

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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November 17, 2021

Jennifer Carman
City of Morgan Hill
Development Services Director
17575 Peak Avenue
Morgan Hill, CA 95037

Dear Jennifer Carman:

RE: Morgan Hill State Density Bonus Law – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance on the application of State Density Bonus Law (SDBL) (Gov. Code, § 65915.) The California Department of Housing and Community Development (HCD) has reviewed and responded to the questions contained in your letter dated August 31, 2021. Prior to receiving your letter, HCD received a request for technical assistance from AMG & Associates, LLC (AMG) on August 20, 2021, which posed very similar questions. This letter is intended to answer questions and provide clarifications applicable to both letters.

Project Description

HCD understands that AMG proposes to develop 200 units of deed-restricted affordable housing on two parcels located at 17910 and 17920 Monterey Street in Morgan Hill. The approximately 1.7-acre site, consisting of two parcels, currently contains an auto repair shop. One hundred percent of the units of the development would be affordable. These would include 20 units for households earning up to 50 percent of the area median income (AMI), 140 units for households earning up to 80 percent of AMI, and 40 units for households earning up to 120 percent of AMI.

The project site has a general plan land-use designation of Mixed-Use Flex, allowing residential densities of 7-24 dwelling units per acre (du/ac). The site is zoned Mixed-Use Flex, which also allows residential densities from 7 du/ac through 24 du/ac. Since the project site is 1.7 acres with a maximum allowable residential density of 24 du/ac, the base density of the site is 41 units. Given that the proposed development would provide 200 units, which represents an approximately 500 percent density bonus, the development would only be possible if found eligible for the “unlimited” density bonus provided under Government Code section 65915, subdivision (f)(3)(D)(ii). Pursuant to this subdivision, no maximum controls on density may be imposed on a development for which one hundred percent of all units are for lower-income households (containing

up to 20 percent moderate-income units) and that is located within one-half mile of a major transit stop.

As described in the project description, 160 units (80 percent) would be for lower-income households and 40 units (20 percent) would be for moderate-income households. This would qualify the proposed development with respect to affordability. The main question then is whether the project is located within one-half mile of a major transit stop. (Gov. Code, § 65915, subs. (f)(3)(D)(ii), (o)(3); Pub. Resources Code, § 21155, subd. (b).) The City and applicant agree that the nearby Morgan Hill Caltrain station meets the definition of a major transit stop under this definition. The sole question presented here is whether the project site is within one-half mile of the Morgan Hill Caltrain station.

Interpretation of Subdivision (o)(2)

Recently enacted changes to Government Code section 65915, subdivision (o)(2), explain that “Located within one-half mile of a major transit stop” means that “*any* point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of *any* point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.” (Emphasis added.)

Despite the definition contained in state law, it is apparent that approaches vary in the real-world application of these newly adopted measurements. Therefore, HCD offers the following technical assistance in the interpretation of the point of measurement on “any point on a proposed development” and “any point on the property upon which a major transit stop is located”.

Liberal Interpretation. Subdivision (r) of Government Code section 65915 requires that the SDBL be interpreted liberally in favor of producing the maximum number of total housing units. HCD remains mindful of this interpretive directive whenever offering technical assistance on the SDBL.

Point of Measurement–Major Transit Stop. HCD interprets “any point on the property upon which a major transit stop is located” to mean any point on the parcel(s) that make up the property upon which a major transit stop is located. HCD believes that the Legislature intended this broad definition when it chose the very general term “any point on the property”. Had the Legislature specifically intended the boarding platform itself to be the point of measurement, as is suggested by the City, it could have done so. Because land is most commonly understood in terms of parcels, parcels represent a familiar way to establish the boundaries of a “property”. Cities also typically perform

measurements from the edges of parcels in other situations (e.g., public hearing notice mailing radius).

While the edges of a boarding platform should not serve as a point of measurement for the purposes of establishing eligibility under the SDBL, the boarding platform (and by extension, the parcel upon which it sits) is certainly a “point on the property.” Therefore, and based on information provided by the applicant, HCD interprets that a straight-line measurement should be taken from the westernmost point on Parcel Number 726-13-050. This point is coincident with the eastern edge of the East Main Avenue right-of-way.

HCD recognizes that the shape of parcels containing boarding platforms associated with major transit stops are often irregularly shaped and inconsistent in size. Irregular parcel shapes, such as long/narrow railroad rights-of-way, can distort the true proximity of the project site to the major transit stop to a certain extent. For example, the Cottle Light Rail Station in San Jose is located on an I-shaped parcel that extends northward from the boarding platform almost 0.2 miles. Measurements taken from the edges of inconsistently sized and irregularly shape of parcels would, as a matter of chance, advantage certain potential development sites and disadvantage others. However, such variation does not provide adequate justification to allow a local agency to apply a stricter standard than is provided by the statute.

Point of Measurement – Proposed Development. HCD interprets that the point of measurement on the site of a proposed development should be any portion of the parcel(s) containing the structures, parking areas, landscaping, etc., that make up the development. Given the infill nature of the proposed development (and lacking a site plan for the proposed development), HCD anticipates that all or nearly all of the site will meet this requirement. Therefore, an appropriate point of measurement would likely be on or near the parcel edge nearest to the Morgan Hill Caltrain Station.

Project Eligibility for Unlimited Density. Applying the definitions and methodology described in this letter, it appears that the proposed development lies approximately 2,050 feet from the property on which a major transit stop is located. Therefore, the proposed project appears to be located within one-half mile (2,640 feet) of the major transit stop.

Parking Exemption. In subdivision (p) of Government Code section 65915, the SDBL provides for a variety of parking reductions and exemptions. Subparagraph (3) provides that a development that consists solely of housing affordable to lower-income families located within one-half mile of a major transit stop is exempt from local requirements to provide on-site parking. Per the project description, the proposed development contains 20 percent moderate-income units. Moderate-income units (i.e., serving households earning 80-120 percent of AMI) do not serve lower-income families. Therefore, the proposed development does not appear to meet the

requirements of subparagraph (3) in subdivision (p) and is not eligible for that specific parking exemption. As noted in the City's letter dated August 21, 2021, the City recognizes that other reduced parking standards under subdivision (p) may apply and that the applicant may request incentives, concessions, or waivers related to further parking reductions. The ability of an applicant to pursue reductions in off-street parking requirements is described in subdivision (p)(6) of Government Code section 65915.

Conclusion

In conclusion, HCD interprets that the proposed development is located within one-half mile of a major transit stop and therefore qualifies for "unlimited" density under Government Code section 65915, subdivision (f)(3)(D)(ii). HCD interprets that the proposed development does not qualify for the parking exemption described in Government Code section 65915 subdivision (p)(3). HCD strongly supports the development of affordable housing in Morgan Hill generally and on this project site specifically. Morgan Hill has met its RHNA targets for all income levels except Very Low Income (VLI), where it has constructed only 29.3 percent (80 units) of its target of 273 units. The construction of additional VLI units should therefore be a top priority. HCD believes that the residents of the proposed development would benefit greatly from the walkable proximity to a Caltrain station and the other amenities of downtown Morgan Hill.

If you have questions or need additional information, please contact Brian Heaton at Brian.Heaton@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief