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September 22, 2023

City of Cupertino - Community Development
Department
City Hall
10300 Torre Avenue
Cupertino, CA 95014-3255

Re: Submission of Formal Development Application – 20015 Stevens Creek Project

Dear All,

This firm represents 20015 SCB Cupertino Multi, LLC (the “Applicant”) in connection with its application to redevelop an approximately 1.63 acre site at 20015 Stevens Creek Boulevard (the “Project Site”), with 141 multifamily residential apartments (the “Project”) in Cupertino, California (the “City”).

On behalf of the Applicant, we are pleased to present the enclosed formal application for the Project. The extant Project is a “housing development project” subject to SB 330 and protected by the Housing Accountability Act (“HAA”),¹ because more than two-thirds of its square footage is devoted to residential uses.²

The Applicant submitted a preliminary application pursuant to SB 330 on May 8, 2023, with the information required by Gov. Code Section 65941.1. Accordingly, the Applicant obtained a vested right to develop in accordance with the applicable ordinances, policies, and standards in effect on May 8,³ subject to a requirement to submit a formal application within 180 days, or by November 4, 2023. The enclosed formal application materials are hereby submitted in satisfaction of that requirement.

As confirmed by the California Department of Housing and Community Development (“HCD”), the Applicant’s vested rights include a right to proceed under the Housing Element compliance

¹ Gov. Code § 65589.5.

² Gov. Code § 65905(b)(3); Gov. Code § 65589.5(h)(2).

³ Gov. Code § 65589.5(o)(1).

status in effect at the time of preliminary application submittal.⁴ When a preliminary application submittal “occurs at a time when the jurisdiction does not have a compliant housing element, any potential benefits afforded to the applicant as a result of the jurisdiction’s noncompliant status . . . remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance during the entitlement process.”⁵

Accordingly, because the City has not yet prepared its revised Housing Element for the 6th Cycle, the Applicant has maintained its ability to “propose eligible housing development projects that do not comply with either the zoning or the general plan.”⁶ This is known informally as the “Builder’s Remedy.” For purposes of the HAA, housing “for very low, low-, or moderate-income households,” includes projects in which at least 20 percent of the units are rented at affordable rents to lower-income households, and projects in which 100% of units are rented to “middle-income” households.⁷

Here, the Project will reserve 20% of its units at rents that are affordable to low income households. Accordingly, the Project qualifies as a housing development project “for very low, low-, or moderate-income households,” and since the City lacked a substantially compliant Housing Element when the Applicant submitted its preliminary application pursuant to SB 330, the Project need not comply with General Plan or zoning standards. For this reason, the Project is not designed to comply in all respects with the General Plan, the Heart of the City Specific Plan,⁸ and zoning standards that would otherwise apply. Please see the enclosed plan set for further details. In summary, inconsistency with the following cannot be used to deny the Project pursuant to the Builder’s Remedy provision of the HAA:

- General Plan land use designation
- Heart of the City Specific Plan⁹
- Zoning Code

The Project is entitled to the benefits of the State Density Bonus Law by virtue of providing 20% lower income units, and is applying for its benefits at this time, please see the enclosed State Density Bonus Law Application for further details. We note that while as explained above the City

⁴ See HCD, “3030 Nebraska Avenue, Santa Monica – Letter of Technical Assistance” (Oct. 5, 2022). Available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santa-monica-TA-100522.pdf>.

⁵ *Ibid.*

⁶ Association of Bay Area Governments, The “Builder’s Remedy” and Housing Elements (Nov. 2022). Available at <https://abag.ca.gov/sites/default/files/documents/2022-11/Builders-Remedy-and-Housing-Elements-Nov-2022.pdf>

⁷ Gov. Code § 65589.5(h)(3).

⁸ The City’s Zoning Code grants the City authority to adopt Precise Plans, and the Precise Plan acts as the zoning for the area. We therefore note that pursuant to the HAA Precise Plan requirements are inapplicable.

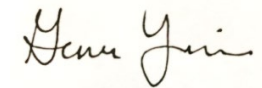
⁹ The Specific Plan functions in the same way that zoning does for a site, with specific development standards. The Zoning Code designates the Property’s zoning as Heart of the City and incorporates the requirements of the Specific Plan as the site’s zoning.

is not permitted to deny the Project due to inconsistencies with the development standards of the Heart of the City Specific Plan and the Zoning Code, we have alternatively requested waivers of such development standards to the extent they would preclude the Project from being built at its proposed density. We do so without waiving any arguments about the applicability of such requirements.

Finally, we appreciate the City's invitation in its June 5, 2023 letter to the Applicant to participate in the Housing Element process. The Applicant remains enthusiastic about this prospect and welcomes the opportunity to participate, including potentially to allow streamlined CEQA coverage. However, in order to preserve the vested right to proceed with the Project as proposed, the Applicant hereby submits the enclosed formal application. We note that the City's rezoning process for the Housing Element is not necessarily at odds with the Project. We look forward to discussing the Project and the Housing Element process further with you.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script, appearing to read "Genna Yarkin", is written over a light yellow rectangular background.

Tamsen Plume
Genna Yarkin