

MEMORANDUM

TO: TOWN OF TRUCKEE PLANNING DEPARTMENT
FROM: ANDREW M. SKANCHY
DATE: JANUARY 24, 2025
RE: SOARING RANCH PHASE 2 DENSITY BONUS CONCESSIONS

JMA submits this memorandum to provide reasonable documentation to support three Density Bonus Law concessions for the Soaring Ranch Phase 2 Project Affordable Housing Agreement. JMA requests that the Town include this Memorandum as an attachment to the Staff Report for the Planning Commission hearing on the Soaring Ranch Phase 2 Project.

Density Bonus Law Incentive or Concession Reasonable Documentation

A. Reasonable Documentation Standard

Prior versions of the Density Bonus Law required an applicant to prove that an incentive or concession would result in identifiable cost reductions. However, in 2016, AB 2501 (Bloom, Chapter 758, Statutes of 2016) reversed that burden by establishing a presumption that incentive and concessions inherently provide cost reductions, and that by providing cost reductions, they contribute to the development of affordable housing. Consistent with this presumption, a jurisdiction may not require a developer to prepare any additional reports or studies to satisfy the “reasonable documentation” standard under subdivision (j) of the law. (Gov. Code, § 65915, subds. (a)(2), (j), (k); see also Sen. Rules Com., Analysis of Assem. Bill No. 2501 (2015-2016 Reg. Sess., as amended August 1, 2016, p. 6).) Thus, to deny a requested concession or incentive, a municipality now has the burden of proof to demonstrate based on substantial evidence that the concession or incentive would not generate cost savings or that another statutory reason for denial exists. Specifically, the only reasons for denial allowed pursuant to the Density Bonus Law are:

- 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).
- 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.

- The concession or incentive would be contrary to state or federal law.

(Gov. Code, § 65915, subd. (d)(1)(A)-(C).)

B. JMA's Reasonable Documentation

I. Concession 1: Multi-family architectural element requirement for balconies, porches, decks, and patios Concession

JMA has requested to use a Density Bonus Law concession to modify the requirements of Development Code section 18.25.090.B as applied to the Soaring Ranch Phase 2 Project. JMA proposes not to include balconies for the upper floors of Building E.

The concession must be granted for the following reasons:

- (1) The concession will result in identifiable and actual cost reductions to provide for rents to be set as needed to be affordable. To build outdoor balconies on the upper floor units would require different materials, labor costs, and engineering requirements for construction. Furthermore, the balconies would be subject to heightened California Building Code requirements as compared to the lower floor units. JMA estimates that, if required, additional material, labor and engineering costs associated with these upper floor balconies would significantly increase construction costs for the Project. Therefore, the concession will result in identifiable and actual cost reductions to assist the developer in offering the proposed low-income rents for the affordable homes included in the Project.
- (2) The concession will not result in a specific, adverse impact on (a) health and safety, or (b) a historic resource listed on the California Register of Historical Resources. For the purposes of the Density Bonus Law, a "specific, adverse impact" is "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." (Gov. Code, §§ 65915, subd. (d)(1)(B), 65589.5, subd. (d)(2).) The Town's multi-family architectural element requirement does not address "public health or safety" nor does any local or state objective health or safety standard require a project to provide balconies. To the contrary, balconies have been documented to pose hazards including the potential dangers associated with a resident climbing over the balcony or dropping items from the balcony. The Project provides ample public open space features including, but not limited to, a community patio and fire pit areas, walking paths, bike paths, lawns and play areas, and other common recreational amenities. As such, the Project includes both passive and active recreational opportunities consistent with the overall objective of the Development Code.

Therefore, the concession will not result in any specific, adverse impact upon public health and safety (as defined pursuant to the Density Bonus Law).

Furthermore, no historic resources listed in the California Register of Historical Resources are located on the Project site or in the immediate area. Even if there were, eliminating balconies from upper floor homes is not something that could result in a specific, adverse effect on a State-listed historical resource. Therefore, the concession will not result in any specific, adverse impact on any real property that is listed in the California Register of Historical Resources.

- (3) The concession is not contrary to state or federal law. No state or federal law mandates that a home includes a balcony. Therefore, the concession is not contrary to any state or federal law.

For the reasons discussed above, the findings necessary to deny this concession cannot be made. Therefore, JMA respectfully requests that Town staff support, and the Planning Commission approve, this requested Density Bonus Law concession.

