



## City Council AGENDA REPORT

**DATE:** 04/25/2024

**AGENDA OF:** 04/30/2024

**DEPARTMENT:** Planning and Community Development

**SUBJECT:** Public Hearing to Review the Updated 2023 Annual Compliance Report for the Delaware Addition Planned Development and Determination of Good Faith Compliance with the Material Terms of the Development Agreement and Conditions of Approval for the Proposed Lease of 100 and 400 Ingalls Alley to the University of California Santa Cruz (Environmental Determination: Not a Project/Exempt per 15061(b)(3)/Reuse of prior Environmental Impact Report) (PL)

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**RECOMMENDATION:** Motion to adopt a resolution acknowledging the environmental determination and finding that the applicant's submittal is in good faith compliance with the material terms of the development agreement, with the following exception. Direct staff to process an Operating Memorandum to clarify conditions of approval and allow for affordable housing units consolidation so the owner can move forward with the amendments to the CC&Rs, lease of the units to the University, consolidation of the affordable housing units on Lot 21 of the Project (400 Ingalls Alley) in lieu of dispersing them over Lots 20 and 21 (100 and 400 Ingalls Alley), and recordation of an amended Affordable Housing Development Agreement.

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**BACKGROUND:** In 2008, the City Council approved the Delaware Addition Planned Development located at 2120 Delaware Avenue, an approximately 20-acre vacant site located on the north side of Delaware Avenue, west of Swift Street and east of Natural Bridges Drive within a light industrial area of the City of Santa Cruz (City). The approvals consisted of multiple permits including a Design Permit, Coastal Permit, Special Use Permit, Watercourse Development Permit, Sign Program, Planned Development Permit, and Vesting Tentative Map (Resolution No. NS-27,901). The City Council also approved a Development Agreement (Ordinance No. 2008-15), certified the final Environmental Impact Report (Resolution No. NS-27-899), and adopted the findings of fact, mitigation monitoring and reporting program, and statement of overriding considerations (Resolution No. NS-27-900) as a part of the Planned Development. The Development Agreement was recorded on October 9, 2008, and since that time, five Operating Memoranda have been signed by the City and the applicant to record clarifications to the Development Agreement.

The City Council approved major modifications to the project in 2014 that allowed for greater flexibility in the timing of construction of the residential flats and that allowed for limited ground-floor residential uses within the industrial/commercial condominiums (Resolution No. NS-28,820). In 2016, the City Council approved a major modification to the original approvals to reconfigure the site layout, revise/update the conditions of approval, revise the development

phasing plan, consolidate all stand-alone residential units to the northern end of the property, create a one-way exit to Swift Street, rename interior streets, and establish design guidelines and allowed uses within the Delaware Addition Planned Development (Resolution No. NS-29,183).

As per the Development Agreement for the Delaware Addition Planned Development, the Delaware Addition Association submits to the City a compliance report for review every year that details the status of the Delaware Addition Planned Development and actions taken with respect to the project, in accordance with the provisions of California Government Code 65865.1, Article V of the Development Agreement, and Municipal Code 24.08.2585. City staff review the report to determine whether the owner has demonstrated good faith substantial compliance with the material terms of the Agreement. City staff will provide the applicant with written comments if it has been determined that the owner's report is inadequate in any respect, and the owner can respond with additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of the Agreement. Ultimately, if not found in compliance, the Planning Director shall provide written notice to the owner and deliver a staff report to the City Council at a noticed public hearing for City Council to determine the good faith substantial compliance by the owner with the material terms of the Agreement. At the hearing, the owner is entitled to submit evidence and address all issues raised in the staff report.

