



1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

T: 510.834.6600  
F: 510.834.1928

www.wendel.com  
amorrison@wendel.com

October 14, 2021

**Via Email**

Mr. Lee Butler  
Community Development Director  
City of Santa Cruz  
809 Center Street  
Room 107 and 101  
Santa Cruz, CA 95060

[lbutler@cityofsantacruz.com](mailto:lbutler@cityofsantacruz.com)

**Re: 831 Water Street – Mixed-Use Development (PLFYI 053)  
Response to Council Action on October 12, 2021**

Dear Mr. Butler:

Wendel Rosen, LLP represents Novin Development Corporation (“Applicant”) in connection with a proposed mixed-use development project (“Project”) located at the northwest corner of Water Street and N. Branciforte Avenue in the City of Santa Cruz (“City”) which was the subject of a public oversight meeting conducted on October 12, 2021.

The City Council ("Council") made the following motion at the October 12, 2021 meeting:

- 1) Deny the 831 Water Street SB 35 application for its violation, or potential violation, of the following objective standards:
  - a. The Anti-segregation standard in the inclusionary ordinance and Density Bonus Ordinance that require the dispersal of affordable units throughout a project, which also violates our Health in All Policy ordinance by creating segregated housing;
  - b. The slope regulation that projects be located no closer than 20 feet from a 30% slope without a variance;
  - c. The lack of a completed Stormwater Management Plan and a completed Drainage Plan that ensure the City's standards to prevent flooding on the property and in the neighborhood.

d. The lack of a traffic study demonstrating that the City's traffic standards protecting the public health and safety from the proposed driveway crossing a bike lane;

e. the lack of a completed noise study documenting that the City's objective standards will be met [sic]

2) Deem the density bonus application incomplete for not complying with the State Housing and Community Development's regulation that affordable units are distributed throughout the development, and for not showing the breakdown of AMI levels and density bonus locations.

The Applicant contends that, consistent with City Staff's determination as stated in the staff report for the October 12 hearing, the Project is consistent with all objective standards pursuant to Government Code section 65913.4. Reserving all rights and not conceding the validity of any of these items, we address each of these items in the order presented in the motion above.

**1. a. Requested Concession from City's Dispersal Requirement.** Relative to the City's requirement found at Santa Cruz Municipal Code ("SCMC") section 24.16.025(2) that inclusionary units be dispersed throughout the residential development to prevent a concentration of affordable units within the development, the Applicant agrees to disperse the affordable units throughout the Project. The total unit count is 140 units and will include two (2) manager units. Of the remaining 138 units, 50% (69 units) will be deed-restricted affordable units with rents formulated to qualify for those earning 80% or less of Area Median Income (AMI).

**1. b. Slope Regulation.** Staff noted the Project was not located on slopes of thirty percent or greater and the Project is, therefore, consistent with the objective standard that requires a setback of 20 feet from slopes greater than 30% pursuant to SCMC section 24.14.030.1.d (see p. 18.72 of the Agenda Report dated October 12, 2021 (hereafter "Agenda Report")) with the exception of the area of the garage structure which abuts the Water Street property line. The Applicant, through its revised Density Bonus Statement dated October 14, 2021, is requesting a waiver of this objective standard pursuant to State Density Bonus Law found at Government Code section 65915(e).

**1.c. Stormwater Management Plan and Drainage Plan.** Staff noted that submittal of a Stormwater Management Plan and Drainage Plan was not required until issuance of building permit, therefore, the submittal of these plans is not an objective standard with which the Project is inconsistent (see p. 18.5 of the Agenda Report). Additionally, the Applicant provided its Stormwater Control Plan (see sheet G01.0 and C3.0) in its submittal dated October 8, 2021 and is attaching hereto the completed Stormwater Management Plan and Drainage Plan report conducted by Ifland Engineers dated September, 2021.

**1.d. Traffic Study.** The Applicant disputes that the submittal of a traffic study is an objective standard for purposes of an SB 35 application. Furthermore, the California Department of Housing and Community Development ("HCD") specifically noted that a traffic study initiated by the City was not an objective standard and stated the following: "pursuant to Government Code § 65913.4(a)(5) the [traffic] study must be an objective standard requirement in effect when the original development application submitted to the local government." See email from Fidel Herrera of HCD, dated October 11, 2021 attached hereto as Attachment "1". Staff determined that, because the traffic study was not an objective standard required at the time the original development application was submitted, the Applicant cannot be required to adhere to this standard.

**1.e. Noise Study.** Staff noted that submittal of a noise study was not required until issuance of building permit, therefore, the submittal of this study is not an objective standard with which the Project is inconsistent (see p. 18.136 of the Agenda Report). Submittal of a noise study will be a standard condition of approval.

**2. Density Bonus Request.** As noted above, the Applicant agrees to disperse the affordable units throughout the Project and is, concurrently with this letter, submitting a revised Density Bonus Statement dated October 14, 2021 to eliminate the requested concession from the City's requirement to disperse affordable units throughout the Project.

Relative to the Council's motion that purports to deny the Applicant's density bonus application on the basis that the application does not reflect a "breakdown of AMI levels and density bonus unit locations," as stated above, 69 units will be deed-restricted affordable units with rents formulated to qualify for those earning 80% or less of Area Median Income (AMI). Section 402(f) of the HCD Guidelines specifically state that "[i]dentification in the development application of the location of the individual affordable units is not required for ministerial approval but distribution of units per this subsection can be included as a condition of approval per Section 301(a)(5)." Therefore, the Project is consistent with SCMC section 24.16.025(2).

To reiterate the objections previously made on the Applicant's behalf in our letter dated September 9, 2021, and consistent with direction stated in the email from HCD, attached as Attachment "1", SB 35 prohibits changes to the processing of an SB 35 application after the date an SB 35 application was submitted to a local agency (see Government Code section 65913.4(a)(5)). As we have stated previously, the City's density bonus ordinance requires a request for a density bonus, and related concessions and waivers, to be processed ministerially.

Through this submittal of additional information, prior to the 60 day period addressed in Government Code section 65913.4(c)(1)(B), the Applicant has addressed the purported areas of inconsistency the Council identified in its motion of October 12, 2021. As such, the Project must be approved consistent with SB 35 (Gov. Code § 65913.4).

Thank you and please do not hesitate to contact either me or my partner, Patricia Curtin (pcurtin@wendel.com) should you have any questions.

Very truly yours,

WENDEL ROSEN LLP

A handwritten signature in blue ink, appearing to read "Amara", followed by a long horizontal flourish.

Amara Morrison

ALM/lmj

cc: Client  
Tony Condotti, City Attorney  
Darcy Pruitt, Assistant City Attorney  
Samantha Haschert, Principal Planner  
Mark Rhoades, Rhoades Planning Group  
Alex Marqusee, Rhoades Planning Group  
Mark Donahue, Lowney Architecture