



**MILLER STARR
REGALIA**

1331 N. California Blvd.
Suite 600
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.msrlgal.com

Kenneth A. Stahl
Direct Dial: 949-688-2980
ken.stahl@msrlgal.com

October 6, 2026

VIA E-MAIL AND HAND DELIVERY

Sausalito City Council
420 Litho Street
Sausalito, CA 94965

Re: 605-613 Bridgeway Housing Development Project Application (Willy's LLC)
Letter in Support of Appeal of Planning Commission's Determinations
Regarding Consistency and CEQA Compliance

Dear Honorable Mayor and Members of the City Council:

This firm represents Willy's LLC (the "Applicant") in connection with the proposed housing development project at 605–613 Bridgeway, Sausalito (the "Project"). We write in support of the Applicant's appeal of the Planning Commission's determinations on April 2, 2025, and respectfully urge the City Council to uphold the appeal and direct staff to process – and ultimately approve – the Project in accordance with State housing laws. The City's actions to date, up to and including its recent refusal to grant our reasonable request for a continuance of the October 6 hearing in advance of the hearing, constitute an unlawful course of conduct calculated to harass and needlessly increase the costs of the Project in violation of the Housing Accountability Act, Gov. Code § 65589.5(h)(6)(E) ("HAA"), Density Bonus Law ("SDBL"), Housing Element law, and other state laws.

We'd like to emphasize that this letter was drafted in extreme haste due to the City's unreasonable refusal to grant a continuance prior to the hearing itself (discussed further below), as well as the City's dubious decision to publish staff's response to the challenged conduct notice under paragraph (h)(6)(E) just three days prior to the hearing, when the city has been in possession of the challenged conduct notice for *almost two years*. Accordingly, this letter is submitted without waiving our right to raise any additional arguments to support the appeal in the event litigation or other further proceedings are required to ensure the Project is properly processed in accordance with applicable laws.

In summary, the City made a commitment in 2023 to designate the Project site for 49 units with the use of a density bonus in its applicable state-mandated housing element, and further committed to rezone the site for that density as of right. The Applicant relied on that commitment to design the 47-unit project under consideration. Then, in processing the Project – which is *one of the very first projects* being

processed under its Sixth Cycle Housing Element – the City backed away completely from its commitments. The City refused to adopt the required rezoning and instead adopted an amended Housing Element that reclassified the Project site as “Inventory” rather than an “Opportunity Site” and purported to reduce the allowable density. The City now says that it can effectively deny the Project because – due to its own failure to timely adopt the required rezoning as mandated by law – the Project exceeds the permitted density for the site. The City also says, despite its previous commitments, that the Project cannot utilize the SDBL at all to increase the Project’s density, and that the Project is subject to CEQA. The City has done all this despite a warning from the State Department of Housing and Community Development that its conduct risked making the Project infeasible, contrary to the law.

State housing law, however, requires the City to meet its commitments. The HAA provides that the City *must* approve a project like this one on a housing element site because the housing development “is consistent with the density specified in the housing element.”¹ State housing law further provides that if the City fails to rezone housing element sites by the state-mandated deadline, the City *must* approve projects on housing element sites without any discretionary permits if the project complies with the applicable objective standards in a housing element program action.² The City committed in Program Action 4 of the Housing Element to rezone the Project site to permit 49 units by right with a density bonus. The City’s deadline to complete the required rezoning lapsed long ago, on January 30, 2026. Therefore, the City is required to approve the Project *by right* at the density of 49 homes.

Should the City continue with this unlawful course of conduct and find the Project inconsistent with City standards, or require the Project to undergo a full Environmental Impact Report (“EIR”), it will be in violation of subdivision (h)(6)(E) of the HAA, as well as the SDBL, housing element law, and other state laws. The consequences will be severe. We intend to bring an appropriate action in Court to reverse the City’s actions, and the City will be liable for paying all the Applicant’s attorney fees and potentially significant penalties as well. Under the HAA, the City faces the prospect of minimum fines of \$10,000 per housing unit – up to nearly \$500,000 in this case, in addition to all attorney fees. If a court finds that the City acted in bad faith, the fine is multiplied by a factor of five – over \$2 million in this case – and the Court can order the Project approved.³ We will also seek to expedite litigation under newly enacted state law to prevent the City from continuing to delay processing of this Project. Furthermore, it is likely that other housing organizations will bring suit to challenge the City’s action. They would all be entitled to recover their attorney fees as well. Finally, a wrongful action in this case will reverberate down the line because if a court finds that the City violated a housing law more than once in a planning cycle, it must increase the fines to \$50,000 per unit.⁴

¹ Gov. Code, § 65589.5(d)(5)(A).

² Gov. Code, § 65583(g).

³ Gov. Code, §§ 65589.5(k)(1)(A)(i)–(ii), (k)(1)(B), (l).

⁴ Gov. Code, § 65914.2(b)(2)(A)(ii).

The Applicant has demonstrated remarkable patience and commitment, producing nearly a dozen redesign renderings in an effort to work collaboratively with the City. The Applicant remains committed to that collaborative approach.

Below please find a more detailed discussion of the arguments in support of our appeal.

A. Request for a Continuance

As you are aware, we recently requested a continuance of the October 6 hearing date given that (1) the hearing date was hastily scheduled despite the lack of any apparent urgency, (2) the Applicant required additional time to prepare, and (3) our lead counsel, who was recently retained, is on a long-scheduled vacation out of the country. Regrettably, we were informed that the Council would make a decision regarding our prior request for a continuance of the October 6 hearing date at the October 6 hearing itself. This is highly discourteous conduct by the Council regarding a routine request, as it requires us to fully prepare for the October 6 hearing while awaiting the Council's decision. We note that this appeal has been in abeyance for over a year and a half while the parties were in mediation, so there was no need to rush this matter to a council hearing.

The staff report recommends that the continuance be denied because the process has already been delayed numerous times due to the Applicant obtaining new counsel. This is laughable. First, the staff report does not detail a single instance of the Applicant requesting a continuance or other delay. Second, the Applicant's prior counsel was forced to withdraw due to a conflict, so this can hardly be held against the Applicant. Third, the City has needlessly delayed processing the Project numerous times, such as when it improperly drew out the completeness process for a year, but now hastily scheduled this hearing with just two weeks' notice to prevent Applicant from being adequately prepared for the hearing. The Applicant requested only a short continuance so her newly retained counsel could adequately prepare and be present.

While we sincerely hope that the Council will approve our prior request for a continuance from the October 6 hearing date, we are nevertheless submitting this letter in the event the Council declines to grant the continuance. Due to the circumstances under which the Council has forced the Applicant to prepare for this hearing, it is possible that the Applicant will not be able to advance all of its arguments in support of the appeal in this letter and during the October 6 hearing. For that reason, in the event this matter goes to litigation, we reserve the right to make any additional arguments that we did not have sufficient time to make in preparation for the October 6 hearing. In addition, we will consider the Council's delayed consideration of this request as well as any failure to grant the continuance as additional evidence of the Council's bad faith in processing this Project, a matter addressed further below.

B. Background

The City of Sausalito adopted its Sixth Cycle Housing Element on January 30, 2023, which HCD certified as substantially compliant. The Housing Element committed, in Program Action 4, to rezone numerous sites in order to meet its assigned Regional Housing Needs Assessment (“RHNA”) (Program Action 4, HP-10). The specific rezonings to which the City committed were contained in Appendix D1. Appendix D1 designates the Project site – 605–613 Bridgeway – as a site suitable and available for very low-, low-, and moderate-income housing.⁵ The site was assigned a maximum achievable density of 49 units with a density bonus.⁶

Site Type	Opportunity Site Potential Rezone	Inventory Type	Notes	Potential Units (Density Bonus)	Potential Units (Realistic Capacity)	VL	L	M	AM
rtunity	Housing-49		Vacant	6	3	-	-	1	2
rtunity	Housing-49		Vacant	7	3	-	-	1	2
tory		Existing-SB9V	Vacant.		4	-	-	2	2
rtunity	MU-49/85%		Commercial building, including Real Napa. Owner interested in converting parking to multifamily.	49	20	11	6	1	2
			Single existing dwelling. 15% reduction in capacity due to steep slopes.						

In addition, Program Action 4 committed to rezoning sites in Appendix D-1, including the Project site, “by-right” for projects containing 20% or more affordable units.⁷

- The rezoning to address the City’s lower income RHNA shortfall shall meet the requirements of Government Code Section 65583.2(h,i), including the following requirements:
 - Permit owner-occupied and rental multi-family uses by-right, consistent with Government Code Section 65583.2(i) for projects with 20% or more units affordable to lower income households

“By right” means that the local government’s review may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” under CEQA.⁸ The City ultimately failed to rezone the site by the statutory deadline of January 30, 2026.

The Applicant submitted a Preliminary Application under SB 330 on August 15, 2023. Although the unit count of the Project has changed slightly as the Applicant has attempted to address numerous comments from City staff, the Project is a proposed mixed-use development consisting of approximately 47 residential units, 20% of which are affordable to lower-income households, along with ground-floor commercial

⁵ Housing Element, Appendix D1, Site 201.

⁶ *Ibid.*

⁷ Housing Element, Program Action 4, pg. HP-13.

⁸ Gov. Code, § 65583.2(i).

space. The City's findings in response to the challenged conduct notice concede that the Preliminary Application included all the information required by section 65941.1.⁹ Therefore, the Preliminary Application had the effect of freezing local regulations and fees in place for purposes of processing the Project as of the date of that submission, including all commitments in the 2023 Housing Element.¹⁰ Alternatively, if for any reason the Preliminary Application did not vest the applicant's rights to proceed under the 2023 Housing Element, those rights were vested by the city's subsequent determination that the formal application was complete.¹¹ Gov. Code § 65589.5(h)(5). The 2023 Housing Element was still in force when the formal application was deemed complete.

On September 14, 2023, the City Attorney confirmed in writing that "the base density applicable to the subject site is 49 units per acre under the Sausalito Housing Element" and agreed that "the proposal to dedicate 5 residential units to very low income allows for a 50% density bonus under the State density bonus law."¹²

On November 21, 2023, the City further confirmed that density could be stacked under SB 713 to achieve 45 units.¹³

On January 31, 2024, the Applicant submitted a formal application for the Project consistent with the City's written density determinations and within 180 days of the Preliminary Application as required under SB 330.¹⁴

After that milestone, Applicant began to face numerous delays and obstacles. City staff determined that the base density was 29 units per acre – not 49 units – and claimed that the Housing Element density did not establish the base density for purposes of a density bonus under the SDBL, necessitating a general plan and zoning amendment.

The Applicant went through numerous rounds of completeness review, during which the City consistently shifted its criteria and added new requirements not contained on the city's checklist, in violation of the Permit Streamlining Act. The City also improperly requested compliance with subjective criteria. The City's actions led to a year of delays.

The Applicant prepared multiple resubmittals in response to staff's comments, leading to a formal determination that the application was complete on October 17, 2024. Applicant received a letter from the City dated November 14, 2024 purporting to specify all of the Project's inconsistencies with City's standards, consistent with Government Code Section 65589.5(j)(2).

⁹ Pg. 1

¹⁰ Gov. Code, § 65589.5(o).

¹¹ Gov. Code § 65589.5(h)(5).

¹² City Attorney Density Letter, Sept. 14, 2023.

¹³ City email confirming SB 713 stacking, Nov. 21, 2023.

¹⁴ See Application, Jan. 31, 2024.

Given the many issues with the City's positions, Applicant filed an appeal of staff's determinations on December 27, 2024. The Applicant also filed a notice of challenged conduct under Gov. Code § 65589.5(h)(6)(E) on January 29, 2025.

The Planning Commission denied the appeal in part on April 2, 2025.

On May 27, 2025, the City amended its Housing Element to redesignate the Project site and allow for a realistic capacity of only 11 units.¹⁵

Mediation failed to resolve the dispute, at which point the City rushed to schedule a Special Meeting of the City Council to hear the appeal, giving Applicant little time to secure new counsel in light of prior counsel's conflict of interest and appropriately prepare for the hearing.

**C. The City Must Permit the Project at the Proposed Density of 49 Units
Because that is the Density the City Codified in its Housing Element**

At their core, the housing element laws are quite simple. In the City's Housing Element, the City is required to make certain commitments to permit housing sufficient to accommodate its RHNA, and then it must actually honor the commitments it makes. The Housing Element is like a contract with the state. In this case, the City's applicable 2023 Housing Element commits the City to permitting 49 homes on the Project site. The Applicant reasonably relied on that commitment in proposing the Project with 47 units. The City now refuses to honor the commitment it made – ominously, one of the very first commitments it is actually being asked to honor under the Sixth Cycle Housing Element.