The City received the 2023 annual compliance report on January 16, 2024, which was found to be consistent and in compliance with all project approvals. On April 1, 2024, the Planning Department received an amended 2023 report (attached), which is the subject of this meeting. As noted in the amended annual compliance report, the owner is proposing to amend the Covenants, Conditions and Restrictions (CC&R's) to lease the residential and commercial buildings on Lots 20 and 21 (100 and 400 Ingalls Alley) in Phase II of the Delaware Addition planned development to the University of California Santa Cruz (UCSC). Lots 20 and 21 are identified in the Master Site Plan attached. The University will sublease the residential units exclusively to faculty and students. The owner is also proposing to consolidate seven, low-income, inclusionary rental units that were required by the Planned Development Permit to be located on 100 and 400 Ingalls Alley onto 400 Ingalls Alley, a building that will house only UCSC faculty and staff.

Staff is requesting guidance from City Council to determine whether the owner is in good faith substantial compliance with the terms of the Development Agreement with regards to the above actions.

**DISCUSSION:** City staff reviewed the amended annual compliance report and identified two areas of potential concern: 1) if leasing the buildings to UCSC to provide housing for students, faculty and staff would cause the buildings to be considered an "educational facility," which is listed as a prohibited use in the Design Guidelines, and 2) if the proposed use requires a modification to a condition of approval regarding promoting and encouraging the sale or rental of residences to on-site employees. Staff recommends that 1) the proposed use does not make the buildings an educational facility and that 2) in order to move forward with the actions noted above, the condition of approval regarding promoting and encouraging the sale or rental of residences to on-site employees may be clarified by way of an operating memorandum. An operating memorandum will also be needed to memorialize the consolidation of affordable units into the single building to be occupied by faculty and staff, as well as recognize the voluntary offer of 12 additional units affordable to moderate income households.

Please see the discussion below for more details.

### **1. Is the proposed use considered an “educational facility”?**

Exhibit D in the Delaware Addition Design Guidelines describes the Planned Development Potential Uses, including principally permitted uses, uses that require use permits, prohibited uses, and outlines the procedures for use permits. One of the prohibited uses under Exhibit D is “private or public non-vocational educational schools or facilities.” The question arose as to whether leasing the buildings to UCSC would cause the buildings to be considered an “educational facility.” Below, arguments are presented for why the buildings would or would not be considered an “educational facility.”

#### *The proposed use could be considered an “educational facility” as defined by State law.*

An “Educational facility” is defined in the California Educational Facilities Authority Act (Education Code Section 94110(e)(1)) as “a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, health care facility (including for an institution of higher education that maintains and operates a school of medicine, structures or facilities designed to provide services as a hospital or clinic, whether the hospital or clinic is operated directly by the institution of higher education or by a separate nonprofit corporation, the members of which consist of the educational institution or the members of its governing body), faculty and staff housing, parking, maintenance, storage, or utility facilities, and other related structures or facilities used for student instruction, conducting research, or operating an institution for higher education, and related facilities and equipment.”

It could be argued that the proposed use is considered an educational facility because dormitory is included in the definition of educational facility and the definition of “dormitory” means “a housing unit with necessary and usual attendant and related facilities and equipment” in Education Code Section 94110(d). As such, the definition of dormitory includes regular apartment units. Faculty and staff housing is also included in the definition of educational facility. Education Code Section 94110(f) defines “faculty and staff housing” as “a residential unit owned by a participating college or participating nonprofit entity for use by an individual holding a faculty appointment or a staff position at a public university, public college, or participating college.” The definition of “educational facility” includes “operating an institution for higher education, and related facilities and equipment” which provides flexibility to expand beyond the strict definitions provided above, such as for faculty and staff housing.

In a separate Education Code Section 17173(h), related to the CA School Finance Authority Act, “educational facility” is defined below:

“Educational facility” means any property, facility, structure, equipment, or furnishings used or operated in conjunction with one or more public schools, including charter schools, or community colleges, including, but not limited to, all of the following:

- (1) Classrooms.
- (2) Auditoriums.
- (3) Student centers.
- (4) Administrative offices.
- (5) Sports facilities.

(6) Maintenance, storage, or utility facilities.

(7) All necessary or usual attendant and related facilities and equipment, including streets, parking, and supportive service facilities or structures required or useful for the effective operation of the educational facility.

Notably, Education Code Section 17173(h) defines “educational facility” more narrowly than Section 94110(d) and omits mention of housing or dormitories.

*No, the proposed use is not an educational facility.*

The City’s Zoning Ordinance defines dormitory as “a residential facility that provides sleeping quarters for a number of people, usually along with common bathroom facilities and recreation areas, generally for students.” The residential buildings in Phase II have a total of 161 individual apartment units, each unit has their own kitchen, bathroom(s), and bedrooms. There are no common bathroom facilities on each floor for students to use. As such, the multi-family apartment buildings do not provide the facilities that are “usually” associated with dormitories. Additionally, the residential units are also proposed to be rented to faculty and staff in addition to students. Even if the student housing portion were to be considered a “dormitory,” the use allowances for the Delaware Addition do not expressly prohibit a dormitory.

The “educational facility” definition in Section 94110 of the Education Code is not adopted in the City’s Zoning Code and appears only applicable to matters specified within the Education Code’s California Educational Facilities Authority Act, which is primarily concerned with the financing of educational facilities, including residential facilities for students. In this case, it is uncertain whether the University is financing the construction or whether it is doing so pursuant to the aforementioned Act. However, regardless, it is not typically the state definition that the City uses as the basis for a use determination, rather it is the local one.

As the Zoning Ordinance does not define “educational facility,” it is fair to conclude that it is synonymous with “educational use,” which is defined in Section 24.22.339 as “any use devoted to education and learning, whether it be public, private, commercial or noncommercial.” This definition could be narrowly interpreted to mean that it does not include student or faculty housing.

The applicant has argued that having students or employees of an educational institution live in a building does not make it an educational facility because they are just living in the building, and not being educated or educating others there. The fact that a resident of an apartment building has a particular occupation does not transmute their residence into a place of business for that occupation. The applicant has stated that the term “educational facilities” as used in Exhibit D was not intended to apply to residential uses. In Chapter 24.10 of the Municipal Code, wherever the term “educational facilities” is used in mixed-use districts, it is under the heading of “Commercial Uses.”

*Staff recommendation*

Since UCSC is proposing to lease the residential apartment buildings from the Association and sublease them to students and faculty, staff recommends that the proposed use of the multi-family residential buildings and commercial building to be leased to UCSC does not meet the definition of an educational facility and is a permitted use, even if it can be interpreted either way.

The residential apartment units that are proposed to be leased to UCSC do not cleanly meet the definition of dormitory in the City's Zoning Ordinance, but even if the use were considered a dormitory, the use allowances for the site do not expressly prohibit a dormitory. The Municipal Code does not have a definition of "educational facility" but there is a definition for "educational use" that can be synonymous with "educational facility," and that definition does not include any mention of student or faculty housing. Typically when the City reviews allowable uses and definitions of uses, it is in accordance with the Municipal Code definitions rather than State Law definitions. As such, the City would not refer to the definition of "educational facility" as defined in the Education Code when considering the definition of the use. Therefore, staff recommends that leasing the buildings to UCSC would not make the buildings an educational facility, thus they would be an allowable use as proposed.

## **2. Does Condition of Approval # 11(cc) need to be revised in order for the owner to move forward with the proposed lease to UCSC?**

In Resolution NS-29,183, which was adopted in 2016 as a result of the approval of the major modification to the Delaware Addition Planned Development, condition of approval #11(cc) was carried forward from the original project approvals to be kept in the amended CC&R's. COA #11(cc) is as follows:

*In order to promote on-site sustainability, the Association will promote and encourage the sale or rental of residences to on-site employees. The CC&R's shall require the Association to provide an early notification program which shall include informing on-site employees and employers of sales or rentals of residences within the Addition by a web site list of available properties and maintaining a list of persons who work on-site and desire residences to be given to all those selling, renting, or leasing their properties within the Addition. The website information shall be available both in English and in Spanish. Upon notification that housing opportunities are available to workers and business owners on site, such notification shall remain open and available until it is taken by an on-site worker or, for a minimum of 21 days for the initial sale, rental, or lease of a residential unit, before being offered to the general public. The program shall be subject to the Enforcement Monitoring Program.*

### Owner's analysis of the COA

The owner takes the position that the above provision is only applicable to units that are made available to the public and that, since the proposed units will be leased to the University, and not made available to the public generally, this condition does not apply. The owner asserts that the purpose of this condition of approval was to reduce traffic by giving onsite employees early notice of available apartments near their place of employment. The owner argues that neither the CC&Rs, the Development Agreement or the project approvals require that residential units at the project be made available to onsite workers or the general public before being used by anyone and further states that if the restriction existed, it would preclude many other uses, such as a senior living facility or workforce housing master leased to a single employer as housing for its own employees. Instead the provision only requires that onsite workers get early notice of available housing before the housing is offered to the general public. The owner is stating that the Association and UCSC will remain in compliance with this condition of approval and section 8.2 in the CC&Rs notwithstanding the master lease, as the units within the buildings leased to UCSC will be listed on the website prior to those units being offered to the general public. If at any time UCSC offers units to the general public, not

just to faculty and students, the owner agrees that those units must (and will) first be listed on the website maintained by the Association before being offered publicly. The owner explained that the master lease to UCSC achieves the sustainability objective given the close proximity of the apartments to the UCSC campus and that the buildings will be served by UCSC transit, which will achieve the City's sustainability objectives more effectively than leasing to onsite employees before leasing to the general public, who may be commuting far greater distances using private vehicles. By master leasing the property for use solely by people who will work or study at a campus less than two miles from the property, readily accessible on major arterial roads and using UCSC-provided transit options, the residents' traffic will be far less impactful than to have those same people housed in locations across the City and beyond, where they would be more likely to use private vehicles on neighborhood streets to travel to campus and back with multiple trips throughout the day.

#### Staff's analysis of the COA

Staff disagree with the owner's interpretation of the implementation of the above provision. Throughout the years, the original project approvals have always been to construct a mixed use industrial/commercial/residential project that will provide jobs and housing for on-site workers, and contribute to the City's economic vitality, consistent with the goals and policies of the IND General Plan designation, implementing IG/Per-2 Zone District, and the public benefit findings of the Planned Development. The development is intended to retain flexibility in providing "build-to-suit" opportunities while providing a cohesive and compatible design through the implementation of Design Guidelines.

The staff report for the major modification to the Delaware Addition Planned Development in 2016 notes the original intent of the Planned Development and how the modification did not impact the original approval and intent, which is to provide housing opportunities on the same site as employment areas and to develop the project as a neighborhood, integrating residents and businesses in a work/live setting and incorporating environmental principles that will reduce reliance on the automobile to minimize adverse impacts to surrounding neighborhoods. The intended purpose of the mix of industrial/commercial/residential uses and live/work units was to preserve the site for primarily business-oriented commercial and industrial activities with live/work options, consistent with the IND (General Industrial) land use and IG/PER-2 (General Industrial/Performance District) zoning designation of the property.

The major modification in 2016 continued to meet the intent of the original project approvals because the purpose of consolidating the residential units to the north side of the lot was to separate the residential units from surrounding commercial/industrial uses to be more desirable for future residents and lenders. The separation of the residential units from surrounding commercial/industrial uses continues to provide housing for larger households and create much-needed rental housing in close proximity to employment opportunities. The project approvals, including previous staff reports, findings, and conditions of approval, all support the original purpose of the project, which is to provide housing opportunities on the same site as employment areas and to develop the project as a neighborhood, integrating residents and businesses in a work/live setting and incorporating environmental principles that will reduce reliance on the automobile to minimize adverse impacts to surrounding neighborhoods as well as to facilitate the goals of the General Plan. The goal of the IND (Industrial) General Plan designation is to designate lands reserved for the City's most employment-intensive uses, including industrial. This designation allows for other employment-intensive uses, such as office parks or incubator spaces for new businesses that are likely to provide high-quality jobs

to the community. The IND designation allows for limited development of live-work units that accommodate home-based businesses, consistent with the Delaware Addition Planned Development.

The above-noted condition of approval and resulting section in the CC&R's clearly describes the process of which the owner must follow to promote on-site sustainability and to meet the intent of the original project approvals, which was to provide housing opportunities on the same site as employment areas and to develop the project as a neighborhood. The condition of approval specifies that the sale or rental of residences to on-site employees needs to be done before the units are made available to the public. In this context, anyone who is not an on-site worker is the public. Staff's analysis finds that the owner must comply with the above-noted condition of approval, and clarification of the condition is needed.

Staff recommendation

While leasing the buildings to UCSC does not constitute an educational facility in staff's opinion and would be considered a permitted use, the above-noted condition of approval must be clarified for the owner to deviate from having to provide early notice to on-site employees first. As described in staff's analysis, the intent of the condition of approval is to ensure that the original project approvals and the General Plan and zone district policies continue to be met regarding the provision of housing opportunities on the same site as employment areas and to develop the project as a neighborhood. This will integrate residents and businesses in a work/live setting and incorporate environmental principles that will reduce reliance on the automobile to minimize adverse impacts to surrounding neighborhoods.

Section 3.13 in the Development Agreement provides a path forward to allow for the condition of approval to be modified/clarified. Section 3.13 states:

*The provisions of this Agreement require a close degree of cooperation between City and Owner, and refinements and further development of the Project may demonstrate that clarifications with respect to the details of performance of City and Owner or minor revisions to the Project are appropriate. If and when, from time to time, during the term of this Agreement, City and Owner agree that such clarifications or minor modification are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved by City and Owner, which, after execution, shall be attached to and become a part of this Agreement. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section 3.13 or whether the requested clarification is of such a character to require an amendment hereof pursuant to Article X below. The parties acknowledge that modifications which would be categorized as exempt under CEQA, or which, after an initial study made pursuant to CEQA, City determines do not require any further environmental review under CEQA, or do not increase the density or intensity of use of the Project overall or the maximum height, bulk, size or architectural style of proposed buildings within the Project, may be effectuated through operating memoranda pursuant to this Section 3.13. The City Manager may execute any operating memoranda hereunder without City Council action.*

The clarification of this condition of approval is considered minor and will be supported by staff, because although the owner is not proposing to provide early notice to on-site employees first, staff agrees with some of the applicant's reasoning with respect to the sustainability aspects of housing students, faculty and staff at the site. Moreover, approval of this use will result in the development of critically needed residential units at this site that will be occupied by people who would otherwise be seeking housing elsewhere in the City while, in the meantime, the commercial/industrial components of the Delaware Addition Planned Development are only partially built-out and, therefore, only a limited number of employees would be able to rent these units were they first offered to on-site workers. The people living in these units will still be located close to where they work and study, and the students (or family members of the faculty and staff) may be able to find jobs located in the Delaware Addition (or other nearby businesses). UCSC students, faculty and staff would have convenient access to regular transit services to and from their place of employment and school, resulting in shorter commutes, which would not be guaranteed if the units were occupied by other community members. Even if on-site workers were offered an opportunity to rent spaces before others, only a limited number of employees would avail themselves of such opportunity, and the resulting residents would be a mix of students and non-students, meaning that employment destinations would likely be further than the distance to UCSC. Furthermore, the site is located in an area of the City that is screened out from vehicle miles traveled (VMT) analysis and within ½ mile of a major transit stop. Given the convenient public transit services in the area, which is especially true for travel between the site and UCSC, clarifying this condition of approval remains consistent with the existing project approvals.

Importantly, the University is proposing to provide an additional 12 affordable housing units on 400 Ingalls Alley to moderate-income households. Additional affordable housing units are a key need in our community, and although the residential units are not being provided to onsite workers first, more affordable housing units are being provided and the residential units are being provided. Staff recommend that Council direct staff to process an operating memorandum under Section 3.13 of the Development Agreement to clarify the condition of approval. The operating memorandum will also state that the owner will provide 12 additional affordable housing units to moderate-income households.

While the above represents staff's recommendation, the Council reserves the right to agree with the applicant's interpretation, whereby the Council would find that, as proposed, the units are not, in the context of the condition of approval, being offered to the public. In such a situation, the conditions of approval would not require clarification, but an operating memorandum will be required to memorialize the changes to the affordable housing units.

### **3. Affordable Housing Units Consolidation**

The Project Approvals require that if the Residential Flats are mapped and inclusionary units have not been offered for sale then until such time as these inclusionary units are offered for sale, the owner shall provide seven units of affordable rental housing that shall be made available for rent to lower income households. Pursuant to the recorded Affordable Housing Development Agreements that were negotiated with the Housing and Community Development Manager of the City of Santa Cruz Economic Development Office, four of these units are to be located in the building constructed on 100 Ingalls Alley and three are to be located in the building constructed on 400 Ingalls Alley. The owner has negotiated a master lease agreement with the University, pursuant to which the University will master lease all



buildings constructed on 100 and 400 Ingalls Alley (Lots 20 and 21). For various reasons, the University desires to consolidate all seven of the affordable housing units onto 400 Ingalls Alley, which will be comprised entirely of housing for University employees, and provide an additional 12 affordable housing units available to moderate-income households.

The consolidation of the affordable housing units to 400 Ingalls Alley and the additional 12 affordable housing units available to moderate-income households can be clarified with an operating memorandum and recording a revised affordable housing development agreement. The Delaware Addition Planned Development was approved in 2008 with major modifications approved in 2014 and 2016, as described in the background of this report. The planned development is locked into the affordable housing provisions that were approved in the 2016 major modification and described in the project conditions of approval and the fifth operating memorandum.

By consolidating the units onto 400 Ingalls Alley, the affordable housing units continue to be provided and the affordable housing provisions continue to be met for Phase II of the project and further exceeded with the addition of 12 affordable housing units. The only difference is that the affordable housing units are being provided in one residential building on one lot rather than dispersed throughout the three residential buildings across both lots.

The owner would be required to record the operating memorandum to clarify the affordable housing units consolidation and to provide the additional affordable housing units through a revised recorded affordable housing development agreement. If the buildings are no longer leased or owned by the University, the affordable housing units will revert back to being dispersed between 100 and 400 Ingalls Alley, without the additional 12 affordable housing units.

#### **4. Regional Housing Needs Allocation (RHNA) Implications**

The State Department of Housing and Community Development (HCD) has very specific requirements for when new units can count towards the City's RHNA totals, some of which can be found at:

<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-element-annual-progress-report-faq.pdf>

With the project as proposed, the 62 units of staff and faculty housing will count toward the City's RHNA totals. The seven low income units will be counted towards meeting the City's low income targets. As proposed, with the 12 moderate income units lasting for the length of UCSC's leasing or ownership of the units, staff currently anticipates that said 12 units will be counted towards the City's moderate income RHNA targets.

It is unclear whether the 99 units of student housing would count towards the City's RHNA targets. The information at the link above states the following: "Student housing of any type is not considered housing units, even if the student housing consists of separate living quarters for students. If the housing is restricted to students, it is considered group quarters and thus not counted as a housing unit." This would, on its face, indicate that the student housing units would not count towards the City's RHNA targets. However, it could be argued that this lease does not guarantee that the units will be permanently restricted to students, and the units could convert to non-student housing in the future. Whether HCD would allow them to be counted under this argument (or other arguments) remains to be seen.

