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February 19, 2019

Jon Biggs
Director
Los Altos Community Development Department
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SENT VIA EMAIL AND COURIER

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs:

As you know, we represent 40 Main Street Offices, LLC (the “Applicant”) in connection with the above-captioned Application, submitted November 8, 2018 (“Application,” attached as [Exhibit 1](#) hereto) for a streamlined ministerial permit for the 40 Main Street Project (“Project”). In a letter dated December 7, 2018 (“Determination Letter”, or “Determination,” attached as [Exhibit 2](#) hereto), you denied the Application on behalf of the City of Los Altos (“City”). For the reasons set forth in our January 10, 2019 letter (attached as [Exhibit 3](#) hereto), the City’s December Determination did not identify any legally sufficient grounds to deny the Application, and as a result the City was required by State law to issue a streamlined ministerial permit no later than February 6, 2019.¹ I am in receipt of your February 6, 2019 letter (attached as [Exhibit 4](#) hereto), sent to me via email at 4:34 pm on the date of the City’s statutory deadline to grant the Application, which letter confirmed that the City would not grant the Application. The purpose of this further response is to (1) provide some important background on SB 35 in the context of the Applicant’s long efforts to build a modest development in a manner that is consistent with the City’s Los Altos

¹ Please note that the January 10 letter was first received by the City on January 10, the same day it was dated and sent, not on January 17, as stated in your February 6 letter. See [Exhibit 5](#) (confirmation e-mail from Western Messenger demonstrating that the letter was received and signed for by a City official at 12:47 p.m. on January 10).

Design Plan and the Downtown Design Guidelines, (2) respond to the February 6 Letter, (3) confirm that, by failing to issue the streamlined ministerial permit required by law within the timeline required by law, the City is now in violation of, *inter alia*, Gov. Code §§ 65913.4 and 65589.5, (4) request your confirmation that there are no legally established procedures to seek appeal or reconsideration of the City's Determination, and (5) provide a final opportunity to avoid litigation of this matter.

I. Background on SB 35 and the Development Process on this Site

There is now a growing realization among legal scholars that local governments' excessive discretionary review of housing development projects is a key cause of California's housing supply crisis.² The State Legislature recognized this incontrovertible fact at least as early as 1990, when it found and declared that "local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects." Gov. Code § 65589.5(a)(1)(D). In 2017, finding that the state's "housing supply and affordability crisis" had reached "historic proportions . . . hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives," the Legislature reiterated its intent that State housing laws have long been intended to "meaningfully and effectively curb[] the capability of local governments to deny, reduce the density for, or render infeasible housing development projects." Gov. Code § 65589.5(a)(2). Recognizing that "[t]hat intent has not been fulfilled," *id.*, the Legislature adopted a comprehensive package of State housing laws to streamline the approval of housing developments like the Project. One of the centerpieces of this legislative package is SB 35 of 2017, which establishes that housing developments like the Project, which comply with all of the City's objective standards, and meet all of SB 35's other qualifying criteria, cannot be denied based on City officials' discretionary judgments, and also cannot be delayed through never-ending cycles of "completeness" review.

² See, e.g., Jennifer Hernandez *et al.*, In the Name of the Environment (2015); Jennifer Hernandez, *et al.*, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 HASTINGS ENVTL. L.J. 21, 21-22 (2018); Moira O'Neill, *et al.*, Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process (Berkeley Law Center for Law, Energy & the Environment; Berkeley Institute of Urban & Regional Development, Columbia Graduate School of Architecture, Planning & Preservation, February 2018), available at https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf (in major jurisdictions, "even if . . . developments comply with the underlying zoning code, they require additional scrutiny from the local government before obtaining a building permit," which "triggers CEQA review of these projects"; "Our data shows that in many cases, these cities appear to impose redundant or multiple layers of discretionary review on projects"); Moira O'Neill *et al.*, Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates, 25 HASTINGS ENVTL. L. J. 1, 73-77 (2019); Elmendorf, Christopher S., Beyond the Double Veto: Land Use Plans As Preemptive Intergovernmental Contracts (February 9, 2019). Available at SSRN: <https://ssrn.com/abstract=3256857>, at pp. 33-37 (noting that especially before 2017, local jurisdictions were largely free to ignore their own plans for meeting regional housing goals, and could always use CEQA to kill housing approvals). These and other referenced materials cited in this letter, our December response letter, and the initial Application, are included as Exhibit 9, attached hereto.

Despite the City's promise in its Downtown Design Guidelines (December 2009) that call for "providing fairness and consistency in the City's downtown development review and approval process," the City's excessive discretionary review process of the Applicant's efforts to build a modestly sized residential development are a quintessential example of why SB 35 is so desperately needed.

The SB 35 Application is the third application the Applicant has submitted to develop the project site with a relatively uncomplicated, modestly sized development that complies with all of the City's many objective criteria for development in this location. The most recent prior application was *submitted in September 2013* and remains "under consideration" after more than five years of review and delay.

City staff issued a letter determining the prior application to be incomplete in October 2013. After the Applicant carefully reviewed and addressed the numerous items the City stated were required for a complete application, staff declared the Applicant's resubmitted application to also be incomplete in December 2015, adding numerous additional completion criteria that had not been required for the previous submission. Staff would later acknowledge that many of these requirements were not, in fact, requirements for a complete application.

After finally acknowledging the application was complete, staff finally issued a formal letter determining the application to be complete in September 2016. But instead of proceeding to be promptly considered on the merits by the city's discretionary decision-making bodies, as any "complete" application should be allowed to do, there followed almost a year and a half of additional delay at the staff level before the application was first heard before the City's Planning Commission. During this time, staff added additional requirements on the already concededly "complete" application, such as outside design review (which to the best of our knowledge no other project before or since has been required to undergo), a third parking report requiring data that no other project in Los Altos has been required to complete, and compliance with newly adopted policies, such as a "story pole policy" adopted years after the project application was submitted in September 2013.

Eventually, after the application finally cleared the daunting hurdles to be considered on its merits, it proceeded to a Planning Commission hearing in June 2017, where the Commission refused to approve it and demanded numerous design changes.³ After the project architect substantively redesigned the Project to meet the Commission's direction, the Commission rejected it a year later in June 2018. At both hearings, the Commissioners' comments expressed clearly aesthetic, subjective and discretionary preferences about how the project should be designed, which were unrelated to any objective requirements in the City's adopted standards. At the June 2018 hearing, the Planning Commission Chair, claiming (incorrectly) that she had already seen the project "seven

³ In between the 2017 and 2018 Commission meetings, staff simply refused for seven months to act on City Council's July 2017 direction to meet with the applicants to negotiate a development agreement that would include the redevelopment of parking plaza 10 to add as many as twenty public parking stalls, and staff only agreed to move forward with a hearing date after the applicants agreed to eliminate the redevelopment of plaza 10 from the application.

times,” indicated that she would oppose any future attempts to build any project at the location that was not completely redesigned and reduced in size.⁴

SB 35 was designed precisely for processes and projects like this one. It was only after more than five years of attempts to achieve a discretionary approval for this Project that the Applicant turned to its legal rights under SB 35: to pay the high cost of preparing and submitting an SB 35 application in order to proceed under the ministerial process now required by State law. The City’s December and February responses to the Application indicate that the City does not intend to meet either the letter or spirit of this law, and instead intends to foist the requirements of a discretionary process – including another round of “completeness” review – on a procedure that the Legislature has explicitly directed to be ministerial. This is no longer permissible as a matter of State law.

II. Response to February 6 Letter

As you know, in the City’s December 7 Determination, you stated that the City had completed its “review of the Project” and concluded that the Project did not qualify for SB 35 streamlining for two reasons: (1) because the Project supposedly did not provide the minimum required amount of affordable housing, and (2) because the Project supposedly did not meet objective zoning standards related to parking. We appreciate your acknowledgement that the first of these contentions was erroneous, and that the Project in fact meets the 10% affordable housing standard that applies to the Application.⁵ As we noted in our January 10 Letter, the Determination Letter’s second ground also was not a permissible basis to deny the Application, for several reasons: because the City’s Determination Letter failed to identify any parking standards that qualify as “objective” under SB 35’s definition of that term, because the Determination failed to identify “which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard,” as required by law (Gov. Code § 65913.4(b)(1)), and because, in any case, the Application affirmatively demonstrated that the Project complied with all applicable objective parking standards. Nothing in the February 6 Letter states anything to the contrary – and in fact, nothing in the February 6 Letter even disputes or responds to these contentions. Therefore, for the reasons set forth in the January 10 letter, the City’s decision to deny the Application was unlawful.

Nonetheless, the following responds to the contentions in the February 6 letter (each section A, B, C and D, *infra*, corresponds to numbered Parts 1, 2, 3 and 4 of the February 6 letter, respectively).

A. Since the City Did Not Identify any Objective Standards with Which the Project Conflicts, the City’s Failure to Issue a Streamlined Ministerial Permit Was Unlawful.

⁴ Documentation of the correspondence and City records related to this process are attached hereto as Exhibit 6.

⁵ For the record, for the reasons explained in footnote 1 of our January 10 Letter, we disagree that new SB 35 applications submitted in Los Altos are required to provide 50% lower-income units, at least not until the City timely adopts and submits an annual progress report on its 2018 housing production. However, our disagreement on this point appears to be immaterial since we both agree that the 10% standard applies to this Application.

The February 6 letter claims - for the first time - that the Applicant has not submitted a “complete” SB 35 application, invoking the Permit Streamlining Act, Gov. Code § 65920 *et seq.* Respectfully, this is simply a mistake of law. The Permit Streamlining Act expressly states that it does not apply to ministerial projects such as the Project. Gov. Code § 65928. The SB 35 process, in notable contrast to the Permit Streamlining Act, does not authorize a local agency to refuse to process an application on the grounds that it is “incomplete.” Instead of encompassing the concept of application “completeness,” SB 35 provides that a streamlined ministerial permit must be granted within 90 days of the day the application is *submitted*, rather than calculating the deadline from the date the application is deemed or determined to be “complete.” Gov. Code § 65913.4(b)(1). Most importantly, it is not the Applicant’s burden to establish the Project’s consistency with the objective standards; it is the City’s burden to establish the contrary. *See* Gov. Code § 65913.4(b)(1); HCD SB 35 Streamlined Ministerial Permit Guidelines (“Guidelines”), § 301(a)(3). Specifically, the City must provide “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.” Gov. Code § 65913.4(b)(1)(A) (emphasis added); Guidelines, § 301(a)(3).

Despite this, the February 6 Letter states that the City has now decided that the SB 35 Application is “incomplete,” and further states that the Applicant must submit *all of the materials the City requires for discretionary project applications* before the City will process the SB 35 Application - without explaining why any of this material is in any way relevant to the SB 35 criteria and standards. This novel – and legally unsupported – contention is (1) irreconcilable with your previous contentions in the December 7 Determination, (2) too late to be asserted well after the City’s 60-day deadline has expired, and (3) in any case, legally untenable.

First, the City’s contention is completely at odds with the City’s Determination Letter. The December 7 Determination did *not* say that the City required any discretionary project application materials in order to analyze the SB 35 Application. To the contrary, the December 7 SB 35 Determination states that the information required in the attached “Notice of Incomplete Application” would be required only “*if*. . . [the Applicant] elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice” (emphases added). Nowhere does the Determination Letter state that any of this material is required in order to facilitate the City’s review of whether the Application complied with the applicable SB 35 objective standards. To the contrary, you stated that even without this material, the City had succeeded in completing its “review of the project” and rendered an assessment of whether the Application met the criteria for streamlined ministerial permitting.

Second, it is too late for the City to now claim that, without this information, the Project may conflict with an objective standard. The 60-day deadline to raise this concern has passed. Once again, if a city believes an SB 35 application may conflict with any of the City’s applicable objective standards, the city is required to provide, within 60 days of submittal, “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.” Gov. Code § 65913.4(b)(1)(A); *see also* Guidelines, § 301(a)(3). The statute and Guidelines both state explicitly what result occurs when, as here, the City fails to identify a specific objective standard

with which the project conflicts: “the development shall be deemed to satisfy the objective planning standards.” Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).

Third, even if the City had timely raised this type of concern, the City cannot demand that an SB 35 applicant submit all of the information normally required for a discretionary permit application. SB 35 states that consideration of an SB 35 application must be “strictly focused on assessing compliance with criteria required for streamlined projects.” Gov. Code § 65913.4(c). The City’s documentation demands run afoul of this statutory restriction, since the City is demanding numerous materials, studies and documents that are wholly irrelevant to the question of whether the Project meets the applicable objective standards.

Finally, even putting aside all of the above, there should be no doubt that the Application did, in fact, “contain[] sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards,” Guidelines, § 301(b), as the City itself implicitly acknowledged when it stated in the December Determination that the City had completed its “review of the project.” Despite the fact that it was not the Applicant’s burden to establish the Project’s consistency with the City’s objective standards, the Application carefully identified each potentially applicable provision of the City’s municipal code, line by line, and explained in detail either how the Project complied with the standard or why the standard did not qualify as “objective” under SB 35’s definition of that term. If there were any valid reason to dispute any of these contentions, it would have been easy enough for the City to say so, and to cite the specific code section at issue.

Other cities have published SB 35 application forms which do not demand that applicants provide the type of material used to assess discretionary permit applications. *See* forms used by the cities of San Francisco and Concord, attached hereto as part of Exhibit 7. Cities including San Francisco, Cupertino and Berkeley have granted SB 35 applications based on material directly comparable to the Application. *See id.* The format of the Application is almost identical to the format used in an application to the City of Berkeley for an SB 35 permit for the 2012 Berkeley Way Project, which application the City of Berkeley had no difficulty analyzing and granting. *See id.* There is no reason why the City of Los Altos could not have made the same determination that its fellow jurisdictions have.

Even at this date, well past the City’s 60-day deadline, the City can only vaguely suggest that the Project may conflict with a “host” of objective standards, but *cannot name a single example*,⁶ despite the clear statutory requirement that the City identify any such standard with particularity. The very purpose of SB 35 is to enable a clear, straightforward assessment of whether a housing development complies with objective standards. The City’s documentation requests seek to

⁶ As noted in our January 10 Letter, the only examples cited in the February 6 letter – which point to Notes 18 and 19 on the December 7 “Notice of Incomplete Application” – do not cite any specific objective standard with which the Project conflicts. Neither Note 18 nor Note 19 cite any specific standard at all, much less a standard that qualifies as “objective,” and the notes refer to subjective considerations such as whether the project is “acceptable.” These types of questions and concerns may be relevant to a discretionary process but are plainly irrelevant to a ministerial approval based on objective standards.

transform this ministerial process into a discretionary process, and are a clear attempt to evade the central purpose of this State law.

B. The City Has Not, and Now Cannot, Make the Necessary Findings under the Density Bonus Law to Deny the Requested Concession/Incentive and Waiver.

We appreciate your acknowledgement that the Project must be considered consistent with objective standards without regard to modifications to which the Applicant is entitled pursuant to the State Density Bonus Law. The Application provided all information necessary to determine that the Project is entitled to the Density Bonus Law concession/incentive and waiver requested in the Application. With respect to information requested in “2-a” of your February 6 Letter, which reiterates the City’s demand that the Applicant provide all of the information required for discretionary project applications, we refer you to our response immediately *supra*. With respect to the request for information in “2-b” of the February 6 Letter, our January 10 letter already explained that all of this information was in fact provided in the original Application. For your convenience, please see the attached table, which explains where each circled and underlined item from the City’s Density Bonus Submittal Requirement document is located in the original Application materials. See Exhibit 8, attached hereto.

Please note that, as we stated in footnote 3 of the January 10 Letter, the City had very limited grounds on which it could have denied the requested Density Bonus Law requests. The burden was on the *City* to establish the existence of those grounds. It is, of course, not the Applicant’s burden to provide the City with evidence from which the City could meet *its* burden to make findings to deny a Density Bonus Law request. But in any event, the City’s own municipal code states that for an “on-menu” concession/incentive such as the 11-foot height increase requested in the Application, “[t]he city council has determined that the on-menu incentive[] . . . would not have a specific, adverse impact.” Los Altos Municipal Code (“LAMC”) § 14.28.040(F)(1). Therefore, there is no need for any additional information to confirm what the City Council has already decided, which is that the requested concession/incentive will have no adverse impact and therefore cannot be denied unless the City makes a finding based on substantial evidence that it would not result in cost savings. The City made no such finding, the time has passed to do so, and so the Project’s consistency with objective standards must be determined without regard to the modifications to which the Applicant is entitled under the Density Bonus Law.

C. The City Has Not Identified any Objective Standard which Prohibits the Processing of Concurrent Applications.

We refer you to Part III of our January 10 Letter, in which we point out that the City has not identified any objective standard which precludes the Applicant from submitting an SB 35 application on the site, and in which we stated that the Applicant authorized the City to suspend any processing of the prior application while the SB 35 Application remains under review. This point appears to be moot, since as we understand it, the City has now completed its review of the SB 35 Application, and will not grant the requested permit, and so there is no still-pending application left to withdraw.

D. The Housing Accountability Act Also Requires the City to Approve the Project.

We refer you to Part IV of our January 10 Letter. The Applicant has submitted all information necessary to establish that the Project meets all of SB 35's qualifying criteria. Under these circumstances, the City's unlawful refusal to grant a streamlined ministerial permit violates the Housing Accountability Act. The Applicant is therefore entitled to the attorney's fees and potential fines and penalties authorized under the Housing Accountability Act.

III. Exhaustion of Remedies

For the reasons set forth above, the City's decision not to grant the SB 35 Application was unlawful. Pursuant to LAMC § 1.12.020, it appears that there are no further avenues to appeal or to seek reconsideration of the City staff's Determination that the City will not grant a streamlined ministerial permit for the Project on the basis of the Application, as submitted. If, notwithstanding this, the City believes that it has adopted any procedures to seek appeal or reconsideration of the City staff's final decision to deny the SB 35 permit, please advise us of those avenues immediately so that the Applicant can consider availing itself of those procedures.

We have concurrently submitted a claim to the City Clerk pursuant to the Government Claims Act, Gov. Code § 900 *et seq.*, to the extent there is any arguable requirement that the Applicant exhaust this avenue for relief before availing itself of its legal remedies.

IV. Conclusion

We urge the City to evaluate whether its taxpayers, residents, and those needing housing would be well-served by litigating this matter – which would result in delayed construction of urgently-needed housing, as well as cause the City to spend taxpayer dollars on litigation defense costs as well as the fines and attorney's fees that would be due to the Applicant based on the City's unlawful denial of this Application.

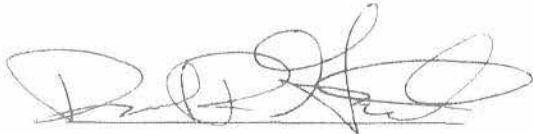
We appreciate your willingness to meet and discuss the development of the Project site, but your letter makes clear that you are only willing to discuss how the Project could theoretically proceed once the Applicants meet the newly articulated "submittal requirements" that your most recent letter claims are required for an SB 35 application. Since the Application as submitted entitles the Project to approval, it is hard to see how this would be a fruitful discussion. It appears clear that the City does not intend to implement SB 35 in a manner consistent with State law. However, if you would like to discuss alternatives to litigation, we and the Applicant team would be very willing to discuss this.

If we do not hear otherwise from you, we anticipate bringing legal action no later than 90 days from the date of the February 6 letter, and may do so well before the 90 days expire, and without further notice. Therefore, please do not hesitate to contact us as soon as possible if you would like to discuss potential alternatives to litigating this issue.

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Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Daniel R. Golub", written over a horizontal line.

By: Daniel R. Golub

Enclosures: Exhibit 1 – November 8, 2018 SB 35 Application
Exhibit 2 – December 7, 2018 SB 35 Determination Letter
Exhibit 3 – January 10, 2019 Response Letter
Exhibit 4 – February 6, 2019 Response Letter
Exhibit 5 – January 10, 2019 Delivery Confirmation E-mail
Exhibit 6 – Correspondence and City records related to prior discretionary process
Exhibit 7 – SB 35 forms and approval documents from other jurisdictions
Exhibit 8 – Response to Density Bonus Submittal Requirements
Exhibit 9 – Documents Cited and Referenced in November 8, 2018 Application,
January 10, 2019 Response Letter, and this letter

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January 10, 2019

Jon Biggs
Director
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Los Altos, California 94022

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs:

We represent 40 Main Street Offices, LLC (the "Applicant") in connection with the above-captioned Application for a streamlined ministerial permit for the 40 Main Street Project ("Project"), which Application was submitted to the City of Los Altos ("City") on November 8, 2018. The Project will bring 15 much-needed housing units, as well as new office space, to a site the City has long recognized as appropriate for development as part of the City's plan to establish a sense of entry to the City's Downtown area. The project will provide 15 new infill and transit-oriented dwelling units in Downtown, proximate to walkable goods and services. In addition, the City of Los Altos will be able to add 13 market-rate and two affordable units to its Regional Housing Needs Assessment compliance.

As you know, Chapter 366, Statutes of 2017, as amended ("SB 35"), requires cities to issue a streamlined ministerial permit to any housing developments that meet SB 35's qualifying objective standards. Gov. Code § 65913.4(a). If cities believe an SB 35 application conflicts with any applicable objective standards, the city is required to provide, within 60 days of submittal, "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." Gov. Code § 65913.4(b)(1)(A); *see also* HCD Streamlined Ministerial Approval Process Guidelines ("Guidelines"), § 301(a)(3). Otherwise, "the development shall be deemed to satisfy the objective planning standards." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).



We have reviewed your brief December 7 letter concluding that the Project is not eligible for streamlined ministerial permitting (“SB 35 Determination”), in which you do not dispute that the Project satisfies nearly all applicable SB 35 criteria, but in which you claim that that the Project is not eligible for SB 35 streamlining for two reasons: (1) because the Project “does not provide the percentage of affordable dwelling units required by the State regulations”, and (2) because the Project does not meet unspecified standards related to parking. Neither of these contentions are correct, and neither provide a legally permissible basis to deny a streamlined ministerial permit. Since the City has not validly identified any SB 35 standard with which the Project conflicts, and the time to do so has now elapsed, the Project is now deemed to comply with all of SB 35’s qualifying criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). As set forth below, State law requires the City of Los Altos to issue a streamlined ministerial permit for the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same).

I. The Project Qualifies for SB 35 Streamlining Because It Meets the Applicable Affordable Housing Requirement

SB 35 requires local governments to issue a streamlined ministerial permit to housing developments which provide a specified minimum percentage of units as housing affordable to lower-income households earning below 80 percent of the area median income. Gov. Code § 65913.4(a)(4). The applicable minimum percentage of affordable housing depends on several factors. *Id.* As pertinent here, the applicable percentage depends upon whether the locality submitted its latest housing production report to the Department of Housing & Community Development (“HCD”) by the April 1 statutory deadline. Gov. Code §§ 65400, 65913.4(a)(4)(B)(i). HCD issued several determinations during 2018, reporting on each California jurisdiction’s status at various points during the year.

The December 7 SB 35 Determination cites a January 31, 2018 HCD determination as support for the contention that the Project was required to provide 50% affordable units to qualify for streamlined ministerial permitting. But HCD’s January 31, 2018 determination was not the current HCD determination on the date the Application was submitted. HCD issued a subsequent determination on June 1, 2018, which unambiguously states that as of that date the City of Los Altos was “subject to SB 35 . . . streamlining for proposed developments with at least 10% affordability.” *See* relevant excerpts from this determination attached hereto as Exhibit A (emphasis added). The June 1, 2018 determination was HCD’s most current determination as of the date the Application was submitted on November 7, 2018, and “[a] locality’s status on the date the application is submitted determines . . . which level of affordability (10 or 50 percent) an applicant must provide to be eligible for streamlined ministerial permitting.” Guidelines, § 200(g); *see also* Gov. Code § 65913.4(a)(5) (SB 35 criteria are determined based on standards “in effect at the time that the development is submitted to the local government . . .”). The Applicant has confirmed directly with HCD – the agency delegated with statutory authority to implement SB 35, *see* Gov. Code § 65913.4(j) - that the 10% affordability requirement applied in Los Altos on

November 7, 2018. See e-mail attached as Exhibit B. Since the Project will provide more than 10% of its units as affordable to low-income households, the Project meets the applicable minimum percentage of units to qualify for a streamlined ministerial permit.¹

II. The Project Meets All Applicable Objective Standards, Including All Objective Standards Related to Parking

A housing development that meets all of SB 35's other criteria is entitled to a streamlined ministerial permit as long as the development is "consistent with *objective* zoning standards . . . in effect at the time that the development is submitted." Gov. Code § 65913.4(a)(5) (emphasis added). The statute defines "objective" standards extremely narrowly; a city may only apply "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." Gov. Code § 65913.4(a)(5); *see also* Guidelines, § 102(p) (same). A local government may not apply any standards that do not qualify as "objective" under this narrow definition, and a local government cannot require an SB 35 applicant to meet any discretionary or subjective criteria typically required in an application for a discretionary permit. Guidelines, §§ 300(b)(1) & 301(a)(1). "Determination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." Guidelines, § 300(b)(8).

If a local government believes that an application for a project with less than 150 housing units conflicts with any objective standards, the local government must "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 standard." Gov. Code § 65913.4(b)(1); *see also* Guidelines, § 301(a)(3). If "the local government fails to provide the required documentation . . . , the development shall be deemed to satisfy the objective planning standards" Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C) (same).

