HSW LLP

June 10, 2025

Community Development Department
200 "H" Street
Antioch, CA 94531

Re: Preliminary Application for Joyfield at Lone Tree, a 100% Affordable Project
Lone Tree & Golf Course Road, Antioch, CA, 94509
APNs: 072-510-005-1, -006-9, -007-7, & -008-5

To Whom It May Concern:

On behalf of Standard Lone Tree Venture LP ("Standard Communities"), you will find enclosed a SB330 preliminary application under Government Code Section 65941.1(a) to a develop a 7.56 gross acre site ("Site") with a 233-unit, 100% residential affordable housing project. This letter, the exhibits and plans, application, and information contained therein, and the permit processing fee constitute the submittal materials necessary to satisfy Senate Bill 330's exclusive 17-item application checklist for a Preliminary Application (Gov. Code § 65941.1, subd. (a).)

I. PROJECT AND SITE DESCRIPTION.

The proposed housing development project ("Project") is located on four vacant parcels (APNs: 072-510-005-1 (2.26+/- acres), 072-510-006-9 (2.10 +/- acres), 072-510-007-7 (1.05 +/- acres), & 072-510-008-5 (2.15 +/-acres)) that will be merged as part of a concurrent lot line application. The Site adjoins a commercial development to the south, and residential to the west and north, and attached residential to the east.

Three of the parcels (-005-1; -006-9; 008-5) have a General Plan land use designation of "Office". The remaining parcel, -007-7 has a General Plan land use designation of "Neighborhood Community Commercial." All of the parcels are zoned "PD – Planned Development" and have a zoning overlay of Commercial Infill Housing ("CIH") that allows for by-right residential development at a minimum of 12 dwelling units per gross acre notwithstanding the underlying General Plan land use designations. The CIH Overlay also creates a ministerial development application process whereby the application is only checked for conformance against objective standards at the staff level. (Antioch Municipal Code at § 9-5.301, subd. (p).) If it is in conformance, the developer can submit for building permits without further review or public hearing.

Here, the Project consists of 233 residential rental units on a 7.56 gross acre site at density of 31 units per gross acre with related improvements and infrastructure. The developer will provide 109 x 1-bedroom units, 58 x 2-bedroom units, and 66 x 3-bedroom units in seven three-, and four-story walk-up buildings, each with a maximum height of 45'. As designed, the Project is consistent with the density, number of stories, and maximum height permitted by the CIH Overlay zoning. The Project will also meet the parking requirements under California Density Bonus Law ("DBL") by providing 350 on-grade vehicle parking spaces.

The HAA and DBL will be used together to ensure that the project is deemed to be in conformance with all applicable, objective standards, even if there are deviations. Under the HAA, a local agency is required to disregard "the receipt of density bonus, incentive, concession, waiver, or reduction of development standards pursuant to Section 65915" in determining whether a project is consistent or not, as these "shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this [the HAA]." (Gov. Code § 65889.5, subd. (j)(3.)

The Project will exceed the City's BMR requirements by deed-restricting all of the units other than the manager's unit(s) at 70% of AMI or less with the following anticipated affordability levels:

- 23 units at Extremely Low Income (10%)
- 23 units at Very Low Income (10%)
- 185 at Low Income (79%)
- 2 Manager Units (1%)

II. SENATE BILL 330.

Effective January 1, 2020, SB 330 declared a statewide housing emergency to be in effect until January 1, 2025. The bill placed restrictions on certain types of development standards, amended the HAA, and made changes to local approval processes and the Permit Streamlining Act (Gov. Code § 65920 *et seq*.). During the housing emergency period, which Senate Bill 8 has extended to January 1, 2030, all cities and counties are subject to specified project review requirements and timelines regarding applications for housing developments. These changes include a prohibition on applying new zoning regulations and development standards after a project's application is submitted, except under certain specified circumstances.

A. <u>Preliminary Application</u>.

SB 330 allows an applicant to submit a Preliminary Application for any "housing development project," *i.e*., a project consisting of residential units, including mixed-use projects that are at least two-thirds residential by square footage. (Gov. Code § 65589.5, subd. (h)(2).) A

Preliminary Application is separate and distinct from, and does not require as much detail as, a traditional development application—i.e., a "Formal Application." SB 330 precludes local agency input into the required contents or format of a Preliminary Application or expanding the list of required materials for submittal. In addition, the local agency has no role in determining the completeness of a Preliminary Application. Once the applicant provides the information required in Government Code section 65941.1(a), the Preliminary Application is complete as a matter of law without any need or requirement for an agency's affirmative action.

