



**MILLER STARR
REGALIA**

1964-2024

Vision. Strategy. Results. 60 Years and Counting.

1331 N. California Blvd.
Suite 600
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.msrllegal.com

Dana Kennedy
Direct Dial: 415.638.4802
dana.kennedy@msrllegal.com

~~December 24~~ February 28, 2024 2025

VIA EMAIL

Nathan Tincclair
Associate Planner
City of Antioch
200 "H" Street
Antioch, CA 94531
Email: ntincclair@antiochca.gov

Re: Formal Development Application for Vineyard Crossings Project
(3001 Oakley Road, Antioch, California)
APN: 051-190-028 and 051-190-034
Application: PD2024-0002

Dear Mr. Tincclair:

On behalf of the Applicant, BrightSky Residential ("BrightSky"), enclosed with this letter is BrightSky's resubmittal of application materials for a Vesting Tentative Map and Final Development Application for development of a new residential subdivision consisting of 45 detached single-family homes, ~~4352~~ attached single-family homes (i.e., duplex units), and ~~4440~~ accessory dwelling units ("ADUs") (the "Project"). We understand that various numbers were included in materials submitted previously and apologize for the oversight.

The Project qualifies as a "housing development project," as defined in the Housing Accountability Act ("HAA"; Gov. Code, § 65589.5(h)(2)), and also qualifies for the protections afforded under the Housing Crisis Act of 2019 ("SB 330") as well as the State Density Bonus Law ("DBL"; Gov. Code, § 65915 et seq.).

BrightSky previously submitted its SB 330 Preliminary Application and fee deposit on December 6, 2024 (See Gov. Code, § 65941.1(d)(1)). In compliance with the timeline provided under the Permit Streamlining Act ("PSA"), Government Code section 65941.1(d)(1), ~~this~~ formal development application ~~is being~~ materials were submitted to the City on December 23, 2024, within 180 days of the Preliminary Application. ~~It is also~~ The enclosed materials are being submitted within the 90-day ~~extension period approved by the City pursuant to Antioch Municipal Code § 9-5.3847~~ period following the City's incompleteness determination on January 22, 2025.

As described in detail below, for purposes of the DBL, the Project contemplates 129 “total units,” including the ~~44~~40 ADUs, with 13 ADUs (i.e., 10% of the 129 “total units”) deed-restricted for occupancy by low-income households. ~~Nine~~Sixteen duplex units (not nine as mistakenly stated previously) on the East Parcel constitute the “bonus units” allowed by the DBL. All units in the Project will be developed, owned and maintained by BrightSky long-term, ensuring that all units will be available for rent in the housing market.

A. Project Site and Proposed Density

The Project is proposed on two parcels located on Oakley Road, just east of Phillips Lane in Antioch (APNs 051-190-028 (the “West Parcel”) and 051-190-034 (the “East Parcel”, and together with the West Parcel, the “Project Site”)). The Project Site is presently undeveloped, and ~~approximately 14.64 acres are the net~~ developable— area of the West Parcel is 8.59 acres and the net developable area of the East Parcel is 3.52 acres.¹ The Project Site is located in a Planned Development (P-D) zoning district and linked to a residential development application approved in 1991. In the operative City of Antioch General Plan, the West Parcel is designated Medium Low Density Residential, which allows six dwelling units per gross developable acre (du/ac) and the East Parcel is designated Medium Density Residential, which allows 10 du/ac. As of January 1, 2023, the DBL provides that the greater density between the General Plan and the Zoning Ordinance shall apply. Here, that is the General Plan. ~~With the density bonus, the allowed density on the West Parcel is 7.2 units per acre and the allowed density on the East Parcel is 12 units per acre.~~ By reserving 10% of the “total units” for low-income households, the Project qualifies for a 20% density bonus, allowing up to 16 additional units.

As designed, the “base project” conforms to the density permitted by the General Plan for each parcel, with 45 single-family homes and 40 ADUs proposed on the ~~approximately 10.23-acre~~ West Parcel (~~4.35~~2.3 du/ac)² and ~~43~~36 duplex units on the ~~approximately 4.35-acre~~ East Parcel (~~9.9~~10 du/ac).³ The “base project” also includes ~~44~~40 accessory dwelling units (ADUs) on the West Parcel, which, as a matter of state and local law, do not count toward allowable density in a zoning district or general plan. (Cal. Gov. Code § ~~65852-2~~66314(~~ac~~)(~~1~~)(~~G~~) and Municipal Code § 9-5.3805.) The remaining ~~nine~~16 duplex units on the East Parcel are “bonus

¹ These areas exclude portions of the site “encumbered by prior dedications of easements or rights-of-way, and are not so steep, unstable, flood prone or subject to other hazards as to be unstable to support new development,” as required by the General Plan.

² By law, ADUs are excluded from residential density calculations. Gov. Code § 66314(c).

³ Under the DBL, “[a]ll density calculations resulting in fractional units shall be rounded up to the next whole number.” Cal. Gov. Code § 65915(f)(5).

units” under the DBL, ~~resulting in a final density of 11.95 units per acre on the East Parcel, within the 12 units per acre allowed with application of the~~ in line with the Project’s 20% density bonus.

