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March 14, 2024

VIA HAND DELIVERY

Mr. Immanuel Bereket
Principal Planner
Marin County
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903

Re: 1501 Lucas valley Road, San Rafael
Assessor's Parcel: 164-280-35
Project ID P4134

Response to the County's December 15, 2023 Letter of Incompleteness

Dear Mr. Bereket:

As you know, our firm represents Lucas Valley Road, LLC ("LVR") in its housing development project application at 1501 Lucas Valley Road in the County ("Project Site"). LVR submitted a Preliminary Application for the Project pursuant to Senate Bill 330 ("SB 330", Gov. Code § 65941.1) on May 24, 2023. LVR then timely submitted its Formal Application on November 17, 2023, which seeks approval of Vesting Tentative Subdivision Map and Housing Compliance Review applications. On December 15, 2023, the County provided LVR an incompleteness determination letter. Consistent with SB 330 and the Permit Streamlining Act ("PSA", Gov. Code § 65920 et seq.), LVR hereby timely responds to the County's November 17 letter with those items listed as required on the County's uniform formal application checklist for the Project's Vesting Tentative Map and Housing Compliance Review applications.¹

As members of the applicant team discussed with County staff recently, this submittal also contains modifications to the Project's total unit count and method of compliance with the County's Affordable Housing Regulations. We are excited to work with the County to deliver this Project, which will deliver critically needed

¹ See Gov. Code §§ 65940 – 65944. As noted on the attached response letter and consistent with recent discussions with the County, LVR is also working to prepare additional studies and materials the County requested in its November 17 letter, which the County may require before taking final action on the Project application.

market rate and affordable homes to a Housing Inventory Site identified as necessary to meet the County's 6th Cycle RHNA obligations.

I. Modified Project

As modified, the Project now proposes thirty-six (36) detached single-family residences, thirty-one of these would be market rate, three (3) would be affordable to very low-income households, and two (2) would be affordable to lower-income households.² By providing more than 11% of project units at prices affordable to very-low income households, the Project would qualify for a 35% density bonus under the state density bonus law, or ten (10) units.

In other words, the Project no longer proposes an alternative method of compliance with the County's Affordable Housing Regulations and would meet the County's applicable 20% inclusionary housing requirement – set forth in your January 18, 2024 letter to us - by including five detached units affordable to lower income households and paying an in-lieu fee of \$74,010 for a fractional unit of .20. (Marin County Code § 22.22.090(A)).

II. Housing Accountability Act

As a brief reminder to the County, the Project is protected by the Housing Accountability Act ("HAA", Gov. Code § 65589.5), a housing production statute that seeks "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 . . ." (§ 65589.5(a)(2)(K)). Moreover, the HAA expresses the state's policy that this statute "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Gov. Code § 65589.5(a)(2)(L)).

As relevant here, subdivision (j) of the HAA directs that a decision to disapprove or reduce the density of a project that complies with "applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards" must be based on written findings supported by a preponderance of the evidence that (1) the project would have "a specific, adverse impact upon the public health or safety" *and* (2) that there is no feasible method to satisfactorily mitigate or avoid this adverse impact. (Gov. Code § 65589.5(j)(1)). The HAA defines a "specific, adverse impact" to mean "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." (Gov. Code § 65589.5(j)(1)(A)).

² These modifications do not change the total unit count or square footage of construction proposed by the Project by more than 20%, thus preserving the Project's vesting under SB 330. (Gov. Code § 65589.5(o)(2)(E)).

Section 65589.5(j) thus requires counties to determine whether a project complies with the applicable, *objective* general plan, zoning, subdivision, and design standards. The HAA defines the term “objective” to mean “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code § 65589.5(h)(8)). Counties must make this determination based on a “reasonable person” standard. (Gov. Code § 65589.5(f)(4)).

Accordingly, if a project complies with applicable, objective general plan, zoning, subdivision, and design standards in the eyes of a reasonable person, the project cannot be disapproved or conditioned on a lower density unless, based on a preponderance of the evidence in the record, it would have a "specific, adverse impact" upon public health or safety and there is no feasible way to mitigate that impact. If a county's disapproval or conditional approval is challenged in court, the burden is on the county to prove its decision conformed to all the conditions specified in the HAA. (Gov. Code § 65589.6).

The courts have explained that the HAA's findings constitute the “only” grounds for a lawful disapproval of a housing development project. (*North Pacifica, LLC v. City of Pacifica* (N.D.Cal. 2002) 234 F.Supp.2d 1053, 1059-60, disapproved on other grounds in *North Pacifica LLC v. City of Pacifica* (2008) 526 F.3d 478; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715-16). Moreover, the HAA creates such a “substantial limitation” on the government's discretion to deny a permit that it amounts to a constitutionally protected property interest. (*North Pacifica, LLC v. City of Pacifica, supra*, 234 F.Supp.2d at 1059).

III. Density Bonus Law

In addition to the HAA, because it will provide 11% very low-income affordable units, the Project is eligible for a 35% density bonus under the state Density Bonus Law (“DBL”, Gov. Code §§ 65915-65918), two incentives or concessions that result in actual and identifiable affordable housing cost reductions, and unlimited waivers or reductions of development standards that would physically preclude construction of the Project at its proposed and allowed density. (Gov. Code § 65915(d)(2); (e)(1); (f)(1)).

“The applicant is not required to prove the requested incentives will lead to cost reductions; the incentive is presumed to result in cost reductions” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 770). The County's ability to deny a requested incentive/concession is limited to whether an incentive/concession: (1) would have “a specific, adverse impact . . . upon public health and safety,” (2) would have an adverse impact on any historic resource, or (3) would be contrary to state or federal law. (*Id.* at § 65915(d)(1)(B)-(C)). A county bears the burden of proof for the denial of a requested incentive/concession. (*Id.* at § 65915(d)(4)).

In addition to “incentives/concessions,” the DBL provides for the grant of an unlimited number of waivers for any development standards “that will have the effect of physically precluding the construction of [the Project] at the densities or with the concessions or incentives permitted by [Government Code section 65915].” (Gov. Code § 65915(e)(1); *Bankers Hill 150, supra*, 74 Cal.App.5th 755, 775 [“so long as a proposed housing development project meets the criteria of the Density Bonus Law by including the necessary affordable units, a county may not apply any development standard that would physically preclude construction of that project as designed...”]).

As discussed on the enclosed materials, the Project will seek multiple incentives or concessions and waivers or reductions of development standards.

C. Conclusion

We thank you in advance for your time, consideration, and review of these additional materials and look forward to working with you to deliver these much needed new homes in the County. Please do not hesitate to reach out with any questions or if you need any additional information.

Very truly yours,

MILLER STARR REGALIA

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