

Rationale for Re-Entitlement of the La Plaza View Mixed-Use Project

The subject site is comprised of 3 parcels, APNs 144-274-002, -014, and -015, containing 0.85 acres (“Site”).

The Bishop Revocable Trust dated 31 May 2007 is the owner (“Owner”) of the Site. North Bay Housing, Inc., on behalf of Owner, is the applicant (“Applicant”) hereunder, applying to re-entitle the Site

- from the mixed-use development entitled in June, 2021 (Cotati Planning Commission Resolution PC-2021-7), with 23 market-rate apartment units and four inclusionary units with 10,752 square feet of ground-floor commercial and retail space and 74 parking spaces,
- to a 70-unit, 100% affordable housing development.

In the several years it took to entitle the property for 27 units, economic conditions for multi-family developers changed substantially. As a result, the project, with its mixed-use entitlement requiring ground floor retail has become unviable financially.

On behalf of Owner, Applicant therefore is submitting herewith its “Notice of Intent to Submit an Application,” as required by the By Right Housing Law. Please see Enclosure #3.

Project Description

The re-entitled Project will be known as La Plaza View Family Apartments (“Project”). It will be comprised of a single, five-story, elevator building with residential use on floors 1 through 5. It will include 14 one-bedroom units, 38 two-bedroom units and 18 three-bedroom units and appropriate common area support spaces on the ground floor with floor area totaling 75,163 square feet. With 25% three-bedroom units, the Project will qualify under CTCAC rules as “large family” housing. The FAR will be 2.03 on .85 acres. The density will be 82 dwelling units per acre.

The Project will include 63 on-site parking spaces including covered parking in three enclosed automated parking structures. In addition, there are 15 street parking spaces and one passenger loading zone. Emergency vehicle access will be provided at two Site entry points on Charles Street and La Plaza, connected by a continuous driveway. Pedestrian access will be provided from E. Cotati Avenue via a passenger loading zone and through the main entrance lobby for visitors and first responders.

One hundred percent of the units will be reserved by a 55-year covenant for lower income households, exclusive of the manager’s unit, but with up to 20% of the units re-allocable to moderate income households.

The Site is well-served by existing transit facilities, including commuter rail and bus service. It is located approximately 0.75 miles west of the Cotati SMART Station. It is served by the two Cotati Hub bus stops, one of which is immediately adjacent to the Site on La Plaza; and the other of which is located about 100 yards to the southwest of the Site at the intersection of W. Sierra Avenue and Old Redwood Highway.

The Site is located within the La Plaza Zoning District (“LP District”) of the Downtown Specific Plan (“SPD”). La Plaza Park is located directly across the street, west of the Site.

Project Benefits

The Project will bring vital benefits to Cotati (the “City”):

- It will house people who can work more easily for businesses in the City as they will not have to commute more than a few minutes thanks to the bus stop on La Plaza View’s doorstep and the City transit hub some one hundred yards away. A local labor force is a benefit for any community.
- Seventy new households on the northeast edge of Downtown will provide needed community vitality to the Downtown, and a close-in customer base that won’t need parking for downtown businesses. The owners of Cotati Market, Shige, Café Salsa, Redwood Café, Superburger, for example, can’t help but see the Project as a boon to their businesses.
- Seventy new households in the Downtown might be the encouragement that stores and shops not yet in the City need to get them to consider the Downtown. Certainly, the Downtown would benefit from some retail re-vitalization.
- It will bring new residences to the City without a significant increase in infrastructure and services costs.
- The Project’s streetscape along East Cotati Avenue, La Plaza, and Charles Street is generous and defines the physical edge of La Plaza Park. Sidewalks and landscaping create up to 20 feet of open space in front and on both sides of the building, encouraging pedestrians to engage in these spaces as community amenities, and facilitating pedestrian access to the Downtown.
- The Project, as a high-density, 100% affordable community, will fulfill half the City’s 2023-2031 RHNA obligation in a single building in the first year of the 2023-2031 cycle.
- The Project will provide badly needed, barrier free housing that will be affordable for 70 individuals, couples, and families who now cannot afford housing at all or are spending as much as 60% of their incomes on rent.

