



SUBMITTED VIA ONLINE PORTAL

December 30, 2025

Kyle Rathbone, Associate Planner
Community Development Department
1377 Fruitvale Avenue
Saratoga, CA 95070
krathbone@saratoga.ca.us

**Re: Resubmittal of Parker Ranch Housing Development Project
 12048 Parker Ranch Road (APN # 366-43-018)
 Application # CPX24-018**

Dear Mr. Rathbone,

Enclosed you will find a resubmittal of a qualified “housing development project,” as defined in the Housing Accountability Act (“HAA”) (Gov. Code § 65589.5) on behalf of WZW Investment, LLC (“WZW” or “Applicant”) for a proposed residential subdivision project located at 12048 Parker Ranch Road within the City of Saratoga (“Parker Ranch Project” or “Project”).

This application follows the City’s May 12, 2025 comments on the Project and the Applicant’s subsequent appeal and the Applicant’s assertion in that appeal that the Parker Ranch Project was deemed complete and consistent as a matter of law on March 19, 2025 because the City failed to comply with the statutory deadlines, first for notification of completeness and then for notification of consistency.

Without waiving any vested rights that have accrued to continue processing the original application as designed, consistent with the discussions with the City’s outside counsel, Ms. Nardos Girma and Mr. Gabriel Ross, the Applicant hereby requests that the City process the revised Parker Ranch Project resubmittal under the provisions of AB 1893. The specifics of the project, including its eligibility to proceed under AB 1893 are described below in the Revised Project Description, in the Additional Project Details found at **Section II** and in the attached checklist at AB 1893 Checklist attached as **Exhibit A-1** hereto.

Revised Project Description:

The proposed project (“Project”) is an all residential “housing development project” within the meaning of the HAA and SDBL consisting of a tentative map application to subdivide consisting of a tentative map application to subdivide a 2.35 AC site located at 12048 Parker Ranch Road in Saratoga to create fourteen (14) residential lots and two common lots for access and stormwater. One remainder parcel will designated pursuant to Government Code section 66424.6 as not a part of this project¹. The project will include a planning permit to demolish the existing single family home and to construct thirty-five (35) new residential units, consisting of fourteen (14) single-family homes, fourteen (14) junior ADUs within each of those homes, and seven (7) ADUs and for associated off-site and on-site improvements. The applicant will deed-restrict three (3) units on Lot 7 for extremely low-income households earning 30% of AMI or less: a single-family home, junior ADU and ADU.

This Project also intends to utilize AB 130’s exemption from CEQA for qualifying in-fill projects as set forth in Public Resource Code section 21080.66. Consistent with its legal status as being “complete”, the Applicant also requests that the City find the Project exempt from CEQA and begin the tribal notification process. Further details, including a checklist establishing eligibility, are provided in **Section III** and **Exhibit A-2** attached hereto.

Last, responses to certain Planning Comments are included in **Section IV**.

I. LEGAL BACKGROUND

A. Remainder Parcels Under Subdivision Map Act

Where a subdivider does not intend to sale, lease or finance a unit or portion of land, the Subdivision Map Act (“SMA”) allows the subdivider to either omit the unit or portion of land from the final recorded map or designate it as a “remainder”. Government Code § 66424.6(a) provides

When a subdivision, as defined in Section 66424, is of a portion of any unit or units of improved or unimproved land, the subdivider may designate as a remainder that portion which is not divided for the purpose of sale, lease, or financing. Alternatively, the subdivider may omit entirely that portion of any unit of improved or unimproved land which is not divided for the purpose of sale, lease, or financing.

(*Id.*)

¹ The remainder parcel created pursuant Government Code section 66424.6 is the area that was formerly designated as Lot C. In conformance with the Subdivision Map Act, this area is not part of the proposed project.

