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April 11, 2022

**Sent via email:** [rbustos@cityofsanmateo.org](mailto:rbustos@cityofsanmateo.org)

Rendell Bustos, Senior Planner  
City of San Mateo  
Community Development Department – Planning Division  
330 West 20<sup>th</sup> Avenue  
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**Re: State Density Bonus Law Concession and Waiver Request**

Dear Mr. Bustos,

This letter is written on behalf of Windy Hill Property Ventures (“Windy Hill”) with regard to the proposed mixed-use project generally referred to as the Block 21 project which encompasses 3<sup>rd</sup> and 4<sup>th</sup> Avenues, South Claremont and South Delaware Streets in San Mateo (“Project”). The Project includes 111 rental units, which is inclusive of 76 base density units and 35 bonus density units. Of the 76 base density units, 15 percent or 12 units would be set aside as affordable to very-low income households. As a result, pursuant to State Density Bonus Law, the Project is entitled to a 50 percent density bonus, three concessions and an unlimited number of waivers. Government Code Sections 65915(d)(2)(C), 65915(e) and 65915(f)(2). This letter will discuss the requested concessions and waivers.

Previously, Windy Hill was requesting three concessions. Although the Project is still entitled to three concessions, Windy Hill is now only requesting two concessions as a reduction in residential parking, discussed below, is no longer needed. The two concessions Windy Hill is requesting are an increase in the building height and an increase in the maximum floor area ratio. Additionally, Windy Hill is requesting five waivers for an increase in the number of permissible compact stalls, an increase in the maximum parking ramp slope, a reduction in private open space, an increase in bulk, and a reduction in wall area. Each of these will be discussed in more detail below.

## **Parking and Turning Radii**

State Density Bonus Law provides in Government Code Section 65915(p) specific parking ratios inclusive of parking for persons with disabilities and guests. In addition, subsection (5) allows the use of tandem parking for the entire development. Previously, in addition to these by-right parking reductions/modifications, Windy Hill was requesting a reduction in residential parking. However, in reviewing the plans, Windy Hill has confirmed that the required number of parking spaces for both residential and office uses is available on-site and no reduction in residential spaces is necessary.

In addition, Windy Hill is no longer requesting a waiver of Municipal Code Section 27.64.130 regarding the turning radii and turnaround requirements. Including additional residential units required a redesign of the parking layout to increase the number of parking stalls. As a result, the layout now provides the required turning radii and turnaround requirements.

## **Concession 1: Increase in building height.**

Windy Hill is requesting a concession to increase building height to 74 feet-2 inches, which is 19 feet-2 inches above the 55-foot maximum identified in Municipal Code Chapter 27.40 and the City's Building Height Plan. A concession is defined as a reduction in a site development standard or a modification of a zoning code requirement or architectural design requirement that results in identifiable and actual cost reductions to provide for affordable housing costs. Government Code Section 65915(k). Concessions are intended to assist in lowering the cost to build a project that includes affordable housing and are presumed to result in cost reductions. *Bankers Hill v. City of San Diego* (2022) 74 Cal.App.5th 755. Height is a development standard that can be modified. Government Code Section 65915(o)(1); see also *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346 where the court upheld the city's waiver of the height standard.

City staff expressed some concern regarding a concession to modify a design standard adopted by the voters. State law identifies three bases for denial of a proposed concession, including that the concession (1) does not result in identifiable and actual cost reductions to provide for affordable housing costs, (2) would have a specific adverse impact upon public health and safety or the physical environment or historic property, or (3) would be contrary to state or federal law. Government Code Section 65915(d)(1). How the design standard was adopted is not identified as a basis for denial. Furthermore, affordable housing is an issue of statewide importance and state law occupies the field preempting any inconsistent local laws. See *DeVita v. City of Napa* (1995) 9 Cal.4th 763, concluding that laws enacted by initiative are subject to preemption by state law where the state occupied the field in a matter of statewide concern. Thus, pursuant to state law, modification of a voter adopted development standard setting a height limitation may be modified as a concession. The staff report from the City Manager dated January 18, 2022 concurred with this conclusion stating "height concession requests were reviewed by staff (including the City Attorney's Office), and it was

determined that the state density bonus law allowance for additional height through a concession would supersede any general plan or zoning limit, including those enacted by voter initiative (including Measure Y).”

Height is an appropriate concession and results in identifiable and actual cost reductions to provide for affordable housing costs. An increase in height allows for an additional 74 units (40 units on the 5<sup>th</sup> floor and 34 units on the 6<sup>th</sup> floor) to be included in the Project, which equates to an additional 56,722 square feet. These additional units allow fixed hard and soft costs, including but not limited to land price, construction of underground parking, elevators and other shared spaces, design and engineering fees, and financing costs to be spread across the additional 74 units. This results in an approximately 15 percent savings on each of the 5<sup>th</sup> and 6<sup>th</sup> floor units (or approximately \$113,000 per unit) making the provision of 12 very-low income units (at a cost of approximately \$8,500,000) and a total of 111 residential units feasible.