By providing deed restricted ADUs to low-income households, the Project qualifies for all of the protections of the DBL, including but not limited to the calculation of maximum allowable residential density, unlimited waivers and reductions in development standards, one concession or incentive, and parking reductions. (See Gov. Code § 65915.) Here, BrightSky requests waivers and/or reductions from the 1991 PD and other development standards (including, but not limited to setbacks, lot coverage, lot dimensions, open space, and other design criteria that may affect project density), to the extent such standards are “objective” as defined under the HAA. If necessary, BrightSky also seeks a waiver from the road width typically required of private streets in the City of Antioch. BrightSky reserves the right to provide a more detailed waiver request and select a concession or incentive as the Project is further refined during the planning process.

~~B. Project Modifications Since Prior Submittal~~

~~The Project has been slightly modified over the past several months, and BrightSky is pleased to share the revised version before you now. We believe this site plan offers the best land use for the Project Site.~~

~~As described in our letter to Kevin Scudero dated September 24, 2024, this resubmittal was contingent on resolution of several complicated factors, including: (1) application of the DBL to the Project; (2) new information from Pacific Gas & Electric (PG&E) regarding restrictions on the location of water quality basins under transmission wires; and (3) the City’s detailed comments regarding drainage at the Project Site, which could only be addressed with resolution of the two aforementioned factors. These issues are now resolved, as explained below.~~

~~As you know, clarifying application of the DBL to the Project was crucial to ascertaining the final site plan and unit count. We trust that the City is now satisfied that the Project qualifies for the protections of the DBL, as confirmed and explained by the California Department of Housing and Community Development (HCD) in their technical assistance letter to the City dated November 15, 2024, and enclosed herewith. HCD has enforcement authority over the DBL and other state housing laws. If HCD finds that a local government’s actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. (Gov. Code, § 65585(j).)~~

~~After engaging with PG&E, BrightSky relocated the water quality basin outside of the PG&E easement area and integrated into the project’s fee land area to avoid approval from the California Public Utilities Commission (CPUC) that would otherwise be necessary under Section 851 of the California Public Utilities Code. PG&E explained that most projects do not receive approval for the use of water~~

~~quality basins within PG&E easements. The newly designed water quality basin and bioretention basin will serve as a dual purpose for residents to enjoy as open space within the development. This area will include a pedestrian sidewalk along the perimeter, enhanced landscaping, and benches for residents to sit and enjoy. The City's drainage comments were resolved with the relocation of the water basin.~~

~~C. Summary of Applicable Standards under SB 330 and the HAA.~~

~~As previously summarized in BrightSky's Preliminary Application, the HAA and SB 330 both provide that "a housing development project shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity." (Gov. Code, §§ 65589.5(f)(4); 65905.5(c)(1).) In addition, under the HAA, housing development projects must only comply with applicable and objective general plan, zoning, and subdivision standards and criteria. (Gov. Code, § 65589.5(j)(1).) "Objective" is defined as "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).) In addition, affected cities and counties "shall not enact a development policy, standard or condition that would" result in "[i]mposing or enforcing design standards on or after January 1, 2020, that are not objective design standards." (Gov. Code, § 66300(b)(1)(C).) Housing developments that meet all applicable objective general plan and zoning standards may only be subject to a limited number of public hearings, including continuances and most appeal hearings, and jurisdictions may not apply new zoning regulations, development standards, or new fees if adopted after a Preliminary Application is filed.~~

~~The HAA also contains substantive restrictions on a city or county's ability to deny housing development projects. Where a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria in effect at the time that the project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency must make written findings supported by a preponderance of the evidence in the record that both of the following conditions exist:~~

~~(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means 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.~~

~~(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density. (Gov. Code, § 65589.5(j)(1)(A)-(B).)~~

~~The HAA thus establishes the only basis upon which a city or county may lawfully disapprove a housing development project or impose a condition that the project be developed at a lower density, as described above. Indeed, the HAA's stringent limitations on a local agency's discretion are sufficient to create a constitutionally protected property interest. In short, this means that to deny a housing development project, a local agency has the burden of either proving that the "proposed project in some manner fails to comply with 'applicable, objective general plan and zoning standards and criteria . . .'" or it must make the health and safety findings required by the HAA. Critically, a project must be deemed compliant "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project . . . is consistent, compliant, or in conformity." (Gov. Code, § 65589.5(f)(4).)~~

DB. Conclusion

BrightSky is excited to work in cooperation with the City of Antioch in providing much needed affordable housing to the community, consistent with the applicable, objective provisions of the City's land use regulations, and pursuant to critical state laws that are designed to facilitate housing production.

If you have any questions regarding the Project or the enclosed materials, please contact Jessica Heidari at (949.299.0861) or by email at jheidari@tkcteam.com.

Very truly yours,

MILLER STARR REGALIA

Dana Kennedy

Dana Kennedy

DCK:kli

~~Attachment: 11.15.24 Department of Housing and Community Development Letter to Kevin Scudero, City of Antioch~~

cc: Charles McKeag
Sondra Harris
Brent Little
Jessica Heidari

Summary report: Litera Compare for Word 11.9.1.1 Document comparison done on 2/28/2025 8:49:47 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://aws-dms02.msrllegal.com/IMANAGE/3089581/1	
Modified DMS: iw://aws-dms02.msrllegal.com/IMANAGE/3089581/2	
Changes:	
<u>Add</u>	41
Delete	41
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	82