It is not the Applicant's burden to establish the Project's consistency with applicable objective standards; it is the City's burden to establish the contrary. *See* Gov. Code § 65913.4(b)(1). Guidelines, § 301(a)(3). Notwithstanding this, the Application contained a detailed submission affirmatively demonstrating that the Project is, in fact, consistent with every one of the City's

¹ We further note that, irrespective of any determinations issued by HCD, SB 35's statutory requirements are clear. A locality is subject to the 10% requirement if "[t]he locality did not submit its latest production report to . . . [HCD] by the time period required by Section 65400 [of the Government Code] . . ." Gov. Code § 65913.4(a)(4)(B)(i). Section 65400 of the Government Code requires all local governments to submit an annual housing report no later than April 1 of each year, reporting on the housing production completed in the prior calendar year. The City of Los Altos submitted its "latest production report" (the report documenting on housing production during the 2017 calendar year) after the April 1, 2018 statutory deadline. Since it remains the case that the City "did not submit its latest production report to the department by the time period required by Section 65400," the City will remain subject to the 10% requirement until and unless it submits its production report documenting its 2018 housing production by the April 1, 2019 statutory deadline. For this additional reason, the Project meets the applicable affordable housing requirement for SB 35 streamlining.

applicable objective zoning standards as well as all of SB 35's other qualifying criteria. The December 7 SB 35 Determination does not dispute that the Application satisfies all of the applicable SB 35 criteria in Gov. Code § 65913.4(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), (a)(8), (a)(9) and (a)(10), and in Guidelines, Article IV, §§ 400, 401, & 403. The City's SB 35 Determination also does not dispute that the Project satisfies all of the City's numerous objective zoning standards other than those related to parking.

As for parking, the City's December 7 SB 35 Determination states only that the plans "do not provide the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking." This cursory statement falls well short of the statutory requirement to "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 standard." Gov. Code § 65913.4(b)(1) (emphasis added). The determination does not even cite the code section or sections the City believes the Project to violate and provides no explanation of the reason the Project conflicts with the unidentified standards. Since the City has not provided the "required documentation" of "which standard or standards" the City believes that the Project conflicts within, and since the 60-day deadline to do so has now elapsed, the Project is now deemed to comply with all such standards as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C).

With this said, and without in any way waiving the Applicants' rights to maintain that the Project is now legally deemed consistent with all applicable objective standards, the following discussion demonstrates that the Project does, in fact, meet all applicable objective zoning standards related to parking spaces and access/egress to off-street parking.

A. Compliance with Numeric Parking Standards

We refer you again to Attachment 2 of the Project application material submitted November 8, 2018, and in particular to the portions of the table addressing sections 14.74.080, 14.74.100, and 14.74.200 of the Los Altos Municipal Code ("LAMC"). This table demonstrates compliance with all objective parking standards and requirements, as they are modified by SB 35 pursuant to Gov. Code § 65913.4(d)(2). SB 35 modifies a local agency's maximum parking standards as applied to an SB 35 Application, providing that a local agency "shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." Gov. Code § 65913.4(d)(2).

As set forth in the original application, the Project, which contains both non-residential and residential components, meets all applicable zoning requirements for each component. For the non-residential component of the Project, there is no applicable parking requirement. Under the City's zoning regulations for "office uses" in this zoning district:

For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking

district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.

LAMC § 14.74.100. As shown in the Project’s architectural drawing package, since the Project participates in the public parking district, and since the 5,724-square foot office area (and even 1,271-square foot residential floor area) do not exceed the lot area of 6,995 square feet, no parking spaces are required for the non-residential floor area.

For the residential portion of the Project, the City of Los Altos’ numeric zoning standard in Section 14.74.080 of the Zoning Ordinance does not apply pursuant to SB 35. Rather, the SB 35 statutorily required standard of one parking space per dwelling unit applies per Government Code § 65913.4(d)(2). The Project exceeds this standard, because it provides 18 parking spaces, and only 15 dwelling units are proposed (with one unit being exempt due to the property’s participation in the parking district).

B. Compliance with Objective Parking Access and Egress Standards

As demonstrated in the preceding section and the original Application, the Project complies with all of the City’s objective standards with respect to off-street parking.

The SB 35 Determination suggests that the Project does not meet an objective zoning standard related to adequate access/egress to off-street parking, but the SB 35 Determination does not cite any code section governing access and egress – and certainly not any code section with objective language – with which the Project fails to comply. The SB 35 Determination’s reference to “adequate” access and egress is irrelevant to an SB 35 application, since determining “adequacy” is a subjective determination that does not qualify as “objective” under SB 35’s definition. Gov. Code § 65913.4(a)(5); Guidelines, § 102(p); *see also Honchariw v. County of Stanislaus*, 200 Cal. App. 4th 1066, 1076 (2011) (“suitability” is a “subjective” criteria that is inapplicable when state law only permits application of “objective” standards).

It has been the City’s demonstrated practice to allow projects such as 40 Main Street to obtain access from the City’s downtown public parking areas. As a result of the Project one space in the public parking plaza may be affected by the Project but one parking space will be made available for the public’s use on Main Street where the property’s current driveway exists.²

² As discussed *infra* at Part V, the City’s SB 35 Determination was also accompanied by a separate “Notice of Incomplete Application” and attachments describing requirements that the City believes *would* apply *if* the Applicant were to submit a discretionary use permit application rather than an SB 35 streamlined ministerial application. The “Notice of Incomplete Application” letter and attachments are not relevant to the City’s SB 35 Determination, but even if they were, they would not provide any valid reason to deny the Applicant’s SB 35 Application. Although the “Notice of Incomplete Application” letter and its attachments contain some references to parking (for example in notes 3, 18 and 19), none of these references cite any *objective* requirements related to parking spaces or required access and egress to parking. The requests in note 3, for example, are found neither in any of the City’s objective standards, nor in the Parking Standards Exhibit A.

III. The City Has Not Identified any Objective Standard Precluding an SB 35 Application on this Site, but the City Can Suspend Processing of the Prior Application While the City Completes the Review of the SB 35 Application

The December 7 SB 35 Determination claims that because two applications have been submitted for the site, one application must be withdrawn. The letter cites no legal authority for this proposition. As set forth above, to the extent the City believed there to be an objective City standard that precluded the Applicants from submitting an SB 35 Application on this site, the City was required to identify that specific standard within 60 days of the Application submittal. See Gov. Code § 65913.4(b)(1). However, to avoid any unnecessary disputes, the Applicant is willing to authorize the City to suspend any processing or other activities planned for the previously submitted application during the time that the November 8 SB 35 Application remains under submission.

IV. The Housing Accountability Act Also Requires the City to Approve the Project

As stated in the Application, we also note that, in addition to being subject to SB 35, the Project is also subject to the Housing Accountability Act (“HAA” or “Act”), because more than two-thirds of the Project’s square footage is designated for residential use. Gov. Code § 65589.5(g)(2). Pursuant to the Housing Accountability Act, “[w]hen a proposed housing development project complies with applicable, objective general plan, zoning and subdivision standards and criteria,” the City *may not* disapprove the project or reduce its density unless the City makes findings, supported by a preponderance of the evidence, that the project would have an unavoidable impact on public health or safety that cannot be mitigated in any way other than rejecting the project or reducing its size. Gov. Code § 65589.5(j). Under recent reforms to the HAA, the question of whether a project is consistent with objective standards is resolved under a standard of review that is extremely deferential to the applicant. See Gov. Code § 65589.5 (f)(4) (“a housing development project or emergency shelter 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”) (emphasis added); see also Gov. Code § 65589.5(a)(2)(L) (“It is the policy of the state that. . . [the HAA] should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing”).

As set forth above, the Project complies with all applicable objective standards under any standard of review. But at the very least, it is clear that it is possible for a “reasonable person to conclude” that the project complies with the City’s objective standards. Gov. Code § 65589.5 (f)(4). Accordingly, the HAA “imposes ‘a substantial limitation’ on the government’s discretion to deny a permit.” *N. Pacifica, LLC v. City of Pacifica* 234 F. Supp. 2d 1053, 1059 (N.D. Cal. 2002), aff’d sub nom. *N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478 (9th Cir. 2008). Before the City could legally reject the Project or reduce its density, the City would be required to demonstrate, based on a preponderance of the evidence, that the project would cause “a significant, quantifiable, direct, and unavoidable impact” on public health or safety, “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(j)(1)(A). The City would be required to further affirmatively prove that there are no feasible means of addressing such “public health” and “safety” impacts other than rejecting or reducing the size of the Project. Gov. Code § 65589.5(j)(1)(B). The Legislature recently re-affirmed its intent that the conditions allowing a project to be rejected on this ground should “arise infrequently.” Ch. 243, Stats. 2018 (A.B. 3194) (amending Gov. Code § 65913.4(a)(3)). Here, there is no evidence – to say nothing of the required *preponderance* of the evidence – that the Project would have any impact at all on public health or safety. Even if there were, there is no evidence that any such impacts are incapable of mitigation. Therefore, any improper denial of the Project would violate the HAA.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5 (j), (k). Any local government that disapproves a housing development project must now meet the more demanding “preponderance of the evidence” standard – rather than the more deferential “substantial evidence” standard – in proving that it had a permissible basis under the Act to reject the project. Gov. Code § 65589.5 (j)(1). As recently reformed, the HAA makes attorney’s fees presumptively available to prevailing plaintiffs regardless of whether the project contains 20% affordable housing. Gov. Code § 65589.5(k)(1)(A). If the City fails to prove in litigation that it had a valid basis to reject the project, the court *must* issue an order compelling compliance with the Act, and any local government that fails to comply with such order within 60 days *must* be fined a minimum of \$10,000 per housing unit and may also may be ordered directly to approve the project. Gov. Code § 65589.5(k). The HAA further provides that if a local jurisdiction acts in bad faith when rejecting a housing development, the applicable fines must be multiplied by five. *Id.*

V. The “Notice of Incomplete Application” Accompanying the SB 35 Determination Is Irrelevant to the SB 35 Application

The December 7 SB 35 Determination notes that if the Applicant “elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice” (emphasis added), the Applicant would need to submit certain additional materials required for discretionary applications such as for a Conditional Use Permit or discretionary Design Review. The City’s SB 35 Determination is accompanied by a separate letter labelled “Notice of Incomplete Application” (“NOIA”), and related attachments, which identify submittal requirements that *would* apply *if* the Applicant were to elect to apply for a discretionary permit to develop a project on the 40 Main Street site. The Applicant’s November 8 SB 35 Application does not seek approval of the Project through any of these discretionary permit avenues, and none of these requirements apply to the current SB 35 Application.

We do not understand the City to suggest that any of these materials are necessary for consideration of the November 8 SB 35 Application (and the City’s SB 35 Letter cannot possibly be read to suggest that they are). But in any event, the law is clear that consideration of an SB 35 application must 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,” Gov. Code § 65913.4(c). Since the City has not published any application materials for SB 35 applications, the City cannot require SB 35 applicants to submit any additional material

as long as the Application contains “sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards.” Guidelines, § 301(b)(1)(A). Moreover, most of the notes, comments, and requests for further plans and revisions to plans are the type of comments and questions that the City addresses *after* entitlement review is completed, such as during the plan check process. Consistent with the City’s processes for processing discretionary permit applications, any arguable need to address these issues cannot be a ground for denying a streamlined ministerial permit. “A locality may not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals.” Guidelines, § 300(b)(2).

Since the City has not published application materials for SB 35 applications, the Applicants submitted application materials and related submissions typically required for a discretionary Use Permit, as well as Use Permit fee in the amount of \$5,350. But as the City correctly notes in the December 7 SB 35 Letter, a Use Permit application is, in fact, legally distinct from an SB 35 Application. We therefore respectfully request that the City confirm it will charge a fee for this application consistent with a fee for a ministerial conformance process such as a Zoning Approval, and to refund to the Applicant the difference between that amount and the submitted fee.

Although not required to do so, and although the City’s SB 35 Determination is clear that none of the material in the NOIA relates to the City’s SB 35 Determination, the Project team has reviewed the NOIA and all attachments, and can confirm that none of the comments or requests in the NOIA relate to any objective standard for which compliance must be demonstrated as a precondition to issuance of an SB 35 streamlined ministerial permit. None of the comments or requests for design requests relate to the Project’s demonstration of compliance with the numeric standards or other physical standards of the City of Los Altos.

With this said, in the interest of being responsive to the comments of City agencies, the Applicant is able and willing to provide, purely for informational purposes, additional information about the Project as well as responses to some of the comments received on the Application. Please note that this letter, and these submissions, are not in any sense a re-submission or new application for the Project. The purpose of this letter is to explain why the November 8, 2018 Application sufficed to qualify the Project for a streamlined ministerial permit, and the purpose of these additional responses is to voluntarily provide additional information and responses to comments on the Application by City agencies. Specifically, understanding the importance of fire safety and accessibility, the Project architect has reviewed and addressed all comments made by the Fire Department and the Building Division. *See Exhibit C*. These design issues can and will be addressed in post-entitlement plan check review.

The Project team can also provide a courtesy response to the “Density Bonus Report Submittal Requirement” document accompanying the NOIA. This document is a requirement of the City of Los Altos for discretionary project applications. However, to avoid any question about the Project’s entitlement to Density Bonus Law bonuses, modifications, waivers, concessions and incentives, the original SB 35 application submitted on November 8, 2018 included as Attachment D a report following the format and providing the information (coupled with the Applicant

Statement's Project Description) that is required in the City's Density Bonus Report Submittal Requirements. The Project team has reviewed each of the boxes (all three categories), with an emphasis on the unchecked items on the City's "Density Bonus Report Submittal Requirement" document. Every item, including those that are left unchecked in the City's letter, have been addressed in original Project Description and the original Attachment D. Please continue to reference those documents with any questions you may have with respect to the Project's entitlement to a density bonus with the appropriate waivers/modifications and incentives/concessions.³

VI. The City Is Required to Complete All Public Oversight over the Application, and to Issue a Streamlined Ministerial Permit, No Later than February 6

As set forth above, the City is required to complete any design review or other public oversight over the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same). However, any such oversight or design review must 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," and this review "shall not in any way inhibit, chill, or preclude the ministerial approval" required by SB 35. Gov. Code § 65913.4(c); *see also* Guidelines, § 301(a)(2)(B) ("Design review or public oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval provided by these Guidelines or its effect"). And as set forth above, the Project is now deemed to comply with all of SB 35's qualifying objective criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). If, consistent with these limitations, the City intends to conduct any additional public oversight or design review over the Project, please

³ Please note that some provisions of the City's "Density Bonus Law Submittal Requirements" document, and note 7 of the NOIA, are out of date and inconsistent with current State law. The State Density Bonus Law provides that "[a] local government shall not condition the submission, review, or approval of an [Density Bonus Law] application . . . on the preparation of an additional report or study that is not otherwise required by state law," Gov. Code § 65915(a)(2), and that the *City* "shall bear the burden of proof for the denial of a requested concession or incentive." Gov. Code § 65915(d)(4). Effective in 2017, the Legislature amended the Density Bonus Law specifically to eliminate the authority of cities to reject a requested concession or incentive on the grounds that "[t]he concession or incentive is not required in order to provide for affordable housing costs," Stats.2016, ch. 758 (A.B.2501), § 1. The currently operative text of the law only authorizes the City to reject the requested concession if the *City* demonstrates that "[t]he concession or incentive does not result in identifiable and actual cost reductions." *Id.* The purpose of this amendment was to foreclose the exact documentation demands made in the City's submittal requirement documents. *See* Assem. Com. on Housing & Community Development, Floor Analysis of Assembly Bill No. 2501 (2015-2016 Reg. Sess.), August 30, 2016, at p. 4 (legislative amendments were intended to respond to "local governments [which] interpret . . . [the previously operative] language to require developers to submit pro formas"); *see also* "Policy White Paper: City of Santa Rosa, Density Bonus Ordinance Update", *available at* <https://srcity.org/DocumentCenter/View/18475/Density-Bonus-Policy-White-Paper>, at p. 45 ("amendments adopted through AB 2501 are intended to presume that incentives and concessions provide cost reductions, and therefore contribute to affordable housing development").

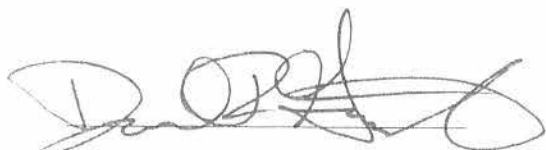
inform us and the Applicant of the type of public oversight or design review that the City expects to conduct.

VII. Conclusion

Based on the foregoing, we hope and expect that we or the Applicants will receive information about any remaining design review or public oversight over the Project, and that the Applicants will receive the streamlined ministerial permit required by State law, no later than February 6. In the hopefully unlikely event that the City intends not to meet the requirements of State law outlined above, please be advised that we have been retained by the Applicant to explore all legal remedies provided by law to enforce the requirements of California housing law. If you would like to discuss these or other matters, please feel free to contact me at (415)743-6900.

Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read 'D. Golub', written over a horizontal line.

By: Daniel R. Golub

Exhibit A

SB 35 Statewide Determination Summary

Cities and Counties Subject to SB 35 Streamlining Provisions

When Proposed Developments Include \geq 10% Affordability

When jurisdictions have insufficient progress toward their Above Moderate income RHNA and/or have not submitted the latest Housing Element Annual Progress Report (2017), these jurisdictions are subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

These conditions currently apply to the following 338 jurisdictions:

JURISDICTION		JURISDICTION		JURISDICTION	
91	FORT JONES	131	KINGS COUNTY	171	MAYWOOD
92	FORTUNA	132	KINGSBURG	172	MCFARLAND
93	FOUNTAIN VALLEY	133	LA CANADA FLINTRIDGE	173	MENDOCINO COUNTY
94	FOWLER	134	LA HABRA	174	MENDOTA
95	FRESNO COUNTY	135	LA HABRA HEIGHTS	175	MENIFEE
96	GARDEN GROVE	136	LA MIRADA	176	MERCED
97	GLENN COUNTY	137	LA PALMA	177	MERCED COUNTY
98	GONZALES	138	LA PUENTE	178	MILLBRAE
99	GRAND TERRACE	139	LA QUINTA	179	MODESTO
100	GRASS VALLEY	140	LA VERNE	180	MODOC COUNTY
101	GREENFIELD	141	LAKE COUNTY	181	MONTAGUE
102	GRIDLEY	142	LAKEPORT	182	MONTCLAIR
103	GUADALUPE	143	LANCASTER	183	MONTEBELLO
104	GUSTINE	144	LASSEN COUNTY	184	MONTEREY
105	HALF MOON BAY	145	LATHROP	185	MONTEREY COUNTY
106	HANFORD	146	LAWNDALE	186	MONTEREY PARK
107	HAWAIIAN GARDENS	147	LEMOORE	187	MORENO VALLEY
108	HAYWARD	148	LINDSAY	188	MORRO BAY
109	HEMET	149	LIVE OAK	189	MOUNT SHASTA
110	HERMOSA BEACH	150	LIVINGSTON	190	MURRIETA
111	HIDDEN HILLS	151	LODI	191	NATIONAL CITY
112	HIGHLAND	152	LOMA LINDA	192	NEEDLES
113	HOLTVILLE	153	LOMPOC	193	NEVADA CITY
114	HUMBOLDT COUNTY	154	LONG BEACH	194	NEWARK
115	HUNTINGTON BEACH	155	LOOMIS	195	NEWMAN
116	HUNTINGTON PARK	156	LOS ALAMITOS	196	NORCO
117	HURON	157	LOS ALTOS	197	NOVATO
118	IMPERIAL	158	LOS ALTOS HILLS	198	OCEANSIDE
119	IMPERIAL COUNTY	159	LOS ANGELES COUNTY	199	OJAI
120	INDIAN WELLS	160	LOS BANOS	200	ONTARIO
121	INDUSTRY	161	LOYALTON	201	ORANGE
122	INGLEWOOD	162	LYNWOOD	202	ORANGE COVE
123	INYO COUNTY	163	MADERA	203	ORLAND
124	IONE	164	MANHATTAN BEACH	204	ORVILLE
125	IRWINDALE	165	MANTECA	205	OXNARD
126	ISLETON	166	MARICOPA	206	PACIFIC GROVE
127	JACKSON	167	MARINA	207	PACIFICA
128	JURUPA VALLEY	168	MARIPOSA COUNTY	208	PALM DESERT
129	KERMAN	169	MARTINEZ	209	PALMDALE
130	KERN COUNTY	170	MARYSVILLE	210	PALOS VERDES ESTATES

SB 35 Determination for the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, and Sonoma; and all cities within each county

*These jurisdictions are in the First Half Reporting Period, including 3 years (2015-2017 APRs) of an 8-year planning period. **Less than 37.5% permitting progress toward 5th Cycle regional housing needs assessment (RHNA) for an income category is considered insufficient progress.***

Jurisdictions with insufficient progress toward Above-Moderate RHNA are subject to SB 35 streamlining for developments with 10% affordability or above. Jurisdictions with insufficient progress toward Lower RHNA (Very Low and Low) are subject to SB 35 streamlining for developments with 50% affordability or above.

(Note: Jurisdictions are automatically subject to SB 35 streamlining provisions when latest Annual Progress Report (2017) Not Submitted)

COUNTY	JURISDICTION	VLI % COMPLE TE	LI % COMPLE TE	MOD % COMPLE TE	ABOVE MOD % COMPLET E
SAN MATEO	SOUTH SAN FRANCISCO	14.2%	1.4%	8.9%	57.2%
SOLANO	SUISUN CITY	0.0%	0.0%	0.0%	32.8%
SANTA CLARA	SUNNYVALE	5.4%	2.3%	8.5%	69.7%
MARIN	TIBURON	0.0%	0.0%	0.0%	57.9%
ALAMEDA	UNION CITY	0.0%	0.0%	131.8%	18.0%
SOLANO	VACAVILLE	4.9%	19.4%	307.5%	92.2%
SOLANO	VALLEJO	0.0%	0.0%	0.0%	13.2%
CONTRA COSTA	WALNUT CREEK	7.0%	4.5%	4.7%	57.1%
SONOMA	WINDSOR	0.0%	0.0%	1.5%	38.3%
SAN MATEO	WOODSIDE	52.2%	15.4%	13.3%	154.5%
NAPA	YOUNTVILLE	25.0%	50.0%	300.0%	175.0%
Alameda County	NEWARK	No 2017 Annual Progress Report			
Contra Costa County	MARTINEZ	No 2017 Annual Progress Report			
Contra Costa County	RICHMOND	No 2017 Annual Progress Report			
San Mateo County	ATHERTON	No 2017 Annual Progress Report			
Santa Barbara County	GUADALUPE	No 2017 Annual Progress Report			
Santa Barbara County	SANTA BARBARA	No 2017 Annual Progress Report			
Santa Barbara County	SOLVANG	No 2017 Annual Progress Report			
Santa Clara County	LOS ALTOS	No 2017 Annual Progress Report			
Solano County	RIO VISTA	No 2017 Annual Progress Report			

Exhibit B

From: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>
Sent: Friday, January 4, 2019 3:51 PM
To: Mark Rhoades <mark@rhoadesplanninggroup.com>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: RE: Los Altos

Yes, on November 8, 2018, Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

From: Mark Rhoades <mark@rhoadesplanninggroup.com>
Sent: Friday, January 4, 2019 3:47 PM
To: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: Los Altos

Melinda,

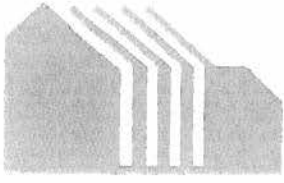
On November 8, 2018, we submitted an SB 35 application for a proposed project in the City of Los Altos. Can you confirm that on November 8, 2018, the City of Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability? As of November 8, 2018, HCD's most recent "SB 35 Determination Summary" was the CA HCD determination issued on June 1, 2018, which identifies Los Altos as subject to streamlining for projects with at least 10% affordability on page 3.

Thank you,

Mark Rhoades, AICP
Senior Planning Director
Los Altos Planning Group

This email and any files attached are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please notify the sender immediately. This email and the attachments have been electronically scanned for email content security threats, including but not limited to viruses.

Exhibit C



William Maston
Architect & Associates

384 Castro St.
Mountain View, CA 94041
t. 650.968.7900 f. 650.968.4914
www.mastonarchitect.com

January 7, 2019

Community Development Department
City of Los Altos
One North San Antonio Road
Los Altos, California 94022
Attention: Jon Biggs

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10; SB 35 Determination
Additional Specific Project Comments

Dear Jon Biggs,

40 Main St.

1. Parking requirements – contrary to staff comments the project meets parking requirements set forth in SB 35 – All of the information was provided in the initial set of drawings.
 - a. Los Altos parking code 14.74.100 exempts the first 100% of FAR for projects which participated in the public parking district (40 Main is a participant in the public parking district), therefore the 5,724 square feet of first floor office space is exempt from providing any parking, additionally 1,226 square feet of second floor residential (equivalent to one unit) is also exempt from any parking requirements.
 - b. Upper level residential units – SB 35 is very specific about the required parking for residential units. Minimum for SB 35 is 1 car per unit with no guest parking required. However, van accessible parking is required to be on-site. Our project includes 2 levels of underground parking providing 18 parking spaces where only 14 (15 minus 1 per 14.74.100) parking spaces are required. Of the 18-parking spaces provided 2 are van accessible. Each floor is accessed by a car elevator platform.
2. Fire access – required fire access and dimensional requirements for the same are being met on both Main Street at the front of the building and the Plaza Ten parking lot driveway at the rear of the building.
3. All other fire department comments are noted and will be specified at plan check.
4. Onsite handicap accessible parking (ADA) – on site ADA parking requirements are met by providing 2 van accessible parking spaces on site including required clear head height of any obstruction at 8'2".

Sincerely,

Bill Maston
Project Architect

EXHIBIT 1

Government Code 65913.4 (SB 35) Submittal for 40 Main Street in Los Altos, California

Table of Contents

This application is being submitted under SB 35 streamlining provisions (Gov. Code § 65913.4). Pursuant to SB 35, the requirement to seek a discretionary permit for this project does not apply. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a). Under SB 35, the only applicable standards are those “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 prior to submittal.” Gov. Code § 65913.4 (a)(5). As set forth in Attachment # 1 of the Applicant Statement of this application, the standards for issuance of a use permit, structural alteration permit and parcel map involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.

Nonetheless, for informational purposes, the applicant is voluntarily providing the following documents that are ordinarily required for conditional use permit application.

