



March 17, 2021

*[Sent via email]*

Jennifer Carman and Gina Paolini  
Development Services Department – Planning Division  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, California 95037

RE: SB 330 and REVISED STATE DENSITY BONUS LAW SUBMITTAL  
Proposed Affordable Housing Apartment Community  
NE Corner of Monterey Road and Madrone Parkway  
Santa Clara County APN 726-36-059

Dear Ms. Carmen and Ms. Paolini:

On behalf of JEMCOR (Applicant) for the proposed affordable housing apartment community at the Northeast corner of Monterey Road and Madrone Parkway (“Project”), we continue to request that this submittal be recognized and considered pursuant to SB 330 and State Density Bonus Law as a 100% deed-restricted affordable rental housing development, with requests refined as described in this letter.

### **SB 330**

As previously identified, as an eligible housing development project, the Applicant intends to seek SB 330 processing. This letter follows the submittal of the preliminary application on June 26, 2020 pursuant to Government Code Section 65941.1.1(a). It is further noted that preliminary application submittal establishes a form of “vesting” such that an application is deemed complete for the purposes of the Housing Accountability Act as of the date that the preliminary application was submitted. (Govt. Code §65589.5(h)(5))

This letter follows the full development application previously submitted on October 6, 2020 and revisions submitted on November 4, 2020 and January 20, 2021, pursuant to Government Code Section 65941.1(d). Now that the City has had an opportunity to identify incomplete items, we look forward to the determination within 30 days of whether the revised application package includes the information required by the incomplete list and the conclusion of the completeness process pursuant to SB 330. (Govt. § 65943(a),(b))

### **PROJECT SUMMARY**

#### **State Density Bonus Law – Election of Evaluation Criteria**

The Applicant requests that Staff evaluate any Project requests related to State Density Bonus Law (Govt Code 65915 and AB 1763) and as specifically subject to Government Code Section 65915(b)(1)(G) and (c)(1)(B)(ii) for 100% affordable rental housing projects with an allocation of federal low-income housing tax credits. The Project will be 100% affordable rental housing exclusive of the manager units.

## **100% Affordable Rental Housing**

The proposed project would include 249 total units, comprising 246 affordable units and 3 manager units. The Applicant anticipates the project financing will include an allocation of Low Income Housing Tax Credits from the California Tax Credit Allocation Committee (“TCAC”), and that the project will be subject to a 55-year regulatory agreement with TCAC, which will satisfy the requirements set forth in Government Code section 65915(c)(1)(A). The regulatory agreement shall include the household income eligibility restrictions identified in Government Code section 65915(b)(1)(G) and the rent restrictions set forth in Government Code section 65915(c)(1)(B)(ii).

The terms of the regulatory agreement will also address and satisfy the obligations under Chapter 14.04 of the Morgan Hill Municipal Code (“Inclusionary Requirement”). Specifically, any maximum rent restrictions placed on the project by the City pursuant to the Inclusionary Requirement will be satisfied within (not in addition to) the 20 percent of lower income unit rent restrictions described in Government Code section 65915(c)(1)(B)(ii)(I), with the remaining 80 percent of lower income rents restricted solely as described in Government Code section 65915(c)(1)(B)(ii)(II).

The statements above supersede any prior references to the project’s “Very Low Income” or “Low Income” units or rents. In addition, the Applicant makes no representation to the City as to the applicability of the project to any requirement the City may have regarding its regional housing needs requirements.

## **Primary Objectives**

The Applicant’s primary objective is to optimize the site’s ability to contribute quality new affordable housing stock to the City of Morgan Hill, the County of Santa Clara, and the State of California.

The Applicant has worked with its architect and civil engineer to ensure a total unit count sufficient to make a meaningful contribution to the ongoing need for affordable housing, while also working to ensure that the project remains financially feasible with no requirement for subsidy funds from public agencies, including the City of Morgan Hill. To the extent the site’s specific physical, land use, or statutory requirements would impair the project’s ability to meet its primary objective, we respectfully request that the City appreciate the balance the Applicant is trying to create to the benefit of all parties and to the community at large.