**Concession 2: Increase in maximum floor area ratio.**

The Project is requesting a concession to increase in the maximum floor area ratio (“FAR”) from 3.0 as identified in Municipal Code Section 27.38.060 by 1.1 FAR, which equates to an additional 63,370 square feet. As with the height, modification of the FAR is a concession by definition. Also like the increased height, an increase in FAR allows for an additional 74 units (40 units on the 5<sup>th</sup> floor and 34 units on the 6<sup>th</sup> floor) to be included in the Project. These additional units allow fixed hard and soft costs, including but not limited to land price, construction of underground parking, elevators and other shared spaces, design and engineering fees, and financing costs to be spread across the additional 74 units. This results in an approximately 15 percent savings on each of the 5<sup>th</sup> and 6<sup>th</sup> floor units making the provision of 12 very-low income units and a total of 111 residential units feasible.

The increased height and floor area both make the same number of additional residential units possible. Therefore, Windy Hill has looked at the construction cost savings holistically and, as described above, together the two concessions result in a 15 percent savings or approximately \$113,000 per unit on each of the 5<sup>th</sup> and 6<sup>th</sup> floor units. This makes the provision of 12 very-low income units at a loss of approximately \$8,500,000 and a total of 111 residential units feasible.

**Waiver 1: Increase in the number of permissible compact stalls.**

A waiver is a modification of a development standard that would have the effect of physically precluding construction of a project at the density or with the concessions permitted. Government Code Section 65915(e). Windy Hill is requesting a waiver of Municipal Code Section 27.64.265 which requires 40 percent of the parking spaces to be provided pursuant to compact car standards. Instead, Windy Hill is proposing that 60 percent of the parking spaces or 233 of 407 spaces be provided pursuant to compact car standards. A greater percentage of compact stalls allows the Project to meet its on-site

parking requirement. Failure to grant this waiver would physically preclude construction of the Project because the Project would not be able to satisfy its parking requirements making the Project infeasible at the density and with the concessions requested.

**Waiver 2: Increase in the maximum parking ramp slope.**

Windy Hill is requesting a waiver of Municipal Code Section 23.40.050 which provides a maximum driveway grade of 18 percent for private roads, driveways and ramps that have no pedestrian access. To make construction of the Project physically possible, Windy Hill is requesting an increase in the maximum slope on a ramp profile of 20 percent between the upper and lower basement levels. Providing a ramp with a steeper incline allows the length of the ramp to be shortened by 3'-11". Reducing the length of the ramp allows two additional parking stalls for four units to be provided, which would not be possible with a longer ramp. Without this reduced dimension, the Project would not feasibly be able to meet its parking requirement, precluding the development of the Project at the density and with the concessions requested.

**Waiver 3: Reduction in private open space.**

Windy Hill is requesting a waiver of Municipal Code Section 27.38.130 regarding the required open space for residential development. The Municipal Code requires residential development to include private usable open space equal to at least 80 square feet per dwelling unit or common usable open space equal to at least 150 percent of the private usable open space requirements, or a combination of both. Private usable open space used to fulfill this requirement must have a usable area of not less than 75 square feet and shall not be less than six feet in any dimension. Windy Hill is requesting a waiver to allow private usable open space equal to at least 57 square feet per dwelling unit. The reduced open space allows for the construction of the additional residential units since there is limited space allocation as part of the building. Without this reduction, the Project would not feasibly be able to provide open space for all the units thus precluding the development of the Project at the density and with concessions requested.

**Waiver 4: Increase in bulk.**

Windy Hill is requesting a waiver of Municipal Code Section 27.40.030 which provides above 55 feet maximum building dimension of 150 lineal feet and a maximum diagonal dimension of 170 lineal feet. To physically construct the project at the density and with the requested concessions a waiver is required. Windy Hill is requesting a 67 percent increase in both lineal and diagonal length. Meeting the Municipal Code standard would result in the loss of 20 units or 60 percent of the units on the 6<sup>th</sup> floor. Without this, construction of the Project would be precluded, including the affordable units which would defeat the law's goal of increasing affordable housing.

**Waiver 5: Reduction in wall area.**

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Windy Hill is requesting a waiver of Municipal Code Section 27.42.010, street wall area. Windy Hill is requesting a 25 percent reduction in the maximum depth of the street wall area. Meeting the Municipal Code standard would result in the loss of 24 units or 70 percent of the units on the 6<sup>th</sup> floor. Without this, construction of the Project would be precluded, including the affordable units which would defeat the law's goal of increasing affordable housing.

Based on the foregoing, Windy Hill has established its eligibility for concessions and the waiver of any development standards that would preclude construction of the Project at the density and with the concessions. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

*Leigh Prince*

Leigh F. Prince

Cc: Lisa Ring (via email: [lising88@gmail.com](mailto:lising88@gmail.com))  
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