

MEMORANDUM

TO: EAH Housing
FROM: Elisa Paster and Eric Geier
DATE: February 9, 2022
SUBJECT: 330 Distel Circle-Project Consistency with Density Bonus Provisions

I. Introduction

EAH Housing is partnering with the City of Los Altos (“City”) to develop a 100% affordable housing project, with the exception of a manager’s unit, using a Density Bonus (the “Project”) at 330 Distel Circle, Los Altos, California 94022 (“Project Site”). The Project is a 64 foot building that consists of 90 affordable units (24 Studio, 20 one-bedroom, 23 two-bedroom, and 23 three-bedroom) and 90 parking spaces. The Project is seeking a 165% Density Bonus, existing zoning allows for 34 units (rounded up from 33.06) at the Project Site.

Based on its proximity to transit, as demonstrated below, state law permits the Project to an unlimited Density Bonus, a height increase up to 33 feet, and no minimum parking requirements. As the Project is 100% affordable, even if a determination is made that the Project is not within one-half mile of a major transit stop, the Project can still be approved as designed with the approval of concessions and waivers.

II. The Project Site is Within One-Half Mile of a Major Transit Stop

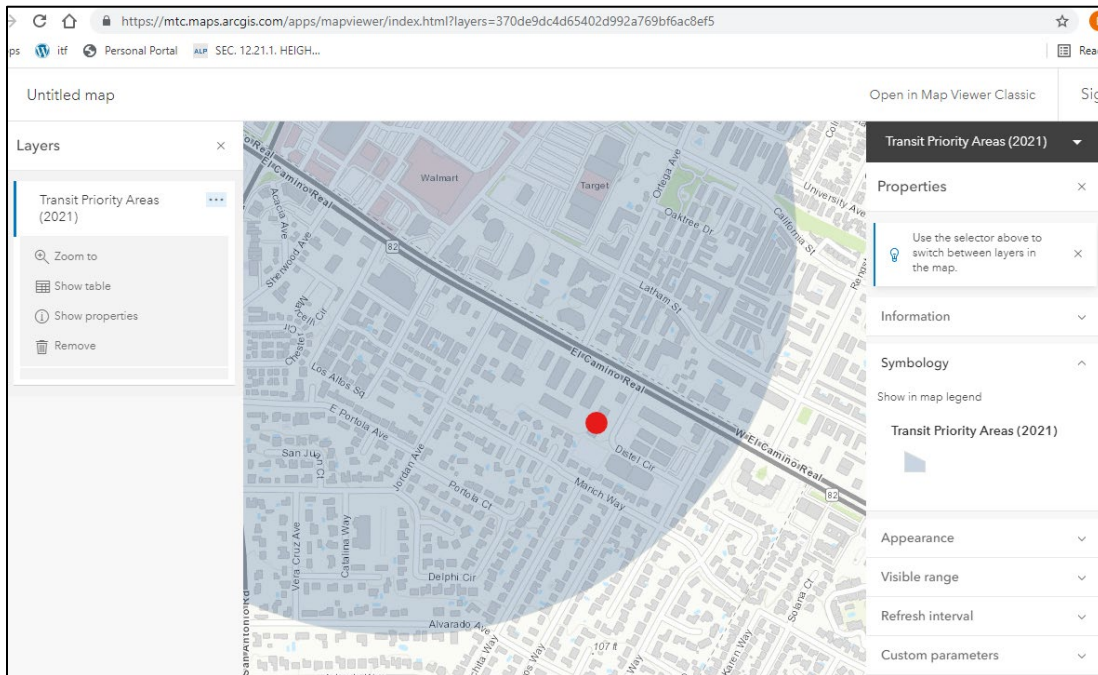
For the purpose of State Density Bonus law, codified in Government Code (GOV) section 65195, a major transit stop is defined as existing or planned rail or bus rapid transit (BRT) stations, ferry terminals served by either a bus or rail transit service, and the intersection of two or more bus routes with a frequency of service interval of fifteen minutes or less during the morning and afternoon peak commute periods. (Public Resources Code (PRC) §§ 21064.3, 21155(b).)¹