Cover Letter

1. General Application Form
2. Applicant Statement, with Attachments:
 - A. Objective Standards Table
 - B. SB 35 Environmental Mapping
 - C. Commitment to Prevailing Wage
 - D. Density Bonus Report
3. Filing Fees (as applicable)
4. Project Plans
 - Cover Sheet
 - Site Plan
 - Floor Plans
 - Building Elevations
 - Roof Plan
 - Landscape Plan

Applicant Statement – 40 Main Street

INTRODUCTION AND OVERVIEW

This Applicant Statement is submitted on behalf of 40 Main Street Offices, LLC, for a proposed residential mixed-use development project to replace an existing single-story office building located at 40 Main Street in the City of Los Altos (“City”). This is an application for a streamlined ministerial development permit pursuant to Government Code Section 65913.4, otherwise known as Senate Bill 35, as well as Government Code 65915 et seq (“State Density Bonus Law”). The project is also subject to Government Code Section 65589.5, the Housing Accountability Act, because it is consistent with all of the City’s objective standards. The project proposes to include 15 for rent apartment units, two of which will be affordable to low-income households (to households earning below 80% of Area Median Income [AMI]). In addition, the project will provide 5,724 square feet of office space on the ground floor and a below-grade parking structure with 18 spaces. The gross project floor area totals 29,566 square feet.

As the State of California Department of Housing and Community Development (“HCD”) recently noted, Los Altos is subject to SB 35 streamlining for proposed developments with at least 10% affordability at 80% AMI. Localities are subject to streamlining for projects providing 10% affordability if the jurisdiction “did not submit its latest [annual] production report to the department by the” April 1 deadline “required by Section 65400 [of the Government Code].” Gov. Code § 65913.4(a)(4)(A)(i).

The City has long recognized the development potential for the site, identifying the area in the Downtown Land Use Plan as “establishing a sense of entry into the Downtown”. The 2009 adopted plan envisioned larger development in the Commercial Retail Sales district by removing the two-story height limitation and removing the 2.0 maximum Floor Area Ratio requirements. The plan also spoke to a vision of creating continuous building frontage on shopping streets.

The project also includes a density bonus pursuant to Government Code Section 65915, with waivers/modifications and concessions/incentives, as allowed per the statute and the Los Altos density bonus ordinance provisions. Finally, the proposed project is also subject to Government Code Section 65589.5, also known as the Housing Accountability Act. The project’s consistency with each of these provisions of State law is discussed in detail below. All three of these Government Code sections are State legislative efforts that recognize the severity of California’s housing crisis and the difficulties associated with developing new housing at appropriately zoned, transit-oriented and urbanized locations. The following legislative findings (from Government Code section 65589.5(a)(2)) are instructive of how, and why, the City must interpret and implement these laws:

California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives...

The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was 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 local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled...

It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

With those laws and policies in mind, the following sets forth the Applicant Statement. This Statement also includes the following attachments:

- A. Attachment A, Objective Standards Table, which demonstrates compliance with City of Los Altos General Plan, Zoning, Subdivision, and Design Standards, as applicable;
- B. Attachment B, SB 35 Environmental Mapping, which demonstrates compliance with SB 35 location and environmental criteria;
- C. Attachment C, which demonstrates the project proponent's commitment letter to construct the project using prevailing wage labor compensation; and,
- D. Attachment D, Density Bonus Report, as required by the City of Los Altos.

SB 35/Government Code Section 65913.4

The legislature enacted SB 35 in 2017 as a response to California's housing crisis and, specifically, the negative impact that the lack of housing production is having on the State's economic vitality, environmental goals and social diversity.

Under SB 35, cities that did not submit their most recent required annual progress report before the April 1 statutory deadline, or who are not on track to meet their Regional Housing Needs Allocation (RHNA) housing production obligations are required to follow a streamlined, ministerial approval process for qualified housing projects. On June 1, 2018, HCD confirmed that Los Altos failed to submit an annual progress report by the April 1 deadline, and so is subject to SB 35 streamlining for projects providing 10% of units affordable to households earning less than 80% AMI threshold.

The SB 35 approval process requires cities to approve projects within 90 days of submittal of an application if they propose 150 or fewer units, and such approval must be based only on whether the project complies with "objective planning standards." To qualify, the project must meet a number of criteria, including providing certain percentages of the units affordable to households with incomes below 80% area median income; paying prevailing wage for construction labor; and meeting all objective zoning and design review standards.

The terms "objective zoning standards" and "objective design review standards" are narrowly defined to 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 prior to submittal." A comprehensive checklist of SB 35 requirements is found in Table 2 below. Because the statute mandates that the process is ministerial and that projects are judged purely on objective standards that do not involve the exercise of

discretion, CEQA does not apply to the SB 35 process. *See* 14 Cal. Code Regs. §15268(a) (“Ministerial projects are exempt from the requirements of CEQA”); *see also* Pub. Res. Code §21080(b)(1).

For the purposes of SB 35, “additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915” may not be considered when assessing the project’s compliance with the City’s objective standards (Gov. Code § 65914.4(a)(5)). The project qualifies for a density bonus under the State Density Bonus Law, because it will provide 20% of its base project units with rent affordable to households earning 80% of AMI. The benefits afforded under State Density Bonus Law also include waivers/modifications of development standards that would otherwise “physically preclude” the density bonus project and two concessions/incentives as discussed in the Density Bonus Report (Attachment D).

By meeting the provisions of the state density bonus law and SB 35, the proposed base project also exceeds the City of Los Altos affordability requirements under Chapter 14.28 of the City’s Zoning Ordinance.

PROJECT DESCRIPTION

Project Uses

The proposed project includes 15 dwelling units, 5,724 square feet of office space on the ground floor, and direct vehicular access to two-levels of below-grade parking via a vehicle elevator. The proposed parking is located within the structure in a secured basement-level garage. Above the ground floor are residential apartments. Two units will be provided at below-market rate rent at 80% AMI. The proposed apartment units, as demonstrated in the attached plans, contain a mix of one-, two-, and three- bedroom units.

Project Residential Affordability

The proposed project is subject to three different residential affordability criteria per the State of California statutes listed above and the Los Altos affordable housing requirements, as follows:

1. SB 35 requires 10% of units in Los Altos to be dedicated affordable units to households with incomes below 80% AMI, *see* Gov. Code § 65913.4(a)(4)(B)(i), and the project’s compliance with that criterion insures that it meets the requirements of the City of Los Altos’ Multiple-Family Affordable Housing Law (Chapter 14.26.030.D.2).
2. State Density Bonus Law thresholds require a rental project to provide at least 20% of its units to low income households with incomes of less than 80% AMI to be eligible for a 35% bonus and up to two incentives (*see* LAMC 14.28.040(C)(1)(a)(ii) Table DB 1 and *see* Gov. Code § 65915(d)(2)(B)).
3. City of Los Altos thresholds require 10% of units at 50% AMI (very low income) or 15% of units at 80% AMI (low income).

Density Bonus

The City of Los Altos Implementing Density Bonus Ordinance (Chapter 14.28 of the Los Altos Municipal Code) provides for the standard density bonus language as it appears in GC Sec. 65915, for density bonus

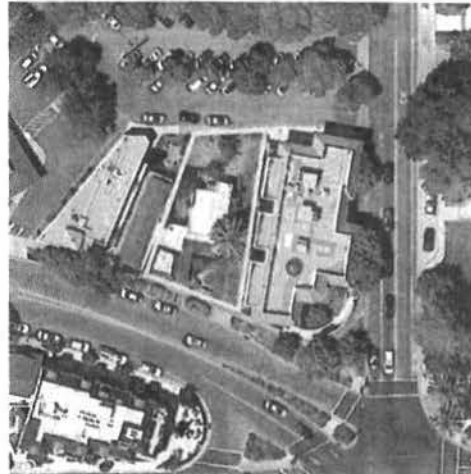
up to 35%. The local ordinance also allows for additional density through the application of a menu of pre-approved concessions/incentives, based on a project’s proposed unit affordability. The concessions/incentives that are pre-approved under the ordinance allow for a number of different items that an applicant may select, some of which result in additional floor area, units and density, consistent with Gov. Code § 65915(n).

Pursuant to Government Code Section 65915, and the local ordinance, the proposed project is entitled to a 35% density bonus, and up to two concessions/incentives. The proposed project only seeks to avail itself of one additional concession/incentive—an 11-foot height increase which provides for the 4th story in the 5-story massing proposed. The 5th story is the density bonus floor area. This is discussed in greater detail in the attached density bonus report.

Location

The proposed project at 40 Main Street is located at the northeast corner of the six-block downtown triangle. The project site measures 6,994 square feet.

Downtown Los Altos, the vicinity of the project site, and the surrounding uses supports a pedestrian-oriented shopping district with tree-lined streets and a small town-square ambiance. The project site is located at the north-east corner of the Downtown Core District. Directly adjoining the project site to the south are two single-story buildings housing a religious institution and an office. To the north there is a two-story office building with professional uses. Across Main Street to the east is a boutique hotel. The west face of the project site is a public parking lot.



This corner of the downtown area is zoned CRS/OAD (Commercial Retail Sales/Office-Administrative District). The Zoning Ordinance envisions this zone to provide a full range of retail, office, mixed-use residential, and commercial services while also encouraging a village-like pedestrian atmosphere that creates an entrance to the downtown.

Direction	Use	Zoning
North	Office	CRS/OAD
East	Hotel	CRS/OAD
South	Religious/Office	CRS/OAD
West	Parking	CRS/OAD

Project Design

The project is designed with a clearly defined architectural base, middle, and top. At the ground floor, tan stone, accented by bronze storefront frames, convey the office ground-floor use and set the base of the building. The light-colored stucco facades above are punctuated by recessed balconies and dark metal window frames. The top level is stepped back and contains a variety of roof forms, which break up the building massing and roofline.

Neighborhood Mixed Use Development

The project site is in a pedestrian-oriented environment with connections to transit. The VTA 40-line bus route runs directly from the site to the San Antonio Transit Center and the 52 line bus is located within walking distance and provides a connection to the Mountain View Caltrain station and the Mountain View-Winchester VTA Light Rail line. The surrounding neighborhood supports walkable destinations for residential goods and services. The proposed project will enhance the existing small-scale pedestrian-oriented environment of the Downtown, as envisioned by the Downtown Core Specific Plan, and provide needed new housing.



Project Statistics

The project includes the following major elements:

- Lot Size: 6,995 SF
- Lot Coverage: 6,745 SF
- Commercial Net Floor Area: 5,724 SF
- Gross Project Floor Area: 29,566 SF (not including basement parking areas)

PROJECT COMPLIANCE AND APPLICABILITY OF STANDARDS

Compliance with City of Los Altos Zoning and Design Review Standards

A comprehensive table analyzing the project’s consistency with all applicable zoning and design review standards is included as Attachment A of this Applicant Statement. Table 2 identifies key development standards.

<i>Characteristic</i>	<i>CRS/OAD Standard</i>	<i>Base Project</i>	<i>Proposed Project</i>
Residential Units	N/A	8	15
Commercial Floor Area	N/A	5,724	5,724
Maximum Intensity (FAR) ⁽¹⁾	N/A	N/A	4.2
Maximum Building Height (feet)	30	30	56.5 (waiver and incentive)
Minimum First Floor Height	12	12	12
Maximum Stories	N/A	N/A	5
Setbacks (feet)			
Front (Min & Max)	0	0	0
Side (Min & Max)	0	0	0 to 10 (waiver)

Rear (Min.), adjacent to public parking	2 (landscaped)	2	2
Parking ⁽²⁾			
1 to 3 Bedroom Dwelling Unit	2 spaces/unit	8 (min. 1/unit per SB 35)	18 (min. 1/unit per SB 35) (waiver)
Visitor	1 space/4 units	N/A (per SB35)	N/A (per SB35)
Minimum Ground-Floor Transparency	60%	61%	61%

- (1) The Los Altos Zoning Ordinance objective development standards have been used in the consideration of the base project envelope for the proposed project at 40 Main Street, and the zoning ordinance was amended to eliminate the previously imposed FAR limit in this zoning district. There is no inconsistency between the city's zoning and its General Plan on this or any other point. Gov. Code §65319.4(a)(5)(B). The most recently adopted element of the City's General Plan, the Housing Element, explicitly affirms that under the General Plan, there is "no limit" on FAR in this district. (City of Los Altos 2015 Housing Element, at p. 89.) HCD certified the City's current Housing Element based on this representation, the City Council has approved several projects downtown based on an unlimited FAR, after finding that they conform with the General Plan. See, e.g., 240 Third Street 3/13/18 and 4/22/08 Staff Reports; 45 Main Street 4/22/08 Staff Report.
- (2) Based on participation in the public parking district, no parking is required for 100% of the lot area (i.e., 6,994 square feet). This standard exempts all of the office floor area (5,724 square feet) from the parking requirement and a portion of the residential requirement (1,271 square feet), which equates to one unit.

Attachment A identifies objective standards in the Zoning Ordinance and Downtown Design Guidelines.

Compliance with City of Los Altos General Plan and Downtown Core Area Plan

The project site is located within the Los Altos Downtown Area Plan. The project's General Plan land use designation is Downtown Commercial. Both the Los Altos Downtown Urban Design Plan and the General Plan land use designation support intensive mixed-use development at this location. The operative zoning for the site is CRS/OAD (Commercial). Since Los Altos is a general law City, its General Plan and Zoning Ordinance must be consistent with one another or the City's land use decision-making authority for all discretionary projects is compromised. When the Council adopted the zoning ordinances applicable to the project site, the City Council determined that those zoning ordinances complied with the General Plan, as required by State law—and it has continuously re-affirmed that determination when approving other projects in the same zoning district.

Environmental Review

SB 35 specifies that the approval process is "ministerial" and approval will be granted if the project complies with "objective standards," meaning standards for which no subjective judgment is exercised. Since CEQA does not apply to ministerial approvals such as this, environmental review is not required for the project.

PROJECT COMPLIANCE WITH ALL APPLICABLE LAWS

1. SB 35: Government Code Section 65913.4 (SB 35) Review and Approval Criteria

As shown Table 2, the submittal complies with the SB 35 eligibility requirements. The following table lists the criteria for a project's consideration per the Government Code, as demonstrated below and confirms that the project complies.

Table 2: Government Code Section 65913.4 Eligibility Requirement		Requirement satisfied?
1.	<p>Is the project a multifamily housing development with 2 or more units? Subd. (a)(1).</p> <p>The project is mixed use multifamily housing development with 15 units.</p>	Yes
2.	<p>Is the project located in an area designated by the U.S. Census Bureau as an urbanized area? Subd. (a)(2)(A).</p> <p>The project is located in the City of Los Altos, which is entirely within a U.S. Census urbanized area boundary. <i>See also:</i></p> <p>https://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua78904_san_francisco--oakland_ca/DC10UA78904.pdf</p>	Yes
3.	<p>Is more than 75% of the project site's perimeter developed with urban uses? Subds. (a)(2)(B), (h)(8).</p> <p>SB 35 defines "urban uses" as "any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." Based on these standards, the entirety of the Project site's perimeter is developed with urban uses.</p>	Yes
4.	<p>Does the site have either a zoning or a general plan designation that allows for residential use or residential mixed-use development, with at least two-thirds of the square footage designated for residential use? Subd. (a)(2)(C).</p> <p>The General Plan land use designation for the site is "Downtown Commercial" within the "Core" special planning area of Downtown, which is characterized by general retail and service uses as well as "higher density residential uses...in the Core and Periphery areas." The site is located in the CRS/OAD Commercial Retail Sales/Office zoning district which allows housing above the ground floor.</p> <p>The gross building area is approximately 29,566 sq. ft., of which 23,842 sq. ft., (approximately 80%) is designated for residential use.</p>	Yes

Table 2: Government Code Section 65913.4 Eligibility Requirement		Requirement satisfied?
<p>5. Has the Department of Housing and Community Development (HCD) determined that the local jurisdiction is subject to SB 35? Gov't Code Sec. 65913.4(a)(4)(A).</p> <p>On June 1, 2018, HCD issued a revised determination regarding which jurisdictions throughout the State are subject to streamlined housing development under SB 35. The City of Los Altos is subject to SB 35 because it did not submit a 2017 Annual Progress Report by the required due date. Therefore projects are eligible for streamlining under SB 35 for proposed developments with at least 10% affordable units. See also:</p> <p>http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary.pdf</p>	Yes	
<p>6. Will the project include the required percentage of below market rate housing units? Subd. (a)(3) and (a)(4)(B)</p> <p>Los Altos is subject to streamlining for 10% affordable projects because “[t]he locality did not submit its latest production report to the department by the time period required by Section 65400 [of the Government Code].” Gov. Code § 65913.4(a)(4)(B)(i). The project meets the required 10% of below-market rate housing units since the project includes two units, which will be available to low income households (up to 80% AMI) thereby exceeding the 10% threshold at 80% of AMI (as well as entitling the project to a 35% density bonus).</p>	Yes	
<p>7. Is the project consistent with “objective zoning standards” and “objective design review standards?” Subd. (a)(5)</p> <p>The Project will comply with all applicable objective standards, except where the project is entitled to waivers/modifications and concessions/incentives pursuant to State Density Bonus Law, as permitted by SB 35. SB 35 defines “objective planning standards” narrowly: “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 prior to submittal.”</p> <p>See Attachment A for a complete list of objective zoning and design review standards associated with this project.</p>	Yes	

<p>8. Is the project located outside of all types of areas exempted from SB 35? Subd. (a)(6-7), (10).</p> <p>The project site is not located within any of the below exempt areas.</p> <p><u>Subd.(a)(6) exempt areas:</u></p> <ul style="list-style-type: none"> - Coastal zone - Prime farmland or farmland of statewide importance - Wetlands - High or very high fire hazard severity zones - Hazardous waste sites - Earthquake fault zone (unless the development complies with applicable seismic protection building code standards) - Floodplain or floodway designated by FEMA - Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan - Habitat for a state or federally protected species - Land under a conservation easement <p>The project site is not located on any of the above areas. See Attachment B for detailed mapping.</p> <p><u>Subd. (a)(7) exempt areas:</u></p> <ul style="list-style-type: none"> - A development that would require the demolition of housing that: <ul style="list-style-type: none"> - Is subject to recorded rent restrictions - Is subject to rent or price control - Was occupied by tenants within the last 10 years - A site that previously contained housing occupied by tenants within past 10 years - A development that would require the demolition of a historic structure on a national, state, or local register - The property contains housing units that are occupied by tenants, and units at the property are/were offered for sale to the general public by the subdivider or subsequent owner of the property. <p>There have been no dwelling units on the property at any point during the last ten years, and the project would not require the demolition of any residential or historic structures.</p> <p><u>Subd. (a)(10) exempt areas:</u></p> <ul style="list-style-type: none"> - Land governed under the Mobilehome Residency Law - Land governed by the Recreational Vehicle Park Occupancy Law - Land governed by the Mobilehome Parks Act - Land governed by the Special Occupancy Parks Act 	<p>Yes</p>
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Table 2: Government Code Section 65913.4 Eligibility Requirement		Requirement satisfied?
Response: The project site is not located on land governed by any of the above laws.		
9.	<p>If the Project is not a public work, has the proponent certified that all construction workers employed in the development project be paid prevailing wages? Subd. (a)(8)(A).</p> <p>As detailed in Attachment C, the applicant certifies that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages.</p>	Yes
10.	<p>Has the applicant made the required "skilled and trained workforce" certification, to the extent applicable? Subd. (a)(8)(B).</p> <p>The "skilled and trained workforce" certification requirement is inapplicable because the Project proposes fewer than 75 units. Gov. Code § 65913.4(a)(8)(B)(i)(I).</p>	Not Applicable.
11.	<p>If the project involves a subdivision, are the criteria in subd. (a)(9) satisfied?</p> <p>The Project does not involve a subdivision.</p>	Not Applicable.

2. Density Bonus: Government Code Section 65915, Affordable Housing Compliance and Density Bonus Entitlement

The project is a rental project, so the provisions of GC Sec. 65915(b)(1)(A), 65915(d)(2)(B), and 65915(f)(1) apply with respect to levels of affordability and percentages of units as do the commensurate levels of density bonus and concessions/incentives. In the case of the proposed project, 25% of base project units will be provided at 80% AMI, allowing for up to a 35% density bonus, even though the SB 35 application would only require 10% of all units to be affordable at less than 80% AMI. It also provides that the project is allowed up to two concessions/incentives. The project has chosen to avail itself to only one concession/incentive from the approved list. See Attachment D for the Density Bonus Report, which includes a broader discussion of waivers/modifications and concessions/incentives.

3. Housing Accountability Act

As set forth in this Applicant Statement, the project is entitled to streamlined ministerial approval under SB 35. In addition, the Housing Accountability Act also requires the City of Los Altos to approve the project, and prohibits the city from reducing its requested density or imposing any conditions that have the same effect or impact on the ability of the project to provide housing Gov. Code § 65589.5(i), (j).

The project is protected under the Housing Accountability Act since it consists of at least two-thirds residential uses, and because it complies with the City's objective standards and criteria, as demonstrated in Attachment A of this application statement. The City is only permitted to reject a project under these

circumstances if it can make findings based on a preponderance of evidence that the project would have a significant, unavoidable, and quantifiable impact on "objective, identified written public health or safety standards, policies, or conditions." Gov. Code §65589.5(j). The Legislature recently affirmed its expectation that these types of conditions "arise infrequently." Ch. 243, Stats. 2018, § 1 (adding subdivision (a)(3) to Gov. Code § 65585.5). Here, there is no evidence, let alone a preponderance of evidence, that the project would have any impact on public health and safety that cannot be feasibly mitigated.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5(k). As recently reformed in the 2017 legislative session, the act makes attorney's fees and costs of suit presumptively available to prevailing plaintiffs, requires a minimum fine of \$10,000 per housing unit for jurisdictions that fail to comply with the act, and authorizes fines to be multiplied by five times if a court concludes that a local jurisdiction acted in bad faith when rejecting a housing development. *Id.*

Applicant Statement, Attachment A
Objective Standards Table – 40 Main Street

Under SB 35, the only applicable standards are those “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 prior to submittal.” Gov. Code § 65913.4 (a)(5).

Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).

See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”).

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
Section 14.54.030 - Permitted uses (CRS/OAD).		
The following uses shall be permitted in the CRS/OAD District: <ul style="list-style-type: none"> a) Business, professional, and trade schools located above the ground floor; b) Office-administrative services; c) Parking spaces and loading areas incidental to a permitted use; d) Personal services; e) Private clubs, lodges, or fraternal organizations located above the ground floor; f) Restaurants, excluding drive-through services; g) Retail; and h) Uses which are determined by the city planner to be of the same general character. 	Applicable objective criteria.	The project’s proposes office-administrative services on the ground floor, consistent with the permitted uses.
Section 14.54.040 – Conditional uses and structures (CRS/OAD).		

<p>Upon the granting of a use permit in accordance with the provisions of Chapter 14.80 of this title, the following uses shall be permitted in the CRS/OAD District:</p> <ul style="list-style-type: none"> A. Any new building that has an area greater than seven thousand (7,000) gross square feet, and any addition to an existing building which would result in the total building area exceeding seven thousand (7,000) gross square feet, including additions to buildings which presently exceed seven thousand (7,000) gross square feet in area; B. Cocktail lounges; C. Commercial recreation; D. Hotels; E. Housing located above the ground floor; F. Medical and dental clinics; G. Medical and dental offices that are five thousand (5,000) gross square feet or more; and H. Uses which are determined by the planning commission to be of the same general character. 	<p>The project proposes a building of 29,566 square feet, including housing located above the ground floor.</p> <p>However, the requirement to seek a conditional use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See</i> Gov. Code § 65913.4(a); <i>see also</i> HCD’s SB 35 Streamlined Ministerial Approval Draft Guidelines (9/28/18), § 300(b)(2).</p> <p>Under SB 35, the only applicable standards are those “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 prior to submittal.” Gov. Code § 65913.4(a)(5). As set forth below in Chapter 14.80 of the Los Altos Municipal Code, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not applicable.</p>
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Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
14.54.050 - Required conditions (CRS/OAD)		
A. All businesses, services, and processes shall be conducted within a completely enclosed structure, except for parking and loading spaces, incidental sales and display of plant materials and garden supplies occupying no more than one thousand five hundred (1,500) square feet of exterior sales and display area, outdoor eating areas operated incidental to permitted eating and drinking services, and as otherwise allowed upon the issuance of an outdoor display permit. Exterior storage is prohibited.	Applicable objective criteria.	All business would be conducted inside the proposed building. The project does not propose any business uses outside the enclosed structure nor exterior storage.
B. No use shall be permitted and no process, equipment, or materials shall be employed which are found to be objectionable by reason of odor, dust, noise, vibration, illumination, glare, unsightliness or electrical disturbances which are manifested beyond the premises in which the permitted use is located.	Not an objective standard. Under SB 35, the only applicable standards are those “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 prior to submittal.” Gov. Code § 65913.4 (a)(5). The conditions imposed by Chapter 14.54.050 (B) involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.	Not applicable. However, the project does not propose uses associated with the impacts listed in subsection B.

