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December 23, 2024

VIA EMAIL

Nathan Tinclair
Associate Planner
City of Antioch
200 "H" Street
Antioch, CA 94531
Email: ntinclair@antiochca.gov

Re: Formal Development Application for Vineyard Crossings Project
(3001 Oakley Road, Antioch, California)
APN: 051-190-028 and 051-190-034
Application: PD2024-0002

Dear Mr. Tinclair:

On behalf of the Applicant, BrightSky Residential ("BrightSky"), enclosed with this letter is BrightSky's resubmittal of application materials for a Vesting Tentative Map and Final Development Application for development of a new residential subdivision consisting of 45 detached single-family homes, 43 attached single-family homes (i.e., duplex units), and 41 accessory dwelling units ("ADUs") (the "Project").

The Project qualifies as a "housing development project," as defined in the Housing Accountability Act ("HAA"; Gov. Code, § 65589.5(h)(2)), and also qualifies for the protections afforded under the Housing Crisis Act of 2019 ("SB 330") as well as the State Density Bonus Law ("DBL"; Gov. Code, § 65915 et seq.).

BrightSky previously submitted its SB 330 Preliminary Application and fee deposit on December 6, 2024 (See Gov. Code, § 65941.1(d)(1)). In compliance with the timeline provided under the Permit Streamlining Act ("PSA"), Government Code section 65941.1(d)(1), this formal development application is being submitted within 180 days of the Preliminary Application. It is also being submitted within the 90-day extension period approved by the City pursuant to Antioch Municipal Code § 9-5.3847.

As described in detail below, for purposes of the DBL, the Project contemplates 129 "total units," including the 41 ADUs, with 13 ADUs (i.e., 10% of the "total units")

deed-restricted for occupancy by low-income households. Nine duplex units on the East Parcel constitute the “bonus units” allowed by the DBL. All units in the Project will be developed, owned and maintained by BrightSky long-term, ensuring that all units will be available for rent in the housing market.

A. Project Site and Proposed Density

The Project is proposed on two parcels located on Oakley Road, just east of Phillips Lane in Antioch (APNs 051-190-028 (the “West Parcel”) and 051-190-034 (the “East Parcel”, and together with the West Parcel, the “Project Site”). The Project Site is presently undeveloped, and approximately 14.64 acres are developable. The Project Site is located in a Planned Development (P-D) zoning district and linked to a residential development application approved in 1991. In the operative City of Antioch General Plan, the West Parcel is designated Medium Low Density Residential, which allows six dwelling units per gross developable acre (du/ac) and the East Parcel is designated Medium Density Residential, which allows 10 du/ac. As of January 1, 2023, the DBL provides that the greater density between the General Plan and the Zoning Ordinance shall apply. Here, that is the General Plan. With the density bonus, the allowed density on the West Parcel is 7.2 units per acre and the allowed density on the East Parcel is 12 units per acre.

As designed, the “base project” conforms to the density permitted by the General Plan for each parcel, with 45 single-family homes proposed on the approximately 10.23-acre West Parcel (4.3 du/ac) and 43 duplex units on the approximately 4.35-acre East Parcel (9.9 du/ac). The “base project” also includes 41 accessory dwelling units (ADUs) on the West Parcel, which, as a matter of state and local law, do not count toward allowable density in a zoning district or general plan. (Cal. Gov. Code § 65852.2(a)(1)(C) and Municipal Code § 9-5.3805.) The remaining nine duplex units on the East Parcel are “bonus units” under the DBL, resulting in a final density of 11.95 units per acre on the East Parcel, within the 12 units per acre allowed with application of the 20% density bonus.

By providing deed restricted ADUs to low-income households, the Project qualifies for all of the protections of the DBL, including but not limited to the calculation of maximum allowable residential density, unlimited waivers and reductions in development standards, one concession or incentive, and parking reductions. (See Gov. Code § 65915.) Here, BrightSky requests waivers and/or reductions from the 1991 PD and other development standards (including, but not limited to setbacks, lot coverage, lot dimensions, open space, and other design criteria that may affect project density), to the extent such standards are “objective” as defined under the HAA. BrightSky reserves the right to provide a more detailed waiver request and select a concession or incentive as the Project is further refined during the planning process.

B. Project Modifications Since Prior Submittal

The Project has been slightly modified over the past several months, and BrightSky is pleased to share the revised version before you now. We believe this site plan offers the best land use for the Project Site.

As described in our letter to Kevin Scudero dated September 24, 2024, this resubmittal was contingent on resolution of several complicated factors, including: (1) application of the DBL to the Project; (2) new information from Pacific Gas & Electric (PG&E) regarding restrictions on the location of water quality basins under transmission wires; and (3) the City's detailed comments regarding drainage at the Project Site, which could only be addressed with resolution of the two aforementioned factors. These issues are now resolved, as explained below.