B. Consistency with General Plan nd Zoning.

SB 330 provides 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 is consistent, compliant, or in conformity." (Gov. Code §§ 65589.5, subd. (f)(4); 65905.5, subd. (c)(1); *see also California Renters Legal Advocacy & Education Fund v. City of San Mateo*, 68 Cal.App.5th 820 (2021).) It also provides that a proposed housing development project "is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria, but the zoning for the project site is inconsistent with the general plan." (Gov. Code §§ 65589.5, subd. (f)(4); 65905.5, subd. (c)(2).)

C. Early Statutory Vested Rights.

If an applicant submits a Formal Application within 180 days of submitting a Preliminary Application, then the planning, zoning, design, subdivision, and fee requirements in effect at the time the Preliminary Application was submitted shall remain in effect for the remainder of the entitlement and permitting process, with certain limited exceptions. This is the earliest form of vested rights provided in the state Planning and Zoning Law, and it is completely controlled by the applicant.

D. Limited Public Hearings.

Under SB 330, housing development projects that comply with applicable, objective general plan and zoning standards are subject to a maximum of five public hearings[1] prior to final action by the City. (Gov. Code § 65905.5, subd. (a).) The City must consider and either approve or disapprove the project at one of these five hearings, after which no further hearings may be held in connection with project approval. (*Id.*)

[1] The term "hearing" is broadly defined to include informational hearings, hearings at which the project is continued to another date, sub-committee hearings, and appeal hearings. (Gov. Code § 65905.5, subd. (b)(2).)

III. HOUSING ACCOUNTABILITY ACT.

A. Basic HAA Policy.

The HAA was enacted in 1982 (Stats. 1982, Ch. 1438). Since then, it has been expanded many times "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 determining the completeness of a Preliminary Application. Once the applicant provides the information required in Government Code section 65941.1, subd. (a), the Preliminary Application is complete as a matter of law without any need or requirement for an agency's affirmative action.

B. Limits On City Discretion.

To lawfully disapprove a housing development project, an agency must make written findings, based upon a preponderance of the evidence in the record, as to at least one of certain statutorily prescribed circumstances. (*See, e.g.*, Gov. Code §§ 65589.5, subds. (d) and (j).) As relevant here, when 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 shall base its decision regarding the proposed project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

> (1) 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. 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.
>
> (2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact 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, subd. (j)(1).)

The HAA thus establishes the *only basis* upon which a city may lawfully disapprove of a housing development project or impose a condition that the project be developed at a lower density,

as described above.[2] Indeed, the HAA's stringent limitations on a city's discretion are sufficient to create a constitutionally protected property interest.[3]

In short, this means that to deny a housing development project, a city has the burden of either proving that the proposed project in some manner fails to comply with applicable, *objective* general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete or making the health and safety findings required by the HAA.[4]

The HAA stringently 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, subd. (h)(8).) Moreover, a project is deemed compliant as matter of law "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, subd. (f)(4).)

IV. DENSITY BONUS LAW.

DBL provides four benefits in exchange for a developer constructing affordable units: (1) a density bonus; (2) incentives/concessions; (3) waivers/reductions of development standards; and (4) parking standards. (Gov. Code § 65915, subds. (b)(1)(A), (d)(1), (e)(1), (f)(1), and (p).) The Project is requesting two of the four benefits: waivers/reductions and DBL parking standards.

Including 100% lower-income units (excepting manager's units, which are disregarded for purpose of DBL) entitles Standard Communities to five incentives/concessions and unlimited waivers/reductions. By incorporating the benefits of DBL, the Project is consistent with all applicable objective City standards.

A. INCENTIVES/CONCESSIONS.

Incentives or concessions are any "regulatory incentives or concessions proposed by the developer or the city…that result in identifiable and actual cost reductions to provide for affordable housing costs." (Gov. Code § 65915, subd. (k)(3)). The City bears the burden of proof

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[2] *See, e.g*. Gov. Code § 65589.5, subd. (d)(j); see also *North Pacifica, LLC v. City of Pacifica*, 234 F.Supp.2d 1053, 1059-60 (2002).