Here, because the portion of the site that the Developer wishes to exclude from the map is not intended now or in the future to be sold, leased or financed, the Developer can designate this portion as a “remainder” or “not a part” of the resulting mapped parcels. By doing so, the “exterior boundary of the land included within the subdivision shall not include a designated remainder or omitted parcel.” (See Gov. Code § 66445, subd. (d)(2) [boundary of land included in subdivision on a parcel map does not include remainder]; *see also* Gov. Code §§ 66424.6, subd. (a)(1) [this portion is not counted as a parcel to determine whether a parcel or final map is required; 66434, subd. (e)(1) [remainder is not included in boundary of subdivided land for final map], § 66445, subd. (d)(1) [same with parcel maps].)

B. State Laws Protecting this Project.

1. Basic HAA Policy

The HAA was enacted in 1982 (Stats. 1982, Ch. 1438.) Since then, it has been expanded many times “to significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters.” (Gov. Code § 65589.5, subd. (a)(2)(K).)

Despite the legislature’s ongoing efforts to substantially increase the state’s housing supply and eliminate or reduce impediments thereto, “[its] intent has not been fulfilled.” (Id.) “California’s housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes [such as the HAA] intended to significantly increase the approval, development, and affordability of housing for all income levels ...” (Gov. Code § 65589.5, subd. (a)(2)(J).)

To deal with this “critical problem”, the legislature has severely and intentionally curtailed the generally broad land use authority local governments otherwise have had, creating an extremely high bar for local agencies to lawfully disapprove of a housing development project. (Gov. Code § 65589.5, subd. (a)(1)(A).) This is precisely the point of the HAA – both as it was originally enacted, and as it has been amended – to close certain loopholes that recalcitrant public agencies have improperly sought to exploit.

2. Limits on City Discretion

One of the loopholes that the HAA has closed is local discretion and legal deference thereto that has long been used to deny projects. Under the HAA, a housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that could allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity with applicable standards and requirements. (Gov. Code § 65589.5, subd. (f)(4).) “The intent of this provision is to provide an objective standard and increase the likelihood of housing

development projects being found consistent, compliant and in conformity.” (See HCD Housing Accountability Act Technical Assistance Advisory (“HCD Housing Accountability TAA”)² at p. 11.)

If a qualified housing development project complies with applicable, objective general plan and zoning standards and criteria in effect at the time that the project’s application is determined to be complete, the local agency can disapprove the project and/or impose a condition that the project be developed at a lower density, only upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

- (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. A “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(Gov. Code § 65589.5, subs. (j)(1)(A)-(B).)

“Housing for very low, low-, or moderate-income households” as defined by the HAA, is entitled to even greater protections. (See Gov. Code § 65589.5, subd. (d) and (h)(3)(A).) To deny a project or condition it at a lower density, the local agency must make additional findings such as inconsistency with both the zoning and the General Plan. (*See, e.g.* Gov. Code § 65589.5, subs. (d)(1)-(6).)

If a local agency chooses to deny the project – including to condition that it be developed at a lower density than what is permitted under SDBL or otherwise - the agency has the burden of either proving that the proposed project in some manner fails to comply with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete or making the health and safety and other findings required by the HAA.

“Objective” is strictly defined to mean “involving no personal or subjective judgment by a public official and being 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.” (Gov. Code § 65589.5, subd. (h)(8).) The “reasonable person” standard

² Found at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf>.

of review further limits local discretion. (See Gov. Code § 65589.5, subd. (f)(4) [a project is deemed compliant as matter of law “if there is substantial evidence that would allow a reasonable person to conclude that the housing development project... is consistent, compliant, or in conformity”].)

The HAA also requires that “the standards and criteria determined to apply to the project must facilitate and accommodate development at the density allowed by the general plan on the project site and as proposed by the housing development project.” (Gov. Code § 65589.5, subd. (j)(4).) When there is an inconsistency between the zoning and general plan, the HAA requires that the local agency disregard any objective standards that are inconsistent with achieving the density allowed by the general plan and as proposed by the housing development project. (See HCD Housing Accountability Act TAA at pp. 11-12.

