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November 4, 2022

Sent via email: rbustos@cityofsanmateo.org

Rendell Bustos, Senior Planner
City of San Mateo
Community Development Department – Planning Division
330 West 20th Avenue
San Mateo, CA 94403-1388

Re: Updated State Density Bonus Law Concession and Waiver Request

Dear Mr. Bustos,

This letter is written on behalf of Windy Hill Property Ventures (“Windy Hill”) regarding their project located at 435 E. 3rd Avenue in San Mateo. The project includes redevelopment of the northwest corner of E. 3rd Avenue and S. Claremont Street in San Mateo. The project site is approximately 10,980 square feet and is located in downtown San Mateo within 0.5 mile of the Downtown Caltrain Station. The project site is zoned CBD Support District-Central Business District Support and is within the City of San Mateo (“City”) Central Parking Improvement District. The zoning allows for office, commercial and residential uses to be developed with a 3.0 floor area ratio.

The proposed project is mixed-use with office and residential. The project would consist of 33,938 square feet of office space on the first through fourth levels and five residential units on the fifth level. One of the residential units would be restricted as affordable to a low-income household. The provision of 20 percent of the housing units as affordable exceeds the City’s inclusionary requirement and entitles the project to two incentives, waivers and parking modifications pursuant to state law (Government Code Section 65915). Incentives 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*

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v. City of San Diego (2022) 74 Cal.App.5th 755. Windy Hill is requesting one incentive to increase the allowable floor area ratio. Previously Windy Hill was requesting a second incentive to modify City parking requirements. However, Assembly Bill (“AB”) 2097, effective on January 1, 2023, prohibits the City from imposing minimum parking requirements on any residential, commercial, or other development project located within 0.5 mile of major transit. This project is located within 0.5 miles of the Downtown Caltrain Station. Therefore, pursuant to AB 2097, the City may not impose minimum parking requirements making a concession to modify parking requirements unnecessary.

Incentive to increase floor area ratio.

Windy Hill is requesting an incentive to modify Municipal Code Section 27.38.060 to allow an increase in floor area ratio from 3.0 to 3.66 to accommodate an additional 7,274 square feet. This incentive allows for the development of the residential units and additional square footage, which results in decreased costs of construction per square foot. Specifically, fixed hard and soft costs of the project such as land price, design and engineering fees, cost of shared spaces, and financial interest and accounting fees will be spread over a larger project. This results in comparative savings in construction costs of \$15 per square foot over the additional 7,275 square feet which makes the provision of the affordable unit feasible.

The loss to Windy Hill is approximately \$1,260,000 for the affordable unit. The cost for the affordable unit in this Project may be higher than the City usually sees because it is a mixed-use project with a small number of affordable units on a very small site. This means the costs for things like the residential lobby and dedicated residential elevator are shared across a much smaller number of units which results in a higher cost per unit. The increased floor area saves the approximately \$109,125 which is less than the cost to provide the affordable unit. In addition, AB 2097 which eliminates minimum parking requirement reduces project costs making the affordable unit possible.

State law allows incentives to apply to non-residential portion of mixed-use project.

State density bonus law (Government Code Section 65915) does not require incentives to apply to the residential portion of a project. As will be discussed in this letter, the goal of state law is the provision of housing, and nothing prohibits an incentive from applying to the non-residential portion of a mixed-use project.

An incentive is defined as a reduction in site development standards or a modification of zoning code requirements or architectural design requirements, including but not limited to, a reduction in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs. Government Code Section 65915(k)(1). A “development standard” is defined as a site or construction condition that applies to a residential development. Government Code Section 65915(o)(1). If the definition of an incentive were limited to a reduction in site development standards, the position that the incentive must apply to the residential portion of a mixed-use project might have merit. However, the definition of an incentive

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also includes modifications of zoning code requirements or architectural design requirements. There is no indication that a zoning code modification must be limited to a residential requirement. Further, the definition of incentive includes other regulatory incentives proposed by the developer that result in identifiable and actual cost reductions to provide for affordable housing cost. Government Code Section 65915(k)(3). Thus, state law provides a catch all which could be used to apply an incentive to the non-residential portion of a mixed-use project.

State law reduces the project's mixed-use parking requirement holistically.

This project is located within 0.5 mile of the Downtown Caltrain Station. As noted above, AB 2097 eliminates minimum parking requirements for development projects located within 0.5 mile of major transit. Even if AB 2097 were not applicable, state law reduces and even allows the elimination of parking requirements. See Government Code Section 65915(p)(2)(A) reducing the requirement to 0.5 space per unit for projects within 0.5 mile of major transit. Additionally, applicants may request parking incentives beyond those provided in state law. Government Code Section 65915(p)(6). Furthermore, the law specifically provides that a city is not precluded from reducing or eliminating a parking requirement for development projects of any type. Government Code Section 65915(p)(7). Thus, state law gives discretion to and anticipates that concessions will be granted to reduce or eliminate parking requirements not only for residential projects, but any type of project including mixed-use projects. A holistic approach to parking for a mixed-use project is also supported by Government Code Section 65915(p)(5) that rounds the total number of parking spaces for a development and does not myopically focus on the number of residential spaces. All of this is consistent with AB 2097 changes to parking requirements for development projects close to transit.

The law is to be interpreted liberally in favor of producing the maximum number of total housing units. Government Code Section 65915(r). In the absence of the requested incentives (and the parking reduction provided by AB 2097), it would not be financially feasible for Windy Hill to provide five housing units, one of which would be reserved for low-income households. For all of the foregoing reasons, state law supports the use and approval of the requested incentives.

Sincerely,

Leigh Prince

Leigh F. Prince

cc: Lisa Ring (via email: lising88@gmail.com)

Michael Field (via email: mike@windyhillpv.com)

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