Fortunately, state housing law does not permit the City to simply walk away from its commitments. The Project qualifies for the enhanced protections of subdivision (d) of the HAA, commonly known as the "Mini Builder's Remedy." This provision strictly limits the grounds on which the City may deny or condition a housing development project for very low-, low-, or moderate-income households.¹⁶ In general, the City cannot deny or impermissibly condition a project that is designated for affordable housing in the Housing Element and consistent with that density, even if it is inconsistent with both the zoning and the general plan land use designation.¹⁷ The purpose is to ensure that developers can rely on the density in a housing element when a jurisdiction has not yet updated its zoning or general plan to be consistent. In this way, the HAA requires local governments "to proceed by way of clear rules adopted in advance, rather than by ad hoc decisions to accept or reject proposed housing." *California Renters v. City of San Mateo* (2021) 68 Cal.App.5th 820, 851.

Here, as mentioned above, the Project's density is fully consistent with the density the City *itself chose* for the Project site in the applicable Housing element. The Project

¹⁵ See May 27, 2025 Housing Element Amendment.

¹⁶ Gov. Code, § 65589.5(d).

¹⁷ Gov. Code, § 65589.5(d)(5)(A).

therefore cannot be denied on the basis of general plan or zoning inconsistency, and cannot be considered inconsistent with any applicable density standard.

While the City has claimed a different density standard applies, the 49 unit standard was codified in the City's 2023 Housing Element, which was certified by HCD and effective at the time the Project's SB 330 application was submitted and deemed complete.¹⁸ The City is therefore mistaken when it says the following in its findings on the challenged conduct notice: "The Project, however, proposes twice the density specified in the City's Housing Element (98 units per acre, rather than 49 units per acre specified in the Housing Element) and therefore, is not consistent with the "density specified in the most recently updated and adopted housing element."¹⁹ As plainly illustrated in Appendix D-1 and the screenshot of the Housing Element shown above, the 2023 Housing Element designates the site for 49 units, so the project is consistent with the density in the applicable Housing Element.

City staff claims that it need not honor the 49 unit commitment because it was based on a mistake about how to apply the SDBL. But the City's post-hoc interpretation of the SDBL cannot change the density the City codified and committed to in the Housing Element, only a legislative act can change it, which the City is well aware of since it subsequently amended the Housing Element to reduce the density to thwart the Project. (In this case, of course, the amended Housing Element is inapplicable to the Project because the Project is vested under the 2023 Housing Element as noted above.) The "Mini Builder's Remedy" law is explicit and absolute – the City *must* permit the density identified for the site in the Housing Element. There is no carveout because the City thinks it made a mistake in interpreting the SDBL. Moreover, HCD certified the 2023 Housing Element with the 49 unit density proposed for the Project site, precluding the City from asserting that such density was a "mistake."

D. The City's Failure to Rezone by The State-Mandated Deadline Does Not Relieve It of Its Duty to Approve the Project

The City has an independent duty to permit the Project at the proposed density because it failed to rezone the Project site by the statutorily required deadline. Government Code section 65583(g) mandates that a jurisdiction that has failed to implement required rezonings must approve projects on housing element sites with no discretionary approvals using the standards in the housing element program actions.²⁰ Here, Program Action 4 commits the City to allowing 49 units on this site with a density bonus.

The City's interpretation of the law is that because it failed to do the required rezoning, it now does not have to grant a density bonus. In the response to the challenged

¹⁸ At the time of the preliminary application, the HAA required that 20% of the basis units be affordable. The HAA as amended now requires one of the following: (1) 4 units affordable to extremely low income households (7%), (2) 5 units affordable to very low income households (10%), or (3) 7 units affordable to lower income households (13%).

¹⁹ Pg. 7.

²⁰ Gov. Code, § 65583(g).

conduct notice, the City admits: “the site has not been rezoned to a density of 49 units per acre, nor has the City’s Land Use Element been modified to allow this density.”²¹ In essence, the City perversely argues that it should be *rewarded* for failing to undertake the rezoning that it committed to doing in the Housing Element. That is not the law. (Civ. Code, § 3517.)

In addition, as the City is aware, under the HAA, a project must be considered compliant with all objective standards if there is substantial evidence to permit any reasonable person to consider it compliant.²² Considering that the 2023 Housing Element itself says that the Project can achieve a density of 49 units, and staff repeatedly confirmed that interpretation prior to changing its mind, surely a reasonable person could reach the conclusion that 49 units are permitted on this site under the Housing Element. The contrary conclusion – that the 2023 Housing Element and staff were unreasonable in their recognition of the 49 unit density – is patently absurd and no court in the State of California would accept such a patently pretextual position.

E. The Project Qualifies for a Density Bonus Based on the Applicable 2023 Housing Element Density

We established above that the applicable density is set forth in the 2023 Housing Element. The City’s entire argument about the base density under the SDBL is therefore irrelevant because the City must approve the Project at the density it committed to in that Housing Element. Assuming for the sake of argument only that the base density under the SDBL is relevant here, the City is also wrong in its interpretation of what constitutes the base density.

The definition of “base density” under the SDBL reflects “the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan.”²³ The City’s strict interpretation of the language led to a determination that the base density is 29 units per acre based on the zoning ordinance and Land Use Element. The City also claimed that a density bonus cannot be applied on top of the Housing Element density if that is what applies. This interpretation ignores the plain language and should have focused on the words “greatest number of units allowed” which is that under the applicable Housing Element. It makes no sense to both say that the Project can utilize the 2023 Housing Element density of 49 units with a density bonus while also saying that the base density is calculated differently and is based on the 29 dwelling unit per acre standard in the zoning ordinance and Land Use Element. Both cannot be true at once.

In any event, SB 786 independently resolves the general plan and zoning inconsistencies in favor of the 2023 Housing Element density and establishes that the SDBL density bonus must be calculated on top of that density. SB 786, codified at Government Code section 65585.02, provides that when a “quantified development

²¹ Pg. 5.

²² Gov. Code, § 65589.5(f)(4).

²³ Gov. Code, § 65915(o)(6).

standard” such as density in one general plan element is inconsistent with a quantified development standard in another, the provisions of the *more recently adopted* general plan element supersede the inconsistent provisions of the previously adopted element.²⁴ Any attempt to argue that this means that the 2025 Housing Element supersedes the 2023 Housing Element completely disregards our client’s vested rights to proceed under the Housing Element in place at the time its application was deemed complete – that is, the 2023 Housing Element.

In this case, the City’s failure to implement Program Action 4 in the 2023 Housing Element created a horizontal and vertical inconsistency in its planning documents. Both the Land Use Element and the zoning ordinance limit the site density to 29 units per acre, but the 2023 Housing Element permits 49 units with a density bonus. Because the 2023 Housing Element is more recent than the Land Use Element, the 49-unit density *supersedes* the Land Use Element density. No general plan amendment or rezoning is needed.

We note that City staff claimed in the staff report that AB 1893 (addressed below) is inapplicable, in part, because “[t]here is no comparable provision stating that the ‘base density’ means Housing Element density when the zoning and Land Use Element have not yet been amended.” SB 786 does precisely that. This is another means to prevent the City from benefitting by knowingly failing to perform its legal obligation to update its zoning ordinance and Land Use Element to conform with the Housing Element.

The practical effect of SB 786 extends to the SDBL by confirming that a density bonus is permitted on top of the Housing Element density. Since the 2023 Housing Element density supersedes the inconsistent Land Use Element density, the controlling density standard is the one in the 2023 Housing Element. In other words, it does not matter that the Housing Element is not expressly named in the statutory definition of base density in the SDBL, since the Housing Element provides the greatest density allowed by any element of the General Plan. This result is compelled by the SDBL’s mandate that “This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.”²⁵ The City’s argument to the contrary is thus in derogation of California law.

Further, case law confirms that the City’s interpretation is inconsistent with the SDBL. In *W. Adams Heritage Ass’n v. City of Los Angeles* (2024) 326 Cal.Rptr.3d 844, the Court confirmed that the intent of the SDBL is to “set density based on the ‘greatest’ density permitted among competing land use documents” and that any doubt about the applicable density should be interpreted in favor of producing the maximum number of total units. Again, since the 2023 Housing Element density is greater than that established in the Land Use Element or zoning ordinance, the SDBL requires the base density be based on the 2023 Housing Element for purposes of the Project. The City’s attempt to confine *West Adams* to its facts is inapposite; the case clearly stands

²⁴ Gov. Code, § § 65585.02 (a) and (b).

²⁵ Gov. Code, § 65915(r).

for the proposition that the Applicant can rely on the greatest density permitted among competing land use documents, a proposition now codified in SB 786.

F. AB 1893 Bars the City from Imposing Its General Plan and Zoning Standards

Assembly Bill 1893 amended the HAA to provide that a housing development project proposed on a housing element site, that is consistent with the housing element density but inconsistent with the zoning ordinance and general plan land use designation, is entitled to additional protections.²⁶ The Project qualifies since it is (1) identified in the applicable Housing Element as suitable for affordable housing, (2) consistent with the density in the Housing Element, and (3) inconsistent with the current zoning ordinance and general plan land use designation because the City failed to rezone.

As a result, the City is prohibited from imposing subjective standards and “may *only* require the project to comply” with objective standards from a zone or general plan designation that would allow the Project’s density.²⁷ The City has no such zone or general plan designation, so the Applicant may identify any apply objective standards from a different general plan designation or zoning classification.²⁸ The Applicant identified such standards on March 18, 2025; therefore, the City is obligated to process the Project according to those standards.²⁹

The City is also prohibited from applying “any individual or combination of” objective standards that would “[r]ender the project infeasible” or “preclude a project . . . as modified by any density bonus, incentive, or concession, or waiver or reduction of development standards” from being constructed.³⁰ A density bonus is expressly allowed.

Further, the City is prohibited from requiring a general plan amendment, rezoning, or other legislative approval.³¹

In sum, the City is required to approve the Project and, in doing so, cannot impose any subjective standards, including compliance with the City’s historic preservation standards in Chapter 10.46 of the Sausalito Municipal Code.

Though the City contends that changes to the HAA effective in January 2025 are not applicable because the challenged conduct notice was sent prior to the new law taking effect, this is untrue. A challenged course of conduct, by its nature, has no definite end date. In this case, the City has continued, up to this very date, to engage in the

²⁶ Gov. Code, § 65589.5(f)(8).

²⁷ Gov. Code, § 65589.5(f)(6)(A) (emphasis added).

²⁸ *Ibid.*

²⁹ Exhibit K (Applicant’s identified objective standards, submitted Mar. 18, 2025).

³⁰ Gov. Code, § 65589.5(f)(6)(B).

³¹ Gov. Code, § 65589.5(f)(6)(D).

challenged course of conduct. Indeed, the *very fact* that the city waited nearly two years – until 3 days prior to the hearing – to respond to the challenged conduct notice is itself further evidence of the vexatious course of conduct the City is engaged in. The City's rush to hearing, ignoring Applicant's reasonable need to get new counsel up to speed and to respond to staff's arguments, further manifests an intent to perpetuate this illegal and discriminatory course of conduct.

What's more, even if AB 1893 does not apply, the previously existing HAA entirely prohibits cities from disapproving *any* project on a Housing Element site, regardless of whether the project is inconsistent with a City's objective standards.³²

G. The HAA and SDBL Prohibit the City From Imposing Subjective Standards

Separate from the protections afforded under AB 1893 or the Mini Builder's Remedy, subdivision (j) of the HAA prohibits the City from denying or imposing impermissible conditions on a project that complies with applicable objective standards unless the project will result in a "specific, adverse impact upon the public health or safety" that cannot be mitigated.³³

A standard is only "objective" if it involves "no personal or subjective judgment by a public official" and is "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."³⁴ Here, many of the standards identified by the City in the inconsistency letter are highly subjective. For example, HCD noted in its technical advisory to the City that the height standards are not objective.³⁵ The City's setback standards can be decreased at the discretion of the Planning Commission.³⁶ And all development standards applicable in the R-3 zone are subjective since they are expressly subject to the Planning Commission's discretion.³⁷

Because the R-3 development standards are all subject to modification by the Planning Commission, they are not "uniformly verifiable" or "knowable by both the development applicant or proponent and the public official."³⁸ Subdivision (j) of the HAA combined with the SDBL therefore prohibit the City from applying "objective" standards to deny or condition the Project.

³² Fmr. Gov. Code § 65589.5(d)(5).

³³ Gov. Code, § 65589.5(j)(1).

³⁴ Gov. Code, § 65589.5(h)(9).

³⁵ See HCD Technical Advisory to City of Sausalito.

³⁶ SMC § 10.40.070(c)(2).

³⁷ Table 10.22-2, Footnote 1.

³⁸ *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 840–42 (design guidelines subject to discretionary interpretation were not "objective" for purposes of the HAA because they "require personal interpretation or subjective judgment that may vary from one situation to the next").