3. Density Bonus Law

SDBL provides a developer with four benefits in exchange for constructing affordable units: (1) a density bonus; (2) incentives/concessions; (3) waivers/reductions of development standards; and (4) maximum parking standards. (Gov. Code § 65915, subs. (b)(1)(A), (d)(1), (e)(1), (f)(1), and (p).) Once a developer provides the minimum number of affordable units needed to establish eligibility, the City must facilitate the permissible density by granting requested incentives/concessions and waivers/reductions of development standards except in limited circumstances as set forth below. As with the HAA, the SDBL is to “be interpreted liberally in favor of producing the maximum number of total housing units.” (Gov. Code § 65915, subd. (r) [emphasis added].)

a. Base Density

AB 2334 (Chapter 651, Statutes of 2022, effective January 1, 2023) and AB 1287 (Chapter 755, Statutes of 2023, effective on January 1, 2024) clarified the definition of “maximum allowable residential density” or “base density” to mean: “...the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the greatest number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project.” This is codified at Government Code section 69515, subd. (o)(6).³

When a project is submitted pursuant to AB 1893, the permissible base density is defined by Government Code section 65589.5(h)(11)(C), *i.e.*:

- (i) The density does not exceed the greatest of the following densities:

³ AB 1287 also further clarifies that any inconsistency between planning documents is irrelevant by removing the sentence in SDBL that used to read, “If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general or specific plan, the greater shall prevail.”

(I) Fifty percent greater than the minimum density deemed appropriate to accommodate housing for that jurisdiction as specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2.

(II) Three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater.

(III) The density that is consistent with the density specified in the housing element.

(ii) Notwithstanding clause (i), the greatest allowable density shall be 35 units per acre more than the amount allowable pursuant to clause (i), if any portion of the site is located within any of the following:

(I) One-half mile of a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(II) A very low vehicle travel area, as defined in subdivision (h).

(III) A high or highest resource census tract, as identified by the latest edition of the “CTCAC/HCD Opportunity Map” published by the California Tax Credit Allocation Committee and the Department of Housing and Community Development.

In this case, the maximum base density is “fifty percent greater than the minimum density deemed appropriate to accommodate housing for that jurisdiction as specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2”, which, here, is 15 dwelling units per acre.

b. Waiver/Reductions in Development Standards

Projects that qualify for SDBL benefits are entitled to waivers and reductions in development standards. (Gov. Code § 69515, subd. (e).) Builder remedy projects are no exception. (*See* Gov. Code § 65589.5, subd. (f)(6)(B)(i) [“a local agency shall not apply any individual or combination of objective, quantifiable, written development standards, conditions, and policies to the project that...(II) Preclude a project that meets the requirements [of AB 1893]...as modified by any density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to Section 65915, from being constructed as proposed by the applicant”].).

Except in limited circumstances, SDBL bars local agencies from applying development standards that preclude a developer from achieving permissible density:

In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of

a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section.

(Gov. Code § 65915, subd. (e) [emphasis added].)

According to the HCD, the word “densities” italicized in the statutory excerpt above, refers to both the density that could be achieved via the granting of density bonus units as well as to situations where an applicant does not seek an increase in density. (*See, e.g.*, HCD Letter of Technical Assistance to the City of San Jose (May 8, 2022)⁴.) In other words, a developer is not required to request density bonus units to qualify for waivers or reductions in development standards to achieve its proposed density.

A “development standard” is defined broadly as “a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.” (Gov. Code § 65915, subd. (o)(1).) An applicant is not limited in the number of waivers that may be requested. (Gov. Code § 65915, subd. (e)(1).)