As you know, clarifying application of the DBL to the Project was crucial to ascertaining the final site plan and unit count. We trust that the City is now satisfied that the Project qualifies for the protections of the DBL, as confirmed and explained by the California Department of Housing and Community Development (HCD) in their technical assistance letter to the City dated November 15, 2024, and enclosed herewith. HCD has enforcement authority over the DBL and other state housing laws. If HCD finds that a local government's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. (Gov. Code, § 65585(j).)

After engaging with PG&E, BrightSky relocated the water quality basin outside of the PG&E easement area and integrated into the project's fee land area to avoid approval from the California Public Utilities Commission (CPUC) that would otherwise be necessary under Section 851 of the California Public Utilities Code. PG&E explained that most projects do not receive approval for the use of water quality basins within PG&E easements. The newly designed water quality basin and bioretention basin will serve as a dual purpose for residents to enjoy as open space within the development. This area will include a pedestrian sidewalk along the perimeter, enhanced landscaping, and benches for residents to sit and enjoy. The City's drainage comments were resolved with the relocation of the water basin.

C. Summary of Applicable Standards under SB 330 and the HAA.

As previously summarized in BrightSky's Preliminary Application, the HAA and SB 330 both provide that "a housing development project shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project

or emergency shelter is consistent, compliant, or in conformity.” (Gov. Code, §§ 65589.5(f)(4); 65905.5(c)(1).) In addition, under the HAA, housing development projects must only comply with applicable and objective general plan, zoning, and subdivision standards and criteria. (Gov. Code, § 65589.5(j)(1).) “Objective” is defined as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code, § 65589.5(h)(8).) In addition, affected cities and counties “shall not enact a development policy, standard or condition that would” result in “[i]mposing or enforcing design standards on or after January 1, 2020, that are not objective design standards.” (Gov. Code, § 66300(b)(1)(C).) Housing developments that meet all applicable objective general plan and zoning standards may only be subject to a limited number of public hearings, including continuances and most appeal hearings, and jurisdictions may not apply new zoning regulations, development standards, or new fees if adopted after a Preliminary Application is filed.

The HAA also contains substantive restrictions on a city or county’s ability to deny housing development projects. Where a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria in effect at the time that the project’s application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency must make written findings supported by a preponderance of the evidence in the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means 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.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density. (Gov. Code, § 65589.5(j)(1)(A)-(B).)

The HAA thus establishes the only basis upon which a city or county may lawfully disapprove a housing development project or impose a condition that the project be developed at a lower density, as described above. Indeed, the HAA’s stringent limitations on a local agency’s discretion are sufficient to create a constitutionally-

protected property interest. In short, this means that to deny a housing development project, a local agency has the burden of either proving that the “proposed project in some manner fails to comply with ‘applicable, objective general plan and zoning standards and criteria’” or it must make the health and safety findings required by the HAA. Critically, a project must be deemed compliant “if there is substantial evidence that would allow a reasonable person to conclude that the housing development project . . . is consistent, compliant, or in conformity.” (Gov. Code, § 65589.5(f)(4).)

D. Conclusion

BrightSky is excited to work in cooperation with the City of Antioch in providing much needed affordable housing to the community, consistent with the applicable, objective provisions of the City’s land use regulations, pursuant to critical state laws that are designed to facilitate housing production.

If you have any questions regarding the Project or the enclosed materials, please contact Jessica Heidari at (949.299.0861) or by email at jheidari@tkcteam.com.

Very truly yours,

MILLER STARR REGALIA

Dana Kennedy

Dana Kennedy

DCK:kli

Attachment: 11.15.24 Department of Housing and Community Development Letter to Kevin Scudero, City of Antioch

cc: Charles McKeag
Sondra Harris
Brent Little
Jessica Heidari

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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November 15, 2024

Kevin Scudero, Community Development Director
City of Antioch
200 H Street
Antioch, CA 94531

Dear Kevin Scudero:

RE: City of Antioch State Density Bonus Law Implementation – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the application of the State Density Bonus Law (SDBL)¹ to the housing development project proposed at 3001 Oakley Road (Project). The SDBL allows housing developments with at least five residential units to obtain increases in allowable density, incentives/concessions, development standard waivers, and, for qualifying projects, reductions in parking requirements, by providing affordable housing. The purpose of this letter is to provide technical assistance to the City of Antioch (City) regarding the ability of the project to use accessory dwelling units (ADUs) to qualify for the benefits of the SDBL.