In addition, the Project must be considered consistent with all objective standards under subdivision (j) because subdivision (j)(4) of the HAA provides that a project may not be considered inconsistent with a site's zoning where the project is consistent with the applicable objective standards in the General Plan but the zoning is inconsistent with the General Plan.³⁹ In this case, the permitted density under the zoning for the site is inconsistent with the 2023 Housing Element's density of 49 units (due to the City's failure to rezone by the statutorily mandated deadline). Furthermore, the standards in the Land Use Element of the General Plan are inapplicable because they are also inconsistent with the Housing Element and, per SB 786 described above, the standards in the more-recently enacted 2023 Housing Element trump the older Land Use Element. Therefore, the City must process this project under subdivision (j) of the HAA.

H. Ordinance 1022 Is Not Applicable

Until the Project came along, the City had consistently interpreted Ordinance 1022 as not applying to the CC district in which the Project is located. Resolution No. 3407, which implemented the ballot measure, states that it does not apply to the CC district. A contemporaneous memorandum written in 1985 clarified that the Initiative Petition, Notice of Intent to Circulate Petition, and Arguments in Favor of the Ballot Measure all indicated that it did not apply to the CC district. Subsequent actions and interpretations reflect that original intent. The City agreed that Ordinance 1022 did not apply to the Valhalla Residential Condominiums project in 2014. (**Exhibit A.**) Materials in connection with the previous General Plan Update confirm that Ordinance 1022 does not apply to the CC district. (**Exhibit B.**) And staff initially informed HCD that Ordinance 1022 did not apply here.

Even with all of that, the City has curiously changed its position 40 years later with minimal explanation in the midst of processing the Project. In any event, for a variety of reasons, Ordinance 1022 cannot be applied to this project. First, the uncertainty over whether Ordinance 1022 applies to the CC district means it's subjective and therefore not applicable. Second, under the reasonable person standard, the previous interpretations confirm that it is entirely reasonable to conclude that Ordinance 1022 does not apply to the CC district. Finally, if necessary, the Applicant can seek relief from the standard utilizing waivers under the SDBL. The point remains, however, that this is further evidence of how the City treated the Project differently in ways that made it exceedingly difficult to move forward. As set forth below, the City's shifting interpretation of Ordinance 1022 to thwart this project is evidence of its bad faith and improper purpose to effectively disapprove the project.

I. The City Cannot Place Undue Comparability Requirements on the Affordable Units

The SDBL does not impose any size or locational requirements on the affordable units and would preempt any conflicting provisions in local ordinances. HCD confirmed this

³⁹ Gov. Code, § 65589.5(j)(4).

understanding in cases involving other jurisdictions that attempted to impose comparability requirements. Accordingly, the comparability and locational requirements set forth in the City's density bonus regulations (Section 10.40.130) are preempted and not applicable. We note that the City's inclusionary requirements in Section 10.40.140 only require that the units be reasonably dispersed throughout the development, which is subjective.

The City grasps for authorities to support its argument by citing to Housing Element strategies, such as those requiring it to affirmatively further fair housing, which is hypocritical when the City failed to follow its own program to rezone sites to implement Program 4. The City also stretched for support in Health and Safety Code Section 17929(a)(2), which as the City acknowledges, provides that "A mixed-income multifamily structure shall not isolate the affordable housing units within that structure to a specific floor or an area on a specific floor." Here, the units are not isolated on a specific floor – they are reasonably dispersed on multiple floors. The practical effect of the City's position is that it imposes a subjective requirement to redesign the Project and would physically preclude construction as proposed which violates the SDBL.

J. The Project Is Now a Builder's Remedy Project Due to the City's Failure to Complete the Required Rezoning

The City's failure to rezone the Project by the January 30, 2026 deadline means the city's Housing Element is now out of compliance with state housing law and the Project is entitled to be processed as a Builder's Remedy project under Gov. Code §65589.5(d)(6) and former Gov. Code § 65589.5(d)(5). The City was warned several times by HCD that failing to rezone by this deadline could lead to decertification of the Housing Element (**Exhibit C**); and regardless of HCD, the failure to rezone automatically renders the Housing Element non-compliant. City staff itself acknowledged as much in an August 5, 2025 staff report, where it said "The City is required by State law to complete its entire rezoning of Program 4 by January 30, 2026; otherwise it will be out of compliance with Housing Element Law." (**Exhibit D.**)

Because the Project is a Builder's Remedy project, AB 1893 as well as the previously existing Builder's Remedy law prohibit the City from applying any subjective standards, and limit its ability to impose objective standards as stated above.

K. The City Improperly Commenced the Environmental Review Process

As explained above, the City committed in Program Action 4 of its Housing Element to rezone the Project site to allow "by-right" processing pursuant to Government Code sections 65583.2(h) and (i). "By right" means that the local government's review "may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a 'project' for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code." The Project is therefore subject solely to a ministerial approval process, and CEQA review is not required.

The City's failure to implement Program Action 4 does not absolve it of this obligation. Government Code section 65583(g) mandates that a jurisdiction that has failed to implement required rezonings "shall not disapprove a housing development project" for lower-income housing and "shall not require" discretionary approvals inconsistent with the Housing Element, or impose conditions that render the Project infeasible. Despite the City's deliberate inaction, the result is the same: CEQA does not apply, and the City is required to approve the Project through a ministerial process.

We observe that on October 6, the same date as the hearing on this Project, the Council is hearing a status update on another project at Harbor Drive. Notably, the staff report for that project states that because the Harbor Drive site was rezoned pursuant to the Housing Element, it requires by-right processing without further CEQA analysis. (**Exhibit E.**) In other words, the sole basis of the City's position here appears to be that it is not required to permit the Project by right at the density of 49 units because the City failed to rezone the Project site as the 2023 Housing Element requires. Again, housing element law forbids the City from evading its Housing Element commitments simply by refusing to rezone opportunity sites.

Because the Project must be processed ministerially, the question whether historic resources may or may not be affected is irrelevant as it relates to complying with CEQA. The City's extensive focus on the buildings' alleged historic significance is a red herring. Even if the City were correct that discretionary review is required, the Project qualifies for applicable CEQA exemptions, including the Statutory Exemption under Section 15183 and the Class 32 Infill Exemption. While the historic status of the buildings at 605–613 Bridgeway is disputed, there's evidence that the Project complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties, meaning it would not cause adverse impacts to historic resources.⁴⁰

L. The City's Actions To Date Demonstrate a Course of Conduct Intended to Harass and Raise Costs for the Applicant that Effectively Denies the Project, all in Bad Faith

The City has taken numerous actions throughout the processing of the Project that collectively evidence a pattern of harassment, delay, and intentionally increasing of project costs, which have effectively denied the project without a formal disapproval in violation of Gov. Code § 65589.5(h)(6)(E). All of these actions demonstrate the City's course of conduct and continued bad faith.

To enumerate some of the City's bad faith actions that constitute an effective denial:

- The City committed to permitting a project at the density of 49 units, and reiterated that commitment through its own staff, inducing the Applicant to rely to her detriment on that commitment in designing the Project. The City then refused to honor its commitment by failing to rezone as it committed to do;

⁴⁰ Cal. Code Regs., tit. 14, § 15064.5(b)(3).

- The City adopted an amended housing element that removed the site as an opportunity site, while this appeal was pending, and despite a warning from HCD on November 4, 2024, that the amended housing element could render the Applicant's project infeasible;
- The City required the Applicant to engage in a protracted process to determine the application's completeness, in which the City improperly included many subjective items in numerous successive incompleteness letters, even after a letter from HCD warning the City about the use of subjective standards, before the City ultimately acknowledged the application's completeness;
- The City committed to rezoning the site by-right for 49 units, but then changed its mind and said that the project must go through full CEQA review;
- The City sent the applicant an inconsistency letter just days after receiving HCD's warning about making the Project infeasible, in which the City claimed the Project must comply with numerous standards that are not objective, are subject to waiver or concession under the SDBL, or otherwise are not applicable;
- The City changed its interpretation of Ordinance 1022 apparently just in time for this Project after 40 years of consistently interpreting it not to apply to the CC zoning classification;
- The City waited a year and a half after the planning commission hearing to schedule this appeal hearing, and then scheduled it hastily with only two weeks' notice. It then refused to grant a routine continuance request so that the Applicant's newly-retained counsel (necessitated by prior counsel's conflict of interest) could be present; and
- The City posted its response to the challenged conduct notice just three days prior to the hearing, when the challenged conduct notice was submitted in January of 2025. This again gave the Applicant very short notice to respond.

The City's conduct throughout this process has been "frivolous, pretextual, and intended to cause unnecessary delay" which is precisely the type of behavior that is prohibited under the HAA.⁴¹

We emphasize that this entire pattern of vexatious, bad faith behavior is occurring in the processing of one of the *first projects* under the Sixth Cycle Housing Element, a project that would be one of the first multi-family housing projects in the City in many

⁴¹ Gov. Code, § 65589.5(l).

years. It is evident that the City is not honoring its Housing Element commitments in good faith.

The City's response to the challenged conduct notice implies that an improper course of conduct cannot be demonstrated without direct evidence of intent to harass, frustrate, or raise costs.⁴² The HAA requires no such heightened proof, and the timeline above shows ample circumstantial evidence of the City's improper purpose. Needless to say, paragraph (h)(6)(E) would be meaningless if direct evidence of intent were required, because cities would simply avoid revealing their improper motivations in every case.

Finally, the City's response to the challenged conduct notice argues that it need not even consider the CEQA-related issues raised in this appeal because of language in subparagraph (h)(6)(E)(vi) of the HAA stating that actions "in furtherance of complying with" CEQA "shall not constitute project disapproval under this subparagraph."⁴³ This is not true for two reasons. First, the City is not acting in furtherance of CEQA by subjecting an exempt project to CEQA review; it is acting *contrary* to CEQA. Second, as set forth in this section, it is the totality of the City's conduct collectively that constitutes the project disapproval, not the improper treatment of the CEQA exemption standing alone.

M. The City's Findings of Denial are Legally Inadequate

The City's findings of denial are inadequate because they simply repeat the flawed analysis described above. The City cannot deny the Project based on non-compliance with objective standards because the Project meets all applicable objective standards, and it cannot deny the Project based on exceeding the density in the 2023 Housing Element because the Project is consistent with the density of 49 units provided in the Housing Element. Therefore, the City cannot make the findings of denial required under either subdivision (d) or subdivision (j) of the HAA.

N. The City Faces Severe Consequences for Violating the HAA and other Housing Laws

Continued efforts to improperly impose inapplicable objective or subjective standards, or to otherwise effectively deny or impermissibly condition the Project constitute violations of the HAA. And there are significant consequences for such violations, especially in light of the City's continued bad faith.

Under the HAA, the City will be responsible for all the Applicant's reasonable attorney fees. Numerous pro-housing organizations have also expressed concern about Sausalito's conduct in this case and may bring suit as well. The HAA liberally permits housing organizations to sue in such cases and entitles them to recover attorney fees

⁴² Pg. 14.

⁴³ Pg. 3.

as well.⁴⁴ An HAA violation will also increase the City's exposure in future cases, because a court must take into account "any prior violations of . . . [the HAA]" when considering potential applicable fines.⁴⁵ The minimum fine is ten thousand dollars (\$10,000) per housing unit,⁴⁶ which is approximately \$500,000 in this case. A finding of bad faith multiplies that by a factor of five – potentially exposing the City to fines exceeding \$2 million.⁴⁷ Furthermore, if a court finds that the local government violated the same housing law previously during the planning period, the *minimum* fine is \$50,000 per unit.⁴⁸ Finally, upon a finding of bad faith, a court can order the project to be approved.

If the Project is denied, we intend to take full advantage of the newly-enacted procedures under SB 808 to expedite the litigation so that the City cannot continue delaying the processing of this project.

O. CONCLUSION

We look forward to the opportunity to present the Project's merits and address the City's obligations under State Housing Laws. For all of the reasons set forth in this letter, the City will be in violation of the HAA and other state laws unless it upholds the appeal.

Very truly yours,

MILLER STARR REGALIA



Kenneth A. Stahl

KAS:kli

cc: City Attorney, City of Sausalito
City Manager, City of Sausalito
Planning Director, City of Sausalito
Matthew Mandich, Principal Planner
Linda Fotsch, Managing Member, Willy's LLC

⁴⁴ Gov. Code, § 65589.5(k)(1)(A)(i)–(ii).

⁴⁵ Gov. Code, § 65589.5(k)(1)(B).

⁴⁶ *Ibid.*

⁴⁷ Gov. Code, § 65589.5(l).

⁴⁸ Gov. Code, § 65914.2(b)(2)(A)(ii).