The HCD has previously clarified that a waiver may follow from a grant of an incentive or concession for relief from a use requirement, as those terms are explained in further detail below. (HCD Letter of Technical Assistance to the City of San Jose (May 20, 2022).) To illustrate the point, the HCD provided an example in which an applicant seeks an incentive/concession to remove the requirement for mixed-use zoning/ground floor commercial space and instead provide residential uses on the ground floor. Under such a scenario, the HCD advised that an applicant could then seek a waiver of ground floor glazing requirements because they “would be incompatible” with the incentive/concession allowing ground floor residential uses. (*Id.* at p.3.) According to HCD, “these derivative waivers should be considered and approved in a perfunctory manner by the local agency.” (*Id.*)

A local government may deny a requested waiver or reduction in development standards only in limited circumstances. Similar to the HAA, a local government may deny the request if it “would have a specific, adverse impact . . . upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact” or where it “would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.” (*Id.*) A “specific, adverse impact” is defined to mean “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (Gov. Code § 65589.5, subd. (d)(2).) The legislature has specified that conditions that would have a specific, adverse impact upon the public health and safety “arise infrequently”. (Gov. Code § 65589.5, subd. (a)(3).) Conditions that would have a specific,

⁴ Available at <https://www.hcd.ca.gov/community-development/housing-element/docs/sclSanJose-TA-052022.pdf>.

adverse impact upon the public health and safety “arise infrequently.” (Gov. Code § 65589.5(a)(3).)

It is well-settled law that a local government cannot deny a requested waiver, even if the developer could have designed its project in a way that could have minimized the need for requested waivers. In *Bankers Hill 150 v. City of San Diego*, project opponents claimed that the development could have been redesigned to be more consistent with the city’s development standards and, therefore, the city should have denied the requested waivers. (*Id.* at 74 Cal.App.5th 755 (2022).) The Court of Appeal rejected that argument, holding that the city could not demand that the developer redesign its building to better meet the city’s development standards even if such a design were to exist. (*Id.* at 775.) In short, “[a] project that meets the requirements of the [State Density Bonus Law] is entitled to waivers if they are needed, ‘period.’” (HCD Notice of Violation Letter to the City of Encinitas (January 20, 2022)⁵, quoting *Wollmer v. City of Berkeley*, 193 Cal.App.4th 1329, 1346-47 (2011).)

c. Incentives and Concessions

Incentives/concessions are any “regulatory incentives or concessions proposed by the developer or the city...that result in identifiable and actual cost reductions to provide for affordable housing costs.” (Gov. Code § 65915(k)(3).) The definition of “incentives and concessions” is broader than “development standards” which are tied to whether the standard physically precludes construction of units. Without limitation, incentives and concessions include the following:

- (1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission . . . including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs
- (2) 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 and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

⁵ Available at <https://www.hcd.ca.gov/community-development/housing-element/docs/sdiencinitas-nov012022.pdf>.)

- (3) Other regulatory incentives or concessions proposed by the developer or agency that result in identifiable and actual cost reductions to provide for affordable housing costs. . . .

(Gov. Code § 65915(k).)

The HCD has stated that the incentives/concessions “clearly indicate[] that requirements beyond development standards are eligible.” (HCD Inquiry and Technical Assistance Letter to City of San Jose (Dec. 14, 2021)⁶ at p. 3 [incentive can be used to obtain relief from replacement commercial requirements in a General Plan].) These include “regulatory requirements,” as long as the incentive/concession results in identifiable and actual cost reductions. For example, the HCD has found that incentives/concessions can be used to alter requirements in inclusionary ordinances, including requirements to disperse affordable units. (See HCD Letter of Technical Assistance to West Hollywood (Sept. 2, 2022)⁷ at p.3.)

As with waivers and reductions of development standards, local agencies must approve incentives/concessions unless specified written findings based on substantial evidence are made. (See Gov. Code § 65915, subd. (d)(1).) As with findings needed to deny approving a project under the HAA or approving a waiver or development standard reduction under SDBL, it will be difficult, if not impossible, for local agencies to make the findings necessary to deny an incentive or concession in most situations.⁸

4. Additional Protections Under AB 1893.

In addition to the standards benefits provided to housing development projects under the HAA, “builder remedy projects” receive other important protections. These include a prohibition against a local agency applying “any individual or combination of objective, quantifiable, written development standards, conditions, and policies to the project that...[r]enders the project infeasible.” (Gov. Code § 65589.5, subd. (f)(6)(B)(i)(II). The term “feasible” is in turn defined as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (Gov. Code § 65589.5, subd. (h)(1).)