II. Concession 2: Percentage of Residential Floor Area

JMA has requested to use a Density Bonus Law concession to eliminate the requirements of the Joerger Ranch Specific Plan (PC-3), General Development Standard CG-9 as applied to the Soaring Ranch Phase 2 Project. JMA proposes to have more than 50 percent of the mixed-use project's floor area be for residential uses.

The concession must be granted for the following reasons:

- (1) The concession will result in identifiable and actual cost reductions to provide for rents to be set as needed to be affordable. Constructing homes above commercial uses changes the type of construction needed and dramatically increases costs. Further, multi-story commercial uses are challenging to lease and not economical. Given the parameters of the land available on the Project site, consolidating all residential homes in a single, multi-story building and consolidating all commercial uses in a single-story building dramatically reduces construction costs. Further, reducing residential floor area to be of equal amount as the single-story retail would require a large reduction in residential units, making it more costly to build the limited number of residential units and more difficult to provide affordable housing. Therefore, the concession will result in identifiable and actual cost reductions to assist the developer in offering the proposed low-income rents for the affordable homes included in the Project.
- (2) The concession will not result in a specific, adverse impact on (a) health and safety, or (b) a historic resource listed on the California Register of Historical Resources. For the purposes of the Density Bonus Law, a "specific, adverse impact" is "a significant, quantifiable, direct,

and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (Gov. Code, §§ 65915, subd. (d)(1)(B), 65589.5, subd. (d)(2).) The Town’s commercial to residential ratio requirement does not address “public health or safety” nor does any local or state objective health or safety standard require a project to provide an equal ratio of commercial and residential space. Therefore, the concession will not result in any specific, adverse impact upon public health and safety (as defined pursuant to the Density Bonus Law).

Furthermore, no historic resources listed in the California Register of Historical Resources are located on the Phase 2 parcel or in the immediate area. Even if there were, the ratio of commercial to residential uses is not something that could result in a specific, adverse effect on a State-listed historical resource. Therefore, the concession will not result in any specific, adverse impact on any real property that is listed in the California Register of Historical Resources.

- (3) The concession is not contrary to state or federal law. No state or federal law mandates that a project’s floor area be equal parts commercial and residential. Therefore, the concession is not contrary to any state or federal law.

For the reasons discussed above, the findings necessary to deny this concession cannot be made. Therefore, JMA respectfully requests that Town staff support, and the Planning Commission approve, this requested Density Bonus Law concession.

III. Concession 3: Maximum FAR requirement

JMA has requested to use a Density Bonus Law concession to eliminate the maximum floor area ratio (FAR) requirements for the Project site. JMA proposes to exceed the maximum allowed floor area.

The concession must be granted for the following reasons:

- (1) The concession will result in identifiable and actual cost reductions to provide for rents to be set as needed to be affordable. Compliance with the existing FAR requirements for the Project site would require a significant reduction in the number of homes that can be built. This would make each individual unit more costly (because costs cannot be spread across more units) and more difficult to provide affordable housing. Therefore, the concession will result in identifiable and actual cost reductions to assist the developer in offering the proposed low-income rents for the affordable homes included in the Project.
- (2) The concession will not result in a specific, adverse impact on (a) health and safety, or (b) a historic resource listed on the California Register of Historical Resources. For the purposes of the Density Bonus Law, a “specific, adverse impact” is “a significant, quantifiable, direct,

and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (Gov. Code, §§ 65915, subd. (d)(1)(B), 65589.5, subd. (d)(2).) The Town’s FAR requirement does not address “public health or safety” nor does any local or state objective health or safety standard require a specific FAR. Therefore, the concession will not result in any specific, adverse impact upon public health and safety (as defined pursuant to the Density Bonus Law).

Furthermore, no historic resources listed in the California Register of Historical Resources are located on the Phase 2 parcel or in the immediate area. Even if there were, the FAR is not something that could result in a specific, adverse effect on a State-listed historical resource. Therefore, the concession will not result in any specific, adverse impact on any real property that is listed in the California Register of Historical Resources.

- (3) The concession is not contrary to state or federal law. No state or federal law mandates that a project’s FAR be a particular amount. Therefore, the concession is not contrary to any state or federal law.

For the reasons discussed above, the findings necessary to deny this concession cannot be made. Therefore, JMA respectfully requests that Town staff support, and the Planning Commission approve, this requested Density Bonus Law concession.

Please let us know if you have any questions regarding the analysis and evidence set forth in this memorandum.