EXHIBIT A



STAFF REPORT

SAUSALITO CITY COUNCIL

TITLE

Valhalla Residential Condominiums – 201 Bridgeway and 206 Second Street
(GPA-ZOA-PD-TM-DR-CC-EA 13-150)

RECOMMENDATION

- Review, amend (as appropriate), and approve the attached draft resolution approving a General Plan Amendment, Planned Development Permit, Floodplain Variance, and Encroachment Agreement to develop seven residential condominiums at 201 Bridgeway and to create a separate parcel for the existing single-family residence at 206 Second Street (**Attachment 15**);
- Review, introduce, and read by Title only "An Ordinance of the City Council of the City of Sausalito amending the City of Sausalito Zoning Map to modify the zoning of 201 Bridgeway (Valhalla Site) from Neighborhood Commercial (CN-1) Zoning District to Multi-Family Residential (R-3) Zoning District; and to add a Planned Development (-Pd) Overlay to 201 Bridgeway (Valhalla Site)" (**Attachment 16**), and
- Continue the second reading of the ordinance to the November 11, 2014 meeting.

A companion staff report for the October 21, 2014 City Council meeting addresses the project's environmental review.

OVERVIEW

The project would redevelop the former Valhalla site and building at 201 Bridgeway by renovating and re-configuring the Valhalla structure to accommodate seven residential condominium units. The project would also maintain the existing single-family residence located at 206 Second Street. The subdivision map for the project would create a separate parcel for the single-family residence and condominiums for the seven residential units plus common areas. The project requires approvals by the Planning Commission and City Council. On September 17, 2014, the Planning Commission approved the following entitlements.

- Design Review Permit
- Condominium Conversion Permit
- Tentative Subdivision Map

The Planning Commission also recommended City Council approval of the following entitlements. City Council action is required on these entitlements.

- General Plan Map Amendments
- Zoning Map Amendments
- Encroachment Agreement
- Planned Development Permit
- Floodplain Variance

This staff report and its attachments provides information on the project, reviews each of the entitlements, identifies the topics which received extensive discussion at the Planning Commission hearings, and provides recommendations for action by the City Council

PROJECT INFORMATION

Applicant/Owner	Alex Kashef, DDS, MD
Location/Size	201 Bridgeway and 206 Second Street (See Attachment 1 for map) (APNs 065-242-06 and -17) 23,100 sq. ft.
Existing General Plan	Neighborhood Commercial – 201 Bridgeway (Valhalla Site) High Density Residential – 206 Second Street (Single Family Residential Site)
Existing Zoning	Neighborhood Commercial (CN-1) District – 201 Bridgeway (Valhalla Site) Multiple-Family Residential (R-3) District – 206 Second Street (Single Family Residential Site)
Authority	General Plan Amendment (Government Code §65355) Zoning Ordinance Amendment (SMC §10.80.070.E) Planned Development Permit (SMC §10.28.060) Design Review Permit (SMC §10.54.050.A) Heightened Design Review (SMC §10.54.050.E) Special Setback (SMC §10.40.070 E) Fair Traffic Initiative (SMC §10.40.020) Condominium Conversion Permit (SMC Chapter 10.66) Tentative Map (SMC Chapter 9.30) Encroachment Agreement (SMC Chapter 10.56) Floodplain Variance (SMC §10.48.061)

BACKGROUND and PROJECT HISTORY

The Valhalla opened as a beer tavern and dance hall in 1893. The building was used as a prohibition-era bootlegging operation and later as a restaurant and banquet facility. From the early 1950s until 1982 the business was operated by Sally Stanford who changed the name to Valhalla. In 1960 Ms. Stanford demolished two residences that occupied the area of the current parking lot on Second Street. In 1978 the Valhalla Site's General Plan Land Use designation was changed from High Density Residential to Neighborhood Commercial and the Valhalla Site was rezoned from Multi-Family Residential (R-3) to Neighborhood Commercial (CN-1). Since 1984 the Valhalla has operated as a series of restaurants. The last of these restaurants, Gaylords, closed in 2008 and the Valhalla structure has remained vacant. In January 2012, Alex Kashef, DDS, MD purchased the property and in June 2012 submitted plans to develop the site as a boutique hotel. In July 2013, the plans for the hotel were withdrawn, and in November 2013 plans were submitted for seven residential condominiums.

The Historic Landmarks Board (HLB) discussed the project at three meetings between April 9, 2014 and May 14, 2014. The Planning Commission held seven hearings on the project entitlements between May 28, 2014 and September 17, 2014. HLB staff reports are available at <http://www.ci.sausalito.ca.us/index.aspx?page=258>. Planning Commission staff reports, minutes, video recordings and audio recordings are available at <http://www.ci.sausalito.ca.us/index.aspx?page=43>. The Planning Commission's resolution documenting its actions is provided as **Attachment 2**. A chronology of the public hearings and reviews is provided as **Attachment 3**.

PROJECT DESCRIPTION

The project site, located on the north side of Main Street between Second Street and the Bridgeway right-of-way (occupied by the Bridgeway boardwalk) has the following improvements:

- The Valhalla facility (addressed as 201 Bridgeway, and hereinafter referred to as the "Valhalla Site"), includes a banquet hall building, parking lot, and carport.
- A single-family residence (addressed as 206 Second Street and hereinafter referred to as the "Single Family Residence Site"), is located at the northwest corner of the project site.

The project would redevelop the former Valhalla Site by renovating and re-configuring the Valhalla structure to accommodate seven residential condominium units. The project would also maintain the existing residence on the Single Family Residence Site. In total, the project (as conditioned) would add approximately 600 square feet of new floor area to the existing 9,290 square feet of building space on the Valhalla Site, for a total of 9,900 square feet of floor area. Additionally, approximately 570 square feet of floor area would be removed from the existing 2,018 single-family residence at the Single Family Residence Site. For more detail on the project components, please refer to the project plans and project narrative (see **Attachments 4 and 5**). In short, the project would consist of the following physical improvements:

Valhalla Site (201 Bridgeway)

- **Demolition and Site Preparation:** The Valhalla Site will be graded for parking lot and building foundations.
- **The Valhalla Structure:** The project will rehabilitate the Valhalla structure to retain its traditional, historic architectural style. The project will retain the Valhalla's two story building form under a truncated hipped roof, which constitute the defining elements of the existing structure. Some modifications to the roof are proposed: new dormers at the north and south slopes, a monitor-like projection at the flat top, and an open roof deck to the Bay side.
- **Banquet Hall:** The existing Banquet Hall will be retained and renovated into one residential condominium unit.
- **New Building:** The project will construct a new two-story building located in place of the Valhalla's kitchen, carport, and service area. The building will provide two additional residential condominium units. Each unit will have a private garden. The two new residential structures will feature a traditional architectural style that complements the Valhalla structure and the general neighborhood character. The structure will feature a hipped roof similar to the Valhalla.
- **Parking:** Twelve parking spaces will be located in garage buildings serving six of the seven units. Two uncovered parking spaces will serve the remaining unit. Additionally, a single-car garage will be constructed to serve 207 Bridgeway.
- **Site Access:** Access to the seven condominiums would be through a central courtyard. Private access from the Valhalla to the beach would be provided through a gate on the north side of the interior courtyard and through a passageway under the former banquet hall building.
- **Landscaping:** Landscaping would be provided along the Second Street frontage, including Ficus vines and hedges to screen the garage wall, lavender, flax lily, and willow-like Mayten street trees. Landscaping along the Main Street frontage include Mayten trees, lavender, and four Coast Live Oak trees.

- **Bus Pullout:** The project will install a bus pullout along the Project's Second Street frontage, as a result of a condition of approval.
- **Main Street Boardwalk:** The project will reconstruct the Main Street boardwalk, adjacent to the south side of the Valhalla Site. The reconstruction of the Main Street boardwalk is contingent upon City Council approval of a variance from the elevation requirement of the Sausalito Municipal Code (SMC) Floodplain Management regulations (SMC 8.48) to allow for reconstruction of the boardwalk at a lower elevation than the promulgated current, effective base flood elevation at the time of Building Permit application. This is described in more detail below.
- **Main Street ADA Ramp:** The project proposes an Americans with Disabilities Act (ADA) compliant ramp providing access between Main Street and the Main Street boardwalk.
- **Bridgeway Boardwalk:** The project will improve the portion of the Bridgeway boardwalk fronting the Valhalla property by replacing the wood planks and ensuring the guardrails are in compliance with Title 24 of the California Building Code and ADA standards. These improvements are contingent upon City Council approval of a variance from the Floodplain Management regulations to allow for reconstruction of the boardwalk at a lower elevation than the promulgated current, effective base flood elevation at the time of Building Permit application. This is described in more detail below.
- **Public Beach Access:** The project proposes a switchback ramp at the east end of Main Street to provide California Building Code-compliant public access to Swede's Beach.

Single-Family Residence Site (206 Second Street)

- **Deck and Garage:** The existing enclosed rear porch would be demolished and a new roof deck would extend over the top of a new garage. New exterior work will match the existing exterior materials, finishes and colors.
- **Entry Gates:** Two new wrought iron entry gates would be installed at each end of the existing concrete wall fronting the property.
- **Parking:** Two parking spaces would be located in a new garage serving the existing single family residence, and four parking spaces would be located on the property to serve the property at 207 Bridgeway.

Summary of Proposed Project

	Square Footage	Bedrooms/Baths	Location	Parking Spaces	Parking Location
VALHALLA SITE – 201 BRIDGEWAY					
Unit 1	958	1 bed / 1 bath	Valhalla ground floor (west side)	2	Uncovered – Valhalla parking lot
Unit 2	1,581	2 bed / 2 bath	Valhalla ground floor (east side)	2	Garage - Valhalla
Unit 3	1,253	2 bed / 2 bath	Valhalla ground floor (east side)	2	Garage - Valhalla
Unit 4	1,600	2 bed / 2 bath	Banquet Hall	2	Garage - Valhalla
Unit 5	1,512	2 bed / 2 bath	New Building	2	Garage - Valhalla
Unit 6	1,007	2 bed / 2 bath	New Building	2	Garage - Valhalla
Unit 7	1,989	3 bed / 2 bath	Valhalla second story and attic	2	Garage – Valhalla
Proposed Total	9,900				
Existing	9,290				
Net New	610				

	Square Footage	Bedrooms/Baths	Location	Parking Spaces	Parking Location
SINGLE FAMILY RESIDENCE SITE – 206 SECOND STREET					
Proposed New	1,451	2 bed / 1 bath	206 Second Street	2	Garage - 206 Second Street
Existing	2,018				
Net New	(567)				
207 BRIDGEWAY				4	Uncovered in 206 Second Street parking lot
Summary – 201 Bridgeway /206 Second Street					
Total	11,351			20	
Existing	11,308				
Total Net New	43				

PROJECT ANALYSIS

The following sections describe the required project approvals and analyze the project's consistency with the General Plan, Zoning Ordinance, and permit requirements.

1.0 GENERAL PLAN

Land Use Map Amendment

The applicant requests a General Plan Amendment to change the Land Use Element map designation of the Valhalla Site from Neighborhood Commercial to High Density Residential. No change is requested for the High Density Residential map designation for the Single Family Residence Site. Attachment 6 shows the existing and proposed General Plan designations for the project site.

The table below summarizes key differences between the Neighborhood Commercial to High Density Residential land use designations. Permitted land uses in the Neighborhood Commercial designation are neighborhood-serving commercial uses and residential uses above ground floor commercial. Ground floor residential uses are not allowed in the Neighborhood Commercial designation. In the High Density Residential designation, residential uses such as single family homes, condominiums, and apartment buildings are allowed; commercial uses are not permitted.

Comparison of General Plan Land Use Designations

	Neighborhood Commercial (Existing)	High Density Residential (Proposed)
Permitted Land Use	Resident serving commercial uses; residential above ground floor	Mix of single family residences, condominiums and apartment buildings
Floor Area Ratio (FAR)	0.50	0.80

A key difference between the Neighborhood Commercial to High Density Residential designations is the maximum permitted Floor Area Ratio (FAR). The maximum permitted FAR is 0.50 in the Neighborhood Commercial designation and 0.80 in the High Density Residential designation.