While working to be compliant wherever possible with objective standards established by the City’s Residential Development Design and Development Standards (December 2019), the Applicant has also relied on features of SB 330, California’s Density Bonus law (including AB 1763), and the Housing Accountability Act to inform and guide specific design and engineering solutions.

## **State Density Bonus Law Requests**

In the spirit of collaboration, the specific concession or waiver requests provided by State Density Bonus Law have been further revised from those included in prior submission letters dated October 6, 2020, November 4, 2020, and January 20, 2021. Throughout the process, several project modifications have been made to reduce the number of requests under the State Density Bonus Law; however, the Applicant reserves the right to make further requests in the future.

Allowable Density Calculation Before and After Utilization of the State Density Bonus

Given the site’s split General Plan land use designations, the maximum density allowed before any density bonus is applied can be calculated by combining separate calculations for each designation. In our estimation, the City’s General Plan Land Use Map (dated December 6, 2017) identifies approximately 70% of the site area as Residential Attached Low (6 – 16 Du/Ac) and approximately 30% of the site area as Mixed-Use Flex (7 – 24 Du/Ac). To the Applicant’s knowledge there is no more precise delineation of land use designation shares for the site.

Prior to the application of any State Density Bonus, then, the land use split above provides a base allowed total unit count of 139 units. Because the proposed project will be 100% deed-restricted affordable housing for lower income households, it is eligible by right to utilize an 80% density bonus (Govt. Code § 65915(f)(3)(D)(i)) (adopted pursuant to AB 1763)) above the base density. Utilizing the full allowance of this density bonus would yield a total unit count of 250 units (139 units x 180%). *Please see Appendix A to this letter for a detailed account of these calculations.*

Required Parking Ratio in Compliance with State Density Bonus

In accordance with current State Density Bonus requirements (Govt. Code § 65915(p)(l)), the proposed project will provide one parking space per one bedroom unit and two parking spaces per two or three bedroom unit (inclusive of ADA and guest parking). As proposed, the project meets this standard as shown in the table below.

**Parking:**

<u>Unit Type</u>	<u>Req'd Ratio</u>	<u>Req'd Parking</u>
1 Bedroom	1 sp/DU	70 spaces
2 Bedroom	2 sp/DU	232 spaces
3 Bedroom	2 sp/DU	126 spaces
<b>Total Required</b>		<b>±428 (1.7 spaces per unit)</b>

<u>Parking Type</u>	<u>Provided Parking</u>
Tandem Carport Spaces	260 spaces
Single Carport Spaces	5 spaces
Standard Open Spaces	14 spaces
Compact Open Spaces	98 spaces
ADA Open Spaces	8 spaces
EV-Ready Spaces	43 spaces
<b>Total Provided</b>	<b>±428 (1.7 spaces per unit)</b>

Despite not seeking the maximum allowable density per the State Density Bonus Law, the Applicant remains eligible to utilize the balance of tools the State Density Bonus Law provides to aid the production of new affordable housing.

**Anticipated Applicant Requests for Concessions or Design Standard Waivers**

Incentives or Concessions: Because the project will be 100% deed-restricted affordable housing, a total of 4 concessions or incentives may be requested by the Applicant (Govt. Code § 65915(d)(2)(D)) (adopted pursuant to AB 1763)). Incentives or concessions may include reductions in development or architectural design standards intended to reduce the cost of construction in to facilitate the development of affordable housing (Govt. Code § 65915(k)(1)).