The Lack of Affordable Housing Is a Local Crisis

There is a manifestly insatiable demand for affordable housing. When the cost of housing is factored in, California has the highest poverty rate of any state in the Country. Increasing numbers of residents throughout the state – especially in communities that are well below their RHNA allocations – are struggling to find places where they can afford to live.

Section 2 of the Housing Crisis Act of 2019 offers a litany of consequences of the “housing crisis”, including:

- Increased poverty and homelessness, especially first-time homelessness.
- Overcrowding in low-income units.

- Inability of public employees including first responders, health care providers, teachers to find local housing, forcing them into more affordable housing farther from the communities they serve.
- Inability of employers to find and retain their workforces.
- Difficulty of schools, universities, non-profits in attracting teachers, students, employees.

The consequences of the acute shortage of affordable housing are not just in “other communities,” they are local. *Indeed, homeless folks have been sleeping under the oak trees on the Site.*

Nearly every affordable housing project has a long waiting list, and despite the development of new affordable housing in Sonoma County, the demand cannot be met. Sites and projects qualifying for entitlement for medium- to high-density development of affordable housing are in high demand by affordable housing developers.

The City’s 2023-2031 RHNA Allocation

Cotati’s RHNA allocation for 2023-2031 includes 94 very-low-income and low-income housing units and another 39 moderate-income units.

Since 1981 – over the last four decades – only four affordable rental projects have been built in Cotati: Windwood Apartments, Marvin Gardens, Charles Street Village, and Wilford Lane Village, for a total of 149 units. The most recent one, Burbank Housing’s 32-unit special needs project at 160 Wilford Lane, was placed in service in November 2003, more than eighteen years ago. Another 106 units were built between 1981 and 2015 as affordable single-family ownership units and as affordable multi-family and single-family inclusionary units per the May 2015 Cotati Housing Element. Between 2004 and 2015, only 1 affordable unit was permitted.

LUC Chapter 17.31, the chapter in the City’s Land Use Code that specifically addresses affordable housing, only does so within the context of the inclusionary requirement for market-rate projects.

“Each residential development shall be designed and constructed with at least fifteen percent of the total units as inclusionary units restricted for occupancy by moderate-, low-, or very low-income households.”

Chapter 17.31 does not address affordable multi-family housing projects at all.

Neither Cotati’s land use history nor its current Land Use Code promises fulfillment of its RHNA allocation.

Policy Conflicts

The City’s many explicit policy directives in support of more housing projects, and more affordable housing projects, in its General Plan (including its Housing Element) conflict with many other policies in the General Plan which are intended to preserve a small town/village ambience.

The City's Land Use Code constrains multi-family affordable housing development to low-density, small-scale projects so as not to disturb the small town/village ambience.

- It limits multi-family housing to the upper floors of mixed-use projects (which forces developers to put unleaseable commercial/retail space on the ground floor).
- It acknowledges only inclusionary units as affordable housing.
- It limits density to 15 units per acre.
- It imposes costly, traditional design features of craftsman-style homes on affordable housing projects when ministerial processing is sought, *and only when ministerial processing is sought*.

Because of the housing crisis in California, public policy is now firmly in support of affordable housing. The Legislature has recently provided regulatory tools that can resolve conflicts between affordable housing and community design in favor of affordable housing.

The enclosed Notice of Intent relies on these tools, as this writing makes clear below, to enable the City to give preference to the policy directives in its General Plan and Housing Element that support the development of multi-family, affordable housing over those that would protect the status quo: i.e., the small town/village ambience.

Precedence of the General Plan Including Its Housing Element

The California Supreme Court has described general plans as the “charter to which [zoning] ordinance[s] must conform¹.”

CA Gov 65913.4(5)(B) provides that, “in the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.”

Notwithstanding the SPD's deference to the Land Use Code², the General Plan and its Housing Element take precedence over the Land Use Code.

Project Consistency with City's General Plan

It is inarguable that the Project meets a number of the General Plan's housing objectives and is consistent with a number of its housing policies. Most notable among them are the following:

- OBJECTIVE LU 1C. *Encourage, and when possible, prioritize the development of infill and underutilized sites within mostly developed areas* in order to minimize the premature extension of infrastructure.

