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September 13, 2023

Aastha Vashist
456 W Olive Ave
Sunnyvale, CA 94086

Re: **1154 Sonora Court Project – UPDATED State Density Bonus Law Application**

Dear Aastha:

We represent SKS Partners (“SKS”) in connection with its application for the 1154 Sonora Court Project (the “Project”), a mixed-use development at 1154 Sonora Court (the “Project Site”) in Sunnyvale, California. The 1.88 acre Project Site is within the Lawrence Station Area and is currently developed with a single story building and surface parking lot. The Project would redevelop the Project Site with a total of 173 multi-family residential rental units and 142,270 square feet of office space. Consistent with both the City’s inclusionary housing requirements and the requirements of the State Density Bonus Law, 24% of the Project’s base residential units (28 total units – see below for further details) would be provided at the lower income affordability level – consisting of 19% low income (22 units) and 5% very low income (6 units).

The purpose of this letter is to serve as SKS’s application for certain rights under the State Density Bonus Law. Pursuant to the State Density Bonus Law and Zoning Code Chapter 19.18.025, because it will provide 24% of its base units at the lower income affordability level, the Project is entitled to all of the following *separate* categories of incentives:

- (1) An up to 50% density bonus over the maximum allowable residential density¹;
- (2) Up to three mandatory concessions or incentives (three identified – see details below);
- (3) any required physical waivers of development standards to accommodate the Project (three identified – see details below); and
- (4) applicable mandatory maximum residential parking standards (not required due to SB 2907 – see details below).

¹ Gov. Code Section 65915(f), 65915(o)(4).

Details on each of the above categories is provided below:

1. Up to 50% Density Bonus

The Project proposes 28 lower income units (24% of the base maximum with 7 LSAP incentive points – please see below and enclosed Plan Set for details). The State Density Bonus Law provides that the base density used to calculate the affordable housing requirements do not include any bonus units under the State Density Bonus Law.² Because the Project provides 24% of its base density units as lower income units, the Project qualifies for a mandatory density bonus of up to 50%.³

Base Maximum (per LSAP)	54 du/acre
LSAP Incentive Points	7 du/acre
• Below Grade Parking – 7 points	
Base + 7 Incentive Points Maximum	61 du/acre
Total Base Maximum Units	61 x 1.88 acres = 115 units ⁴
Lower Income Units Required for 50% Bonus	24% x 115 units = 27.6 rounded to 28 units
Maximum Units w/ 50% Density Bonus	115 units + 50% = 173 total permitted units
Total Units Proposed	173, consistent with 173 unit maximum

2. Up to Three Mandatory Concessions or Incentives – Three Identified

Because the Project provides 24% of its base density units as lower income units, it is eligible for up to three (3) mandatory concessions or incentives.⁵ A concession is defined to include “approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the cost of the housing development.” It is also defined to include, among other things, “reduction in site development standards or a modification of zoning code requirements or architectural design requirements,” including a reduction in setbacks and square footage requirements, and “[o]ther regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs.”^{6, 7} SKS has identified three concessions or incentives at this time.

Incentives:

² Gov. Code Section 65915(b)(3).

³ Gov. Code Section 65915(b)(1)(A), (f)(1).

⁴ 61 x 1.88 acres = 114.68, which is rounded up to 115 pursuant to Gov. Code Section 65915(q), which specifies that “each component of any density calculation...resulting in fractional units shall be separately rounded up to the next whole number.”

⁵ Gov. Code Section 65915(d)(2)(C).

⁶ Gov. Code Section 65915(k).

⁷ Pursuant to Gov. Code Section 65915(d)(4), “the city...shall bear the burden of proof for the denial of a requested concession or incentive.” Further, the City cannot require a pro forma or other study from the applicant, beyond reasonable documentation to establish eligibility. (Gov. Code 65915(a)(2)).

3) *Exceed Maximum Office Floor Area Ratio by 23%*

SKS has identified a need to exceed the 150% maximum Floor Area Ratio (FAR) provided in the recently amended Lawrence Station Area Plan for projects zoned MXD-I/S,⁸ by 23% (for a total of 173%. Please see Sheet G.A.007 for FAR calculation details.

For this mixed-use project, the conjunction of commercial office with housing reduces the cost of housing. The office component yields higher returns than the residential component, and when combined, makes the overall project financially feasible. It is clear that the State has recognized this fact, given that as noted above, one of the specific incentives provided for in Govt. Code Section 65915(k) is to allow mixed-use zoning on a property. Furthermore, the additional office square footage results in identifiable and actual cost reductions for both the affordable and market rate units. Feasible and marketable office area is critical to the economic health of the project and ensures a high-density project can be built, consistent with the Lawrence Station Area Plan and the City's Housing Element. The Bay Area has the highest multi-family construction costs in the state, rising 119% between 2008 and 2018, compared to 25% statewide.⁹ In 2019 The Bay Area was ranked the third most expensive region to build in the world, behind only Tokyo and Hong Kong,¹⁰ and construction costs escalated 15% in 2021.¹¹ Given the high, and ever-rising, costs of developing multi-family housing, the revenue from the office component will help to secure commercially reasonable financing and subsidize the construction of housing units.

The specific amount of office requested is a result of building layout and construction efficiencies. Given site constraints, such as setbacks and fire access, and required functional ground floor services, 150% FAR would limit the office area to two and a half building levels. The result is a split third level, with both office and residential uses. The most cost-efficient way to construct housing over an office is to build units with a wood stud structural system (Type V or Type III). In the scenario of a split level, the units on the third level would be built in the more robust and costly system of the office, most likely concrete and metal studs (Type I), *increasing* the already high cost of the housing, contrary to the intent of the State Density Bonus Law.¹² Structural and constructability factors would warrant a full third level concrete slab, similar to lower building levels. Further, the California Building Code would require these units to have higher fire ratings than the upper levels and the third level would need an additional vertical fire separation between the office and residential portions. Additionally, a small handful of units would need to be built in a different system from the rest, requiring separate building trades. For these reasons, construction

⁸ City of Sunnyvale, Ordinance No. 3181-21, Section 19.35.060, Table 19.35.060.

⁹ "The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California" Turner Center for Housing Innovation UC Berkeley March 2020.

¹⁰ See <https://www.mercurynews.com/2021/07/26/bay-area-tops-list-as-one-of-the-worlds-most-expensive-regions-to-build/>

¹¹ Engineering News-Records Building Cost Index

¹² "The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California" Turner Center for Housing Innovation UC Berkeley March 2020.

costs of the residential units would rise, and any economic benefits captured from the half level of office would be eliminated by added costs. To offset this impact, the project would need to remove the third split level, limiting the office to two full levels, *and reducing affordable units*.

In addition to the proposed office area directly reducing housing costs, the economic benefits also enable higher quality spaces. They allow more flexibility and creativity to provide terraced open spaces and courtyards, giving both office and residential tenants higher access to fresh air and sunlight. The proposed office space also enables a wider range of architectural expression and higher quality materials. Overall, the project will be better positioned to deliver a dense mixed-use project and help Sunnyvale meet its housing goals, with a higher FAR.

2) *No Development Agreement*

The LSAP purports to require a Development agreement (“DA”) for projects that propose FAR above the 35% office base maximum through the LSAP incentive program.¹³ However, we note that a DA is a fully voluntary contract, and a jurisdiction may not *require* an applicant to enter into one.¹⁴ While SKS has been voluntarily negotiating the potential terms of a DA in good faith with City staff for approximately a year, on March 30th the City relayed a “best offer” for the Project’s community benefit contribution that would make the Project financially infeasible for SKS, in part because the offer fails to provide credit for significant contributions SKS is making, including 60% more affordable housing than the LSAP requires.¹⁵ Accordingly, SKS has decided not to pursue a Development Agreement. The City did not ever issue SKS an invoice for the associated \$7,313 fee and SKS never submitted (nor does the City have) an application form for a DA. However, to the extent the City does consider SKS to have formally applied for a Development Agreement, we hereby revoke that application/request.

As explained above in relation to the Project’s first incentive request, the revenue from the office component will help to secure commercially reasonable financing and subsidize the construction of housing units. In order to achieve a rate of return that makes the Project economically feasible, the Project cannot also pay an additional over \$5 Million¹⁶ in an “over and above” contribution that outweighs the incentive provided to the Project by allowing the office space. Not entering into a Development Agreement will also directly reduce entitlement costs for the Project, by avoiding the need for any hearings at City Council (without a Development Agreement the Project will only be required to proceed to Planning Commission), the \$7,313 Development Agreement processing fee, and the assessment of any further fees for staff and legal time (in addition to our own fees) in a protracted negotiation process.

¹³ LSAP pages ES.3, ES.5, 3.10.

¹⁴ Gov. Code Section 65865.

¹⁵ The LSAP requires 15% affordable housing, whereas the Project is providing 24%.

¹⁶ This total includes both this project and 1170 Sonora Court. While they are separate projects, they are being entitled and evaluated at the same time as related projects, and, at this stage, have integrated financial aspects.

3) *Extend Two-Year Entitlement Expiration (With One-Year Potential Extension) to Five Years (With 1-Year Potential Extension) for Total of Six Years*

At this time, the City's Zoning Code specifies that a Major Special Development Permit expires in two years, with a potential discretionary one-year extension. In order to maintain the certainty that it may accomplish the construction of the large and complicated Project (which SKS is losing due to the stalling of its voluntary Development Agreement), SKS hereby requests an incentive to extend the life of its Major Special Development Permit to 5 years, with a potential discretionary 1-year extension (for a total of 6 years as opposed to 3 years).

Automatically extending the life of the Major Special Development Permit will result in actual and identifiable costs reductions for the Project because it will avoid the need for SKS to go through a process to obtain a discretionary one-year extension, which process has associated processing costs. And, most importantly, an extended life to the entitlement would mitigate the risk of raising additional capital, and spending additional time, to re-entitle the project if the City does not decide to issue a discretionary extension, all of which increases the cost of housing. In the current economic environment, including the highest inflation in forty years and large bank failures, longer approvals are critical to securing construction financing.

3. Waivers – Three Identified

In addition to a limited number of concessions/incentives, the State Density Bonus Law specifies that a project is entitled to a waiver from “any development standard that will have the effect of physically precluding the construction of a development . . . at the densities or with the concessions or incentives permitted by this section.”¹⁷ Waivers are separate from and additional to concessions/incentives, are unlimited, and approval is mandatory if the standard would preclude development of the Project at its permitted density and with its incentives/concessions incorporated. SKS has identified the need for three waivers, as follows:

1) *Landscape frontage strip*

The Zoning Code requires a 15' wide landscaped frontage strip from the inside of a public sidewalk.¹⁸ The requirement to preserve the redwood trees fronting Sonora Court, and the need to locate the public sidewalk behind them, prevents the Project from meeting this requirement. The Project is in a somewhat unique position relative to other sites to which this requirement would apply, and strict compliance would negatively impact the project. As a result of the redwood trees, the proposed sidewalk on Sonora Court is already set back 25' and the building is set back 35'

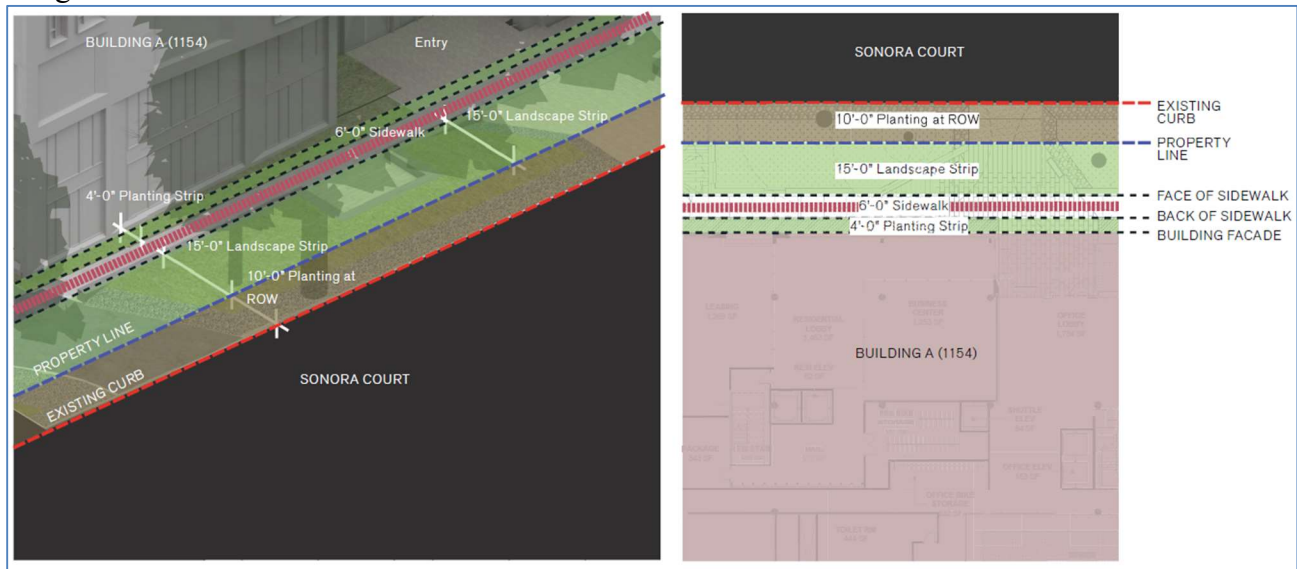
¹⁷ Gov. Code Section 65915(e)(1).

