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RECEIVED
FEB 21 2019
CITY OF LOS ALTOS
PLANNING

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

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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

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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 <u>discretionary</u> 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

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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

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[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

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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

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		JURISDICTION		JURISDICTION
91	FORT JONES	131	KINGS COUNTY	171	MAYWOOD
92	FORTUNA	132	KINGSBURG	172	MCFARLAND
93	FOUNTAIN VALLEY	133	LA CANADA FLINTRIDGE	173	MENDOCINO COUNTY
94	FOWLER	134	LA HABRA	174	MENDOTA
95	FRESNO COUNTY	135	LA HABRA HEIGHTS	175	MENIFEE
96	GARDEN GROVE	136	LA MIRADA	176	MERCED
97	GLENN COUNTY	137	LA PALMA	177	MERCED COUNTY
98	GONZALES	138	LA PUENTE	178	MILLBRAE
99	GRAND TERRACE	139	LA QUINTA	179	MODESTO
100	GRASS VALLEY	140	LA VERNE	180	MODOC COUNTY
101	GREENFIELD	141	LAKE COUNTY	181	MONTAGUE
102	GRIDLEY	142	LAKEPORT	182	MONTCLAIR
103	GUADALUPE	143	LANCASTER	183	MONTEBELLO
104	GUSTINE	144	LASSEN COUNTY	184	MONTEREY
105	HALF MOON BAY	145	LATHROP	185	MONTEREY COUNTY
106	HANFORD	146	LAWNDALE	186	MONTEREY PARK
107	HAWAIIAN GARDENS	147	LEMOORE	187	MORENO VALLEY
108	HAYWARD	148	LINDSAY	188	MORRO BAY
109	HEMET	149	LIVE OAK	189	MOUNT SHASTA
110	HERMOSA BEACH	150	LIVINGSTON	190	MURRIETA
111	HIDDEN HILLS	151	LODI	191	NATIONAL CITY
112	HIGHLAND	152	LOMA LINDA	192	NEEDLES
113	HOLTVILLE	153	LOMPOC	193	NEVADA CITY
114	HUMBOLDT COUNTY	154	LONG BEACH	194	NEWARK
115	HUNTINGTON BEACH	155	LOOMIS	195	NEWMAN
116	HUNTINGTON PARK	156	LOS ALAMITOS	196	NORCO
117	HURON	157	LOS ALTOS	197	NOVATO
118	IMPERIAL	158	LOS ALTOS HILLS	198	OCEANSIDE
119	IMPERIAL COUNTY	159	LOS ANGELES COUNTY	199	OJAI
120	INDIAN WELLS	160	LOS BANOS	200	ONTARIO
121	INDUSTRY	161	LOYALTON	201	ORANGE
122	INGLEWOOD	162	LYNWOOD	202	ORANGE COVE
123	INYO COUNTY	163	MADERA	203	ORLAND
124	IONE	164	MANHATTAN BEACH	204	OROVILLE
125	IRWINDALE	165	MANTECA	205	OXNARD
126	ISLETON	166	MARICOPA	206	PACIFIC GROVE
127	JACKSON	167	MARINA	207	PACIFICA
128	JURUPA VALLEY	168	MARIPOSA COUNTY	208	PALM DESERT
129	KERMAN	169	MARTINEZ	209	PALMDALE
130	KERN COUNTY	170	MARYSVILLE	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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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.

William Maston
Architect & Associates
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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