed its own path, if one squints a bit, one can discern two basic models. I'll call these the Northeastern Model and the West Coast Model, after the regions where each predominates. California, Oregon and Washington (as well as Florida) follow the West Coast Model, while the Northeastern Model is found in New Jersey, Massachusetts, Connecticut, Rhode Island, and Illinois.[83]

The Northeastern Model treats the affordability / housing supply problem as essentially about suburban regulatory barriers to subsidized, income-restricted housing. The primary goal is to get each local government to accommodate its "fair share" of low-income housing, and the primary tool is the "builder's remedy," a judicial or administrative proceeding whereby developers of housing projects with a large proportion of income-restricted units may obtain exemptions from local regulations.

The West Coast Model treats the problem instead as one of local regulatory barriers to producing enough housing to accommodate projected population growth across all income categories. Local governments are required to enact and periodically update a comprehensive plan with a "housing element" that explains how the jurisdiction will permit enough housing for its share of state-projected population growth. These plans are subject to review and approval by a state agency. Localities without a compliant plan may lose access to certain funding streams, but traditionally have not been exposed to strong builders' remedies.

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[83] For an overview of the model as embodied in the law of Connecticut, Massachusetts, New Jersey, and Rhode Island, see Sam Stonefield, *Affordable Housing in Suburbia: The Importance but Limited Power and Effectiveness of the State Override Tool*, 22 W. NEW ENG. L. REV. 323 (2000). Regarding Illinois, see ILL. HOUSING DEVELOPMENT AUTHORITY, AFFORDABLE HOUSING PLANNING AND APPEAL ACT:
2013 NON-EXEMPT LOCAL GOVERNMENT HANDBOOK(rev'd Jan. 7, 2014), https://www.ihda.org/wp-content/uploads/2016/03/Final2013AHPAANELGHandbook.pdf (hereinafter, "ILL. HANDBOOK").

As we will see, there has been some cross-fertilization between the Northeastern and West Coast states. For example, housing need determinations in California are made in a loosely similar way to housing need determinations in New Jersey, except that California assesses need for market-rate as well as subsidized housing. And echoing the builder's remedy of the Northeastern Model, California has authorized developers of affordable housing to bypass local zoning rules if the local government lacks a substantially compliant housing element. Conversely, most Northeastern Model states now immunize local governments from the builder's remedy if the locality submits its affordable-housing plan to a state agency and the agency approves it. This is analogous to plan-review under the West Coast Model, except review in the Northeastern states only addresses income-restricted housing.

The Northeastern and West Coast Models are not the only ways in which states have acted to accommodate more housing, denser housing, or more below-market-rate housing units. A few states have created incentive programs to encourage denser housing near mass transit,[84] and many more provide for tax abatements or tax increment financing to encourage redevelopment of deteriorating areas.[85] I focus here on the Northeastern and West Coast Models, however, because they capture the principal means by which parent states of the expensive metro regions have undertaken to regulate locally-erected barriers to new housing. As such, these models are the precursors and reference points for the spate of "Yes In My Backyard" housing bills now making their way through the statehouses, the subject of the next Part.

A. The Northeastern Model: Builder's Remedy, Safe Harbors, and Indifference to Market-Rate Housing

1. The Framework

The Northeastern Model is a legacy of the civil rights movement. Cities in the 1970s were in disarray. White people with means had fled to the suburbs, and were using large-lot zoning and other exclusionary tactics to keep poor people and minorities from following behind them.[86] Civil rights activists demanded state intervention to make the "tight little islands" of suburbia accept their fair share of low-income housing.[87] The aim was to dismantle concentrated urban

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[84] *See* ROBERT H. FREILICH ET AL., FROM SPRAWL TO SUSTAINABILITY: SMART GROWTH, NEW URBANISM, GREEN DEVELOPMENT, AND RENEWABLE ENERGY 247 (2010) (discussing Massachusetts and Connecticut programs).

[85] *See id.* at 248-49.

[86] *See generally* ANTHONY DOWNS, OPENING UP THE SUBURBS: AN URBAN STRATEGY FOR AMERICA (1973).

[87] Lawrence Gene Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767 (1968).

poverty and racial isolation, giving poor black families in the central cities access via housing to the good schools and increasingly bountiful employment opportunities of the suburbs.[88]

New Jersey's courts in the *Mt. Laurel* line of cases famously converted this civil rights demand into state-constitutional doctrine.[89] In Massachusetts, Connecticut, Rhode Island, and Illinois, the legislature answered the call.[90] But all of these states eventually settled on a similar strategy for opening up the suburbs. First, a state-level actor—the legislature, an administrative agency, or the courts—sets a target for the number of "below-market rate" (BMR) dwelling units in the territory of each local government. Deed restrictions on these units allow them to be sold or rented only to persons who earn no more than a state-determined share of the Area Median Income, and at restricted prices.[91] In New Jersey, BMR quotas emerge from a complicated and contentious process of periodically determining regional "needs" and then jurisdiction-specific "fair shares,"[92] whereas Massachusetts, Rhode Island, Connecticut, and Illinois have

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[88] *See* CHARLES M. HAAR, SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES 3-11 (2d. ed. 1996) (describing background to the *Mt. Laurel* litigation).

[89] S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel I), 67 N.J. 151, 179, 187, 336 A.2d 713, *appeal dismissed and cert. denied*, 423 U.S. 808, 96 S.Ct. 18, 46 L.Ed.2d 28 (1975); S. Burlington Cnty. N.A.A.C.P. v. Twp. of Mount Laurel (Mount Laurel II), 92 N.J. 158, 205, 456 A.2d 390 (1983).

[90] On the history of the Massachusetts framework, see Sharon Perlman Krefetz, *The Impact and Evolution of the Massachusetts Comprehensive Permit and Zoning Appeals Act: Thirty Years of Experience with a State Legislative Effort to Overcome Exclusionary Zoning*, 22 W. NEW ENG. L. REV. 381, 384-89 (2001). Regarding Connecticut, see Robert D. Carroll, *Connecticut Retrenches: A Proposal to Save the Affordable Housing Appeals Procedure*, 110 YALE L.J. 1247, 1253-55 (2001). The Illinois framework, which dates to 2003, is summarized in ILL. HANDBOOK, *supra* note 83. About Rhode Island, whose framework dates to 1991, see *Town of Burrillville v. Pascoag Apartment Assocs., LLC*, 950 A.2d 435, 438-39 (R.I. 2008).

[91] *See* Rachel G Bratt & Abigail Vladeck, *Addressing Restrictive Zoning for Affordable Housing: Experiences in Four States*, 24 HOUSING POL'Y DEBATE 594, 598 (2014) (comparing BMR housing definition in several states).

[92] The state projects population growth in each of six regions, estimates the share of growth likely to consist of low- and moderate-income people, adds to this the number of low- and moderate-income households in the region who currently lack subsidized housing or inhabit substandard housing, and adjusts for projected demolitions and conversions of existing housing units. Having so determined each region's need, the state allocates a share of it to each political subdivision within the region, weighing the amount of undeveloped land in the subdivision, the characteristics of its population, and the quantity of BMR housing it has produced in the past. *See generally* Roderick M. Hills, Jr., *Saving* Mount Laurel, 40 FORDHAM URB. L.J. 1611, 1619-23 (2012) (discussing controversy); In re Declaratory Judgment Actions Filed by Various Municipalities, 227 N.J. 508 (2017) (instructing lower courts on housing-need calculation).

simply declared that 10% of the housing stock of each locality should consist of BMR units.[93]

The second feature of the Northeastern Model is the so-called builder's remedy. If a local government denies a project with a substantial fraction of BMR units, typically 20-25%,[94] the developer may appeal to a state tribunal *and obtain an exemption from otherwise-applicable local ordinances.*[95] In these proceedings, the burden of proof is on the local government to show that any local interests adversely affected by the project outweigh the regional or statewide need for BMR units.[96] To prevent local governments from killing BMR projects with delays, Massachusetts and Rhode Island deem qualifying projects approved as a matter of law if the local government fails to act on the permit application within a brief window of time.[97] (However, only nonprofit or limited-profit developers are entitled to speedy permitting, which limits the disruptive potential of the "deemed approved" proviso.[98])

The final component of the Northeastern Model is the safe harbor. Local governments that have produced their target number (share) of BMR units, or that have received state approval of their plan to produce them, are immune from

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[93] *See* Stonefield, *supra* note 83, at 339. Massachusetts hasn't sidestepped it entirely, however, in that jurisdictions below the 10%-of-housing-stock threshold which seek an exemption from the builder's remedy (on which *see infra* notes 99-101 and accompanying text) must submit an affordable housing plan tied to projected population growth in various income categories. *See* MASS. DEP'T OF HOUS. & COMMUNITY DEV., G.L.C. 40B GUIDELINES II-8 – II-10 (Dec. 2014), https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf.

[94] *See, e.g.*, R.I. § 45-53-4(a) (25%); Stuborn Ltd. Partnership v. Barnstable Bd. of Appeals, Decision of Jurisdiction, No. 98–01, at 6–7 (Mass. Hous. App. Com'n, Mar. 5, 1999) (25%); In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462, 491, 6 A.3d 445, 463 (App. Div. 2010), *aff'd as modified sub nom.* In re Adoption of N.J.A.C. 5:96, 215 N.J. 578, 74 A.3d 893 (2013) ("a 20% set-aside requirement has been considered the norm in the administration of the Mount Laurel doctrine").

[95] These proceedings take place before an administrative tribunal in Massachusetts, Rhode Island, and Illinois, and courts in Connecticut. See sources cited in note 90, *supra*. In New Jersey, the proceedings took place before courts initially, then an agency, and most recently before courts again, since he agency was declared "defunct." *See* In re Declaratory Judgment Actions Filed by Various Municipalities, 152 A.3d 915, 918-22 (NJ 2017) (summarizing history). Additionally, Rhode Island restricts the builder's remedy to projects that are publicly subsidized, 45 R.I. Gen. Laws Ann. § 45-53-3 (West), and Massachusetts restricts it to projects proposed by public agencies, nonprofits, and "limited divided" organizations. Mass. Gen. Laws Ann. ch. 40B, § 21 (West).

[96] See sources cited in note 90, *supra*

[97] Regarding the expedited, "comprehensive permit" procedure in Massachusetts and Rhode Island, see, respectively, 28 ARTHUR L. ENO, JR. ET AL., MASS. PRACTICE SERIES § 23.30 (4th ed. Supp. 2016); Erika Barber, *Note, Affordable Housing in Massachusetts: How to Preserve the Promise of "40B" with Lessons from Rhode Island*, 46 NEW. ENG. L. REV. 125, 132 (2011).

[98] See Ellen Callahan, *Will an Increase in Profits Increase Affordable Housing? Examining the Limited Dividend Requirement of Chapter 40b of the Massachusetts General Laws*, 50 SUFFOLK U.L. REV. 649 (2017) (describing and critiquing this limitation).

the builder's remedy.[99] To obtain the plan-based immunity, localities typically must adopt an inclusionary-zoning ordinance, which requires developers of multi-unit projects to dedicate some percentage of the units to the BMR program or pay an in-lieu fee.[100] Local governments are also encouraged to enact a "density bonus" ordinance, allowing projects with a substantial share of BMR units to be somewhat denser or bulkier than otherwise permitted.[101]

The underlying premises of the Northeastern Model seem to be (1) that problem of housing affordability deserves the state's attention only insofar as it affects poor people, and (2) that the problem can be redressed only through the

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[99] Regarding New Jersey, see N.J.S.A. 52:27D–313 –317; *see also* Hills Dev. Co. v. Twp. of Bernards, 103 N.J. 1, 19–20, 33–35, 510 A.2d 621 (1986) (explaining certification procedure); In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Hous., 221 N.J. 1, 24, 110 A.3d 31, 45 (2015) (stating that "substantive certification" of plan "afford[s] the ordinances implementing the housing elements of such municipalities a strong presumption of validity in any exclusionary zoning action and, thus, would provide powerful protection from a builder's remedy").

Regarding Massachusetts, see 70 CMR 56.03 (exempting local governments that both have a current, state-approved "housing production plan" in place, and produced affordable units equal to 0.5% of their total housing stock during the previous year); Mass. Dep't of Hous. & Community Dev., G.L.C. 40B Guidelines II-8 – II-10 (Dec. 2014), https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf (implementing statute).

Regarding Rhode Island, see R.I. Gen. Laws Ann. § 45-53-4 (West) (stating that review board may deny affordable-housing development application if the local government "has an approved affordable housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing plan"); Div. of Planning, Rhode Island Department of Administration, State Guide Plan Element 423, Appendix D (June 2016) (reprinting guidelines for affordable housing plans).

Regarding Illinois, see ILL. HANDBOOK, *supra* note 83, at 13 (noting, inter alia, that local governments are exempt from builder's remedy if they adopt an affordable housing plan establishing goal that 15% of all new housing consist of affordable units).

In contrast to the other Northeastern states, Connecticut does not appear to offer a plan-based immunity. Instead, it limits the threat of the builder's remedy by allowing local governments to adopt temporary affordable-housing moratoria provided that certain criteria are met. *See* Conn. Gen. Stat. Ann. § 8-30g(l) (West).

[100] *See* Stoneman, *supra* note 83, 334-35 (noting that with the partial exception of Massachusetts, the Northeastern Model states have all pushed local governments to achieve their affordable housing targets through zoning regimes designed to induce private developers to set aside BMR units).

[101] *See* 42 R.I. Gen. Laws Ann. § 42-128-8.1(g) (directing agency to promulgate guidelines for inclusionary zoning and density bonuses); DIV. OF PLANNING, R.I. DEP'T OF ADMIN., STATE GUIDE PLAN ELEMENT 423, Appendix D (June 2016) (reprinting Inclusionary Zoning Guidelines, which call for the BMR set-aside to be offset more than 1:1 with extra market-rate units through a density bonus); In re Adoption of N.J.A.C. 5:96 & 5:97, 6 A.3d 445, 461-64 (N.J. App. Div. 2010), *aff'd as modified sub nom.* In re Adoption of N.J.A.C. 5:96, 74 A.3d 893 (NJ 2013) (invalidating Third Round Regulations for implementing *Mt. Laurel* because, *inter alia*, the regulations did not provide sufficient density bonuses or other incentives for private construction of BMR housing).

construction or rehabilitation of deed-restricted BMR units. Massachusetts, Connecticut, Rhode Island, and Illinois could hardly be more explicit about this, as they condition exposure to the builder's remedy *solely* on the locality's weak track record or plan for producing BMR units, and they provide the remedy *solely* for builders of BMR units. And while New Jersey has recognized that a generous supply of new market-rate units may make existing units more affordable, thus reducing the regional need for BMR housing,[102] the state's courts have resisted efforts to account for market-supply effects in the calculation of regional housing needs.[103] A New Jersey municipality that meets its fair-share obligation for BMR units may zone the rest of its land as restrictively as it wishes.[104]

2. Critiques

The Northeastern Model has been bashed from many directions.[105] The most fundamental concern for present purposes is the deep mismatch between the Model's conception of the housing-supply problem and the actual problems described in Part I. The root problem today is not (or not just) the racist or snooty suburb trying to keep out poor folks, but an unwillingness on the part of governments throughout expensive metro regions to allow enough market-rate housing, especially dense housing near transit. As the gentrification fights attest,

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[102] *See* In re Adoption of N.J.A.C. 5:94 & 5:95 by the N.J. Council on Affordable Hous., 914 A.2d 348, 362 (N.J. Super. Ct. App. Div. 2007) (stating that the the housing agency had "recognized filtering as the most significant market force in reducing housing need").

[103] *See id.* at 372-75 (N.J. Super. Ct. App. Div. 2007) (criticizing agency's filtering adjustment for disregarding current data on house prices and paying no need to whether local governments actually would increase the supply of market-rate housing). In 2015, responsibility for fair-share calculations was reassigned to the judiciary, *In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Hous.*, 110 A.3d 31 (NJ 2015), and the housing-need determinations since then have not adjusted for filtering. *See* Matter of Application of Twp. of S. Brunswick, 153 A.3d 981, 994 (N.J. Law. Div. 2016) (acknowledging filtering as relevant in principle but stating that neither expert had "satisfactorily addressed the deficiencies identified by the Appellate Division" with respect to filtering estimation); *In re Municipality of Princeton*, No. MERL155015, 2018 WL 1352272, at *40-42 (N.J. Super. Ct. Law Div. 2018) (same).

[104] S. Burlington Cnty. NAACP v. Mount Laurel, 456 A.2d 390, 390 (N.J. 1983) (stating that jurisdictions which meet their fair-share obligations are free to enact "large-lot and open space zoning").

[105] Some critics complain that deed-restricted BMR units are a terribly inefficient way to subsidize housing for poor people, e.g., Robert C. Ellickson, *The False Promise of the Mixed-Income Housing Project*, 57 UCLA L. REV. 893 (2009); others fault the states for inadequate commitment, see http://fairsharehousing.org/mount-laurel-doctrine; still others want the states to better account for the filtering of market-rate units into or out of "affordable" price points, see Hills, *supra* note 92, at 1639-44.

there are now plenty of affluent whites who are willing live near poor people and minorities,[106] but there's not enough housing to go around.

Some critics posit the Northeastern Model is not only mismatched to today's housing problems but actually exacerbates them.[107] Because Northeastern Model states (other than New Jersey) define the affordable-housing target as *percentage* of the total housing stock (10%), rather than as an *amount* of new housing units to be built over a planning period, they effectively punishes suburban communities that approve market-rate housing projects. Any new market rate units will reduce the BMR share of the community's housing stock, potentially exposing the jurisdiction to builder's remedy lawsuits. There's also some evidence that the Northeastern Model has led suburban governments to buy up developable parcels for protected parks and open space, so that the parcels cannot be used to house locally unwelcome populations.[108]

On the other hand, the Northeastern Model may have induced some local governments to accommodate reasonably dense housing projects they would otherwise have rejected. This is so because the least fiscally burdensome way for a local government to meet its affordable-housing obligations is to make it profitable for developers to build while setting aside a substantial fraction of the units as BMR housing. Courts in New Jersey have also put some pressure on local governments to zone for fairly dense, low-cost housing forms, and have pushed back against BMR requirements that are so onerous as to render development unprofitable.[109]

The few empirical studies that have tried to sort out how the Northeastern Model has affected total housing supply are inconclusive.[110] About the best that

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[106] For a review of the literature on time trends in white preferences for residential integration, see Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329, 1351-52 (2016).

[107] *See, e.g.*, FISCHEL, *supra* note 5, at 359-62.

[108] *See* FISCHEL, *supra* note 5, at 359-60.

[109] *Id.*

[110] A recent difference-in-difference study finds that the *Mt. Laurel* intervention in New Jersey caused an increase in the multifamily and townhome housing stock in New Jersey counties relative to similar counties in New York, but not Pennsylvania (where the courts have also invalidated exclusionary zoning). *See* Nicholas J. Marantz & Huixin Zheng, *Exclusionary Zoning and the Limits of Judicial Impact*, J. PLANNING EDUC. & RES. 1 (2018); Another finds that during the 1990s, a greater proportion of new construction in New Jersey consisted of multi-family units than in seven comparison states. *See* GARY K. INGRAM ET AL., SMART GROWTH POLICIES, ch. 6 (2009). In Connecticut, adoption of the Northeastern Model did not reduce housing production in Connecticut suburbs relative to nearby "control" suburbs in New York (which has not adopted the model). *See* Nicholas J. Marantz & Harya S. Dillon, *Do State Affordable Housing Appeals Systems Backfire? A Natural Experiment*, 28 HOUS. POLICY DEBATE 267 (2018).

can be said for the model is that while aims at the wrong target, it has induced the construction of BMR units without clearly diminishing the overall supply of new housing.

B. The West Coast Model: Supervised Planning for Projected Population Growth

1. *The Framework*

The West Coast Model emerged from the wave of enthusiasm for comprehensive planning that washed over the states in the 1960s and 1970s.[111] Housing wasn't the focus of the initial planning mandates,[112] but it became much more central in the 1980s and 1990s.[113] By 1991, when Washington enacted its Growth Management Act, the three West Coast states (and Florida) had all embraced the following principles. First, local governments have a duty to plan, on a state-mandated cycle (generally 7-10 years[114]), for enough new housing to accommodate projected population growth.[115] Second, the local comprehensive

On the other hand, there's suggestive evidence that New Jersey suburbs which voted (unsuccessfully) against the Northeastern Model have used public "parkland" bonds to buy up and set aside parcels with low value as parkland but high value for housing development. *See* Stephan Schmidt & Kurt Paulsen, *Is Open-Space Preservation a Form of Exclusionary Zoning? The Evolution of Municipal Open-Space Policies in New Jersey*, 45 URB. AFFAIRS REV. 92 (2009); 92-118.

[111] *See* Daniel R. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation*, 74 MICH. L. REV. 899 (1976) (describing environmental, civil rights, and federal funding influences on the new planning requirements).

[112] *Id.*

[113] California's framework legislation dates to 1968, but the RHNA and state-review requirements were not established until the early 1980s. *See* Baer, *supra* note 113, at 54-61. Oregon's framework dates to 1973 and acquired its modern form by 1979. *See* Robert L. Liberty, *Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States*, 22 ENVT'L L. REP. 10367, 10368 (1992), Edward J. Sullivan, *The Quiet Revolution Goes West: The Oregon Planning Program 1961-2011*, 45 J. MARSHALL L. REV. 357, 367-72 (2011); Paul A. Diller & Edward J. Sullivan, *The Challenge of Housing Affordability in Oregon: Facts, Tools, and Outcomes*, 27 J. AFFORDABLE HOUS. 183 (2018). Washington's framework, the Growth Management Act, dates to 1990. *See* Paul Marshall Parker, The Evolution of Growth Management in Washington: 25 Years and Counting (2015), https://www.washington-apa.org/assets/docs/2015/Events/GMA_Gala_Event/parker_presentation_gma_25_years_and_counting.pdf. Florida's regime originated in the early 1970s but state review of local plans for various required elements was not mandatory until the mid 1980s. *See* Stroud, *supra* note 116, at 400-06.

[114] Cal. Gov't Code § 65588 (8-year cycle) (West 2018); Or. Rev. Stat. § 197.629 (West 2018) (7-10 years); Fla. Stat. Ann. § 163.3191 (West 2018) (7 years); Wash. Rev. Code Ann. § 36.70A.130 (West 2018) (8 years).

[115] In Washington, "County officials [select a] 20-year [] planning target from within the range of high and low prepared by [the state finance agency;] then within each county, population planning targets for cities, towns, and unincorporated areas are developed among

all affected local jurisdictions." https://www.ofm.wa.gov/washington-data-research/population-demographics/population-forecasts-and-projections/growth-management-act-county-projections. The housing element of the plan must "[i]nclude[] an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth," "mak[ing] adequate provisions for existing and projected needs of all economic segments of the community." RCW 36.70A.070(2) (West).

In Oregon, local governments must plan for "needed housing" "in one or more zoning districts . . . with sufficient buildable land to satisfy that need." Or. Rev. Stat. § 197.307(3). "Needed housing," in turn, "means all housing on land zoned for residential use . . . that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes . . . ." Or. Rev. Stat. § 197.303. "Needed housing" is determined using a 20-year population forecast. *See* Or. Rev. Stat. § 197.296(6) (requiring cities to adjust growth boundaries and / or density to accommodate needed housing per 20-year forecast); Or. Admin R. 660-024-0040 ("The determination of 20-year residential land needs for an urban area must be consistent with the appropriate 20-year coordinated population forecast . . ."). In 2013, Oregon's legislature assignment responsibility for making the associated population-forecast projection to the Population Research Center at Portland State University (for most of the state) and to the Metro regional government (for the Portland area). *See* Edward J. Sullivan, *Population Forecasting and Planning Authority*, 48 URB. LAWYER 47 (2016).

The California process for determining housing need is described in the text accompanying notes 121-124, *infra*. *See also* CAL. AFFORDABLE HOUS. LAW PROJECT, CALIFORNIA HOUSING ELEMENT MANUAL 18-21 (3d ed. June 2013) (hereinafter, "CAL. MANUAL"); Cal. Gov't Code §65584 et seq. (West 2018).

In Florida, "[t]he plan must be based on at least the minimum amount of land required to accommodate the medium projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period. Absent physical limitations ... population projections for each municipality, and the unincorporated area within a county must, at a minimum, be reflective of each area's proportional share of the total county population and the total county population growth." Fla. Stat. § 163.3177 (West)).

plans, or at least their "housing elements," must be submitted to a state agency for review.[116] Third, local land-use regulations and by extension local permitting decisions must conform to the plan.[117]

Population forecasts are made by a state agency and forwarded to local planners.[118] Oregon, Washington, and Florida instruct their local governments

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[116] Oregon requires local governments to have their comprehensive plans and implementing regulations "acknowledged" by the state agency. *See* Sullivan, *supra* note 111, at 370-71. This process was completed by 1986. *Id.* Amendments to an acknowledged plan must be submitted for state review, see Or. Rev. Stat. § 197.610; additionally, plans covering urban areas (with a few exceptions) must be updated and submitted for state review every 7-10 years, see Or. Rev. Stat. § 197.633. For a comparison of the post-acknowledgment amendment and periodic review processes, see Sullivan, *supra* note 111, at 370-72, 392-93.

In California, local governments must submit draft housing elements and amendments to HCD for review. If HCD objects, the local government may enact the element or amendment anyway but must make findings about why it believes the element substantially complies. HCD then makes a written determination about substantial compliance, and if it finds noncompliance, may refer the matter to the Attorney General for enforcement. See CAL. MANUAL, *supra* note 115, at 15; Cal Gov't Code § 65585.

In Washington, plans and plan amendments must be submitted to the state Department of Commerce for review at least 60 days before adoption. *See* Wash. Rev. Code § 36.70A.106 (West); WAC 365-196-630. If the department believes that the plan is inadequate, it may initiate a proceeding before the Growth Management Hearing Board. *See* Wash. Rev. Code § 36.70A.280.

In Florida, plans and plan amendments must be submitted to the state planning agency (and several other agencies) for comments after the local government's first public hearing. After adoption of the plan or plan amendment, the final package is sent back to the state agency, which has 45 days to make a compliance determination. If the agency finds the plan non-compliant, it may initiate proceedings before the Division of Administrative Hearings, which adjudicates plan validity. *See* Fla. Stat. Ann. § 163.3184(4) (West); for a history of earlier incarnations of the Florida plan-review process, see Nancy Stroud, *A History and New Turns in Florida's Growth Management Reform*, 45 J. MARSHALL L. REV. 397 (2012).

[117] California's consistency requirements are codified as Cal. Gov't Code §§65860, 66473.5 & 65583(c) (West 2018). Regarding Florida, see Stroud, *supra* note 116, at 400-01, 14 (describing emergence of consistency requirement in the early 1970s, and its preservation even during the 2009-11 "counter-revolution" against strong state oversight of local planning). In Washington, the courts seem somewhat ambivalent about the consistency requirement. *Compare* Citizens for Mount Vernon v. City of Mount Vernon, 947 P.2d 1208 (Wash. 1997) (deeming the comprehensive plan only a "guide" or a "blueprint") *with* King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 979 P.2d 374, 380 (Wash. 1999), *as amended on denial of reconsideration* (Sept. 22, 1999) (holding that urban growth boundaries designated in plan are binding). Oregon has strong consistency requirements, enforceable via "work task" orders that the state land-use agency may issue to local governments. *See* Or. Rev. Stat. Ann. § 197.636 (West 2018); Liberty, *supra* note 111, at 10372.

[118] In Washington and California, the population projections are made by the state's department of finance. See RCW 43.62.035; Cal. Gov't Code §65584 et seq. In Oregon, they are made by a state university, see Or. Rev. Stat. 195.033, and in Florida, they are made by the state's Office of Economic and Demographic Research, see Fla. Stat. Ann. § 163.3177 (West 2018).

convert these population forecasts into estimates of needed housing for "all economic segments of the community."[119]

California goes a step further.[120] In 1980, the state legislature enacted a framework for periodically establishing regional housing quotas through negotiations between the state Department of Housing and Community Development (HCD) and regional associations of local governments, the so-called Councils of Government.[121] Though HCD ultimately determines the size of each region's quota (called the "regional housing needs assessment," or RHNA), the Councils are invited to provide information and propose methodologies for translating the state's population forecasts into housing quotas.[122] The RHNAs are subdivided into four affordability bands: housing units to be produced over the planning cycle for households of very-low, low, moderate, and above-moderate incomes, respectively.[123] ("Above-moderate" is code for market-rate housing.[124]) Councils of Government then allocate their region's quotas among the member governments. This roughly resembles the process of determining and then allocating regional housing need in New Jersey, except that New Jersey considers only the need for subsidized housing, and New Jersey allocations have been made by courts or agencies rather than confederations of local governments.[125]

Beyond the essential "West Coast" commonalities noted above—periodic planning to accommodate state-forecasted population growth, state review of the plan, and a duty to conform local law to the plan—the housing frameworks of the West Coast states differ in many important particulars.

Consider how the planning mandate is enforced. In all of the West Coast Model states, local governments that fail to adopt a compliant housing element, on the state's timeline, may lose access to certain streams of funding.[126] In

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[119] *See supra* note 115.

[120] *See generally* CAL. MANUAL, *supra* note 115, at 18-21.

[121] 1980 Stat. Ch. 1143 § 3 (adding Cal. Gov't Code §§ 65580 et seq.).

[122] *Id.*

[123] *Id.*

[124] Darrel Ramsey-Musolf, *Evaluating California's Housing Element Law, Housing Equity, and Housing Production (1990–2007)*, 26 HOUSING POL'Y DEBATE 488, 491 (2016).

[125] In New Jersey, "regional need" is the sum of the region's "present need" (defined as substandard or too-expensive housing now occupied by the region's poorer residents) and projected "future need" (new housing for new poor families, per projected population growth). The "gap" between a local government's prior-round affordable housing quota and its actual production during that planning cycle is also carried forward. *See* In re Declaratory Judgment Actions Filed By Various Municipalities, 152 A.3d 915 (N.J. 2017).

[126] Regarding Washington, see https://www.commerce.wa.gov/serving-communities/growth-management/submitting-materials/; Wash. Rev. Code Ann. § 36.70A.340-.345 (West).

Washington, this appears to be the only consequence, and it is suffered only in the discretion of the governor.[127] In California and Oregon, local governments that do not maintain a compliant plan also put their regulatory autonomy at risk. California's courts and Oregon's Land Conservation and Development Commission (LCDC) have enjoined non-compliant local governments from issuing land-use permits.[128] In Oregon, permits issued by local governments that lack an approved comprehensive plan may also be invalidated for not conforming to the state's nineteen land-use goals.[129] Though no West Coast state has established a full-blown builder's remedy to enforce the planning duty—that is, an expedited, burden-shifting procedure for developers in jurisdictions without an approved plan to bypass local ordinances and obtain permits from a state decisionmaker—California has recently taken some steps in this direction,[130] and Oregon's state-oversight body may remedy planning defaults by ordering development projects approved.[131]

The West Coast Model states also differ in how they superintend plan implementation. In Oregon, the LCDC has authority to review actions and inactions by local governments at the implementation stage, and to issue prescriptive "work task" orders if the LCDC deems implementation inadequate.[132] The LCDC also has broad rulemaking authority, which it has used to establish minimum zoning densities.[133] By contrast, Washington's oversight entity, the Growth Management Hearing Board (GMHB), has no authority to

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Regarding Calforonia, see Dep't Hous. and Cmty. Dev., Incentives for Housing Element Compliance (2009), *available at* http://www.hcd.ca.gov/hpd/hrc/plan/he/loan_grant_hecompl011708.pdf.

Regarding Oregon, see Or. Rev. Stat. §§ 197.319-.335 (2011); Or. Admin. R. 660-045. Sullivan, *supra* note 111, at 391, notes that these powers are "now largely unused."

[127] *See* RCW §§ 36.70a.330, 36.70a.340, 36.70a.345.

[128] Regarding California, see Ben Field, *Why Our Fair Share Housing Laws Fail*, 34 SANTA CLARA L. REV. 35, 43-44, 47-50 (1993) (discussing cases). Regarding Oregon, see Or. Rev. Stat. §§ 197.319-.335 (2011); Or. Admin. R. 660-045 (2011).