¹ Leshar Communications, Inc. v. City of Walnut Creek, 802P. 2d 317 – Cal: Supreme Court 1990

² SPD 3.1.050.B.2. “The LP District is subject to the applicable regulations of the City's LUC.”

- OBJECTIVE LU 2A. Establish and maintain residential neighborhoods as safe and attractive places to live with convenient access to commercial services, recreational facilities, employment opportunities, public services, and other destinations.
- POLICY LU 2.2 *Encourage clustering housing* so that larger areas of open space may be permanently preserved.
- POLICY LU 2.5. *Locate medium and higher density housing within easy walking or bicycling distance of public facilities, services, transit, and major employers.*
- POLICY LU 2.7. Encourage social interaction between neighbors in new residential developments by providing opportunities for social gathering in common areas, parks, and neighborhood commercial centers.
- POLICY LU 2.10. Encourage mixed-use, *pedestrian- and transit-oriented development, with a focus on the Hub and major corridors, and continuing to prioritize implementation of the Downtown Specific Plan* in order to provide a range of housing opportunities and expand the range of goods and services available to nearby residents.
- POLICY LU 3.2 *Encourage infill development of vacant lots within existing commercial districts and the core downtown/business area and prioritize such development.*
- POLICY LU 3.7. Preserve lands for economic development and employment opportunities by requiring residential projects, **except affordable housing**, in commercial areas to be incorporated into larger commercial (projects) or mixed-use projects and not result in adverse economic or land use compatibility impacts.
- Policy CON 1.6 Avoid removal of large, mature trees that provide wildlife habitat or contribute to the visual quality of the environment to the greatest extent possible through appropriate project design and building siting. If full avoidance is not possible, prioritize planting of replacement trees on-site over off-site locations.
- POLICY CON 2.1 Improve air quality through continuing to require a compact development pattern that focuses growth in and around existing urbanized areas, locating new housing near places of employment, and encouraging alternate modes of transportation, and requiring projects to mitigate significant air quality impacts.

Project Consistency with the City's Housing Element

In the Introduction to the City's Housing Element, the relationship of the Housing Element to the General Plan is acknowledged as follows: "Recognizing the importance of providing adequate housing, the State has mandated a Housing Element within every General Plan since 1969. This Housing Element was prepared in compliance with the State General Plan Law pertaining to Housing Elements."

The very first sentence of the Introduction to the Housing Element reads as follows:

"Meeting the housing needs of Cotati's residents as well as accommodating the City's share of regional housing needs is an important goal for the City."

In Chapter 3 (Resources), Table 3-6 of the Housing Element, the three parcels comprising the Site are identified as “Very Low and Low Income Vacant and Underutilized Mixed-Use Sites.” *The Housing Element explicitly targets the Site for affordable housing.*

Under “Housing Element Goals, Policies and Programs” the Housing Element lays out goals and related policies, including the following:

- GOAL H-2. Provide adequate sites to accommodate the housing needs of all economic segments of the community.
 - ✓ Policy H-2.1 *Ensure that adequate land designated for residential and/or mixed-use development is available to accommodate the City’s fair-share of ABAG’s Regional Housing Needs Allocation.*
 - ✓ Policy H-2.8 *Require housing developments to provide housing stock at a range of affordability levels to assist in meeting the City’s housing needs as required by Chapter 17.31 of the Land Use Code.*
 - ✓ Policy H-2.12 *Encourage housing development on existing infill sites to efficiently utilize existing infrastructure.*
 - ✓ Policy H-2.14 *Lower-income residential development is a priority for water and sewer service.*
- GOAL H-3. Expand affordable housing opportunities for lower income households and persons with special housing needs, including seniors, disabled persons, large households, and homeless persons and families.
 - ✓ Policy H-3-1: *Ensure that the City’s development standards encourage development of a range of housing types, including multifamily, mixed-use, high-density residential, second units, and single-family units, and incentivize production of lower-income housing.*
 - ✓ Policy H-3-2: *Provide incentives for affordable housing development, including density bonuses, expedited processing, relaxation in development standards, and either reduction, delay, or waiver of fees when financially feasible.*
 - ✓ Policy H-3-3: *Continue to provide density bonuses to eligible projects as required by Government Code Section 65915, including projects that meet the minimum of total units affordable to very low- and low-income households or provide units restricted to occupancy for senior households.*
 - ✓ Policy H-3-7: *Encourage housing for large families.*
 - ✓ Policy H-3-8: *Continue to facilitate barrier-free housing in new development.*
- GOAL 4. Promote housing opportunities for all persons regardless of race, gender, age, marital status, ancestry, national origin, color, or sexual orientation.
- GOAL 5. Promote energy efficiency and conservation in residential development.

