

July 30, 2024

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## VIA E-MAIL

Piu Ghosh  
Planning Manager  
Department of Community Development  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014

Re: Idlewild - 10065-10075 E. Estates Dr. Density Bonus Law Request

Dear Ms. Ghosh,

Buchalter, a Professional Corporation, represents Toll Brothers with respect to its SB 330 application to develop 55 townhomes and 10 accessory dwelling units (“ADUs”), along with associated infrastructure (the “Project”) on the 2.72-acre site of the existing Idlewild Shopping Center at 10065-10075 East Estates Drive (APNs 369-06-002, -003, -004) (the “Property”) in the City of Cupertino (the “City”). The Property is located in the Heart of the City Specific Plan (the “Specific Plan”).

The 55-unit Project would be developed at a density of 20.22 units per acre. The Project will comply with the City’s Below Market Residential (“BMR”) Housing Program pursuant to Section 19.172.020(A) of the Cupertino Municipal Code (“C.M.C.”). As you know, the City’s BMR Housing Mitigation Procedural Manual (the “BMR Program Manual”) requires residential projects of seven or more units to provide at least 20% of the units as BMR ownership units, half of which must be made available for median-income households and the other half for moderate-income households. (BMR Program Manual, § 4.3.) Toll Brothers is proposing that 12 of the total units be preserved as affordable: six for moderate-income households and six for median-income households.

### **State Density Bonus Law**

The Density Bonus Law, codified at Government Code section 65915, allows projects

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that provide a specified percentage of units available for lower income households to receive a certain density bonus percentage. Projects that provide a certain number of affordable units are eligible for incentives or concessions that will result in “identifiable and actual cost reductions” to provide for affordable housing costs. (Gov. Code, § 65915(d)(1).) Qualifying projects are additionally eligible for an unlimited number of waivers of development standards that have the effect of physically precluding development of the project at the densities and with the concessions or incentives permitted under the law. (Gov. Code, § 65915(e)(1).) With respect to for-sale units, a city will grant a density bonus, waivers of development standards, and a specified number of incentives or concessions for projects that provide at least 10% of the total units for sale to lower income households, 5% of the total units are sold to very low income households, or 10% of the total units are sold to moderate-income households. (Gov. Code, § 65915(b)(1)(A), (B), (D).)

The Density Bonus Law defines “density bonus” as “a density increase over the otherwise maximum allowable gross residential density.” (Gov. Code, § 65915(f).) The maximum base here density allows for up to 68 units.<sup>1</sup> In this project, Toll Brothers will reserve six units for moderate-income households and six units for median-income households. These six units for moderate-income households will qualify the Project for the Density Bonus Law by providing at least 10% of the total units as affordable for moderate-income households pursuant to Government Code section 65915(b)(1)(D). The Density Bonus Law awards such projects a density bonus of 5%. Such projects are eligible for one incentive or concession. (Gov. Code, § 65915(d)(1)(A).)

While Toll Brothers would be eligible for a density bonus of up to 71 units,<sup>2</sup> Toll Brothers has no obligation to develop a project at the awarded density or even at the base density for that matter.<sup>3</sup> (Gov. Code, § 65915(f).) Toll Brothers could still develop the 55-unit townhome project plus 10 ADUs (at 20.22 units/acre). Developing 55 townhomes with 10 ADUs is consistent with the allowable density plus the “bonus.” Even under this scenario, Toll Brothers would be able to obtain the waivers of development standards that physically preclude development of the Project, as well as one incentive or concession.

## Waivers of Development Standards

As detailed above, a jurisdiction cannot apply to an eligible density bonus project any development standard that will have the effect of physically precluding development at the density provided and with the incentives/concessions granted. (Gov. Code, § 65915(e)(1).) A

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<sup>1</sup> 2.72 acres x 25 units/acre = 68 units.

<sup>2</sup> Bonus density of 26.25 units per acre (25 units per acre x 1.05), multiplied by 2.72 acres.

<sup>3</sup> Section 65915(f) explains that the “density bonus” could mean a density increase, “or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.”

density bonus project applicant may submit to the jurisdiction a proposal for the waiver or reduction of such development standards. (Gov. Code, § 65915(e)(1).)

In order to proceed with the proposed Project, Toll Brothers is requesting the following waivers of development standards contained in the Specific Plan:

- **Setbacks:** the Project needs the following waivers of minimum setbacks adopted as part of the Heart of the City Specific Plan (the “Specific Plan”):

	<b>Required<sup>4</sup></b>	<b>Proposed</b>
<b>Front</b> (Stevens Creek Blvd. & E. Estates Dr.)	35’ from face of curb 25’ from property line	7’ property line to porch 9’ property line to building face
<b>Rear</b> Richwood Dr.	1.5x building height 44’2” x 1.5 = 66’3”	10’ property line to porch 12’ property line to building face
<b>Side</b> Adjacent property	0.5x building height 44’2” x 0.5 = 22’1”	17’ property line to porch 11’ property line to building face

