



## AGENDA REPORT SUMMARY

**Meeting Date:** August 23, 2022

**Subject** Consider the Proposed Vesting Tentative Subdivision Map, Inclusionary Housing, and State Density Bonus Modification for a 196-Unit Multiple-Family Development at 5150 El Camino Real; consider finding that no further review under the California Environmental Quality Act (CEQA) is required for the project because the findings in CEQA Guidelines Section 15162 cannot be made.

**Prepared by:** Sean Gallegos, Senior Planner

**Reviewed by:** Nick Zornes, Development Services Director

**Approved by:** Gabriel Engeland, City Manager

**Attachment(s):**

1. Resolution No. 2022-XX, Clean Version
2. Resolution No. 2022-XX, Redlined Version
3. Planning Commission Meeting Minutes, June 16, 2022
4. Planning Commission Agenda Report and Attachments, June 16, 2022
5. Project Plans

**Initiated by:**

Applicant – Michael Ducote, Prometheus Real Estate Group, Inc.

**Previous Council Consideration:**

None

**Fiscal Impact:**

The project will result in the following estimated financial contributions to the City's special revenue funds:

- Park in-Lieu Fees: \$9,564,800 (\$48,800/multiple-family dwelling unit)
- Traffic Impact Fees: \$815,164 (\$4,159/multiple-family dwelling unit)
- Los Altos Public Art Fund: one percent of construction costs, up to \$200,000

**Environmental Review:**

An Initial Study and Mitigated Negative Declaration (IS/MND) was previously prepared in compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (California Code of Regulations §15000 et. Seq.) and the regulations and policies of the City of

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**Reviewed By:**

City Manager

City Attorney

Interim Finance Director

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Los Altos. The Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project were adopted for the project by the City on December 10, 2019, and for reasons set forth in further detail later in this report, a subsequent MND is not required under State CEQA Guidelines Section 15162.

**Policy Question(s) for Council Consideration:**

- Does the modified subdivision result in an orderly and compatible development pattern, within the subdivision and in relation to its surroundings?
- Does the modified subdivision provide for quality site planning and design?
- Does the proposed housing comply with the city’s Inclusionary Housing Requirements and Los Altos Density Bonus Ordinance?

**Summary:**

- The application includes a request to modify the approved Vesting Tentative Subdivision Map which created one lot for condominium purposes into a two-lot subdivision. Lot 1 includes two five-story buildings along El Camino Real with 172 rental units and Lot 2 will include the townhouse buildings with 24 units that will be further subdivided by a condominium plan to create for-sale units.
- The application requests to modify the previously approved 28 affordable units (12 moderate and 16 very-low income) to 29 low-income affordable units (or 20% of the 145 base units), to satisfy the City’s requirements for rental projects under its Inclusionary Housing Requirements.
- The application proposes to maintain the 35% density bonus, development concessions and waivers it is eligible for under State Density Bonus Law and the Los Altos Municipal Code (LAMC), but the project requests an additional development waiver from the required 75-foot site frontage requirement for Lot 2.
- On June 16, 2022, the Planning Commission reviewed the application and recommended the City Council approve the subdivision modification and density bonus request.

**Staff Recommendation:**

Approve the modification to the Vesting Tentative Subdivision Map, Inclusionary Housing and Density Bonus (application MOD22-0003) for a 196-Unit Multiple-Family Development at 5150 El Camino Real per the findings and conditions contained in the resolution (Attachment 1).

**Purpose**

Consider the recommendation from the Planning Commission and evaluate whether the project complies with the Los Altos Municipal Code requirements for vesting tentative subdivision map, inclusionary housing, and state density bonus approval and whether it furthers the city’s efforts for



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the production of housing, as reflected in the Goals, Policies, and Programs of the Housing Element and other elements in the Los Altos General Plan.

## **Background**

### *City Council*

On December 10, 2019, the City Council approved a multiple-family condominium residential development with 196 units, common areas and one level of underground parking. The applicant requests to modify the approved Vesting Tentative Map which created one lot for condominium purposes into a two-lot subdivision. Lot 1 includes the two five-story buildings along El Camino Real with 172 rental units and Lot 2 will include the townhouse buildings with 24 units that will be further subdivided by a condominium plan to create for-sale units. The applicant also requests to modify the previously approved 28 affordable units (12 moderate and 16 very-low income) to 29 low-income affordable units (or 20% of the 145 base units), to satisfy the City's requirements for rental projects. The applicant also proposes maintaining the 35 percent density bonus, development concessions and waivers it is eligible for under State Density Bonus Law and the Los Altos Municipal Code (LAMC), but the project will need an additional development waiver for the required 75-foot site frontage requirement for Lot 2.

### *Planning Commission Meeting*

The Planning Commission held a public hearing on June 16, 2022, to consider the vesting tentative subdivision map and state density bonus approval request. The Commission voted unanimously to recommend approval. The Planning Commission meeting minutes and agenda report are included as Attachments 2 and 3.

## **Discussion/Analysis**

### *General Plan*

The General Plan contains goals and policies for the El Camino Real Corridor Special Planning Area in the Land Use Element, Community Design & Historic Resources Element, Economic Development Element, and Housing Element which emphasize increasing commercial vitality, intensification of development, developing housing, including affordable housing, improving the streetscape of the El Camino Real corridor and ensuring compatibility with adjacent residential land uses and nearby single-family neighborhoods.

The Housing Element encourages maximum densities of residential development as well as facilitating affordable housing. The project maintains a density of 52 units per acre, which would exceed the maximum density allowed for the El Camino Real corridor (38 dwellings per acre) and includes 29 affordable dwelling units. The site is identified as an opportunity site in the Housing



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Element, with realistic potential to achieve 144 units. So, the proposed 196 units, with 29 affordable units, would meet and exceed the General Plan's Housing Element housing projection target for this site.

As indicated, the proposed subdivision would not increase the density above what the City Council previously approved, but instead would provide for 172 of the approved units to be rental units rather than condominium units. This is consistent with Policy 2.3 of the City's Fifth Cycle Housing Element, which is to encourage development of new rental units in multi-family districts. In recent years, the City has not received many applications for new rental housing development, even though rental housing tends to be more affordable by design than for-sale housing and provides housing opportunities for households that are unable to secure the financing necessary to enter the local real estate market. Also, the City's inclusionary housing policies require a higher percentage of below market rate units for rental projects than for for-sale projects, so that the current proposal would secure an additional below market rate unit for the City's inventory. Thus, the proposed subdivision is generally consistent with the policies in Goal 4 of the Housing Element, which encourages affordability and diversity of housing opportunities at all income levels.

The Land Use Element encourages intensification along the El Camino Real corridor while also requiring that new development be compatible with nearby residential land uses. Since the site is adjacent to a multiple-family building to the west and single-family properties to the south, the project includes increased setbacks along the right side and rear property lines, including a significant amount of landscaping and evergreen screening trees. In addition, the lower scale townhouses at the rear of the site provide a transition between the single-family residential uses and the taller condominium buildings along El Camino Real.

### *Zoning*

The proposed subdivision includes two proposed lots. Lot 1 is proposed to be 2.4 acres and is considered a conforming interior lot according to CT zoning district and the "lot" definitions in Chapter 14.02 of the LAMC with the front lot line abutting El Camino Real. Lot 2 is a 1.4-acre lot that complies with the minimum 20,000 square foot area requirement of the CT zoning district (Section 14.50.070 LAMC), but does not have the required 75-foot site frontage along a public street. In lieu of satisfying this requirement, the project is eligible for a development waiver under State Density Bonus Law and the Los Altos Density Bonus Ordinance (Chapter 14.28, Article 2).

Since Lot 2 does not have the required 75-foot site frontage, it would be considered a "flag lot" per Section 14.02.070 due to having access to a street by means of a corridor of land not meeting the requirements for site width. Lot 2 is accessible by a 26-foot-wide emergency vehicle access easement and public access utility easement, and a four- to seven-foot-wide pedestrian access easement across Lot 1 from El Camino Real.

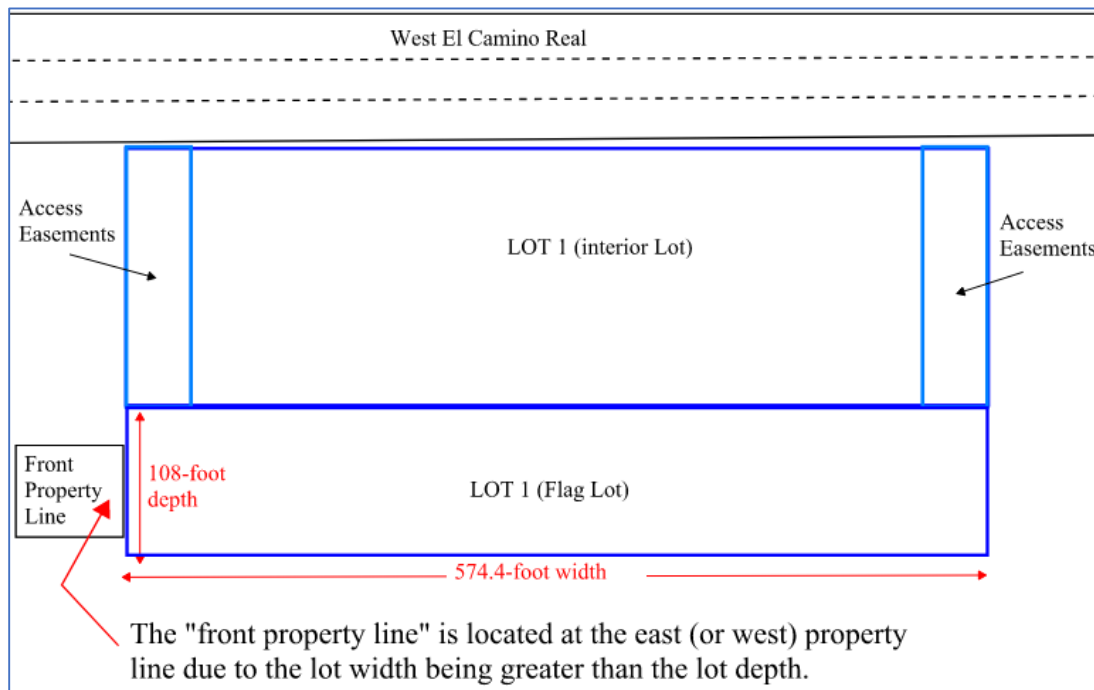


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With regards to the lot orientation for a flag lot, Section 14.02.070 of the LAMC states that the “front lot” line is the “interior lot line most parallel to and nearest the street from which the means of access is obtained, except that where the average width of a flag lot exceeds its average depth and the longer dimension is considered the depth, the front lot line will be the property line from which the front yard is measured.” Furthermore, Section 14.02.070 LAMC states that a “front lot” line may be assigned or designated by the City Planner.

For Lot 2, the lot line most parallel to El Camino real is 574.4 feet long. Since the lot’s width of 574.4 feet exceeds its depth of 108 feet, the lot’s 574.4-foot width is reoriented to be the lot’s depth. Due to the lot’s width becoming the lot’s depth, the City Planner determined that the “front lot” line may be reoriented to either the east or west property lines. Staff determined that the west property line to be the front lot line. This is consistent with similar flag lot determinations on residential lots, would allow the project to maintain the yard relationships, required landscaping areas, and the approved building setbacks that exist with the approved site and design plans without any further changes. Figure 1 is provided below to illustrate the Flag Lot Determination.

Figure 1: Flog Lot Determination Example



The lot orientation is a significant determination for the development due to the “front lot line” determination establishing the setbacks along each property line. A front lot line along the east



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property line results in a project, which complies with the front, side and rear yard setbacks of the Commercial Thoroughfare (CT) zoning district, as shown on Sheet A\_0.07 of the project plans. A “front lot line” determination along the north property line would require modifications to the development to comply with the 30-foot front yard setback.

While the applicant has not requested a waiver under Government Code Section 65915(e) and Los Altos Municipal Code Section 14.28.046(C) from the definition of “flag lot” or “front lot” line for lot No. 2, a development waiver appears appropriate and reasonable for a project of this size and scope.<sup>1</sup> To provide appropriate vehicular and pedestrian access from El Camino Real to lot No. 2, the lot would have appropriate and reasonable access and entry spaces to the townhouses with 26-foot-wide lanes with an emergency vehicle access easement (EVAE) and a private access and utility easement (PAUE), and a four- to seven-foot wide pedestrian assessment easement along the east and west sides of lot No. 1. The orientation of the front lot line along the west property line would be consistent with the development approved by the City Council on December 10, 2019, and it would result in the least adverse impacts to adjoining properties. If we view the west lot line as the “front,” then no waiver is required. In the alternative, even if the north lot line is treated as the front lot line, the project is entitled to a waiver.

Pursuant to findings under the State Density Bonus Laws, the development waiver would not have a specific, adverse impact upon public health and safety or on any real property that is listed in the California Register of Historical Resources, and it would not violate state or federal law.

The density bonus, concession and development waiver are discussed further in the *Affordable Housing* section below.

### *Traffic and Circulation*

A full Transportation Impact Analysis (TIA) was prepared and considered by the City Council on December 10, 2019. The TIA analyzed potential impacts to pedestrians, bicycles, and transit services from the project, vehicle queuing at intersections, traffic added to Distel Drive and Clark Avenue due to cut-through and school related trips, site access and on-site circulation. There are no substantial changes to the project which will require revisions of the previous TIA that would increase in the severity of previously identified significant effects. Therefore, staff does not believe a subsequent addendum to the TIA is required under State CEQA Guidelines Sections 15162.