Program 5-1. Promote energy efficiency and conservation in residential development as follows:

- ✓ As part of the General Plan Update, *ensure location of higher density residential housing near employment centers and public services to discourage sprawl and conserve energy resources.*
- ✓ *Continue to permit and encourage mixed uses and higher densities on in-fill and vacant sites in areas with public services, such as medical clinics, schools, and grocery stores, to discourage sprawl and encourage short vehicle trips and/or alternative forms of transportation.*
- ✓ During preparation of specific plans and master plans, encourage location of higher density residential areas within walking distance of employment-generating uses, schools, parks, community centers, and other amenities.

The General Plan and its Housing Element, in policy after policy, virtually define the Site as a site for housing, indeed for high density, affordable housing.

Project Consistency with the City's Downtown Specific Plan ("SPD")

SPD 1.3 defines the relationship of the SPD to the General Plan. Most relevantly, it says, "...the key General Plan policies that are implemented by this Specific Plan are in the Land Use and Urban Design Elements of the General Plan."

The Cotati General Plan designates the Zoning Map Symbol "LP" as the "La Plaza Zoning District." Table 2-1 in Chapter 17.20.020 of the Land Use Code (Zoning Map and Zoning Districts) specifies that the Zoning District which implements the General Plan Designation "LP" is the Downtown Specific Plan ("SPD").

In Chapter 1 of the SPD, under "Plan-Wide Policies", the City's housing imperative is set forth as follows:

"SP5. Ensure a mix of housing types to serve all economic segments of the community. Create a variety of housing choices. As the Downtown matures and its livability and economic value increase, a more diverse set of housing choices attract an increasingly varied resident population housing in rental or ownership configurations. The variety is necessary for vitality over the long term and is enabled by the various building types and blocks in the Plan."

Also, in Chapter 1 of the SPD, under "Plan-Wide Programs," the housing imperative is further emphasized as follows:

"Housing – There is an increasing demand for housing in the (SPD) area to serve a diverse set of needs. Leverage the demand for housing into an asset for both downtown and the community through the following:

11. *Ensure a wide variety of housing types and unit types into the various buildings throughout the plan area.*

12. Provide a variety of housing choices within the smallest scale of development: the building.”

The SPD emphasizes the General Plan’s advocacy for more housing within its boundaries, especially Downtown.

In support of that advocacy, in sub-section 3.1.050.B.2, the LP District summary notes that there are 89 dwelling units allowed in the LP District.

Notably, there are presently only 17 dwellings in the LP District: 4 apartment units in a mixed-use project and 13 other residences.

The Project’s 70 units fit within the 89-dwelling limit in the LP District. Indeed, it is the only realistic prospect for adding enough units to get to 89, given the dearth of vacant sites within the LP District boundaries. There is only one other vacant site that could be developed to high-density multi-family use within the LP District, and that is at the far north end contiguous to the Northern Gateway District. It is not nearly as desirable a location for affordable housing as is the Site.

Project Consistency with LUC 17.24.020

LUC 17.24.020’s Table 2-4 – as opposed to LUC 17.22.020’s Table 2-4 – specifies that for specific plan zoning districts, ...residential density is “determined by the applicable specific plan.” The applicable specific plan is the SPD. There is no specific density control in the SPD.

Project Consistency with LUC 17.39

Apart from “traditional design features of craftsman-style homes” required by 17.39.B.1., the Project is consistent will all standards in LUC 17.39. See “Other Relief”, page 13.