<p>C. No property owner, business owner and/or tenant shall permit or allow operation of a business which violates the required conditions of this chapter, including the following general criteria:</p> <ol style="list-style-type: none"> 1. Refuse collection. Every development, including applications for tenant improvements, shall provide suitable space for solid waste separation, collection, and storage and shall provide sites for such that are located so as to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way. Refuse collection areas are encouraged to be shared, centralized, facilities whenever possible. 2. Lighting. Lighting within any lot that unnecessarily illuminates any other lot and/or substantially interferes with the use or enjoyment of such other lot is prohibited. Lighting unnecessarily illuminates another lot if (i) it clearly exceeds the minimum illumination necessary to provide for security of property and the safety of persons using such roads, driveways, sidewalks, parking lots, and other common areas and facilities, or (ii) if the illumination could reasonably be achieved in a manner that would not substantially interfere with the use or enjoyment of neighboring properties. 3. Air pollution. Any use that emits any "air contaminant" as defined by the Bay Area air quality management district shall comply 	<p>C.1 Is not an objective standard. C.2 is not an objective standard. C.3 the project does not propose any use that emits any of the Bay Area Air Quality Management District defined air contaminants. C.4 Is not an objective standard. C.5 Is not an objective standard. C.6 the project does not propose any uses in conflict with 'Chapter 6.16 Noise Control'</p>	<p>Subsections C.1, C.2, C.4, C.5, and C.6 are not applicable. However, the project intends to provide refuse collection, lighting, and maintenance services, and does not propose to create unreasonable odors or noise.</p> <p>Subsection C.3 applies. The project does not propose to emit substantial air contaminants, as listed by the Air District (https://www.arb.ca.gov/toxics/id/taclist.htm) and would comply with all required state standards concerning air pollution that are applicable to a mixed use residential/office project.</p>
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<p>with applicable state standards concerning air pollution.</p> <p>4. Maintenance of common areas, improvements, and facilities. Maintenance of all common areas, improvements, facilities, and public sidewalks adjacent to the subject property shall be required. In the case of public sidewalks, maintenance shall be limited to keeping the sidewalk clean and free of debris, markings, and food and drink stains by means of sweeping, cleaning with water and/or steam cleaning.</p> <p>5. Odors. No use may generate any odor that may be found reasonably objectionable as determined by an appropriate agency such as the Santa Clara County health department and the Bay Area air quality management district beyond the boundary occupied by the enterprise generating the odor.</p> <p>6. Noise. No person shall operate, or cause to be operated, any source of sound at any location within the city or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level when measured on any other property either incorporated or unincorporated, to exceed standards as set forth in <u>Chapter 6.16</u> of the Los Altos Municipal Code. In order to attenuate noise associated with commercial development, walls up to twelve (12) feet in height may be required at a commercial/residential interface. Other</p>		
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Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.06 – General Standards and Exceptions		
Provision	Applicability	Compliance
conditions may be applied such as, but not limited to, muffling of exterior air conditioning facilities.		
Section 14.54.060 – Front yard (CRS/OAD)		
With the exception of landscaping, all development in the CRS/OAD District must be built to the back of the sidewalk.	<p>Applicable objective criteria. The front and rear yards front onto sidewalks; the side yards do not.</p> <p>The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”).</p>	<p>As shown on Sheet B1.01, the base project is built to the back of sidewalk along the front elevation. Along the rear elevation, which fronts a public parking lot (see subsection 14.54.080.A, below), the building is setback with landscaping between the building and sidewalk.</p> <p>The proposed project would have a setback of 0 feet in the front yard and a minimum of 2 feet in the rear yard. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback requirements because the setbacks, if applied, would physically preclude the density bonus project.</p>
Section 14.54.070 – Side yard (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
<p>No side yards shall be required, and none shall be allowed, except where the side property line of a site abuts a public parking plaza, the minimum width of the side yard shall be two feet which shall be landscaped. A required side yard may be used for parking except for the area required to be landscaped.</p>	<p>Applicable objective criteria. There is no proposed side yard and the side property lines do not abut the public parking plaza.</p> <p>The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”).</p>	<p>As shown on Sheet B1.01, the base project has a side yard setback of 0 feet, in compliance with the minimum and maximum required setback.</p> <p>The proposed project would have a side yard of 0 to 10’ feet. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback requirements because the setbacks, if applied, would physically preclude the density bonus project.</p>
Section 14.54.080 – Rear yard (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
<p>No rear yard shall be required except as follows:</p> <p>A. Where the rear property line of a site abuts a public parking plaza, the minimum depth of the rear yard shall be two feet, which shall be landscaped.</p>	<p>Applicable objective criteria. The rear property line abuts a public parking plaza.</p> <p>The setback requirements are waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”).</p>	<p>As shown on Sheet B1.01, the base project has a rear yard setback minimum of 2 feet, which is landscaped, in compliance with this requirement.</p> <p>The proposed project would have a rear yard setback of 2 feet which is landscaped with planter boxes. Pursuant to State Density Bonus Law, the applicant is entitled to a waiver of the setback landscaping requirements because the setbacks, if applied, would physically preclude the density bonus project.</p>
<p>B. Where the rear property line of a site abuts an existing alley, the minimum depth of the rear yard shall be ten (10) feet, of which the rear two feet shall be landscaped. A required rear yard may be used for parking, except for the area required to be landscaped.</p>	<p>Not applicable to the project. The proposed project site does not abut an existing alley.</p>	<p>Not applicable.</p>
Section 14.54.090 – Off-street parking (CRS/OAD)		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
<p>Parking facilities shall be provided in accordance with Chapter 14.74 of this title. In addition, parking facilities shall:</p> <p>A. Reduce the visual impact of parking structures and parking lots by locating them at the rear or interior portions of building sites</p>	<p>The requirements of Chapter 14.74 are discussed below.</p> <p>Subdivision (a) is an applicable standard.</p>	<p>The project complies by proposing interior parking in a two-level below-grade basement.</p>
<p>B. Minimize the street frontage of the lot or structure by placing its shortest horizontal edge along the street;</p>	<p>Applicable objective standard.</p>	<p>The project complies by proposing interior parking in a below-grade basement.</p>
<p>C. When parking structures must be located at street frontage because other locations are proven infeasible, the ground level frontage shall either be used for commercial space or shall provide a landscaped area not less than five feet in width between the parking area and the public right-of-way;</p>	<p>Does not apply pursuant to SB 35 – non-objective standard.</p>	<p>Not applicable. However, the project complies by proposing interior parking in a two-level below-grade basement.</p>
<p>D. Not be accessed from state or Main Streets unless no other access is feasible, in which case the number of direct entrances to parking facilities from streets shall be kept to a minimum;</p>	<p>The entrance to the parking garage is from the rear of the building and not from State or Main Streets.</p>	<p>Not applicable.</p>
<p>E. Provide a landscaped buffer not less than five feet in width between a parking lot or structure and street frontage or buildings. Where the landscaped strip adjoins a public street or pedestrian walkway, the landscaped strip may be required to include a fence, wall, berm, or equivalent feature;</p>	<p>The project does not propose a parking lot or structure, since parking is provided below-grade.</p>	<p>Not applicable.</p>

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
F. Provide a minimum of interior landscaping for unenclosed parking facilities as follows: where the total parking provided is located on one site and is fourteen thousand nine hundred ninety-nine (14,999) square feet or less, five percent of total parking area; where the parking is fifteen thousand (15,000) through twenty-nine thousand nine hundred ninety-nine (29,999) square feet, seven and one-half percent of total parking area; and where the facility is thirty thousand (30,000) square feet or greater, ten (10) percent of total parking area;	The project does not propose unenclosed parking.	Not applicable.
G. Trees in reasonable number shall be provided; ground cover alone is not acceptable. Interior landscaping shall be distributed throughout the paved area as evenly as possible. Provision shall be made for automatically irrigating all planted area. All landscaping shall be protected with concrete curbs or other acceptable barriers. All landscaping shall be continuously maintained.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.
14.54.110 – Off-street loading and refuse collection (CRS/OAD).		
A. Where buildings are served by alleys, all service-delivery entrances, loading docks, and refuse collection facilities shall be located to be accessed from the alley. No loading area shall be located at the street frontage or building facade.	The building is not served by an alley and no loading zones are proposed along the Main Street frontage.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
B. A minimum of thirty-two (32) square feet of covered refuse collection area shall be provided and shall not be located in any front or street side yard. Where an alley exists, the refuse collection area shall be accessed from the alley. Refuse collection areas shall be on site, but are encouraged to be shared, centralized, facilities whenever possible.	Applicable objective zoning standard.	Sheet B2.02 identifies the 184-square foot “Garbage/Recycle” room on the ground floor. The room opens onto the rear sidewalk, adjacent to the public parking plaza.
C. On sites not served by an alley, service areas shall be located to the rear, side, or at an internal location where visibility from public streets, public parking plazas and neighboring properties will be minimized.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. However, the project complies by locating the service area adjacent to the rear of the building where visibility is minimized.
D. Refuse collection areas shall be enclosed by a screen wall of durable material and planting as necessary to screen views from streets, public parking plazas and neighboring properties.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable. However, the refuse collection area is located within the building.
14.54.120 – Height of structures (CRS/OAD).		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
<p>No structure shall exceed thirty (30) feet in height. The first story shall have a minimum interior ceiling height of twelve (12) feet to accommodate retail use, and the floor level of the first story shall be no more than one foot above sidewalk level.</p>	<p>Applicable objective criteria.</p> <p>Under SB35, consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”. See Gov. Code § 65913.4(a)(5) Accordingly, the project’s conformity with the height requirement is judged based on the “base project” and not on the plans that incorporate density bonus law modifications.</p>	<p>As shown on Sheet B4.01, the base project has a building height of 30 feet and a first-floor height of 12 feet and is therefore compliant with the district standards.</p> <p>Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the height restriction for the partial 5th story because the height limit, if applied, would physically preclude the density bonus project.</p> <p>In addition to granting the density bonus, the City must also grant the Project up to two incentives or concessions pursuant to GC Sec. 65915(d)(1) because more than 10% of the “base density” units will be affordable to very low-income households. The City is required to grant the incentive for the 4th story, insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts.</p> <p>As shown on Sheet A4.01, the proposed project would have a maximum height of 56’-6” and a first floor height of 12 feet.</p>
<p>14.54.130 – Design control (CRS/OAD).</p>		

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
A. No structure shall be built or altered including exterior changes in color, materials, and signage in the CRS/OAD District except upon approval of the city planner or as prescribed in Chapter 14.78 of this title	Does not apply pursuant to SB 35 – non-objective standards. See discussion of Chapter 14.78 below.	Not applicable.
<p>B. Reduction of apparent size and bulk:</p> <ol style="list-style-type: none"> 1. As a general principle, building surfaces should be relieved with a change of wall plane that provides strong shadow and visual interest. 2. Every building over twenty-five (25) feet wide shall have its perceived height and bulk reduced by dividing the building mass into smaller-scale components by: <ol style="list-style-type: none"> i. A change of plane; ii. A projection or recess; iii. Varying cornice or roof lines; iv. Providing at least one entrance for every twenty-five (25) feet of building frontage; or v. Other similar means. 3. The proportions of building elements, especially those at ground level, should be kept intimate and close to human size by using recesses, courtyards, entries, or outdoor spaces along the perimeter of the building to define the underlying twenty-five (25) foot lot frontage. 	<p>In general, these provisions are not objective standards and therefore do not apply pursuant to SB 35.</p> <p>To the extent subsection B.2.i - iv are “objective,” the project complies.</p>	<p>B.2.i - iv: The proposed project incorporates the design features as stated in this section. It includes changes of plane, projections and recesses, varied cornice and roof lines, and the base project’s frontage along Main Street contains three entrances at less than 25-foot intervals, as shown in Sheet B2.02.</p> <p>Item B.2.v is not an objective standard, so it does not apply.</p> <p>The remaining provisions of section B. are not applicable.</p>

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
C. The primary access to the ground floor for all buildings shall be directly to the street or parking plazas, with the exception of arcade or interior courtyard spaces.	Applicable objective criteria.	The project complies because the ground floor entrances from Main Street consist of two entrances to the ground floor offices and an entrance to the residential lobby to access the units above.
D. Consideration should be given to the relationship of the project and its location in the downtown to the implementation of goals and objectives of the downtown urban design plan. Evaluation of design approval shall consider one or more of the following factors: <ol style="list-style-type: none"> 1. The project location as an entry, edge, or core site; 2. The ability to contribute to the creation of open space on-site or in designated areas; 3. Enhancement of the pedestrian environment through the use of pathways, plantings, trees, paving, benches, outdoor dining areas or other amenities; 4. Building facade improvements including, paint, signage, service areas, windows and other features; 5. On- or off-site improvements; and/or 6. Public or private landscape improvements. 	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.

Table 1: Chapter 14.54 – CRS/OAD Commercial Retail Sales/Office Administrative District/14.66 – General Standards and Exceptions		
Provision	Applicability	Compliance
E. Opaque, reflective, or dark tinted glass should not be used on the ground floor elevation. Sixty (60) percent of the ground floor elevation should be transparent window surface.	Applicable objective standards.	As shown on Sheet B3.01, the base project complies by providing 61% transparency on the ground-floor elevation and does not propose dark tinted glass at the ground floor level. As shown on Sheet A3.01, the proposed project also complies with this standard.
F. Courtyards should be partially visible from the street or linked to the street by a clear circulation element such as an open passage or covered arcade.	This is not an Objective standard.	Not applicable.
G. Rooftop mechanical, venting, and/or exhausting equipment must be within the height limit and screened architecturally from public view, including views from adjacent buildings located at the same level.	The height limit provision represents an applicable objective standard.	Rooftop mechanical, venting, and/or exhausting equipment is screened from public view. The height limit is subject to the density bonus waiver and incentive already requested for height.
14.66.240 - Height limitations—Exceptions		
E. Cupolas, chimneys, tanks, or electrical or mechanical equipment required to operate and maintain the building, solar thermal and photovoltaic panels, parapet walls and skylights may project not more than twelve (12) feet above the roof and the permitted building height, provided the combined area of all roof structures, excluding solar thermal and photovoltaic panels, does not exceed four percent of the gross area of the building roof.	Applicable objective standards.	As shown on Sheet B3.01, the base project complies since the parapet height extends just 9 feet above the permitted building height and the mechanical equipment represents 98 square feet (2%) of 6,156 square feet, and therefore does not exceed 4% of the gross area of the building roof. The proposed project has a ratio of 4.4% and therefore requests a waiver from this requirement. As noted above, for the proposed project, the height limit is subject to the density bonus waiver and the incentive for building height that are already requested.

14.74.080: Residential uses in CN, DC, CD/R3, CRS/OAD, CRS and CT Districts		
<p>For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required as follows for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking district:</p> <p>A. There shall be two off-street parking spaces for each dwelling unit in a multiple-family dwelling or apartment house having two rooms or more in addition to the kitchens and bathrooms.</p> <p>B. There shall be one and one-half off-street parking spaces for each dwelling unit in a multiple-family dwelling or apartment house having less than two rooms in addition to the kitchens and bathrooms.</p> <p>C. One on-site visitor space shall be required for every four multiple-family residential dwelling units or fraction thereof. Mixed use projects may substitute nonresidential parking spaces for visitor use in-lieu of providing dedicated visitor parking spaces, subject to approval of the commission and council.</p>	<p>These standards do not apply pursuant to SB 35. Local governments "shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." Gov. Code § 65913.4(d)(2).</p>	<p>Consistent with SB35 parking requirements, the base project provides 8 spaces for 8 units. The proposed project provides 18 spaces for 15 units, thereby meeting the SB35 standard.</p>
14.74.100 - Office uses in CRS/OAD, OA, CN, CD, CD/R3, CRS and CT Districts.		

<p>For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.</p>	<p>Applicable objective standard.</p>	<p>The project site participates in the public parking district and therefore qualifies for parking exemptions for the 5,724-square foot office area and 1,271-square foot residential floor area, given the lot area of 6,995 square feet. Therefore no parking is required or provided for the office component, and no parking is required for one of the base project units, since several units are less than 1,271 square feet.</p> <p>Still, as noted above, consistent with SB35 parking requirements, the base project provides 8 spaces for 8 units. The proposed project provides 18 spaces for 15 units.</p>
<p>14.74.200 - Development standards for off-street parking and truck loading spaces</p>		
<p>A. Off-street parking facilities shall conform to the following standards:</p> <ol style="list-style-type: none"> 1. Perpendicular parking space size. Each standard parking space shall consist of an area not less than nine feet wide by eighteen (18) feet long, except as noted on the drawing labeled "Parking Standards Exhibit A" on file in the office of the planning department. 	<p>Applicable objective standard.</p>	<p>As shown on Sheets A2.01 and A2.02, parking stalls measure a minimum of 9 x 18 feet.</p>
<ol style="list-style-type: none"> 2. Handicapped persons perpendicular parking space size. Parking stalls for the use of the physically handicapped shall comply with the requirements set forth in Part 2 of Title 24 of the California Administrative Code and Chapter 9 of Division 11 of the Vehicle Code of the state. 	<p>Applicable objective standard.</p>	<p>Project will comply with Title 24 ADA requirements for parking.</p>

3. Truck loading space size. Truck loading spaces shall not be less than ten (10) feet wide by twenty-five (25) feet long.	No truck loading is required or provided.	Not applicable.
4. Clearance. Standard and compact parking spaces shall have a vertical clearance of at least seven feet over the entire area. In addition, the spaces shall be clear horizontally (for example, pillars in a basement or parking structure shall not be located in required parking spaces). Truck loading spaces shall have a vertical clearance of at least fourteen (14) feet.	Applicable objective standard.	As shown on Sheet A4.01, the parking areas have a vertical clearance of 11'-6", therefore complying with this standard. No loading spaces are required.
B. Each parking and loading space shall be accessible from a public street or alley.	Applicable objective standard.	Parking is accessible from the public parking lot and public access aisle at the rear of the building.
C. The parking and loading area shall be paved with an all-weather asphaltic concrete or Portland cement concrete pavement and marked in accordance with the city engineering standards (not applicable for single-family dwellings).	Applicable objective standard.	The parking garage will be paved with concrete per City Engineering standards.
D. Concrete bumper guards or wheel stops shall be provided for all parking spaces, except as provided in this section. The concrete curb around a perimeter landscaped area shall not be used as a bumper stop unless approved by the commission and the council. In such cases, the commission and the council may allow a parking space length to be reduced by two feet.	Applicable objective standard.	Wheel stops are provided for all parking spaces.
E. Lighting shall be deflected downward and away from any residential property.	Applicable objective standard.	All exterior lighting shall be deflected downward. No residential properties are adjacent to the site.
F. No advertising or sign, other than identification or direction signs, shall be permitted in the parking or loading area.	Applicable objective standard.	No advertising or signs, other than identification or direction signs, are proposed in the parking garage.

G. No repair or servicing of vehicles shall be permitted in the parking or loading area.	Applicable objective standard.	No vehicle repair or servicing is proposed.
H. No area which lies within the precise plan line for a public street or alley adopted by the council shall be computed as satisfying the parking and loading space requirements of this chapter.	Applicable objective standard.	The proposed project does not propose parking or loading within a public street or alley.
I. A parking area abutting on property in an R District or across a street or an alley from property in an R District shall be screened, subject to the approval of the planning department, by a solid fence or wall or a compact evergreen hedge or other screening not less than six feet high, subject to the provisions of Chapter 14.72 of this title regulating fences (not applicable for single-family dwellings).	The project site is not located in or adjacent to an R district site.	Not applicable.
J. The minimum width of a one-way drive shall be twelve (12) feet.	The project proposes a two-way drive aisle.	Not applicable.
K. The minimum width of a two-way drive shall be eighteen (18) feet.	Applicable objective standard.	As shown on Sheets A2.01 and A2.02, the two-way drive aisle measures 26 feet.
L. Space for turning around on the site shall be provided for parking areas of three or more spaces so that no cars need back into the street (not applicable for single-family dwellings).	Applicable objective standard.	No parking is proposed to back out onto a street.
M. Parallel and acute angle parking shall be designed for one-way traffic only, unless otherwise specified by the commission.	Applicable objective standard.	No angled or parallel parking is proposed for the project.

N. The minimum standards for the design of off-street parking areas shall be in accordance with those shown on the drawing labeled "Parking Standards Exhibit A" on file in the office of the planning department.	Applicable objective standard.	As shown on Sheets A2.01 and A2.02, the parking garage layout shows 9 x 18-foot parking spaces and a minimum back-up distance of 26 feet.
O. If found to be necessary or desirable by the city, the design standards set forth in this section may be waived for public and community facility uses or commercially operated public parking facilities in order to permit attended or supervised parking.	Does not apply pursuant to SB 35 – non-objective standards.	Not applicable.
P. District requirements resulting in one-half or greater parking space shall be deemed to require a full space.	These standards do not apply pursuant to SB 35. Gov. Code § 65913.4(d)(2).	Not applicable.
Q. For the purposes of this section, "net square footage" shall mean the total horizontal area in square feet on each floor, including basements, but not including the area of inner courts or shaft enclosures.	This provision is a definition, not a substantive requirement.	Noted.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
Provision	Applicability	Compliance
14.28.030 - General requirements		
The following provisions shall apply to all multiple-family residential projects: A. One (1) to four (4) units. Affordable housing units are not required. B. Five (5) to nine (9) units. Affordable housing units are required. In the event that the developer can demonstrate to the satisfaction of the city council that providing affordable housing units in a project will be	The base project proposes 8 multiple-family residential units and therefore is subject to this subsection.	The base rental project provides 25% of units (2 units) for low income households (up to 80% AMI), thereby exceeding the requirement.

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
<p>financially infeasible, the city council may waive the requirement to provide affordable housing units.</p> <p>C. Ten (10) units or more. Affordable housing units are required.</p> <p>D. For multiple-family residential projects where affordable housing units are required, the following minimum percentage of units shall be provided.</p> <ol style="list-style-type: none"> 1. Rental units. Fifteen (15) percent low income or ten (10) percent very-low income housing. 2. Owner units. Ten (10) percent moderate income housing. <p>E. Notwithstanding Section 14.28.030 (D) in projects containing more than ten (10) units and when more than one (1) affordable unit is required at least one (1) affordable unit must be provided at the low income level.</p>		
<p>F. Unless otherwise approved by the city council, all affordable units in a project shall be constructed concurrently with market rate units, shall be dispersed throughout the project, and shall not be significantly distinguishable by design, construction or materials.</p>	<p>Applicable objective standard.</p>	<p>The BMR units will be constructed concurrently with the market rate units and will not be significantly distinguishable by design, construction or materials. One unit is proposed on the second floor and one unit is proposed on the third floor so the units are "dispersed throughout the project."</p>
<p>G. Any tentative map, use permit, PUD, design application or special development permit approved for multiple-family residential construction projects meeting the foregoing criteria shall contain sufficient conditions of approval to ensure compliance with the provisions of this chapter.</p>	<p>No tentative map is proposed. Additionally, no discretionary use permits are required pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).</p>	<p>Not applicable.</p>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
14.28.040 - Density bonuses.		
<p>C. Development eligibility, bonus densities, and incentive counts.</p> <p>1. Eligible developments, bonus densities, and incentive counts. The developments identified in this subsection are eligible for density bonuses and/or incentives as well as parking requirement alterations and waivers. For each development, this section provides levels of density bonus available and the number of incentives available. For applicable standards, see subsections (E) (Density Bonus Standards), (F) (Incentive Standards), (G) (Parking Requirement Alteration Standards), and (H) (Waivers Standards)</p> <p>a. Housing development with low income restricted affordable units, for sale or for rent. A housing development project that includes at least ten (10) percent of the total units of the project for low income households, either in for sale or for rent, shall be granted the following:</p> <p>i. Density bonus. A project that includes ten (10) percent low income housing shall be granted a density bonus of twenty (20) percent. For each one percent increase above the required ten (10) percent low income units, the density bonus shall be increased by one and one-half percent, up to a maximum density bonus of thirty-five (35) percent. See Table DB 1.</p>	<p>Applicable objective standard.</p>	<p>The 8-unit base project includes 2 low income units, which equates to 25% of the base project. Therefore the project qualifies for a 35% bonus.</p>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing										
<p>Table DB 1</p> <table border="1"> <thead> <tr> <th>Percentage Low Income Units</th> <th>Percentage Density Bonus</th> </tr> </thead> <tbody> <tr> <td>20 or more</td> <td>35.0</td> </tr> </tbody> </table>			Percentage Low Income Units	Percentage Density Bonus	20 or more	35.0				
Percentage Low Income Units	Percentage Density Bonus									
20 or more	35.0									
<p>ii. Incentives. A project that includes at least ten (10) percent low income units shall be granted one incentive. A project that includes at least twenty (20) percent low income units shall be granted two incentives. A project that includes at least thirty (30) percent low income units shall be granted three incentives. See Table DB 2.</p>	Applicable objective standard.	The base project includes 25% low income units. Therefore the project qualifies for two incentives.								
<p>Table DB 2</p> <table border="1"> <thead> <tr> <th>Percentage Low Income Units</th> <th>Number of Incentives</th> </tr> </thead> <tbody> <tr> <td>10 or more</td> <td>1</td> </tr> <tr> <td>20 or more</td> <td>2</td> </tr> <tr> <td>30 or more</td> <td>3</td> </tr> </tbody> </table>			Percentage Low Income Units	Number of Incentives	10 or more	1	20 or more	2	30 or more	3
Percentage Low Income Units	Number of Incentives									
10 or more	1									
20 or more	2									
30 or more	3									
<p>D. Application processing and review.</p> <p>1. Application. An application for a density bonus, incentives, parking requirements alterations, and/or waiver or any other provision in this section shall:</p> <p>a. Be submitted in conjunction with an applicable development permit application;</p>	Applicable objective standard.	See Attachment D for compliance with these standards.								