Staff supports the proposed General Plan Amendment for the following reasons:

- **Consistency with Adjacent Uses.** All property on the east side of Second street is designated High Density Residential except for the Valhalla Site. The proposed amendment will bring the Valhalla Site into conformity with adjacent properties.
- **Original Designation.** The Valhalla Site was originally designated High Density Residential before it was changed to Neighborhood Commercial in 1978. The proposed amendment would return the Valhalla Site to its original designation.
- **Adaptive Reuse.** The Valhalla property has proven unviable as a restaurant use. The applicant has explored other non-residential uses for the property, including a boutique hotel, and has found them infeasible. The proposed amendment would allow an economically feasible reuse of the historic Valhalla property. This reuse is consistent with Housing Element Policy 2.3 which calls for the City to “support innovative strategies for the adaptive reuse of commercial structures to provide for a range of housing types and residential uses, for example, the residential use of upper floors of commercial buildings.”
- **Neighborhood Impacts.** As a restaurant and banquet facility, the Valhalla created a number of impacts on the neighborhood, including parking and traffic. Residential uses allowed by the High Density Residential designation and as proposed by the applicant would eliminate or reduce many of these impacts. This change would benefit the neighborhood and would be consistent with Land Use Element Policy LU-2.S to “Encourage rebuilding and reuse of commercial space in a manner which minimizes conflict with adjacent residential uses.”
- **Additional Housing.** Sausalito is required by State law to provide adequate sites to accommodate its fair share of the regional housing need. The proposed amendment would help Sausalito meet this requirement by increasing the supply of land designation for multi-family residential development. The amendment would be consistent with Housing Element Policy 2.2 which calls for the City to “provide adequate housing sites through appropriate land use and zoning designations, consistent with Sausalito’s regional housing growth needs.”

1.2 General Plan Consistency

In order to approve the project, the Planning Commission and City Council must determine the project is consistent with the General Plan. With the conditions described in this staff report, staff concludes the proposed project consistent with the General Plan. **Attachment 7** analyzes the proposed project’s consistency with key General Plan policies.

1.3 General Plan Conclusion

Staff supports approval of the General Plan Map Amendment. The project site has a history of commercially related uses and has not been viable for commercial uses, including restaurants or banquet halls. Additionally, non-residential uses, such as hotels would result in greater impacts than a residential use, such as traffic and noise. The amendment would make the project site’s land use designation consistent with residential designation of the properties to the north and south of the project site.

2.0 ZONING ORDINANCE

2.1 Zoning Map Amendments

The applicant has requested a Zoning Map Amendment of the Valhalla Site from Neighborhood Commercial (CN-1) Zoning District to Multi-Family Residential (R-3) Zoning District. No change is requested for the R-3 zoning designation for the Single Family Residence Site. **Attachment 8** shows the existing and proposed zoning for the project site.

The table below summarizes key differences between the CN-1 and the R-3 Districts. Permitted land use, density, and FAR in the CN-1 and R-3 Districts are the same as in their corresponding General Plan designations.

Comparison of Zoning Designations

	CN-1 Commercial District (Existing)	R-3 Residential District (Proposed)
Land Use	Restaurants and Bars, Retail and Services, Offices, Public and quasi-public uses, Upper Floor Residential	Single-family and multi-family residential, Public and quasi-public uses
Density	1 unit/1,500 sq. ft.	1 unit/1,500 sq. ft.
FAR	0.50	0.80
Building Coverage	70%	50%
Impervious Surface	N/A	75%
Height	32 ft.	32 ft.

The applicant has also requested a Zoning Map Amendment to add a Planned Development (Pd) Overlay to the Valhalla Site and Single Family Residence Site. The Pd Overlay would allow the project to deviate from the development standards that apply in the R-3 Zoning District. The project's deviations must be specified and approved with a Planned Development Permit. The requested deviations and staff's analysis are provided in Section 2.3 below.

SMC Section 10.80.070 describes the process for City action on a proposed Zoning Map amendment. This Section states the Zoning Ordinance may be amended whenever the City Council determines that public necessity, convenience, or welfare would be served. As such, the Planning Commission must address consistency of the proposed amendment with the General Plan. The Planning Commission may then recommend conditions of approval for the City Council to consider when it acts on the proposed amendment.

City Staff supports the proposed Zoning Map amendment for the same reasons as the General Plan Map amendment. One issue present with the Zoning Map amendment that does not apply to the General Plan Map amendment is the Fair Traffic Initiative, discussed below.

Fair Traffic Initiative

Background

The Fair Traffic Initiative (Ordinance No. 1022) was approved by the voters in 1985 (see **Attachment 9**). The purpose of the Initiative is to: (1) reduce the increase in automobile traffic generated by new development in the City's commercial and industrial zoning districts; and (2) preserve the maritime character of those areas by reducing permissible density in commercial and industrial areas. The Fair Traffic Initiative applies only to the CN (Commercial Neighborhood), CS (Commercial Shopping Center), IM (Industrial Marinship), CW (Commercial Waterfront), and W (Waterfront) Districts; it does not apply to the CC (Central Commercial) or any residential zoning districts. Attached is a memorandum dated July 7, 1985 from some of the residents who participated in drafting the Initiative. They indicate that was always the intent of the initiative to specifically exclude residential districts because "residential areas do not contribute significantly to the traffic problems in the Marinship and Central Waterfront Areas." See **Attachment 10**.

The Fair Traffic Initiative's intent is to limit density and floor area ratio (FAR) within areas affected by the Initiative and prohibit changes in zoning or use that would increase commercial usage or density (Section 10.40.020(B)(4)). Additionally, the Zoning Ordinance states that maximum FAR for the CN Zoning District may not be exceeded by variances, conditional use permits, planned unit developments or any other device (Section 10.40.020(B)(6)).

Applicability

The Valhalla Site is currently zoned CN-1 and the requested Zoning Map amendment would rezone the site from CN-1 to R-3. As shown in the Comparison of Zoning Designations table above, the maximum permitted FAR is 0.50 in the CN-1 District and 0.80 in the proposed R-3 District. An increase of 0.30 FAR would occur under normal circumstances with the rezone. Since the Fair Traffic Initiative applies to the CN Districts, and does not allow for the increase in FAR, the Zoning Map amendment would not be consistent with the FAR provisions of the Fair Traffic Initiative.

Compliance

In order to address the increase in FAR issue, staff has included a condition of approval for the Pd overlay zoning amendment and Planned Development Permit (discussed below in Section 2.3) stipulating that the Valhalla Site is limited to 0.50 FAR as long as the Fair Traffic Initiative provisions are in effect. Therefore, although the zoning district would change to allow for residential development, the maximum permitted FAR would remain the same as under its existing CN-1 zoning. Since this stipulation would be embedded into the Pd Overlay and Planned Development Permit, it would require action by the City Council to be changed.

As noted above, the Fair Traffic Initiative prohibits changes in zoning or use that would increase commercial usage or density. Since the project proposes a residential use, it would not increase commercial usage. Furthermore, the density in the CN-1 and the R-3 district is the same—a maximum of 1 dwelling unit per 1,500 square feet. Therefore, density would not be changed under the proposed project. As such, the only remaining issue pertaining to the Fair Traffic Initiative restrictions is that the increase in FAR that normally occurs from changing the CN-1 zoning designation to R-3; however, because the condition of approval in the Pd Overlay and Planned Development Permit would cap the FAR at a maximum of 0.50, there would be no increase in FAR under the proposed project. Therefore, the Zoning Map amendment would be consistent with the Fair Traffic Initiative.

In summary, the rezoning of the Valhalla Site from CN-1 to R-3 with a Pd Overlay and a stipulated limit of 0.50 FAR would maintain the site's current CN-1 density and FAR standards and would be consistent with all applicable provisions of the Fair Traffic Initiative.

Conclusion

Staff recommends approval of the Zoning Map Amendment for the same reasons as described above under the General Plan Map Amendment. Additionally, staff supports the Planned Development Overlay District (-Pd) based on the Planned Development Permit findings below and the condition of approval which requires the building plans to demonstrate compliance with a maximum FAR of 0.50 for the Valhalla site.

2.2 Development Standards

The Development Standards Analysis (see Attachment 11) compares the development standards of the R-3 Zoning District with the existing conditions and the proposed project. Since the project is not in compliance with some of the development standards, the project entitlements include a

Planned Development (Pd) Overlay and a Planned Development Permit which allow deviation from pertinent R-3 Residential standards. The Planned Development (Pd) Overlay and a Planned Development Permit are further discussed below.

Special Setback – Second Street

SMC Section 10.40.070, Setbacks and Yards, establishes minimum setback requirements for general development. Section 10.40.070(E), Special Setbacks, establishes special building setback lines along designated streets, pedestrian and other public ways to provide space for light, air, safety, circulation, and visual amenity.

Applicability

A 10-foot special building setback line is required on both sides of the following streets:

- Alexander Avenue;
- South Street from Alexander to Second Street;
- Second Street from South Street to Richardson Street; and
- Richardson Street from Second Street to Bridgeway.

Since the west side of the project is situated along Second Street, the project is subject to the 10-foot special building setback for new structures proposed along Second Street. Section 10.40.090, Permitted Projections into Required Setbacks, states that no structure shall be permitted within any required setback area, except the following:

- Underground utilities and the related above ground metering;
- Septic tanks;
- Fences and retaining walls that comply with applicable height requirements;
- Signs pursuant to Chapter 10.42 SMC (Sign and Awning Regulations); and
- As otherwise provided by SMC 10.40.080 (Exceptions to required setbacks) and this section.

Compliance

The wall of the proposed garages on the Valhalla Site along Second Street would be set back 11 feet from the edge of the Second Street right-of-way, and therefore would be in compliance with the Special Setback provisions. The roof eave of the proposed garages on the west side of the garages would be set back 10 feet from Second Street right-of-way, which would also be in compliance with the Special Setback. However, the proposed trash enclosure at the northwest corner of the Valhalla Site would extend into the Special Setback and, therefore, not in compliance. Therefore a deviation for the trash enclosure to be located within the Special Setback is required.

The Planning Commission considered this issue and supports allowing the trash enclosure to be located within the Special Setback. As a result, the encroachment of the trash enclosure into the Special Setback has been included in the deviations listed in the Planned Development Permit. If the City Council supports this configuration, no change to the draft Planned Development Permit is needed. If the City Council does not support this configuration, a condition of approval should be add to require the relocation of the trash enclosure outside of the Special Setback

2.3 Planned Development Permit

As noted in Section 2.1 Zoning Map Amendment, the project includes a Planned Development (-Pd) Overlay Zoning District for the Valhalla Site and Single Family Residence Site. The Pd Overlay allows for deviations to development standards required in the R-3 Zoning District. Approval of a Planned Development (-Pd) Overlay requires a Planned Development Permit which specifies the specific requirements and development standards applicable to the project.

SMC Section 10.28.060 describes the process for City review and approval of a Planned Development Permit. Subsection 10.28.060.E lists the findings that must be made by the City Council to approve a Planned Development Permit.

The table below lists the deviations requested by the applicant for the proposed project.

Requested Deviations from R-3 District Standards

	R-3 District Standard	Requested Deviation
Side Yard Setback – Valhalla Site	8' Min. (Valhalla structure)	4' (Valhalla dormer)
North Side	6'-1/2" Min. (Two-unit building)	3'-1/2" (Two-unit building)
	5' Min. (Garages)	4' (Garage wall)
		1' (Garage eave)
Side Yard Setback – SFR Site ¹		
North Side	6'-3" Min. ²	6'-3" (2-car garage and roof deck)
South Side	7'-2" Min. ²	7'-2" (1-car garage) and 3'-3" (roof deck)
Height	32 feet Max.	43 ft. (Valhalla dormer)
Voluntary Demolition of Existing Nonconforming Exterior Walls	51% Max.	68%
Parking Space Size	9" x 19'	8'-6" x 18'
Building Coverage – Valhalla Site	50% Max.	55.2%
Building Coverage – Single Family Residential Site	50% Max.	50.8%
Impervious Surface	75% Max.	91% (Valhalla Site) 95% (SFR Site ¹)
Floor Area Ratio Limitation	0.80 Max.	0.50 (Valhalla Site), per recorded deed
Trash Enclosure	10 foot Special Setback	Encroaches into Special Setback by approx. 6'-6"
Fence Heights – between Valhalla Site and 207 Bridgeway	6' Max.	9' at entry gate to 207 Bridgeway and 12' at base of rear garden entry

¹ SFR Site = Single Family Residential Site (206 Second Street)

² Standard 5 foot setback is increased per §10.40.070.C.1 since the building length is greater than 40 feet.

Compliance

Analysis of the requested deviations relative to the project's site and neighborhood conditions are listed below.