Project Inconsistency with “Zoning Overlay” in the SPD and Allowable Land Use in the Land Use Code

1. A dotted line (for purposes of this letter, “Zoning Overlay”) on the SPD Land Use Map included in SPD Chapter 3.1.050 bounds frontages on La Plaza and E. Cotati Avenue (among others). The map legend identifies such bounded frontages as requiring 100% commercial (including 50% retail) on the ground floor. Apart from this dotted line, there is no reference to this particular requirement anywhere else in the Zoning Code.
2. The only regulation in the Land Use Code that specifically regulates the use of the Site is 17.22.020, Table 2-4, which allows “the residential component of a mixed-use project” as the only residential land use allowed in any SPD zoning district and then only at 15 units per acre (17.42.100.B). This regulation is in direct conflict with 17.20.020m(see above).

Project Inconsistency with the SPD's Urban Standards

1. Building Height (SPD 3.2.020.D). The building height limit is three stories. The Project is designed to include 70 units and common area totaling 75,163 sq.ft. On the .85-acre site, that is an FAR of 2.03. To achieve that density, the Project must be five stories.

Project Inconsistencies with the SPD's Architectural Standards for Commercial Block

1. The maximum allowed lot width frontage is 250 feet. The Site frontage is 345 feet.
2. SB 35 requires that the City not impose a parking ratio greater than 1 space per unit. That would require 70 spaces. The project has 63 on site and 15 street spaces. If the street spaces are not credited, the Project will be seven spaces short. The City is allowed to use whatever ratio they want below 1:1, but is not required to.
4. A front yard or porch is required on the ground floor of residential units. A private porch is not prohibited.
5. Building size and massing standards preclude full floors above ground floor.

Project Inconsistency with LUC 17.39

If an applicant files a Notice of Intent for ministerial processing, the City's Land Use Code, Chapter 17.39.B.1 requires the use of "traditional design features of craftsman style homes...."

Application of the Density Bonus Law

The enclosed Notice of Intent relies on CA Gov 65915: the Density Bonus Law.

Pursuant to CA Gov 65915(b)(1), "a city... shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p)."

The No-Increase Density Bonus

CA Gov 65915(f) "'density bonus' means a density increase over the otherwise 'maximum allowable gross residential density'... ..or if elected by the applicant, a lesser percentage increase, including, but not limited to, **no increase in density.**"

LUC 17.24.020, Table 2-4, makes the SPD the determinant of residential density for the Site. There is no maximum allowable residential density in the SPD. Accordingly, Applicant is applying for a density bonus of no increase.

Applying for a density bonus – even at no increase -- entitles Applicant to the Density Bonus Law's concessions and incentives as well as its waivers.

The Base Case Density Bonus

In any event, with 100% affordable units, the Project qualifies for an 80% density bonus.

CA Gov 65915(f)(3)(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b),

(b)(1)(G) One hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

the following shall apply:

- (i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

The base case for density on the Site is determined by:

1. Applying the setbacks required for the Site in the LP District.
2. Applying the building height limit required for the Site in the LP District: 3 stories
3. Applying the building massing standards as required for the site in the LP District.
4. Applying the maximum FAR as required for the site in the LP District: 2.15
5. Applying the frontage limit as required for the Site in the LP District: 250 feet
6. Allowing 100% affordable units, including on the ground floor, rather than mixed-use, as allowed by General Plan Policy LU 3.7.
7. Applying the maximum parking ratio for the Site allowed in SB35: 1 space per unit

These seven conditions restrict the base-case building to three floors totaling [redacted] sq.ft. Including hallways and other common areas, this square footage allows a project containing 39 units: [redacted] one-bedrooms, [redacted] two-bedrooms, and [redacted] three bedrooms.

An 80% density bonus applied to the 39-unit base case gives a unit count for the Site of 70 units.

Interpretation

CA Gov 65915(r) imposes the following imperative: *This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.*

Use of Concessions

CA Gov 65915(d)(1) entitles Applicant to submit a proposal to the City for specific incentives or concessions. The section requires the City to grant the proposed concessions or incentives unless the

City can make a “written finding based on substantial evidence... ..(that) the concession or incentive does not result in identifiable and actual cost reductions consistent with subdivision (k)....”