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
<ul style="list-style-type: none"> b. Be made on a form provided by the community development department; c. Be accompanied by applicable fees; d. Include reasonable documentation, using forms prepared by the city, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing; e. Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the densities authorized under this section or with the concessions and/or incentives requested; and f. Include any other documentation or materials required by this section or by the city for the purpose of density bonus, incentives, parking requirements alterations, and/or waivers or any other provision in this section. <p>2. Review authority. Applications shall be reviewed by the review authority charged to review the applicable development permit application.</p>		

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
<p>E. Density bonus standards. Developments eligible for density bonuses as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive the density bonuses as provided below:</p> <ol style="list-style-type: none"> 1. No waiver required. The granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards. 2. Density calculation. The area of any land required to be dedicated for street or alley purposes may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone in which the project is located. 3. Fractional units. All density bonus calculations shall be rounded up to the next whole number including the base density, restricted affordable units, and the number of affordable units required to be eligible for a density bonus. 4. Minimum number of dwelling units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded. 5. Other discretionary approval. Approval of density bonus units shall not, in and of itself, 	<p>Applicable objective standard.</p>	<p>See Attachment D for compliance with these standards.</p>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
<p>trigger other discretionary approvals required by this Code.</p> <p>6. Other affordable housing subsidies. Approval of density bonus units does not, in and of itself, preclude projects from receipt of other government subsidies for affordable housing.</p> <p>7. Optional density bonuses. Nothing in this section shall be construed to prohibit the city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.</p> <p>8. Lesser percentage of density bonus. If elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density, is permissible.</p>		

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
<p>F. Incentive standards. A development eligible for incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives).</p> <p>1. On-menu incentives. The city council has determined that the on-menu incentives listed below would not have a specific, adverse impact.</p> <p>a. Lot coverage. Up to twenty (20) percent increase in lot coverage limits.</p> <p>b. Lot width. Up to twenty (20) percent decrease from a lot width requirement.</p> <p>c. Floor area ratio. In zone districts with a floor area ratio maximum, an increase in the maximum floor area equal to the floor area of the affordable housing units for the housing development project, up to a thirty-five (35) percent increase in the floor area maximum.</p> <p>d. Height. Up to an eleven (11) foot increase in the allowable height.</p> <p>e. Yard/setback. Up to twenty (20) percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.</p>	<p>Under SB35, consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”. See Gov. Code § 65913.4(a)(5). Accordingly, the project’s conformity with the height requirement is judged based on the base project and not on the plans that incorporate density bonus modifications.</p>	<p>The proposed project includes one on-menu incentive for an 11-foot increase in building height.</p> <p>The City is required to grant the incentive for the 4th story, insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts.</p> <p>As shown on Sheet A4.01, the proposed project would have a maximum height of 56’-6” and a first floor height of 12 feet.</p>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
<p>f. Open space. Up to twenty (20) percent decrease from an open space requirement, provided that (i) the landscaping for the housing development project is sufficient to qualify for the number of landscape points equivalent to ten (10) percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines "O," and (ii) any such reduction is first applied to open space on any project floor or floors above grade.</p>		
<p>2. Off-menu incentives. An applicant may request an incentive not included in subsection (F)(1) (On-Menu Incentives), so long as such incentive meets the definition under state law. The review authority will determine whether any such requested off-menu incentive may have a specific, adverse impact.</p>	<p>The proposed project does not request any off-menu incentives.</p>	<p>Not applicable.</p>
<p>G. Parking requirement alteration standards.</p> <p>1. General parking requirement. Developments eligible for density bonuses and/or incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) must comply with the applicable parking provisions of Chapter 14.74 (Off-Street Parking and Loading), unless the development qualifies for a parking requirement alteration as provided in subsections (G)(2) (On-Menu</p>	<p>See discussion of Chapter 14.74, above.</p>	<p>See discussion of Chapter 14.74, above.</p>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
Parking Requirement Alterations) or (G)(3) (Off-Menu Parking Requirement Alterations).		
<p>H. Waiver standards.</p> <ol style="list-style-type: none"> 1. Waivers or reduction. An applicant may apply for a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development identified in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city to discuss the proposed waiver or reduction. 2. No Change in other incentives. A proposal for the waiver or reduction of development standards described in subsection A shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to this section. 3. Denial of requested waiver. The reviewing authority may deny a request for a waiver under this section if it finds the waiver would: <ol style="list-style-type: none"> a. Waive or reduce a development standard that would not have the effect of physically precluding the construction of a development meeting the criteria of this section at the densities or with the 	<p>Under SB35, consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”. See Gov. Code § 65913.4(a)(5). Accordingly, the project’s conformity with the height requirement is judged based on the base project and not on the plans that incorporate density bonus modifications.</p>	<p>Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the height restriction for the partial 5th story because the height limit, if applied, would physically preclude the density bonus project.</p>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing		
<p>incentives permitted under this section; or</p> <ul style="list-style-type: none"> b. Have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or c. Have an adverse impact on any real property that is listed in the California Register of Historical Resources; or d. Be contrary to state or federal law. 		
<ul style="list-style-type: none"> i. Covenants. <ul style="list-style-type: none"> 1. Covenant required. Prior to issuance of a building permit for a development identified in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) that qualified for a density bonus, incentive, and/or parking alteration, the developer must record a restrictive covenant against the development as provided in subsection (l)(2) (Covenants for Specific Developments). 2. Covenants for specific developments. <ul style="list-style-type: none"> a. For rental developments for low or very low income households. For a development that contains rental housing for low or very low income households, a covenant acceptable to the city shall be 	<p>Applicable objective standard.</p>	<p>The Project will comply with the requirement to record a covenant as required, prior to issuance of a building permit.</p>

Table 3: Chapter 14.28 - Multiple-Family Affordable Housing

<p>recorded with the Santa Clara County Recorder, guaranteeing that the affordability criteria will be observed for at least fifty-five (55) years from the issuance of the certificate of occupancy or a longer period of time if required by the construction or mortgage financing assistance program, mortgage assistance program, or rental subsidy program.</p> <p>...</p> <p>3. Private right of action. Any covenant described in this section must provide for a private right of enforcement by the city, any tenant, or owner of any building to which a covenant and agreement applies.</p> <p>4. Conflict of durations. If the duration of affordability covenants provided for in this section conflicts with the duration for any other government requirement, the longest duration shall control.</p> <p>J. State regulations. All other provisions of California Government Code Sections 65915 to 65918, and any amendments thereto, not specified herein are incorporated by reference into this section.</p>		
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Table 4: Chapter 14.78 - Design and Transportation Review—Multiple-Family, Public and Community Facilities, Office and Administrative, and Commercial Districts

Provision	Applicability	Compliance
14.78.020 - Requirement for administrative design review.		
<p>A. No building permit shall be issued for any new main or accessory structure, or addition or alteration thereto within an R3, PCF, PUD, PC, OA or C district, until such construction has received administrative design review approval by the community development director or their designee. Window replacements, reroofing and rooftop venting and exhausting equipment, and mechanical equipment are exempt from this requirement.</p> <p>B. Whenever, as determined by the community development director or their designee, the construction, expansion or modification of a main or accessory structure may be in conflict with the design review findings contained in this chapter, the project shall be referred to the planning and transportation commission for action on the design review approval.</p>	<p>Under SB 35, the only applicable standards are those “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 prior to submittal.” Gov. Code § 65913.4 (a)(5). Any required “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.” Gov. Code § 65913(c).</p> <p>Aside from the zoning development standards and objective Downtown Design Guidelines described in this attachment, the city has not adopted any other objective design standards by ordinance or resolution.</p>	<p>Pursuant to SB 35, the proposed project is only subject to “objective” design review standards. The only applicable Downtown Design Guideline standards that qualify as “objective” are listed below. No other objective standards are contained in the guidelines. The project has been designed to conform to both standards. No conflicts with any objective standards are proposed, and any review approval “shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects” and these two objective design standards. Gov. Code § 65913(c).</p>

Table 5: Downtown Design Guidelines		
Provision	Applicability	Compliance
Downtown Commercial Core <i>Most of these adopted design guidelines do not qualify as "objective" under SB 35. Below are the guidelines that could be interpreted as objective standards.</i>		
3.2.3d: Utilize awnings and canopies at windows and entries ... <ul style="list-style-type: none"> Keep the mounting height at a human scale with the valence height not more than 8 feet 	Applicable objective standard.	The base project provides awnings across most windows and entries. As shown on Sheets B4.01 and B5.01, the ground floor awning height is at 8 feet above grade.
3.2.4c: Utilize operable windows in traditional styles. Recess windows at least 3 inches from the face of the wall.	Applicable objective standard.	As shown on Sheet B5.01, windows are recessed at least 3 inches from the face of wall.

Applicant Statement, Attachment B SB 35 Environmental Mapping – 40 Main Street

Establishing that the project at 40 Main Street is outside certain regulatory zones as required for SB 35 threshold compliance.

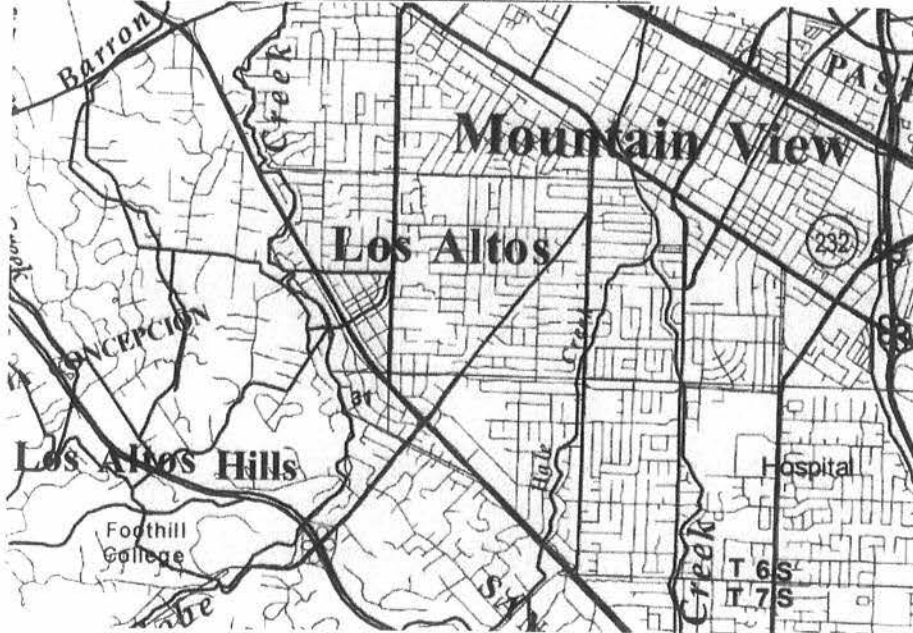
- Coastal zone
- Prime farmland or farmland of statewide importance
- Wetlands
- High or very high fire hazard severity zones
- Hazardous waste sites
- Earthquake fault zone (unless the development complies with applicable seismic protection building code standards)
- Floodplain or floodway designated by FEMA
- Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan
- Habitat for a state or federally protected species
- Land under a conservation easement

California Coastal Zone: <https://www.coastal.ca.gov/maps/czb/>



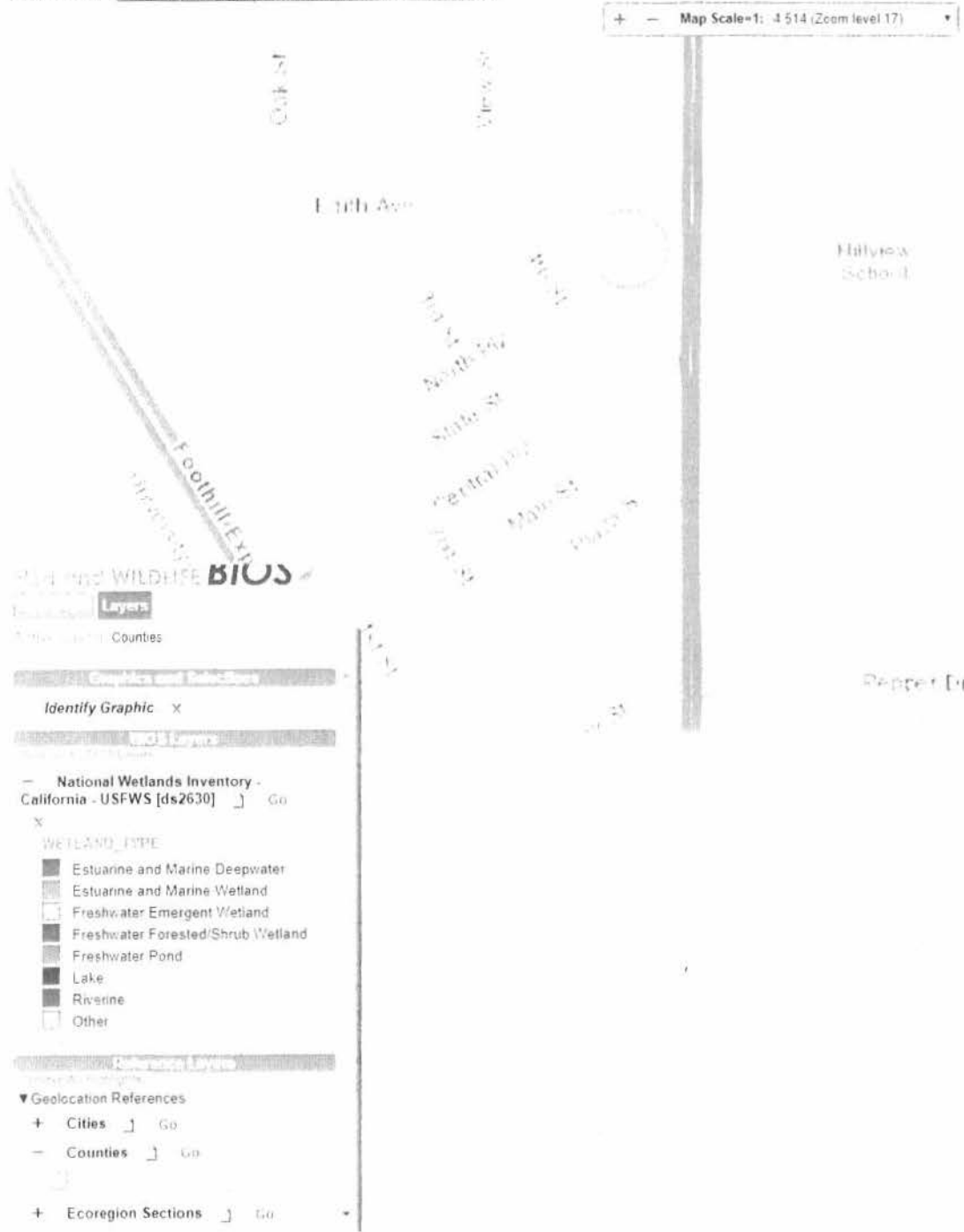
Map does not extend far enough east to show project site. Coastal zone does not extend past San Francisco.

Prime farmland or farmland of statewide importance:
<http://ftp.consrv.ca.gov/pub/dlrp/FMMP/pdf/2016/scl16.pdf>



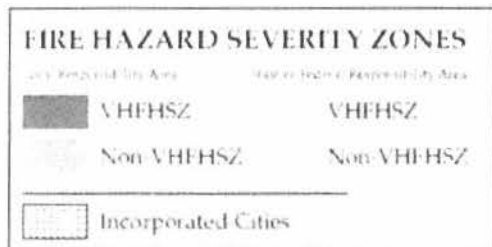
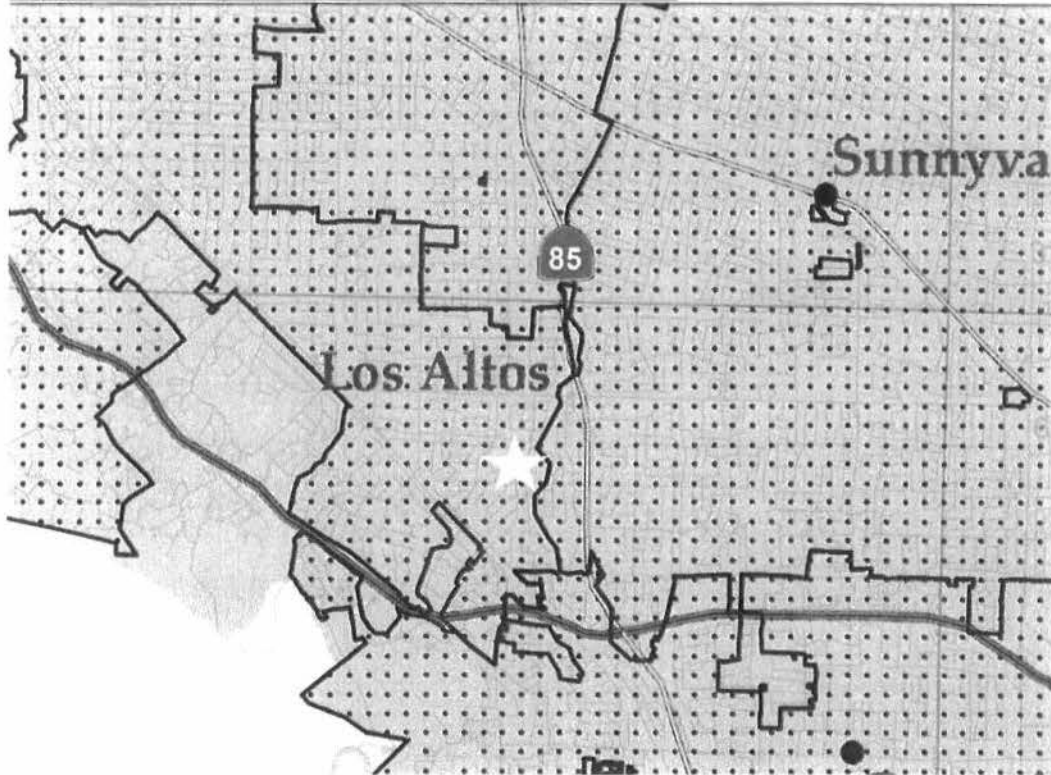
- PRIME FARMLAND**
 PRIME FARMLAND HAS THE BEST COMBINATION OF PHYSICAL AND CHEMICAL FEATURES ABLE TO SUSTAIN LONG-TERM AGRICULTURAL PRODUCTION. THIS LAND HAS THE SOIL QUALITY, GROWING SEASON, AND MOISTURE SUPPLY NEEDED TO PRODUCE SUSTAINED HIGH YIELDS. LAND MUST HAVE BEEN USED FOR IRRIGATED AGRICULTURAL PRODUCTION AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.
- FARMLAND OF STATEWIDE IMPORTANCE**
 FARMLAND OF STATEWIDE IMPORTANCE IS SIMILAR TO PRIME FARMLAND, BUT WITH MAJOR SHORTCOMINGS, SUCH AS GREATER SLOPES OR LESS ABILITY TO STORE SOIL MOISTURE. LAND MUST HAVE BEEN USED FOR IRRIGATED AGRICULTURAL PRODUCTION AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.
- UNIQUE FARMLAND**
 UNIQUE FARMLAND CONSISTS OF LESSER QUALITY SOILS USED FOR THE PRODUCTION OF THE STATE'S LEADING AGRICULTURAL CROPS. THIS LAND IS USUALLY IRRIGATED, BUT MAY INCLUDE NONIRRIGATED ORCHARDS OR VINEYARDS AS FOUND IN SOME CLIMATIC ZONES IN CALIFORNIA. LAND MUST HAVE BEEN CROPPED AT SOME TIME DURING THE FOUR YEARS PRIOR TO THE MAPPING DATE.
- FARMLAND OF LOCAL IMPORTANCE**
 SMALL ORCHARDS AND VINEYARDS PRIMARILY IN THE FOOTHILL AREA. ALSO LAND IRRIGATED AS CRY ORLAND FOR GRAPES AND NUTS.
- GRAZING LAND**
 GRAZING LAND IS LAND ON WHICH THE EXISTING VEGETATION IS SUITED TO THE GRAZING OF LIVESTOCK.
- URBAN AND BUILT-UP LAND**
 URBAN AND BUILT-UP LAND IS OCCUPIED BY STRUCTURES WITH A USEABLE DENSITY OF AT LEAST 1 UNIT TO 1.8 ACRES, OR APPROXIMATELY 4 STRUCTURES TO A 20-ACRE PARCEL. COMMON EXAMPLES INCLUDE RESIDENTIAL, INDUSTRIAL, COMMERCIAL, INSTITUTIONAL FACILITIES, CEMETERIES, AIRPORTS, GOLF COURSES, SANITARY LANDFILLS, SEWAGE TREATMENT, AND WATER CONTROL STRUCTURES.
- OTHER LAND**
 OTHER LAND IS LAND NOT INCLUDED IN ANY OTHER MAPPING CATEGORY. COMMON EXAMPLES INCLUDE LOW DENSITY RURAL DEVELOPMENTS, HIGHWAY TRIPLES, WETLANDS, AND RECREATION AREAS NOT SUITABLE FOR LIVESTOCK GRAZING, UNFITTED LIVESTOCK PASTURES, OR AQUACULTURE FACILITIES. STRIP MINES, HARBOR FITS, AND WATER BODIES SMALLER THAN 45 ACRES, VACANT AND NONAGRICULTURAL LAND SURROUNDED BY ALL SIZES OF URBAN DEVELOPMENT AND GREATER THAN 45 ACRES IS MAPPED AS OTHER LAND.
- WATER**
 PERENNIAL WATER BODIES WITH AN EXTENT OF AT LEAST 45 ACRES.

Wetlands - <https://map.dfg.ca.gov/bios/?al=ds2630>



High or very high fire hazard severity zones:

http://www.fire.ca.gov/fire_prevention/fhsz_maps_santaclara



Hazardous waste sites - <https://www.envirostor.dtsc.ca.gov/public/map/?assembly=15>



ENVIROSTOR

Sites and Facilities

Cleanup Sites

- Federal Superfund
- State Response
- Voluntary Cleanup
- School Cleanup
- Evaluation
- School Investigation
- Military Evaluation
- Tiered Permit
- Corrective Action

Permitted Sites

- Operating
- Post-Closure
- Non-Operating

Other Sites

GIS Layers

- CalEnviroScreen Layer
- Assembly Districts
Assembly District 15
- Congressional Districts
- Senate Districts
- Counties

Tools

THEATRE SHARE THIS MAP

Earthquake fault zone (unless the development complies with applicable seismic protection building code standards) - <https://maps.conservation.ca.gov/cgs/EQZApp/app/>



Legend

Fault Traces

- Accurately Located
- - - Approximately Located
- · - · - Approximately Located, Queried
- - - - Inferred
- · - · - Inferred, Queried
- · - · - Concealed
- · - · - Concealed, Queried
- - - Aerial Photo Lineament

Fault Zone



Liquefaction Zone



Landslide Zone



Liquefaction Landslide Overlap Zone



Area N ot E valuated for Liquefaction or Landslides

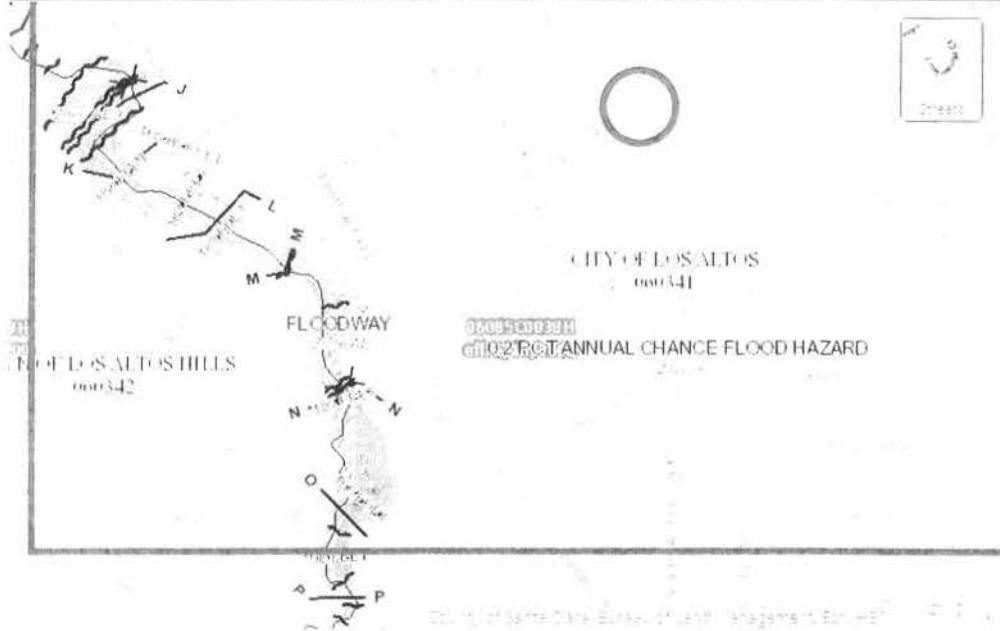


Parcels

- Parcel is in an Earthquake Fault Zone, a Liquefaction Zone, and a Landslide Zone
- Parcel is in an Earthquake Fault Zone and a Liquefaction Zone
- Parcel is in an Earthquake Fault Zone and a Landslide Zone
- Parcel is in an Earthquake Fault Zone
- Parcel is in a Liquefaction Zone and Landslide Zone
- Parcel is in a Liquefaction Zone
- Parcel is in a Landslide Zone
- Parcel is not in a zone or has not been evaluated

Floodplain or floodway designated by FEMA

https://p4.msc.fema.gov/arcgis/rest/directories/arcgisjobs/nfhl_print/nfhlprinttool2_gpserver/j3e95bb95d8e84c8ba35aa1458af56f3d/scratch/FIRMETTE_6139409e-dc95-11e8-a026-001b21b31e35.pdf



Site is located within Zone X: a 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average flood depth less than one foot or with drainage areas of less than one square mile.