- **Existing Site Conditions.** The existing project site has legal nonconforming conditions including setbacks, building height, building coverage, and impervious surface area. In many instances, the project would reduce or remove the legal nonconformities, or at least not exacerbate the nonconformities. For example, while the existing project site exceeds the maximum impervious surface area allowed, the project would reduce the overall amount of impervious surface area, therefore, reduce stormwater runoff.
- **Historic Preservation and Adaptive Reuse.** The Planned Development Permit would allow for minor deviations from development standards for the purpose of allowing adaptive reuse of the Valhalla structure, which is considered to be eligible for the Local Historic

EXHIBIT B

FAIR TRAFFIC INITIATIVE (ORDINANCE NO. 1022), 1985

The Fair Traffic Initiative (Ordinance No. 1022) was approved by Sausalito voters in 1985 as an amendment to Title 10 (Zoning) of the City's Municipal Code. The purpose of the Ordinance was to limit automobile traffic generated by new development in commercial and industrial zones to maintain the maritime character of the community. The Ordinance applies only to the CN (Commercial Neighborhood), CS (Commercial Shopping Center), IM (Industrial Marinship), CW (Commercial Waterfront), and W (Waterfront) Districts; it does not apply to the CC (Central Commercial) or any residential zoning districts.¹

A focus for the Fair Traffic Initiative is the Marinship, which is governed by Ordinance 1022 (as codified within Title 10 of the Municipal Code) as well as the Marinship Specific Plan (discussed below). Traffic mitigation strategies contained in the Ordinance include more restrictive bulk, floor area, and open space requirements for parcels within the Marinship's Zoning Districts. In addition to limiting density and floor areas, the Fair Traffic Initiative prohibits zoning or land use changes—within zoning districts subject to the Initiative as defined in the zoning map of Sausalito effective July 15, 1980—that would increase commercial usage or density beyond the maximum floor area ratios identified for each applicable zoning district as outlined in Table 1 below. The Ordinance establishes a maximum floor area ratio that may not be exceeded by variances, conditional use permits, planned unit developments or any other mechanism (Section 10.40.0 20(B)(6)). Any changes to the provisions of the Fair Traffic Initiative and associated restrictions on land uses or development standards requires an affirmative referendum vote of Sausalito voters.

TABLE 1 - SUMMARY OF "TABLE NO. 2" IN THE SAUSALITO FAIR TRAFFIC INITIATIVE ORDINANCE

ZONE	MIN. PARCEL AREA/UNIT	REQUIRED YARDS WHEN ADJACENT WHEN ADJACENT TO "R" OR "H" DISTRICTS ^B		MAX. HEIGHT LIMIT	LOT COVERAGE LIMIT	MAX. FLOOR AREA RATIO
		REAR	e			
CC	1,500 SF	15'	10'		100%	1.30
CN	1,500 SF	15'	10'		70%	0.50
CR	1,500 SF	15'	10'		70%	1.00
CM	N/A	20'	A		50%	0.35
CS	N/A	20'	A	32'	50%	0.20
I	N/A	30'	A		50%	0.40 ^{C, D}
CW	N/A	20'	A		30%	0.30 ^C
W	N/A	15'	A		30%	0.30 ^C

A: ½ HEIGHT OF BUILDING BUT NOT LESS THAN 5 FEET

B: REQUIRED ONLY ALONG PARCEL LINES ABUTTING ON SUCH DISTRICTS

C: THE MAXIMUM NUMBER OF BERTHS FOR BOAT HARBORS IN THE WAND CW ZONING DISTRICTS IS 20 BERTHS/ACRE

D: COMMERCIAL USE LIMITED TO 0.15 MAXIMUM FLOOR AREA RATIO IN I ZONING DISTRICT

Considerations for the General Plan Update

The Ordinance adopting the City's Fair Traffic Initiative includes the stated purpose of maintaining a Level of Service (LOS) standard C in commercial and industrial zones. The 1995 General Plan

¹ Residential districts were excluded because "residential areas do not contribute significantly to the traffic problems in the Marinship and Central Waterfront Areas."

EXHIBIT C

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

651 Bannan Street, Ste. 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



December 16, 2025

Brandon Phipps, Director
Community Development Department
City of Sausalito
420 Litho Street
Sausalito, CA 94965

**RE: City of Sausalito 6th Cycle Housing Element Update Rezone Requirements –
Letter of Inquiry**

Dear Brandon Phipps:

The purpose of this letter is to inquire about the status of the City of Sausalito's (City) 6th Cycle Housing Element implementation program related to sites to accommodate the Regional Housing Needs Allocation (RHNA) pursuant to Government Code section 65585, subdivision (i). The California Department of Housing and Community Development (HCD) sent the City a letter on April 28, 2023, finding the City/County's housing element in substantial compliance with Housing Element Law.¹ This was based on, among other reasons, the City's commitment to complete Program 4 (Ensure Inventory of Sites Accommodates RHNA throughout the Planning Period) to rezone adequate sites to satisfy its lower-income RHNA shortfall.

Rezoning Requirements

Pursuant to Government Code section 65583, subdivision (c)(1)(A), all rezoning actions must be completed generally three years from the statutory deadline (January 31, 2023) if the local government adopted a sixth cycle housing element and HCD found the adopted element to be in substantial compliance within one year of the statutory deadline.²

¹ Gov. Code, § 65580 et seq.

² Please note that for the sixth and previous cycles, the jurisdiction's actual rezone deadline is either three years after either the date the housing element is adopted pursuant to Government Code section 65585, subdivision (f), or 90 days after receipt of comments from HCD pursuant to section 65585, subdivision (b), whichever is earlier. However, for the ease of implementation, HCD is using three years from the statutory deadlines as a general benchmark.

Consequences of Failure to Implement Program 4

Government Code section 65585, subdivision (i), grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or Housing Element Law. This includes failure to implement program actions included in the housing element. Failure to implement rezone actions in Program 4 by the statutory deadline means the City's housing element will no longer substantially comply with Housing Element Law, and HCD may revoke its finding of substantial compliance.

Various consequences may apply if the City does not have a housing element in compliance with Housing Element Law, including ineligibility or delay in receiving certain state funds, referral to the California Office of the Attorney General, court-imposed financial penalties, the loss of local land use authority to a court-appointed agent, and the application of the "builder's remedy."³

Conclusion

Housing elements are essential to developing a blueprint for growth and are a vital tool to address California's prolonged housing crisis. Accordingly, state law has established clear disincentives for local jurisdictions that fail to comply with Housing Element Law.

To ensure the City continues to meet the 6th cycle update requirements for a substantially compliant housing element, HCD requests that the City provide an update on the status and timeline of implementation of Program 4 by January 15, 2026 and submit any adopted rezones and accompanying resolutions to HCD for review.

HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (i), including issuance of a Corrective Action Letter and revocation of HCD's finding of housing element compliance.

HCD looks forward to receiving your written response to this inquiry. If you have any questions or would like to discuss the content of this letter, please contact Reid Miller, Housing Policy Specialist, at Reid.Miller@hcd.ca.gov.

Sincerely,



Melinda Coy
Housing Accountability Unit Chief

³ Gov. Code, §§ 65585, subds. (j), (l)(1), (i); 65589.5, subd. (d)(6) and (h)(11).

EXHIBIT D



STAFF REPORT

SAUSALITO CITY COUNCIL

MEETING DATE: August 5, 2025

AGENDA TITLE: Adopt a Resolution of the City Council of the City of Sausalito, Submitting to the Qualified Voters of the City of Sausalito, an Ordinance Amending the City Zoning Map to Authorize Development of Housing on Martin Luther King Jr. Property, to be Voted Upon at the Special Municipal Election to be Held on November 4, 2025

LEAD DEPARTMENT: Community Development

RECOMMENDED ACTION:

Staff recommend the City Council adopt a resolution of the City Council of the City of Sausalito, submitting to the qualified voters of the City of Sausalito, an ordinance amending the City zoning map to authorize development of housing on Martin Luther King Jr. Property, to be voted upon at the special municipal election to be held on November 4, 2025.

SUMMARY

On March 27, 2025, the City Council of the City of Sausalito adopted its Amended 2023-2031 Housing Element (available [here](#)), which has been determined to be substantially compliant with all requirements of State Housing Element Law by the Department of Housing and Community Development ("HCD"). State law mandates that the City have a general plan, which contains a housing element that plans for the development of housing to meet the Regional Housing Needs Allocation ("RHNA") as developed by HCD and assigned by the Association of Bay Area Governments ("ABAG").

The Amended Housing Element establishes goals, policies, and identifies future actions to address the existing and projected housing needs of Sausalito. As required by State law, the City analyzed the capacity of its existing zoning, determined that existing zoning would not meet the RHNA, and developed an inventory of sites that could be rezoned, the details of which are contained in Program 4 of the City's Amended Housing Element.

The City is required by State law to complete its entire program of rezoning in Program 4 by January 30, 2026; otherwise, it will be out of compliance with Housing Element Law. Potential consequences under State law for non-compliance include the loss of local control over land use permitting, exposure to the builder's remedy, increased litigation risk from developers, housing groups, and the State, and potential fines as set forth in Government Code 65585.

The City's rezoning program (Program 4) requires that the City rezone 31 sites. Certain sites specified in the Amended Housing Element's program of rezoning are subject to prior restrictions of Ordinance Nos. 1022 and 1128, which are prior initiatives which can only be modified with voter approval. Eighteen sites do not require voter approval to rezone, and would be rezoned by Ordinance No. 06-2025, which was introduced by the City Council on May 27, 2025. One site is impacted by Ordinance No. 1128: an initiative measure adopted by the City Council in lieu of placement on the ballot in 1997 which now restricts the City's ability to change uses on the Martin Luther King Jr. Property without voter approval. Twelve sites are impacted by Ordinance No. 1022, and will be addressed by a separate agenda item.

The approval of the attached draft resolution (**Attachment 1**) would place on the ballot a measure to approve the rezoning of a 2-acre portion of the City-owned Martin Luther King Jr. property, referred to as Site 84 in the City's Amended Housing Element.

Passage of both measures pertaining to Ordinance 1022 and 1128 by the voters is necessary in order for the City to complete the program of rezoning set forth in the City's Amended 2023-2031 Housing Element and to maintain the City's ongoing compliance with State Housing Element law.

BACKGROUND

Amended Housing Rezoning Program:

Implementation of Program 4 requires that the City complete rezoning and/or adopt overlay zones to allow development of residential units on identified opportunity sites at densities identified in the Amended Housing Element. This rezoning must be completed by the January 30, 2026, deadline imposed by State law.

Program 4 of the City's adopted Amended Housing Element involves the City completing rezoning and/or adopting overlay zones to allow densities at identified opportunity sites of 20-29 dwelling units/acre (H-29), 43-49 dwelling units/acre (H-49), 50-70 dwelling units/acre (H-70), or mixed-use zoning of 20-29 dwelling units/acre with minimum of 85% residential required (MU-29), 43-49 dwelling units/acre with minimum of 85% residential required (MU-49), and mixed-use zoning of 50-70 dwelling units/acre with minimum of 85% residential required (MU-70) for a total capacity of 923 units. Further standards for these overlay zoning districts were included in Ordinance No. 06-2025, as follows:

Development Requirement	H-29	MU-29	H-49	H-70	MU-49	MU-70
Affordability	20% very low or low	20% very low or low	20% very low or low	20% very low or low	20% very low or low	20% very low or low
Minimum Density	20 units/acre ¹	20 units/acre ¹	43 units/acre	50 units/acre	43 units/acre	50 units/acre

Development Requirement	H-29	MU-29	H-49	H-70	MU-49	MU-70
Maximum Density	29 units/acre	29 units/acre	49 units/acre	70 units/acre	49 units/acre	70 units/acre
Maximum FAR residential uses	None	None	None	None	None	None
Maximum nonresidential FAR	Non-residential uses not allowed	0.4	Non-residential uses not allowed	Non-residential uses not allowed	0.4	0.4
Front Setback	0	0	0	0	0	0
Street side setback	5	5	5	5	5	5
Interior side setback	5	5	5	5	5	5
Rear setback	15	15	15	15	15	15
Maximum building height	32 feet/3 stories	32 feet/3 stories	35 feet/3 stories	45 feet/4 stories	35 feet/3 stories	45 feet/4 stories
¹ Minimum density for the H-29 and MU-29 is only applied to sites identified to accommodate very low and/or low-income units in Appendix D1 of the Housing Element.						

To ensure that the City does not have to identify and rezone additional sites under the No Net Loss Law if developers propose lower density projects, and to ensure that the Amended Housing Element remains in compliance with state law during the entirety of the planning period, the Amended Housing Element includes a buffer of 199 units above the City's RHNA allocation of 724 units. The outline of the RHNA sites strategy is provided in Table 1 (below). For more details on Program 4, please review the City's adopted Amended Housing Element (available [here](#)).

Table 1. RHNA Requirements and Rezoning:

	Extremely / Very Low	Low	Moderate	Above Moderate	Total
RHNA	200	115	114	295	724
TOTAL CAPACITY FOLLOWING COMPLETION OF REZONING					
Total Capacity	245	157	190	331	923

As required by State law, the City has ensured that the sites identified for rezoning are not concentrated in any particular location and are spread throughout the City.