CA Gov 65915(k) defines concession or incentive to be any 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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, *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, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(3) Other 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, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

CA Gov 65915(d)(2)(D) gives Applicant four incentives or concessions if the project meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b). That subparagraph reads as follows:

(b)(1)(G) One hundred percent of the total units, exclusive of a manager’s unit or units, are for lower income households, [80% of AMI] as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, [110% of AMI] as defined in Section 50053 of the Health and Safety Code.]

The Project will comply with (b)(1)(G) so it qualifies for four concessions.

Concessions

The Project exemplifies the current trend in multi-family housing design that can be constructed at costs that can be financed with the income derived from affordable rents.

We estimate that adding the traditional design features of craftsman style homes, as required by LUC 17.39(B)(1), to a commercial block building will increase the cost of construction by as much as \$1.5 million (including the cost of a construction elevator which would be required because a pitched roof atop a five-story building will bring the building height to over 60 feet). Moreover, the cost of on-going maintenance would be significantly increased.

1. Applicant therefore proposes the use of one of its concessions to relieve the requirement for traditional design features of craftsman style homes imposed by LUC 17.39(B)(1).
2. Reserved.
3. Reserved.
4. Reserved.

Use of Waivers

The Project is inconsistent with some of the SPD's Urban Standards and Architectural Standards, as noted above. These standards would physically preclude the construction of the Project.

CA Gov 65915(e)(1) prohibits the City from "applying any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) [see (b)(1)(G), at the densities or with the concessions or incentives permitted by this section. Applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that would have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section."

Waivers

1. SPD 3.2.020(C) requires 2 parking spaces per unit. CA Gov65913.4(e)(2) restricts the City from imposing automobile parking requirements that exceed one space per unit. *A waiver is requested to allow on-site parking of 63 spaces for 70 units.*
2. SPD 3.2.020(D) requires a height limit of three stories. *A waiver is requested to allow five stories.*
3. SPD 3.3.010(B)(1) limits lot width/frontage for a commercial block style building to 250 feet. The Site frontage on E. Cotati Avenue is 339 feet. *A waiver of the lot width/frontage is requested.*
4. SPD 3.3.010(B)(8) limits maximum floor areas above the ground floor to less than 100% of the ground floor area. *A waiver is requested to allow up to 100% of the ground floor area on each floor.*

Precedence of the General Plan Over the Land Use Code

65913.4(5)(B) provides that, "in the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan."

The General Plan, Chapter 7, Land Use, Policy LU 3.7 (see Tab 2, page 5) specifically exempts affordable housing from the requirement that it be included in mixed-use projects. Thus, the Project can be 100% residential.

In accordance with 65913.4(5)(B), therefore, Applicant submits that the "Zoning Overlay" (the dotted line) on the SPD Land Use Map (see page 8) and the requirements of LUC 17.22.020, Table 4 (and its imposition of 17.42.100.B), both of which explicitly require that residential units be built only on the upper floors of mixed-use projects in the SPD, are superseded by General Plan Policy LU 3.7.

LUC 17.39.030(D)(7) precludes the removal of several of the oak trees growing on the Site. As Project landscape plans include the planting of numerous replacement trees around the Site, this regulation is

superseded by General Plan Policy Con 1.6 which allows removal of these trees, provided replacement trees are planted.

Other Relief

LUC 17.39.030(D)(1)(a) requires that ground-level units shall include a private porch and/or private patio/garden and that each private porch or private patio/yard shall include a minimum clear dimension of six feet by eight feet. 17.39(D)(1) relieves the requirement for a private porch because a private porch is listed in 17.39.D.1 as qualifying as private open space and the project already has more private open space than is required given that it is across the street from a public park.

Notice of Intent to Submit an Application

CA Gov 65913.4(b)(1)(A)(i) requires that, before submitting an application for a development subject to the streamlined, ministerial approval process described in subdivision (c), the development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent shall be in the form of a preliminary application that includes all the information described in Section 65941.1(a).

65941.1(b) (1) requires that each local agency shall compile a checklist and application form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application.

65941.1(b)(2) requires that the Department of Housing and Community Development shall adopt a standardized form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application if a local agency has not developed its own application form pursuant to paragraph (1).