These minimum setback waivers are necessary to ensure that the Project fits on the site at the 20.22 unit per acre density proposed. Complying with the setback requirements would otherwise result in a very small developable portion of the Property that would be too small to accommodate the size of the townhomes or the proposed number of dwelling units;

- **Retail Requirement:** the Specific Plan designates the Property for “Retail /Commercial/Commercial Office” as the primary uses. The Specific Plan identifies “Residential/Residential Mixed Uses” as supporting uses. (Specific Plan, p. 6.) To that end, the Specific Plan requires that residential projects provide some retail/commercial use. (Specific Plan, p. 14.) Complying with this standard would require the Project dedicate a significant share of the Property to non-residential uses because the retail/commercial use is the primary use. Doing so would reduce the overall number of residential units developable on the Property. Consequently, adherence to this retail/commercial use requirement physically precludes development of the Project at the density proposed. Toll Brothers requests that the City waive this requirement.

Toll Brothers is additionally requesting the following waiver of zoning development standards:

- **Site Coverage:** the maximum site coverage allowed on the Property is 40%. (C.M.C., § 19.80.030(F)(1), Table 19.36.070.) The Project requires a slightly

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<sup>4</sup> Specific Plan, pp. 15-16.

larger site coverage percentage of 42.4%. Complying with this site coverage requirement would result in the elimination of some of the proposed housing units. This waiver is necessary to physically accommodate the 55-unit Project on 2.72 acres.

### **Alternative Heart of the City Exception for Retail Requirement**

As an alternative to the requested Density Bonus Law waiver for the retail requirement, the City may alternatively approve an exception to this requirement under the provisions of the Specific Plan. (Specific Plan, p. 20.) The Specific Plan allows for this flexibility where a small lot size or unique surrounding land uses make it difficult to adhere to the Specific Plan's development standards. (Specific Plan, p. 20.) As explained above, the Property's small 2.72-acre size would result in far fewer residential units if the Project were to include the retail/commercial primary use as required by the Specific Plan.

The Cupertino Planning Commission may approve an exception if it finds that the proposed project: (1) is consistent with the General Plan and the goals of the Specific Plan; (2) will not be injurious to property or improvements; (3) will not create a hazardous condition for pedestrian vehicular traffic; (4) has legal access to public streets and services; and (5) requires an exception involving a modification of the development regulations. (Specific Plan, p. 20; C.M.C. Table 19.12.030.) This exception to the commercial use requirement is permissible under the General Plan and Specific Plan, which allow exclusively residential uses with a Conditional Use Permit. The Project would be consistent with the residential density allowed on the Property and would not be injurious to property or improvements. Nor would the Project result in a hazardous condition. The Property has legal access to public streets and services. Thus, the City, may alternatively approve this exception under the Specific Plan.

### **Parking Ratio Modifications**

While the City's requires a townhome project to provide 2.8 parking spaces per dwelling unit,<sup>5</sup> the Density Bonus Law provides its own parking ratios for qualifying projects. Specifically, the Density Bonus Law allows for qualifying projects to provide parking at a ratio of: 1 parking space per studio to one-bedroom unit; 1.5 parking spaces per two- or three-bedroom units; and 2.5 parking spaces per four- or more-bedroom unit. (Gov. Code, § 65915(p)(1).) No additional guest spaces are required. (Gov. Code, § 65915(p)(1).)

State law provides that for ADUs proposed to be developed as part of a project that also proposes new single-family or multifamily dwellings, the local agency cannot impose any parking standards for those ADUs as long as the ADUs meet the criteria established in state ADU law. (Gov. Code, § 66322(a)(6).) Separately, the law prohibits imposition of parking

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<sup>5</sup> C.M.C., Table 19.124.040(A).

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standards for ADUs located within ½ mile of public transit. (Gov. Code, § 66322(a)(1).) Multiple bus lines run down Stevens Creek Blvd., with one stop located across the street from the Property. Accordingly, the Project need not provide any parking for the ADUs.

Using this criteria under the Density Bonus Law, the Project need only provide the following number of parking spaces for each type of unit:

<b>Unit Type</b>	<b>No. of Units</b>	<b>Parking Spaces</b>
Two Bedroom	10	15
Three Bedroom	10	15
Four Bedroom	35	88 <sup>6</sup>
<b>Total</b>	<b>55</b>	<b>118</b>

Nevertheless, the Project includes 119 spaces, 110 of which will be covered for residents and nine to be uncovered for guests.

## Conclusion

We appreciate the City’s consideration of eligible benefits under the Density Bonus Law. With the requested waivers, concessions, and minimum parking ratio reduction, Toll Brothers will be able to provide 11 affordable units, amounting to 22% of the Project. This exceeds the City’s 20% minimum affordable housing requirement contained in Section 19.172.020(A) of the C.M.C. Please do not hesitate to reach out if you have any additional questions.

Sincerely,

BUCHALTER  
A Professional Corporation



Braeden Mansouri

BM:vs

cc: Nick Kosla  
Robert Connolly  
Alli Sweeney  
Alicia Guerra

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<sup>6</sup> 87.5 rounded up.