The following 18 sites do not require voter approval for rezoning, and are proposed for rezoning under Ordinance No. 06-2025:

Site Number	APN	Address	Housing Opportunity Overlay
73	064-322-01	636 Nevada St	H-49
86	052-322-02	330 Ebbitide Ave	H-49
87	052-322-01	Ebbitide Ave	H-49
75	064-341-04	530 Nevada St	H-70
	064-341-10	Tomales St	H-70
53	064-163-06	Bonita St	H-49
55	064-162-27	Napa St	H-49
56	064-151-16	412 Napa St	H-49
207	065-063-07	925 Bridgeway Blvd	H-29
3	065-292-34	Marion Ave	H-49
8	065-253-02	Main St/Crescent Ave	H-49
9	065-231-45	Lower Crescent Ave	H-49
10	065-233-22	18 West Ct	H-49
101	065-281-20	357 Sausalito Blvd	H-49
59	064-142-29	Easterby St	H-49
23	065-072-11	10 Reade Ln	H-29
24	065-071-13	10 Excelsior Ln	H-29
212	065-193-31	Sausalito Blvd	H-49
110	065-121-09	San Carlos Ave	H-70
	065-121-08	San Carlos Ave	H-70
	065-121-07	San Carlos Ave	H-70

Twelve additional sites, not impacted by Ordinance No. 1128, but impacted by Ordinance No. 1022, will be rezoned under a different ballot measure.

Ordinance 1128 Summary:

Ordinance No. 1128 regulates the sale, lease, or other disposition of specified City-owned properties, and requires that the City of Sausalito dedicate the Martin Luther King property for park and recreational purposes, except for certain commercial uses, and that the City of Sausalito may not change such uses, nor sell, lease or otherwise dispose of such property without voter approval. Ordinance 1128 was never approved by voters, but was adopted by the City Council in 1997 in lieu of being placed on the ballot for consideration by voters (**Attachment 2**).

Proposed Ballot Measure:

As further detailed in the draft resolution and ballot measure, the below opportunity site is impacted by Ordinance No. 1128 and proposed to be rezoned to implement the rezoning in Program 4 of the City's Amended 2023-2031 Housing Element and to maintain the City's ongoing compliance with State Housing Element Law. A map of the overlay zoning can also be accessed from the draft resolution (**Attachment A to ballot measure**).

Site Number	APN	Address	Housing Opportunity Overlay	Notes
84	063-170-03	100 Ebbtide / 610 Coloma	-H29	Portion of parcel not to exceed two acres; may be developed with residential uses; development shall be limited to a maximum of 50 housing units and subject to a 32 foot height limit.

Rezoning Implementation Timeline Summary:

Please see below for a summary of key dates and milestones that must be met in order to implement the Amended Housing Element's program of rezoning and to maintain the City's ongoing compliance with State Housing Element Law.

- **August 5, 2025:** City Council Public Hearing to adopt resolutions calling a special election to amend the City's zoning map for consistency with the Amended Housing Element (voter initiatives 1022 and 1128)
- **August 8, 2025:** Last day to place matters on the ballot for November 4, 2025, special election
- **November 4, 2025:** Special election date
- **December 2025:** Election results are certified by the City Council, City Council adopts Ordinance No. 06-2025 completing rezoning of sites not restricted by voter initiatives.
- **January 30, 2026:** State imposed deadline for City of Sausalito to complete its program of rezoning in the Amended Housing Element

The City is on an urgent timeline to place matters on the ballot for a November 4, 2025, special election, and to meet the State-imposed rezoning deadline of January 30, 2026. In order to meet this timeline, the City Council must provide a conclusive decision on these matters at the August 5, 2025, City Council public hearing.

Join the Conversation – We Want to Hear From You!:

Since 2024, Sausalito has been engaged in a transparent public process associated with the adoption and implementation of its Amended Housing Element. The City is continuing to meet the safety, traffic impact, and quality of life needs of our existing residents and businesses while complying with requirements under State Housing Element Law.

As we continue to implement the City's Housing Element to keep the City compliant with State Law, we want to hear from you. Please take a moment to join the conversation and provide your priorities for a strong, safe, and locally controlled Sausalito by filling-out our [Community Feedback Form](#). Additional information in connection with the City's Amended Housing Element can be found on the City's [Housing Element Rezoning Webpage](#) and on the City's [Amended Housing Element Webpage](#).

Community Outreach – Meeting with Tenants at the Martin Luther King Jr. Property:

To complement the City of Sausalito's transparent public process associated with the Amended Housing Element, on June 10, 2025, City Staff, including the City's City Manager, Assistant City Manager, and Vice Mayor, met with tenants of the MLK property at the Sausalito MLK Gym, to discuss potential development timelines and how the process of rezoning may impact the operation of their businesses, many of which currently operate within the 2-acre area designated for development in the City's Housing Element. The City continues to welcome public comment and collaborative discussion with members of the public and members of civic organizations on the implementation of Program 4 in the City's Housing Element.

FISCAL IMPACT

There are costs associated with the scheduling of Special Local Elections with the County of Marin. Staff understand the ultimate cost of the Special Local Election is based on a currently unknown dollar amount applied to the number of registered voters in the jurisdiction; moreover, if the City of Sausalito is the only jurisdiction on the ballot, it will incur the full cost of the election. Staff are currently working to clarify the actual cost of a Special Local Election and will keep the City Council updated on our progress.

STRATEGIC PLAN ALIGNMENT

Implementation of this action complies with and assists in achieving Sausalito's Strategic Plan Goal A4 to *prioritize other General Plan implementation action items*, such as the preparation and adoption of the 6th Cycle Housing Element.

STAFF RECOMMENDATION

Staff recommend the City Council adopt a resolution of the City Council of the City of Sausalito, submitting to the qualified voters of the City of Sausalito, an ordinance amending the City zoning map to authorize development of housing on Martin Luther King Jr. Property, to be voted upon at the special municipal election to be held on November 4, 2025.

ATTACHMENTS

Attachment 1: Draft Resolution

Attachment 2: Ordinance No. 1128

Attachment 3: MLK Site Visualizations & Views Analysis

Attachment 4: City of Sausalito Zoning Map (Includes HE Overlays)

PREPARED BY: Brandon Phipps, Director of Community and Economic Development

REVIEWED BY: Sergio Rudin, City Attorney

SUBMITTED BY: Chris Zapata, City Manager



STAFF REPORT

SAUSALITO CITY COUNCIL

MEETING DATE: August 5, 2025

AGENDA TITLE: Adopt a Resolution Calling a Special Election and Submitting to the Qualified Voters of the City of Sausalito an Ordinance Amending the City Zoning Map in City Commercial Districts to Adopt Housing Overlay Zoning Consistent with the Housing Element, to be Voted Upon at the Special Municipal Election to be Held on November 4, 2025

LEAD DEPARTMENT: Community Development

RECOMMENDED ACTION:

Staff recommend the City Council adopt a resolution calling a special Election and Submitting to the Qualified Voters of the City of Sausalito an Ordinance Amending the City Zoning Map in City Commercial Districts to Adopt Housing Overlay Zoning Consistent with the Housing Element to be Voted Upon at the Special Municipal Election to be Held on November 4, 2025.

SUMMARY

On March 27, 2025, the City Council of the City of Sausalito adopted its Amended 2023-2031 Housing Element (available [here](#)), which has been determined to be substantially compliant with all requirements of State Housing Element Law by the Department of Housing and Community Development ("HCD"). State law mandates that the City have a general plan, which contains a housing element that plans for the development of housing to meet the Regional Housing Needs Allocation ("RHNA") as developed by HCD and assigned by the Association of Bay Area Governments ("ABAG").

The Amended Housing Element establishes goals, policies, and identifies future actions to address the existing and projected housing needs of Sausalito. As required by State law, the City analyzed the capacity of its existing zoning, determined that existing zoning would not meet the RHNA, and developed an inventory of sites that could be rezoned, the details of which are contained in Program 4 of the City's Amended Housing Element.

The City is required by State law to complete its entire program of rezoning in Program 4 by January 30, 2026; otherwise it will be out of compliance with Housing Element Law. Potential consequences under State law for non-compliance include the loss of local control over land use permitting, exposure to the builder's remedy, increased litigation risk from developers, housing groups, and the State, and potential fines as set forth in Government Code 65585.

The City's rezoning program (Program 4) requires that the City rezone 31 sites. Certain sites specified in the Amended Housing Element's program of rezoning are subject to prior restrictions

of Ordinance Nos. 1022 and 1128, which are prior initiatives which can only be modified with voter approval. Eighteen sites do not require voter approval to rezone, and would be rezoned by Ordinance No. 06-2025, which was introduced by the City Council on May 27, 2025. Twelve sites are impacted by Ordinance No. 1022, which is a local voter approved initiative which impacts the ability of the City to rezone in the City's commercial districts. One site is impacted by Ordinance No. 1128, and will be addressed by a separate agenda item. The proposed draft resolution calling a special election and ballot measure (**Attachment 1**) has been prepared to address the requirement for the rezoning of sites impacted by Ordinance No. 1022.

The approval of the attached draft resolution would call a special election for November 4, 2025, for the voters to approve the rezoning of opportunity sites in the City's Amended Housing Element impacted by Ordinance 1022.

Passage of both measures pertaining to Ordinance 1022 and 1128 by the voters is necessary in order for the City to complete the program of rezoning set forth in the City's Amended 2023-2031 Housing Element and to maintain the City's ongoing compliance with State Housing Element Law.

BACKGROUND

Amended Housing Rezoning Program:

Implementation of Program 4 requires that the City complete rezoning and/or adopt overlay zones to allow development of residential units on identified opportunity sites at densities identified in the Amended Housing Element. This rezoning must be completed by the January 30, 2026, deadline imposed by State law.

Program 4 of the City's adopted Amended Housing Element involves the City completing rezoning and/or adopting overlay zones to allow densities at identified opportunity sites of 20-29 dwelling units/acre (H-29), 43-49 dwelling units/acre (H-49), 50-70 dwelling units/acre (H-70), or mixed-use zoning of 20-29 dwelling units/acre with minimum of 85% residential required (MU-29), 43-49 dwelling units/acre with minimum of 85% residential required (MU-49), and mixed-use zoning of 50-70 dwelling units/acre with minimum of 85% residential required (MU-70) for a total capacity of 923 units. Further standards for these overlay zoning districts were included in Ordinance No. 06-2025, as follows:

Development Requirement	H-29	MU-29	H-49	H-70	MU-49	MU-70
Affordability	20% very low or low	20% very low or low	20% very low or low	20% very low or low	20% very low or low	20% very low or low
Minimum Density	20 units/acre ¹	20 units/acre ¹	43 units/acre	50 units/acre	43 units/acre	50 units/acre

Development Requirement	H-29	MU-29	H-49	H-70	MU-49	MU-70
Maximum Density	29 units/acre	29 units/acre	49 units/acre	70 units/acre	49 units/acre	70 units/acre
Maximum FAR residential uses	None	None	None	None	None	None
Maximum nonresidential FAR	Non-residential uses not allowed	0.4	Non-residential uses not allowed	Non-residential uses not allowed	0.4	0.4
Front Setback	0	0	0	0	0	0
Street side setback	5	5	5	5	5	5
Interior side setback	5	5	5	5	5	5
Rear setback	15	15	15	15	15	15
Maximum building height	32 feet/3 stories	32 feet/3 stories	35 feet/3 stories	45 feet/4 stories	35 feet/3 stories	45 feet/4 stories
¹ Minimum density for the H-29 and MU-29 is only applied to sites identified to accommodate very low and/or low-income units in Appendix D1 of the Housing Element.						

To ensure that the City does not have to identify and rezone additional sites under the No Net Loss Law if developers propose lower density projects, and to ensure that the Amended Housing Element remains in compliance with state law during the entirety of the planning period, the Amended Housing Element includes a buffer of 199 units above the City's RHNA allocation of 724 units. The outline of the RHNA sites strategy is provided in Table 1 (below). For more details on Program 4, please review the City's adopted Amended Housing Element (available [here](#)).

Table 1. RHNA Requirements and Rezoning:

	Extremely / Very Low	Low	Moderate	Above Moderate	Total
RHNA	200	115	114	295	724
TOTAL CAPACITY FOLLOWING COMPLETION OF REZONING					
Total Capacity	245	157	190	331	923

As required by State law, the City has ensured that the sites identified for rezoning are not concentrated in any particular location and are spread throughout the City.