A. Available Resources Identify the Project Site as Being One-Half Mile of a Major Transit Stop

A Transit Priority Area is defined as “an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program or applicable regional transportation plan.” (PRC § 21099(a).) Accordingly, if the Project Site is

¹ State Density Bonus law treats planned major transit stops as existing major transit stops. Limited analysis was performed on whether major transit stops are planned within one-half mile of the Project Site. Our initial conclusion is that no such transit stops are planned, thus our research focused on existing major transit stops.

located in a Transit Priority Area, it is by definition within one-half mile of a major transit stop. The Metropolitan Transportation Commission (MTC), the metropolitan planning organization for the San Francisco Bay Area, identifies the Project Site as being within a Transit Priority Area. The graphic below is taken from the MTC's GIS system, which shades the TPAs in blue; the Project Site is designated by a red dot.



B. A Major Transit Stop is Located at El Camino Real and Showers Drive

Although the MTC identifies the Project Site as being within a Transit Priority Area, it does not identify the major transit stop within one-half mile of the Project Site. Because the Project Site is not within one-half mile of a rail station, ferry terminal, or BRT station,² analysis focuses on the intersection of two or more bus routes with requisite service during the peak hour commute periods.

The statute does not define morning and afternoon peak commute hours, nor does the Los Altos Municipal Code (LAMC) or other City documentation. The Santa Clara Valley Transportation Authority (VTA), the City's transit provider, defines peak hours as "the highest morning or evening hour of travel reported on a transportation network or street." As the Congestion Management Agency for Santa Clara County, the VTA's Guidelines can be considered applicable in the absence of any other City guidance.

² Note that the Rapid 522 does not appear to have the elements of BRT service identified in the PRC, such as 1) dedicated bus lanes or a separate right-of-way, 2) transit signal priority, 3) all door boarding, 4) fare collection system promoting efficiency, and 5) defined stations. (PRC § 21060.2.) Accordingly, the Rapid 522 does not establish a major transit stop in and of itself.

Typically, peak hours are defined at between 7:00 am and 9:00 am and 4:00 pm and 6:00 pm.

The bus stop at the intersection of El Camino Real and Showers Drive, approximately 1,513 feet from the Project Site, constitutes a major transit stop, as VTA lines 22, 40, and Rapid 522 operate at less than 15 minute intervals between 7:00 am and 9:00 am and 4:00 pm and 6:00 pm, morning and afternoon peak commute periods. A chart demonstrating the bus lines frequency follows.

Northbound/Eastbound				Southbound*/Westbound			
Morning Peak Hours (7:00 AM-9:00 AM)		Afternoon Peak Hours (4:00 PM-6:00 PM)		Morning Peak Hours (7:00 AM-9:00 AM)		Afternoon Peak Hours (4:00 PM-6:00 PM)	
Time	Bus Line	Time	Bus Line	Time	Bus Line	Time	Bus Line
7:07 AM	22	4:01 PM	22	7:09 AM	522	4:01 PM	22
7:10 AM	522	4:02 PM	40	7:15 AM	22	4:07 PM	522
7:18 AM	22	4:05 PM	522	7:25 AM	40	4:14 PM	40
7:24 AM	522	4:16 PM	22	7:25 AM	522	4:16 PM	22
7:25 AM	40	4:17 PM	40	7:36 AM	22	4:23 PM	522
7:32 AM	22	4:20 PM	522	7:41 AM	522	4:31 PM	22
7:37 AM	522	4:31 PM	22	7:55 AM	40	4:38 PM	522
7:47 AM	22	4:35 PM	522	7:56 AM	22	4:44 PM	40
7:48 AM	522	4:46 PM	22	7:59 AM	522	4:46 PM	22
7:56 AM	40	4:47 PM	40	8:12 AM	22	4:53 PM	522
8:02 AM	22	4:50 PM	522	8:15 AM	40	5:01 PM	22
8:03 AM	522	5:02 PM	22	8:19 AM	40	5:09 PM	522
8:16 AM	22	5:04 PM	522	8:20 AM	522	5:14 PM	40
8:18 AM	522	5:17 PM	40	8:27 AM	22	5:16 PM	22
8:26 AM	40	5:17 PM	22	8:40 AM	522	5:24 PM	522
8:31 AM	22	5:19 PM	522	8:46 AM	22	5:31 PM	22
8:33 AM	522	5:33 PM	22	8:55 AM	40	5:39 PM	522
8:45 AM	22	5:33 PM	522	8:57 AM	522	5:46 PM	40
8:48 AM	522	5:46 PM	40			5:46 PM	22
8:50 AM	40	5:48 PM	22			5:54 PM	522
8:59 AM	22	5:49 PM	522				