[129] Local land use actions, such as rezonings and permit decisions, may be challenged before the state's Land Use Board of Appeals (LUBA), and are reviewed for consistency with the state's land use goals *unless* the jurisdiction has adopted an LCDC-approved land use plan. *See* Or. Rev. Stat. Ann. § 197.835(5) (West); Liberty, *supra* note 111, at 10371

[130] *See infra* notes 210-212 and accompanying text.

[131] More specifically, the LCDC may order "such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals." Or. Rev. Stat. Ann. § 197.636 (West). It "shall, as part of its order, limit, prohibit *or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions* until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance." Or. Rev. Stat. Ann. § 197.335 (West) (emphasis added). Oregon's Land Use Board of Appeals also has authority to order projects approved *See* Or. Rev. Stat. 197.835(10); Walter v. City of Eugene, Or. LUBA No. 2016-024.

[132] *See* Or. Rev. Stat. Ann. § 197.636(2). For examples, *see infra* note 360.

[133] Or. Admin. R. 660-07-035 (adopted 1981).

establish minimum densities or any other "public policy,"[134] and its remedial powers are very limited. All it can do is forward its findings of noncompliance to the governor, who then decides whether to cut funding from the disobedient local government.[135] In California, the HCD lacks general rulemaking authority and has had virtually no oversight role with respect to plan implementation,[136] although recent reforms are starting to change this.[137]

California and Oregon have also taken some steps to thwart local evasion of the plan at the project-permitting stage. Both states set time limits within which local governments must act on permit applications,[138] and local governments may deny permits only on the basis of objective standards.[139] (Washington and Florida do not have such requirements.) In California, the housing element must include an analysis of governmental and private constraints upon "development of housing for all income levels,"[140] and a "schedule of actions" to "[a]ddress and, where appropriate and legally possible, remove constraints."[141]

Finally, the West Coast Model states vary in the strength of their commitment to periodic plan revision. At one end of the spectrum is California and, arguably, Washington. California as we have seen periodically assesses regional housing needs and requires local governments to update their housing elements shortly after receiving RHNA allocations.[142] In Washington, local governments must update urban growth boundaries on the official cycle if the state's forecast of local population growth has changed since the last round.[143]

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[134] Viking Properties, Inc. v. Holm, 118 P.3d 322, 329 (Wash. 2005) (en banc).

[135] See RCW §§ 36.70a.330, 36.70a.340, 36.70a.345.

[136] *See* Baer, *supra* note 113, at 56-60; Cal. Gov't Code § 65585(a) (West 2018).

[137] *See infra* text accompanying note 213.

[138] California's Permit Streamlining Act establishes varying time limits depending on the size of the project. *See* Cal. Gov't Code § 65950 (West 2018).

[139] *See* Honchariw v. Cty. of Stanislaus, 200 Cal.App.4th 1066 (2011) (discussing objective standards requirement, and tracing it to a bill enacted in 1999); Or. Rev. Stat. 197.307(4) ("Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.").

[140] Cal. Gov't Code §§ 65583(a)(5) & (6) (West 2018).

[141] Cal. Gov't Code § 65583(c) (West 2018).

[142] *See supra* note 115.

[143] *See* Clallam Cty. v. Dry Creek Coal., 255 P.3d 709, 712 (Wash. App. 2011) ("The Growth Board determined that a county is required to revise its [urban growth area] designations when OFM population projections change. RCW 36.70A.130(3)(b)."). *See also* 36 Wash. Prac., Wash. Land Use § 5:12 ("UGAs [shall] provide densities, sufficient to permit the urban growth that is projected [by the state office of financial management] to occur in the county or city for the succeeding twenty-year period…") (internal citations and quotation marks omitted).

In Oregon, however, the theory of periodic plan revision has given way to a practice of ad-hoc amendment.[144] Oregon by statute requires most urban communities to revise their plans on a regular cycle,[145] but LCDC regulations have exempted local governments that choose other, simplified procedures for plan amendments.[146] Ed Sullivan, a veteran of the Oregon scene, reports that periodic review outside of the Portland metro area has become virtually a dead letter, and that piecemeal plan amendments provide little opportunity for LCDC to examine local housing policies.[147]

Florida's abandonment of periodic, state-supervised plan revision has been even more thoroughgoing. A 2011 statute repealed the formerly mandatory duty of local governments to update and submit general plans for state review on a seven-year cycle.[148] Now it suffices for local governments to write a septennial letter reporting their self-assessed need for plan amendments.[149] According to leading land-use attorney Nancy Stroud, the housing element of a newly formed Florida municipality will get a careful look and be rejected by the state if it does not accommodate forecasted population growth, but municipalities are effectively on their own once they have an initial, state-approved plan in place.[150]

2. Critiques

Critiques of the West Coast Model are to some extent state-specific, which should hardly be surprising given the differences I have described. They are also time-specific, especially as to California, whose state housing framework has undergone big changes since the early 2000s and especially over the last few years. But measured by results, the West Coast Model has been a disappointment everywhere.

Oregon and Washington have achieved somewhat denser patterns of housing development than other similar states, which is consistent with their stated goal of confining growth within urban boundaries while producing sufficient housing.[151] Yet "the increase in [Portland and Seattle's] rate of housing production pales in comparison to what similarly-sized cities like Phoenix and Atlanta have achieved through outward expansion."[152] And despite the Oregon LCDC's unique authority to establish minimum densities and direct the

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[144] *See* Sullivan, *supra* note 111, at 392-93.
[145] Or. Rev. Stat. § 197.629.
[146] *See* Or. Admin. R. 660-038-0020(15), 660-038-0210(2).
[147] Telephone interview with Ed Sullivan, Oct. 1, 2018.
[148] Fla. Stat. Ann. § 163.3191 (West); Stroud, *supra* note 116, at 412.
[149] Fla. Stat. Ann. § 163.3191(1).
[150] Telephone interview, Oct. 2, 2018.
[151] Issi Romem, *Can U.S. Cities Compensate for Curbing Sprawl by Growing Denser?*, BUILDZOOM (Sept. 14, 2016), https://www.buildzoom.com/blog/can-cities-compensate-for-curbing-sprawl-by-growing-denser.
[152] Romem, *supra* note 151.

implementation of comprehensive plans, ninety percent of the residential land in the state's largest city remains zoned for single-family homes.[153]

Since California adopted its RHNA framework in 1980, the state has become the poster child for housing policy dysfunction. A prominent 2005 study found that local governments in California with state-approved housing elements issued no more building permits than the noncompliant jurisdictions, controlling for observable jurisdiction-level characteristics.[154] A more recent study finds some evidence that localities with approved housing elements developed more BMR housing—*but less market-rate housing*—than similar localities without certified housing elements.[155]

So what went wrong? One must be a bit circumspect in answering this question, because there is no state whose land-use interventions have been shown to substantially expand the housing supply. I would venture, however, that the failures of the West Coast Model at least partly reflect (1) the setting of housing-supply targets on the basis of projected population growth, rather than market conditions; and (2) a misplaced presumption of local good faith with respect to the design and implementation of land use plans.

Aiming at the wrong target. The West Coast Model improves on its Northeastern counterpart by recognizing that local governments may over-restrict market-rate housing development. It also furnishes a procedural framework for negotiating regional (California[156]) or countywide (Washington and Oregon[157]) housing goals in advance of discrete rezoning and project-

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[153] Diller & Sullivan, *supra* note 113, at 225 n. 224 (reporting figures as of Dec. 23, 2017).

[154] Paul G. Lewis, *Can State Review of Local Planning Increase Housing Production?*,16 HOUSING POL'Y DEBATE 173 (2005).

[155] *See* Ramsey-Musolf, *supra* note 124 (comparing jurisdictions in the Los Angeles and Sacramento regions with and without approved housing elements). A problem with studies in this vein is that rich jurisdictions are likely to have more planning capacity, greater NIMBYism, and more opportunities to extract rents through inclusionary-zoning requirements than poor jurisdictions; and planning capacity is probably correlated with having an approved housing element. This would bias the results of studies that treat jurisdictions without an approved element as counterfactuals for jurisdictions with an approved element, unless one has good measures of planning capacity and NIMBYism.

For a case study of two Silicon Valley suburbs which suggests that California's framework is becoming more effective, see Jessie Agatstein, *The Suburbs' Fair Share: How California's Housing Element Law (and Facebook) Can Set a Housing Production Floor*, 44 REAL EST. L.J. 219 (2015).

[156] *See supra* note 115, and text accompanying.

[157] *Id.* In practice, county-level coordination never worked very well in Oregon, and the state's population forecaster now tells each city in a county how much growth it shall accommodate. *See* Sullivan, *supra* note 115.

permitting decision.[158] But the West Coast Model launches these negotiations with a specific target in mind, and the target is perverse: accommodating *projected* population growth.[159]

A county or a region that has permitted very little new housing for many years will have experienced low population growth. Projecting that low rate of growth into the future leads to the conclusion that little new housing is needed—even if demand and prices are sky high. Population growth in high-demand regions is obviously endogenous to housing supply, so it makes no sense to fix supply targets on the basis of population projections.

Oregon all but acknowledges this point. Regulations issued in 2014 tell the state's population forecaster to account for local governments' "[p]lanned new housing," "[e]xpected changes in zoning designations or density," and "[a]dopted policies regarding population growth."[160] Yet other Oregon laws tell local governments to guage their housing needs and draw urban boundaries on the basis of the population forecast.[161] Thus does the planning dog chase its own tail.

The absurdity of basing housing-need determinations on population projections is well illustrated by the fact that for the current planning cycle in California, the city of Beverly Hills—with a median home price of roughly $3.5 million[162]—received an affordable housing quota of precisely three units, and a market-rate quota of *zero* units.[163] When journalists noticed this and began asking snarky questions, the city's leadership responded that the tiny allocations were reasonable given the lack of growth in Beverly Hills's population.[164] According to the traditional logic of the West Coast Model, the city's leadership has it exactly right. And this illustrates just how wrong it is to for states to base local housing obligations on population-growth projections. Under any sane regime, a region comprised of Beverly Hills—of cities that have utterly stanched population growth despite astronomical demand—would be presumptively categorized as having enormous unmet housing need.[165]

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[158] As Rick Hills and David Schleicher have emphasized, such procedural frameworks can reduce the impact of NIMBYism on land use decisions—if there's a viable mechanism to enforce the agreements. *See infra* Part IV.B.2.

[159] *See supra* note 118 and accompanying text.

[160] PSU Standard 577-050-0050(3), https://www.pdx.edu/prc/opfp. For a history of Oregon population forecasting, see Sullivan, *supra* note 115.

[161] *See supra* note 115.

[162] https://www.zillow.com/beverly-hills-ca/home-values/.

[163] https://www.nytimes.com/2018/02/05/us/california-today-beverly-hills-affordable-housing.html.

[164] *Minneapolis Just Eliminated Single-Family Zoning. Should California Cities Follow Suit?*, GIMME SHELTER PODCAST (Dec. 27, 2018), https://calmatters.org/articles/minneapolis-bans-single-family-zoning-should-california/.

[165] I say "presumptively" because a state might reasonably decide that some regions with high housing prices and low growth should be allowed to stay that way—say, because of historic preservation or environmental concerns.

This is not to say that there is one uniquely best or most defensible housing-supply target. But if West Coast Model states were serious about the problems canvassed in Part I, they would be well advised to tie local housing quotas to good indicators of unmet demand (*e.g.*, housing prices which substantially exceed the usual costs of production[166]), as well as actual or potential access to job centers via convenient, non-greenhouse-gas-intensive modes of commuting.

Or, more simply, the states might simply require *every* region to zone for a substantial increase in housing supply, and then let the market determine which regions will grow. In recognition of the fact that the affordable metro regions of the South and Southwest managed to increase their housing supply by 30%-60% in barely more than a decade,[167] policymakers in a high-cost state might decide that the state's metro regions should plan for a potential 50% increase in housing supply, and maintain this "potential growth" buffer through decennial revisions of the general plan and zoning maps. A state agency would review the periodic revisions, rejecting those which fail to demonstrate potential for 50% growth (relative to the then-current housing stock), or which allocate housing growth to locations that would be difficult to develop while restricting development of better, more transit-accessible sites.

The details of such a scheme are far beyond the scope of this Article. For now, suffice it to observe that West Coast Model states are not going to solve the housing-supply problem so long as cities or regions can effectively pick their own housing quotas by enacting onerous controls that curtail population growth notwithstanding high demand.

The misplaced presumption of good faith. A key takeaway from the political science and economics research surveyed in Part I is that homeowners wield outsized influence over local governments, and that the self-interest of incumbent homeowners is at war with the public interest in expanding the housing stock of high-cost metro regions. Yet the West Coast Model states have tacitly assumed that local governments will try diligently and in good faith to meet the state's housing targets. This presumption of good faith is manifested in the standards for judicial review of the housing element, in the lack of a robust state-law framework to prevent or deter local governments from evading commitments in their state-approved plans.

Begin with judicial review. California courts have long treated housing elements as "legislative enactments" entitled to the usual presumption of validity

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[166] *Cf.* Issi Romem, *Paying For Dirt: Where Have Home Values Detached From Construction Costs?*, BUILDZOOM, Oct. 17, 2017, https://www.buildzoom.com/blog/paying-for-dirt-where-have-home-values-detached-from-construction-costs (providing metro-area estimates of construction costs and home values).

[167] *See supra* note 27.

that other legislation enjoys—even if the state agency has rejected the housing element in question.[168] So long as the housing element "contains the elements mandated by the statute," the courts will uphold it.[169] Whether it will actually enable construction of the required number of units has been regarded as a question of "workability" or "merits," and *irrelevant as matter of law* to the housing element's validity.[170]

In Washington and Florida, the reviewing state agency cannot make binding determinations about the validity of a housing element, but may challenge the plan before an administrative tribunal.[171] In both states, "comprehensive plans and development regulations . . . are presumed valid upon adoption,"[172] and the burden of proof is on the party challenging them.[173] Washington's administrative tribunal "shall find compliance" unless it determines that the plan or development regulation at issue "is clearly erroneous."[174]

Only Oregon has firmly rejected judicial deference to local governments with respect to the plan. Approval by the LCDC is necessary to make a comprehensive plan legally effective,[175] and Oregon courts give LCDC determinations the usual deference afforded to agencies' rules and orders.[176]

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[168] *See, e.g.*, Fonseca v. City of Gilroy, 148 Cal.App.4th 1174, 1191 (2007) (restating and applying doctrine that housing element is a legislative enactment subject to strong presumption of validity, notwithstanding agency disapproval); Buena Vista Gardens Apartments Ass'n v. City of San Diego Planning Dep't., 175 Cal.App.3d 289, 298-99, 300-02 (1985) (stating that "the appropriate standard of appellate review is whether the [local government] has acted arbitrarily, capriciously, or without evidentiary basis") (internal citations and quotation omitted," and upholding housing element notwithstanding state agency's rejection of it for want of, *inter alia*, a "comprehensive five-year schedule of actions"). For a review of other cases to similar effect, see Field, *supra* note 128, at 54-61.

[169] *Forseca*, 148 Cal.App.4th at 1191-92.

[170] *See, e.g.*, *Fonseca*, 148 Cal.App.4th at 1185 ("judicial review of a housing element for substantial compliance with the statutory requirements does not involve an examination of the merits of the element[, of] whether the programs adopted are adequate to meet their objectives") (internal citations and quotation marks omitted); *Buena Vista Gardens*, 175 Cal.App.3d at 298-302 (treating agency's view of workability of plan as a "merits" question not for courts to consider in judging plan's validity).

[171] In Washington, this adjudicator is the specialized Growth Management Hearing Board. *See* 24 Wash. Prac., Envtl. Law & Practice § 18.3 (2d ed., July 2017 Update). In Florida, it's the general-purpose Department of Administrative Hearings. *See* Fla. Stat. § 163.3184.

[172] Wash. Rev. Code Ann. § 36.70A.320(1) (West). There is an exception for certain coastal development regulations. *See id.*

[173] Wash. Rev. Code Ann. § 36.70A.320(2) (West). *See also* Fla. Stat. Ann. § 163.3184 (stating that plans rejected by the state agency still enjoy a presumption of validity, and that it is the agency's burden to prove "by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance" with state law).

[174] RCW 36.70A.320(3).

[175] *See supra* note 116.

[176] *See, e.g.*, City of Happy Valley v. LCDC, 677 P.2d 43 (Or. 1984) (applying abuse-of-discretion review to LCDC decision rejecting plan); 1000 Friends of Oregon v. Land

Beyond the legal standards for housing element validity, the tacit presumption of good faith is also manifested in the lack of backstopping measures to counteract local evasion of duly adopted plans. Zoning and other local ordinances must be consistent with the plan, but consistency challenges have to be brought within a brief window of time following enactment of the ordinance,[177] and courts strongly defer to local governments when evaluating consistency.[178] If the court deems the ordinance inconsistent, it may remand to the local government to fix the inconsistency,[179] and if the remand is coupled with an injunction, it is customarily an injunction *against* issuing permits on the basis of the inconsistent ordinance.[180] The working assumption is that local governments will honor the plan and resolve any inconsistency which may arise promptly and in good faith.

In addition to the consistency requirement, California and Oregon purport to limit local evasion of the plan at the project-permitting stage, by requiring local agencies to use only "objective" standards,[181] and to act on project applications within a fixed, reasonably short period of time.[182] But these strictures are less binding than they appear, and their weakness represents another manifestation of the tacit presumption of good faith. For example, time limits under California's

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Conservation & Dev. Comm'n, 301 Or. 447, 469, 724 P.2d 268, 284 (1986) (extending deference to LCDC interpretations of law).

[177] *See* Cal. Gov't Code § 65860(b) (West 2018) (90 days).

[178] *See* CECILY TALBERT BARCLAY & MATTHEW S. GRAY, CALIFORNIA LAND USE & PLANNING LAW 25-26, 46-47 (36th ed. 2018) (discussing "arbitrary and capricious" / "no reasonable person" standard in California). *See also* Marracci v. City of Scappoose, 552 P.2d 552, 553 (Or. Ct. App. 1976) (rejecting developer's argument that project which complied with plan could not be denied on basis of more restrictive zoning ordinance, on ground that it was local government's prerogative to decide when and how to "evolve" "more restrictive zoning ordinances [] toward conformity with more permissive provisions of the plan").

[179] *Compare* Baker v. Milwaukie, 533 P.2d 772, 779 (Or. 1975) ("plaintiff has stated a cause of action in seeking to compel the City of Milwaukie to conform its zoning ordinances to the comprehensive plan") *with* Lesher Commc'n, Inc. v. Walnut Creek, 52 Ca. 3d 531, 544-47 (Cal. 1990) (holding that zoning ordinance inconsistent with the plan is invalid *ab initio*, and therefore properly remedied by writ compelling invalidation rather than compliance decree).

[180] *See, e.g.*, *Baker*, 533 P.2d at 779 ("plaintiff has stated a cause of action . . . to suspend the issuance of building permits in violation of the plan"); Skagit Surveyors & Engineers, LLC v. Friends of Skagit Cty., 958 P.2d 962, 971–972 (Wash. 1998) ("If a . . . development regulation is found to be inconsistent with the plan, the validity of any permits issued by the local government under the authority of those development regulations will be called into question"). *See also* Edward G. Diener, *Defining and implementing local plan-land use consistency in California*, 7 ECOLOGY L.Q. 753 (1978) (examining consistency requirement as grounds for blocking projects).

[181] *See supra* note 139 and accompanying text.

[182] *See supra* 138.

Permit Streamlining Act kick in only *after* the local government has completed any environmental reviews and resolved any internal appeals.[183] Environmental appeals of municipal decisions are heard by the city council.[184] So if a city councilmember wants to kill a housing project in her district, she can always insist on further / better / different environmental analyses. Once the clock finally starts to run on the developer's permit application, local officials may "encourage" the developer to withdraw and resubmit it, perhaps suggesting that if only this or that change were made, the application would more likely be approved. Or the decisionmaker may approve the project with conditions that make it tough to build or market. Weird or unexpected conditions might be challenged on the theory that the underlying development standard violates the state's objectivity requirement, but this is a crapshoot. Objectivity is a matter of degree,[185] and in any event California's objectivity requirement only applies if the conditions reduce a project's density or render it "infeasible."[186]

Finally, and perhaps most significantly, the tacit presumption of good faith is reflected in the lack of any material consequences for local governments that fail to meet their housing targets. Prior to the 2017 California housing package (discussed in the next Part), no West Coast Model state had enacted statutory ex-post punishments tied to actual housing construction over the planning cycle. This is in sharp contrast to the Northeastern Model states, which expose jurisdictions that fail to meet their BMR-housing targets to the feared builder's remedy.[187] Though Massachusetts, Rhode Island, and New Jersey provide for plan-based exemptions from the builder's remedy, Massachusetts and Rhode Island extend this exemption only to local governments making adequate yearly progress toward their affordable-housing goals.[188]

In principle, housing agencies in the West Coast states could incentivize local follow-through by announcing that the agency will review the *next* plan very harshly if the local government fails to meet its housing targets under the current plan. Cities hoping to avoid fiscal and regulatory sanctions for not having an approved housing element would then have good reason to permit the housing for which they planned. But to induce compliance in this way, the state agency must have authority to reject a housing element because it's unlikely to work, given the jurisdiction's track record. California law historically would not allow

[183] *See* Cal. Govt. Code 65950(a); Eller Media Co. v. City of Los Angeles, 105 Cal. Rptr. 2d 262, 264 (Cal. App. 4th 2001).

[184] Cal. Pub. Res. Code § 21151(c).

[185] *Cf.* Rogue Valley Ass'n of Realtors v. City of Ashland, Or., LUBA No. 97-260, at 17 (1998) ("[F]ew tasks are less clear or *more* subjective than attempting to determine whether a particular land use approval criterion is clear and objective.")

[186] *See* Cal. Gov't Code § 65589.5(d) (West 2018).

[187] *See supra* Part II.A

[188] *See supra* note 99. (In New Jersey, the prospect of a court-ordered builder's remedy hangs over all local land use decisions, so local governments disregard outcomes at their peril.)

this, and the "presumption of validity" in Washington and Florida works against it too.[189]

Putting all these pieces together—the inane, population-forecast norm for housing need; the deference to local governments on the substance of their plans; the failure to punish or reward local governments on the basis of housing outcomes; and the lack of an expeditious procedure for permitting projects that conform to the plan notwithstanding contrary local ordinances—one cannot help but wonder whether the state legislators who forged the West Coast Model were themselves acting in good faith. Did they really mean to overcome local barriers to the supply of an adequate amount of new housing, or was the mandate to plan for "needed housing" just a means of prettifying some other agenda?[190]

III. THE NEW YIMBY MEASURES

Legal scholars and economists who write about housing-supply barriers have tended to regard state-level interventions skeptically (or not at all).[191] Their skepticism is rooted in the risk that state control of local land-use regulation will enable local homevoter coalitions to band together into regional cartels.[192] In the absence of state control, the argument goes, developers are generally able to buy off *some* local governments in a region and thereby increase the regional housing supply.[193] But once the state gets involved, antidevelopment interests can wield state law to make every local government establish rigid growth boundaries,

[189] *See supra* notes 168-173 and accompanying text.

[190] In Oregon and Washington, the "other agenda" was presumably the establishment of urban growth boundaries. In California, the other agenda is less apparent, but it may have been to support developers of BMR housing (much like the Northeastern Model). *Cf.* Ramsey-Musolf, *supra* note 124 (finding, during study period, that jurisdictions with approved housing elements produce more BMR housing, but less market-rate housing, than jurisdictions without).

[191] *See, e.g.*, FISCHEL, *supra* note 5, at 54-57, 365-67 (discussing weakness of state housing requirements, and concluding with a dozen-item menu of suggestions for combatting housing supply restrictions, on which the "state planning mandate" is not mentioned). One exception is a forthcoming paper by John Infranca, written independently of this Article, which also discusses state ADU and density mandates. *See* John Infranca, *The New State Zoning: Land Use Preemption Amid a Housing Crisis*, 60 B.C. L. REV. (forthcoming 2019). Infranca focuses on upzoning by state statute, whereas I think the more promising reforms concern housing quotas and the nature of the plan. *See infra* Parts III & IV.

[192] *See, e.g.*, FISCHEL, *supra* note 5, at 307 (suggesting that homeowners in Portland metro area favor regional controls as a means of restricting housing supply); Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 434-35 (1977) (discussing this risk).

[193] *See* Ellickson, *supra* note 192, at 404-10 (arguing that developer influence means that exclusionary practices by some homogenous suburbs are unlikely to distort allocation of housing and people across metro regions).

onerous inclusionary zoning ordinances, or other restrictions that stanch the regional supply of new housing.

The state-cartelization thesis may be overdrawn—local governments have proven themselves quite capable of coordinating exclusionary policies without directives from the state[194]—but the traditional Northeastern and West Coast Models do not inspire much confidence in the states' ability to intervene constructively in local land use. Interestingly, though, as housing prices in the expensive metro regions rocketed upward following the Great Recession of 2007-2009, the states, led by California, responded with forceful measures to increase the supply of market-rate as well as BMR housing. This Part explains California's reworking of its housing framework, as well as recent initiatives in California and other states to curtail the locally popular practice of zoning developable land exclusively for single-family homes on large lots.

Pushing the state-level interventions is a nascent Yes In My Backyard (YIMBY) movement.[195] YIMBY groups are springing up around the country to lobby for more housing at the state as well as local levels.[196] The YIMBYs' state-legislative and fundraising successes warrant a rethinking of the state-cartelization thesis, a point to which I shall return below.

A. California Strengthens the West Coast Model

Starting around 2005 and accelerating a decade later, California passed a flurry of bills that try to answer critiques of the West Coast Model. In 2017 alone, the legislature enacted a fifteen-bill housing package. The state is feeling its way toward a better way of setting housing-supply targets, and the tacit presumption of good faith on the part of local governments is under attack.

1. Finding a Better Target

Senate Bill 828, enacted in 2018, begins to establish a new ground norm for regional housing needs assessments (RHNAs).[197] The bill was a political compromise and leaves in place the old idea of tying housing quotas to population projections, while adding a new overlay of administrative discretion to plump up regional quotas on the basis of a nationally-normed affordability

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[194] *See supra* Part I.

[195] For an introduction to the movement, see Kenneth Stahl, *"Yes in My Backyard": Can a New Pro-Housing Movement Overcome the Power of NIMBYs?*, 41 ZONING & PLANNING L. REP. 1 (2018).

[196] *Id. See also* https://en.wikipedia.org/wiki/YIMBY.

[197] 2018 Cal. Stat. ch. 974 (hereinafter, "SB 828"). SB 828 builds on a measure passed a year earlier, AB 1068, which curtailed COG authority to deviate from the state's official population forecast, and which added "[t]he percentage of renters' households that are overcrowded" as a factor to be weighed when converting the population forecast into RHNA quotas. *See* 2017 Cal. Legis. Serv. Ch. 206, Digest & § 2 (A.B. 1086) (West).

goal.[198] Determinations of housing need are to account for the percentage of "cost burdened" households in the region (households spending more than 30% of their income on housing), relative to "the rate of housing cost burden for a healthy housing market."[199] The "healthy housing market" standard is in turn defined as a cost-burdened rate "no more than the average [such rate] in comparable regions throughout the nation."[200] Similarly, the "overcrowding rate [among renter households] [should be] no more than the average overcrowding rate in comparable regions throughout the nation.[201]

SB 828 is a very important development in the housing policy dialectic. The bill explicitly confronts, and condemns, the way in which exclusionary jurisdictions have until now been rewarded for their exclusion with small housing quotas.[202] And the idea of a nationally normed, "healthy markets" standard represents a new and facially plausible alternative to setting housing quotas on the basis of population trends.

But there's a significant problem lurking in the details: the "percentage of cost burdened households" is a dubious indicator of a housing market's ill-health, because it fails to account for population flows. As housing becomes more expensive in supply-constrained markets, less affluent residents are evicted or bought out and leave for cheaper pastures, and only rich people choose to move in.[203] This tends to equalize the share of cost-burdened households across supply-constrained and unconstrained regions.[204] Indeed, in economic models with

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[198] The bill as passed initially by the state senate provided that HCD "shall grant allowances" for the factors discussed in this paragraph, but the state assembly removed this language in favor of a more permissive authorization "to make adjustments." *See* https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180SB828.

[199] SB 828, § 2 (amending Cal. Gov't Code s. 65584.01(b)).

[200] *Id.*

[201] *Id.*

[202] SB 828, § 3 (amending Cal. Gov't Code s. 65584.04(f)) (stating that neither "[p]rior underproduction of housing . . . from the previous regional housing needs allocation" nor "[s]table population numbers" shall not be "a justification for a determination or a reduction in a jurisdiction's share of the regional housing need").

[203] *See, e.g.*, Issi Romem & Elizabeth Kneebone, *Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?*, BUILDZOOM (Oct. 4, 2018), https://www.buildzoom.com/blog/disparity-in-departure-who-leaves-the-bay-area-and-where-do-they-go (finding that the San Francisco Bay Area has the greatest socioeconomic disparity between its in-migrants, who tend to be rich, and its out-migrants, who tend to be poor, of all metro regions in the United States).

[204] Tellingly, the share of cost-burdened households in the San Francisco metro area is smaller than that in the Riverside-San Bernardino metro area, see https://lao.ca.gov/Infographics/californias-high-housing-costs, even though the price of housing relative to replacement cost in the San Francisco metro area is almost twice is high as in the San Bernardino-Riverside metro area, *see* Romen, *supra* note 166.

costless mobility, an interregional disparity in the percentage of income spent on housing will persist only if certain regions offer locational amenities not found elsewhere.[205] So, ironically, the fact that a region has a *persistently* large share of cost-burdened households may indicate that it is doing a very good job protecting environmental and other characteristics which make it desirable, not that it suffers from welfare-reducing supply constraints.

Then again, despite the conceptual problem with treating the share of cost-burdened households as a proxy for housing-market health, California may still manage to ramp up housing quotas using the authority granted by SB 828. Specifically, the housing agency could try to convert temporary, disequilibrium changes in the share of cost burdened households into big RHNAs for the state's expensive, supply-constrained metro areas. Because moving between regions is costly, supply-constrained regions experiencing positive economic shocks may also experience a big, short-term increase in the share of cost-burdened households.[206] A short-term runup in the share of cost-burdened households, followed by socioeconomically skewed population flows (rather than a large increase in the housing stock) is certainly an indicator of an unhealthy housing market, and it's one that HCD arguably has statutory authority to use.[207]

To be sure, newly ambitious RHNAs under SB 828 might not achieve very much if California's courts continue to give unstinting deference to local

[205] *See, e.g.*, Albouy et al., *supra* note 36 (presenting model in which high housing costs relative to wage persist in equilibrium only because of locational amenities).

[206] Price controls—rent control and BMR deed restrictions—may mute this.

[207] Here is the strategy in a little more detail: First, HCD would define the statutory term "comparable region" as metro regions which were economically similar to the target region some years previously, e.g., at the beginning of the previous planning cycle. To illustrate, HCD would pick comparators for the San Francisco Bay area by identifying regions that eight years ago (at the start of the previous cycle) had similar economies measured by size and composition.

Having identified the relevant regions, HCD would then compare the change in the percentage of cost-burdened households in the target region, with the change in the percentage of cost-burdened households in the comparators. If the target region's cost-burdened share increased more than was typical of the comparator regions, HCD could "top off" the target region's baseline, population-forecast RHNA for the next cycle with a cost-burden adjustment which accounts for the region's failure to produce enough housing to accommodate demand in the previous cycle.

The remaining question is how big the top off should be. SB 828 provides no specific instruction, but building on the statute's national norming idea, HCD might define the appropriate top-off as the difference between (1) the average housing stock expansion over the previous cycle in the comparator regions, and (2) the actual housing stock expansion over the previous cycle in the target region. No longer would regions comprised of Beverly Hills lookalikes be able to leverage their exclusionary policies into small housing quotas.

HCD may also be able to boost housing quotas for regions that over the previous cycle experienced significant job growth without commensurate housing growth, relying on the "jobs-housing imbalance" factor. *See* Cal. Gov't Code § 65584.01(b)(1)(G). This factor was added to statutory framework in 2008, by SB 375, but has not yet been used by HCD to set regional quotas.

governments' housing elements, and if even the best of plans come to naught because there are no controls on implementation. But California has started responding to these critiques as well.

2. *Upending the Presumption of Local Good Faith*

I suggested earlier that if a state took seriously the political economy of local land-use policy, the state would presume bad faith rather than good faith with respect to the design and implementation of the housing element, and backstop approved housing elements with strong measures to combat local governments' evasion of their own, adopted plans. California is starting to take this idea to heart.

The standard for a "substantially compliant" housing element. California hasn't expressly abrogated the courts' deferential, check-the-boxes test for housing element validity—to wit, a housing element "substantially complies" with state law if it "contains the elements mandated by the statute," regardless of whether it's likely to work.[208] But local governments can no longer count on judicial or administrative deference to dysfunctional housing elements.

One reason is that in 2005, the legislature created a builder's-remedy incentive for developers of 20% (and greater) BMR projects to challenge the adequacy of a housing element's program to accommodate affordable housing.[209] If the developer prevails, the local government may not deny project on the basis of local zoning ordinances or the general plan.[210] In these proceedings, "*the burden of proof shall be on the local [government]* to show that its housing element does identify adequate sites," with "appropriate zoning and development standards and with services and facilities to accommodate [the jurisdiction's] share of the regional housing need [for low- and moderate-income households]."[211]

The upshot is that in a conventional facial challenge to a housing element, courts may continue to apply the traditional, very deferential standard of review, but if the housing element is challenged by a developer seeking to build a 20%-BMR project that violates local zoning or development standards, the courts

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[208] *See supra* notes 168-170 and accompanying text.
[209] *See* Cal. Gov't Code 65589.5(d)(5)(B); 2005 Cal. Legis. Serv. Ch. 601 (S.B. 575) (West).
[210] The only allowable ground for denial in most cases is that the project would have a "specific, adverse effect on public health or safety." Cal. Gov't Code § 65589.5(d)(2).
[211] Cal. Gov't Code § 65589.5(d)(5).

should take a careful look at whether the housing element realistically accommodates the jurisdiction's RHNA shares.[212]

Furthermore, the legislature in 2017 authorized HCD to review housing-element implementation and, upon discovering a serious failure of implementation, to rescind the agency's finding that the housing element "substantially complies" with state law.[213] This new emphasis on implementation is hard to square with the courts' longstanding position that "substantial compliance" is just a matter of whether the housing element "contains the elements mandated by the statute."[214] It's conceivable that the California Supreme Court, which hasn't addressed the meaning of substantial compliance since housing element / RHNA framework was enacted in 1980, will eventually rule that the lower courts' deference to local governments on housing element validity has been abrogated by the evolution of the framework as a whole.[215]

The new, self-executing housing element. The traditional West Coast requirement that local ordinances conform to the plan did little to help developers get projects approved.[216] In California, a consistency challenge had to be brought within ninety days of enactment of the ordinance or it was forever barred. But a little-noticed reform adopted in 2004 and extended in 2018 essentially obviates this statute of limitations. The 2004 legislation requires local governments to

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[212] To be clear, this is my gloss on a statutory provision which has not yet been interpreted by the courts. It is possible that the courts will interpret it to mean only that the local government must carry the burden of showing that its housing element is not irrational vis-à-vis the RHNAs. But that gloss would go against the thrust of SB 575, and the legislature's instructions about how the Housing Accountability Act should be interpreted. *See* Cal. Gov't Code § 65589.5(a)(2)(L) (West 2018) ("It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.")

[213] 2017 Cal. Legis. Serv. Ch. 370 (A.B. 72) (West) (adding Cal. Gov't Code § 65585(i)(1)(a)) (West 2018). *See also* Cal Gov't Code § 65583.1(a) (added in 2002 per AB 1866), which states that HCD may allow a city or county to identify sites for second units *based on the number of second units developed in the prior housing element planning period*—a standard that's clearly focused on outcomes rather than formalities. The first enforcement action under AB 72 was filed against a city which amended a specific plan in a manner that conflicted with the housing element. *See* Complaint, Ca. Dep't of Hous. & Community Dev. v. City of Huntington Beach, No. 30-2019-01046493, Jan. 25, 2019 (Cal. Sup. Ct., Cty. of Orange).

[214] *See supra* notes 168-170.

[215] When the "substantial compliance" standard was added to the housing element law in 1984, the legislature expressed its intent to codify the standard applied in *Camp v. Bd. of Supervisors*, 123 Cal. App. 3d, 334 (Cal. Ct. App. 1981). *See* Hernandez v. City of Encinitas, 28 Cal. App. 4th 1048, 1058 (Cal. Ct. App. 1994) (quoting the legislative declaration). *Camp* is actually a better decision than many of the "substantial compliance" cases since, as the *Camp* court gave considerable weight to the views of the state housing agency, and characterized "substantial compliance" as a matter of substance rather than form. *See* 123 Cal. App. 3d. at 349-51. Thus, the statutory origins of the substantial compliance standard would not prevent the California Supreme Court from putting a more demanding gloss on it than have the lower courts have to date.

[216] This paragraph restates a point explained *supra* in the text accompanying notes 178-180.

approve 20%-BMR projects whose location and density comport with the housing element, "notwithstanding any zoning ordinances or general-plan land use designations to the contrary."[217] The 2018 bill put developers of 100% market-rate projects on similar footing.[218] In effect, the housing element is becoming self-executing. Developers can apply for permits on the authority of the housing element, and the local officials who review the project must disregard inconsistent ordinances.

The requirement of imminently developable sites. A favorite ruse of anti-housing local governments has been to assign their RHNA shares to sites that are impractical to develop.[219] The builder's remedy enacted in 2005 puts some pressure on local governments not to do this, and in 2017, California took another big step, ordering local governments to accommodate their RHNA allocations on imminently developable sites.[220] Using HCD-issued forms, local governments must furnish a parcel-by-parcel enumeration of the available or potentially available sites for housing development, noting for each parcel its "realistic and demonstrated" development potential at various levels of affordability, current uses of the parcel, barriers to development at the parcel's potential density over the next period in the planning cycle, and any steps the local government intends

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[217] 2004 Cal. Legis. Serv. Ch. 724 (A.B. 2348) (amending Cal. Gov't Code § 65589.5(d)(5)).

[218] *See* 2018 Cal. Legis. Serv. Ch. 243 § 1 (A.B. 3194) (West) (adding Cal. Gov't Code § 65589.5(j)(4), which requires approval of projects that comply with the general plan--which the housing element amends--notwithstanding "zoning standards and criteria" to the contrary). In contrast to the 2004 amendments for 20% BMR projects, the 2018 amendments are silent on whether local governments must grant permits for housing-element-compliant projects if the housing element conflicts with the land-use element and thus violates the background state-law requirement of "horizontal consistency" among components of the general plan. However, an intermediate court of appeals has held that housing elements that conflict with other components of the plan are valid and enforceable so long as the housing element acknowledges the inconsistency and spells out an action plan to fix it, e.g., by amending the conflicting component of the plan. *See* Friends of Aviara v. City of Carlsbad, 210 Cal. App. 4th 1103, 1112-13 (2012).

[219] This bit of conventional wisdom is indirectly supported by the California Legislative Analyst's finding that most multi-family construction occurs on sites which are *not* designated for multi-family construction in the corresponding housing element. *See* LAO, DO COMMUNITIES ADEQUATELY PLAN FOR HOUSING? 8-9 (Mar. 8, 2017), https://lao.ca.gov/reports/2017/3605/plan-for-housing-030817.pdf. Evidently cities "plan" for multifamily housing where its uneconomical to build, and then work out case-by-case exemptions for certain developers.

[220] *See* Fonseca v. City of Gilroy, 148 Cal.App.4th 1174, 1194-1202 (2007) (discussing 2005 amendments, while applying previous standards which did not require parcel identification); 2017 Cal. Legis. Serv. Ch. 375 (A.B. 1397) (delineating criteria for what counts as an available site).

to take to remove those constraints.[221] If the local government assigns more than 50% of its lower-income RHNA share to presently non-vacant parcels, it must make findings supported by substantial evidence that the existing use of each such parcel "is likely to be discontinued" during the planning period.[222]

An end to deference on project denials and density reductions. As far back as 1982, with the first iteration of its Housing Accountability Act, California has recognized that local governments may try to evade state housing mandates through project-specific shenanigans, such as unwarranted delay, bad-faith application of existing standards, or denial on the basis of post hoc requirements invented for the purpose of killing the project. The original Housing Accountability Act provided that local governments may deny or reduce the density of a housing project that complied with applicable development standards at the time the permit application was filed only if the decisionmaker makes "written findings supported by substantial evidence" that the project would have a "specific, adverse [and non-mitigable] effect on public health or safety."[223] Subsequently the legislature clarified that only "objective" standards could be used to deny or reduce the density of a project.[224]

The difficulty with this requirement is that development standards are never perfectly clear, and it's hard for judges who lack intimate familiarity with legislative negotiation and drafting to say whether a standard is sufficiently or reasonably clear. The 2017 housing package includes a clever fix: housing proposals must be deemed compliant with applicable development standards "if there is substantial evidence that would *allow a reasonable person to conclude*" that the project conforms to the standards.[225] So if a local government chooses to employ mushy standards, it will have enormous difficulty denying any project, as the very mushiness of the standards means there will almost always be enough evidence to allow (not require) a reasonable person to conclude that the standards were met.

The 2017 amendments also hack away at the discretion local governments previously enjoyed to reject zoning-compliant projects on the basis of alleged health or safety impacts. Previously, such projects could be denied or reduced in density if there was substantial evidence in the record to support the local government's health or safety finding.[226] Going forward, the local government must show *by a preponderance of the evidence* that the project would have a

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[221] 2017 Cal. Legis. Serv. Ch. 375 (A.B. 1397) (West) (amending Cal. Govt Code Code § 65883.2(c))).

[222] *Id.*

[223] 1982 Stats. ch. 1438, s. 2 (adding Cal. Gov't Code § 65589.5).

[224] 1999. Cal. Legis. Serv. Ch. 968 (S.B. 948) (West).

[225] 2017 Cal. Legis. Serv. Ch. 368 (S.B. 167) (amending Cal. Gov't Code § 65589.5(f)).

[226] The Housing Accountability Act originally required "written findings supported by substantial evidence [that the project would have] a specific, adverse [and not feasibly mitigable] effect on public health or safety." 1982 Stats. Ch. 1438, § 2.

"significant, quantifiable, direct, and unavoidable [public health or safety] impact, based on objective, identified written public health or safety standards . . . as they existed on the date the application was deemed complete."[227] The local government must make these findings in writing within 30-60 days of its decision,[228] and if the decision is challenged in court, the local government must carry the burden of proof.[229] Lest courts fail to get the message, the legislature in 2018 declared that adverse health and safety impacts from new housing "arise infrequently."[230]

Finally, recent amendments to the Housing Accountability Act extend standing to sue to "housing organizations" and potential residents, and require defendants to pay the attorneys' fees of prevailing plaintiffs.[231] Developers who have ongoing relationships with a local government may be wary of litigating, say, a modest density reduction. The attorney's fee and liberal standing provisions enable other parties to step in and make local governments follow their own rules.

Statutory consequences for failing to meet housing targets. With the passage of SB 35 (2017), California became the first West Coast state to make local governments liable for failing to meet state housing targets, not just for failing to plan.[232] SB 35 requires local governments to report annually to HCD on housing outcomes: the number of project applications received, entitlements and building permits granted, and certificates of occupancy issued.[233] SB 35 also directs HCD to issue mid-period and end-of-period evaluations of whether each local government is meeting or has met its RHNA allocations.[234] And here's the kicker: if a local government falls short of its RHNA targets, it must allow by-right development, with no environmental review, of projects that comply with zoning and development standards that were in effect when the application was submitted.[235] Projects submitted under SB 35 must be approved or rejected by the local government within a brief window of time or else they are deemed approved as a matter of law.[236]

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[227] 2017 Cal. Legis. Serv. Ch. 368 (S.B. 167) (West); Cal. Gov't Code § 65589.5(j)(1) (West 2018).

[228] Cal. Gov't Code § 65589.5(j)(1) (West 2018).

[229] Cal. Gov't Code § 65589.6 (West 2018).

[230] 2018 Cal. Stat. ch. 243, § 1 (adding subdivision (a)(3) to Gov. Code § 65585.5).

[231] *See* 2017 Cal. Legis. Serv. Ch. 368 (S.B. 167) (amending Cal. Gov't Code § 65589.5(k)).

[232] 2017 Cal. Legis. Serv. Ch. 366 (S.B. 35) (West 2018).

[233] These requirements are codified at Cal. Govt Code Code § 65400 (West 2018). They firm up earlier, much less specific reporting requirements.

[234] Cal. Gov't Code §§ 65913.4(a)(4) & (h)(7) (West 2018).

[235] 2017 Cal. Legis. Serv. Ch. 366 (S.B. 35) (West), § 3 (hereinafter "SB 35") (now codified as Cal. Gov't Code Code § 65913.4(a)(4)).

[236] SB 35, *supra* note 235, § 3 (now codified as Cal. Govt Code § 65913.4(b) & (c).

In keeping with the idea of the housing element as self-executing and preemptive, SB 35 provides that in the event of inconsistency between "zoning, general plan, or design review standards . . . a development shall be deemed consistent [within the meaning of this section] if the development is consistent with the standards set forth in the general plan."[237]

Though SB 35 projects must meet several other criteria which may blunt the statute's impact,[238] the statute nonetheless advances an important principle: that local governments' prerogative to use cumbersome, discretionary development procedures is conditional on their producing the amount of new housing—including market-rate housing—that the state expects of them.[239]

California may soon make local governments that fail to meet their housing target pay a serious fiscal price, too. In early 2019, Gov. Gavin Newsom announced that he intends to withhold transportation funding from local governments that fall short of their targets.[240]

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California's housing policy contraption would have made Rube Goldberg blush. But abstracting from the jury-rigged details, the big picture is this: California, home to the nation's most expensive housing markets, is developing a nationally-normed, "healthy housing market" standard, and will set regional quotas for new housing accordingly. California has also taken important steps to make the housing element self-executing, so that developers can get permits for compliant projects notwithstanding inconsistent local ordinances and standards. California has terminated judicial deference to local governments on the question of whether development proposals comply with applicable zoning, development, environmental, and safety standards. And, using fee-shifting rules, liberal standing, and evidentiary reforms, California has armed interest groups and private citizens to challenge permit denials and density reductions. These are unabashedly pro-housing reforms, applicable to market-rate as well as affordable projects.

One can also discern in the recent California legislation a more tentative movement to require local governments to allow some by-right development, at

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[237] *Id.* (now codified as Cal. Govt Code Code § 65913.4(a)(5)(B)).

[238] The project must have at least 10% BMR units (more if the jurisdiction has a compliant housing element and met its quota for market-rate housing in the previous cycle), must not use sites that were recently occupied by residential tenants or rent-controlled dwelling units, and, for larger projects, must pay union wages. *See id.* (now codified as Cal. Govt Code 65913.4(a)(4), (7) & (8)).

[239] The same principle is also advanced by another statutory provision added in 2017, which stipulates that local governments may not count a parcel toward their lower-income RHNA quota without rezoning it for by-right development, if the parcel had been counted toward the quota but not developed in the previous planning cycle. *See* 2017 Cal. Legis. Serv. Ch. 375 (A.B. 1397) (West) (amending Cal. Govt Code § 65883.2(c)).

[240] *See* Liam Dillon, *Gov. Gavin Newsom Threatens to Cut State Funding from Cities that Don't Approve Enough Housing*, L.A. TIMES, Jan. 10, 2019.

state-prescribed minimum densities, under quick timeframes, and without project-specific environmental reviews. SB 35 is the leading example of this; another is a new requirement local governments which must liberalize their zoning ordinances to plausibly accommodate their RHNA shares do so by zoning for by-right development at specified minimum densities.[241]

Taken together, the California reforms are redefining the character and function of the comprehensive plan. Rather than serving as an "impermanent constitution" for zoning and development ordinances,[242] or as a statement of a community's aspirations for its built environment,[243] the plan through its housing element increasingly resembles a compact between the local government and the state about development permitting. Through the plan, local governments provide the state with an inventory of potentially developable or redevelopable parcels within their territory, and commit to a schedule of actions to remove development constraints. In return for making these promises, the local government maintains its eligibility for certain funding streams and avoids builder's remedy lawsuits. Developers, housing organizations, and potential residents can enforce the compact in court, both by suing the local government to make it follow through on rezoning and other actions promised in the housing element, and by demanding building permits on the authority of the housing element itself, even if the project conflicts with other local ordinances.

And yet this agreement is not quite a contract. The housing element, as an amendment to the local government's general plan, remains local law, and may itself be amended without the state agency's consent. The agency can respond to bad amendments by decertifying a housing element midcycle—exposing the local government to a loss of funding and possibly builder's remedy lawsuits—but the agency cannot compel the local government to stick to the original compact. Nor may the agency impose housing elements of its own design on local governments that fail to revise their housing elements on the state's cycle.

One can think of the housing element, then, as a kind of provisionally preemptive state intervention in local land-use. The state has considerable influence over the housing element's content, and while in place, the housing element supersedes contrary local regulations and establishes a basis for development permitting. But the housing element's preemptive character is softer than that of ordinary state law, both because the housing element must be locally adopted before it takes effect, and because it can be changed by the local

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[241] *See supra* note 239.

[242] For the canonical accounts of this ideal, see Charles M. Haar, *In Accordance with a Comprehensive Plan*, 68 HARV. L. REV. 1154 (1955); Mandelker, *supra* note 111.

[243] On plans as dreamy visions for the future, see ROBERT C. ELLICKSON ET AL., LAND USE CONTROLS: CASES AND MATERIALS 69-72 (4th ed. 2013).

government without the concurrence of the state—albeit at the price of risking pecuniary and regulatory sanctions.

B. Density Mandates

In 1981, Oregon's LCDC promulgated the Metropolitan Housing Rule, which sets minimum zoning densities for cities in the Portland metro area.[244] Ever since, land-use scholars have regarded the rule with a kind of wry bemusement, as if to say, "Oh, leave it Oregon's urban-boundary enthusiasts to try something way too zany for any other state."[245] Yet in recent years and on both coasts, states have begun to challenge local control over housing density, including the density of market-rate housing. This is an ideologically important development because, as Part II explained, the expensive Northeastern states traditionally regarded the "affordability problem" as being solely about barriers to the construction of subsidized, deed-restricted housing,[246] and because even West Coast states often privilege projects with a large share of BMR units.[247] (Whether density mandates will actually result in more housing is less clear, a point I take up below.)

To date, most of the new density interventions have focused on so-called accessory dwelling units (ADUs), small homes which may be developed in an under-utilized garage or basement, or added in the backyard of existing or proposed dwelling.[248] Washington, California, Oregon, New Hampshire, and Vermont now require local governments to permit ADUs on parcels zoned for single family homes.[249] Connecticut, Florida and Rhode Island have proceeded a bit more indirectly, encouraging ADUs by allowing local governments to count

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[244] The rule is codified at OAR 660–07–000 to 660–07–360. For discussion of its history, see *City of Happy Valley v. Land Conservation & Dev. Comm'n*, 677 P.2d 43, 44 (Or. 1984).

[245] *See, e.g.*, FISCHEL, *supra* note 5, at 303-07 (describing Portland), 366-67 ("[I]t is Oregon's boat to float"); Hills, *supra* note 92, at 1639-42 (praising Metropolitan Housing Rule but describing the adoption of anything similar in New Jersey, the subject of his article, as "improbabl[e]").

[246] *See supra* Part II.A.

[247] *See supra* Part III.B (describing reforms in California).

[248] ADUs are typically defined by statute as a small dwelling (e.g., less than 800 or 1200 square feet) contained within, or located in close proximity to, another existing or zoning-authorized structure. See sources cited in note 249, *supra*.

[249] *See* Cal. Gov't Code § 65852.2 (West 2018); Wash. Rev. Code Ann. § 43.63A.215 (West 2018); http://mrsc.org/getmedia/3ccc6c5e-0cc9-43c1-8936-b0017c7c161e/ADUordrecommendations.pdf.aspx (model ADU ordinance which local governments of a certain size in Washington must conform to); Vt. Stat. Ann. tit. 24, § 4412(1)(E) (West 2018); 2017 Oregon Laws Ch. 745 (S.B. 1051); N.H. Rev. Stat. Ann. § 674:72(I) (West 2018).

them toward the locality's fair-share obligation for affordable housing.[250] Several other states have enacted modest ADU incentive programs.[251]

More aggressive density mandates are also on the table. In 2016, one house of the Massachusetts legislature passed a bill that would have required every local government to zone at least one district "of reasonable size" for multi-family housing "as of right."[252] The bill spelled out minimum densities,[253] and authorized the state housing agency to implement the new mandate through rulemaking.[254] Oregon considered a bill in 2017 that would have banned single-family-home zones within urban growth boundaries.[255] Though the bill failed, the speaker of the Oregon house announced in December 2018 that she is drafting a new measure to allow fourplexes statewide on land zoned for single family use.[256] In Washington, a state senator has begun circulating a bill to establish tiered minimum densities near transit stations in the Seattle region.[257]

The granddaddy of the state upzoning bills is California's SB 827. Introduced in early 2018 by state senator Scott Wiener, SB 827 would have authorized 8-10 story residential buildings on all transit-accessible parcels that local governments have zoned for residential or mixed use.[258] The bill was soon watered down and then defeated, but not before drawing national attention to the connections between housing density, socioeconomic mobility, mass transit, and climate change.[259] The legislature did pass a more modest measure to upzone

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[250] Fla. Stat. Ann. § 163.31771 (West 2018); R.I. Gen. Laws § 42-128-8.1(b)(5) (West 2018); Conn. Gen. Stat. § 8-30g (West 2018).

[251] *See, e.g.*, Md. Code Ann., Hous. & Cmty. Dev. § 4-926 (West 2018) (providing for loan program for affordable housing including ADUs).

[252] *See* Bill S.2311, s. 6 (189th session, 2015 - 2016), https://malegislature.gov/Bills/189/Senate/S2311?pg=1&perPage=100§ion=Amendments&filter=Senate&sortOption=; http://www.telegram.com/news/20180227/chandler-state-senate-ready-to-go-on-housing-bill.

[253] *Id.* (minimum densities of 8-15 units per acre).

[254] *Id.* ("The department shall promulgate regulations which shall be used to determine if a city or town has satisfied the requirements established in this subsection.").

[255] HB 2007 (79th Or. Legis. Assembly, 2017), https://gov.oregonlive.com/bill/2017/HB2007/.

[256] Rachel Monahan, *Could Oregon Become the First State to Ban Single Family Zoning?*, WILLIAMETTE WEEK, Dec. 18, 2018, https://www.wweek.com/news/state/2018/12/14/could-oregon-become-the-first-state-to-ban-single-family-zoning/.

[257] Doug Trumm, *State Sen. Palumbo Plans to Introduce a Minimum Housing Density Bill*, THE URBANIST, Oct. 5, 2018, https://www.theurbanist.org/2018/10/05/state-sen-palumbo-plans-to-introduce-a-minimum-housing-density-bill/.

[258] Scott Wiener, *My Transit Density Bill (SB 827): Answering Common Questions and Debunking Misinformation*, EXTRANEWSFEED, Jan. 16, 2018.

[259] *See, e.g.*, Dante Ramos, *Go on, California — Blow up Your Lousy Zoning Laws*, BOSTON GLOBE, Jan. 24, 2018; David Roberts, *The Future of Housing Policy Is Being Decided in California*, VOX, Apr. 4, 2018; Megan McArdle, *Democrats' Housing Problem*, WASH.

certain parcels near Bay Area Rapid Transit (BART) stations,[260] and as of this writing, Sen. Wiener has just introduced a successor to SB 827, with bipartisan cosponsors and the backing of significant interest groups.[261] The successor bill, SB 50, would authorize 4-5 story buildings near centers of employment as well as mass transit.[262]

Upzoning by statute is an exciting idea, but it remains a difficult sell. Outside of the ADU context, the BART upzoning bill is the only such measure to have passed, and it is exceedingly narrow.[263] Most of the density mandates that have actually made it into law operate indirectly, as a byproduct of other requirements, and have been established or applied through administrative proceedings. Thus, as mentioned in the last section, California now requires minimum densities if a local government must rezone land to accommodate its share of lower-income housing.[264] Similarly, in New Jersey, localities seeking immunity from the builder's remedy must zone at minimum densities for 20%-BMR projects.[265] In Oregon and Washington, state agencies have derived minimum zoning densities from the principle of confining growth within urban boundaries.[266] Oregon's latest regulation, issued in 2009, spells out density safe harbors for local governments throughout the state which seek to adjust their growth perimeter.[267] And though Washington's supreme court invalidated the Growth Management

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POST., Apr. 19, 2018; Conor Dougherty & Brad Plumer, *A Bold, Divisive Plan to Wean Californians From Cars*, NY TIMES, Mar. 16, 2018; *Conor Dougherty, California Lawmakers Kill Housing Bill After Fierce Debate*, NY TIMES, Apr. 17, 2018.

[260] 2018 Cal. Stat. ch. 1000 (A.B. 2923).

[261] Scott Wiener, *Senator Wiener Introduces Zoning Reform Bill to Allow More Housing Near Public Transportation and Job Centers*, MEDIUM, Dec. 4, 2018.

[262] S.B. 50, Cal. Legis., 2019-20 Regular Session, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB50; Matthew Yglesias, *Gavin Newsom Promised to Fix California's Housing Crisis. Here's a Bill that Would Do It*, VOX, Dec. 7, 2018.

[263] The bill only covers parcels owned by BART as of the date of enactment; it requires by-right permitting only of structures no more than one story taller than the height for which surrounding parcels have been zoned by local governments; and it contains extensive union-labor and BMR requirements. *See* 2018 Cal. Stat. ch. 1000 (A.B. 2923).

[264] *See supra* Part III.A.

[265] *See* In re Adoption of N.J.A.C. 5:96 & 5:97, 6 A.3d 445, 461-64 (N.J. App. Div. 2010), *aff'd as modified sub nom.* In re Adoption of N.J.A.C. 5:96, 74 A.3d 893 (N.J. 2013) (invalidating regulation which, in the court's view, would have allowed local governments to comply with their *Mt. Laurel* obligations by zoning land at insufficient density and with excessive BMR requirements).

[266] *See infra* notes 267-269.

[267] Or. Admin. R. 660-024-0040(8) & Tables. The rule was promulgated as LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09. It has been used by LCDC and advocacy groups to induce upzonings in small cities and towns far away from the liberal bastion of Portland. *See* Andrew Ainsworth & Edward Sullivan, *Regional Problem Solving in Action: Lessons from the Greater Bear Creek Valley RPS Process*, 46 URB. LAW. 269 (2014) (showing that the density safe harbors and threat of litigation or LCDC disapproval led to revision of originally-proposed growth boundaries and planning for greater density).

Hearing Board's attempt to create "bright line" minimum urban densities,[268] observers see Washington as having *de facto* density requirements for land within the growth boundaries.[269]

In addition to being hard to enact, statutory density mandates are generally easy for local governments to vitiate. This is well illustrated by California's relatively long experience with ADUs.[270] The state's ADU framework dates to 1982, when the legislature decreed that local governments may disallow ADUs within residential zones only if the locality makes "findings [of] specific adverse impacts on the public health, safety, and welfare."[271] Many local governments responded by "authorizing" ADUs while requiring ADU applicants to obtain onerous, discretionary permits.[272] Concerned that local governments were abusing their discretion, the state legislature in 2002: directed local governments to permit ADUs ministerially; demanded approval of ADU applications that conform to state-prescribed requirements (irrespective of local ordinances); enacted a template to which local ADU ordinances must conform; and required local governments to submit their ADU ordinances to the state housing agency for review.[273] The 2002 bill did not, however, displace "height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements *generally applicable* to residential construction in the zone in which the property is located."[274]

Studying the response to this statute, Margaret Brinig and Nicole Garnett collected the zoning ordinances of every California municipality with more than 50,000 people, as well as public-meeting minutes and news stories. They found that most California cities—including Los Angeles, San Diego, and San Francisco—effectively thwarted the new mandate with a "thousand paper cuts."[275] Cities discouraged ADU construction via design review, costly

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[268] Viking Properties, Inc. v. Holm, 118 P.3d 322, 329 (Wash. 2005) (en banc).

[269] Egon Terplan, *Learning from Washington's Growth Management Act*, THE URBANIST, June 2017, https://www.spur.org/publications/urbanist-article/2017-07-31/learning-washington-s-growth-management-act ("Within urban areas, most growth must be allocated with minimum densities of four units per acre.").

[270] *See* Margaret F. Brinig & Nicole Stelle Garnett, *A Room of One's Own: Accessory Dwelling Unit Reforms and Local Parochialism*, 45 URB. LAW. 519, 541-67 (2013).

[271] *Id.* at 541 (quoting Act of Sept. 27, 1982, ch. 1440, § 1, 1982 Cal. Stat. 5500).

[272] *See* Assembly Floor Analysis, A.B. 1866, Aug. 28, 2002, *available at* https://leginfo.legislature.ca.gov.

[273] *See* 2002 Cal. Legis. Serv. Ch. 1062 (A.B. 1866); Brinig & Garnett, *supra* note 270, at 541-43.

[274] 2002 Cal. Legis. Serv. Ch. 1062 (A.B. 1866), § 2 (West) (amending Cal. Gov't Code § 65852.2(a)) (emphasis added).

[275] *Id.* at 546-47. *See also* John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, 25 STAN. L. & POL'Y REV. 53, 70-86 (2014) (detailing regulatory barriers to ADUs in five cities across the country).

building-material mandates, rental restrictions, owner-occupancy requirements, minimum lot sizes, conditional use permits, permit-filing fees, impact fees, and tight allowances for the permissible size of an ADU.[276] Some of these requirements probably violated state law, but anti-ADU local governments had few compunctions about pushing the envelope of their reserved authority.[277]

Frustrated by local intransigence, California enacted additional ADU bills in the 2016 and 2017. The 2016 statute further constrains local requirements for parking, unit size, fire sprinklers, utility-connection fees, and lot-line setbacks.[278] Additional tweaks were made in 2017,[279] and in 2018 a bill that would have nearly occupied the field of ADU regulation passed one house of the state legislature.[280] The new measures seem to have generated a flood of ADU applications,[281] which suggests that local intransigence can be overcome—*if* the legislature is willing to preempt a ton of local law and terminate permitting discretion.

C. Conclusion

Spurred by the YIMBY movement, legislatures in the high-cost coastal states are showing new interest in local governments' land-use policies, and are intervening in new and unambiguously pro-housing ways. There is clearly a receptive audience among state policymakers for ideas about how to overcome local NIMBYism and increase the supply of market-rate as well as BMR housing, particularly near mass transit. But there also seems to be some uncertainty about how best to proceed. Just about everything is on the table: new ways of setting housing-supply targets (national norming); new density requirements (ADUs and beyond); new tools for pressing local governments to follow their own rules

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[276] *Id.* at 543-66.

[277] The death by a thousand cuts story also applies to so-called micro-units, an attempt to provide more affordable housing through small, dorm-like units. See https://www.sightline.org/2016/09/06/how-seattle-killed-micro-housing/.

[278] 2016 Cal. Legis. Serv. Ch. 720 (S.B. 1069) (West).

[279] 2017 Cal. Legis. Serv. Ch. 594 (S.B. 229) (West) (clarifying, *inter alia*, that the restriction on utility fees applies to fees charged by special districts and water corporations).

[280] The 2018 bill would have, among other things: (1) prohibited local governments from applying minimum lot sizes to ADU projects, and from counting the square footage of ADUs when calculating the floor-to-area ratio of a housing project; (2) exempted ADUs from nearly all development fees; (3) banned owner-occupancy requirements; (4) prohibited local agencies from requiring replacement of parking spaces in garage-to-ADU conversions; (5) preempted local limits on the number of ADUs that may be constructed within existing multifamily buildings; and (6) compelled local governments to decide ADU permit applications within 60 days ("deeming approved" every application not so decided). *See* S.B. 831, Cal. Legislature, 2017-18 Regular Session, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB831.

[281] *See* DAVID GARCIA, ADU UPDATE: EARLY LESSONS AND IMPACTS OF CALIFORNIA'S STATE AND LOCAL POLICY CHANGES (Terner Center, UC Berkeley, Dec. 2017), http://ternercenter.berkeley.edu/uploads/ADU_Update_Brief_December_2017_.pdf.

(attorney's fees, evidentiary standards, time limits, as-of-right permitting, and permitting on the basis of the housing element); and more prescriptive requirements for the housing element itself (imminently developable sites).

IV. A WAY FORWARD: "HOUSING ELEMENTS" AS TOP-DOWN AND BOTTOM-UP DEVICES FOR OVERCOMING LOCAL BARRIERS TO HOUSING

This Part takes up the how best to proceed question. Without purporting to offer a universal answer—there probably is none—I will suggest a variation on the emerging California model of the housing element as a preemptive intergovernmental compact for development permitting.

Today the California model, like its West Coast antecedents, represents a largely top-down strategy for controlling local barriers to housing supply. The state tells local governments how much new housing they must accommodate through their housing elements, and the state uses the threat of fiscal and regulatory sanctions to induce local governments to adopt compliant housing elements. It is a fair question, though, whether any high-cost state will be able to expand the supply of housing substantially without changing the *local* politics of housing, the political dynamics in cities and suburbs that led to decades of underproduction.

A central contribution of this Part is to show that the emerging California model can readily be adapted to put bottom-up as well as top-down pressure on local barriers to housing supply. Specifically, with a few modest extensions, the California framework can be used to increase the political leverage and policymaking discretion of relatively pro-housing factions in city politics, and to facilitate regional housing deals by enabling local governments to make credible commitments to one another.

Boiled down to essentials, my variation on the California model combines a procedure for periodically (and unobtrusively) redefining the local regulatory baseline for new housing, in keeping with the state's goals; a mechanism to guard the new baseline against the retrogressive tactics of local governments; interventions that redistribute political power at the local level; and finally some accommodations for politically powerful NIMBY jurisdictions which might otherwise bring down the whole regime.

I defend this general approach as facially well tailored to the political economy of the housing-supply problem. I also develop a historical analogy to the Voting Rights Act. The problem states now face in trying to control local barriers to housing supply is structurally quite similar to the problem the federal government faced in the 1960s when it undertook to dismantle the regime of Jim Crow. The VRA created a new regulatory baseline for voting, which in turn

changed the distribution of political power in the former Jim Crow jurisdictions. The VRA also locked in the new baseline with centralized, pre-implementation review of changes to voting standards and procedures. My variation on the California model embodies the same ideas—new regulatory baselines, preclearance to guard against retrogression, and redistribution of political power—but adapts them to deal with a context in which there is no general consensus about what the new baseline should be, and doubtful political support for centralizing control over the "traditionally local" governmental function in question.

Part IV.A fixes ideas. It lays out the elements of my proposal, and briefly explains what further reforms would be needed to fully realize it in the state that's come closest to date, California. Part IV.B explains the model's top-down and bottom-up mechanisms for inducing local governments to relax locally erected barriers to new housing.

A. Elements of the Model

Extending California's recent innovations, the model I shall defend has the following components:

(1) The state, through a housing agency under control of the governor, periodically determines the minimum amount of new housing that each region of the state shall accommodate over the planning cycle. The agency or a regional council of governments then divvies up the regional need among local governments. Both the need determination and the divvying should be grounded in economic conditions—not population projections—so that new housing is added where it would be more valuable, and so that escalating prices result in higher housing quotas. (Alternatively, the state might just require all economically significant regions to maintain a substantial potential-housing buffer, *e.g.*, capacity to accommodate a 30%-60% increase in the housing stock over the course of a decade.[282])

(2) After receiving their housing targets, local governments must draft and submit to the state housing agency a parcel-specific "housing element," in which the locality explains how it will accommodate its share of state-determined housing need, or the housing buffer, over the planning cycle. The housing element must spell out or incorporate by reference zoning, fees, and development standards and procedures applicable to the parcels. It must also identify local constraints to

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[282] *See supra* Part III.A.1.

development of the planned-for housing, and set forth a schedule of actions to alleviate unreasonable constraints.

(3) A state-certified housing element, once enacted by the local government, becomes the local government's highest law with respect to land use, at least until the local government has produced its quota of housing for the cycle. It supersedes any contrary provisions found in local regulations, ordinances, ballot measures, the general plan, or the city or county charter. (This is the sense in which the model establishes a preemptive compact. A state-law framework empowers the local legislative body and the state agency *acting together* to preempt contrary local law, including law that the municipal legislature cannot override on its own, such as the city charter.) Courts shall not defer to local governments on whether a disputed provision of local law conflicts with the housing element.

(4) A housing element "substantially complies" with state law and shall be certified by the state agency if (a) the agency determines that the local government, operating with the housing element in place, is substantially certain to meet its housing quota, or (b) the agency concludes that achievement of the quota is uncertain, or infeasible without public subsidy, but that the housing element removes or appropriately commits the local government to removing all unreasonable (unnecessary) regulatory and procedural constraints to achieving the housing quota.[283] Courts shall defer to the agency's certification decision if supported by substantial evidence. If the agency fails to act on a housing element within a reasonable period of time (say, 60 days), the element shall be deemed certified as a matter of law.

(5) The housing agency may by guidance or regulation establish classes of presumptively unreasonable constraints.

(6) The housing element is self-executing with respect to project permitting, meaning that developers can apply for permits on the authority of the housing element itself, irrespective of contrary local

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[283] Here a slight variation in word choice ("unreasonable" vs. "unnecessary") may end up being consequential, as "necessity" connotes a stricter standard than "reasonableness." Note also that if the state adopts the "potential-housing buffer" approach at step (1), then housing element validity will usually be evaluated under (4)(b), because market conditions will not usually support a 30%-60% expansion of the housing stock over the planning cycle even in the absence of regulatory constraints.

law, at least until the local government has produced its quota of housing for the cycle. The self-execution principle should also cover discrete, removable governmental constraints that the housing element has identified and targeted for reform.[284] If not fixed by the date listed in the housing element's schedule of actions to alleviate constraints, such constraints would become legally inoperative.

(7) A local government may amend its housing element during the planning cycle if the locality gives the state agency 60-day notice, a copy of the proposed amendment, and written findings about whether the amendment would or would not render the housing element noncompliant.[285] The agency may respond with suggestions, requests for further information, and, as appropriate, warnings about decertification. The local government shall again notify the agency upon adoption of the amendment, at which point the agency shall either recertify or decertify the housing element.[286] Decertification would strip the housing element of its preemptive force vis-à-vis provisions of local law that take precedence over ordinary municipal legislation, *e.g.*, provisions found in the charter or adopted by the voters.

(8) Local governments must report annually to the state housing agency on development applications received, applications approved and denied, time from submittal of application to final approval / denial, and the issuance of certificates of occupancy.

(9) Local governments that lack a current, state-approved housing element, or whose housing has been decertified, should face substantial pecuniary sanctions. However, the state agency shall have no authority to impose a housing element of its own design on a local government that has failed to timely adopt a substantially compliant housing element.

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[284] A "discrete, removable" constraint is one that can be lined out while leaving the rest of the local government's land-use apparatus intact and functional—*e.g.*, an allowable use, density, or setback limitation in the zoning code, or a discretionary review or internal appeal procedure. For an example of a constraint that does not fit the "discrete, removable" category, see *infra* text accompanying notes 350-351.

[285] If it proves necessary, the state could further strengthen the framework by stipulating that housing elements and housing-element amendments to which the state agency has properly objected may be adopted only through an exceptional local legislative procedure, *e.g.*, supermajority vote of the city council, or supermajority council vote followed by referendum approval.

[286] If the agency fails to act within a reasonable period of time (say, 60 days), the housing element would be deemed recertified as a matter of law.

(10) If a local government fails to enact a certified housing element by the statutory deadline, the mayor, with the approval of the state housing agency, may issue an interim housing element. An interim housing element shall have the same legal effect as a regularly adopted housing element, but shall lapse in (say) 180 days, unless reissued by the mayor and reconfirmed by the housing agency at that time. Development proposals submitted while an interim housing element is in effect shall be permitted on the basis of it, even if the permitting decision occurs after the interim element has lapsed or been replaced.

To be clear, neither California nor any other state has fully realized this model. As of this writing, California still falls short in the several significant respects:

First, California has not adopted an explicit, functional definition of what constitutes a "substantially compliant" housing element, and the courts have not deferred to the housing agency's judgment about the validity of contested housing elements.[287]

Second, California has just begun to wrestle with the inadequacies of the population-forecast approach to determining housing need.[288] The state is groping toward an alternative, but the shape of what's to come is not yet apparent.

Third, the California housing element is not fully self-executing, in the sense of providing developers with a right to permits for housing-element-compliant projects notwithstanding contrary local law. While recent reforms to the Housing Accountability Act prevent local governments from denying or reducing the density of projects on the basis of zoning which conflicts with the housing element,[289] the state has not yet extended this principle to fees, procedures, and other non-zoning constraints.[290] Nor has the state made governmental constraints identified in the housing element but not reformed on schedule inoperative as a matter of state law. And while California courts no longer defer to local governments on the question of whether a development proposal complies with

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[287] *Compare supra* notes 168-170 and accompanying text, *supra* (restating conventional, deferential standard of review), *with* notes 209-215 and accompanying text (arguing for greater deference to agency based on recent legislation).

[288] *See supra* notes 197-207 and accompanying text.

[289] *See supra* text accompanying notes 216-218 and 223-231.

[290] The background requirement of horizontal consistency among elements of the general plan may result in housing elements that provide for greater density than the land-use element (which is not subject to state review or periodic updating) not being self-executing as to market-rate projects, at least if the housing element fails to acknowledge the inconsistency and spell out a timeline for revising the land-use element. *See supra* note 218.

applicable standards,[291] the test for whether a local ordinance or regulation complies with the housing element itself (and thus contains "applicable" standards) remains deferential.[292] This saps the housing element of some of its preemptive force, and generates uncertainty for developers who would like to apply for permits on the authority of the housing element.[293]

Fourth, it is not yet clear whether local governments can use the housing element to trump voter-adopted constraints or provisions found in the city charter, outside of extreme cases where the measure at issue unequivocally disables the local government from meeting its RHNA target.[294] Courts have done backflips to preserve voter-adopted measures that make it difficult, if not facially impossible, for the local government to accommodate its RHNA share.[295]

Fifth, California has no provision for interim housing elements. One city, Encinitas, has effectively thwarted the state framework with a charter provision requiring housing elements to be enacted by referendum vote.[296] The city's voters have consistently rejected the housing elements presented to them.[297] As the housing element becomes more legally consequential under state law, other cities are likely to parrot Encinitas unless the state neutralizes their efforts.

These caveats notwithstanding, California has certainly taken big steps toward the model I have sketched. The state has strengthened the preemptive

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[291] *See supra* text accompanying notes 223-230.

[292] *See supra* note 178 (restating "arbitrary and capricious" test for consistency between ordinances and the general plan).

[293] California could fix this problem by extending the Housing Accountability Act's new "reasonable person" standard (described in the text accompanying note 227, *supra*): A development standard or procedure sall be deemed preempted by the housing element if it is not expressly authorized by the element, and the evidence in the record would allow a reasonable person to conclude that the standard or procedure is a material obstacle to realizing the housing element's objectives.

[294] For examples of such extreme cases, see *Building Industry Assn. v. City of Oceanside*, 27 Cal.App.4th. 744 (1994); *Urban Habitat v. City of Pleasanton*, No. RG06-293831 (Cal. Sup. Ct., Alameda Cnty., Mar. 12, 2010), http://ag.ca.gov/globalwarming/pdf/order_granting_writ.pdf.

[295] *See, e.g.*, Shea Homes Ltd. v. Cty. of Alameda, 110 Cal. App. 4th. 1246 (2003) (rejecting preemption claim because it was *possible* that the measure would not conflict with housing element, at least if voters approved certain measures in the future). *Cf.* Building Industry Ass'n of San Diego Cty. et al. v. City of Encinitas (Sup. Ct. San Diego Cnty., Dec. 12, 2018, http://www.pilpca.org/wp-content/uploads/2019/01/BIA-SDTU-et-al.-v.-City-of-Encinitas-Order-2018-12-12.pdf) (declining to enjoin voter-approval requirement for future housing elements, because the city's voters might behave reasonably in the future, notwithstanding their rejection of every housing element considered in the previous thirty years).

[296] *Building Industry Ass'n of San Diego Cty., supra* note 295; Terrell Kingwood, *Judge Orders the City of Encinitas to Adopt a Housing Element; City's First Since 1992*, PUBLIC INTEREST LAW PROJECT (Jan. 9, 2019), http://www.pilpca.org/2019/01/09/encinitas-housing-element-order/ (noting that city has not enacted a housing element update for nearly thirty years).

[297] See sources cited in note 296, *supra*.

force of the housing element and made it self-executing in key respects;[298] courts have been instructed to take a closer look at the housing element's site designations and densities if the developer of a 20%-BMR project claims that the housing element does not provide adequate sites for the jurisdiction's share of lower-income housing;[299] and housing-need determinations are now supposed to reflect national norms concerning "healthy housing markets."[300] The state has also removed some exceptions that charter cities previously enjoyed.[301] Governor Newsom recently announced an ambitious revamp of the process for setting housing quotas, and warned local governments that the state will soon tie transportation funding to their housing-policy compliance.[302]

B. The Case for the Model

The case for my proposal depends on the nature of the problem to be solved. From the point of view of a YIMBY state legislator who is (let us assume) well versed in the relevant economic, political science, and legal-academic literatures, the problem of overcoming locally erected barriers to housing has the following salient features:

> *(1) Extreme but geographically uneven preference conflict between the state government (which wants more housing) and the municipal actors responsible for zoning and project permitting (many of whom want to preserve the status quo).*

As Part I explained, many local governments in expensive regions of the nation are dominated by "homevoters" who have a strong financial interest in opposing new housing—especially housing in their neighborhoods—and who vote accordingly. Making the state / local conflict all the more intense is the fact that new housing can change local electorates in ways that threaten incumbent officeholders. Imagine a sleepy suburb of single-family homes that is compelled to permit five-story residential buildings within ½ mile of transit stations, as a

[298] *See supra* Part III.A.2.
[299] *Id.*
[300] *See supra* Part III.A.1.
[301] *See* S.B. 1333, 2018 Cal. Stat. ch. 856 (amending Cal. Gov't Code § 65700 to apply consistency and other requirements to charter cities). These amendments respond to *The Kennedy Comm'n v. City of Huntington Beach*, 224 Cal. Rptr. 3d 665 (Cal. Ct. App. 2017), which held that charter cities were not required to make zoning and specific plans consistent with their housing element).
[302] *See supra* note 240.

California lawmaker has proposed.[303] In come thousands of new residents whose land-use preferences are likely to be quite different than those of the existing homeowners.[304] Local politicians who've built their brands serving homogenous, single-family-home neighborhoods will have a strong personal incentive to block the change, not just to put on a show of opposing it.

That said, the degree of state / local preference conflict over new housing is geographically uneven. The state wants a lot more housing in some places (near transit and employment centers), but not in others (environmentally sensitive lands, and places where prices haven't escalated). And among the local governments targeted for more housing, opposition to the state's agenda is likely to be much stronger in affluent, homogenous communities where nearly everyone is a homeowner than in mixed polities where renters make up a large share of the electorate.[305] Opposition may also be weaker in communities that elect their local governments at-large rather than by-district.[306]

(2) Substantial intracity conflict over housing policy, the outcomes of which may depend on procedural rules and the relative strength of the mayor and the city council.

Particularly in cities that are socioeconomically and housing-tenure diverse, housing policy is likely to be an ongoing source of political conflict and compromise rather than an issue on which homevoters always get their way. Business interests may be forceful advocates for pro-growth policies;[307] neighborhood groups will favor local restrictions. Mayors, to a first approximation, are likely to be more supportive of liberal housing policies than

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[303] *See supra* text accompanying notes 261-263.

[304] If the newcomers are renters, they'll support the development of more rental housing (though perhaps not in their neighborhoods), see Hankinson, *supra* note 61, and even as owners they'll probably have a greater taste for density, and less willingness to pay for roads and parking, than existing residents who own dispersed single-family homes.

[305] But as Part I.B, *supra*, explained, many big cities are also showing "NIMBY" characteristics.

[306] Researchers have found that zoning was adopted earlier in cities that elected their councils by-district rather than at-large, and that cities with by-district elections have more exclusionary zoning codes. *See* James Clingermayer, *Distributive Politics, Ward Representation, and the Spread of Zoning*, 77 PUB. CHOICE 725 (1993); James Clingermayer, *Electoral Representation, Zoning Politics, and the Exclusion of Group Homes*, 47 POL. RES. Q. 969 (1994). This is consistent with the idea that neighborhood/homevoter interests have more power under districted than at-large electoral systems. *See also* Aaron Deslatte, António Tavares & Richard C. Feiock, *Policy of Delay: Evidence from a Bayesian Analysis of Metropolitan Land-Use Choices*, 46 POLICY STUDIES J. 674 (2016) (finding that in cities with districted elections, the degree of building-industry concentration has weaker influence on permitting delays).

[307] An increase in housing supply that brings down prices would raise the effective (real) wage paid to workers, at no cost to employers.

city councilpersons elected from territorial districts.[308] This is so because mayors answer to city-wide electorates, not district-specific constituencies (where neighborhood groups are well organized), and because mayors run in relatively expensive elections (making them more dependent on deep-pocketed business interests).[309] As well, because of their higher profile, mayors have a better chance than city councilors of developing a personal brand known to voters,[310] which may provide some buffering against the discontent of homevoters reacting to neighborhood change.

One consequence of these intracity conflicts (coupled with a lack of strong parties in municipal legislatures) is that the procedures through which land use policy is developed can have big consequences for housing outcomes.[311] Specifically, as Rick Hills and David Schleicher have argued, a city's policy is likely to be more accommodative of new housing if it is forged through citywide grand bargains, rather than worked out seriatim through project- or site-specific decisions.[312] The seriatim, project-specific approach privileges the interests of those who have the most at stake in individual projects, *i.e.*, neighborhood NIMBYs,[313] whereas the prospect of a grand bargain can activate groups that would benefit from a big citywide or regional increase in the supply of housing (*e.g.*, employers and municipal labor unions), particularly if the mayor plays an agenda-setting role.[314]

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[308] *See* Roderick M. Hills Jr. & David Schleicher, *Planning an Affordable City*, 91 IOWA L. REV. 101, 112-15, 124-29 (2015) (hereinafter, Hills & Schleicher, *Planning*). Notably, the pending California bills to upzone all land in the state near transit and job centers for 4-5 story buildings has (as of this writing) been endorsed by the mayors of San Francisco, Oakland, San Jose, Sacramento, and Stockton, https://twitter.com/Scott_Wiener/status/1085934772717641728, but no endorsements from city council members have been announced.

[309] *Id.*

[310] *See* Christopher S. Elmendorf & David Schleicher, *Informing Consent: Voter Ignorance, Political Parties, and Election Law*, 2013 U. ILL. L. REV. 363, 398-403.

[311] More specifically, it is internal conflict plus the lack of meaningful partisan competition for control of city government that makes the procedural rules so important. *See* Roderick M. Hills Jr. & David Schleicher, *Balancing the Zoning Budget*, 62 CASE W. RES. L. REV. 81, 124-27 (2011) (hereinafter, Hills & Schleicher, *Balancing*)

[312] *See* Hills & Schleicher, *Balancing*, *supra* note 312; Hills & Schleicher, *Planning*, *supra* note 308.

[313] *Cf.* Katherine L. Einstein et al., *Who Participates in Local Government? Evidence from Meeting Minutes* (forthcoming, PERSPECTIVES ON POLITICS), https://doi.org/10.1017/S153759271800213X (studying minutes of planning and zoning board meetings in Boston area and finding that homeowners are vastly overrepresented among people who comment on land-use issues, and nearly always speak in opposition to proposed developments)

[314] Business interests are hard to engage on individual projects (which considered in isolation have no tangible effect on the regional housing market), but will be highly motivated to lobby on

> *(3) Asymmetric information about how best to reconcile the state's desire for more housing with local preferences over urban form and community character.*

YIMBY state legislators know they want a lot more housing, and higher density housing, in expensive regions of the state. But they probably have little if any idea about how to assemble a given number of units into a built-form package that minimizes public opposition in any given locale. The local officials who make project-approval decisions on a daily basis are likely to have a much better sense of this.

> *(4) A deeply rooted tradition of discretionary local control over land use, such that local governments have an enormous variety of tools with which to vitiate prescriptive mandates from the state.*

We saw in Part III that state legislators are increasingly willing to tell local governments that they must allow certain types of housing (*e.g.*, ADUs), or certain densities of housing. But as evidenced by the nearly forty-year game of cat and mouse that California has played with local governments over ADUs, it's very doubtful that nondiscrimination requirements ("treat housing type X the same as housing type Y") or narrow mandates ("allow ADUs on parcels zoned for single-family homes") will actually result in local governments permitting a lot more housing. Such requirements do little to prevent local agencies from exercising their permitting discretion to stymie projects they dislike,[315] or from enacting facially neutral ordinances that make the state-favored housing type tough to develop.

To be sure, California's Housing Accountability Act prevents local governments from denying or reducing the density of projects except on the basis of objective standards, but the Act does not prevent local governments from *otherwise conditioning* projects in extremely subjective ways.[316] So it was that San Francisco's planning commission recently demanded changes to an infill condo development because the windows looked too upscale,[317] and turned back

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proposals that would materially increase the total supply of housing in the labor markets from which they hire. *See supra* note 307.

[315] See references in note 31, *supra* (describing transformation of local land-use law from a regime of by-right permitting to regimes predicated on project-by-project negotiations).

[316] *See* Cal Gov't Code § 65589.5(j)(1) & (5).

[317] *See* Laura Wenus, *Development Delayed as SF Commission Wants Less Aggressive Design*, MISSIONLOCAL (Feb. 24, 2017), https://missionlocal.org/2017/02/development-delayed-as-sf-

a small ADU-and-an-addition project because the commission thought the architect could improve the unit's internal layout.[318] This kind of nitpicking leads to interminable delays, and positions anti-development factions to weigh down projects with uneconomic conditions. The Housing Accountability Act's distinction between density-reducing and non-density reducing conditions is ultimately arbitrary, since a significant risk of substantial conditions or delays will deter developers from even proposing redevelopment projects which are only modestly more profitable than the next best use of the land.

California's ADU story is a sobering reminder of the challenges that lie ahead. ADUs are the most innocuous form of residential densification. They affect the character of single-family home neighborhoods only marginally, if at all. Their small size makes them poor substitutes for single family homes, so a proliferation of ADUs wouldn't cause the price of existing houses to crater. A liberal ADU regime would actually create nice investment opportunities for many homeowners, who could add an ADU to their lot at modest cost while leaving their primary residence intact.[319] Yet California's allow-ADUs-and-don't-discriminate-against-them mandate achieved very little—even after the state required local governments to permit ADU's ministerially. It was not until California established a nearly field-preemptive set of ADU regulations that the market responded with a substantial uptick in ADU permit applications and production.[320]

Beyond ADUs, a statewide zoning and development code that entirely displaces local authority is almost unimaginable in the United States.[321] The bold upzoning-near-transit bills that California considered in 2018 and 2019 did not touch local authority over demolition control, design standards, permitting

commission-wants-less-aggressive-design/ (quoting planning commissioner Myrna Melgar, "Big windows, to me, are a statement of class and privilege").

[318] *See* https://twitter.com/graue/status/1032798736160718849.

[319] By contrast, a law which upzoned a neighborhood of already-developed single-family homes for small apartment buildings would likely reduce the value of existing homes, even if it increases the value of the land itself. (The land value couldn't be realized without tearing down the existing homes.)

[320] *See supra* notes 270-281 and accompanying text.

[321] But Japan successfully nationalized land-use policy in 2002, and Tokyo today is one of the few major cities in which housing supply remains elastic. Scott Beyer, *Tokyo's Affordable Housing Strategy: Build, Build, Build*, FORBES, Aug. 12, 2016.

procedures, fees, and much more.[322] If such a bill is ever enacted, local governments will have had a field day inventing ways to evade it.[323]

(5) Weak or (at best) highly uncertain support in the statewide electorate for consolidating state control over zoning and development permitting.

Strong conflicts between state and local preferences often give rise to field preemption,[324] so perhaps it's not surprising that California has cut off most local discretion with respect to ADUs. Yet thoroughgoing state control over ADUs is probably tenable only because ADUs pose such trivial threats to neighborhood character and homeowner wealth. No interest group cares enough to wage a big battle against ADU mandates. At some point, though, strong pro-housing interventions by the state may engender serious pushback, such as a ballot initiative to constitutionalize local control over land use.[325] Should that occur, it's not at all clear that YIMBYs would prevail. Recent opinion polls suggest that supermajority of the California electorate objects to giving the state more authority over development permitting, and that the California public does not see local land-use regulation as significantly responsible for unaffordable

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[322] For an explanation from its author, see Scott Wiener, *SB 827 Retains an Awful Lot of Local Control and Community Planning*, MEDIUM, Apr. 8, 2018, https://medium.com/@Scott_Wiener/sb-827-retains-an-awful-lot-of-local-control-and-community-planning-b1d111fe1007.

[323] Unless—perhaps—the state housing agency is authorized to review and enforce local compliance with the state's upzoning policy.

[324] *See generally* Richard Briffault, The Challenge of the New Preemption (Feb. 1, 2018), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3091&context=faculty_scholarship (exploring city-level enactment of liberal policies and state-level preemption of the same policies, in states with Republican-dominated legislatures and Democratic cities).

[325] In California, an umbrella organization of anti-housing activists recently formed to lobby the state and support allied candidates for local and state offices. *See* https://www.livablecalifornia.org/1393-2/ (documenting the group's actions).

As of this writing, there are two pending state-constitutional "home rule" challenges to SB 35, the 2017 state statute which requires expedited, by-right permitting of certain projects if the local government has failed to meet its housing targets. *See* Letter from City of Berkeley Planning Dep't to Dana and Ruegg Ellsworth, Sept. 4, 2018, https://www.berkeleyside.com/wp-content/uploads/2018/09/2018-09-04_City-Staff-Denial-of-Application-for-Ministerial-Approval-Pur....pdf (denying SB 35 permit application on ground that state law is unconstitutional); City of Huntington Beach v. State, No. 30-201-01044945-CU-WM-CJC (Cal. Sup. Ct., Orange Cnty, Apr. 4, 2018), https://www.huntingtonbeachca.gov/government/elected_officials/city_attorney/city-of-huntington-beach-vs-state-of-california-ref-sb54.pdf. I expect the SB 35 challenges to fail, but their failure could catalyze a ballot initiative to expand cities' home rule powers over land use.

housing.[326] Public opinion outside of California appears to be equally protective of local control, although there has not been much work on the subject.[327]

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To sum up, the housing problem is a very tough nut: the preferences of local governments tend to diverge sharply from the preferences of the pro-housing faction in state government (though there are some intralocal conflicts); local governments can vitiate state mandates by exploiting their permitting discretion, residual regulatory authority, and superior information; and state lawmakers who would like to wrest control of zoning and development permitting from local governments cannot count on support from the statewide electorate.

As the balance of this section will explain, the model I have outlined—building on and extending the recent California reforms—aims to crack the housing nut with complementary top-down and bottom-up attacks. Applying pressure from above, the state would use the threat of funding cutoffs to get local

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[326] *See* USC Dornsife/L.A. Times Cal. Poll, Oct. 24, 2018, https://dornsife.usc.edu/unruh/past-polls/ (finding that by a 3:1 margin, registered and likely California voters endorsed proposition that "[t]he authority to approve housing developments should remain primarily with cities and counties," as opposed to "[t]he state should have greater authority to approve housing developments than it does now"; and also finding that voters are more than twice as likely to attribute housing unaffordability to "lack of rent control" and "lack of funding for low income housing," than to "too little homebuilding" or "restrictive zoning rules"); Carson Bruno, *Californians See The Housing Affordability Crisis as a Threat To The California Dream*, EUREKA (May 19, 2015) (reporting results of Hoover Institution poll, finding (1) that while most Californians see housing affordability as a big problem, only about a third favor relaxing zoning or open-space requirements to accommodate more housing, and (2) that when respondents were asked about "new housing in your area," the only type of housing to receive majority support was single family homes with large yards).

[327] Marble & Nall, *supra* note 61, recently surveyed residents of the nation's twenty largest metro regions. They find overwhelming support for "giving neighborhoods more voice over development proposals" (see Table A.1, Model 2, and Fig. 1); and lack of support for "changing local laws to allow more construction" (see Table A.1, Model 8). They also asked about a hypothetical state law to require local governments to allow apartment buildings, finding majority support only among those renters who also favor a national housing guarantee (see Table A.1, Model 9, and Fig. 1). *Cf.* Hankinson, *supra* note 61, figs. C8 & C9 (reporting results from national survey showing that in average-to-expensive cities, only about 25% of homeowners would support a 10% increase in the citywide housing supply, whereas about 50%-60% of renters in the same cities would support the policy). One might think that liberal homeowners would be moved to support high-density housing (and possibly state intervention) by egalitarian framing, but the survey experiments of Marble & Nall, *supra* note 61, indicate that self-interest trumps ideology. *See also* Andrew H. Whittemore & Todd K. BenDor, *Exploring the Acceptability of Densification: How Positive Framing and Source Credibility Can Change Attitudes*, 10 URB. AFFAIRS REV. 1 (2018) (finding in national survey that several positive frames reduced, rather than increased, homeowners' support for a denser-than-typical residential project in their neighborhood).

governments to periodically revisit and liberalize their entire framework for housing development, including zoning maps, development standards and fees, permitting procedures, and anything else that might stand in the way of achieving the local government's quota of new housing. This periodic redefinition of the local regulatory baseline would occur in a manner which is politically discreet, sensitive to information asymmetries, and resistant to backsliding. It would also occur under more favorable local conditions than exist today, as the proposed state-law framework subtly shifts the balance of local authority toward more housing-tolerant factions, and helps local governments make credible regulatory-reform commitments to one another.

1. From the Top Down: Baseline Change and Lock-In, Done Discreetly

It should now be clear that if states are to control local housing supply barriers, it is not enough to preempt discrete local rules, such as height and density limits near transit stations. Changes to the regulatory status quo must be backstopped against the evasive tactics of local governments wielding residual regulatory authority and permitting discretion. The bigger the intervention, the greater the need for backstopping.

There is one seminal example of a higher-level government acting under conditions of extreme preference conflict to change the regulatory status quo among lower-level governments, while effectively backstopping the new regulatory baseline against evasion. This is the Voting Rights Act of 1965 (VRA),[328] through which Congress overcame generations of black disenfranchisement in the South.[329] The variation on the California model I have sketched represents an effort to borrow and adapt the VRA paradigm.

Structurally, the problem facing Congress in 1965 was in key respects quite similar to the problem faced today by state lawmakers trying to induce local governments to allow a lot more housing in areas of economic opportunity. In both cases, the central government wants local governments to heed the interests of a class of outsiders (blacks in the VRA example, would-be residents in the housing example), but the local governments don't allow the outsiders to vote in their elections, and the interests of the excluded outsiders are at war with the interests of those who do vote.[330] In both cases, adherence to the central

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[328] PL 89-110, August 6, 1965, 79 Stat. 437 (hereinafter, "VRA").

[329] *See generally* ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES (2009); J. MORGAN KOUSSER, COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION (1991).

[330] There is also considerable evidence that opposition to new, higher-density housing is exacerbated by cultural or racial hostility to would-be newcomers, particularly among conservatives. *See* Trounstine, *supra* note 68 (showing that "whiteness" of precinct is strongly correlated with support for growth controls, and that restrictive land use policies exacerbate racial segregation); Jonathan Mummolo & Clayton Nall, *Why Partisans Do Not*

government's policies would transform local electorates in ways that could jeopardize incumbent politicians' hold on office.[331] In both cases, preference conflict between the central government and local governments varies with geography. (By the mid-20th century, black disenfranchisement was mostly a Southern phenomenon, and within the South, blacks were geographically concentrated.[332]) And in both cases, the central government could not easily subsume the local governments' responsibilities. The federal government didn't want to operate electoral systems throughout the South, let alone schools and police forces. Rather, it sought to change the manner the extant local governments performed those functions. Similarly, in the housing space, there is no political support for a state takeover of land-use regulation and development permitting. The goal instead is to nudge—or shove—local governments into exercising the own regulatory apparatuses in a more housing-tolerant manner.

So what did the federal government do about black disenfranchisement? Initially it tried to enforce the 15th Amendment with affirmative litigation. By the 1950s, many federal courts stood ready to enjoin unconstitutional discrimination against black voters, but prescriptive mandates in the form of injunctions didn't achieve much black enfranchisement.[333] When one discriminatory law was invalidated, another would be enacted to take its place.[334] When voting registrars were personally enjoined from violating the rights of African Americans, they would resign and the jurisdiction would move to have the injunction lifted, thus positioning a newly appointed registrar to continue his predecessor's unconstitutional conduct.[335]

But with the Voting Rights Act, the cat finally caught the mouse. Congress's solution for Jim Crow disenfranchisement was to ban one particularly damaging instrumentality of racial discrimination—tests of literacy and moral character as a prerequisite to voting[336]—and to backstop the ban by *conditionally preempting all changes* to state and local electoral practices in the South.[337] No electoral

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Sort: The Constraints on Political Segregation, 79 J. POL. 45 (2017) (showing that conservatives prefer racially homogenous neighborhoods).

[331] *Cf.* text accompanying notes 303-304 (describing transformation of local electorate's land-use preferences which may result from introduction of dense residential buildings, especially rental buildings, into neighborhoods of single family homes).

[332] *See generally* V.O. KEY, SOUTHERN POLITICS IN STATE AND NATION (1949).

[333] *See generally* SAMUEL ISSACHAROFF ET AL., THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS 715-17 (5th ed. 2016); BRIAN K. LANDSBERG, FREE AT LAST: THE ALABAMA ORIGINS OF THE VOTING RIGHTS ACT (2008); KEYSSAR, *supra* note 329.

[334] *Id.*

[335] *Id.*

[336] VRA, *supra* note 328, § 4.

[337] VRA, *supra* note 328, § 5.

reform in the so-called "covered jurisdictions" could take effect unless approved by the U.S. Department of Justice or the District Court for the District of Columbia.[338] The burden of proof in these preclearance proceedings was on the covered jurisdiction to show that the change was neither intended to make minority voters worse off ("retrogression"), nor likely to have that effect.[339] In short, Congress both changed the regulatory baseline for voting and locked in the new baseline with the preclearance mechanism.

It was an elegant solution. The ban on literacy and moral-character tests knocked out the principal source of local discretion with respect to voter registration, and thus the channel of *sub rosa* discrimination.[340] Meanwhile, the preclearance framework adroitly navigated between two competing dangers: the risk that a covered jurisdiction would invent some discriminatory substitute for literacy tests; and the risk that the federal administrator would push the covered jurisdictions too hard, too fast, inducing so much local opposition as to inadvertently fell the whole regime. The substantive modesty of the retrogression standard, which allowed local governments to change their practices in any way that did not make minority voters worse off, limited the risk of administrative overreach.[341] Conversely, the procedural requirement that covered jurisdictions bear the burden of proving that proposed changes were non-retrogressive made it difficult for subnational governments to exploit asymmetric information about the likely effects of a change. If the federal administrator couldn't tell whether the change would make minority voters worse off, the law required her to block it, unless or until the subnational government revealed why the change would not be retrogressive.

The VRA was enormously successful. Registration and turnout rates among African Americans in the South surged almost overnight.[342] Several studies comparing adjacent "covered" and "noncovered" counties show that blacks in the covered jurisdictions realized huge gains in non-electoral domains as well,

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[338] *Id.*

[339] *Id.* The retrogression standard is a judicial gloss per *Beer v. United States*, 425 U.S. 130 (1976), and *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320 (2000).

[340] *See* Daniel S. Goldman, *The Modern-Day Literacy Test: Felon Disenfranchisement and Race Discrimination*, 57 STAN. L. REV. 611, 620 (2004), and sources cited therein.

[341] It's not clear whether "retrogression" was the standard envisioned by Congress in 1965, but as glossed by the courts, *see supra* note 339, the VRA limits the risk of administrative overreach.

[342] *See* KEVIN J. COLEMAN, THE VOTING RIGHTS ACT OF 1965: BACKGROUND AND OVERVIEW 12-13 & tbl. 3 (Cong. Res. Service, July 22, 2014).

such as labor market outcomes.[343] Once blacks could vote, Southern politicians paid attention to their interests.[344]

The model I have sketched for housing is kin to the VRA, in that it combines baseline change with a preclearance-type lock-in mechanism.[345] A new regulatory baseline is periodically established through self-executing housing elements, and retrogression is controlled through centralized, pre-implementation review of housing-element amendments.

But there are also some significant differences. Most important, the new regulatory baseline for housing is negotiated administratively on a case-by-case basis, and periodically revisited, rather than prescribed by statute once and for all.[346] And whereas the VRA categorically eliminated the principal source of local "permitting discretion" with respect to voting, the housing framework tacitly delegates the analogous question to an administrative agency, which must

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[343] Elizabeth U. Cascio & Ebonya Washington, *Valuing the Vote: The Redistribution of Voting Rights and State Funds Following the Voting Rights Act of 1965*, 129 Q.J. ECON. 379 (2013) (effects on state spending on counties with large black populations); Abhay Aneja & Carlos Avenancio-Leon, Political Power, Public Employment, & Private Wage Convergence: The Labor Market Effects of the Voting Rights Act (unpublished manuscript, 2017) (on file with author) (effects on black wages). *See also* ANDREA BERNINI, GIOVANNI FACCHINI & CECILIA TESTA, RACE, REPRESENTATION AND LOCAL GOVERNMENTS IN THE US SOUTH: THE EFFECT OF THE VOTING RIGHTS ACT (CEPR Discussion Paper No. DP12774, Mar. 2018), https://ssrn.com/abstract=3138836 (estimating that VRA doubled black representation in local government in covered jurisdictions, relative to control counties); Desmond Ang, Do 40-Year-Old Facts Still Matter? Long-Run Effects of Federal Oversight Under the Voting Rights Act (2017) (documenting long-run effects on voter turnout).

[344] In addition to the studies cited in note 343, *supra*, see Sophie Schuit & Jon C. Rogowski, *Race, Representation, and the Voting Rights Act*, 61 AM. J. POL. SCI. 513 (2017) (effects on roll call votes of Members of Congress on civil rights legislation).

[345] One might suppose that the Fair Housing Act—the federal government's 1960s-era response to discrimination in the housing market—would offer a better model than the VRA. But the FHA (in contrast to the VRA) effected neither a clear revision to the regulatory baseline for new housing, nor a mechanism to prevent retrogression. At best, the FHA expressed an aspiration: no unnecessary, racially disparate impacts. *See* Tex. Dep't of Hous. and Comm. Affairs v. Inclusive Comm. Project, Inc., 135 S.Ct. 2507 (2015). But because the FHA depends entirely on case-by-case litigation (like 15th Amendment enforcement prior to the VRA), and because the goal that informs FHA disparate-impact analysis can be understood in two different and often mutually contradictory ways, *see id.* at 2548-50 (Alito, *J.*, dissenting), it's not surprising that the FHA's impact has been very limited. *See* Stacy E. Seicshnaydre, *Is Disparate Impact Having Any Impact: An Appellate Analysis of Forty Years of Disparate Impact Claims under the Fair Housing Act*, 63 AM. U.L REV. 357 (2013) (reviewing decades of caselaw and finding that housing-barrier challenges under the FHA almost never succeed).

[346] *See supra* Part IV.A.

decide whether the discretionary permitting arrangements of any given local government represent "unreasonable constraints" on housing development.[347]

The lock-in mechanism also diverges somewhat from the VRA paradigm. Whereas the VRA conditionally preempted the field of electoral regulation, barring local governments from changing any standard, rule, or procedure without federal preapproval, the California model for housing is much less draconian, even with the extensions I have proposed. Local governments remain free to enact or modify any rule or regulation which is subordinate to the housing element, without pre-implementation review.

More strangely yet, local governments may unilaterally amend the preemptive compact itself (the certified housing element), putting the onus on the state to decertify the housing element or accede to the amendment. The regulatory baseline defined by the original compact is therefore "locked in" only to the extent that the local governing body fears the pecuniary sanctions associated with decertification, or wants to maintain the suspension of charter provisions or voter-approved measures that the certified housing element has superseded.[348]

These departures from the VRA paradigm have an underlying logic. They accommodate the absence of a political consensus about metropolitan land use. By the mid-1960s, when Congress passed the Voting Rights Act, there had emerged an elite national consensus that blacks should be able to vote on the same terms as whites, and that no one should have to surmount a test of literacy or moral character, or pay a tax, as a prerequisite to voting.[349] By contrast, there is today no readily articulable, state-level consensus about how much new housing should be planned for and where it should go. Nor has local discretion in development permitting come to be regarded as illegitimate. No doubt many a homeowner is quite happy that their planning commission and city council can impose ad hoc limitations on nearby projects. The mantra of "local control over land use" elicits broad support in statewide surveys of public opinion.[350]

Under these circumstances, the political genius of the emerging California model is that it should soon enable the state to bring about something functionally

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[347] *See supra* Part IV.A (proposing definition of "substantial compliance" which calls for administrative review of reasonableness of any local barrier to achieving a locality's housing quota if achievement of the quota is uncertain).

[348] Under both current California law and the extension I have sketched, the state agency lacks authority to impose a housing element of its own design on a local government which is out of compliance. This distinguishes the model from standard "cooperative federalism" arrangements, which often authorize a federal agency to promulgate implementation plans on a state's behalf if the state fails to enact its own, federally-approved plan. *Cf.* Dave Own, *Cooperative Subfederalism*, 9 UC IRVINE L. REV. 177, 186-88 (2018) (discussing federal Clean Water Act in relation to state-local cooperative programs).

[349] *See generally* Bruce Ackerman & Jennifer Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*, 63 NW. U.L. REV. 103 (2009).

[350] *See supra* notes 326-327.

quite similar to a statewide zoning and development code, without quite appearing to do so. More precisely, the governor will be well positioned to bring this about *if* California adopts a functional definition of housing element "substantial compliance"; allows the housing agency to plump up regional quotas on the basis of market conditions; and declares that certified housing elements supersede all local law to the contrary, including charter and voter-enacted provisions.[351] The first two steps are necessary to prevent restrictive local governments from dodging meaningful administrative scrutiny of their housing constraints (by showing either that their housing element notionally "contains the elements mandated by statute,"[352] or that they will meet a trivial quota even with substantial constraints in place). The third step is necessary to prevent local governments from defeating the state's housing goals by codifying development constraints in a body of local law which trumps the general plan.

Once California completes these steps, the set of local housing elements, viewed as a whole, will be akin to a statewide zoning and development code for an ample quantity of new housing. The housing elements will be self-executing, setting the terms for development of identified parcels, and approved by a state agency. The state agency, under control of the governor, can be expected to establish fairly aggressive housing targets, and to review housing elements with an exacting eye (once the law allows it). This is so because the governor, of all the state's elected officials, is likely to be the most reliably supportive of pro-housing policies. She answers to the statewide electorate, not just to homeowners in the high-cost regions. She runs in expensive statewide elections, which means that deep-pocketed business interests are likely to have her ear as well.[353] Gubernatorial elections are also relatively high-turnout and high-information affairs, which makes them hard for homevoters to control.[354] And because the governor's capacity to carry out her non-housing agenda depends on tax revenue,

[351] These conditions correspond to Elements of the Model (4), (1), and (3), respectively, per Part IV.A, *supra*.

[352] *See supra* note 287 and accompanying text.

[353] *Cf.* Liam Dillon, *How California's Candidates for Governor Want to Fix the State's Housing Problems*, L.A. TIMES, May 10, 2018 (summarizing housing positions platforms of leading candidates for Governor of California in 2018, nearly all of whom took strong positions in favor of expansion of supply).

[354] *See* Christopher S. Elmendorf & David Schleicher, *Informing Consent: Voter Ignorance, Political Parties, and Election Law*, 2013 U. ILL. L. REV. 363, 398-403 (reviewing literature); Joseph T. Ornstein, Municipal Election Timing and the Politics of Urban Growth (Feb. 7, 2018) (finding that off-cycle local government elections, which result in lower turnout, lead to more restrictive housing policies); Eric J. Oliver & Shang E. Ha, *Vote Choice in Suburban Elections*, 101 AM. POL. SCI. REV. 393 (2007) (finding that homeowners are vastly overrepresented in suburban local government elections relative to their share of the voting-eligible population, and that their vote choice in these elections is informed more by particular issues or personal knowledge of candidates rather than partisanship).

the governor should be quite sensitive to housing supply as a bottleneck on economic growth.[355]

Yet even as housing elements in the aggregate would function like a preemptive, statewide zoning and development code, the rules which apply within the territory of each local government will have been proposed initially by that government, negotiated with the state in a low-limelight administrative setting, and codified as a local ordinance, *i.e.*, as the housing element of the locality's general plan, rather than as state law. The housing element's *de jure* status as a locally adopted ordinance, and the obscure process through which state approval is obtained, should help state legislators parry any accusation that they have imposed a statewide zoning map.

The local prerogative to draft the housing element, and the absence of state authority write a housing element on behalf of a noncompliant local government, means that local governments have substantial leeway to decide how best to reconcile the state's housing objectives with local preferences over the built environmental and community character. Importantly though, under the test for "substantial compliance" I have proposed, a local government could only avoid administrative scrutiny of the reasonableness of its zoning, development standards, procedures, and fees if the local government is "substantially certain" to meet its housing target.[356] Much like the VRA's evidentiary standards encouraged covered jurisdictions to come forward with evidence about the likely effects of a proposed election-law change, so too does the proposed test for substantial compliance encourage local governments to rectify information asymmetries in housing element review—either by sharing information about local conditions with the state, or by committing to development standards and procedures that render inconsequential phenomena that are hard for the state to see (*e.g.*, the preferences of local officials who review permit applications).

Notice also that to the extent that there does emerge a political consensus about unacceptable land use controls—either in general or as to certain retrograde local governments—the state housing agency could easily incorporate these norms into its review of housing elements. By way of illustration:

- The agency could announce that, as a general matter, it will deem housing elements not to have "remov[ed] all unreasonable regulatory and procedural constraints"[357] unless the housing element requires local authorities to process development applications exclusively on the basis of procedures, standards, and fee schedules published on the planning department's website prior to date on

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[355] *See supra* Part I.C.3.

[356] *See supra* Part IV.A (element #4).

[357] *Id.*

which the developer's application was deemed complete.[358] The informational costs and project risks generated by a local government's failure to commit to this transparency principle arguably represent an unreasonable constraint on housing production.[359]

- The agency could announce that non-ministerial (*i.e.*, discretionary) permitting of housing-element compliant projects will generally be deemed to be an "unreasonable constraint" *if* the jurisdiction failed to meet its housing target during the previous planning cycle.[360] This would put pressure on local governments to commit to ministerial permitting through their housing element.[361] (The premise of this move is that what constitutes a "reasonable" constraint depends on the jurisdiction's track record of permitting new housing.)
- The agency could push the worst dawdlers to enact, through their housing elements, a local fix for gaping loopholes in the state's Permit Streamlining Act (PSA).[362] The PSA stipulates that if a public agency fails to complete its review of a project within a designated period of time, the project shall be deemed approved as a matter of law. But the clock starts to run only after the agency has completed environmental reviews, and the clock is tolled by internal appeals. With an eye to chinking these gaps, the housing agency might announce that as to jurisdictions whose permitting times were very slow during the previous cycle (and which failed to meet their

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[358] A local government that declines to commit to this precept in its housing element would have to show (1) that it's housing element is nonetheless likely to result in production of the RHNA target, or (2) that exceptional local interests or needs justify the local government's decision.

[359] California's Housing Accountability Act disallows local governments from denying or reducing the density of projects on the basis of standards that did not exist at the time the developer's application was deemed complete, *see supra* text accompanying notes 223-230, but does not address fees or procedure. The "CASA Compact"—a recent agreement among local officials and interest group leaders in the San Francisco Bay Area—calls for extending the HAA's anti-retroactivity principle to fees. *See* COMMITTEE TO HOUSE THE BAY AREA, CASA COMPACT 12 (Jan. 2019), https://mtc.ca.gov/sites/default/files/CASA_Compact.pdf.

[360] Oregon's state planning agency has ordered local governments to eliminate discretionary approval standards vis-a-vis "needed housing." *See, e.g.*, LCDC Compliance Order (Aug. 23, 1982) and Staff Report (Aug. 19, 1982) at 28-19 regarding City of Eugene; LCDC Work Task Order 02-WKTASK-001412 (June 27, 2002) at 4 (faulting planned development overlay zoning for insufficient clarity).

[361] The commitment would be credible since the housing element is the highest law of the local government, and because amending the housing element risks decertification.

[362] For citations to the provisions of the PSA mentioned in this paragraph, see *supra* notes 181-184.

> targets), the agency will deem the local government to have "unreasonable constraints" *unless the housing element includes a deemed-approved proviso* limiting project review to (say) 12 months, inclusive of environmental studies and internal appeals.[363]

As valuable as it would be to empower the housing agency to establish such norms by regulation, it is equally important that the framework not *require* any of this. The agency may proceed case by case rather than by general rule if it wishes. The agency may issue loose guidelines rather than firm rules, or rules that establish only rebuttable presumptions, thereby retaining flexibility to make politically informed judgements about what different local governments will tolerate. Because the strength of state / local preference conflict over housing varies geographically, and because some communities have greater political resources for pushing back than others, a state-law framework for boosting the supply of housing needs this flexibility.

The ultimate out for an anti-development community is to refuse to adopt a "substantially compliant" housing element. To date, California's courts have resisted the notion that this is a permissible choice for local governments.[364] The courts have ordered cities without a compliant housing element to enact one, and in some instances have suspended the noncompliant local government's authority to issue building permits.[365] Local governments that lack a substantially compliant housing element are also disabled from using their zoning code or general plan to deny projects with a substantial (20%) below-market component.[366]

However, if the state ramps up housing quotas and establishes a functional definition of substantial compliance, continued insistence that *every* local government maintain a compliant housing element might endanger the whole regime. The politically prudent course is probably to let the most diehard NIMBY governments opt out, upon payment of a significant fiscal penalty, lest they fight back with ballot initiatives or other stratagems to constitutionalize local control.[367] The wealthiest of the NIMBYs will probably get what they want, one

[363] To be sure, a housing element's "deemed approved" provision could not, as such, exempt the local government from otherwise applicable state law such as the California Environmental Quality Act (CEQA). But CEQA review is only triggered by discretionary government actions, *see* BARCLAY & GRAY, *supra* note 178, at 144, and if the housing element commits the local government to approving projects ministerially (at least after a certain period of time following project submission), then CEQA does not apply.

[364] See cases cited in notes 294-297, *supra*.

[365] *Id. See also* Field, *supra* note 128.

[366] *See supra* notes 209-210 and accompanying text.

[367] One way to do this is to eliminate the regulatory (non-fiscal) consequences for noncompliance. Another is to make RHNA quotas tradeable among governments within a region, so that rich NIMBY jurisdictions could pay other local governments to take on the NIMBYs' housing obligations. (New Jersey formerly allowed *Mt. Laurel* affordable-housing obligations to be traded in this way. *See* Harold A. McDougall, *Regional Contribution Agreements: Compensation for Exclusionary Zoning*, 60 TEMP. L.Q. 665

way or another. Better that they not wreck the framework for everyone else in the process.

2. *From the Bottom Up: Strengthening Pro-Housing Actors in City Politics, and Facilitating Regional Deals*

While top-down pressure applied through housing-element review and preclearance of amendments is central to the framework I have sketched, it is not everything. My extension of the California model would also strengthen the hand of *local* actors who favor more accommodative housing policies, in ways that go considerably beyond what California has achieved to date.

For example, city councils would be able to unfetter themselves from voter-enacted growth controls and permitting rigmarole—and to do this without going to the voters, and while deflecting blame to someone else. A city council would just need to ask the state agency to approve a housing element that conflicts with the problematic local constraints. If homevoters complain, the city council can respond, "The state pushed us to do it; we had to or else we'd lose our funding." And if homevoters gripe to the governor or the housing agency, the state-level actors can respond in kind: "All we did was approve a proposal that *your city council* developed for accommodating a reasonable amount of new housing. If you want it done differently, tell them, but don't complain to us."

To be sure, city councils are not reliably pro-housing actors.[368] Given the choice, some will jealously protect voter-adopted constraints on housing development. Still, survey evidence suggests that many city councilors understand the housing supply problem and would like to do something about it, but feel hemmed in politically.[369] A state-law framework which lets city councils remove voter-adopted constraints while dodging the blame should do some good, perhaps especially with respect to older constraints whose undoing may seem less an affront to today's voters.

My adjustments to the California model would also bolster mayors vis-à-vis city councils in negotiations over the housing element, and as explained above,

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(1987).) Still another possibility would be to borrow from the VRA and enact a "coverage formula" that subjects only a subset of local governments to the most intrusive components of the housing-element framework. *Cf.* text accompanying notes 336-339 (describing selective application of VRA preclearance to Jim Crow jurisdictions).

[368] If elected from territorial districts, they will tend to be responsive to homeowner interests in the neighborhood. *See supra* note 306.

[369] *See* PAUL G. LEWIS & MAX NEIMAN, CITIES UNDER PRESSURE: LOCAL GROWTH CONTROLS AND RESIDENTIAL DEVELOPMENT POLICY 41-51(2002) (concluding, based on survey of local officials in California, that most city councilors have neutral or pro-growth attitudes toward housing, but are often cowed by grassroots, anti-growth factions).

mayors are likely to be more supportive of liberal housing policies.[370] The key move is to authorize mayors to promulgate interim housing elements, if the state's deadline passes without the local government having enacted a compliant housing element using the normal, locally prescribed procedures. Once mayors have this power, city councils will make generous concessions *ex ante* to the mayor, in the hopes of avoiding a veto or other mayorally-induced delay of the council's housing element.

Notice finally that my strengthening of the California framework would powerfully support bottom-up regional initiatives to plan for more housing. Consider by way of illustration the recent efforts of the Metro Mayors Coalition in Greater Boston and the Committee to House the Bay Area ("CASA") in the San Francisco Bay Area.[371] In each case, a regional planning entity convened a consortium of elected officials,[372] and the consortium developed quantitative targets for new housing in the region, as well as guidelines for zoning and development-permitting reforms. These efforts build on Rick Hills and David Schleicher's important insight that land-use policy is likely to be more accommodative of new housing if it can be forged through grand bargains on citywide or larger scales, rather than worked out seriatim through project- or site-specific upzonings and downzonings.[373]

As Hills and Schleicher acknowledge, the central challenge for the grand-bargain approach is "designing an enforcement mechanism."[374] What is to keep individual members of a city council from defecting, once community groups and nearby homeowners start complaining about specific projects in the councilmember's district? Or, at the regional level, what is to keep the municipalities which forge a Greater Boston or Greater Bay Area plan from reneging on their commitments to one another? California's experience since the early 1980s with the RHNA process suggests that regionally coordinated plans are worthless if the plans don't actually compel local governments to remove development constraints or issue building permits.

But consider how the Metro Mayors and CASA undertakings could play out if the parent state had the legal framework I have sketched in place. Quantitative housing goals set by the collaborative would probably become *de facto* floors for

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[370] *See supra* text accompanying notes 306-309.

[371] *See* Tim Logan, *Citing 'Housing Emergency,' 15 Mayors Pledge to Boost Construction*, BOSTON GLOBE, Oct. 2, 2018 (reporting on announced goal of 185,000 new units by 2030, a tripling of the rate of housing relative to the previous decade); Rachel Swan, *Bay Area Leaders Propose Aggressive Housing Fix, and New Agency to Get It Done*, S.F. CHRONICLE, Dec. 12, 2018.

[372] The CASA consortium includes business, labor, and interest group leaders, as well as elected officials. *See* CASA Membership Roster, https://mtc.ca.gov/our-work/plans-projects/casa-committee-house-bay-area/casa-membership-roster.

[373] *See* Hills & Schleicher, *Planning*, *supra* note 308; Hills & Schleicher, Balancing, *supra* note 311.

[374] Hills & Schleicher, *Planning*, *supra* note 308, at 125.

the state's housing need assessment for the region. Knowing that there's a regional-elite consensus for a certain amount of new housing, the state's housing agency would have little reason to demand less.[375]

Similarly, the collaborative's guidelines for zoning and regulatory reform would inform the agency's review of "constraints" under housing elements submitted by local governments in the region. If most of the region's local governments have, through the collaborative, condemned a particular barrier to development, the state housing agency would have a strong political and legal basis on which to disallow it *in that region*, if not elsewhere.[376] Moreover, commitments made in housing elements to remove these constraints would be credible, both because state law would automatically suspend constraints that are not reformed on schedule, and because a local government which adopts a state-certified housing element in the first place signals that it prefers the concessions made in its housing element to the alternative of forgone revenue.[377]

If the understandings reached through Metro-Mayor type collaboratives can be enforced in these ways, it should be much easier to motivate local officials to join the regional planning efforts in the first instance. And—importantly—the interest groups which stand to benefit from a big increase in the regional housing supply (*e.g.*, chambers of commerce and municipal unions) would have reason to invest *a lot* of resources in lobbying the collaborative.[378]

To be sure, a strong RHNA / housing-element framework is not the only way to make interlocal housing bargains enforceable. Region-specific legislation is another possibility. But getting legislation passed is likely to be more difficult than getting a mission-driven agency to reinforce, through an extant review process, an interlocal understanding that advances the agency's mission.

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[375] This assumes there's some play in the joints of the housing need determination. As explained above, California recently revised the statutory framework governing this determination in ways that give considerable discretion to the housing agency. *See supra* Part III.A.1.

[376] Opposition to the constraint by leaders of a supermajority of the local governments suggests that it is probably unreasonable in light of regional housing needs.

[377] Of course, it is *possible* that this signal is insincere with respect to concessions that will take effect at some time in the future (e.g., under the local program to remove constraints). But if the local governments in the region doubt one another's sincerity in this regard, they can agree through the consortium to make the constraint-removal provisions of their housing elements immediately effective.

[378] No doubt NIMBY groups will organize to lobby the collaborative too, but it may be harder for them to get homeowners riled up by the collaborative's policy proposals, as opposed to tangible projects in the homeowner's neighborhood.

3. Caveats

The model I have sketched holds considerable promise, and to operationalize it in the West Coast states (especially California) would require only modest tinkering with extant state-law frameworks. But the model's limitations should be acknowledged too. Some NIMBY governments may manage to exploit their superior information about local conditions and preferences to bamboozle the state agency into certifying dysfunctional housing elements, *e.g.*, housing elements which assign the quota to sites that are infeasible or very costly to develop.[379] Other NIMBY localities may be able to get the agency to approve transparently awful housing elements, by arguing that the element's dysfunctional features are necessary to forestall a local insurrection. It is certainly worth considering additional measures to strengthen the voice of nonresidents in local politics,[380] to reduce the return to homeowners from restricting housing supply,[381] or otherwise to better align the interests of current residents with the interests of potential future residents.[382]

Finally, as economists and legal scholars have long argued, there is always some risk that state institutions for regulating land use will end up serving regional homevoter cartels.[383] A state housing agency captured by homevoters might push *every* local government to impose onerous affordability requirements on new development, thereby stanching the supply of housing even in localities that would otherwise have had developer-friendly policies. This risk must be weighed, however, against the reality of extreme supply constraints in the absence of state control, and the potential payoff from using state law to empower a relatively pro-housing set of actors at the local level.

---

[379] This risk is exacerbated by resource shortages at the California housing agency. *See* LAO, *supra* note 219, at 7 (noting that as of 2017, HCD had only a $1M budget line and seven staff persons for housing element review). The main advantage of state-mandated upzoning (e.g., requiring local governments to allow 4-5 story buildings on all parcels near transit), relative to the housing-element approach, is that state-mandated upzoning obviates the risk of local governments "complying" by assigning their quota to bad sites.

[380] For example, allowing commuters to vote in local elections both where they work and where they live.

[381] *See, e.g.*, FISCHEL, *supra* note 5, at 365 (calling for reduction in federal tax benefits for homeownership); EDWARD L. GLAESER & JOSEPH E. GYOURKO, RETHINKING FEDERAL HOUSING POLICY: HOW TO MAKE HOUSING PLENTIFUL AND AFFORDABLE 126-32 (2008) (calling for mortgage-interest tax deduction to be tied to the county-level elasticity of housing supply).

[382] *See, e.g.*, CHRISTOPHER S. ELMENDORF & DARIEN SHANSKE, AUCTIONING THE UPZONE: A NEW STRATEGY TO INDUCE LOCAL GOVERNMENT COMPLIANCE WITH STATE HOUSING POLICIES (Cal. Envtl. Law & Pol'y Center, UC Davis, Dec. 2018) (proposing state-law framework authorizing local governments to auction, and thus profit from, the new development rights created by upzoning pursuant to state policy).

[383] *See supra* text accompanying notes 191-193.

V. CONCLUSION

Fifty years in the making, the problem of local barriers to housing supply in economically productive regions is finally having its moment in the sun. To the present moment of possibility, this Article has contributed a descriptive account of the state frameworks for controlling local housing-supply restrictions, and an extension and defense of the model toward which our nation's most expensive and supply-constrained state, California, seems to be evolving.

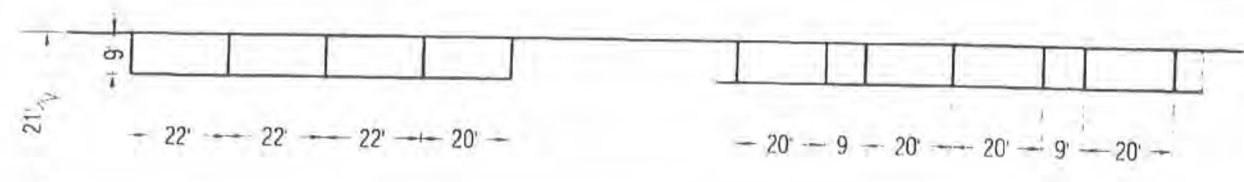
The model is one of preemption by intergovernmental compact. The state periodically establishes regional housing-production targets, with the goal of increasing supply until housing costs in then-expensive regions become comparable to housing costs in regions with "healthy housing markets" elsewhere in the nation. Regional quotas are then divvied up among local governments. Local governments must submit to the state housing agency a parcel-specific plan for how they will meet their quotas, including a schedule of actions to remove local constraints on the development of housing. Once approved by the agency and enacted as a local ordinance, this plan—the "housing element"—becomes the highest law of the local government with respect to land use. Developers may apply for building permits on the authority of housing element itself. Local governments seeking to amend their housing element must provide notice and a written justification to the state's housing agency. The agency may respond by decertifying the housing element, exposing the local government to pecuniary and possibly regulatory sanctions, but the agency may not impose on the local government a housing element of the agency's own design.

Parking Standards Exhibit A

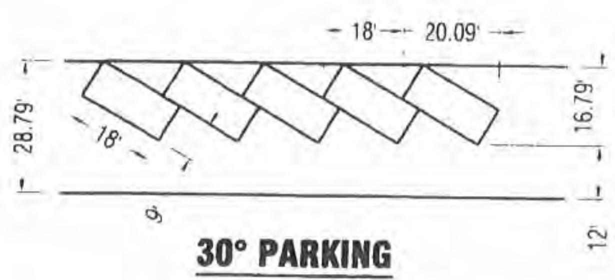
CITY OF LOS ALTOS

COMMUNITY DEVELOPMENT DEPARTMENT

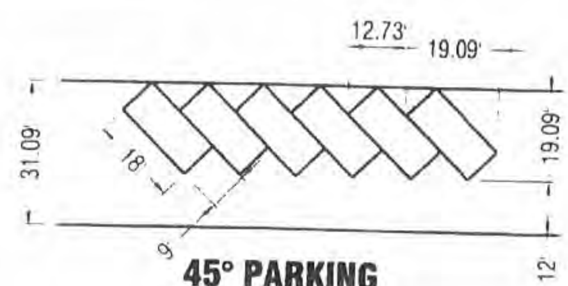
March 2001



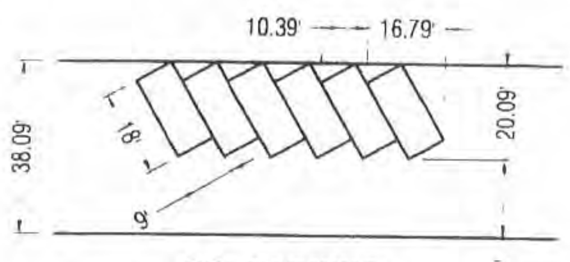
PARALLEL PARKING ALTERNATES



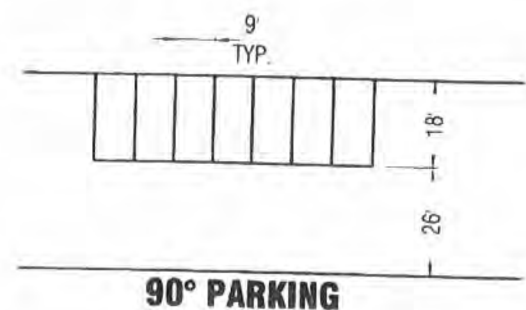
30° PARKING



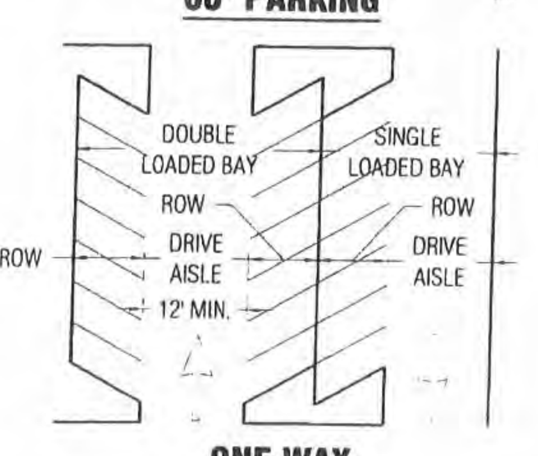
45° PARKING



60° PARKING



90° PARKING



ONE WAY

Approved: ______________________ ______________
City Engineer Date

CITY OF LOS ALTOS · CALIFORNIA · INCORPORATED DECEMBER 1, 1952

REVISION	
Description	Date

DEPARTMENT OF PUBLIC WORKS

STANDARD PARKING STALL DETAILS

SU-17

STANDARD PLANS 2007

CITY OF LOS ALTOS

Landscaping Guidelines

The Architectural and Site Control Committee of the Planning Commission will use the following guidelines with respect to interior and perimeter landscaping:

1. Interior Landscaping

   a. In parking areas with 10 or more spaces, at least 5 percent of the interior of the parking area shall be landscaped. Hedges or other landscaping installed to meet the screening requirements are not to be included in computing the portion of interior lot area devoted to landscaping.

   b. Individual planting areas shall preferably be a minimum of 6 feet wide and 50 square feet in area.

   c. There shall be a minimum of one 15-gallon tree per 100 square feet of landscaped area, with a balance in shrub and ground cover.

2. Perimeter and Buffer Strips

   a. Unless otherwise specified by the Zoning Ordinance, a 4-foot planted strip shall be maintained when adjacent to streets. This shall be increased to 6 feet if car bumpers overhang.

   b. Unless otherwise specified by the Zoning Ordinance, there shall be a 4-foot planted strip at abutting property lines (6-foot if bumper overhangs.)

   c. Unless otherwise specified by the Zoning Ordinance, there shall be a 10-foot strip with dense screen planting when abutting property is residential.

   d. Unless otherwise specified by the Zoning Ordinance, an alternate to (c) is a minimum 5-foot-high fence with 4-foot planted strip.

3. Maintenance

   a. Protection for planted areas shall be provided by a 6-inch minimum height concrete curb.

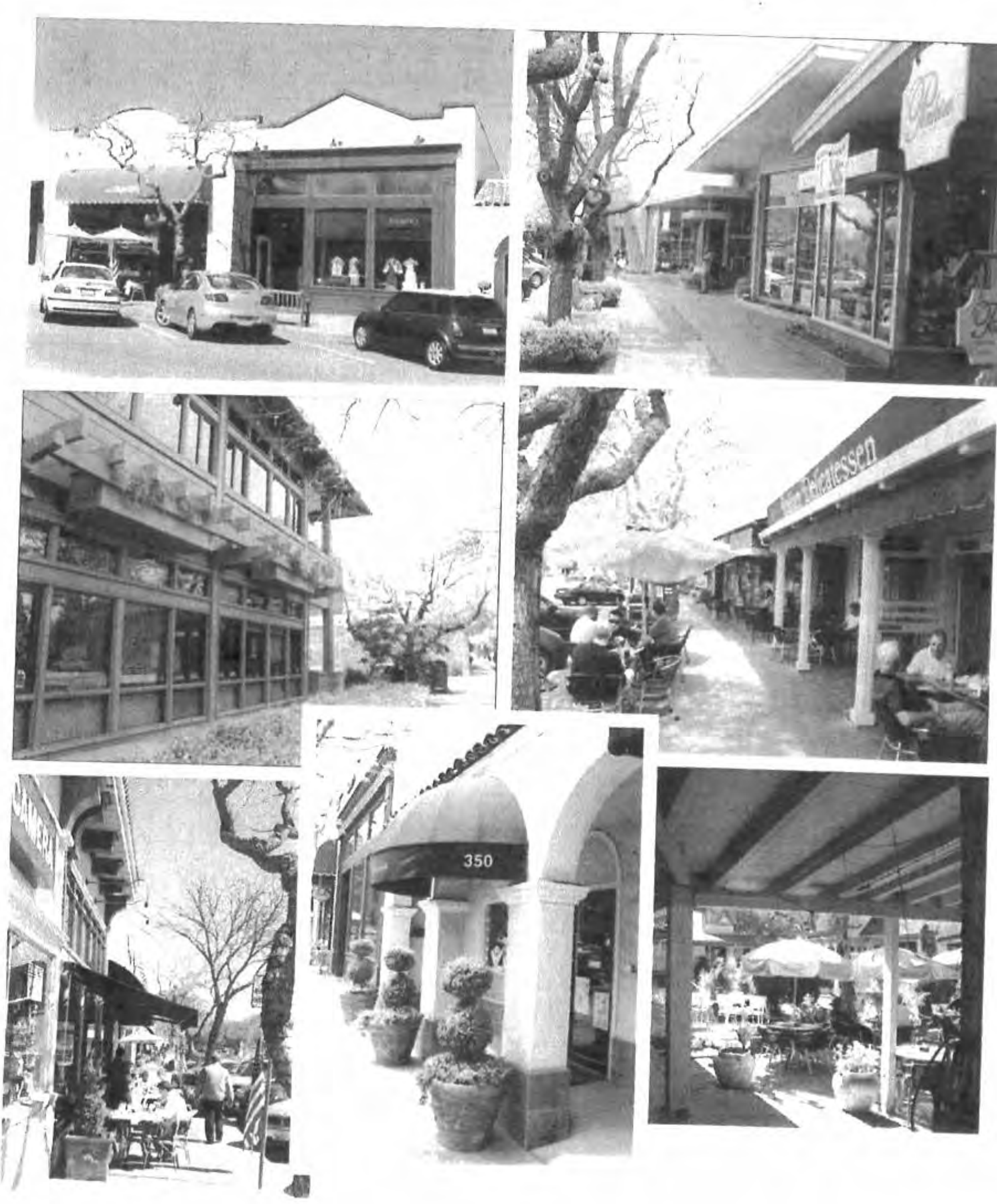
   b. Permanent automatic sprinklers are required.

4. Exceptions

   These requirements for landscaping may be waived or modified at the discretion of the Architectural and Site Control Committee when in their judgment the environment or particular locations would prove hostile to plants, trees, or shrubs.

Downtown Design Guidelines

City of Los Altos



Adopted
December 8, 2009

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INTRODUCTION

1

INTRODUCTION

Los Altos is blessed with a downtown of unique personality and vitality with a wide variety of shops, restaurants, offices, and services focused primarily on serving the local community. Constructed over a period of many decades, the development patterns are supportive of a strong pedestrian environment, and its structures offer a rich palette of the community's history.

Residents and visitors alike appreciate the special *Village Character* of Downtown Los Altos, but the identification of those features that are most responsible for the establishment of that highly prized character has often been elusive, and difficult to convey to property owners wishing to make changes to existing structures or build new ones. The intent of these design guidelines is to better describe the nature and elements of that *Village Character* by pointing out special features of existing downtown development and by examples from other communities with a similar village scale and character.

The design guidelines that follow provide practical and time-tested methods for preserving and enhancing the special qualities of the Downtown Los Altos village scale and character while offering ample opportunity for increased economic vitality. They supplement and reinforce the *Los Altos Downtown Design Plan*, and are intended to assist applicants in visualizing appropriate designs and in understanding community expectations, while providing fairness and consistency in the City's downtown development review and approval process.

COMMUNITY EXPECTATIONS

The community wishes to support and enhance the unique character of Downtown Los Altos. Property owners and developers will be expected to fit their projects into that existing fabric with sensitivity to their surroundings, and a recognition that the sum of the whole is more important than any single building or use. Buildings should be seen as unique, identifiable, and distinct from other buildings, but this distinction should be subtle, not dramatic.

A high quality of traditional architectural and landscape design is expected with abundant detail carried out in a manner that is authentic to the architectural style selected by the applicant.

Applicants are not required to meet all guidelines, but should be in substantial conformance with the design guidelines and the Required Findings set forth in the sidebar on page 11.

INTENT

These guidelines are intended to accomplish the following:

- **Support and enhance the unique Los Altos Downtown Village Character.**
- **Maintain and enhance an attractive Downtown pedestrian environment.**
- **Provide a mix of uses to meet the needs of community residents and visitors.**
- **Encourage increased Downtown vitality with additional retail shops, restaurants, offices and residents.**
- **Encourage creative design and architectural diversity.**
- **Encourage appropriate historic preservation.**
- **Encourage sustainable design and development.**
- **Establish a strong sense of entry at Downtown gateways.**
- **Provide adequate, attractive and convenient public parking.**
- **Encourage the maintenance and upgrading of uses, properties and signage.**
- **Encourage signage appropriate to the Downtown Village scale and Character.**
- **Implement the Los Altos Downtown Design Plan.**
  The city will consider development incentives for projects that implement or preserve elements of the Downtown Design Plan (e.g., paseos and courtyards) on a case-by-case basis.

For City staff assistance in the development review process, please contact the City's Planning Department at (650) 947-2750

Downtown Zoning

Downtown Design Guidelines Districts

APPLICABILITY

These design guidelines apply to all design review applications for new construction, additions, exterior facade changes, landscaping and signage.

The guidelines are in addition to and subordinate to the zoning regulations. The five downtown zoning districts covered by these design guidelines are shown on the map to the left. Full Zoning Code information for the downtown area can be found on the City's web site at:

www.losaltos.ca.gov

GUIDELINES ORGANIZATION

These guidelines are focused on the commercial areas contained within the triangle bounded by Foothill Expressway, San Antonio Road, and West Edith Avenue.

The guidelines are divided into three sections to reflect the major use areas of Downtown Los Altos. Note that some districts may contain more than one zoning category.

The guidelines set forth in the Downtown Core District establish the level of community expectations relative to architectural form, village character elements, and design quality and details for the whole of the downtown area. They should be reviewed by applicants for projects in all zones.

Downtown Core District

This district is the primary pedestrian retail area of downtown focused on Main Street and State Street. Its structures are closely related one to the next with a great deal of retail continuity, and a small scale village character. Most of the Downtown Core District is within the Downtown Parking District.

Mixed Commercial District

Located adjacent to San Antonio Road, this district, while still heavily pedestrian oriented, has a looser physical texture, somewhat larger scale buildings, and more stand alone structures. Supplemental design guidelines are provided to recognize the district's different physical conditions and uses. The intent is to accommodate larger uses while maintaining a scale and character that is supportive of downtown's village character.

First Street District

This area fronting on First Street contains a wide variety of uses, and is more strongly vehicle-oriented than the retail core area. The intent is to accommodate a wide mix of uses in a manner sensitive to the village character of downtown.

DOWNTOWN VILLAGE CHARACTER

2

DOWNTOWN VILLAGE CHARACTER

Downtown Los Altos has grown and changed over a span of decades through incremental changes and the efforts of many property and business owners. The area serves as the heart of the community through a mix of retail, office, residential, institutional, civic and service uses as well as social gathering spaces. Today, it is a closely knit series of subdistricts with slightly differing use emphases and design characteristics, held together by an overall village scale and character. That unique scale and character has been nurtured over the years, and has become even more of a community asset as many other downtowns in the Bay Area have grown ever larger and lost much of their earlier charm.

Village Character is often hard to define, and harder to preserve as retailing and office development trends in downtown areas have tended to favor national retail chains and prototypical designs. Yet, there are communities determined to preserve the uniqueness of their village scale and character downtowns. In the development of these design guidelines, existing features of Downtown Los Altos have been used as models, and lessons learned from other downtowns have been integrated as examples of effective ways to preserve and enhance village scale and character.

Some of the major features of village character are listed in the sidebar to the right, and illustrated by the annotated photographs of Downtown Los Altos below and on the following pages.

Individual tenant identities with wide diversity in parapet shapes, building heights and awnings

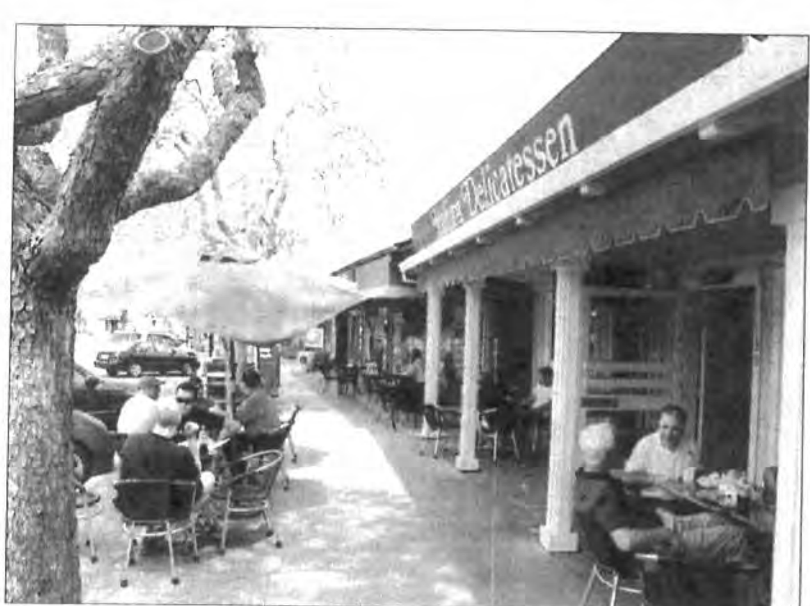
VILLAGE CHARACTER FEATURES

- **Traditional Village and Main Street architectural styles.**
- **Wide diversity of building forms.**
- **Larger buildings broken up into smaller segments.**
- **Courtyards and paseos with secondary uses.**
- **Mixture of continuous storefronts and stand alone buildings.**
- **Varied building top profiles and details.**
- **Wide variety of interesting architectural and storefront detail.**
- **Diverse mix of pedestrian scaled storefronts and signage.**
- **Individual store personalities.**
- **Variety of storefront profiles with entry vestibules, facade recesses and landscaping.**
- **Landscaping integrated with the storefronts**
- **Limited blank walls.**
- **Wide variety of natural building materials.**
- **Abundant landscaping and pedestrian amenities.**
- **Wide variety of pedestrian paving.**
- **Preserved historic resources.**
- **Pleasant and interesting parking-to-shopping paths.**
- **Second floors strongly related to the street front.**
- **Attractive parking areas.**
- **Residential units included in the downtown mix of uses.**
- **Public social gathering places.**
- **Integrated art and whimsical details.**
- **Use of natural materials.**
- **Subtle lighting.**

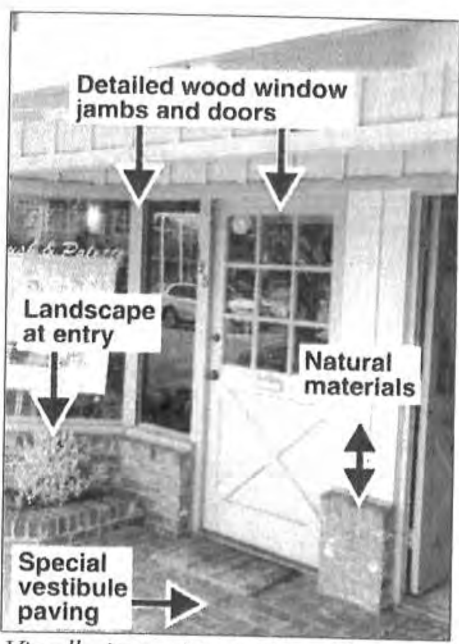
VILLAGE CHARACTER FEATURES

Landscaping and amenity buffers between pedestrians and parked cars

Great diversity in awnings, signage and sign lighting



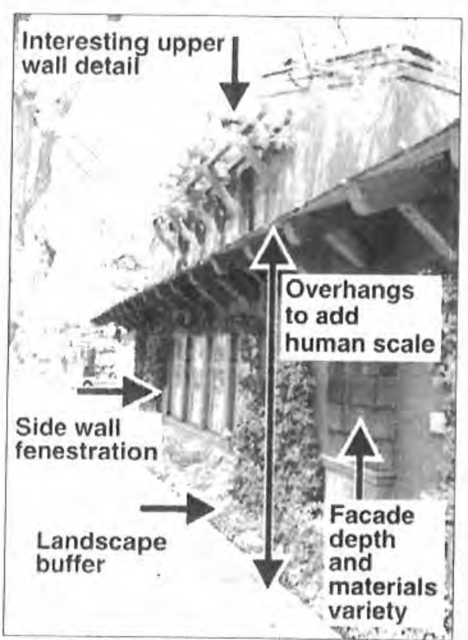
Facade setbacks and outside seating



Visually interesting entries with natural materials

Variety of building forms

VILLAGE CHARACTER FEATURES



Side wall breakup and visual interest

Pedestrian scale signage and landscaping with personality

Public social spaces

Strong presence of second floor uses on the street

Intimate courtyards and paseos

Residential units included in the downtown mix of uses

VILLAGE CHARACTER FEATURES

Small offices with personality and human scale

Larger offices with interesting human scale details and sensitive materials selection

Entry vestibules and friendly entry doors

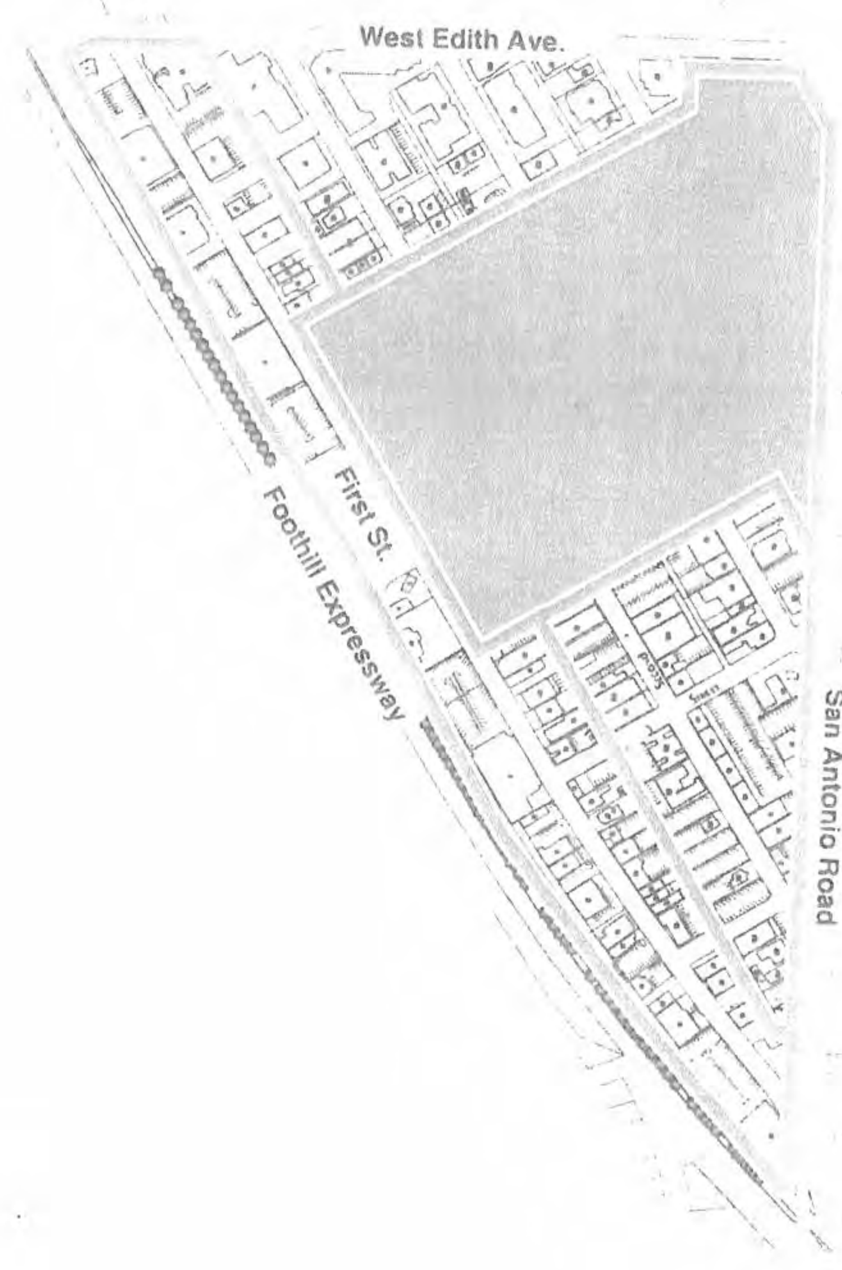
Reminders of the downtown's architectural history

Large offices broken up into village scale buildings

Pedestrian scaled storefronts

DOWNTOWN CORE DISTRICT

3



DOWNTOWN CORE DISTRICT

The Downtown Core District is the very heart of the downtown. It contains a wide diversity of retail and other uses, all contained within a strongly pedestrian-oriented environment. The size of the area makes parking once and visiting multiple stores relatively easy. And, street frontages are visually interesting. Individual buildings and shops have unique personalities, and a great deal of attention has been given to landscaping within both the public and private realms.

The goal of these design guidelines is to retain and enhance the uniqueness of the district, and to integrate changes to individual parcels into the fabric of the area – including parcels and buildings, which by historic standards, may be somewhat larger than the current pattern.

3.1 PEDESTRIAN ENVIRONMENT

The compactness of the Downtown Core is such that it lends itself well to parking once, and walking to multiple destinations. For that to be successful, the pedestrian experience at every point from getting out of one's car to moving throughout the downtown must be a pleasant one with clarity of organization and delight to the eye and senses.

The creation of a successful pedestrian environment is a joint public-private effort. The guidelines below address the major contributors to the creation of a village scale and character.

3.1.1 Provide uses and activities to enhance and complement the Downtown environment

Uses and activities do not normally fall within the purview of design guidelines. However, they are often critical to the success of individual projects and the downtown as a whole. The following are guidelines for the early planning stages of projects within the Downtown Core District.

a) Explore opportunities for office and residential uses on the second floor.

Second floor office and residential uses provide valuable support for downtown ground floor uses as well as a greater sense of place for the downtown. In addition, they have the potential for extending the hours of downtown utilization beyond normal retailing hours.

REQUIRED FINDINGS

For any commercial project in the city to receive design review approval, the Planning Commission must be able to make the following findings:

1. The proposal meets the goals, policies and objectives of the General Plan and any specific plan, design guidelines, and ordinance design criteria adopted for the specific district or area.

2. The proposal has architectural integrity, and has an appropriate relationship with other structures in the immediate area in terms of height, bulk and design.

3. Building mass is articulated to relate to the human scale, both horizontally and vertically. Building elevations have variation and depth, and avoid large blank wall surfaces. Residential or mixed-use residential projects incorporate elements that signal habitation, such as identifiable entrances, stairs, porches, bays and balconies.

4. Exterior materials and finishes convey quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, arcades and structural elements.

5. Landscaping is generous and inviting, and landscape and hardscape features are designed to complement the building and parking areas and to be integrated with the building architecture and the surrounding streetscape. Landscaping includes substantial street canopy, either in the public right-of-way or within the project frontage.

6. Signage is designed to complement the building architecture in terms of style, materials, colors and proportions.

7. Mechanical equipment is screened from public view, and the screening is designed to be consistent with the building architecture in form, material, and detailing.

8. Service, trash and utility areas are screened from public view, or are enclosed in structures that are consistent with the building architecture in materials and detailing.

Courtyards and paseos can increase downtown vitality and economic success through development intensity and tenant variety.

Clusters of varied dining opportunities can create a distinctive sense of place and an enhanced street environment after normal working hours.

Outdoor dining is strongly encouraged.

b) Explore opportunities for additional tenants through the use of courtyards and paseos.

Current uses are largely contained within one-story structures, often containing only a single tenant. Opportunities for additional retail, service commercial and office tenants, in courtyards or along paseos, abound. They can be especially useful for deep parcels where primary tenants do not need the full depth of the lot. Their use could enhance individual property utilization while supplying additional foot traffic to support other downtown uses. Existing paseos and courtyards should be preserved. Arbors and trellises are encouraged in paseos and courtyards (see example below).

Guidelines for Courtyards:

- Enclose on at least two sides by buildings.
- Remain open to the sky.
  (Arbors and trellises are allowed.)
- Minimum width: 20 feet.
- Minimum area: 400 square feet.

Guidelines for Paseos:

- Minimum width: 10 feet for through-block paseos.
  4 feet for entries to courtyards or individual single businesses.
- Courtyards along the paseo are encouraged.

c) Explore opportunities for active evening uses.

Consider nearby uses when planning for property design changes. There may be opportunities for adding to an existing cluster of after-hours uses with outdoor dining or complementary uses (e.g., bookstore for browsing near restaurants or coffee houses).

3.1.2 Design landscaping and open space to enhance the Downtown Village Character

Downtown open spaces and landscaping are as much responsible for the area's uniqueness as are the buildings. They provide the framework to unify an otherwise potentially chaotic collection of eclectic building designs into a strong sense of place. Some of the main features of Downtown's open space and landscape system include:

- Continuous pedestrian links between uses and between parking and storefront clusters

- Separations between pedestrians and automobiles
- Quiet and intimate open spaces off of main walkway areas
- Varied paving colors and textures
- Multiple and varied pedestrian amenities
- Sheltering Chinese Pistache trees along pedestrian paths
- Individualized landscaping at storefronts and shop entries
- Landscaping with seasonal blooms
- An overall sense of informality and variety

a) Design storefronts and building walls along pedestrian frontages to accommodate special paving and landscaping.

Use abundant landscaping to emphasize storefront entries.

Use landscaping to soften side walls along pedestrian walks.

Use special textured paving in open space areas to separate them from high traffic sidewalks and to provide a human scale.

b) Utilize textured paving in all paving areas adjacent to the public sidewalks.

Brick pavers and other modular units are ideal in providing a color and scale change to open space areas that are linked to or adjacent to sidewalk areas. They complement the smaller scale size of the areas, and assist in reinforcing the village scale of the downtown. One example is shown in the photograph to the upper right. Exposed aggregate concrete with brick or wood dividers, or permeable paving, are other acceptable alternatives. Avoid plain or colored concrete paving with scored joints. While less expensive than hand-placed pavers, it lacks the necessary visual quality to enhance the village character.

c) Enhance tree wells with landscaping.

Planting strips and pockets are effective in adding visual interest to sidewalks and open spaces, and serve well in separating pedestrians from adjacent traffic and parked cars. They also provide infiltration areas for stormwater runoff. Flowering plants or ones with distinctive forms and colors, as shown in the examples to the right, are especially appropriate.

Landscaped tree wells and planter strips are the desired approach to separating pedestrians and cars.

Courtyard and paseo treatment should be equal in quality and detail to the primary street frontages.

Incorporate fountains and other forms of public art into courtyards, paseos and other open spaces.

d) Design courtyards and paseos to invite pedestrian use and enhance adjacent uses.

Landscaping, pedestrian amenities, storefront treatments and signage in courtyards and paseos should be equal in quality and detail to the primary street frontages. One example is shown to the left.

e) Seek opportunities to incorporate fountains and public art into open spaces.

Fountains and other forms of public art add uniqueness to the downtown pedestrian environment, increase the attractiveness of the area to a wide range of tenants, and encourage longer shopping stays.

f) Provide abundant pedestrian amenities.

Benches and other places to sit, shade from the sun, and other amenities also encourage shoppers to linger and extend their time downtown. These amenities should be supportive of the desired village character and scale. Selection of natural materials, like wood, and high quality metal of a traditional design, rather than concrete, are most likely to be successful. Planter edges can also serve to provide convenient seating near shop fronts.

g) Integrate pedestrian scale lighting into the landscape of open spaces.

3.1.3 Design pedestrian and vehicle crossing points with attention to pedestrian safety

Ingress and egress points for parking lots and parking structures as well as pedestrian crosswalks are potential areas of pedestrian and vehicular movement conflicts.

a) Provide visual clues to alert drivers that pedestrians have the right of way.

- Provide special paving textures and/or colors for pedestrian crossings at intersections and parking areas.
- Provide special signage where driver visibility of crossing pedestrians might be limited.

b) Avoid landscaping and other obstructions that could limit views of traffic and pedestrians at crossing points.

- Keep landscaping below driver eye height.
- Avoid trees and signs that might block drivers' views of pedestrians about to cross their path.

3.1.4 Locate and design trash enclosures and private parking areas to be inconspicuous and enhance the visual environment

Adequate parking and trash disposal areas are essential to the success of the downtown. However, accommodating them must be accomplished in a manner that is inconspicuous and enhances the area's village scale and character.

a) Improve existing private parking lots when conversion to usable commercial space is not possible.

- Provide low walls and landscaping for parking spaces adjacent to streets and pedestrian ways.
- Soften walls with vine and/or tree landscaping. Two examples are shown below.

Use low walls to screen the view of cars from adjacent sidewalks and landscaping to soften blank walls.

Use trees and architectural features to buffer walls at parking and service areas.

b) Integrate trash enclosures into the building.

- Provide interior trash rooms whenever possible.
- Where trash enclosures are adjacent to buildings, match the trash enclosure building materials, details and colors to those of the building (See examples on page 36).
- Where integration into the building is not possible, provide upgraded trash enclosures with finished and durable materials as well as buffering landscaping. Avoid exposed concrete block unless enhanced split face block textures and colors are utilized, block joints are visually minimized with colored mortar, and extensive vine landscaping is provided to soften the walls' appearance. Three examples are shown below and to the left.

Mountain View

Valencia

3.2 ARCHITECTURE

Downtown Los Altos contains an eclectic mix of architectural styles and forms, indicative of its growth over many decades. While there are individual buildings of architectural merit, the character of downtown owes more to the wide stylistic variety, small scale, and visual richness of its structures than to their architectural distinction. In the future, the emphasis will be on combining individual architectural excellence with building forms and details that reinforce the small scale village character of the Downtown Core District. A diversity of design styles will be encouraged and expected.

Over time, the downtown retail core has evolved as an area with substantial pedestrian/retail continuity and an emphasis upon an expression of the unique personalities of its individual businesses. The following design guidelines are intended to reinforce that existing framework, scale and character.

3.2.1 Continue the pattern and scale established by existing buildings

a) Maintain and reinforce the underlying downtown 25-foot module along all street frontages. Some techniques for this emphasis include the following:

Changing roof parapet height and/or shape.

Utilizing different building heights, architectural styles, and forms.

ARCHITECTURAL STYLE

These guidelines are not intended to establish or dictate a specific style beyond the desire to maintain Downtown Los Altos' small town character and attention to human scale and detail. In general, diverse and traditional architectural styles that have stood the test of time are preferred.

Designs merely repeated from other cities or without thought to the special qualities of Los Altos are strongly discouraged, and unlikely to be accepted.

CORPORATE ARCHITECTURE

The City will work with applicants to adapt critical functional features of prototype plans to their Los Altos sites, but will not accept standard plans, building forms, elevations, materials, or colors that do not relate to the site, adjacent development, or Los Altos' community character.

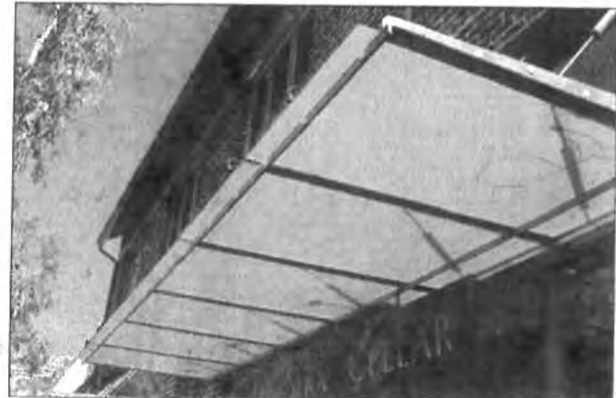
Applicants are encouraged to meet early in the process with the City's Planning Services Department staff to discuss their plans and building prototypes.

SUSTAINABLE DESIGN

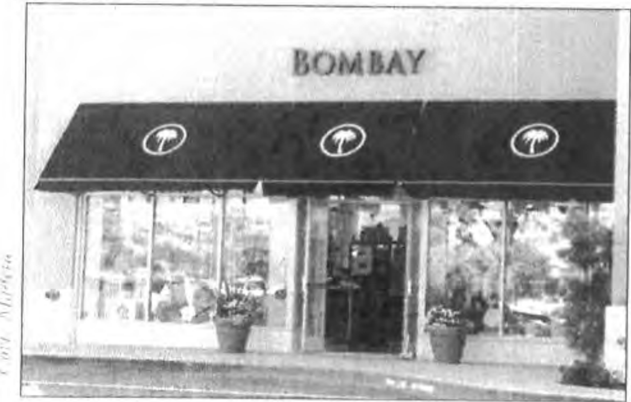
The City of Los Altos supports sustainable design in the construction of new facilities and the remodeling of existing buildings. Applicants are expected to utilize creativity in adapting sustainable design elements to the unique qualities of Downtown Los Altos' visual environment. City staff will work closely with applicants to achieve this goal.

Special attention will be expected of all applicants in the following areas:

- Use of energy efficient HVAC systems
- Use of solar energy
- Reduction of energy demands through simple techniques such as operable windows and sun control methods
- Minimization of storm water runoff
- Use of recycled materials
- Maximization of insulation and energy efficient lighting



Utilizing different awning forms and/or materials, as shown above and below, matching the predominant building module.



Defining storefronts with projecting piers and emphasizing tenants' unique store personalities.

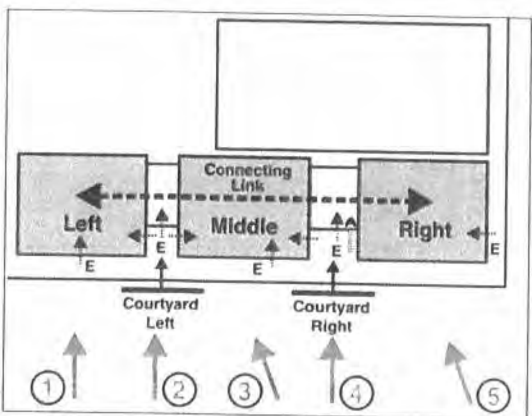
Changing storefront type and details.

Reinforcing the module with second floor projections and details.

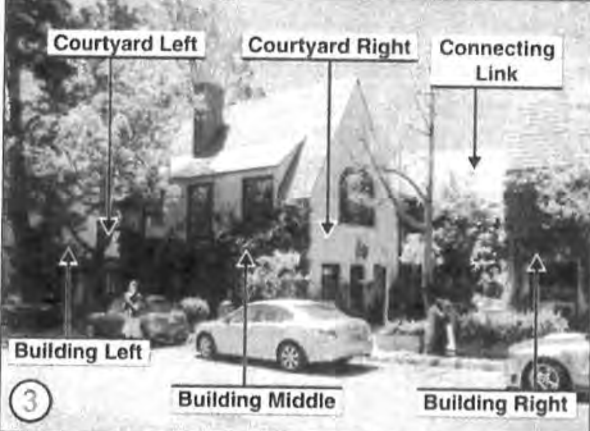
b) **Break larger buildings up into smaller components.**

- Divide longer facades into individual smaller segments with individual design forms and architectural styles. One option is shown on this page. Development incentives may be available.

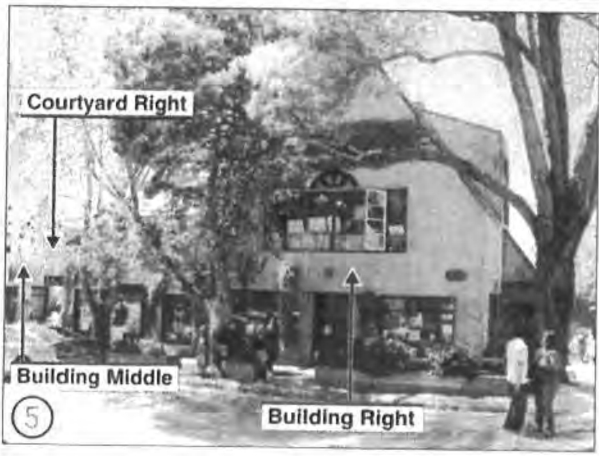
- Provide recessed courtyard entries between individualized building segments. These courtyards should be at least 20 feet wide and 20 feet deep with substantial landscaping and pedestrian amenities. These are excellent locations for entries to shops and/or to second floor uses. The example of a larger structure in Carmel which utilized these techniques is shown in the diagram and photos on this page. See also the photo example from Los Gatos at the bottom of page 31.



Left courtyard features shop entries, display windows. special paving and landscaping.



Right courtyard features shop entries, stairs to second floor uses, special paving and landscaping.



Differing architectural forms and styles separated by courtyards assist in fitting this large building complex into a village scale.

Front facades are predominantly display windows and entries.

Sidewall display window provides a transition between the primary and secondary frontages.

Sidewall piers relate the sidewall facade to the shop fronts, and landscaping softens the wall.

These contemporary facades fit into this streetscape due to their small scale, and the use of high quality materials and crisp detailing.

c) Create continuous building frontages.

• Avoid blank walls along sidewalks and paseos. Display windows and entries should occupy at least 60% of the wall areas on primary frontages. Walls along side streets and paseos may have a lesser amount of glazing, but should have display windows – especially near the primary facade. Other non-glazed wall areas should be enhanced with wall plane changes, landscaping (e.g., landscaped trellises and lattices), and/or special architectural detailing (see example to the left).

• Minimize pedestrian/vehicle conflicts by locating any driveway or loading areas away from main pedestrian routes.

3.2.2 Design for diversity with sensitivity to adjacent development

a) Select traditional architectural styles.

• Traditional architectural styles have been developed over an extended period of time, and generally fit comfortably with other traditional styles in a downtown commercial environment. Within the traditional styles of building form and facade organization, however, design creativity is encouraged to adapt the style to current needs and a fresh look. Examples of traditional commercial styles may be found in the resources identified in the sidebar on page 27. Adaptations of traditional residential styles may also be appropriate to the village character of Downtown Los Altos.

• The depth and authenticity of detailing found in traditional architectural styles will best harmonize well with current buildings in Downtown Los Altos. However, well designed modern facade designs may be acceptable, depending on location, materials, and the quality of the details. They will be considered on a case-by-case basis. Examples are shown below and to the bottom left.

The warmth of the materials and the variety of smaller scale detailing help this modern facade to fit into a streetscape of diverse architecture.

b) Relate the facade designs to adjacent structures.

- Respect the scale of adjacent buildings.
- Relate the placement of defining elements and details to those on adjacent structures. One example from Downtown Los Altos is shown below.

Matching parapet and window heights help relate these adjacent buildings.

c) Design with architectural integrity and continuity.

- Exterior details should be authentic to the style. Sources of assistance in understanding traditional architectural design principles and details may be found in the reference sources noted in the sidebar to the right.
- Design buildings as whole units. The design of upper floors and ground level walls, piers and other supporting elements should be designed as a unified whole.
- Preserve historically significant structures, whenever possible. Refer to Appendix B for a list of downtown historic resources.
- Preserve worthy elements of the existing buildings. Recycle and reuse distinctive design elements.

The upper and lower facades of this building work as one unified structure.

- Where buildings were once architecturally distinctive but have been altered over time, restore the lost integrity of form and details, if possible.

ARCHITECTURAL STYLES AND DETAILS RESOURCES

- **The Buildings of Main Street: A Guide to American Commercial Architecture**
  Richard Longstreth
  Rowman Atimira 2000
- **Traditional Construction Patterns: Design & Detail Rules of Thumb**
  Stephen A. Mouzon
  McGraw-Hill 2004

Avoid tall entries like the one above in favor of pedestrian scaled entries like the one shown below.

Operable windows are encouraged for restaurants, cafes and coffee shops.

3.2.3 Design to enhance Downtown's Village Character and pedestrian scale

a) Vary storefront treatments.

A strong feature of Downtown Los Altos' village character is the variety and individuality of the storefronts.

- Provide significant variations between adjacent storefronts occupied by different businesses, including those within the same building structure. These variations should include display windows, entry doors, awnings and signage. For frontages over twenty-five feet in width with the same tenant, variations should also be provided to avoid long facades of the same storefront design.
- Size store entries to the human figure and normal entry door heights. Avoid over scaled, tall entries such as the one to the above left.
- A wide variety of storefront treatments is desirable. Some may have bulkheads below display windows while others may have larger areas of glass extending to the floor.
- Outdoor dining and operable windows are strongly encouraged for restaurants and cafes. Two examples of operable windows are shown below to the left.

b) Design storefronts to allow landscaping and special paving.

- Landscaping may occur in a variety of forms as shown in the examples below and on the following page. Flowers are strongly encouraged to add color and interest.
- See also Guidelines 3.1.2 a) on page 19.

Permanent brick planters.

Planters and climbing vines.

Built-in planters and hanging pots.

Trellises and lattices with climbing vines.

Recessed window boxes.

Mixed treatment in larger setbacks.

Window box planters, paving pockets and climbing vines.

Landscaped setbacks and potted plants.

Planter pots.

Wall-mounted pots.

Vestibules need not be rectangular in shape.

Vestibules with more facets can be used to increase the exposure of goods in storefront windows.

A simple, narrow vestibule with a well detailed door may work best for narrow store frontages.

c) **Provide entry vestibules.**

Vestibules emphasize shop entries, and allow ingress and egress to businesses without impeding pedestrian movement on adjacent sidewalks. They also allow for increasing display window exposure.

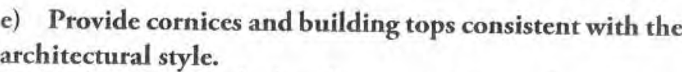
- Vestibules may have a wide variety of shapes, from simple rectangular indentations to larger and more complex shapes. Some examples are shown in photos to the left.
- Use special paving materials and colors to clearly define the vestibule areas and separate them from the adjacent public sidewalk.
- The use of wood doors with glazing and raised panel details, rather than metal and glass doors, is strongly encouraged to add warmth to the shop entries.
- Dutch doors and doors with divided light windows are encouraged to link the shop interior to passing pedestrian traffic and add visual interest to the entry.

A wood door and brick paving contribute to this inviting shop entry.

Dutch doors offer an inviting, friendly entry to passing shoppers.

d) Utilize awnings and canopies at windows and entries.

- A variety of awning types is encouraged. They may be traditional, as shown to the right, or unique (see the wood shutter awnings below). They should also be distinct to the store's tenant. For multiple tenant buildings, avoid making all of the awnings the same.
- Keep the mounting height at a human scale - with the valence height not more than 8 feet above the sidewalk level.

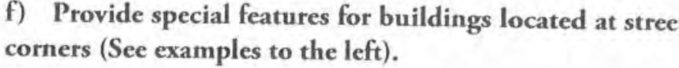


e) Provide cornices and building tops consistent with the architectural style.

- Avoid unfinished wall tops in favor of projecting cornice features or roof overhangs. Examples are shown below and to the right.

Designing larger buildings to resemble a collection of smaller individual buildings, as shown to the left, is preferred in the Downtown Core. Larger structures with varied store fronts, as shown above, may be considered on a case-by-case basis.

Architectural features and shop entries are encouraged on corner parcels.



f) Provide special features for buildings located at street corners (See examples to the left).

g) Emphasize entries and display windows.

- Make shop entries as open and inviting as possible.
- Consider landscaping and special paving to add visual interest.
- Keep all window glazing transparent. Avoid tinted glass in favor of awnings and other shading devices for sun control.

h) Utilize natural materials.

Wood, stone, and brick can provide warmth at storefronts, and enhance the feeling of village scale and character.

- Wood doors and window frames are strongly encouraged.
- Avoid synthetic stone.
- Tile is discouraged except for bulkheads below display windows and for decorative accents. One good example is shown below.

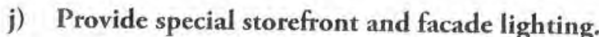
Landscaping and open doors can add great appeal to both individual shops and the street as a whole

Providing large display windows and inviting entries enliven the street frontage, and encourage shoppers to enter the store.

i) Enhance the pedestrian experience with interesting architectural details.

- Consider bay window displays where walls might otherwise be blank, as shown in the example below.

- Architectural details should be high quality and appropriate to the architectural style.
- Individual trim elements should be scaled to be or resemble proportions that could be handled and installed by hand. Elements on any portion of the structure should not be inflated in size to respond strictly to building scale, but should also have a relationship with human scale.



j) Provide special storefront and facade lighting.

Nighttime lighting of the building and display windows can add greatly to the downtown's sense of vitality and safety, and can encourage window shopping by those who may be dining in downtown restaurants.

- Lighting should be subtle.
- The use of decorative lighting, concealed fixtures, or pin lights are all possibilities.
- Decorative lighting fixtures should be appropriate to the architectural style of the building and storefront.

Small details like these pots on shelves at the restaurant entry can add greatly to the village scale and character.

True or simulated divided light windows, decorative lights, and landscaping can add special visual interest to a storefront.

These small decorative wall-mounted fixtures and the concealed lighting of the display window provide subtle lighting for the building, merchandise and signage.

Carmel

Tile stairs and business directory sign

Pasadena

Awnings and window boxes at the second level help relate those uses to the street level

Carmel

Second floor overhang and wrought iron gate at second floor entry

3.2.4 Design second floor facades to complement the streetscape and Village Character

a) Provide second floor entries that are equal in quality and detail to storefront entries.

Some techniques to accomplish this emphasis include: See example to the left and below.

- Special awning or roof element.
- Wrought iron gate.
- Decorative tile stair treads and risers.
- Special lights.
- Decorative street address numbers or tiles.
- Plaque signs for upper floor business tenants.

Carmel

Second floor entry awning

b) Relate second floor uses to the pedestrian environment on the street level.

Some methods of achieving this include the following: See examples on this and the following page.

- Second floor overhangs
- Bay windows
- Decks
- Balconies
- Planters.

Carmel

Projecting bay windows

Upper floor deck

Small balcony with landscaping

Wide balcony

Colorful flower pots

c) **Utilize operable windows in traditional styles.**

- Recess windows at least 3 inches from the face of the wall.
- Use vertical proportions for individual windows.
- Separate individual or groups of windows by solid wall masses, and treat windows as punched openings.
- Avoid ribbon windows and curtain wall treatments.

Building facades facing parking lots may be treated the same as street-facing facades, as above, or may be treated in a more simple manner, as below.

3.2.5 Design compatible parking plaza oriented entries and facades

Facades facing parking lots may be treated similarly to street-facing facades if they serve as a second entry, or they may be treated more simply, but will be expected to receive consistent design attention and landscaping. Two current examples in the Downtown Core District are shown below.

3.2.6 Integrate utilities and building services into the overall building design

a) Integrate mechanical and trash rooms into the building whenever possible.

- Where not feasible, use screen walls to match the design, materials and finish of those of the main building (See examples below).

b) Add trellises, lattices, and landscaping to screen and soften exterior mechanical equipment and trash enclosures. *Two examples are shown below.*

c) Rooftop mechanical equipment shall be concealed from public view (street or adjacent buildings).

- Existing rooftop mechanical equipment shall be concealed or relocated out of view whenever a roof is replaced and when equipment is upgraded or replaced to any extent that requires a building permit.

- Locate on a portion of the rooftop that is not visible to the public or locate behind roof forms, parapets or screens that are compatible with the architectural character of the structure.

3.2.7 Design larger structures to be sensitive to the unique scale and character of Downtown Los Altos

a) Adapt corporate prototype designs to relate both in form and scale to the adjacent downtown fabric.

- An Apple store prototype example in Walnut Creek and its modification for Downtown Los Gatos, shown to the right, illustrates one way in which a corporate prototype design can be modified to fit into a small scale downtown environment.

- The GAP store in Los Gatos, shown below, has been designed to appear as two structures to better fit into the existing downtown fabric.

This store in Walnut Creek illustrates the standard Apple prototype.

The standard Apple prototype was modified in the Town of Los Gatos to better fit with the existing downtown scale and character.

b) Avoid architectural styles and monumental building elements that do not relate to the small human scale of Downtown Los Altos.

- The structures shown below and to the right are well designed, but would be out of place in Downtown Los Altos. These are all examples of what should not be done.

Don't use exaggerated tall doors

Don't use over-size building elements

Don't use large arches

c) Provide special design treatment for visible sidewalls of structures that are taller than their immediate neighbors.

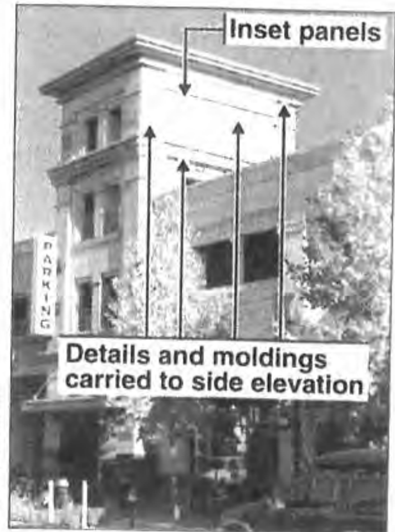
- Sidewall windows are encouraged where codes allow and adequate fire protection can be provided.
- Employ design techniques to relate the visible sidewalls to front facades. Some common techniques include the following:
  * Repeating front facade finished materials, decorative details and mouldings.
  * Carrying front facade cornices and wall top projections around all sides of the upper floor.
  * Providing varied parapet heights to avoid a box-like appearance.
  * Utilizing gable and hip roofs to vary the height and appearance of side walls.
  * Treating side walls with inset panels.
  * Integrating interesting architectural details.
  * Stepping back the front facade of upper floors to vary the side wall profile.

Carmel

Telluride

Telluride

Valencia



Walnut Creek

3.2.8 Design and detail parking structures to complement Downtown's Village Scale and Character

a) Locate vehicular entries to allow ingress and egress from streets other than Main Street and State Street.

b) Place as much of the parking below grade as possible.

c) Provide commercial uses on ground floors facing pedestrian-oriented streets and walkways.

d) Provide a minimum 5-foot wide landscape strip to accommodate low shrubs, flowering plants, and vertical trees along all edges that do not have active commercial frontages.

e) Integrate extensive landscaping into the parking structure edges and entries.

f) Integrate pedestrian entries with adjacent commercial uses.

g) Provide secondary ground floor pedestrian entries when the structure is adjacent to commercial core service alleys containing rear shop entries or paseo entries.

h) Design parking structures to be visually compatible with other Downtown Core District commercial buildings.

Some techniques include:

- Breaking up the building mass and height to match the predominant 25-foot wide module of the core area.
- Designing the structure as a downtown building, rather than as a parking structure.

Ground floor commercial uses in the parking structure example shown above assist in maintaining retail and pedestrian continuity.

This parking structure has been designed with pilasters, and with varied facade depths, and details to relate to the module and style of nearby retail shops.

Minimize parking garage entries, and integrate parking structures with adjacent commercial uses, as shown above.

Sacramento

Facade materials and opening proportions help relate this parking structure to its surrounding neighbors.

San Mateo

Ground level commercial uses and upper floor setbacks are techniques that relate parking structures to adjacent smaller scale development.

- Utilizing finished exterior wall materials (e.g., brick and/or stucco), and decorative trim elements.
- Providing natural light and ventilation with openings that are similar to the proportions of commercial building windows.
- Screening cars from street view.
- Visually screening interior light fixtures from street and adjacent buildings view.
- Incorporating medallions and/or decorative lighting fixtures into exterior ground floor facades.

i) Step back street-facing facades, if feasible, where they are adjacent to lower buildings (See example to the left).

j) Design facades facing the service drives for Downtown Core District commercial buildings as visually attractive neighbors that will be compatible with those adjacent secondary entries and outdoor use spaces. Two multi-use service alley examples are shown below.

k) Special attention should be given to landscaping, window fenestration, lighting, variations in alley paving materials and textures, and other elements that add human scale and visual interest.

Pasadena

Pasadena

3.2.9 Reinforce a sense of entry at Downtown Gateways

a) Provide special design treatments on sites that mark entries to the Downtown Core District.

- Sites for special treatment are identified on the adjacent map.
- Relate the improvements to any special public entry improvements at these entry intersections. Broader concepts for these intersections are outlined in the *Los Altos Downtown Design Plan.*

b) Select design treatments that are appropriate for the site, the architectural style of the structure, and the uses accommodated. Some elements that may be considered include:

- Tower elements
- Sloped roof structures
- Special uses with outdoor plazas
- Fountains
- Special landscape features
- Special lighting
- Increased architectural details
- City identity signing

Downtown Gateways

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3.3 SIGNAGE

Signage is critical to the economic viability of individual businesses as well as to the downtown as a whole. This importance must be balanced with the goals of providing a strong sense of community, and using the design of signage to reinforce the village character and ambiance of Downtown Los Altos.

Applicants should refer to Chapter 11.04 Signs of the Los Altos Zoning Ordinance which contains relevant definitions and the basic standards which will be applied to commercial signage. The guidelines in this chapter supplement the Sign Ordinance, and are intended to provide more detail in regard to good signage design principles and community expectations that signage will be consistent with downtown's village scale and character.

The sign examples shown may not be appropriate for all locations. Each sign will be reviewed in the context of the proposed project architecture and site.

3.3.1 Select signs appropriate to the pedestrian scale environment of the Downtown Core District

a) Select and scale signs that are oriented to pedestrians rather than to passing motorists. Sign types that are most likely to be successful and approved are the following:

- Wall Signs
- Awning Signs
- Window Signs
- Projecting Signs
- Hanging Signs
- Plaque Signs

GOOD SIGN DESIGN PRINCIPLES

Design easily readable signs.

• Avoid excessive wording and advertising messages. Signs are most effective when their messages can be grasped quickly. Too many words or images compete for attention and reduce the readability of the sign.

• Use no more than two letter font types per sign. The primary purpose of a sign is to quickly convey information to passing pedestrians and motorists. More than two letter styles make readability more difficult. A simple logo with an additional type style may be considered.

• Keep the size of letters and graphics in proportion to overall sign area. Text and graphics are difficult to read if they crowd the borders of the sign. Smaller letters with space around them will have more impact than larger letters with limited space around them. Generally limit the width and height of lettering and graphics to 85% of the overall sign width and height. A good rule of thumb is to limit the amount of sign information to no more than 50 to 55% of the overall sign area.

Use high quality materials

• Appropriate materials include finished wood, metal and, for projecting banner signs, woven fabric. Plastic sign materials and signs painted directly onto building surfaces are strongly discouraged..

• The sign materials and design should be related to those of the building on which it is mounted, and all sign edges should be cleanly finished.

Use simple sign shapes

• Geometrical shapes such as rectangles, squares, circles, ovals and triangles are visually stable shapes which help focus attention on the sign message. These should be used in almost all cases. Combinations of geometric shapes will also generally produce a good sign shape.

3.3.2 WALL SIGNS

Wall signs are panels or individual letters mounted on and parallel to a building wall or a roof fascia.

a) **Limit sign information.**

• Generally, limit sign information to the business name. Graphic logos, date of building construction, address, and other elements may be allowed at the discretion of the City.

b) **Place signs within a clean *Signable Area.***

• The *Signable Area* should:

1) Be relatively flat.

2) Not contain doors or windows.

3) Not include projecting molding or trim.

4) Be in reasonable proportion to the overall facade.

5) Generally not exceed 15% of the building facade.

• If a building does not have a good location for a wall sign, use other allowed types such as awning, window, or projecting signs.

c) **Use sign materials which project slightly from the face of the building.**

• Signs painted directly onto wall surfaces are strongly discouraged since a change in tenant could require a major facade repainting.

• Use either individually applied letters to the face of the wall, or apply sign letters to a board or panel mounted on the wall face. Sign copy and graphics applied to a board or panel may consist of any of the following:

* Individual letters and graphics of wood, metal or similar materials
* Individual letters and graphics carved into the surface of a wood panel
* Letters and graphics painted directly onto the surface of the panel

d) **Night lighting is encouraged.**

• Direct exterior illumination with well designed and shielded spotlights is the preferred lighting method.

• Interior illuminated individual letters are strongly discouraged.

• Interior illuminated *can signs* which include multiple letters on a translucent background within a single sign enclosure are not allowed.

• Neon signs are discouraged, but may be allowed and evaluated on a case-by-case basis.

e) **Conceal all sign and sign lighting raceways and other connections.**

f) **Maximum letter height.**
Sign height and width should be appropriate to the building on which it is placed and the distance of the sign from fronting streets. Generally, wall sign letter heights should not exceed 12 inches in height except along San Antonio Road where 18 inch high letters may be considered.

Santa Rosa

g) **Relate sign colors to building colors.**
• Select wall sign colors to complement the building and storefront colors. For colors other than black, select from color ranges which are analogous and complementary to storefront and/or building colors.

• Corporate branding colors will be considered, but will not be automatically approved if they are considered out of place with the building or the surrounding environment. A change of color or the use of toned down colors in the same hue family may be required in place of brighter standard corporate colors.

3.3.3 AWNING SIGNS

Awning signs consist of letters and graphics applied directly to the face or valence of awnings. Awning signs are often used effectively in combination with window signs.

Healdsburg

a) **Place signs for easy visibility.**
• Apply signs to awning front valences (i.e., the flat vertical surface of awnings) or to sloped awning faces with a slope of at least 2 to 1.

b) **Limit the signage information on awnings.**
• Since awning signs will often be viewed from passing vehicles, the amount of information which can be effectively conveyed is limited. Keeping sign text short will allow viewers to better comprehend and remember the message.

• Generally, limit awning signs to the business name, business logo, services or type of business (e.g., French Cuisine), and/or the business address number.

• Limit the size of logos or text placed on awning sloped faces to a maximum of 15% of the sloped surface areas.

• Limit sign width on awning valences to a maximum of 85% of the awning width. Limit the letter height to a maximum of 85% of the valence height.

Sonoma

c) **Avoid interior illuminated awnings.**
Backlit awnings that make the entire awning a large sign are not allowed. Signage on the awning's sloped face may be illuminated by shielded and attractive directional spot lights.

Burlingame

Los Gatos

3.3.4 WINDOW SIGNS

Window signs are primarily oriented to passing pedestrians, and are generally applied to the inside of display windows.

a) **Limit the amount of signage used.**
Window signs should be limited to a maximum of 25% of any individual window, and an aggregate area of no more than 10% of all ground floor windows on any building face.

b) **Limit the size of lettering.**
The maximum height of letters should be 10 inches.

c) **Consider the use of logos and creative sign type.**
Graphic logos and images along with special text formats can add personality and interest to window signs.

d) **Use high quality materials and application methods.**
Limit window sign materials to the following:

- Paint or vinyl film applied directly to the face of the window.
- Wood or metal panels with applied lettering.

Oakland

Mill Valley

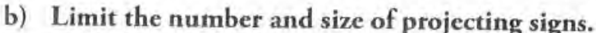
Los Gatos

San Francisco

3.3.5 PROJECTING SIGNS

Projecting signs are relatively flat, two-sided solid panels attached to brackets which are mounted on and perpendicular to the face of buildings and storefronts. In addition to text, they may include graphic images that express the unique personality of an individual business.

a) **Use high quality materials.**
Use wood, metal or non-glossy fabrics. Avoid plastics.

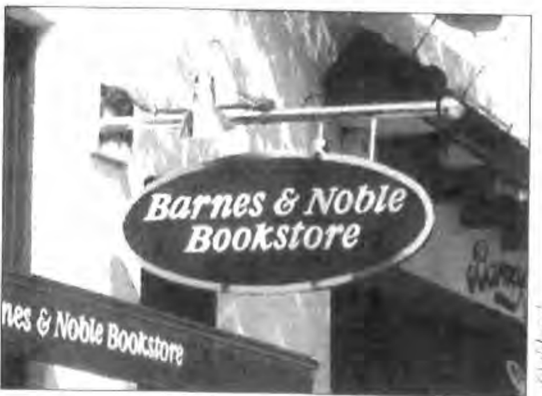


b) **Limit the number and size of projecting signs.**
- Use no more than one projecting sign per business frontage.
- Limit the size of any projecting sign to five square feet.
- Project signs no more than 36 inches from the building face, and provide at least 6 inches between the inside edge of the sign and the building.

c) **Relate the design of projecting signs and supports to the character of the building.**
- Simple round or square horizontal supports with capped ends, painted black or white, are generally acceptable.
- More decorative approaches may be desirable when appropriate to the sign and/or architectural character of the building.

d) **Position projecting signs to complement the building's architectural details.**
Locate solid panel signs below the first floor ceiling line, or no more than 14 feet above the sidewalk, whichever is less. Provide at least 8 feet from the bottom of projecting signs to the ground in pedestrian areas.

e) **Provide sign lighting only with shielded spotlights.**
- Utilize high quality fixtures such as cylinder spots or decorative fixtures. Avoid exposed standard spot and flood light bulbs.
- Design light supports to complement the design of the sign and building facade.



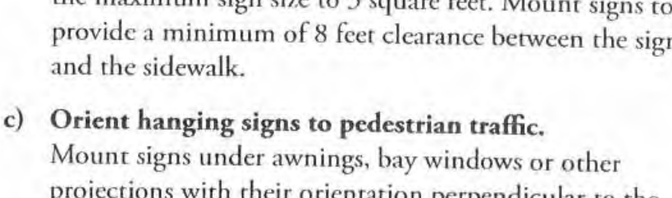
Blade signs are a smaller form of projecting sign.

Laguna Beach

3.3.6 HANGING SIGNS

Hanging signs are relatively flat panels, generally two-sided, which are similar to projecting signs, but are smaller and suspended below awnings, bay windows, balconies, and similar projections. They are intended primarily for business identification to pedestrians passing on the sidewalk.

a) **Use high quality materials.**
Use wood or metal and avoid shiny plastic or fabric. Finish all exposed edges. Suspend signs with metal rods, small scale chain, cable, or hooks.



b) **Limit the number and size of hanging signs.**
Use no more than one hanging sign per business. Limit the maximum sign size to 3 square feet. Mount signs to provide a minimum of 8 feet clearance between the sign and the sidewalk.

c) **Orient hanging signs to pedestrian traffic.**
Mount signs under awnings, bay windows or other projections with their orientation perpendicular to the building face so that they will be visible to pedestrians passing on the sidewalk. If hanging signs for multiple businesses are placed along a building frontage, they should all be mounted with their bottom edge the same distance above the sidewalk.

Laguna Beach

Mountain View

Carmel

Oakland

3.3.7 PLAQUE SIGNS

Plaque signs are pedestrian-oriented flat panels mounted to wall surfaces near business entries, upper floor entries, and courtyards. They include signs that identify a specific business, directory signs for multiple businesses, and menu display boxes for restaurants.

a) **Limit the location and size of plaque signs.**
Locate signs only on wall surfaces adjacent to tenant entries or entry passageways to off-street courtyards. Plaque signs may identify a single business or multiple businesses occupying an upper floor or courtyard.

Santa Barbara

Los Gatos

Santa Barbara

Santa Fe

b) **Use plaque signs for the display of restaurant menus.**
A restaurant district is enhanced when a variety of restaurants share the area and customers are able to walk from one to the next to compare menus and prices. Attractive menu boxes with lighting assist in this process. Menu signs or boxes should have internal indirect lighting (e.g., bulbs located in the frame to cast direct light over the menu surface) or direct lighting using decorative fixtures.

Sausalito

San Francisco

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MIXED COMMERCIAL DISTRICT

4

MIXED COMMERCIAL DISTRICT

Owners of properties and businesses in this district should review the guidelines for the Downtown Core District. While projects in this district may be somewhat larger and less retail-oriented than those in the downtown core, they are still very much a part of the downtown village, and the village character and scale emphasis underlying those guidelines will be expected of new buildings and changes to existing properties in this district. The intent of these guidelines and the zoning standards established for this district are summarized in the sidebar to the right.

The primary differences between development in this district and the downtown core include:

- A wider range of uses is allowed.
- Required parking must be provided on-site rather than in common parking district lots or structures.
- Setbacks are required along all street fronts, and in many cases at the rear of parcels.
- A 50-foot building module applies, rather than the 25-foot module in the downtown core.
- Three-story buildings are allowed up to forty-five feet in height.*

** Pending a Zoning Code change approval by the City Council to increase the height limit in this zone from its current maximum of forty feet.*

INTENT

A. Promote the implementation of the Los Altos Downtown Design Plan.

B. Support and enhance the downtown Los Altos village atmosphere.

C. Allow latitude for creative design and architectural variety.

D. Respect the scale and character of the area immediately surrounding the existing downtown pedestrian district.

E. Provide pedestrian amenities such as paseos, outdoor public spaces and outdoor seating.

F. Establish a sense of entry into the downtown.

G. Encourage historic preservation for those buildings listed on the city's historic resources inventory.

H. Encourage the upgrading of building exteriors, signs, passageways and rear entries.

I. Provide for a full range of retail, office, and service uses appropriate to downtown.

J. Improve the visual appeal and pedestrian orientation of the downtown.

K. Encourage the use of solar, photo voltaic, and other energy conserving devices.

This low wall separates the parking lot from the sidewalk/driveway at this Los Altos office building.

A low box hedge is used here to buffer the pedestrian from the adjacent parking lot.

4.1 PEDESTRIAN ENVIRONMENT

A strong pedestrian orientation is expected. In addition to the guidelines below, the Downtown Core District Pedestrian Environment guidelines on pages 17-22 will also apply to this district.

4.1.1 Minimize the impact of parking on pedestrian circulation and the pedestrian environment

a) Underground parking is strongly encouraged.

b) Locate parking at the rear of parcels.

c) Limit the exposure of surface parking lots along street frontages as much as possible.

d) Provide access to parking from passages and less traveled pedestrian routes whenever possible.

e) Limit the width of parking access drives as much as possible.

f) Limit access and parking lot paving to those areas that are functionally required, and provide landscaping in all other areas.

g) Where parking lots must abut a public street or a pedestrian walkway, provide a minimum landscaped setback of 5 feet, and provide low walls or box hedges to screen parked cars from direct view. Two examples of screening are shown to the left.

h) Special textured paving that is porous and minimizes water run-off in surface parking lots is strongly encouraged. Examples are shown to the left and below.

Special paving and landscaping give this parking lot a village character.

Another example of porous paving

4.2 ARCHITECTURE

The Mixed Commercial District includes office and service uses as well as retail uses. And, since many of the parcels are larger than those in the Downtown Core District, buildings are also often larger. The architecture guidelines below are intended to recognize these differences while maintaining a scale and character that is compatible with that of the downtown core.

4.2.1 Mixed use buildings are encouraged

a) Buildings not planning for a mixed use at the current time still must allow for future mixed use by:

- Providing a minimum ground floor ceiling height of 12 feet.
- Locating the ground floor no more than 12 inches above the sidewalk level.
- Designing the ground floor facade with a minimum of 60 percent transparent glazing.

b) Ground floor retail uses should generally follow the relevant storefront design guidelines for the Downtown Core District. If in doubt, applicant should consult with city planning staff.

4.2.2 Break long facades into smaller modules

a) Buildings that are longer than 75 feet in length must be broken up into segments that are no longer than 50 feet.

b) The development of smaller building segments may be accomplished in several different ways. They include combinations of the following techniques:

- Separate structures surrounding a courtyard.
- Indented courtyards (See Guideline 3.2.1.b).
- A change in horizontal or vertical plane.
- A projection or recess.
- Varying cornice or roof lines.
- Distinctive entries.

4.2.3 Provide primary building entries on the street frontage

a) Building entries may also be provided from the parking lot, but this should not be designed as the only or the major entry.

The photos above show two examples of breaking larger buildings into smaller segments that are compatible with the Los Altos downtown village scale and character.

BUILDING HEIGHT VARIATION EXAMPLES

Exterior stairs to upper floor uses are one way to provide variation in building height.

Projecting ground floor arcades are another way to provide variation in building height.

4.2.4 A variation in building heights is encouraged

a) Variations may be provided by different heights for major building elements or by lowering segments of the facade such as exterior stairs (See photos to the left).

4.2.5 Sloped roof forms are encouraged

a) Flat roofs may be considered on First Street parcels where they would be more compatible to adjacent development.

b) Upper floors embedded in the sloped roof form may be needed to conform to the height limits for the district. *One example is shown below.*

4.2.6 Design buildings to screen surface parking lots whenever possible

a) Provide as much building frontage along the streets as possible.

b) Second floor space is encouraged along street frontages with parking lot entries. See the example below.

4.2.7 Provide design consistency

a) **The architectural style and details should continue around all sides of the structure.**

4.2.8 Emphasize individual windows or small window groups on upper levels

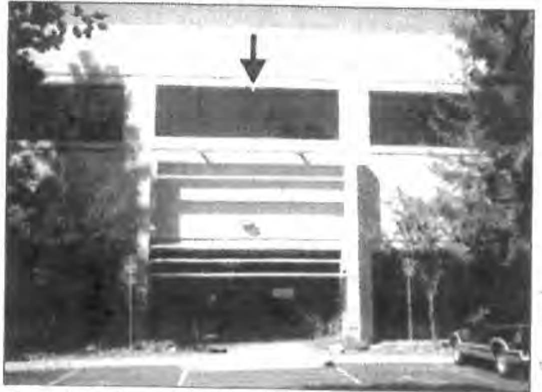
a) **Use vertical window proportions.**

b) **Avoid horizontal ribbon windows.**

c) **Recess window a minimum of 3 inches from the face of all exterior walls.**

4.2.9 Upper floor balconies and decks are encouraged

Another example of second floor balcony and deck space providing facade depth and visual interest.



Avoid continuous ribbon windows like those above in favor of individual windows with substantial jambs separating them, as shown below.

See the guidelines and examples on pages 34-35.

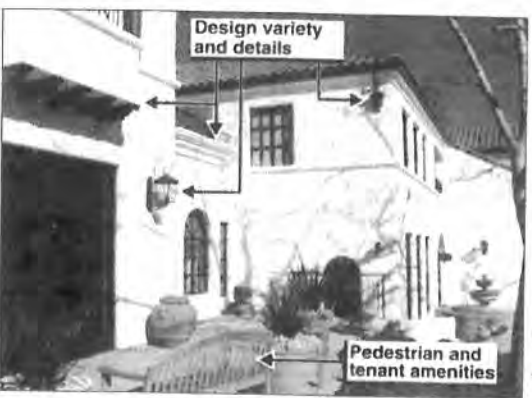
4.2.10 Include substantial architectural detail

a) **Detail elements should be consistent with the architectural style of the building.**

b) **Detail elements, similar to those in the Downtown Core, may include:**

- Roof cornices and overhangs
- Wall mouldings
- Trellises and lattices with landscaping
- Decorative lights
- Awnings
- Balconies

See examples to the right.



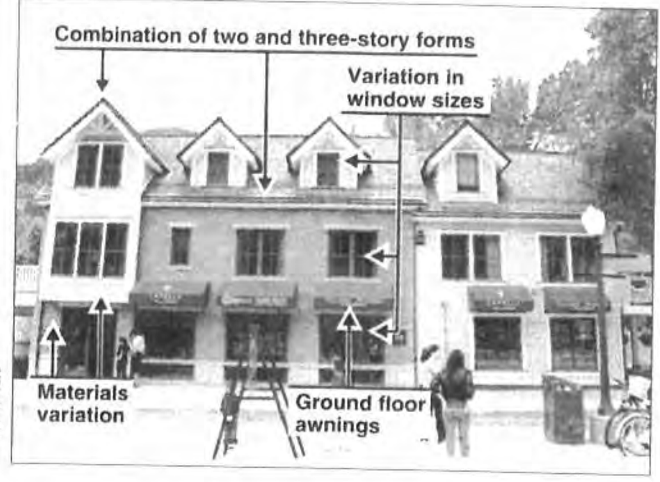
4.2.11 Design taller buildings to relate to smaller nearby buildings in the downtown

Some techniques are shown in the examples on this page.

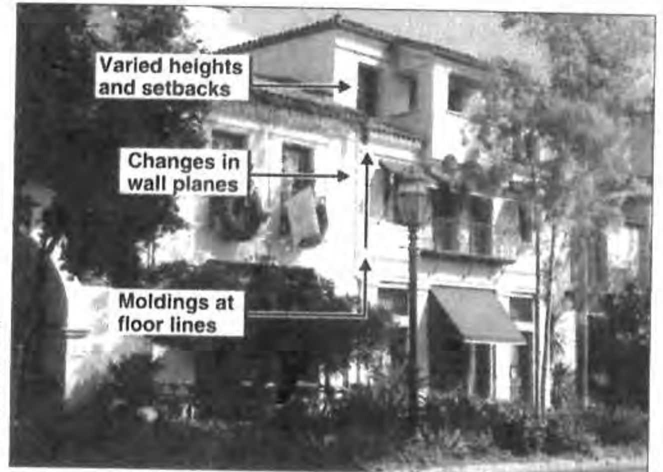
Danville

Healdsburg

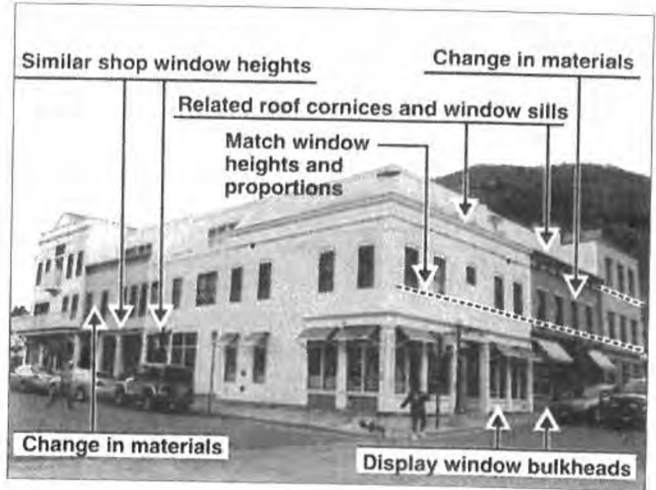
Birkdale Village



Telluride



Santa Barbara



Telluride

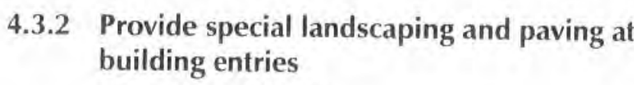
4.3 LANDSCAPE

Extensive landscaping is expected in the Mixed Commercial District because of the increased setback requirements, substantial surface parking, and the increased size of the buildings.

4.3.1 Provide a landscaping buffer between parking lots and building facades

a) **Include shrub and tree landscaping to give tenants a sense of separation between themselves and the parking lot.**

b) **When parking is tucked under the building, landscaped planters, with trees, should be provided to break up the parking lot paving at the building. One example is shown below to the right.**



4.3.2 Provide special landscaping and paving at building entries

See pages 28 and 29.

4.3.3 Provide on-site amenities for tenants and pedestrians

a) **Locate amenities adjacent to sidewalks, building entries, paseos, and courtyards.** Amenities may include:

- Benches
- Fountains
- Planted areas
- Rain gardens and other rainwater infiltration features
- Special decorative paving
- Potted flowers and plants
- Public art
- Waste receptacles

Danville

Landscaping to separate buildings from parking lots is expected. The type and height of landscaping will be dependant on the size, height, and form of the building.

Laguna Beach

Example of landscaped planters at tuck-under parking.

Los Altos

Los Altos example of landscaping used to enhance an office building's setting.

GROUND SIGN EXAMPLES

4.4 SIGNAGE

The Downtown Core District signage guidelines apply to all signs in the Mixed Commercial District. Ground signs and free-standing signs may also be allowed at the discretion of the city.

4.4.1 GROUND SIGNS

a) Location limitations.

Ground signs may be considered on a case-by-case basis mainly along San Antonio Road in recognition of its greater vehicle orientation, width, and traffic speeds. They may also be considered along other streets where wide landscaped setbacks are provided, as in the downtown Los Altos example to the upper left.

b) Limit the information on each sign.

- Ground signs should generally be limited to the following information:
  1) Project or primary business identification name and/or logo
  2) Address number
- Multi-tenant ground signs are strongly discouraged. However, the display of multiple tenants may be considered for small ground signs so long as the sign and background color is common throughout, and the type style and logo colors of each tenant are the same.
- The inclusion of services and products offered should not be included on ground signs.

c) Locate signs for easy visibility from passing vehicles.

- Locate signs within 10 feet of the front property line.
- Avoid blocking any vehicular or pedestrian sight lines which might result in safety problems.

d) Signs including bases should fit within a rectangle no larger than 5 feet high and 5 feet wide.

e) Lighting.

- Lighting for ground signs must be by direct spotlight illumination from fixtures mounted either at the top of the sign or on the ground below the sign. Fixtures must be shielded to avoid direct view of the bulbs. Interior illuminated ground signs are not allowed.

f) Materials.

- All ground signs, including price signs for service stations, shall be constructed of matte finish nonreflective materials.

4.4.2 FREESTANDING SIGNS

a) Limit freestanding signs to single tenants.

b) Signs including bases, vertical supports, and crossbars should fit within a rectangle no larger than 6 feet high and 3 feet wide.

c) All sign materials should be matte finish.

d) Letters and logos may be applied or painted onto the sign.

e) Signs may be externally lit with shielded spot lights.

FREESTANDING SIGN EXAMPLES

Laguna Beach

Sonoma

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FIRST STREET DISTRICT

5

FIRST STREET DISTRICT

Owners of properties and businesses in this district should review the guidelines for the Downtown Core District. While projects in this district may be somewhat larger and less retail-oriented than those in the downtown core, they are still very much a part of the downtown village, and the village character and scale emphasis underlying those guidelines will be expected of new buildings and changes to existing properties in this district. The intent of these guidelines and the zoning standards established for this district are summarized in the sidebar to the right.

The primary differences between development in this district and the downtown core include:

- A wider range of uses is allowed.
- Required parking must be provided on-site rather than in common parking district lots or structures.
- Setbacks are required along all street fronts, and in many cases at the rear of parcels.
- A 50-foot building module applies, rather than the 25-foot module in the downtown core, except for lots located within the CRS Zoning District.*

  * *Pending a Zoning Code change approval by the City Council to extend the CRS zoning into the First Street District..*

INTENT

A. Promote the implementation of the Los Altos Downtown Design Plan.

B. Support and enhance the downtown Los Altos village atmosphere.

C. Allow latitude for creative design and architectural variety.

D. Respect the scale and character of the area immediately surrounding the existing downtown pedestrian district.

E. Establish a sense of entry into the downtown.

F. Encourage historic preservation for those buildings listed on the city's historic resources inventory.

G. Encourage the upgrading of building exteriors, signs, and parking lots.

H. Provide for a full range of retail, office, and service uses appropriate to downtown.

I. Develop a landscaped strip along the back of properties that abut Foothill Expressway between West Edith Avenue and San Antonio Road.

J. Improve the visual appeal and pedestrian orientation of the downtown.

K. Encourage the use of solar, photo voltaic, and other energy conserving devices.

Applicants should carefully review the Los Altos Zoning Ordinance provisions appropriate to their properties. Parcels covered by the design guidelines for the First Street District are located within three zoning districts with slightly different limitations and requirements.

A visual and physical separation between street front sidewalks and adjacent parking lots is expected.

5.1 PEDESTRIAN ENVIRONMENT

The First Street District is spread along First Street which is more vehicle-oriented than the remainder of Downtown Los Altos, and has more surface parking with limited landscaping than most other areas. Nevertheless, this district is very much a part of the downtown village. These guidelines are intended to allow larger buildings and on-site parking while doing so in a manner that reinforces Downtown Los Altos' village scale and character.

5.1.1 Minimize the visual impact of parking

a) Underground or screened roof parking is encouraged on larger parcels.

b) Provide a landscape buffer between street front sidewalks and any adjacent parking lot. Per the zoning code, the minimum width of this buffer must be 5 feet, unless less is allowed by a variance. When lesser widths are allowed for existing parking lot improvements, some buffering is still required. One approach to adding visual buffering by a low wall is shown below.

Separate parking lots from pedestrian areas at buildings by landscaping (above) or by pedestrian arcades (below).

5.1.2 Provide pedestrian linkages between street front sidewalks and building entries

a) Building entries facing First Street are strongly encouraged. For larger buildings where entries are set back on a facade facing a parking lot, provide a strong sidewalk connection with landscaping on both sides from the street front to the entry.

5.1.3 Provide landscape buffers between parking lots and pedestrian areas at buildings

a) Building fronts are expected to be as active and attractive as those in the Downtown Core District, and to be buffered from parked cars. Landscaping and, where appropriate, trees should be used to buffer pedestrian areas. Alternatively, arcades and planters at the building may be used for this purpose. Examples of these two approaches are shown to the left.

5.1.4 Provide special paving for parking lots immediately accessible from the street

a) Parking areas which are adjacent to street front sidewalks and with perpendicular parking spaces directly accessible from the street drive lane are strongly discouraged. For existing parking areas like this that are being upgraded, provide a distinction on the paving color and texture between the parking surface and the adjacent sidewalk and street paving.

5.1.5 Provide pedestrian walkways through large parking lots

a) Dedicated walks through parking lots will improve pedestrian safety and enhance the shopping and business patronage experience. Walkways should be reinforced with edge landscaping and with textured and/or permeable paving where they cross parking drive aisles. One example is shown in the upper right of this page.

5.1.6 Provide pedestrian amenities.

Amenities may include:

- Benches
- Fountains
- Planted areas
- Rain gardens and other rainwater infiltration features
- Special decorative paving
- Potted flowers and plants
- Public art
- Waste receptacles

5.1.7 Integrate ground floor residential uses with the streetscape

a) Set structures back a minimum of 10 feet from the street property line. Stairs and entry porches may encroach into this setback up to the property line.

B) Soft landscaping is required for a minimum of 60% of the front setback area.

See examples below and to the right.

Example of a well designed pedestrian walkway through a parking lot. Note: The building entry in the background would be out of scale for downtown Los Altos.

Provide pedestrian amenities.

Provide ground floor residential setback landscaping.

This shopping complex has a village scale and character by virtue of treating adjacent uses as individual buildings.

The scale, details and natural materials used for this tower create an attractive focal point for the building without losing human scale.

5.2 ARCHITECTURE

Building uses and sizes will vary more in the First Street District than elsewhere in the downtown. The goal of these guidelines is to accommodate this wide diversity of size and use while maintaining a village scale and character that is complementary to the downtown core. The photographs shown on this and the following page are examples of more vehicle-oriented buildings that include forms and details that are sensitive to village scale and character.

5.2.1 Design to a village scale and character

a) Avoid large box-like structures.

b) Break larger buildings into smaller scale elements.

c) Provide special design articulation and detail for building facades located adjacent to street frontages.

d) Keep focal point elements small in scale.

e) Utilize materials that are common in the downtown core.

f) Avoid designs that appear to seek to be prominently seen from Foothill Expressway and/or San Antonio Road in favor of designs that focus on First Street, and are a part of the village environment.

g) Provide substantial small scale details.

h) Integrate landscaping into building facades in a manner similar to the Downtown Core District (See pages 28-29).

Examples of larger parcel buildings that are designed to be consistent with a village character are shown on this and the adjacent page.

Traditional building forms, architectural details, and integrated landscaping assist in relating the parking lot frontage to an overall village scale and character.

5.2.2 Design structures to be compatible with adjacent existing buildings

a) **Buildings adjacent to the Downtown Core District should be designed in form, material, and details similar to those nearby along Main and State Streets.**

b) **Projects adjacent to existing residential neighborhoods should draw upon residential forms and details to create a smaller grain design fabric that is compatible with the residential buildings.**

Examples are shown below and to the right.

Ojai

Danville

Danville

Mill Valley

Landscaping between facing parking rows is desirable to break up large expanses of paving.

5.3 LANDSCAPE

Substantial landscaping is expected in the First Street District to ensure that the area becomes a visual part of the larger downtown village.

5.3.1 Provide substantial landscaping adjacent to residential neighborhoods

5.3.2 Landscape Foothill Expressway edges with shrubbery and trees

5.3.3 Add substantial landscaping in all parking lots

a) Provide landscaping equal to or greater than the requirements set forth in the Los Altos Zoning Code.

b) Tree landscaping should be provided to create an orchard canopy effect in surface parking lots with more than one drive aisle. Utilize landscape fingers placed parallel to the parking spaces to break up expanses of parking lot paving. Space the islands with intervals not exceeding 6 parking spaces in length.

c) Utilize hedges, trees, and other landscaping between facing parking spaces as shown in the example to the left.

5.3.4 Add street trees along all parcel street frontages

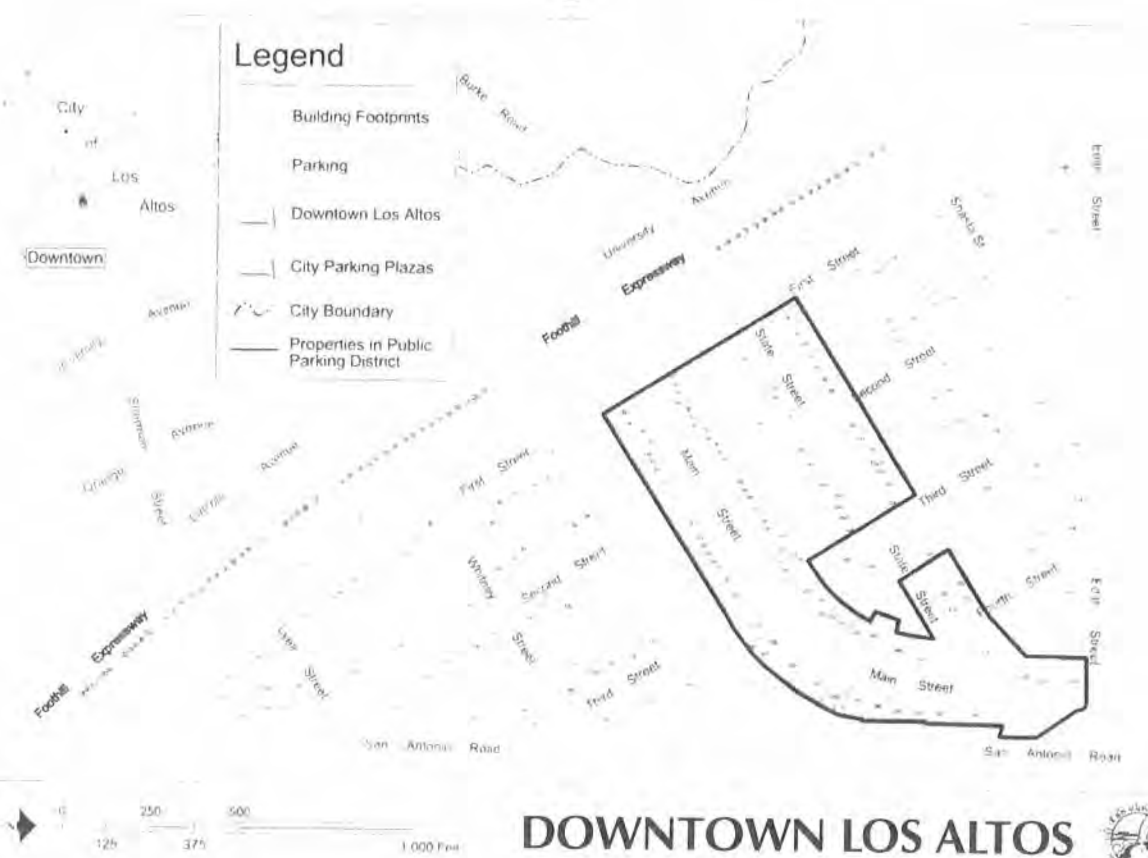
5.4 SIGNAGE

The Downtown Core District signage guidelines apply to all signs in the First Street District. Ground signs and freestanding signs may also be allowed at the discretion of the city (See the guidelines on pages 60-61 for these two sign types).

DOWNTOWN PARKING DISTRICT

In conjunction with downtown property owners in 1956 the City of Los Altos formed a public parking assessment district. As a result this district formed the 10 public parking plazas in the downtown core area. A majority of the properties in the downtown core are within the public parking district as shown on the map below. These properties in the public parking district are subject to unique parking regulations that exempt the properties from providing on-site parking for gross square footage that does not exceed 100 percent of their lot area.

Properties in Public Parking District



DOWNTOWN HISTORIC RESOURCES

Downtown Los Altos has nine properties listed in the City's Historic Resources Inventory, including five buildings that are designated as landmarks. The most prominent historic building downtown is the old Southern Pacific Railroad Station at 288 First Street, which was designated as a landmark in 1984 and may be eligible for listing on the State and National Historic Registers. All nine properties and their historic ranking is listed below. More detailed historic evaluations for each property are available in the City's Historic Resources Inventory.

Address	Historic Ranking
288 First Street	Landmark
300 Main Street	Landmark
301 Main Street	Historically Significant
316 Main Street	Landmark
350 Main Street	Historically Important
368 Main Street	Historically Significant
388-398 Main Street	Landmark
395-399 Main Street	Landmark
188 Second Street	Historically Significant

Parking Standards
Exhibit A

CITY OF LOS ALTOS

COMMUNITY DEVELOPMENT DEPARTMENT

March 2001

ATTACHMENT 5

CITY OF LOS ALTOS

Landscaping Guidelines

The Architectural and Site Control Committee of the Planning Commission will use the following guidelines with respect to interior and perimeter landscaping:

1. Interior Landscaping

   a. In parking areas with 10 or more spaces, at least 5 percent of the interior of the parking area shall be landscaped. Hedges or other landscaping installed to meet the screening requirements are not to be included in computing the portion of interior lot area devoted to landscaping.

   b. Individual planting areas shall preferably be a minimum of 6 feet wide and 50 square feet in area.

   c. There shall be a minimum of one 15-gallon tree per 100 square feet of landscaped area, with a balance in shrub and ground cover.

2. Perimeter and Buffer Strips

   a. Unless otherwise specified by the Zoning Ordinance, a 4-foot planted strip shall be maintained when adjacent to streets. This shall be increased to 6 feet if car bumpers overhang.

   b. Unless otherwise specified by the Zoning Ordinance, there shall be a 4-foot planted strip at abutting property lines (6-foot if bumper overhangs.)

   c. Unless otherwise specified by the Zoning Ordinance, there shall be a 10-foot strip with dense screen planting when abutting property is residential.

   d. Unless otherwise specified by the Zoning Ordinance, an alternate to (c) is a minimum 5-foot-high fence with 4-foot planted strip.

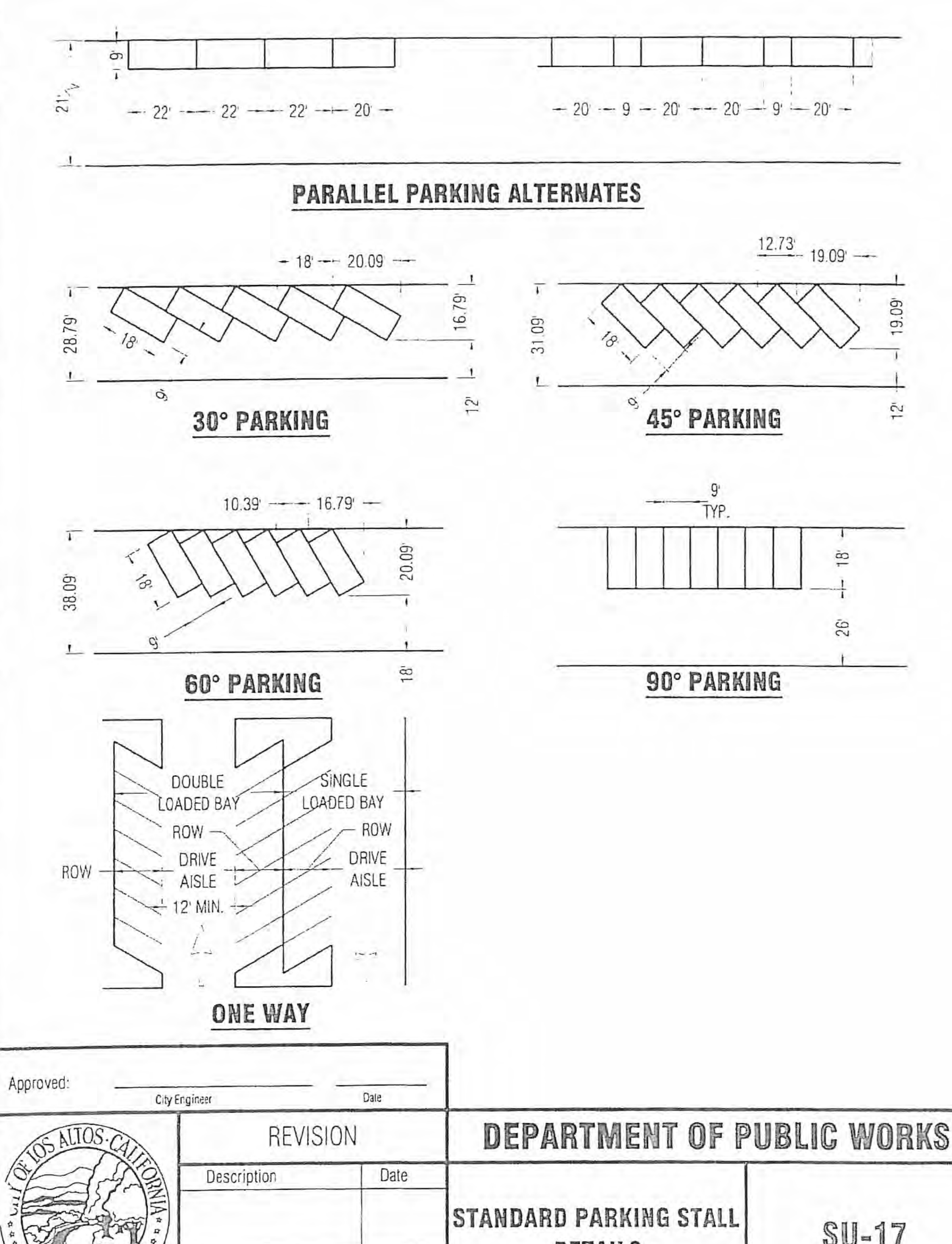
3. Maintenance

   a. Protection for planted areas shall be provided by a 6-inch minimum height concrete curb.

   b. Permanent automatic sprinklers are required.

4. Exceptions

   These requirements for landscaping may be waived or modified at the discretion of the Architectural and Site Control Committee when in their judgment the environment or particular locations would prove hostile to plants, trees, or shrubs.



Approved: ____________________ City Engineer ____________ Date

DEPARTMENT OF PUBLIC WORKS

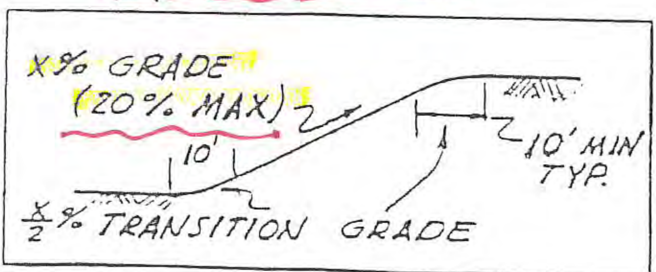
REVISION	
Description	Date

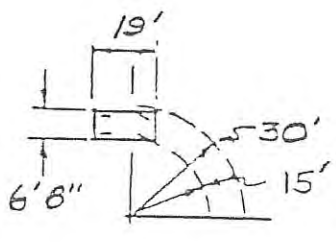
STANDARD PARKING STALL DETAILS

SU-17

STANDARD PLANS 2007

RAMP DETAIL





MIN. RIGHT TURN RADIUS
(PASSENGER VEHICLES)

ENGINEERING DEPT. CITY OF LOS ALTOS SANTA CLARA COUNTY, CALIFORNIA	PARKING STALL STANDARD DESIGN	DRAWN K.E.F. CHECKED D.S.D. APP. DATE 2 JULY 69 SCALE 1" = 50' DRAW. NO.

DIETZGEN-POST CLEARPRINT 1000 H