Background

HCD understands the Project proposes the construction of 150 units (consisting of 52 duplex units, 51 single-family houses, and 47 ADUs) on two contiguous lots with a combined area of approximately 14.58 acres. All units in the project would be offered for rent and managed together as a single community. The Project seeks to deed restrict 11 of the ADUs as low-income units to obtain a 22 percent density bonus under the SDBL. This density bonus will enable the construction of eight of the 52 duplex units.

The City initially held the position that under State ADU Law,² the City was permitted to stagger the review of the primary units and ADU components of the project, such that the Project would be unable to use the ADUs to obtain a density bonus for the primary units. Following a meeting on September 3, 2024, where HCD provided verbal technical assistance that State ADU Law was meant to allow for simultaneous discretionary primary unit review and ministerial ADU review, the City concluded the Project would

¹ Gov. Code, § 65915.

² Gov. Code, § 66317, subd. (a).

have to deed restrict primary units as affordable in order to obtain a density bonus for the primary units.

Analysis

The SDBL requires that local governments grant certain housing developments density bonuses if the developments provide specified percentages of their pre-density bonus “total units” as deed restricted affordable housing. Therefore, the relevant question is:

Can deed restricted ADUs serve to qualify a project for a density bonus pursuant to the SDBL, even if the bonus sought is for primary units?

The answer is “yes,” if all the ADUs in the project are counted towards the “total units” in the project. Although the SDBL makes no mention of ADUs in its text, it likewise does not expressly narrow the definition of unit to exclude ADUs. A project initially qualifies under the SDBL when the project’s deed restricted affordable units meet or exceed the percentages specified in the SDBL, not when the project’s deed restricted affordable *primary* units meet or exceed the specified percentages. ADUs are a type of housing unit that can be used to establish eligibility “*provided they are counted within the total units of the project.*”³

However, a project may not deed restrict units to qualify under SDBL if the units are not counted toward the total unit count for the purposes of SDBL. Furthermore, deed restricting ADUs to achieve SDBL eligibility, where they only exist in relation to primary units, makes them a “dependent project” that renders all ADUs in the project, deed restricted or not, part of the total unit count.⁴

Applied to the Project, the development has 142 “total units,”⁵ including 95 primary units and 47 ADUs. This means that to use ADUs as deed restricted units, at least 15 units (including ADUs only, if desired) would need to be deed restricted for low-income households to meet the 10-percent SDBL minimum. Alternatively, the Project could deed restrict only 10 *primary* units so that the 47 ADUs would not be counted toward the Project’s “total units.”

Qualifying for the SDBL with deed restricted ADUs would grant the project up to 29 bonus units, while qualifying with primary units would grant up to 19 bonus units; in

³ See HCD Letter of Technical Assistance to the City of Carlsbad, February 16, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/carlsbad-hau565-ta-02162024.pdf>, page 2. (Emphasis added.)

⁴ See HCD Letter of Technical Assistance to the City of El Cajon, February 16, 2023, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/el-cajon-hau484-ta-02162024.pdf>.

⁵ “Total units” means the number of units in the project excluding bonus units. See Gov. Code, § 65915, subd. (o)(8)(A).

either case, this is beyond the eight bonus units the Project seeks to obtain. What is not permitted, however, is for an applicant to include only a portion of the ADUs in the “total units” count – as proposed in the subject Project.

Note that using deed restricted ADUs to qualify for the SDBL is a choice for applicants that comes with responsibilities. In addition to considering whether the applicant should increase its number of total units by using deed restricted ADUs for eligibility, applicants must ensure the continued affordability of the ADUs for the duration of their deed restriction. The purpose of the SDBL is to ensure that deed restricted affordable units are built and continuously occupied by households at qualifying income levels. Enforcing this in ADUs can be challenging, especially if the development includes for-sale primary units or will be parceled off in the future. In the context of the Project, this is not an immediate issue because the applicant intends to own the Project as a single community and manage it collectively, but it may pose challenges in the future should that ownership and management structure change. In future projects where an applicant may be inclined to qualify under the SDBL by deed restricting ADUs, the City might consider imposing a recurring affordable unit monitoring fee as provided for in the SDBL.⁶ This would help to ensure that the affordable ADUs are occupied by households at qualifying income levels.

Conclusion

Deed restricted affordable ADUs can be used to meet the requirements of the SDBL, provided that the developer can ensure the affordability of the ADUs and that all ADUs are counted as “total units” for the purposes of calculating the number of deed restricted units required for SDBL eligibility.

HCD remains committed to supporting the City of Antioch in facilitating housing at all income levels and hopes the City finds this clarification helpful. If you have questions or need additional information, please contact David Ying at david.ying@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

⁶ Gov. Code, § 65915.3 as created by AB 2430 (Chapter 273, Statutes of 2024), effective January 1, 2025.