The Applicant currently requests the following three concessions and reserves the right to alter its requested concessions if needed as the project is further refined following the City's official response to this application:

- *Parking Space Dimensions (RDDS § 15; Morgan Hill Municipal Code § 18.72.060.B.2 and §18.108.070.B.1.f):* The proposed project meets the City's requirement in all cases other than the use of a partial compact dimension within the enclosed garage spaces, where instead of each tandem garage space measuring 10' x 20', two tandem spaces are each proposed at 10' by 18'. As proposed, the project provides only the 428 parking spaces required, with no surplus parking area to convert to other uses, and with no other surplus land area sufficient to otherwise repurpose without significantly reducing or eliminating open space and amenity areas, creating conflicts with other elements of the Morgan Hill RDDS, or violating other zoning or fire code requirements. Specifically, the project architect estimates that at 50-60 vehicle parking spaces would need to be removed to increase tandem garage space depths from 36' to 40'. Deepening these garage space depths would expand the building footprints of every building by 4', which would then reduce adjacent drive aisle widths below those required by the Morgan Hill Fire Department. Rather than reduce drive aisle depths, the additional 4' of garage bay depth would instead need to come from a significant reduction in the depth of adjacent open vehicle parking spaces, which would effectively eliminate those parking spaces as they would also then fall short of their minimum required depth of standard or compact spaces as required by the Morgan Hill zoning code. The net result would equate to the loss of approximately 50 – 60 open vehicle parking spaces which, at a required 1.7 spaces/unit parking ratio, would equal a loss of approximately 30 - 35 units from the site's maximum allowable density (please see Attachment 2 to Applicant's Response dated March 17, 2021 to City Notice of Application Incompleteness dated February 19, 2021). While this item is appropriately categorized as a waiver, the Applicant is willing to allow the City to evaluate this item as a concession per Staff's request. Taken as a concession request, the additional cost burden that compliance with this item would create (while otherwise maintaining the existing unit mix in compliance with all other requirements of the Morgan Hill or California design standards or building codes) would be to construct subterranean vehicle parking spaces to replace the surface-level vehicle parking spaces lost to accommodate standard parking space dimensions. A conservative estimate to construct subterranean parking for this purpose would likely add \$50K - \$70K of additional cost per vehicle parking stall. Taken against the estimated 50 - 60 surface spaces required to meet standard parking space dimensions for both tandem spaces (see notes above), compliance with this item would therefore add several million dollars of cost that the project economics are unable to feasibly support.
- *Bicycle Parking and Storage (Morgan Hill RDDS § 17):* While the project does meet the City's quantitative requirement for short-term bicycle parking (56 total), it will not meet the City's requirement for covered bicycle parking or provide any long-term bicycle parking. The Applicant's consultants have estimated that the land area required to provide covered short-term bicycle parking per City standards would require twice the land area required for uncovered short-term bicycle parking, removing 8–12 vehicle parking spaces from the balance of the project, while providing long-term bicycle parking spaces per City standards would further reduce vehicle parking by an additional 5 spaces. Taken separately or together, these changes would require either a substantial reduction in surface parking spaces from the greater project, physically precluding and thereby reducing the quantity of affordable housing units that can be built due to required parking ratios (please see Attachment 1 to Applicant's Response dated March 17, 2021 to City Notice of Application Incompleteness dated February 19, 2021). While this item is appropriately categorized as a waiver, the Applicant is willing

to allow the City to evaluate this item as a concession per Staff's request. Taken as a concession request, the additional cost burden that compliance with this item would create (while otherwise maintaining the existing unit mix in compliance with all other requirements of the Morgan Hill or California design standards or building codes) would be to construct subterranean vehicle parking spaces to replace the surface-level vehicle parking spaces lost to provide long-term bicycle storage lockers. A conservative estimate to construct subterranean parking for this purpose would likely add \$50K - \$70K of additional cost per vehicle parking stall. Taken against the estimated 8 – 12 surface spaces required to meet the long-term bicycle requirement (see notes above), compliance with this item would therefore add several hundred thousand dollars of cost that the project economics are unable to feasibly support.

- *Pavement Design (Morgan Hill RDDS § 38)*: We understand there is a new requirement that 10% of the paved surface area are composed of decorative paving material. The project provides decorative paving materials for a total of 2% of its paved areas. Given the size of the site, increasing what has been provided by 5x would add significant and unnecessary additional cost burden to the property that affordable housing economics are not designed to support. As we understand that the 10% paving requirement has recently been adopted, the proposed project, with the requested concession, will not differ from recently completed communities in the city. The cost difference between pavement and a decorative concrete or paver is 4-5x higher.

Waivers or Reductions of Development Standards: Separate from requests for incentives/concessions, the State Density Bonus Law allows a qualifying Applicant to request a waiver or reduction of development standards. Government Code Section 65915(e) provides that no city shall “apply any development standard that will have the effect of physically precluding the construction of a development meeting the [affordable housing] criteria .... at the densities or with the concessions or incentives permitted by [the SDBL].”

For ease of reference, the State Density Bonus Law reads as follows relative to reductions or waivers from development standards:

*“Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, policy, resolution, or regulation.”* (Govt. Code 65915(o)(1))

*“A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the Applicant is entitled.”* (Govt. Code 65915(e)(2))

The Applicant requests the following reductions or waivers of development standards and reserves the right to request additional reductions or waivers if needed as the project is further refined:

- *Building Height (Morgan Hill Zoning Code Table 18.22-2)*: In its letter dated December 18, 2020, the City requested an explanation as to how the maximum building height of the project (38') complies within a zoning district with a 35' height limit. After accounting for required drive aisle widths, pedestrian access paths, open space and amenity requirements, and the California Fire Code, the site lacks any meaningful surplus land area to accommodate mechanical equipment on the ground without also reducing the project density or, further, without violating Morgan Hill RDDS § 34, which requires that all mechanical equipment

(specifically, “all roof mounted equipment”) be screened in a manner that “so as not to be visible from the public right-of-way, common areas, or contained within an enclosed structure”. As elsewhere in the project planning, the project architect has sought the most appropriate balance of RDDS requirements and optimal density wherever possible. To specifically ensure compliance with Morgan Hill RDDS § 34, a 4:2 roof pitch has been designed such that all roof mounted equipment (to include HVAC condenser dimensions consistent with this product type) should not be visible from a public right-of-way while also accounting for the 30’ maximum roof access height required by the California Fire Code (please see Figure 1 below). However, the architect also notes that the ultimate roof height of any given residential building may be closer to 35’ than 38’ given conditions that may be clarified during the permitting or construction stages of the project development. The Applicant’s request for a 3’ waiver allowance in this regard is intended to allow a reasonable amount of variance from the 35’ standard where necessary to accommodate the balance of objectives outlined herein.

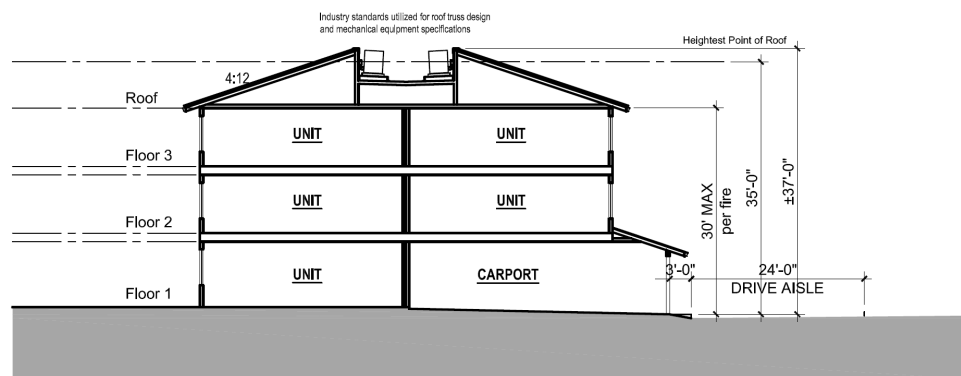


Figure 1

Further, the Applicant notes that Building 12 and Building 13 were voluntarily and deliberately designed as two-story structures to soften the transition between the project and the existing single-family homes east and north of the property on Taylor Avenue. While not a requirement of the RDDS or State Density Bonus Law, the Applicant feels this was a common-sense approach to balancing optimal density, project viability, and the RDDS while also trying to be thoughtful about the project’s single-family neighbors.