¹⁸ Zoning Code Section 19.37.040(c).

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from the curb. Requiring the 15' landscaped frontage strip behind the proposed sidewalk would result in a front setback of 46', which would reduce the Project's density, precluding it from being constructed at its permitted densities and qualifying it for a waiver from this requirement.

The proposed design includes 25' of landscaping between the curb and sidewalk, and a 4' planting strip between the sidewalk and building façade. SKS believes preserving the redwood trees and incorporating appropriate landscaping features is still in line with the City's goals. The proposed design is illustrated below:



2) Solid waste and recycling management

The Zoning Code requires that solid waste enclosures be located within 150 feet by path of travel from any dwelling unit or commercial business.¹⁹ However, the proposed vertical mixed-use development combines both residential and office uses, and strictly meeting the requirement would greatly impact the usability of the office space. This would not only be detrimental to the project, but also to future office tenants who want to locate their business in Sunnyvale. Further, strict compliance with the requirement would reduce the Project's density, as residential units would need to be lost in order to provide an additional chute or chutes. Accordingly, the Project qualifies for a waiver from this requirement. We note that relatively few residential units are out of compliance with the requirement, and the furthest distance for units is 230 feet.

SKS hereby reserves the right to identify any further necessary modifications or waivers through the City's application review and approval process.

3) Reduce minimum landscape area

¹⁹ Zoning Code Section 19.38.030(e)(1)(K).

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The Zoning Code requires a minimum of 20% landscaped area.²⁰ SKS requires a waiver from this requirement because the project is providing a public sidewalk within the project lot area, which takes up land that would otherwise be planted and counted as landscaped area. This is necessary to preserve the mature redwood trees lining Sonora Court, and to provide a safe and accessible sidewalk for the public.

Due to the sidewalk being located within the lot, the project does not provide the required landscaped area (it is short on decorative stone and provides 18.59% overall – please see detail below), and in order to do so it would need to reduce its residential density, qualifying it for a waiver pursuant to the State Density Bonus Law. Nonetheless, the project is still within the 80% maximum lot coverage. In addition, it provides 25' of frontage landscaping that includes the redwood trees and a variety of other vegetated areas on site, as well as low landscaping within the emergency vehicle access area which will be available unless there is a serious emergency.

LANDSCAPE AREA CALCULATIONS (SMC 19.12.130)

ITEM	REQUIREMENT (sf)		PROPOSED (sf)		
PLANTING	0.70 MIN.	11,470.62	15.15%	12,415	81.5%
DECORATIVE STONE ON GRADE	0.30 MAX.	4,915.98	2.85%	2,339	18.0%
DECORATIVE STONE ON STRUCTURE			0.59%	481	
TOTAL	20% MIN.	16,386.60	18.59%	15,235	100%

SITE AREA: 100% 81,933

4. Mandatory Maximum Residential Parking Standards

Pursuant to the State Density Bonus Law, the Project has the right to meet mandatory maximum residential parking standards under the State Density Bonus law of no more than: 0.5 spaces per unit, because it provides at least 20 percent lower income units (19% low income, 5% very low income); and is within 1/2 mile of a major transit stop with unobstructed access.²¹

²⁰ Zoning Code Section 19.25.090.

²¹ Gov. Code Section 65915(p)(2).

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However, the Project is not applying for a parking reduction under the State Density Bonus Law. Rather, SKS hereby applies under AB 2097, which became effective on January 1, 2023.²² We have been unable to locate a City form to assert the Project's qualification under AB 2097, and are therefore including this statement regarding qualification here. Under AB 2097, the City may not impose minimum automobile parking requirements for residential and commercial uses for projects within 1/2 mile of a major transit stop, and the Project qualifies.²³ Accordingly, the Project is not required to provide parking, but will voluntarily provide 254 parking spaces.

Thank you for your attention to this matter, we look forward to working with the City on bringing this project to fruition.

Sincerely yours,

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²² [Bill Text - AB-2097 Residential, commercial, or other development types: parking requirements. \(ca.gov\)](#)

²³ Gov. Code Section 65863.2(a), (e)(5).