

RAND | PASTER | NELSON

MEMORANDUM

VIA EMAIL

TO: EAH Housing

FROM: Elisa Paster

DATE: September 15, 2022

SUBJECT: **330 Distel Circle - Density Bonus**

I. INTRODUCTION

EAH Housing is partnering with the City of Los Altos (“City”) to develop a 100% affordable housing project, with the exception of two manager’s units, 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, 21 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 receive an unlimited increase in density, a height increase up to 33 feet, and no minimum parking requirements.

EAH Housing is requesting the following concessions:

- Reduced front yard setback from 25 feet to 10 feet
- Reduced front side step-back on the 4th and 5th levels
- Reduced average per-unit open space requirement from 50 square feet to 25 square feet
- Reduced EV ready parking stalls from 90 to 9 stalls

EAH Housing is also requesting the following waivers:

- Modification of the requirement for an inner courtyard to be partially visible from the street and linked by a clear accessible path of travel
- Allowance to use wood as a distinct material for the base of the building
- Allowance to locate the solid waste staging area in the public right-of-way

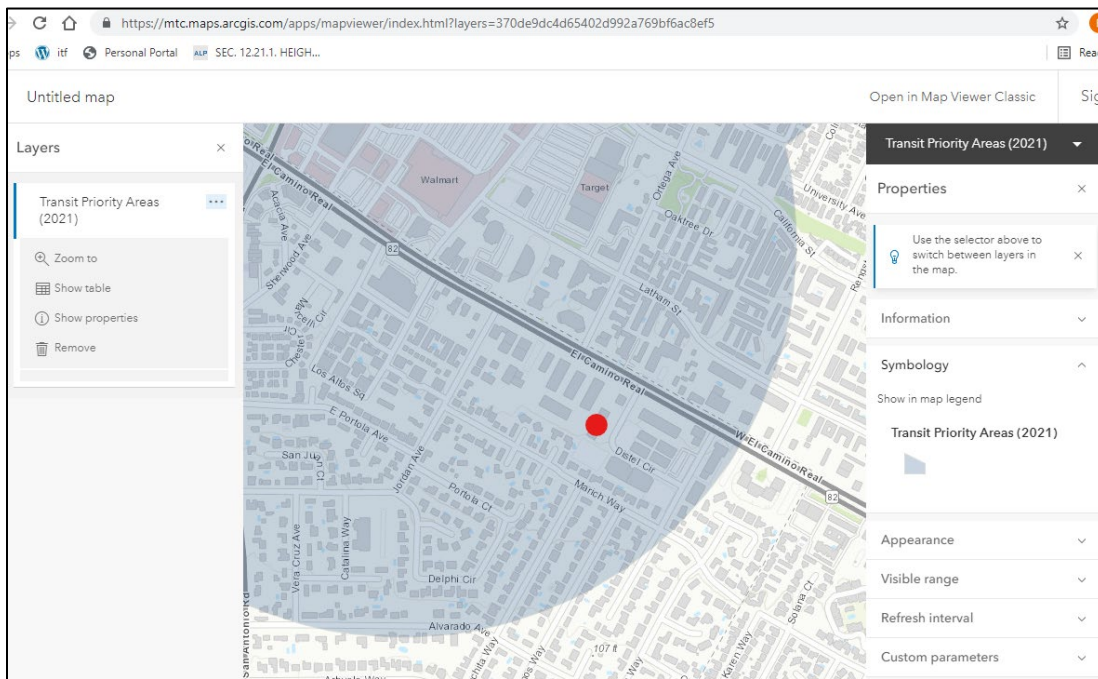
II. THE PROJECT SITE IS WITHIN ONE-HALF MILE OF A MAJOR TRANSIT STOP

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 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.



A. 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.

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.