*There are two southbound stops for Line 40 at Latham Street, one is south of Latham Street, approximately a third of the distance to El Camino Real. This stop functionally serves to connect Line 40 to Line 22 and Rapid 522.

III. Consistency with Density Bonus Provisions Based on Proximity to a Major Transit Stop

A. Density Bonus

The LAMC provisions contemplate up to a 35% Density Bonus. (LAMC § 14.28.040(C).) Alternatively, the Government Code allows for unlimited density for projects that are 100% affordable (at least 80% low income and up to 20% moderate income) and within one-half mile of a major transit stop. (GOV § 65915(f)(3)(D)(ii).) As the Project is a 100% affordable housing project, using Santa Clara County Measure A funding, City of Los Altos fee waivers, and Low Income Housing Tax Credits, its affordability will be subject to a covenant. Accordingly, as a 100% affordable project, the 165% Density Bonus is permitted by state law. The density increase is not considered an incentive/concession.

B. Height

Projects that are 100% affordable and within one-half mile of a major transit stop are entitled to a height increase of three additional stories, or 33 feet. (GOV § 65915(d)(2)(D).) The Project is designed to be 64 feet in height, 19 feet greater than the 45 feet allowed in the Commercial Thoroughfare zone. (LAMC § 14.50.140.) However, because the 64 feet would be within the additional 33 feet allowed for by GOV § 65915(d)(2)(D), the Project height is consistent with state Density Bonus provisions. Per the Government Code, this height increase is not considered an incentive/concession. (GOV § 65915(d)(2)(D).)

C. Parking

The City's Density Bonus provisions include a parking standard of .5 parking space per bedroom for affordable housing with unobstructed access to a major transit stop within one-half mile. (LAMC § 14.28.040(G)(2)(b).) As the Project consists of 159 bedrooms, this provision would require the Project to provide 80 parking spaces. Alternatively, state Density Bonus provisions do not require any parking for 100% affordable projects with unobstructed access to a major transit stop located within one-half mile of the project site. (GOV § 65915(p)(3).) As the Project proposes to include 90 parking spaces, it would satisfy both the state and local requirement. Use of these provisions is not considered an incentive/concession. (GOV § 65915(p)(9), LAMC § 14.28.040(G)(2)(e).)

D. Incentives, Concessions, and Waivers

Projects that are 100% affordable are entitled to four concessions or incentives. (GOV § 65915(d)(2)(D).) Concession or incentive is defined as "A reduction in site

development standards or a modification of zoning code requirements or architectural design requirements...that results in identifiable and actual cost reductions, to provide for affordable housing costs....” (GOV § 65915(k)(1).) Although entitled to four concessions, we understand that the EAH Housing is requesting two concessions which will result in cost reductions to allow the Project to be built: 1) a reduction in front yard setback from 25 feet to 10 feet, and 2) a reduction in private open space from a 50 square foot average to 25 square foot average.³ The application for the Project should include findings or evidence demonstrating that reduction of the front yard setback and reduction of the open space would result in cost reductions to provide for the affordable housing. We can assist with those findings at your request.