The following 18 sites do not require voter approval for rezoning, and are proposed for rezoning under Ordinance No. 06-2025:

Site Number	APN	Address	Housing Opportunity Overlay
73	064-322-01	636 Nevada St	H-49
86	052-322-02	330 Ebbitide Ave	H-49
87	052-322-01	Ebbitide Ave	H-49
75	064-341-04	530 Nevada St	H-70
	064-341-10	Tomales St	H-70
53	064-163-06	Bonita St	H-49
55	064-162-27	Napa St	H-49
56	064-151-16	412 Napa St	H-49
207	065-063-07	925 Bridgeway Blvd	H-29
3	065-292-34	Marion Ave	H-49
8	065-253-02	Main St/Crescent Ave	H-49
9	065-231-45	Lower Crescent Ave	H-49
10	065-233-22	18 West Ct	H-49
101	065-281-20	357 Sausalito Blvd	H-49
59	064-142-29	Easterby St	H-49
23	065-072-11	10 Reade Ln	H-29
24	065-071-13	10 Excelsior Ln	H-29
212	065-193-31	Sausalito Blvd	H-49
110	065-121-09	San Carlos Ave	H-70
	065-121-08	San Carlos Ave	H-70
	065-121-07	San Carlos Ave	H-70

One additional site, not impacted by Ordinance No. 1022, but impacted by Ordinance No. 1128, (Site 84 – MLK Park Property) will be rezoned under a different ballot measure.

Ordinance 1022 Summary:

Ordinance 1022, commonly known as the Fair Traffic Initiative, was passed by voters in 1985 and limits changes to City zoning without voter approval, and includes provisions that establish a maximum allowable density and floor area ratio, and prevent any site in the City's commercial and industrial zones from being rezoned to allow for a greater density or floor area ratio, and would prevent their use for housing in the manner set forth in the Amended Housing Element unless modifications are approved by voters.

Proposed Ballot Measure:

As further detailed in the draft resolution and ballot measure, the following 12 opportunity sites are impacted by Ordinance No. 1022 and are proposed to be rezoned to implement the rezoning in Program 4 of the City's Amended 2023-2031 Housing Element and to maintain the City's ongoing compliance with State Housing Element Law. A map of the overlay zoning can also be accessed from the draft resolution (**Attachment A to ballot measure**).

Site Number	APN	Address	Housing Opportunity Overlay	Notes
39	065-037-01	303 Johnson	-M29	
	065-034-07	303 Johnson	-M29	
	065-038-06	501 Humboldt	-M29	
44	065-051-10	1319 Bridgeway Blvd	-M29	
47	064-087-07	300 Locust St	-M29	
72	063-140-21	2656 Bridgeway	- M49	
	063-140-18	2650 Bridgeway	-H70	
79	063-151-01	2631 Bridgeway Blvd	-M49	
81	063-151-05	2829 Bridgeway Blvd	-M49	
211	063-140-20	2660 Bridgeway	-M49	
301	065-032-01	Locust St And Humboldt Ave	-H29	Overlay zoning is only applied to the land-based portion of the site.
	065-031-01	225 Locust	-H29	Overlay zoning includes adjacent paper streets.
303	063-140-15	1 & 3 Harbor Dr	-M49	Overlay zoning is only applied to a 3-acre portion of the site.
306	063-162-04	3000 Bridgeway	-M70	
401	063-130-01	2400 Bridgeway Blvd	-M29	
402	063-152-01	2680 Bridgeway Blvd	-H49	Overlay zoning is only applied to a 1-acre portion of the existing parking/paved area of the site.

Three of the opportunity sites above will only have a portion of the total site rezoned; as detailed below:

- **Site 301:** Overlay zoning is only applied to the land-based portion of the site and includes adjacent paper streets (**Attachment 3**)
- **Site 303:** Overlay zoning is only applied to a 3-acre portion of the site (**Attachment 4**)
- **Site 402:** Overlay zoning is only applied to a 1-acre portion of the site (**Attachment 5**)

Rezoning Implementation Timeline Summary:

Please see below for a summary of key dates and milestones that must be met in order to implement the Amended Housing Element's program of rezoning and to maintain the City's ongoing compliance with State Housing Element Law.

- **August 5, 2025:** City Council Public Hearing to adopt resolutions calling a special election to amend the City's zoning map for consistency with the Amended Housing Element (voter initiatives 1022 and 1128)
- **August 8, 2025:** Last day to place matters on the ballot for November 4, 2025, special election
- **November 4, 2025:** Special election date
- **December 2025:** Election results are certified by the City Council, City Council adopts Ordinance No. 06-2025 completing rezoning of sites not restricted by voter initiatives.
- **January 30, 2026:** State imposed deadline for City of Sausalito to complete its program of rezoning in the Amended Housing Element

The City is on an urgent timeline to place matters on the ballot for a November 4, 2025, special election, and to meet the State-imposed rezoning deadline of January 30, 2026. In order to meet this timeline, the City Council must provide a conclusive decision on these matters at the August 5, 2025, City Council public hearing.

Join the Conversation – We Want to Hear From You!:

Since 2024, Sausalito has been engaged in a transparent public process associated with the adoption and implementation of its Amended Housing Element. The City is continuing to meet the safety, traffic impact, and quality of life needs of our existing residents and businesses while complying with requirements under State Housing Element Law.

As we continue to implement the City's Housing Element to keep the City compliant with State Law, we want to hear from you. Please take a moment to join the conversation and provide your priorities for a strong, safe, and locally controlled Sausalito by filling-out our [Community Feedback Form](#). Additional information in connection with the City's Amended Housing Element can be found on the City's [Housing Element Rezoning Webpage](#) and on the City's [Amended Housing Element Webpage](#).

FISCAL IMPACT

There are costs associated with the scheduling of Special Local Elections with the County of Marin. Staff understand the ultimate cost of the Special Local Election is based on a currently unknown dollar amount applied to the number of registered voters in the jurisdiction; moreover, if the City of Sausalito is the only jurisdiction on the ballot, it will incur the full cost of the election. Staff are currently working to clarify the actual cost of a Special Local Election and will keep the City Council updated on our progress.

STRATEGIC PLAN ALIGNMENT

Implementation of this action complies with and assists in achieving Sausalito's Strategic Plan Goal A4 to *prioritize other General Plan implementation action items*, such as the preparation and adoption of the 6th Cycle Housing Element and its associated program of rezoning.

STAFF RECOMMENDATION

Staff recommend the City Council adopt a resolution calling a special election and submitting to the qualified voters of the City of Sausalito an ordinance amending the City zoning map in City commercial districts to adopt housing overlay zoning consistent with the Housing Element to be voted upon at the special municipal election to be held on November 4, 2025.

ATTACHMENTS

- Attachment 1: Draft Resolution
- Attachment 2: Ordinance No. 1022
- Attachment 3: Site 301 Subarea Map
- Attachment 4: Site 303 Subarea Map
- Attachment 5: Site 402 Subarea Map
- Attachment 6: Sausalito Commercial District Local Control Measure Overlay Zoning Map
- Attachment 7: City of Sausalito Zoning Map (Includes HE Overlays)

PREPARED BY: Brandon Phipps, Assistant City Manager
REVIEWED BY: Sergio Rudin, City Attorney
SUBMITTED BY: Chris Zapata, City Manager

EXHIBIT E



STAFF REPORT

SAUSALITO CITY COUNCIL

MEETING DATE: October 6, 2026

AGENDA TITLE: Receive and File Update Regarding Project Status at 1 and 3 Harbor Drive and Application of CEQA

LEAD DEPARTMENT: Community and Economic Development, City Attorney

RECOMMENDED MOTION: Receive and File Report Regarding Project Status at 1 and 3 Harbor Drive and Application of CEQA

BACKGROUND

On November 4, 2025, City of Sausalito voters approved Measure J, adopting overlay zoning to accomplish the program of rezoning in the City of Sausalito's 6th Cycle Amended Housing Element. The measure rezoned this housing opportunity site with the MU-49 overlay zone.

DISCUSSION

On June 2, 2026, the City of Sausalito's Community Development Department received application materials requesting approval of a Zoning Permit, Lot Line Adjustment, and a Tree Removal Permit for the demolition of an existing 116,937 square-foot office building and the construction of a new 349,479 square-foot, six story multi-family residential structure comprised of 294 total units and including 59 low-income units at 1 Harbor Drive. This parcel is designated as a Housing Opportunity Site (Site 303) in the City of Sausalito's Adopted 6th Cycle Housing Element and is located in the Mixed Use-49 (MU-49) overlay zone. In addition to the Zoning Permit requested pursuant to SMC 10.54.020.C, the Applicant is also requesting a Lot Line Adjustment to reconfigure the underlying legal parcels to be consistent with the dimensions of the MU-49 overlay zone as well as a Tree Removal Permit for the removal of 12 protected trees. The filing date for the application is June 4, 2026, which is determined based on the date the required fees were paid. After staff review, it was determined that the application submitted was incomplete and a Notice of Incomplete Application was sent to the Applicant on June 30, 2026. On August 14, 2026, the City received a resubmittal in support of the project; however, after staff review the application was determined to be incomplete and a second Notice of Incomplete Application was sent to the Applicant on September 11, 2026. The current status of the project is that the application remains incomplete.

The City of Sausalito (City) has received a letter from Lozeau Drury on behalf of Save Our Sausalito (SOS) stating that the 294-unit project proposed at 1 & 3 Harbor Drive in the City of Sausalito (the Project) does not qualify for the exemption from the California Environmental Quality Act (CEQA) provided by Government Code Sections 65583.2(h) and (i). The chief argument presented is that the Project's requested density bonus waivers and tree removal permits are discretionary, rather than ministerial, and so CEQA review is required. The City has also received a petition asking that an EIR be completed because of the many project impacts that may result from the Project.

Government Code Section 65583.2(h) provides that sites rezoned to implement the Housing Element must "permit owner-occupied and rental multifamily residential use by right for developments in which at least 20 percent of the units are affordable to lower income households." Section 65583.2(i) defines "use by right" as follows:

"[T]he phrase 'use by right' shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a 'project' for purposes of [CEQA]. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that 'use by right' does not exempt the use from design review. However, that design review shall not constitute a 'project' for purposes of [CEQA]."

To comply with Housing Element Law, the City implemented "use by right" approval through amendments to Sausalito Municipal Code (SMC) Chapter 10.54, Design Review. These provisions in Section 10.54.020 state that Chapter 10.54 does not apply where a housing project qualifies for use by right approval under Government Code Section 65583.2. Instead, a qualifying project requires only approval of a zoning permit under Chapter 10.52. Under the City's zoning ordinance, a zoning permit is a ministerial permit. The ordinance states that:

"The Community Development Department shall evaluate the proposed use and check for compliance with all applicable provisions of this title and all other applicable ordinances and laws. If the proposal complies with all applicable provisions of this title and other applicable regulations, the Community Development Department shall issue the permit." (SMC Section 10.52.040.)

Permit requirements where there is ability to exercise discretion are ministerial permits, and are exempt from CEQA review. See Public Resources Code Section 21080(b)(1).

Additionally, Government Code Section 65583.2(i) states that with respect to multifamily residential projects where at least 20 percent of the units are affordable to lower income households, the City "may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that

would constitute a “project” for purposes of [CEQA].” This provision does not allow the City to require discretionary approvals that would subject the Project to CEQA.

Consequently, to avoid violating Housing Element Law, any other approvals, including the waiver requests or tree removal requests, cannot be treated as discretionary approvals that would subject the Project to CEQA. The City may review the waiver and tree removal requests but, to reconcile Housing Element law with its usual procedures, and will treat them as non-discretionary approvals reviewed under objective standards. Alternatively, even if the City can exercise some form of discretion over the tree removal and density bonus determinations, CEQA is still not triggered unless the City has some authority to consider the environmental consequences and mitigate environmental impacts as part of its decision. See *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2019) 31 Cal. App. 5th 80 [discretionary design review for an otherwise permitted, by-right project does not trigger review under the California Environmental Quality Act (CEQA) if the city's authority is strictly limited to aesthetic and design issues].

Similarly, the City’s review of a lot line adjustment related to the project is limited under state law, under Government Code section 66412(d), to “whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances,” and no conditions may be imposed except to require the lot line adjustment to “conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements.” These do not allow the City to exercise discretion in a manner that would trigger CEQA. See *Loewenstein v. City of Lafayette* (2002) 103 Cal.App.4th 718, 721 [lot line adjustment approval is a ministerial decision]; *Sierra Club v. Napa County Board of Supervisors* (2012) 205 Cal.App.4th 162, 179-180 [noting that the lot line adjustment process does not authorize the exercise of discretion to mitigate environmental impacts].

STRATEGIC GOAL

Goal D - Continually improve and maintain infrastructure while addressing climate change and ensuring resiliency.

Goal E: Maintain a Strong Organization to Deliver Effective, Efficient and Sustainable Municipal Services

CEQA

The receipt of this report is not subject to CEQA.

FISCAL IMPACT

ATTACHMENTS

Attachment 1 — Applicant Letter August 14, 2026, Regarding CEQA

Attachment 2 — Comment Letter – Lozeau Drury

PREPARED BY: Matthew Mandich, Acting Community Development Director
REVIEWED BY: Sergio Rudin, City Attorney
SUBMITTED BY: Brandon Phipps, Interim City Manager