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,

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. 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
7:01 AM	522			7:00 AM	522		
7:07 AM	22	4:02 PM	40	7:05 AM	22	4:04 PM	22
7:14 AM	522	4:03 PM	40	7:17 AM	522	4:07 PM	522
7:10 AM	22	4:13 PM	522	7:21 AM	22	4:19 PM	22
7:26 AM	40	4:14 PM	22	7:26 AM	40	4:23 PM	522
7:27 AM	522	4:28 PM	522	7:33 AM	522	4:26 PM	40
7:34 AM	22	4:29 PM	22	7:38 AM	22	4:34 PM	22
7:39 AM	522	4:34 PM	40	7:56 AM	40	4:38 PM	522
7:48 AM	22	4:43 PM	522	7:58 AM	22	4:48 PM	22
7:54 AM	522	4:45 PM	22	7:51 AM	522	4:53 PM	40
7:56 AM	40	4:56 PM	40	8:10 AM	522	4:53 PM	522
8:03 AM	22	4:57 PM	522	8:14 AM	22	5:03 PM	22
8:09 AM	522	5:00 PM	22	8:14 AM	40	5:09 PM	522
8:18 AM	22	5:12 PM	522	8:19 AM	40	5:18 PM	22
8:24 AM	522	5:16 PM	22	8:27 AM	522	5:24 PM	522
8:26 AM	40	5:23 PM	40	8:30 AM	22	5:25 PM	40
8:31 AM	22	5:28 PM	522	8:43 AM	522	5:33 PM	22
8:39 AM	522	5:32 PM	22	8:47 AM	22	5:39 PM	522
8:47 AM	22	5:49 PM	522	8:56 AM	40	5:48 PM	22
8:49 AM	40	5:48 PM	22	8:59 AM	522	5:54 PM	522
8:53 AM	522	5:57 PM	40			5:56 PM	40
8:59 AM	22						

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.

*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.

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

A. Density Bonus

The LAMC provisions contemplate up to a 50% Density Bonus. (Chapter 14.28, Article 2.) The Government Code also 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, and its affordability will be subject to a covenant, it will qualify for unlimited density. Therefore, the 165% Density Bonus is permitted by state law, and 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 law. 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 law incorporates state parking reductions, which permit 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 § 14.28.046.) 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 § 14.28.042.)

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).) The Project seeks four incentives or concessions:

- Reduced front yard setback from 25 feet to 10 feet because implementing the setback would decrease the building area and unit count.

- Reduced front side step-back on the 4th and 5th levels because implementing the step-back would decrease the building area and unit count.
- Reduced average per-unit open space requirement from 50 square feet to 25 square feet because the existing of a ten foot wide utility easement prevents cantilevered balconies along the Distel frontage. Modifying the units to accommodate additional open space would decrease the building area and unit count.
- Reduced EV ready parking stalls from 90 to 9 stalls because providing 90 EV ready stalls is cost prohibitive.

The City must approve the incentives or concessions, unless the City makes written findings, based upon substantial evidence, of any of the following:

“(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.”
(GOV § 65915(d)(1).)

No substantial evidence supports denial of the Project based on the above factors. Additional information is provided in the applicant’s memo to the City dated July 24, 2022.

EAH Housing may also request waivers, in addition to any incentives or concessions. (LAMC § 14.28.040(H).) The Project is seeking the following waiver:

- Modification of the requirement for an inner courtyard to be partially visible from the street and linked by a clear accessible path of travel because the courtyard has been raised to the second level to accommodate parking on the ground level.
- Allowance to use wood as a distinct material for the base of the building because the prescribed materials would preclude the Project.
- Allowance to locate the solid waste staging area in the public right-of-way because the trash collection company requires that the staging area be within a specified distance from the street. Moving the trash collection area on the site would result in lost amenity space.

The City must approve the waivers only “if the waiver or reduction would have a specific, adverse impact . . . upon health, safety, or the physical environment,” would have “an adverse impact” on an historic resource, or “would be contrary to state or federal law.” (GOV § 65915(e)(1).) Further, the City may not impose any development standard that would have the effect of physically precluding the construction of the Project. No substantial evidence supports denial of the Project based on the above factors. Additional information is provided in the applicant’s memo to the City dated July 24, 2022.