- FAR Requirement within the MU-F Portion of the Site (Morgan Hill Zoning Code Table 18.22-2):* As you know, the project site has two zoning designations. The MU-F zoning carries a 0.5 Floor Area Ratio (FAR) limit. However, it is the Applicant’s understanding that the FAR standard applies to any nonresidential projects/components as separate “residential density” (24 du/ac) standards are provided for residential development (Table 18.22-2). Further, the definition of Floor Area Ratio includes references to “nonresidential” components. (Zoning Code 18.128.050). For the sake of information, if FAR were calculated for the portion of the site within the MU-F, it would be 0.8 FAR. This would conflict with the density allowed by the 24 du/ac standard. Any zoning requirement (FAR, Du/Ac, et cetera) that would otherwise reduce the maximum allowable density provided under the General Plan land use element (in this case, 24 Du/Ac before density bonus) should be disregarded as provided by Govt. Code § 65915(o)(2), which states that:

*"Maximum Allowable Density" means the density allowed under the zoning ordinance and*

*land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail."*

- *Front Setbacks Along Taylor Avenue (Morgan Hill Zoning Code Table 18.22-3):* Given a slight angle to the parcel boundary, the northeastern site boundary (the ‘front setback’ of the RAL 3,500 portion of the site) along Taylor Avenue requires a reduction in design standards against the RAL zoning requirement for a 20’ front setback. At its narrowest point, the front setback along Taylor Avenue will be approximately 15.7’. The Applicant requests a reduction in setback standards to maintain allowable density while also providing for adequate drive aisle widths and resident parking spaces behind Building 12. Accommodating a continuous 20’ setback at this point of the site would require a reduction in surface parking spaces from the greater project (physically precluding and thereby reducing the quantity of affordable housing units that can be built due to required parking ratios) or the construction of subterranean parking, which would add an insupportable cost burden to the project.

The Applicant has otherwise worked to be compliant with Morgan Hill’s Residential Development Design and Development Standards (December 2019) wherever possible. Based on our current understanding of the City’s standards, the Applicant believes the proposed project complies with all other objective requirements not otherwise addressed in this letter.

Please contact us with questions you may have. We look forward to moving this project ahead.

## APPENDIX A

### Calculation of Maximum Allowable Density Per the Morgan Hill General Plan Land Use Map (December 2017)

#### MONTEREY-MADRONE SITE (APN 726-36-059)

Total Site Acres	7.536
General Plan Land Use Designation	Residential Attached Low (6 - 16 Du/Ac), Mixed-Use Flex (24 Du/Ac)
Maximum DU Allowed After State Density Bonus	250
Maximum Density Allowed After State Density Bonus	33.12 Du/Ac

<b>RESIDENTIAL ATTACHED LOW PORTION</b>			
Share of Total Land Area Shaded as RAL on GP Land Use Map	70%		
Total Land Acres Designated RAL	5.28		
	<u>Du/Ac Allowed</u>	<b><i>Before 80% SDB<sup>1</sup></i></b>	<b><i>After 80% SDB<sup>1</sup></i></b>
DU Allowed Per General Plan	16	84	152
<b>Maximum DU Allowed - Residential Attached Low Portion</b>			<b>152</b>

<b>MIXED-USE FLEX PORTION</b>			
Share of Total Land Area Shaded as MU-F on GP Land Use Map	30%		
Total Land Acres Designated MU-F	2.26		
	<u>Du/Ac Allowed</u>	<b><i>Before 80% SDB<sup>1</sup></i></b>	<b><i>After 80% SDB<sup>1</sup></i></b>
DU Allowed Per General Plan	24	54	98
<b>Maximum DU Allowed - Mixed-Use Flex Portion</b>			<b>98</b>

<sup>1</sup> Because the proposed project will be 100% deed-restricted affordable housing for Very Low Income and Low Income households, it is eligible by right to utilize an 80% density bonus above the base density (Govt. Code § 65915(f)(3)(D)(i)) and AB 1763.