## **5. Permitting Process**

Staff recommends that leasing the buildings to UCSC does not constitute an educational facility and that the condition of approval be clarified through an operating memorandum. The next step would be to administratively approve an Operating Memorandum to clarify the condition of approval, allow the affordable housing units consolidation, and memorialize the voluntary offer of additional affordable housing units. Once the operating memorandum is administratively approved, the CC&R's can be amended with the approval of the Planning Director and City Attorney, and a revised affordable housing agreement can be recorded.

## **6. Health in All Policies (HiAP)**

HiAP is a collaborative approach to improving the health of all people by incorporating health considerations into decision-making across sectors and policy areas. HiAP is based on 3 pillars: equity, public health, and sustainability. The goal of HiAP is to ensure that all decision-makers are informed about the health, equity, and sustainability impacts of various policy options during the policy development process. The project supports the pillar of equity by providing a range of jobs, as there are commercial buildings proposed to be built as part of Phase II and that will be constructed in the future on other lots in the Delaware Addition Planned Development. There will be residential units constructed as part of the Phase II development, which will include providing affordable housing units. There are also public amenities, such as the central plaza, that will be built alongside the Phase II development that are all open and available to the public at large. The development is on a site that will be improved with sidewalks and trees and that is close to public transportation, commercial goods and services, job opportunities, and recreational areas and trails. Development in this central location encourages a sustainable and healthy lifestyle by promoting alternative forms of transportation such as use of pedestrian trails and bike paths via the Rail Trail and the riparian trail along Arroyo Seco, which connects to other areas in the City. Therefore, the project remains consistent with the three pillars of the HiAP and continues to be an efficient use of the land.

## **7. California Environmental Quality Act (CEQA) Compliance**

California Environmental Quality Act (CEQA) compliance can be achieved for this under either one of several paths. First, should Council agree with the applicant's proposed positions, the action would not change any of the conditions of approval, other than allowing the affordable units to be consolidated into one building and memorializing the voluntary provision of 12 additional affordable units. Those changes would have no foreseeable impact on the environment and would not be considered a project under CEQA Guidelines Section 15378 or would be exempt under the "common sense" exemption in Section 15061(b)(3), in that there is no possibility that the activity in question would have a significant effect on the environment. The changes to the affordable housing units would have to be memorialized through an operating memorandum, which would not be considered a project under CEQA. Second, should Council agree that clarification is needed for the condition of approval related to offering units to on-site workers, although the action would not change any of the conditions of approval but merely clarify an ambiguity and would, therefore, not constitute a project, even if it was a project, that action can either re-use the prior Environmental Impact Report that was certified for the project, and would also qualify under the "common sense" exemption in Section 15061(b)(3). The transportation considerations discussed above support this

conclusion, and no other changes could be reasonably contemplated from a slight reduction in the number of units potentially being occupied by students or UCSC faculty/staff that would otherwise be occupied by on-site workers.

**FISCAL IMPACT:** The applicant paid fees to compensate for costs associated with staff time processing the review of the annual compliance report. This project will contribute to increased property tax to the City, and the project developer will be required to pay City impact fees. The additional revenue generated by the project will help offset the costs of providing municipal services demanded by the project, though many residential uses typically have net negative fiscal effects over time. In addition to the residential buildings, there are also commercial buildings that will be constructed in Phase II of the Delaware Addition Planned Development which will contribute to the economic activity in the City, provide more jobs in proximity to residential units, and will, by themselves, have a net fiscal positive impact, as is typically the case for employment uses due to their higher revenue generation and lower service demands as compared to residential uses.

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**Approved By:**  
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**ATTACHMENTS:**

1. Resolution
2. Amended Annual Compliance Report
3. Master Site Plan