### *Parking*

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<sup>1</sup> A project is entitled to a waiver if the findings for the waiver can be made, even if the waiver is not requested by the applicant. See *Bankers Hill 150 v. City of San Diego*, (2022) 74 Cal.App.5th 755, 770 (“[A] city must offer a waiver or reduction of development standards that would have the effect of physically precluding the construction of a development at the density, or with the requested concessions, permitted by the Density Bonus Law.”)





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The City Council previously approved the project with a total of 290 parking spaces including 236 spaces in the underground parking garage for the rental units, 48 spaces in the townhouse garages and six surface level guest spaces along the access road (three on Lot 1 and three on Lot 2). In addition, two loading spaces (10 feet x 25 feet) are provided along the access road. The modification to the Vesting Tentative Subdivision Map does not modify the total number of residential units or parking spaces (290) approved by the City Council on December 10, 2019.

*Bicycle and Pedestrian Amenities*

There are no proposed modifications to the previously approved bicycle and pedestrian amenities. Overall, the project's pedestrian amenities and improvements continue to meet or exceed all applicable City policies and guidelines.

*Affordable Housing - Density Bonus and Development Concessions*

The City Council previously approved two development concessions and one waiver in exchange for providing affordable housing for the 196-unit condominium development.

The proposed modification to the Vesting Tentative Subdivision Map subdivides the lot into two lots for condominium purposes, with two five-story buildings with 172 rental units on Lot 1, and the townhouse buildings with 24 for-sale condominium units on Lot 2. Due to the five-story buildings on Lot 1 being for rental purposes, the City's Inclusionary Housing Requirements (LAMC Chapter 14.28, Article 1) requires a minimum of 20 percent of the units be affordable, with 20 percent designated as affordable at the low-income level or 15 percent designated as affordable at the very-low-income level.

With a base density of 145 units, the project must provide 29 affordable units. Since the applicant is proposing 29 low-income units, the project is in compliance with the City's Inclusionary Housing Requirements. The following table breaks down the proposed unit types and sizes for both the affordable and market rate units for the project previously approved by the City Council and the proposal being reviewed by the Planning Commission:



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Condominium Units				Townhouse Units			
		Approved 12/10/19	Proposed			Approved 12/10/19	Proposed
Affordable	1- bedroom	12	14	Affordable	2- bedroom	2	-
	2- bedroom	13	15		3- bedroom	1	-
Market Rate	1- bedroom	68	66	Market Rate	2- bedroom	2	4
	2- bedroom	77	75		3- bedroom	15	16
	3- bedroom	2	2		4- bedroom	4	4
<b>Total</b>		<b>172</b>	<b>172</b>			<b>24</b>	<b>24</b>

Housing Element program 4.3.2 requires that affordable housing units generally reflect the size and number of bedrooms of the market rate units. In addition, the Inclusionary Housing Requirements requires that all affordable units in a project be constructed concurrently with market rate units, be dispersed throughout the project, and not be significantly distinguishable by size, design, construction or materials. The project’s Density Bonus Report (Attachment B) provides exhibits that show where the affordable units will be throughout the two five-story rental buildings, with no affordable proposed for the townhouse buildings. Condition No. 3 has been added to specify the breakdown of affordable units by income level, that the units shall be provided at the location on the approved plans, and that they shall not be significantly distinguishable with regard to design, construction or materials. Thus, as designed and conditioned, the proposed affordable housing units meet the intent of the City’s affordable housing requirements. As proposed, the inclusionary units in the rental component ensures that inclusionary units for the entire project are provided at the 20% rate applicable for rental projects rather than the 15% rate applicable to for-sale projects

Under the State’s density bonus regulations (Section 65915 of the California Government Code), the project qualifies for a 35 percent density bonus with at least 20 percent low-income units.

With regard to concessions, since the project is providing 20 percent of its units as affordable at the low-income level, it continues to qualify for two concessions per State’s density bonus regulations and the City’s Density Bonus Ordinance. The City Council approved the original project on December 10, 2019, with a height concession to allow the project to exceed the maximum height limit of 45 feet by 11 feet (on-menu) and a six-inch reduction in the required





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parking stall width for the spaces in the underground parking garage (off-menu). The proposed project is not requesting to modify the previously approved concessions and waivers.

The project would need a new waiver under Government Code Section 65915(e) and Los Altos Municipal Code Section 14.28.046(C) to not require the 75-foot site frontage for lot No. 2, which is required under 14.50.070 of the Zoning Code. Per State Law and City Ordinance, the City must grant a requested waiver or development standard reduction unless it can make one or more the following findings:

- The waived or reduced development standard 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 concessions permitted under this section.
- The waiver would have a specific, adverse impact upon health or safety for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- The waiver would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
- The waiver or reduced development standard would be contrary to state or federal law.