As of the date of this Notice of Intent, the City has not promulgated its own SB 35 preliminary application form, nor has the Department of Housing and Community Development (although HCD has promulgated an SB330 Notice of Intent form).

Therefore, the enclosed Notice of Intent form is neither a City form nor a State form, per se, but includes all the requirements of 65941.1(a). See “State Objective Planning Standards”, pages 14-15.

65941.1(b)(3) requires that a checklist or form shall not require or request any information beyond that expressly identified in 65941.1(a).

Tribal Scoping

65913.4(b)(1)(A)(ii) requires that, “Upon receipt of a notice of intent to submit an application, the local government shall engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area... .. of the proposed development.”

65913.4(b)(1)(A)(iii) The timeline for noticing and commencing a scoping consultation in accordance with this subdivision shall be as follows:

65913.4(b)(1)(A)(iii)(I) The local government shall provide a formal notice of a development proponent's notice of intent to submit an application described in clause (i) to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent.

65913.4(b)(1)(A)(iii)(II) Each California Native American tribe that receives a formal notice pursuant to this clause shall have 30 days from the receipt of that notice to accept the invitation to engage in a scoping consultation.

65913.4(b)(1)(A)(iii)(III) If the local government receives a response accepting an invitation to engage in a scoping consultation pursuant to this subdivision, the local government shall commence the scoping consultation within 30 days of that response.

Applicant submits that a scoping engagement may be unnecessary inasmuch as a formal cultural resources evaluation of the property was completed by Archaeological Resources Service and submitted to the City on April 12, 2017. The Conclusion Section of that study begins with: "Based on the results of the field examination and the literature search, no Native American prehistoric archaeological site is present in the upper soils of the project area." A copy of that study is included. See Enclosure 9.

Moreover, Jon-Paul Harris, on behalf of the City, sent a letter to Mr. Greg Sarris, Chairperson of the Federated Indians of Graton Rancheria, on January 16, 2020, advising him of the two, two-story buildings project then going through entitlement processing. Apparently, either Mr. Sarris did not respond within the thirty-day reply period, or he replied that the Federation had no interest in the site. A copy of that letter is enclosed. See Enclosure 10.

Application

65913.4(b)(2)(A) requires that, if, after concluding the scoping consultation, the parties find that no potential tribal cultural resource would be affected by the proposed development, the development proponent may submit an application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c).

State Objective Planning Standards

65913.4(a) allows a development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit if the development complies with subdivision (b) and satisfies all of the following objective planning standards:

1. The development is a multi-family housing development
2. The development is on a site which satisfies all of the following:
 1. Legal parcel or parcels located in a city;
 2. 75% of the site perimeter adjoins parcels that are developed with urban uses
 3. Zoned for residential or mixed-use development;

3. Commitment for land use covenant for lower or moderate-income housing rents will remain in effect for 55 years;
4. Located in a locality that CA Dept of Housing has determined to be less than the locality's share of regional housing needs by income category for the reporting period;
5. The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards and objective design review standards in effect at the time the... ..notice of intent is submitted pursuant to subdivision (b).
6. The development is not located on a site that is any of the following:
 - A. Coastal zone;
 - B. Prime farmland;
 - C. Wetlands;
 - D. Very high fire hazard severity zone;
 - E. Hazardous waste site;
 - F. Delineated earthquake fault zone;
 - G. Special flood hazard area;
 - H. Regulatory floodway;
 - I. Lands identified for conservation in an adopted natural community conservation plan;
 - J. Habitat for protected species;
 - K. Lands under conservation easement;
7. The development would not require demolition of certain categories of housing;
8. Certification to the City that prevailing wage will be paid during construction;
9. Parcel is not subject to Subdivision Map Act;
10. The development will not be on a mobile home or RV site.

Compliance With State Objective Planning Standards

CA Gov 65913.4(c)(1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

- (A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

CA Gov 65913.4(c)(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

City Objective Design Standards in the Land Use Code and SPD

The City has promulgated local objective design standards in its land use code: LUC 17.39. The SPD also contains objective design standards. As noted, this pre-application uses concessions and waivers to exempt the Project from certain of those design standards.