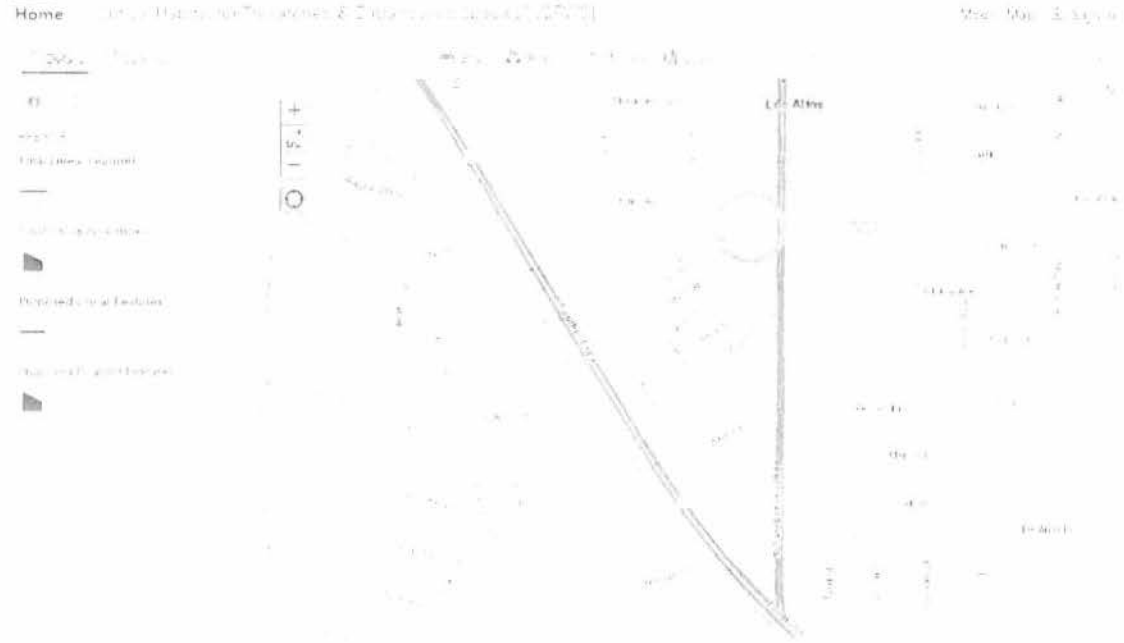
Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan - <http://www.calands.org/map>



Habitat for a state or federally protected species

Federal:

<https://fws.maps.arcgis.com/home/webmap/viewer.html?webmap=9d8de5e265ad4fe09893cf75b8dbfb77>



Applicant Statement, Attachment C
SB 35 Prevailing Wage Commitment Letter – 40 Main Street

November 8, 2018

Jon Biggs
Community Development Director
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

Re: Commitment to and Certification of SB 35 Prevailing Wage and Skilled & Trained
Workforce Requirements

Dear Mr. Biggs:

By way of this letter, 40 Main Street Offices, LLC (the "Applicant"), the applicant for the 40 Main Street Project ("Project"), certifies that per the requirements of Senate Bill 35, all construction workers will be paid the applicable prevailing wages.

The Applicant hereby certifies that all requirements in California Government Code § 65913.4(a)(8)(A)(ii) will be met. Specifically, all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. The Applicant will ensure that the prevailing wage requirement is included in all contracts for the performance of the work and will ensure that all other requirements contained in Gov. Code § 65913.4(a)(8)(A)(ii) will be satisfied, as applicable.

Sincerely,

Applicant Statement, Attachment D Density Bonus Report – 40 Main Street

1. Requested Density Bonus

- I. *Minimum Number of Dwelling Units:* the project proposes to build 15 rental units which includes two below market rate units. This exceeds the minimum threshold for the City's ordinance, which is five dwelling units.
- II. *Summary Table of Permitted and Proposed Units:*

Dwelling Unit Summary	
Base project dwelling units permitted by zoning and general plan	N/A – no density standard in Los Altos Zoning Code for CRS/OAD. Based on the development standards for the site, the project is entitled to two floors of residential above the ground floor (see Applicant Statement and Attachment A: Compliance with Objective Zoning Standards), based on the 30-foot height limit. The base project includes 8 units.
Proposed number of affordable units by income level	The project proposes two units affordable to low-income households, defined as earning less than 80% of Area Median Income (AMI).
Proposed bonus percentage	Project proposes eight base units of which two (25% of project) are affordable. The project is therefore entitled to a 35% density bonus.
Number of density bonus units proposed	The project proposes 7 density bonus units.
Total number of dwelling units proposed	A total of 15 units are proposed.
Proposed Density per Acre	Total project is 93 dwelling units per acre. (Site is 6,994 square feet with 15 units.)

- III. *Tentative map and/or preliminary site plan. Must show the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.*

See second floor and third floor plans in attached plan set for the location of the proposed affordable units.

- IV. *Zoning and general plan designations and assessor parcel number.*

Characteristic	Designation
Zoning District	CRS/OAD
General Plan Land Use	Downtown Commercial
Assessor's Parcel Number (APN)	167-38-032

V. *Calculation of the maximum number of dwelling units permitted by the City’s zoning ordinance and general plan for the housing development, excluding any density bonus units.*

The Los Altos Zoning Ordinance and general plan do not specify a maximum number of dwelling units.

VI. *Number of bedrooms in the proposed market-rate units and the proposed affordable units.*

Floor	Market Rate Units	Below Market Rate Unit
First	N/A	N/A
Second	4 units: <ul style="list-style-type: none"> • 1 one bedroom • 2 two bedroom • 1 three bedroom 	1 two bedroom unit
Third	4 units <ul style="list-style-type: none"> • 1 one bedroom • 2 two bedroom • 1 three bedroom 	1 one bedroom unit
Fourth	4 units <ul style="list-style-type: none"> • 1 one bedroom • 2 two bedroom • 1 three bedroom 	
Fifth	3 units: 3 two bedroom	

VII. *Description of all dwelling units that have existed on the site in the previous five-year period.*

N/A. For at least the past five years, the project has been a commercial property with no housing units.

VIII. *Description of any recorded document applicable to the site that restricted rents.*

N/A. For at least the past five years, the project has been a commercial property with no housing units.

IX. *Land donation density bonus question.*

N/A, no land donation is included as part of this application.

2. *Requested Incentive(s) and Concessions*

The project is entitled to two concessions under LAMC Sec. 14.28.040.C.1.a.ii and GC Sec. 65915. The project proposes to use one 11’ height increase, which is an “on-menu” incentive.

3. Requested waivers

Development Standard	Proposed Development Standard for Waiver	Rationale for how waiver is required to avoid physically precluding construction
<i>30' Height Limit</i>	Additional 2/3 of a floor	The project proposes a fourth floor of housing as an incentive. A waiver of the 2/3 rd of a fifth floor is required to construct the density bonus units. The units cannot be constructed within the first three floors because they are already at the maximum potential floor area/density.
<i>Side Yard</i>	0 to 10' setback	The increased setback is required to construct the density bonus units as proposed in the attached plans.
<i>Parking Regulations</i>	Parking standards per SB35	The parking waiver is required to construct the density bonus units as proposed in the attached plans.
<i>Rooftop Mechanical</i>	4.4% of rooftop area to be occupied by mechanical equipment	A waiver is required to construct the density bonus units as proposed in the attached plans.

4. Requested parking reduction

Per SB 35, the project is not subject to local parking requirements that exceed one space per unit.

5. Childcare facility.

N/A

6. Condominium Conversion

N/A

7. Other

N/A

8. Fee

The fees for the project will be provided as determined by the City of Los Altos' adopted legal requirements.

Government Code Section 65915, Affordable Housing Compliance and Density Bonus Entitlement

Government Code Section 65915 requires the City grant density bonuses to qualifying affordable housing projects as they are otherwise defined in the statute. GC Sec. 65915(n) allows that a city may grant a greater density bonus than allowed by state law but only if the local agency has a specific ordinance allowing the additional bonus. GC Sec. 65915(n) states:

If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section. (GC Sec. 65915(n))

The City of Los Altos has a local implementing density bonus ordinance that does include language allowing for a greater density bonus than is otherwise required by State law. The LADBO allowance for additional density bonus is found in Los Altos Municipal Code (LAMC) section 14.28.040.E.7:

Optional density bonuses. Nothing in this section shall be construed to prohibit the city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section. (LAMC Sec. 14.28.040.E.7)

Density Standard and Bonus

The project is a rental housing project that will provide 25% of its base project units at 80% AMI and is therefore entitled to a 35% density bonus and two concessions/incentives. In the case of the proposed project, at least 20% of base project units must be provided at not greater than low incomes (up to 80% AMI) to allow for a full 35% density bonus, even though the SB 35 application would only require 10% of all units to be affordable at less than 80% AMI. It also provides that the project is allowed up to two concessions/incentives.

Waivers and Modifications

The City must waive any development standards that would have the effect of “physically precluding” the density bonus project, including the concessions discussed below. The height limit standard, if applied, would physically preclude the project and thus must be waived. Further, if there are other development standards that would physically preclude the project with the density bonus units and incentives/concessions, those must also be waived.

Concessions and Incentives

In addition to granting the density bonus, the City must also grant the project up to two incentives or concessions pursuant to GC Sec. 65915(d)(1) because 20% of the “base density” units will be affordable to low-income households. The City is required to grant the concessions/incentives insofar as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts. Although the Project qualifies for two incentives or concessions, the project only requires one as described below.

Los Altos’ specific allowance for density increases beyond 35% are found in LAMC Sec. 14.28.040.C.1.a.ii, as follows:

- ii. Incentives. A project that includes at least ten (10) percent low income units shall be granted one incentive. A project that includes at least twenty (20) percent low income units shall be granted two incentives. A project that includes at least thirty (30) percent low income units shall be granted three incentives.

The menu of incentives found in LAMC Sec. 14.28.040.F states:

F. Incentive standards. A development eligible for incentives as provided in subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives).

...

- d. Height. Up to an eleven (11) foot increase in the allowable height.

Given that the project is entitled to two concessions under LAMC Sec. 14.28.040.C.1.a.ii and GC Sec. 65915, it follows that it may avail itself to two 11’ height increases. However, the proposed project is only requesting one concession/incentive to allow for an 11-foot increase in building height for the fourth story, in addition to the waiver request for the partial fifth story.

The City would “bear the burden of proof for the denial of a requested concession or incentive,” Gov. Code § 65915(d)(4). Effective in 2017, the Legislature amended the Density Bonus Law specifically to eliminate the authority of cities to reject a requested concession or incentive on the grounds that “[t]he concession or incentive is not required in order to provide for affordable housing costs,” Stats.2016, ch. 758 (A.B.2501), § 1. The currently operative text of the law only authorizes the City to reject the requested concession if the City demonstrates that “[t]he concession or incentive does not result in identifiable and actual cost reductions.” whereas the prior language required that concessions are also “financially sufficient.” Id. Here, the concession yields direct savings to the proposed project and the development standard does not impact public health and safety, nor is it required by State or federal

law. The proposed project costs are increased as a podium development that contains two levels of underground parking. The proposed concession offsets the costs of the two proposed below market rate units. The balance of the density bonus and other market rate units must bear the substantial financial burden of paying the costs of the podium construction and underground parking.

EXHIBIT 2



Community Development Department
One North San Antonio Road
Los Altos, California 94022

December 7, 2018

40 Main Street Offices, LLC;
c/o Ted Sorensen
40 Main Street
Los Altos, CA 94022,

&

William J. Maston, Architect and Associates
384 Castro Street
Mountain View, CA 94041

**Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10; SB 35
DETERMINATION**

Dear Mr. Sorensen and Mr. Maston:

This letter provides our decision on the application you have submitted, dated November 8, 2018, for a mixed-use project at 40 Main Street, Los Altos, CA, submitted for consideration under the provisions of SB 35, the California State legislation that provides for streamlined permit processing of projects meeting certain requirements.

Our review of the project indicates that it is not subject to the provisions of SB 35 for the following reasons:

- The project does not provide the percentage of affordable dwelling units required by the State regulations. The SB 35 Statewide Determination Summary list (http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary01312018.pdf) concludes that the City of Los Altos requires 50% of more affordable to take advantage of SB 35. See Government Code Section 65913.4(a)(4)(A) and (B)(ii).
- Per Government Code Section 65913.4(a)(5), the development, excluding any density bonus units, concessions, incentives, or waivers is inconsistent with the City's objective zoning standards. Namely, the plans purporting to demonstrate a consistent project do not provide the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking.

In addition, this application results in two applications that have been submitted for this site. One or the other of the projects must be withdrawn. The City of Los Altos does not have provisions that provide for the concurrent processing of multiple development proposals on the same site.

40 Main Street
December 7, 2018
Page 2

If you elect to pursue other approval/permit avenues for the project that is the subject of this notice, the applications, fees, deposits, studies, and information contained in the attached Notice of Incomplete Application are required to continue an evaluation of the project. A review of any submittals may reveal that other applications, fees, deposits, studies, and information are required to continue an evaluation of the project to determine completeness and processing through the environmental review and public hearing processes.

Sincerely,



Jon Biggs, City of Los Altos
Community Development Director

Attachments:

Notice of Incomplete Application



Community Development Department
One North San Antonio Road
Los Altos, California 94022

NOTICE OF INCOMPLETE APPLICATION

December 7, 2018

40 Main Street Offices, LLC;
c/o Ted Sorensen
40 Main Street
Los Altos, CA 94022

&

William J. Maston, Architect and Associates
384 Castro Street
Mountain View, CA 94041

Subject: 40 MAIN STREET, APPLICATIONS 18-D-07 AND 18-UP-10

Dear Mr. Sorensen and Mr. Maston:

This letter is in response to the Design Review and Use Permit applications submitted on November 8, 2018 for a new mixed-use building at 40 Main Street. The application is **incomplete** for processing. This letter is a list of the items that will need to be addressed or provided for the application to be deemed complete.

Per Zoning Code Section 14.78.050, all necessary plan revisions, documentation and information to address the comments in this letter must be submitted within **180 days** of the date of this letter in order to avoid this application from being deemed expired. This application will be deemed expired on June 6, 2019. If additional time is necessary to fully address the City's comments, you may submit a written request for an extension of up to an additional 180 days. The request should include justification for the extension and outline the circumstances that have caused a delay in the submittal of the required information.

Once the application has been deemed complete, we can discuss the schedule for the required public meetings before the Complete Streets Commission, Planning Commission and the City Council, and the environmental review process as required by the California Environmental Quality Act.

LIST OF COMPLETENESS ITEMS

Planning Division

1. Provide a preliminary lighting plan that provides details and locations of all exterior lighting fixtures.

2. Provide a sign design plan that includes signage details – dimensions, letter size, colors, material, illumination, sign/letter cross sections – for the existing pole sign and all building mounted signage. The sign materials should be high quality and match the style of the project architecture.
3. Update the design of the parking levels to include the following information:
 - a. Provide vehicle circulation details such as directional arrows, striping and stop signs;
 - b. Show that all parking spaces will be double-striped;
 - c. Show the location of all proposed EV charging stations. For the remaining EV reserved spaces, consider alternative locations in the parking lot;
 - d. Provide a complete engineering plan of the vehicle circulation system that will provide access to and egress from the underground parking levels of the structure, to include projections for vehicle queuing in public parking plaza 10 and circulation patterns of vehicles traveling through public parking plaza 10.
4. Provide a landscape plan to include the following information:
 - a. Show existing and proposed landscaping, trees and improvements within the public right-of-way and details for the landscape plane;
 - b. Provide a tree inventory (size and species) of all existing trees on the site and along the property frontage in the public street right-of-way and a report from a certified arborist or forester that details the conditions of the trees.
5. Provide an acoustical analysis that evaluates the proposed rooftop mechanical equipment and noise generated by delivery trucks to ensure that the project is in compliance with the City's General Plan and the Noise Control Regulations.
6. Variance application for an exception to the maximum permitted height and reduction in the required number of off-street parking spaces with the variance application fee of \$5,350.
7. Provide a preliminary deposit in the amount of \$75,000 to cover the initial cost of environmental evaluation that must be conducted on the project and independent studies and analysis necessary to complete the environmental review.
8. Provide a deposit of \$15,000 to cover the cost of the peer review of the density bonus report that is required in order to demonstrate how any concessions and incentives requested result in identifiable and actual cost reductions to provide affordable housing.
9. Provide a deposit of \$6,000 to cover the cost of an independent design evaluation of the structure and its conformance with the Los Altos Downtown Design Guidelines.
10. Provide a shadow study depicting how shadows that will be cast by the project throughout the course of the day, for both the winter and summer seasons.
11. Provide complete engineering and/or manufacturers details for the mechanical vehicle lift system that is being proposed
12. Provide a Sketch-Up model of the project so it can be inserted into the Downtown model and evaluated.
13. Provide an address list, in label format, for all commercial tenants within 500 feet of the project.

14. Provide two sets of blank, postage paid postcards. Each set should have enough postcards to cover all property owners and business tenants within 500 feet of the project (80 property owners plus additional commercial tenants).
15. Provide circled items from the Submittal requirements for Commercial or Multi-Family Design Review list (attached).
16. Provide circled items from the Submittal requirements for Conditional Use Permits list (attached).
17. Provide circled items from the Density Bonus Report Submittal Requirements list (attached).

Building Division

See comments listed on the November 15, 2018 Memorandum from the Building Division

Engineering Division

These are preliminary comments supplemental to those additional comments that the Engineering Division may develop as it continues its review of any revised plans submitted for the project. A complete set of conditions of approval will be added to the application prior to consideration of the project by the Planning Commission.

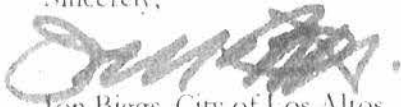
18. The driveway entrance along parking plaza will affect up to 2 parking spaces which is not acceptable.
19. Parking circulation is inadequate. How/where will the vehicles queue while waiting for the mechanical lift system to go into the underground parking area?
20. C3 bioretention areas shall be located in building common areas to allow for bi-annual inspections by City and SCC Vector Control staff.
21. Provide a truck route plan that shows the street routes that delivery trucks will use and include turning templates for the trucks entering and exiting the site. Also, note the size of the trucks and the hours of operation. This information should be included as a plan sheet.
22. The applicant shall contact Mission Trails Company and submit a solid waste disposal plan indicating the type and size of container proposed and the frequency of pick-up service subject to the approval of the Engineering Division. The applicant shall submit evidence that Mission Trails Company has reviewed and approved the size and location of the enclosure for recyclables.
23. The project will be required to submit a Stormwater Management Plan (SWMP) report showing:
 - a. That 100 percent of the site is being treated to include the new paving and new sidewalk;
 - b. The project is in compliance with the San Francisco Bay Municipal Regional Stormwater NPDES Permit Order R2-2009-0074, NPDES Permit No. CAS612008, October 14, 2009;
 - c. That all treatment measures are in accordance with the C.3 Provisions for Low Impact Development (LID) and in compliance with the December 1, 2011 requirements; and
 - d. The SWMP shall be reviewed and approved by a City approved third party consultant. The recommendations from the SWMP shall be shown on the building plans.

Page 4

24. See comments listed on the November 15, 2018 Memorandum from the Fire Department.

To continue the development review process, submit five (5) full sized sets of plans, five (5) half sized sets of plans and two (2) copies of all technical reports and support information required by this notice of incomplete application.

Sincerely,



Jon Biggs, City of Los Altos
Community Development Director

Attachments:

Building Division Memo, Dated November 15, 2018

Santa Clara County Fire Department Memo/Letter, Dated November 15, 2018

Submittal requirements for Commercial or Multi-Family Design Review

Submittal requirements for Conditional Use Permits

Density Bonus Report Submittal Requirements



MEMORANDUM

DATE: 11/15/18

TO: _____ City Manager
_____ Building Division
_____ Fire Department
_____ Engineering Division
_____ Other _____

FROM: PLANNING DIVISION ~

RE: 40 Main Street
18-D-07 & 18-UP-10 – 40 Main Street Offices, LLC/
William J. Maston Architect & Associates

Attached is a copy of an application and/or drawings.

Please return any comments by: 7:00 PM 12/9/18

*Van Accessible Vertical Clearances?
Kirk B Ballou 12/6/18*



CITY OF LOS ALTOS
GENERAL APPLICATION

Type of Review Requested: (Check all boxes that apply)

Permit # 1108545

<input checked="" type="checkbox"/> One-Story Design Review	<input checked="" type="checkbox"/> Commercial/Multi-Family	<input type="checkbox"/> Environmental Review
<input type="checkbox"/> Two-Story Design Review	<input type="checkbox"/> Sign Permit	<input type="checkbox"/> Rezoning
<input type="checkbox"/> Variance	<input checked="" type="checkbox"/> Use Permit	<input type="checkbox"/> R1-S Overlay
<input checked="" type="checkbox"/> Lot Line Adjustment	<input type="checkbox"/> Tenant Improvement	<input type="checkbox"/> General Plan/Code Amendment
<input type="checkbox"/> Tentative Map/Division of Land	<input type="checkbox"/> Sidewalk Display Permit	<input type="checkbox"/> Appeal
<input type="checkbox"/> Historical Review	<input type="checkbox"/> Preliminary Project Review	<input type="checkbox"/> Other:

Project Address/Location: 40 Main Street, Los Altos CA 94022

Project Proposal/Use: Mixed Use / Residential Current Use of Property: Office

Assessor Parcel Number(s): 167-38-032 Site Area: 6,995

New Sq. Ft.: 29,566 Altered/Rebuilt Sq. Ft.: _____ Existing Sq. Ft. to Remain: _____

Total Existing Sq. Ft.: 2,050 Total Proposed Sq. Ft. (including basement): _____

Applicant's Name: 40 Main Street Offices, LLC

Telephone No.: (650) 924-0418 Email Address: ted@gannmanagement.com

Mailing Address: 40 Main Street

City/State/Zip Code: Los Altos CA 94022

Property Owner's Name: 40 Main Street Offices, LLC

Telephone No.: (650) 924-0418 Email Address: ted@gannmanagement.com

Mailing Address: 40 Main Street

City/State/Zip Code: Los Altos CA 94022

Architect/Designer's Name: William J. Masten Architect & Associates

Telephone No.: (650) 968-7900 Email Address: billm@mastenarchitect.com

Mailing Address: 384 Castro Street

City/State/Zip Code: Mountain View, CA 94041

*** If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finalized prior to obtaining your building permit. Please contact the Building Division for a demolition package. ***

(continued on back)

Does your project comply with any Deed Restrictions, Conditions, Covenants, and Restrictions (CC&R's), or any other recorded conditions of the subdivision in which it is located? Examples are restrictions that limit development to one-story height or may require setbacks greater than those required by City Codes. You are responsible for researching your title insurance report to find the CC&R's for your property. If you do not have a copy of the title report, you may obtain the information from a title insurance company or the County Recorder's Office. Yes No N/A

If No, please explain below in what way your project does not comply with the restrictions and why you propose such variations.

N/A

I certify that the above information is true and correct.

Date: 11/13/18

Property Owner/Applicant or Authorized Agent Signature: [Signature]

(If signing as an authorized agent, please submit evidence of written authorization)

For City Staff Use Only:

Received by: Eliana / Sean Date: 11/8/18

Department Review Required:

Fire Department YES / NO
Building Division YES / NO
Public Works Engineering YES / NO
City Manager YES / NO

Date Notified: 11/15/18
Date Notified: 11/15/18
Date Notified: 11/15/18
Date Notified: 11/15/18
Date Notified: _____
Date Notified: _____

Is the submittal package complete? YES / NO TBD

If NO, what items still need to be submitted?

RECEIVED

18-4273

NOV 16 2018
SANTA CLARA COUNTY
FIRE DEPARTMENT



DRC

MEMORANDUM

DATE: 11/15/18

TO: _____ City Manager
_____ Building Division
 Fire Department
_____ Engineering Division
_____ Other _____

FROM: PLANNING DIVISION

RE: 40 Main Street
18-D-07 & 18-UP-10 - 40 Main Street Offices, LLC/
William J. Maston Architect & Associates

Attached is a copy of an application and/or drawings.

Please return any comments by: THURS. 11/29/18



FIRE DEPARTMENT
SANTA CLARA COUNTY

14700 Winchester Blvd., Los Gatos, CA 95032-1818
(408) 378-1010 • (408) 378-9342 fax • www.sccfd.org



PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

Plans and Scope of Review:

This project shall comply with the following:

The California Fire (CFC), Building (CBC) and Residential (CRC) Code, 2016 edition, as adopted by the City of Los Altos Municipal Code (LOSMC), California Code of Regulations (CCR) and Health & Safety Code.

The scope of this project includes the following:

Review of preliminary application for a proposed four-story residential (15 units) over ground floor office (29,566 square foot building) with two levels of underground parking (square footage not provided).

NOTE: Please be advised that the review comments are based on limited information provided on the plans and as the submittal also included a 3-story, a full detailed plan review could not be conducted. Please provide only one building proposal in future plan submittals so that we can provide more clear and accurate comments.

Plan Status:

Plans are **NOT APPROVED**. To prevent plan review and inspection delays, the below noted Developmental Review Conditions shall be addressed on all pending and future plan submittals and any referenced diagrams to be reproduced onto the future plan submittal.

Plan Review Comments:

1. Review of this Developmental proposal is limited to acceptability of site access and water supply as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work the applicant shall make application to, and receive from, the Building Department all applicable construction permits.

CITY	PLANS	SPECS	NEW	RMBL	AS	OCCUPANCY	CONST TYPE	Applicant Name	DATE	PAGE
LOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B/R	pending	William Matson Architect &	11/29/2018	1 OF 4
SECT/FLOOR	AREA	LOAD	PROJECT DESCRIPTION				PROJECT TYPE OR SYSTEM			
5-2pkg	29,566		Commercial Development				Design Review			
NAME OF PROJECT						LOCATION				
40 MAIN OFFICES AND RESIDENCES						40 Main St Los Altos				
TABULAR FIRE FLOW						REDUCTION FOR FIRE SPINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY		
								Baker, Kathy		

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FIRE DEPARTMENT
SANTA CLARA COUNTY

14700 Winchester Blvd., Los Gatos, CA 95032-1818
(408) 378-4010 • (408) 378-9342 (fax) • www.sccfd.org



PLAN REVIEW No. 18 4273

BLOG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

2. **Fire Sprinklers Required:** Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.18 whichever is the more restrictive. For the purposes of this section, firewalls used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations. NOTE: The owner(s), occupant(s) and any contractor(s) or subcontractor(s) are responsible for consulting with the water purveyor of record in order to determine if any modification or upgrade of the existing water service is required. A State of California licensed (C-16) Fire Protection Contractor shall submit plans, calculations, a completed permit application and appropriate fees to this department for review and approval prior to beginning their work. CFC Sec. 903.2 as adopted and amended by LOSMC. **Provide a note in Project Data on Sheet A0.01 indicating that a fire sprinkler system will be provided and installed per NFPA 13 and 13R, 2016 edition standards.**

3. **Water Supply Requirements:** Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2016 CFC Sec. 903.3.5 and Health and Safety Code 13114.7.