None of these findings can be made. To provide appropriate vehicular and pedestrian access from El Camino Real to Lot 2, the project would have 26-foot-wide lanes with an emergency vehicle access easement (EVAE) and private access and utility easement (PAUE), and four- to seven-foot-wide private pedestrian access easements along the east and west sides of Lot 1. Thus, the requested waiver would not have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources.

#### *Subdivision*

The project includes a modified Vesting Tentative Subdivision Map to create a two-lot subdivision. Lot 1 is proposed to be 2.4 acres and will include two five-story buildings for 172 rental units along El Camino Real with associated private and common areas and Lot 2 is proposed to be 1.4 acres and will be further subdivided with a condominium plan for the townhouse buildings with 24 for-sale units and associated private and common areas. The subdivision conforms to the permitted General Plan and Zoning Code densities as modified by State law. The subdivision is not injurious to public health and safety, and is suitable for the proposed type of development, and the subdivision provides proper access easements for ingress, egress, public utilities and public services. A comprehensive list of findings and approval conditions for the subdivision modification are contained in the resolution found in Attachment A.



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While the applicant requests to modify the 196-unit development to eliminate the phased construction of the project, based on the City Council’s previous concerns that affordable housing and parking should be provided during the phases of construction or if (for unforeseen circumstances) the completion of the project could not be realized by the applicant. To address this, the following condition has been proposed in the Resolution:

Condition No. 4: The condition shall supersede Condition No. 5 in Resolution No. 2022-043. Once construction is initiated by the developer, there shall be continuous progress without phasing of the development. The project shall provide the resident and guest parking spaces required for the rental and townhouse units.

Condition No. 5: The condition shall supersede Condition No. 6 in Resolution No. 2022-043. Once construction is initiated by the developer, there shall be continuous progress without phasing of the development.

Condition No. 7: The condition shall supersede Condition No. 24 in Resolution No. 2022-043, Upon completion of the townhouses on Lot No. 2, five townhouses shall not be sold for five years from the date of occupancy and shall be held by an entity controlled by Prometheus Real Estate Group, Inc. If 172 rental units on Lot No. 1 are not initiated within five years from completion of townhouses, the five unsold townhouse units shall be dedicated as affordable units. If the 172 rental units on Lot No. 1 are initiated within five years from the completion of the townhouses, the condition for five unsold townhouse units be dedicated as affordable will terminate.

*Environmental Review*

CEQA requires analysis of agency approvals of discretionary “Projects.” A “Project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (State CEQA Guidelines Section 15378). The proposed Project is a project under CEQA. State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations) provides that when a mitigated negative declaration (MND) is adopted for a project, no subsequent MND shall be prepared for that project unless changes to the project are proposed and the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are new significant environmental effects due to a change in the project or circumstances, or there is new information of substantial importance as identified in State CEQA Guidelines Section 15162(a)(3). The project was evaluated in 2019 with the approval of the 196-unit multiple-family development. A Mitigated Negative Declaration (MND) was prepared and certified for the project



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titled the 5150 El Camino Real Residential Development MND (SHC# 2019079050) and was adopted in December 2019.

The proposed project requests a modification to the approved vesting tentative map to subdivide the property from one lot to two lots. The tentative map does not involve any physical changes in the environment and hence does not have the potential for causing a significant effect on the environment. No potential new impacts related to the Project have been identified that would necessitate further environmental review beyond the impacts and issues already disclosed and analyzed in the 5150 El Camino Real Residential Development MND. No other special circumstances exist that would create a reasonable possibility that the Project will have a significant adverse effect on the environment. Therefore, no further environmental review is required.

### **Options**

- 1) Adopt Resolution No. 2022-XX

**Advantages:** The subdivision would create two new parcels that maintain an orderly and compatible development pattern on El Camino Real, and the project would support replacing an underdeveloped commercial property with a high-quality multiple-family development that helps the City meet its goals for producing new rental housing units and is supportive of the goals of the El Camino Real Corridor Special Planning Area

**Disadvantages:** None identified

- 2) Do not approve Resolution N. 2022-xx

**Advantages:** The existing parcel would remain unchanged.

**Disadvantages:** The City will reduce its progress on achieving its goals for the production of new housing units and implementation of objectives for the El Camino Real Corridor Special Planning Area.

### **Recommendation**

The Planning Commission and staff recommends Option 1.