[3] *See* FN 2.

[4] *See Honchariw v. County of Stanislaus*, 200 Cal.App.4th 1066, 1081 (2011).

to justify denial of a requested concession. (Gov. Code § 65915, subd.(d)(4).) The definition of "concessions" is broad and includes but is not limited to all of the following:

> (1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission…including, but not limited to, a reduction in setback and square footage requirements and 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…
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> (2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
>
> (3) Other regulatory incentives or concessions proposed by the developer or agency that result in identifiable and actual cost reductions to provide for affordable housing costs…
>
> (Gov. Code § 65915, subd.(k).)

According to the California Department of Housing and Community Development ("HCD"), the DBL definition of incentives/concessions "clearly indicates that requirements beyond development standards are eligible," including "regulatory requirements," as long as the concession results in identifiable and actual cost reductions. (HCD Letter of Inquiry and Technical Assistance to City of San Jose (Dec. 14, 2021).)[5] For example, HCD has found that incentives/concessions can be used to alter requirements in inclusionary ordinances, including requirements to disperse affordable units. (HCD Letter of Technical Assistance to West Hollywood (Sept. 2, 2022), at p.3.)[6]

A local agency must approve incentives/concessions unless it makes specified written findings based on substantial evidence. (*See* Gov. Code § 65915, subd. (d)(1)). The only reasons to deny

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[5] A*vailable at* https://www.hcd.ca.gov/communitydevelopment/housing-element/docs/sclSanJose-LOI-TA-121421.pdf.

[6] *Available at* https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/WestHollywood-TA- 090222.pdf.)

an incentive/concession are: (i) the incentive/concession does not result in identifiable and actual cost reductions; (ii) the incentive/concession would have a specific, adverse impact (as defined) upon public health and safety or on real property listed in the California Register of Historical Resources, and there is no feasible method to mitigate or avoid the impact; or (iii) the incentive/concession would be contrary to state or federal law. (*Id*.) A "specific, adverse impact" is defined 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. subd. (d)(2)). The legislature has specified that conditions that would have a specific, adverse impact upon the public health and safety "arise infrequently." (Gov. Code § 65589.5, subd. (a)(3)). Hence, making such a finding is exceedingly difficult, if not impossible to make. Notably, Government Code section 65915(r) declares: "This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units." Therefore, if ever in doubt regarding an incentive/concession or a waiver or reduction of development standards, the City should make the decision that promotes the production of housing.

Here, based on the level of affordability provided, Standard Communities is entitled to five incentives and concessions. Standard Communities reserves the right to request these incentives and concessions under the SDBL in its formal application. (Gov. Code § 65915, subd. (d)(2)(D).)

B. Waivers/Reductions.

The State Density Bonus Law provides that "an applicant may submit to a city . . . a proposal for a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development" that is entitled to the benefits of the State Density Bonus Law. (Gov. Code § 65915, subd. (e)(1).) A "development standard" is defined broadly as "a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation." (Gov. Code § 65915, subd. (o)(1).) An applicant is not limited in the number of waivers that may be requested and granted. (Gov. Code § 65915, subd. (e)(1).) Waivers can be requested for "any development standard that will have the effect of physically precluding the construction of a development" that meets the State Density Bonus Law's minimum affordable requirements "at the densities or with the concessions or incentives permitted by [DBL]."(*Id*.)

A local government may deny a requested waiver only in limited circumstances. Specifically, a local government may deny a requested waiver only if granting the waiver "would have a specific, adverse impact . . . upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact" or where it "would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to

grant any waiver or reduction that would be contrary to state or federal law." (*Id*.) As noted above, conditions that would have a specific, adverse impact upon the public health and safety "arise infrequently." (Gov. Code § 65589.5, subd. (a)(3).)

A local government can require "an applicant to provide reasonable documentation to establish eligibility" only for a density bonus and requested parking ratios, and not for concessions or waivers. (Gov. Code § 65915, subd. (a)(2).) As HCD has stated, the "showing or 'reasonable documentation' required by the applicant [for a waiver] is that the project qualifies for a density bonus." (HCD's Notice of Violation Letter to the City of Encinitas (Jan. 20, 2022).[7] "A project that meets the requirements of the [State Density Bonus Law] is entitled to waivers if they are needed, 'period.' " (*Id*., quoting *Wollmer v. City of Berkeley*, 193 Cal.App.4th 1329, 1346-47 (2011).)