4. **Two-way communication system:** Two-way communication systems shall be designed and installed in accordance with NFPA 72 (2016 edition), the California Electrical Code (2013 edition), the California Fire Code (2016 edition), the California Building Code (2016 edition), and the city ordinances where two way system is being installed, policies, and standards. Other standards also contain design/installation criteria for specific life safety related equipment. These other standards are referred to in NFPA 72.

5. **Fire Alarm Requirements:** The building shall be provided with a fire alarm system in accordance with CFC Section 907.

City	PLANS	SPECS	NEW	RMOL	AS	OCCUPANCY	CONST. TYPE	Applicant Name	DATE	PAGE
LOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B/R	pending	William Matson Architect &	11/29/2018	2 OF 4
SECFLOOR	AREA	LOAD	PROJECT DESCRIPTION				PROJECT TYPE OR SYSTEM			
5+2pkg	29,566		Commercial Development				Design Review			
NAME OF PROJECT						LOCATION				
40 MAIN OFFICES AND RESIDENCES						40 Main St. Los Altos				
TABULAR FIRE FLOW						REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY		
								Baker, Kathy		



FIRE DEPARTMENT
SANTA CLARA COUNTY



11700 Winchester Blvd., Los Gatos, CA 95032-1818
(408) 378-1010 • (408) 378-9342 (fax) • www.secd.org

PLAN REVIEW No. 18 4273

BLOG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

6. **Public Fire Hydrant(s) Required:** Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be 500 feet, with a minimum single hydrant flow of 500 GPM at 20 psi, residual. Fire hydrants shall be provided along required fire apparatus access roads and adjacent public streets. CFC Sec. 507, and Appendix B and associated Tables, and Appendix C. **Identify on the plans the location of all existing and new fire hydrants as required to comply with above mentioned code section.**

7. **Aerial Fire Apparatus Access Roads:** 1. Where required: Buildings or portions of buildings or facilities exceeding 30 feet (9144 mm) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway. 2. Width: Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925) in the immediate vicinity of any building or portion of building more than 30 feet (9144 mm) in height. 3. Proximity to building: At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572) and a maximum of 30 feet (9144mm) from the building, and shall be positioned parallel to one entire side of the building, as approved by the fire code official. CFC Sec. 503. **Aerial Apparatus Access will be required along the west side of the building, opposite Main Street. Identify this access road as well as all above required measurements on site access sheet.**

8. **Timing of installation:** When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods of protection are provided. Temporary street signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2 CFC Sec. 501.4

9. **Ground ladder access:** Ground-ladder rescue from second and third floor rooms shall be made possible for fire department operations. With the climbing angle of seventy five degrees maintained, an approximate walkway width along either side of the building shall be no less than seven feet clear. Landscaping shall not be allowed to interfere with the required access. CFC Sec. 503 and 1029 NFPA 1932 Sec. 5.1.8 through 5.1.9.2. **Identify the location of ground ladder access on the plans.**

CITY	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	Applicant Name	DATE	PAGE
LOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B/R	pending	William Matson Architect &	11/29/2018	3 OF 4
SEC/FLOOR	AREA	LOAD	PROJECT DESCRIPTION				PROJECT TYPE OR SYSTEM			
3-2/pkg	29,566 +		Commercial Development				Design Review			
NAME OF PROJECT						LOCATION				
40 MAIN OFFICES AND RESIDENCES						40 Main St Los Altos				
TABULAR FIRE FLOW						REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI		BY	
									Baker, Kathy	



FIRE DEPARTMENT
SANTA CLARA COUNTY

11700 Winchester Blvd., Los Gatos, CA 95032-1818
(408) 378-4110 • (408) 378-9342 (fax) • www.sccfd.org



PLAN REVIEW No. 18 4273

BLDG PERMIT No.

DEVELOPMENTAL REVIEW COMMENTS

10. **Standpipes Required:** Standpipe systems shall be provided in new buildings and structures in accordance with this section. Fire hose threads used in connection with standpipe systems shall be approved and shall be compatible with fire department hose threads. The location of fire department hose connections shall be approved. Standpipes shall be manual wet type. In buildings used for high-piled combustible storage, fire hose protection shall be in accordance with Chapter 32. Standpipe systems shall be installed in accordance with this section and NFPA 14 as amended in Chapter 47. CFC Sec. 905

11. **Emergency Responder Radio Coverage:** Emergency responder radio coverage in new buildings. All new buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communication systems. Refer to CFC Sec. 510 for further requirements

12. **Construction Site Fire Safety:** All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification SI-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. CFC Chp. 33

13. **Address identification:** New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1

This review shall not be construed to be an approval of a violation of the provisions of the California Fire Code or of other laws or regulations of the jurisdiction. A permit presuming to give authority to violate or cancel the provisions of the Fire Code or other such laws or regulations shall not be valid. Any addition to or alteration of approved construction documents shall be approved in advance. [CFC, Ch.1, 105.3.6]

City	PLANS	SPECS	NEW	RMDL	AS	OCCUPANCY	CONST. TYPE	Applicant Name	DATE	PAGE
LOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B/R	pending	William Matson Architect &	11/29/2018	4 OF 4
SECT/FLOOR	AREA	LOAD	PROJECT DESCRIPTION				PROJECT TYPE OR SYSTEM			
5-2pkg	29,566 sq ft		Commercial Development				Design Review			
NAME OF PROJECT						LOCATION				
40 MAIN OFFICES AND RESIDENCES						40 Main St Los Altos				
TABULAR FIRE FLOW						REDUCTION FOR FIRE SPRINKLERS	REQUIRED FIRE FLOW @ 20 PSI	BY		
								Baker, Kathy		

40 MAIN - MIXED USE
- NOV. 8, 2018



City of Los Altos
Planning Division

(650) 947-2750

Planning@losaltos.ca.gov

Project No. 2018-1108545

SUBMITTAL REQUIREMENTS COMMERCIAL OR MULTI-FAMILY DESIGN REVIEW

APPLICATION FORM, FEE & REQUIRED MATERIALS

All items are required at time of submittal. The project will not be scheduled for a public meeting until the application has been reviewed by a planner and is deemed complete.

1. **General Application Form**

2. **Filing Fee(s)**

Application	\$ _____
Environmental Review	\$ _____
Public Notification (\$1.00/notice) *	\$ _____
Other: _____	\$ _____
TOTAL	\$ _____

Make checks payable to the City of Los Altos. Fees are not refundable.

* Notices mailed to all properties and business tenants within 500 feet of project site for the Planning Commission and City Council public meetings.

3.

Materials Board

- a. Initial submittal: Provide color photos on an 8.5" x 11" sheet showing roofing material, siding, applied materials (e.g. stone, brick), trim, etc., and identify manufacturer and product specifications.
- b. Once application is deemed complete: Provide product samples of proposed materials and colors on an 11" x 17" board and, if necessary, applied material mockups to illustrate the appearance of materials together.

4.

Technical Studies

Depending on the nature of the project, technical studies, such as a traffic impact assessment, arborist report or acoustical analysis, may be required.

5. **Climate Action Plan Checklist for New Development**

6. **Color Renderings and 3D Model**

- a. Provide a sufficient number of perspective color renderings of the proposed structure, photo simulated within the existing context of the built and natural surroundings, to represent how all elevations of the building will appear at a pedestrian scale/level.
- b. Provide a digital model (using SketchUp or a similar program) of the proposed development and adjacent buildings within the broader streetscape area that can be presented and manipulated to represent the three dimensional qualities of the proposed building within the existing context of the built and natural surroundings.

7. **Architectural Design Plans** (see checklist below)

- ✓ a. Initial submittal: Five (5) full-size sets (24" x 36") and five (5) half-size sets (11" x 17").
- b. Once application deemed complete: Additional half-size sets of plans will be required before each public meeting and a digital copy in .pdf format on a CD, a USB data key or emailed to the project planner.

ARCHITECTURAL DESIGN PLANS

1. Cover Sheet

- Vicinity Map (clear and legible)
- Table of Contents
- General Project Information (project description, general plan, zoning, property owner, design professionals, etc.)
- A summary of land development calculations including, but not limited to, site area, lot coverage, setbacks, impervious surfaces, building floor area, parking stalls (required and proposed), and, when appropriate, number of beds, students and/or dining seats
- Rendering or graphic of proposed project

2. Site Plan ($1/8" = 1'$ scale)

- Subject property showing all property lines and adjacent streets
- Location of all structures on subject property
- Location and dimensions of parking, driveway, and loading areas
- Location, size, type and proposed disposition of all existing trees over four-inches in diameter
- Landscape areas, walkways, fences, retaining walls, utility areas, and trash facilities

3. Floor Plans ($1/4" = 1'$ scale) / $3/10" = 1'-0" - OK$ ✓

- Show existing and proposed development
- Identify details such as balconies, roof gardens, cabanas, etc.
NOTE: Floor plans for single-story buildings may be shown on the site plan.

4. Floor Area Calculation Diagram ($1/8" = 1'$ scale)

- Gross floor area - measured to outside edge of wall and including all space enclosed by walls (habitable space, non-habitable space, accessory structures, basements)
- Net floor area - excluding all inner courts and/or shaft enclosures (stairwells, elevator shafts, etc)
- Existing floor area of structures to be removed

5. Building Elevations ($1/4" = 1'$ scale)

- Building materials and design details
- Roof pitch
- Roof-mounted equipment
- New signage being proposed
- Height
- Color(s) - **SAMPLES**
- Fencing **NA**

6. Building Cross-Sections ($1/4" = 1'$ scale)

Provide at least two (2) cross-sections (one perpendicular from the other) taken from the highest ridge, showing existing and proposed grades, finished floor heights, wall plates, and building height measured to existing grade.

7. **Roof Plan** ($1/4" = 1'$ scale)

- Roof pitch
- Existing roof to remain and new roof area
- All rooftop mechanical equipment and screening location(s)

8. **Landscape Plan** ($1/4" = 1'$ scale)

- A conceptual planting plan that identifies all existing and proposed trees and plants
- Hardscape, walkways, fences and retaining walls
- Utility areas and trash facilities
- A calculation identifying total area of proposed hardscape and softscape
- Provide color photos of all proposed trees and evergreen screening species, along with the following information:
 - Common name
 - Anticipated height and spread at maturity
 - Average rate of growth

9. **Grading and Drainage Plan** ($1/8" = 1'$ scale)

NOTE: The Grading and Drainage Plan shall be prepared by a registered civil engineer or a licensed architect.

- Location and elevation of benchmarks
- Elevation at street and neighboring property lines
- Pad elevation
- Finished floor elevation
- Tree location(s)
- Lot drainage pattern
- Existing and proposed contours
- Stormwater management measures to retain stormwater on site in accord with the Best Management Practices
- All existing and proposed utilities (lines, transformers, meters, etc.) and adjacent infrastructure

✓10. **Construction Management Plan**

Prepare a preliminary construction management plan that identifies anticipated truck routing and staging, construction worker parking plan (on-site and off-site) and pedestrian routing (sidewalk closures, detours, etc.). *See Construction Management Plan handout for more specific direction.*

✓11. **Streetscape Elevation**

Render proposed structure(s) in relation to buildings/development on adjoining properties. In the case of a corner lot, a streetscape of each street is required.

PUBLIC NOTIFICATION

1. **Mailed Notices** – All properties within 500 feet of the project site will receive a mailed notice of all public meetings 10-14 days before the meeting date. The Planning Division will provide an area map showing all properties within a 500-foot radius of the project site.
NOTE: For projects in or near commercial areas, notification will also be provided to all commercial tenants within the 500-foot radius area. The applicant is responsible for providing a name and address list of all commercial tenants within the notification area in a label format approved by staff.
2. **On-Site Posting Requirement** – In addition to the mailed notices, a public notice billboard (four feet by six feet) with color renderings of the project will need to be installed at the project site at least 10 days prior to the first public meeting date. *See Public Notice Billboard handout for more specific direction.*
3. **Story Poles** – All new development projects are required to install story poles on the site at least 20 days prior to the first Planning Commission meeting. *See Story Pole handout for more specific direction.*

CITY ACTION

The project will be reviewed at public meetings before the Complete Streets Commission (CSC), the Planning Commission (PC) and the City Council (CC). CSC will hold a public meeting to provide a recommendation regarding the project's transportation amenities (vehicle, bicycle and pedestrian). The PC will hold a public meeting to review and provide a recommendation on all components of the project, and the CC will review and take a final action on the project.

In order to approve the project, the PC and CC must make specific findings on each of the following issues:

1. The proposal meets the goals, policies and objectives of the Los Altos General Plan and any specific plan, design guidelines and ordinance design criteria adopted for the specific district or area.
2. The proposal has architectural integrity and has an appropriate relationship with other structures in the immediate area in terms of height, bulk and design.
3. Building mass is articulated to relate to the human scale, both horizontally and vertically. Building elevations have variation and depth, and avoid large blank wall surfaces. Residential or mixed-use residential projects incorporate elements that signal habitation, such as identifiable entrances, stairs, porches, bays and balconies.
4. Exterior materials and finishes convey high quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, arcades and structural elements. Materials, finishes, and colors have been used in a manner that serves to reduce the perceived appearance of height, bulk and mass, and are harmonious with other structures in the immediate area.
5. Landscaping is generous and inviting, and landscape and hardscape features are designed to complement the building and parking areas, and to be integrated with the building architecture and the surrounding streetscape. Landscaping includes substantial street tree canopy, either in the public right-of-way or within the project frontage.

6. Signage is designed to complement the building architecture in terms of style, materials, colors and proportions.
7. Mechanical equipment is screened from public view and the screening is designed to be consistent with the building architecture in form, material and detailing.
8. Service, trash and utility areas are screened from public view, or are enclosed in structures that are consistent with the building architecture in materials and detailing.



City of Los Altos
Planning Division

Project No. 2018-1108545

(650) 947-2750
Planning@losaltosca.gov

SUBMITTAL REQUIREMENTS CONDITIONAL USE PERMIT

APPLICATION FORM, FEE & OTHER REQUIRED MATERIALS

All items are required at time of submittal. The project will not be scheduled for a public meeting until the application has been reviewed by a planner and is deemed complete.

1. General Application

2. Proposed Use Description

Provide a detailed project description of the proposed use that includes all relevant and applicable information related to the proposed use (description of business, number of employees, hours of operation, how building/site will be used, etc.).

3. Filing Fee(s)

- Application
- Environmental Review
- Public Notification (\$1.00/notice) *
- Other: _____
- TOTAL

\$ VARIANCE - \$5350 -
 \$ DEPOSIT REQ. - SEE LETTER
 \$ _____
 \$ _____
 \$ _____

Make checks payable to the City of Los Altos. Fees are not refundable.

* Notices mailed to all properties and business tenants within 500 feet of project site for the Planning and Transportation Commission and City Council public meetings.

4. Project Plans (see checklist below)

- a. Initial submittal: Five (5) full-size sets (24" x 36") and five (5) half-size sets (11" x 17").
- b. Once application is deemed complete: 14 additional half-size sets of plans and a digital copy in .pdf format on a CD, a USB data key or emailed to the project planner.

PROJECT PLANS

1. Cover Sheet

- Vicinity Map (clear and legible)
- Table of Contents (DRAWING INDEX)
- General Project Information (project description, general plan, zoning, property owner, design professionals, etc.)
- A summary of land development calculations including, but not limited to, site area, lot coverage, setbacks, impervious surfaces, building floor area, parking stalls (required and proposed), and, when appropriate, number of beds, students and/or dining seats

2. **Site Plan** ($\frac{1}{8}'' = 1'$ scale) ✓

- Subject property showing all property lines and adjacent streets
- Location of all structures on subject property
- Location and dimensions of parking, driveway, and loading areas (indicate surfacing material)
- Location, size, type and proposed disposition of all existing trees over four-inches in diameter
- Landscape areas, walkways, fences, retaining walls, utility areas, and trash facilities. Any special landscape features such as children's play areas must be specified;
- A summary of land development calculations including site area, lot coverage allowed and proposed, total proposed impervious surface, building area, parking stalls required and proposed, and when appropriate number of beds, students or dining seats

3. **Floor Plans** ($\frac{1}{4}'' = 1'$ scale) / $\frac{3}{16}'' = 1'-0''$ - OK

- Show existing and proposed development
- Identify details such as balconies, roof gardens, cabanas, etc.
NOTE: Floor plans for single-story buildings may be shown on the site plan.

4. **Building Elevations** ($\frac{1}{4}'' = 1'$ scale)

- Building materials and design details
- Roof pitch
- Roof-mounted equipment
- New signage being proposed
- Height
- Color(s)
- Fencing NA

5. **Roof Plan** ($\frac{1}{4}'' = 1'$ scale)

- Roof pitch
- Existing roof to remain and new roof area
- All rooftop mechanical equipment and screening location(s)

6. **Landscape Plan**

- Existing landscaping and trees to remain
- Proposed front yard (and exterior side yard) landscaping, street trees and hardscape improvements
- Any landscaping required for privacy and/or visual screening
- A calculation showing:
 - Total hardscape area
 - Existing softscape area
 - New softscape area.Hardscape area includes house footprint, driveway, swimming pool and other impervious areas.

PUBLIC HEARING NOTIFICATION

1. **Mailed Notices** – All properties within 500 feet of the project site will receive a mailed notice of all public meetings 10-14 days before the meeting date. The Planning Division will provide an area map showing all properties within a 500-foot radius of the project site.
NOTE: For projects in or near commercial areas, notification will also be provided to all commercial tenants within the 500-foot radius area. The applicant is responsible for providing a name and address list of all commercial businesses within the notification area in a label format approved by staff.
2. **On-Site Posting Requirement** – In addition to the mailed notices, a meeting notice will need to be posted at the project site at least 10 days prior to the public hearing date. City staff will provide the notice along with instructions for properly posting it on the project site.

CITY ACTION

The Planning Commission and/or City Council, when required, must make specific findings on each of the following issues when considering a conditional use permit application:

1. Whether the proposed location of the conditional use is desirable or essential to the public health, safety, comfort, convenience, prosperity or welfare.
2. Whether the proposed location of the conditional use is in accordance with the following objectives of the Zoning Ordinance:
 - a. To guide community growth along sound lines;
 - b. To ensure a harmonious, convenient relationship among land uses;
 - c. To promote a safe, workable traffic circulation system;
 - d. To provide appropriate locations for needed community facilities;
 - e. To promote business activities of appropriate types;
 - f. To protect and enhance real property values within the City; and
 - g. To conserve the City's natural beauty, to improve its appearance and to preserve and enhance its distinctive physical character.
3. Whether the proposed conditional use will comply with the regulations prescribed for the district in which the site is located and the general provisions of Chapter 1 of the Los Altos Municipal Code.
4. Depending on the proposed use, as outlined in Section 14.80.060 of the Zoning Ordinance, additional findings may need to be made.

SUBMITTING MORE THAN ONE APPLICATION

These instructions will be modified in the event that the application is submitted simultaneously with another application (e.g. design review, subdivision, variance). If the project includes multiple applications, work with Planning staff to better understand the City's submittal requirements to avoid redundancy.



City of Los Altos
Planning Division

Project No. 2018-1108545

(650) 947-2750
Planning@losaltosca.gov

DENSITY BONUS REPORT SUBMITTAL REQUIREMENTS

A housing development including five or more residential units may propose a density bonus in accordance with California Government Code Section 65915 et seq. ("Density Bonus Law") and the City's Affordable Housing Ordinance (Zoning Code Chapter 14.28).

Any applicant requesting a density bonus and/or any incentive(s), waiver(s), or parking reductions provided by State Density Bonus Law shall submit a Density Bonus Report as described below concurrently with the filing of the planning application for the first discretionary permit required for the housing development. The requests contained in the Density Bonus Report shall be processed concurrently with the planning application.

The Density Bonus Report shall include the following minimum information:

I. Requested Density Bonus:

- Minimum Number of Dwelling Units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded.
- Fractional Units. All density bonus calculations shall be rounded up to the next whole number including the base density, Restricted Affordable units, and the number of affordable units required to be eligible for a density bonus.
- Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units, proposed number of affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.
- A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.
- The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
- Calculation of the maximum number of dwelling units permitted by the City's zoning ordinance and general plan for the housing development, excluding any density bonus units.
- Number of bedrooms in the proposed market-rate units and the proposed affordable units.
- A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents

NA

occupying dwelling units when the site contained the maximum number of dwelling units, if known.

~~NA~~ Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.

~~NA~~ If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and evidence that each of the requirements included in Government Code Section 65915(g) can be met.

2. **Requested Incentive(s) and Concessions:** In the event an application proposes incentives or concessions pursuant to State Density Bonus Law, to ensure that each incentive contributes significantly to the economic feasibility of the proposed affordable housing, the Density Bonus Report shall include the following minimum information for each incentive or concession requested, shown on a site plan if appropriate:

The City's usual development standard and the requested development standard or regulatory incentive/concession. Applicant shall identify whether each of the requested incentive(s)/concession(s) is an on-menu or off-menu request.

Include reasonable documentation, in a form subject to approval by the City, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing. Applicant may also be required to provide funds to cover city expenses incurred for a peer review of applicant's documentation.

~~NA~~ If approval of mixed use zoning is proposed as an incentive, provide evidence that nonresidential land uses will reduce the cost of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning is required in order to provide for affordable rents or affordable sales prices.

3. **Requested Waiver(s):** In the event an application proposes waivers of development standards pursuant to State Density Bonus Law, the Density Bonus Report shall include the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate:

The City's usual development standard and the requested development standard.

Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the allowed densities or with the concessions and/or incentives requested.

4. **Requested Parking Reduction:** In the event an application proposes a parking reduction pursuant to Government Code Section 65915(p), a table showing parking required by the zoning ordinance and parking proposed under Section 65915(p). If an additional parking reduction is proposed under the provisions of Section 65915(p)(2) or (p)(3), evidence that the project qualifies for the additional parking reduction.

~~NA~~ **Child Care Facility:** If a density bonus or incentive is requested for a child care facility, evidence that all of the requirements included in Government Code Section 65915(h) can be met.

~~NA~~ **Condominium Conversion:** If a density bonus or incentive is requested for a condominium conversion, evidence that all of the requirements included in Government Code Section 65915.5 can be met.

7. **Other:** Include any other documentation, materials or fees/funds required by this Section or by the City for the purpose evaluating and/or reviewing a density bonus, incentives, parking requirements alterations, and/or waivers or any other provision.

8. **Fee:** Payment of any fee in an amount set by resolution of the City Council for staff or consultant time necessary to determine compliance of the Density Bonus Plan with State Density Bonus Law.

→ TO BE DETERMINED .

EXHIBIT 3

Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Daniel R. Golub
+1 415-743-6976
Daniel.Golub@hklaw.com

January 10, 2019

Jon Biggs
Director
Los Altos Community Development Department
One North San Antonio Road
Los Altos, California 94022

Re: 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Biggs:

We represent 40 Main Street Offices, LLC (the “Applicant”) in connection with the above-captioned Application for a streamlined ministerial permit for the 40 Main Street Project (“Project”), which Application was submitted to the City of Los Altos (“City”) on November 8, 2018. The Project will bring 15 much-needed housing units, as well as new office space, to a site the City has long recognized as appropriate for development as part of the City’s plan to establish a sense of entry to the City’s Downtown area. The project will provide 15 new infill and transit-oriented dwelling units in Downtown, proximate to walkable goods and services. In addition, the City of Los Altos will be able to add 13 market-rate and two affordable units to its Regional Housing Needs Assessment compliance.

As you know, Chapter 366, Statutes of 2017, as amended (“SB 35”), requires cities to issue a streamlined ministerial permit to any housing developments that meet SB 35’s qualifying objective standards. Gov. Code § 65913.4(a). If cities believe an SB 35 application conflicts with any applicable objective standards, the city is required to provide, within 60 days of submittal, “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.” Gov. Code § 65913.4(b)(1)(A); *see also* HCD Streamlined Ministerial Approval Process Guidelines (“Guidelines”), § 301(a)(3). Otherwise, “the development shall be deemed to satisfy the objective planning standards.” Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).

We have reviewed your brief December 7 letter concluding that the Project is not eligible for streamlined ministerial permitting (“SB 35 Determination”), in which you do not dispute that the Project satisfies nearly all applicable SB 35 criteria, but in which you claim that that the Project is not eligible for SB 35 streamlining for two reasons: (1) because the Project “does not provide the percentage of affordable dwelling units required by the State regulations”, and (2) because the Project does not meet unspecified standards related to parking. Neither of these contentions are correct, and neither provide a legally permissible basis to deny a streamlined ministerial permit. Since the City has not validly identified any SB 35 standard with which the Project conflicts, and the time to do so has now elapsed, the Project is now deemed to comply with all of SB 35’s qualifying criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). As set forth below, State law requires the City of Los Altos to issue a streamlined ministerial permit for the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same).

I. The Project Qualifies for SB 35 Streamlining Because It Meets the Applicable Affordable Housing Requirement

SB 35 requires local governments to issue a streamlined ministerial permit to housing developments which provide a specified minimum percentage of units as housing affordable to lower-income households earning below 80 percent of the area median income. Gov. Code § 65913.4(a)(4). The applicable minimum percentage of affordable housing depends on several factors. *Id.* As pertinent here, the applicable percentage depends upon whether the locality submitted its latest housing production report to the Department of Housing & Community Development (“HCD”) by the April 1 statutory deadline. Gov. Code §§ 65400, 65913.4(a)(4)(B)(i). HCD issued several determinations during 2018, reporting on each California jurisdiction’s status at various points during the year.

The December 7 SB 35 Determination cites a January 31, 2018 HCD determination as support for the contention that the Project was required to provide 50% affordable units to qualify for streamlined ministerial permitting. But HCD’s January 31, 2018 determination was not the current HCD determination on the date the Application was submitted. HCD issued a subsequent determination on June 1, 2018, which unambiguously states that as of that date the City of Los Altos was “subject to SB 35 . . . streamlining for proposed developments with at least 10% affordability.” *See* relevant excerpts from this determination attached hereto as Exhibit A (emphasis added). The June 1, 2018 determination was HCD’s most current determination as of the date the Application was submitted on November 7, 2018, and “[a] locality’s status on the date the application is submitted determines . . . which level of affordability (10 or 50 percent) an applicant must provide to be eligible for streamlined ministerial permitting.” Guidelines, § 200(g); *see also* Gov. Code § 65913.4(a)(5) (SB 35 criteria are determined based on standards “in effect at the time that the development is submitted to the local government . . .”). The Applicant has confirmed directly with HCD – the agency delegated with statutory authority to implement SB 35, *see* Gov. Code § 65913.4(j) - that the 10% affordability requirement applied in Los Altos on

November 7, 2018. See e-mail attached as Exhibit B. Since the Project will provide more than 10% of its units as affordable to low-income households, the Project meets the applicable minimum percentage of units to qualify for a streamlined ministerial permit.¹

II. The Project Meets All Applicable Objective Standards, Including All Objective Standards Related to Parking

A housing development that meets all of SB 35's other criteria is entitled to a streamlined ministerial permit as long as the development is "consistent with *objective* zoning standards . . . in effect at the time that the development is submitted." Gov. Code § 65913.4(a)(5) (emphasis added). The statute defines "objective" standards extremely narrowly; a city may only apply "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." Gov. Code § 65913.4(a)(5); *see also* Guidelines, § 102(p) (same). A local government may not apply any standards that do not qualify as "objective" under this narrow definition, and a local government cannot require an SB 35 applicant to meet any discretionary or subjective criteria typically required in an application for a discretionary permit. Guidelines, §§ 300(b)(1) & 301(a)(1). "Determination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." Guidelines, § 300(b)(8).

If a local government believes that an application for a project with less than 150 housing units conflicts with any objective standards, the local government must "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 standard." Gov. Code § 65913.4(b)(1); *see also* Guidelines, § 301(a)(3). If "the local government fails to provide the required documentation . . . , the development shall be deemed to satisfy the objective planning standards . . ." Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C) (same).

It is not the Applicant's burden to establish the Project's consistency with applicable objective standards; it is the City's burden to establish the contrary. *See* Gov. Code § 65913.4(b)(1), Guidelines, § 301(a)(3). Notwithstanding this, the Application contained a detailed submission affirmatively demonstrating that the Project is, in fact, consistent with every one of the City's

¹ We further note that, irrespective of any determinations issued by HCD, SB 35's statutory requirements are clear. A locality is subject to the 10% requirement if "[t]he locality did not submit its latest production report to . . . [HCD] by the time period required by Section 65400 [of the Government Code] . . ." Gov. Code § 65913.4(a)(4)(B)(i). Section 65400 of the Government Code requires all local governments to submit an annual housing report no later than April 1 of each year, reporting on the housing production completed in the prior calendar year. The City of Los Altos submitted its "latest production report" (the report documenting on housing production during the 2017 calendar year) after the April 1, 2018 statutory deadline. Since it remains the case that the City "did not submit its latest production report to the department by the time period required by Section 65400," the City will remain subject to the 10% requirement until and unless it submits its production report documenting its 2018 housing production by the April 1, 2019 statutory deadline. For this additional reason, the Project meets the applicable affordable housing requirement for SB 35 streamlining.

applicable objective zoning standards as well as all of SB 35's other qualifying criteria. The December 7 SB 35 Determination does not dispute that the Application satisfies all of the applicable SB 35 criteria in Gov. Code § 65913.4(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), (a)(8), (a)(9) and (a)(10), and in Guidelines, Article IV, §§ 400, 401, & 403. The City's SB 35 Determination also does not dispute that the Project satisfies all of the City's numerous objective zoning standards other than those related to parking.

As for parking, the City's December 7 SB 35 Determination states only that the plans "do not provide the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking." This cursory statement falls well short of the statutory requirement to "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 standard." Gov. Code § 65913.4(b)(1) (emphasis added). The determination does not even cite the code section or sections the City believes the Project to violate and provides no explanation of the reason the Project conflicts with the unidentified standards. Since the City has not provided the "required documentation" of "which standard or standards" the City believes that the Project conflicts within, and since the 60-day deadline to do so has now elapsed, the Project is now deemed to comply with all such standards as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C).

With this said, and without in any way waiving the Applicants' rights to maintain that the Project is now legally deemed consistent with all applicable objective standards, the following discussion demonstrates that the Project does, in fact, meet all applicable objective zoning standards related to parking spaces and access/egress to off-street parking.

A. Compliance with Numeric Parking Standards

We refer you again to Attachment 2 of the Project application material submitted November 8, 2018, and in particular to the portions of the table addressing sections 14.74.080, 14.74.100, and 14.74.200 of the Los Altos Municipal Code ("LAMC"). This table demonstrates compliance with all objective parking standards and requirements, as they are modified by SB 35 pursuant to Gov. Code § 65913.4(d)(2). SB 35 modifies a local agency's maximum parking standards as applied to an SB 35 Application, providing that a local agency "shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." Gov. Code § 65913.4(d)(2).

As set forth in the original application, the Project, which contains both non-residential and residential components, meets all applicable zoning requirements for each component. For the non-residential component of the Project, there is no applicable parking requirement. Under the City's zoning regulations for "office uses" in this zoning district:

For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking

district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.

LAMC § 14.74.100. As shown in the Project’s architectural drawing package, since the Project participates in the public parking district, and since the 5,724-square foot office area (and even 1,271-square foot residential floor area) do not exceed the lot area of 6,995 square feet, no parking spaces are required for the non-residential floor area.

For the residential portion of the Project, the City of Los Altos’ numeric zoning standard in Section 14.74.080 of the Zoning Ordinance does not apply pursuant to SB 35. Rather, the SB 35 statutorily required standard of one parking space per dwelling unit applies per Government Code § 65913.4(d)(2). The Project exceeds this standard, because it provides 18 parking spaces, and only 15 dwelling units are proposed (with one unit being exempt due to the property’s participation in the parking district).

B. Compliance with Objective Parking Access and Egress Standards

As demonstrated in the preceding section and the original Application, the Project complies with all of the City’s objective standards with respect to off-street parking.

The SB 35 Determination suggests that the Project does not meet an objective zoning standard related to adequate access/egress to off-street parking, but the SB 35 Determination does not cite any code section governing access and egress – and certainly not any code section with objective language – with which the Project fails to comply. The SB 35 Determination’s reference to “adequate” access and egress is irrelevant to an SB 35 application, since determining “adequacy” is a subjective determination that does not qualify as “objective” under SB 35’s definition. Gov. Code § 65913.4(a)(5); Guidelines, § 102(p); *see also Honchariw v. County of Stanislaus*, 200 Cal. App. 4th 1066, 1076 (2011) (“suitability” is a “subjective” criteria that is inapplicable when state law only permits application of “objective” standards).

It has been the City’s demonstrated practice to allow projects such as 40 Main Street to obtain access from the City’s downtown public parking areas. As a result of the Project one space in the public parking plaza may be affected by the Project but one parking space will be made available for the public’s use on Main Street where the property’s current driveway exists.²

² As discussed *infra* at Part V, the City’s SB 35 Determination was also accompanied by a separate “Notice of Incomplete Application” and attachments describing requirements that the City believes *would* apply *if* the Applicant were to submit a discretionary use permit application rather than an SB 35 streamlined ministerial application. The “Notice of Incomplete Application” letter and attachments are not relevant to the City’s SB 35 Determination, but even if they were, they would not provide any valid reason to deny the Applicant’s SB 35 Application. Although the “Notice of Incomplete Application” letter and its attachments contain some references to parking (for example in notes 3, 18 and 19), none of these references cite any *objective* requirements related to parking spaces or required access and egress to parking. The requests in note 3, for example, are found neither in any of the City’s objective standards, nor in the Parking Standards Exhibit A.

III. The City Has Not Identified any Objective Standard Precluding an SB 35 Application on this Site, but the City Can Suspend Processing of the Prior Application While the City Completes the Review of the SB 35 Application

The December 7 SB 35 Determination claims that because two applications have been submitted for the site, one application must be withdrawn. The letter cites no legal authority for this proposition. As set forth above, to the extent the City believed there to be an objective City standard that precluded the Applicants from submitting an SB 35 Application on this site, the City was required to identify that specific standard within 60 days of the Application submittal. *See* Gov. Code § 65913.4(b)(1). However, to avoid any unnecessary disputes, the Applicant is willing to authorize the City to suspend any processing or other activities planned for the previously submitted application during the time that the November 8 SB 35 Application remains under submission.

IV. The Housing Accountability Act Also Requires the City to Approve the Project

As stated in the Application, we also note that, in addition to being subject to SB 35, the Project is also subject to the Housing Accountability Act (“HAA” or “Act”), because more than two-thirds of the Project’s square footage is designated for residential use. Gov. Code § 65589.5(g)(2). Pursuant to the Housing Accountability Act, “[w]hen a proposed housing development project complies with applicable, objective general plan, zoning and subdivision standards and criteria,” the City *may not* disapprove the project or reduce its density unless the City makes findings, supported by a preponderance of the evidence, that the project would have an unavoidable impact on public health or safety that cannot be mitigated in any way other than rejecting the project or reducing its size. Gov. Code § 65589.5(j). Under recent reforms to the HAA, the question of whether a project is consistent with objective standards is resolved under a standard of review that is extremely deferential to the applicant. *See* Gov. Code § 65589.5 (f)(4) (“a housing development project or emergency shelter 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”) (emphasis added); *see also* Gov. Code § 65589.5(a)(2)(L) (“It is the policy of the state that. . . [the HAA] should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing”).

As set forth above, the Project complies with all applicable objective standards under any standard of review. But at the very least, it is clear that it is possible for a “reasonable person to conclude” that the project complies with the City’s objective standards. Gov. Code § 65589.5 (f)(4). Accordingly, the HAA “imposes ‘a substantial limitation’ on the government’s discretion to deny a permit.” *N. Pacifica, LLC. v. City of Pacifica* 234 F. Supp. 2d 1053, 1059 (N.D. Cal. 2002), *aff’d* sub nom. *N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478 (9th Cir. 2008). Before the City could legally reject the Project or reduce its density, the City would be required to demonstrate, based on a preponderance of the evidence, that the project would cause “a significant, quantifiable, direct, and unavoidable impact” on public health or safety, “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(j)(1)(A). The City would be required to further affirmatively prove that there are no feasible means of addressing such “public health” and “safety” impacts other than rejecting or reducing the size of the Project. Gov. Code § 65589.5(j)(1)(B). The Legislature recently re-affirmed its intent that the conditions allowing a project to be rejected on this ground should “arise infrequently.” Ch. 243, Stats. 2018 (A.B. 3194) (amending Gov. Code § 65913.4(a)(3)). Here, there is no evidence – to say nothing of the required *preponderance* of the evidence – that the Project would have any impact at all on public health or safety. Even if there were, there is no evidence that any such impacts are incapable of mitigation. Therefore, any improper denial of the Project would violate the HAA.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5 (j), (k). Any local government that disapproves a housing development project must now meet the more demanding “preponderance of the evidence” standard – rather than the more deferential “substantial evidence” standard – in proving that it had a permissible basis under the Act to reject the project. Gov. Code § 65589.5 (j)(1). As recently reformed, the HAA makes attorney’s fees presumptively available to prevailing plaintiffs regardless of whether the project contains 20% affordable housing. Gov. Code § 65589.5(k)(1)(A). If the City fails to prove in litigation that it had a valid basis to reject the project, the court *must* issue an order compelling compliance with the Act, and any local government that fails to comply with such order within 60 days *must* be fined a minimum of \$10,000 per housing unit and may also may be ordered directly to approve the project. Gov. Code § 65589.5(k). The HAA further provides that if a local jurisdiction acts in bad faith when rejecting a housing development, the applicable fines must be multiplied by five. *Id.*

V. The “Notice of Incomplete Application” Accompanying the SB 35 Determination Is Irrelevant to the SB 35 Application

The December 7 SB 35 Determination notes that if the Applicant “elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice” (emphasis added), the Applicant would need to submit certain additional materials required for discretionary applications such as for a Conditional Use Permit or discretionary Design Review. The City’s SB 35 Determination is accompanied by a separate letter labelled “Notice of Incomplete Application” (“NOIA”), and related attachments, which identify submittal requirements that *would* apply *if* the Applicant were to elect to apply for a discretionary permit to develop a project on the 40 Main Street site. The Applicant’s November 8 SB 35 Application does not seek approval of the Project through any of these discretionary permit avenues, and none of these requirements apply to the current SB 35 Application.

We do not understand the City to suggest that any of these materials are necessary for consideration of the November 8 SB 35 Application (and the City’s SB 35 Letter cannot possibly be read to suggest that they are). But in any event, the law is clear that consideration of an SB 35 application must 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,” Gov. Code § 65913.4(c). Since the City has not published any application materials for SB 35 applications, the City cannot require SB 35 applicants to submit any additional material

as long as the Application contains “sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards.” Guidelines, § 301(b)(1)(A). Moreover, most of the notes, comments, and requests for further plans and revisions to plans are the type of comments and questions that the City addresses *after* entitlement review is completed, such as during the plan check process. Consistent with the City’s processes for processing discretionary permit applications, any arguable need to address these issues cannot be a ground for denying a streamlined ministerial permit. “A locality may not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals.” Guidelines, § 300(b)(2).

Since the City has not published application materials for SB 35 applications, the Applicants submitted application materials and related submissions typically required for a discretionary Use Permit, as well as Use Permit fee in the amount of \$5,350. But as the City correctly notes in the December 7 SB 35 Letter, a Use Permit application is, in fact, legally distinct from an SB 35 Application. We therefore respectfully request that the City confirm it will charge a fee for this application consistent with a fee for a ministerial conformance process such as a Zoning Approval, and to refund to the Applicant the difference between that amount and the submitted fee.

Although not required to do so, and although the City’s SB 35 Determination is clear that none of the material in the NOIA relates to the City’s SB 35 Determination, the Project team has reviewed the NOIA and all attachments, and can confirm that none of the comments or requests in the NOIA relate to any objective standard for which compliance must be demonstrated as a precondition to issuance of an SB 35 streamlined ministerial permit. None of the comments or requests for design requests relate to the Project’s demonstration of compliance with the numeric standards or other physical standards of the City of Los Altos.

With this said, in the interest of being responsive to the comments of City agencies, the Applicant is able and willing to provide, purely for informational purposes, additional information about the Project as well as responses to some of the comments received on the Application. Please note that this letter, and these submissions, are not in any sense a re-submission or new application for the Project. The purpose of this letter is to explain why the November 8, 2018 Application sufficed to qualify the Project for a streamlined ministerial permit, and the purpose of these additional responses is to voluntarily provide additional information and responses to comments on the Application by City agencies. Specifically, understanding the importance of fire safety and accessibility, the Project architect has reviewed and addressed all comments made by the Fire Department and the Building Division. See Exhibit C. These design issues can and will be addressed in post-entitlement plan check review.

The Project team can also provide a courtesy response to the “Density Bonus Report Submittal Requirement” document accompanying the NOIA. This document is a requirement of the City of Los Altos for discretionary project applications. However, to avoid any question about the Project’s entitlement to Density Bonus Law bonuses, modifications, waivers, concessions and incentives, the original SB 35 application submitted on November 8, 2018 included as Attachment D a report following the format and providing the information (coupled with the Applicant

Statement's Project Description) that is required in the City's Density Bonus Report Submittal Requirements. The Project team has reviewed each of the boxes (all three categories), with an emphasis on the unchecked items on the City's "Density Bonus Report Submittal Requirement" document. Every item, including those that are left unchecked in the City's letter, have been addressed in original Project Description and the original Attachment D. Please continue to reference those documents with any questions you may have with respect to the Project's entitlement to a density bonus with the appropriate waivers/modifications and incentives/concessions.³

VI. The City Is Required to Complete All Public Oversight over the Application, and to Issue a Streamlined Ministerial Permit, No Later than February 6

As set forth above, the City is required to complete any design review or other public oversight over the Project no later than February 6, 2019. *See* Gov. Code § 65913.4(c) (all design review and public oversight over a SB 35 application must be completed within 90 days of application submittal if project contains 150 or fewer housing units); *see also* Guidelines, § 301(b)(3)(B) (same). However, any such oversight or design review must 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," and this review "shall not in any way inhibit, chill, or preclude the ministerial approval" required by SB 35. Gov. Code § 65913.4(c); *see also* Guidelines, § 301(a)(2)(B) ("Design review or public oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval provided by these Guidelines or its effect"). And as set forth above, the Project is now deemed to comply with all of SB 35's qualifying objective criteria as a matter of law. Gov. Code § 65913.4(b)(2); Guidelines, § 301(b)(2)(C). If, consistent with these limitations, the City intends to conduct any additional public oversight or design review over the Project, please

³ Please note that some provisions of the City's "Density Bonus Law Submittal Requirements" document, and note 7 of the NOIA, are out of date and inconsistent with current State law. The State Density Bonus Law provides that "[a] local government shall not condition the submission, review, or approval of an [Density Bonus Law] application . . . on the preparation of an additional report or study that is not otherwise required by state law," Gov. Code § 65915(a)(2), and that the *City* "shall bear the burden of proof for the denial of a requested concession or incentive." Gov. Code § 65915(d)(4). Effective in 2017, the Legislature amended the Density Bonus Law specifically to eliminate the authority of cities to reject a requested concession or incentive on the grounds that "[t]he concession or incentive is not required in order to provide for affordable housing costs," Stats.2016, ch. 758 (A.B.2501), § 1. The currently operative text of the law only authorizes the City to reject the requested concession if the *City* demonstrates that "[t]he concession or incentive does not result in identifiable and actual cost reductions." *Id.* The purpose of this amendment was to foreclose the exact documentation demands made in the City's submittal requirement documents. *See* Assem. Com. on Housing & Community Development, Floor Analysis of Assembly Bill No. 2501 (2015-2016 Reg. Sess.), August 30, 2016, at p. 4 (legislative amendments were intended to respond to "local governments [which] interpret . . . [the previously operative] language to require developers to submit pro formas"); *see also* "Policy White Paper: City of Santa Rosa, Density Bonus Ordinance Update", *available at* <https://srcity.org/DocumentCenter/View/18475/Density-Bonus-Policy-White-Paper>, at p. 45 ("amendments adopted through AB 2501 are intended to presume that incentives and concessions provide cost reductions, and therefore contribute to affordable housing development").

inform us and the Applicant of the type of public oversight or design review that the City expects to conduct.

VII. Conclusion

Based on the foregoing, we hope and expect that we or the Applicants will receive information about any remaining design review or public oversight over the Project, and that the Applicants will receive the streamlined ministerial permit required by State law, no later than February 6. In the hopefully unlikely event that the City intends not to meet the requirements of State law outlined above, please be advised that we have been retained by the Applicant to explore all legal remedies provided by law to enforce the requirements of California housing law. If you would like to discuss these or other matters, please feel free to contact me at (415)743-6900.

Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read 'Daniel R. Golub', written over a horizontal line.

By: Daniel R. Golub

Exhibit A

SB 35 Statewide Determination Summary

Cities and Counties Subject to SB 35 Streamlining Provisions

When Proposed Developments Include ≥ 10% Affordability

When jurisdictions have insufficient progress toward their Above Moderate income RHNA and/or have not submitted the latest Housing Element Annual Progress Report (2017), these jurisdictions are subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

These conditions currently apply to the following 338 jurisdictions:

JURISDICTION		JURISDICTION		JURISDICTION	
91	FORT JONES	131	KINGS COUNTY	171	MAYWOOD
92	FORTUNA	132	KINGSBURG	172	MCFARLAND
93	FOUNTAIN VALLEY	133	LA CANADA FLINTRIDGE	173	MENDOCINO COUNTY
94	FOWLER	134	LA HABRA	174	MENDOTA
95	FRESNO COUNTY	135	LA HABRA HEIGHTS	175	MENIFEE
96	GARDEN GROVE	136	LA MIRADA	176	MERCED
97	GLENN COUNTY	137	LA PALMA	177	MERCED COUNTY
98	GONZALES	138	LA PUENTE	178	MILLBRAE
99	GRAND TERRACE	139	LA QUINTA	179	MODESTO
100	GRASS VALLEY	140	LA VERNE	180	MODOC COUNTY
101	GREENFIELD	141	LAKE COUNTY	181	MONTAGUE
102	GRIDLEY	142	LAKEPORT	182	MONTCLAIR
103	GUADALUPE	143	LANCASTER	183	MONTEBELLO
104	GUSTINE	144	LASSEN COUNTY	184	MONTEREY
105	HALF MOON BAY	145	LATHROP	185	MONTEREY COUNTY
106	HANFORD	146	LAWNDALE	186	MONTEREY PARK
107	HAWAIIAN GARDENS	147	LEMOORE	187	MORENO VALLEY
108	HAYWARD	148	LINDSAY	188	MORRO BAY
109	HEMET	149	LIVE OAK	189	MOUNT SHASTA
110	HERMOSA BEACH	150	LIVINGSTON	190	MURRIETA
111	HIDDEN HILLS	151	LODI	191	NATIONAL CITY
112	HIGHLAND	152	LOMA LINDA	192	NEEDLES
113	HOLTVILLE	153	LOMPOC	193	NEVADA CITY
114	HUMBOLDT COUNTY	154	LONG BEACH	194	NEWARK
115	HUNTINGTON BEACH	155	LOOMIS	195	NEWMAN
116	HUNTINGTON PARK	156	LOS ALAMITOS	196	NORCO
117	HURON	157	LOS ALTOS	197	NOVATO
118	IMPERIAL	158	LOS ALTOS HILLS	198	OCEANSIDE
119	IMPERIAL COUNTY	159	LOS ANGELES COUNTY	199	OJAI
120	INDIAN WELLS	160	LOS BANOS	200	ONTARIO
121	INDUSTRY	161	LOYALTON	201	ORANGE
122	INGLEWOOD	162	LYNWOOD	202	ORANGE COVE
123	INYO COUNTY	163	MADERA	203	ORLAND
124	IONE	164	MANHATTAN BEACH	204	ORVILLE
125	IRWINDALE	165	MANTECA	205	OXNARD
126	ISLETON	166	MARICOPA	206	PACIFIC GROVE
127	JACKSON	167	MARINA	207	PACIFICA
128	JURUPA VALLEY	168	MARIPOSA COUNTY	208	PALM DESERT
129	KERMAN	169	MARTINEZ	209	PALMDALE
130	KERN COUNTY	170	MARYSVILLE	210	PALOS VERDES ESTATES

SB 35 Determination for the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, and Sonoma; and all cities within each county

These jurisdictions are in the First Half Reporting Period, including 3 years (2015-2017 APRs) of an 8-year planning period. **Less than 37.5% permitting progress toward 5th Cycle regional housing needs assessment (RHNA) for an income category is considered insufficient progress.**

Jurisdictions with insufficient progress toward Above-Moderate RHNA are subject to SB 35 streamlining for developments with 10% affordability or above. Jurisdictions with insufficient progress toward Lower RHNA (Very Low and Low) are subject to SB 35 streamlining for developments with 50% affordability or above.

(Note: Jurisdictions are automatically subject to SB 35 streamlining provisions when latest Annual Progress Report (2017) Not Submitted)

COUNTY	JURISDICTION	VLI % COMPLE TE	LI % COMPLE TE	MOD % COMPLE TE	ABOVE MOD % COMPLE TE
SAN MATEO	SOUTH SAN FRANCISCO	14.2%	1.4%	8.9%	57.2%
SOLANO	SUISUN CITY	0.0%	0.0%	0.0%	32.8%
SANTA CLARA	SUNNYVALE	5.4%	2.3%	8.5%	69.7%
MARIN	TIBURON	0.0%	0.0%	0.0%	57.9%
ALAMEDA	UNION CITY	0.0%	0.0%	131.8%	18.0%
SOLANO	VACAVILLE	4.9%	19.4%	307.5%	92.2%
SOLANO	VALLEJO	0.0%	0.0%	0.0%	13.2%
CONTRA COSTA	WALNUT CREEK	7.0%	4.5%	4.7%	57.1%
SONOMA	WINDSOR	0.0%	0.0%	1.5%	38.3%
SAN MATEO	WOODSIDE	52.2%	15.4%	13.3%	154.5%
NAPA	YOUNTVILLE	25.0%	50.0%	300.0%	175.0%
Alameda County	NEWARK	No 2017 Annual Progress Report			
Contra Costa County	MARTINEZ	No 2017 Annual Progress Report			
Contra Costa County	RICHMOND	No 2017 Annual Progress Report			
San Mateo County	ATHERTON	No 2017 Annual Progress Report			
Santa Barbara County	GUADALUPE	No 2017 Annual Progress Report			
Santa Barbara County	SANTA BARBARA	No 2017 Annual Progress Report			
Santa Barbara County	SOLVANG	No 2017 Annual Progress Report			
Santa Clara County	LOS ALTOS	No 2017 Annual Progress Report			
Solano County	RIO VISTA	No 2017 Annual Progress Report			

Exhibit B

From: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>
Sent: Friday, January 4, 2019 3:51 PM
To: Mark Rhoades <mark@rhoadesplanninggroup.com>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: RE: Los Altos

Yes, on November 8, 2018, Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability.

From: Mark Rhoades <mark@rhoadesplanninggroup.com>
Sent: Friday, January 4, 2019 3:47 PM
To: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>; McDougall, Paul@HCD <Paul.McDougall@hcd.ca.gov>
Subject: Los Altos

Melinda,

On November 8, 2018, we submitted an SB 35 application for a proposed project in the City of Los Altos. Can you confirm that on November 8, 2018, the City of Los Altos was subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 10% affordability? As of November 8, 2018, HCD's most recent "SB 35 Determination Summary" was the CA HCD determination issued on June 1, 2018, which identifies Los Altos as subject to streamlining for projects with at least 10% affordability on page 3.

Thank you,

Mark Rhoades, AICP

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