EAH Housing may also request waivers, apart from an incentive/concession. (LAMC § 14.28.040(H).) The LAMC defines waiver as “the deletion or reduction of any development standards that would otherwise have the effect of physically precluding” a Density Bonus Development. (LAMC § 14.28.040(B)(27).) The Project is seeking a waiver to reduce the front step back of a minimum 10 feet from ground floor façade for stories above 45 feet in height, as maintaining that step back would preclude the Project from being constructed with the identified density. The application for the Project should include findings or evidence demonstrating that imposition of the front step back requirement would physically preclude the construction of the Project. We can assist with those findings at your request.

IV. Alternative Consistency with Density Bonus Provisions

As demonstrated above the Project Site is located within one-half mile of a major transit stop as defined by the Government Code and Public Resources Code. The subsequent analysis demonstrates that the Project Site’s proximity to a major transit stop qualifies the Project for unlimited density, increased height, and decreased parking. However, even if the Project Site is not determined to be within one-half mile of a major transit stop, it would still be consistent with state and local Density Bonus provisions based on available concessions and waivers.

Projects that are 100% affordable are entitled to four concessions or incentives. (GOV § 65915(d)(2)(D).) The LAMC does not include a limitation on the number of waivers a project can seek, but rather contemplates the use of multiple waivers by using the plural of the term, waivers, in relevant provisions.⁴ State law specifically allows a city to grant multiple waivers. (GOV § 65915(e)(3).)

³ The staff report for the Joint City Council/Planning Commission Study Session on January 11, 2022 identified a third concession, increase in building height. As noted above, this increase is allowed by state law and not considered an incentive, consistent with GOV § 65915(d)(2)(D).

⁴ See LAMC §§ 14.28.040(A), 14.28.040(C), 14.28.040(D)(1)(f), 14.28.040(H).

If the Project Site is not determined to be within one-half mile of a major transit stop, the Density Bonus can still be processed by including the following concessions and waivers.

A. Incentives/Concessions

An incentive or concession is defined as “A reduction in site development standards or a modification of zoning code requirements...that results in identifiable and actual cost reductions, to provide for affordable housing costs.” (GOV § 65915(k)(1).) As density is specifically identified as a zoning code requirement, an increase to the identified level, 103.45 dwelling units/acre as opposed to the 38 dwelling units/acre identified in LAMC § 14.50.080, would constitute a modification to a zoning code requirement, and therefore an incentive/concession. As it is not enumerated in LAMC § 14.28.040(F)(1), this would be considered an off-menu incentive or potentially a waiver (discussed below).

A reduction in required parking is specifically cited as an example of a concession or incentive. (GOV § 65915(k)(1).) The LAMC specifically allows for “off-menu parking requirement alterations.” (LAMC § 14.28.040(G)(3).) Further, the LAMC vests the City with broad authority to determine the parking required for a project: “This section does not preclude the city from reducing or eliminating a parking requirement for development projects of any type in any location.” (LAMC § 14.28.040(G)(4).)

The Project has previously identified the reduction in front yard setback from 25 feet to 10 feet and the reduction in private open space from a 50 square foot average to 25 square foot average as potential incentives/concessions. The staff report for the Joint City Council/Planning Commission Study Session on January 11, 2022 identified both of these as on-menu incentives/concessions.

B. Waivers

As noted above, maintaining the step back requirement would preclude the Project from being constructed with the identified density. Similarly, limiting the Project’s height to 45 feet would preclude the Project from being constructed at the identified density. The Project, as designed, includes dwelling unit square footages consistent with code requirements and ground floor amenities, as well as required parking. Reducing the Project to 45 feet would cause the removal of two stories from the Project. Maintaining the identified density while reducing the Project by two stories would likely require 1) redesign of the Project to include rooms of a substandard size, and/or 2) the removal of required parking and Project amenities on the ground floor, which would be displaced by residential units. Accordingly, the increased height would constitute a permissible waiver, as maintaining the 45 foot height limit would reduce the Project’s density.

The Project's increased density could also be considered a waiver. As the Project seeks to construct an affordable housing development with a density of 103.45 dwelling units/acre, maintaining the density required by the LAMC would have the effect of physically precluding the Project. Accordingly, the Project's increased density could be treated as a waiver rather than an incentive.