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November 9, 2021

Via Email

Mr. Tony Condotti
City Attorney
City of Santa Cruz
333 Church Street
Santa Cruz, CA 95060
tcondotti@cityofsantacruz.com

Re: 831 Water Street – Mixed-Use Development (PLFYI 053)
Inapplicability of AB 491

Dear Mr. Condotti:

Wendel Rosen, LLP represents Novin Development Corporation ("Applicant") in connection with a proposed mixed-use development project ("Project") in the City of Santa Cruz ("City"). The purpose of this correspondence is to object to the City's reliance on AB 491 as a basis on which to deny the Project.

The Santa Cruz City Council ("Council") took action on the Project at a public oversight meeting conducted on October 12, 2021, namely to direct staff to deny the 831 Water Street SB 35 Project application for its violation, or potential violation, of "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."

Our office previously provided an objection to the motion in our correspondence dated October 16, 2021 and also included supplemental information related to the Project application to address other aspects of the Council's motion.

Without waiving the arguments we have previously made regarding the impropriety of method by which the Council designated itself as the arbiter of density bonus concession requests in connection with SB 35 projects in general, and the Project application in particular, we now address the City's letter dated October 14, 2021 and its specific reliance upon AB 491 as a basis for the putative denial of the Project.

The City's position is that AB 491, to be codified at Health and Safety Code section 17929 as of January 1, 2022, is applicable to the Project due to subsection (c) which indicates it is declaratory of existing law and should, therefore, apply to the Project.

Section 17929 (a)(1)(A) requires that:

> "for a mixed-income multifamily structure…the occupants of the affordable housing units within the mixed-income multifamily structure shall have the same access to the common entrances to that structure as the occupants of the market-rate housing units."

Section 17929 (a)(1)(B) requires that:

> "the occupants of the affordable housing units within the mixed-income multifamily structure shall have the same access to the common areas and amenities of that structure as the occupants of the market-rate housing units."

A plain reading of AB 491, therefore, makes it inapplicable to the Project in that the Project is comprised of two structures. The Project is proposed to be located on a 0.91-acre site comprised of two parcels with two physically separate structures in order to secure state tax credits and in order to record local and state deed restrictions / regulatory agreements against the affordable parcel. See Section 10377(a) of the State's Low Income Housing Tax Credit regulations. There are many examples of this type of mixed-income affordable housing with shared amenities built by companies like BRIDGE Housing and MidPen Housing. For example, 2000 Delaware Street in San Mateo has a shared parking structure and amenities with two separate buildings on top, one building focused on tax credit assisted affordable housing, and one building under separate ownership/financing not utilizing any tax credits.

Section 402 (f) of the HCD Guidelines for SB 35 specifically states that "[a]ffordable units shall be distributed throughout the development, unless otherwise necessary for state or local funding programs," and that mixed-income projects can be designed like the Project with two separate buildings connected through shared amenities and access. State Density Bonus Law also permits the market rate units to be in a located in geographic areas of the housing development other than the areas where the affordable units are located (see Government Code section 65915(i)).

We have reviewed the legislative history of AB 491 and understand that the bill was specifically intended to require that a mixed-income multifamily structure (singular) provide the same access to the common entrances, common areas, and amenities of the structure to occupants of the affordable housing units in the structure as is provided to occupants of the market-rate housing units. The bill was also intended to prohibit a mixed-income multifamily structure (singular) from isolating the affordable housing units within the structure to a specific floor or an area on a specific floor. AB 491 was introduced in the 2021 legislative session in response to a project in San Diego which proposed three separate towers (2 market rate towers and one affordable tower) but specifically denied access by the affordable tower occupants to the pool, spa, and roof top deck amenities in the market rate portions of the project.

A review of the legislative history also confirms that the inclusion of the phrase "this section is declaratory of existing law" is because it was believed the bill might cause confusion because "the discriminatory practice of creating a poor door is already prohibited by law." AB 491 is simply not applicable to the Project and, therefore, cannot be relied upon by the City as a basis for denial of the Project.

Relative to the Project, all of the affordable units will have equal access to all of the project amenities available to the market rate units. The affordable units will have access to the same project entrance and all project amenities.

Finally, while we dispute that AB 491 is applicable to the Project for the reasons stated above, we would also argue that AB 491 cannot be applicable to the Project since the Project application date precedes the effective date of AB 491, which is not until January 1, 2022).

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
Amara Morrison

ALM/lmj

cc: Client
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