A recent California Court of Appeals case has further confirmed that a local government cannot deny a requested waiver based on whether a developer could have designed its project in a way that minimizes the need for requested waivers. (*See Bankers Hill 150 v. City of San Diego*, 74 Cal.App.5th 755 (2022).) In *Bankers Hill 150*, project opponents claimed that the project could be redesigned to be more consistent with the city's development standards and therefore the city should have denied the requested waivers. The Court of Appeal rejected that argument, holding the city could not demand that the developer to redesign its building to better meet the city's development standards even if a design existed that would allow fewer deviations than the proposed project. (*Id*. at 775.)

HCD has also clarified that a waiver must be granted if it is necessary to facilitate a requested concession. (HCD Letter of Technical Assistance to the City of San Jose (May 20, 2022).)[8] To illustrate the point, HCD provides an example in which an applicant seeks an incentive/concession to remove the requirement for ground floor commercial space in a mixed-use zoning district and instead provide residential uses on the ground floor. Under such a scenario, an applicant can seek a waiver of ground floor commercial space requirements because such requirements "would be incompatible" with the incentive/concession allowing ground floor residential uses. (Id.) According to HCD, "these derivative waivers should be considered and approved in a perfunctory manner by the local agency." (*Id*.)

Standard Communities is requesting the waivers/reductions that are identified in Exhibit A, attached hereto. Standard Communities reserves the right to modify the requested waivers/reductions and/or request additional waivers/reductions.

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[7] Available at https://www.hcd.ca.gov/community-development/housing- element/docs/sdiencinitas-nov012022.pdf.

[8] *Available at* http://www.hcd.ca.gov/community-development/housingelement/docs/sclSanJose-TA-052022.pdf.)

V. CONCLUSION.

Standard Communities is excited to work in cooperation with the City of Antioch to provide much-needed housing to the community consistent with the applicable, objective provisions of the City's land use regulations and critical state laws that are designed to facilitate new housing production.

We will file the Formal Application within 180 days, as required by Government Code section 65941.1(d)(1). In the meantime, we would be happy to discuss the Project or this Preliminary Application with you at any time.

Sincerely,

MELANIE GRISWOLD,
PARTNER HSW, LLP

cc: Yael Suneson Preskill, Senior Regional Director, Standard Communities

EXHIBIT A

REQUESTED WAIVERS/DEVELOPMENT STANDARDS

Waiver #1: Relief from the requirement for open space in CIH Design Standard 3.1.6.A that mandates providing 200 SF per unit with a minimum of 50% as common open space and the remaining 50% as either private or common open space, as well as one common open space area for developments with 5 or more units.

Waiver #2: Relief from the parking lot landscape requirements outlined in the CIH Design Standard Section 3.1.1.P to provide landscaping and street trees on at least one side of a Shared Entry drive from the street curb to a minimum of 50' inside the property line with a street tree spacing of no more than 25' apart.

Waiver #3: Relief from CIH Design Standard 3.1.4.G that requires parking areas to be divided into a series of parking courts separated by landscaping.

Waiver #4: Relief from the parking space dimension and type standards required by Section 9-5.1709 and Section 9-5.1711 of the Antioch Municipal Code, which are incorporated into the CIH Design Standards, to allow for both perpendicular compact stalls at 8' x 16' and perpendicular parallel stalls at a reduced length of 9' x 18' rather than 9' x 20' for all non-ADA stalls.

Waiver #5: Relief from CIH Design Standard 3.1.6.G that requires open space usable areas to be less than a 10% slope.

Waiver #6: Relief from CIH Design Standard 3.1.3D that requires a separation buffer at the edge of residential development immediately abutting commercial development.

Waiver #7: Relief from CIH Design Standard 3.1.2C that requires that at least one entry door to the residential project at ground level shall face the primary frontage.

Waiver #8: Relief from CIH Design Standard 3.1.5G that requires that the trash enclosure pad shall be designed to drain to a pervious surface through indirect soil infiltration in accordance with the Municipal Code and other applicable regulating agencies.