In addition, CA Gov65913.4(e)(2) restricts the City from imposing automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit. The City may allow fewer.

Compliance with City Objective Design Standards in the Land Use Code and Objective Design Standards in the SPD via Design Review

The objective design standards in the Land Use Code (Chapter 17:39) and in the SPD that have not been conceded or waived in accordance with the Density Bonus Law are subject to an optional design review conducted pursuant to CA Gov 65915.4(d)(1), as follows:

“Any design review or public oversight of the development *may* be conducted by the local government’s planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as ***any reasonable objective design standards*** published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application and ***shall be broadly applicable to development within the jurisdiction***. That design review or public oversight shall be completed as follows ***and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section*** or its effect, as applicable:

- (A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.”

The sixty days allowed to vet the State objective planning standards per 65913(c)(1) are included within the 90-day design review period granted by 65913.4(d)(1). Both periods start from the application submittal date.

In fact, the Housing Accountability Act of 2019 (SB330) makes any design review irrelevant. See page 17.

Definition of Objective Standards

CA Gov 65913.4(b)(5) For purposes of this paragraph, ‘objective zoning standards,’ ‘objective subdivision standards,’ and ‘objective design review standards’ mean standards that involve no personal or subjective judgment by a public official and are 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 before submittal.

Updated Streamlined Ministerial Approval Process, Government Code Section 65913.4 Guidelines

Article III, Section 300, Sub-section (c)(3) Modifications to objective standards granted as part of a density bonus, concession, incentive, parking reduction, or waiver of development standards pursuant to Density Bonus Law Government Code section 65915, or a local density bonus ordinance, shall be considered consistent with objective standards.

Application of the Housing Accountability Act

The Housing Accountability Act (CA Gov 65589.5) all but precludes disapproval of an affordable housing project and makes design review *for that purpose* irrelevant.

65589.5(d) states that “a local agency shall not disapprove a housing development project... ..for very low, low-, or moderate-income households... ..or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households... .., *including through the use of design review standards*, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following...”

There are five possibilities listed:

1. Number 1 requires adoption of a housing element that has been revised in substantial compliance with Section 65588, and the jurisdiction has met or exceeded its RHNA allocation for the planning period.
2. Number 2 requires proof that the project would have a *specific, adverse impact* on public health or safety, and that inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact on public safety. *Per 65589.5(D)(2) “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.*
3. Number 3 requires proof that the project violates specific State and/or Federal laws.
4. Number 4 requires that the site be surrounded on two sides by agricultural land or land used for resource preservation purposes.
5. Number 5 allows disapproval if “the project is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation and the jurisdiction has adopted a housing element that has been revised in substantial compliance with Section 65588.” Notably, *“this paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low-, low-, or moderate-income households in the jurisdiction’s housing element, even though it is inconsistent with both the jurisdiction’s zoning ordinance or general plan land use designation.”*

In short, none of these five possibilities can be used to disapprove the Project. Arguably, the Housing Accountability Act, on its own, will entitle Applicant to approval of its application.

Timeline

65913.4(b)(1)(A)(ii) requires that the tribal scoping process begin “upon receipt of a notice of intent....” Thus, in accordance with the timing specified in 65913.4(c)(1) and 65913.4(d)(1), assuming no Tribal objections and assuming compliance with all applicable objective standards, Applicant hopes for the issuance of the requested re-entitlement of the Site by Labor Day.

TASK	START	END
Submission of Notice of Intent		
Receipt by City Planning	3/1/22	3/1/22
Tribal Scoping		
Canvassing of Tribes and Invitation(s)	3/2/22	4/1/22
Response by Tribes	4/1/22	5/2/22
Complete Scoping	5/2/22	6/2/22
Submission of Application		
Receipt by City Planning	6/3/22	6/3/22
Determination of Consistency with State Objective Planning Standards		
Vetting of State Objective Planning Standards	6/3/22	8/2/22
Optional Objective Design Review		
Design Review (if elected) of Objective Standards	6/3/22	9/1/22
Entitlement		
Issuance of Entitlements (over the counter)	9/2/22	9/2/22