⁶ Available at <https://www.hcd.ca.gov/community-development/housing-element/docs/sclsanjose-loi-ta-121421.pdf>

⁷ Available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/West-Hollywood-TA-090222.pdf>.

⁸ The only permissible reasons to deny an incentive/concession are: (i) the incentive/concession does not result in identifiable and actual cost reductions; or it would have specific, adverse impacts with no feasible method to mitigate upon public health and safety or on real property listed in the California Register of Historical Resources or granting the incentive/concession would be contrary to state or federal law. (*Id.*)

Another important protection is the “deemed consistent” provisions of AB 1893. Pursuant to Government Code section 65589.5(f)(6)(D)(iii):

Any project that complies with this paragraph shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing instruments, or other similar provision for all purposes, and shall not be considered or treated as a nonconforming lot, use, or structure for any purpose.

In its Technical Assistance Letter to the City of San Jose dated February 7, 2025, the HCD found that this provision means that a “builder remedy project” will satisfy the first prong of the AB 130 CEQA exemption requiring that a proposed project be consistent with the General Plan and zoning.⁹ That letter states:

AB 1893 amends the HAA to deem a qualifying builder’s remedy project “consistent...with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing structures, or other similar provisions for all purposes” [citation to HAA] which would satisfy the condition outlined in subdivision (a) of CEQA Guidelines section 15332.

(*Id.* at p. 3.)

5. AB130 CEQA Exemption

Assembly Bill 130 (AB 130) was recently enacted to address the cost and time delays to housing production from excessive and unnecessary review under California Environmental Quality Act (CEQA). This statutory exemption, which is codified at Public Resources Code section 21080.66, applies to qualifying urban infill housing projects that meet specific criteria, including location on previously developed sites, consistency with applicable general plan and zoning designations, and satisfaction of specified environmental and project design standards.

The rationale underlying this exemption recognizes that infill development on previously disturbed sites within existing urbanized areas promotes smart growth principles, reduces urban sprawl, minimizes impacts on undeveloped land and natural resources, and takes advantage of existing infrastructure and public services. A checklist summarizing the criteria for eligibility and the specific statutory references is set forth in **Exhibit A-2** hereto.

By streamlining the environmental review process for projects that meet rigorous environmental and design standards, AB 130 encourages the construction of housing in locations that reduce

⁹ Available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/sanjose-hau-1359-ta-ab1893-02062025.pdf>

vehicle miles traveled and advance the State's climate goals while maintaining appropriate environmental protections through objective performance standards.

II. ADDITIONAL PROJECT DETAILS

A. SB 330 Replacement Units

Because there are no qualified units being demolished, there are no SB 330 requirements for this Project.

B. Density Bonus Requests

The Applicant is not currently seeking any density bonus units but reserves its right to request the same pending City feedback on the revised project.

Because the Application has already been deemed complete and consistent as a matter of law, the Applicant is not anticipating any waivers or reductions in development standards will be needed or requested. The Applicant reserves its right to request waivers and reductions in development standards needed to facilitate the permissible density as well as an incentive or concession under SBDL in response to City feedback.

III. ELIGIBILITY FOR CEQA EXEMPTION

The Project has been designed to be exempt from CEQA review under AB130. A checklist has been provided at **Exhibit A-2** in support of the Project's eligibility for an exemption under Public Resource Code section 21080.66.

The Applicant requests that the City begin tribal notification at the earliest opportunity.

IV. SPECIFIC RESPONSES TO COMMENTS

Planning Comment a through d: The cited policies are not objective standards by which the Applicant can evaluate whether the Project complies. Under the HAA, these standards may not be applied to the Project and, as such, no further response is required.

Comment #2, #4, #6 - #14:

All comments development standards for the underlying zoning, which is not applicable under Government Code section 65589.5(f)(6)(A). Specifically, a local agency "may only require the project to comply with the objective, quantifiable, written development standards, conditions, and policies that would have applied to the project had it been proposed on a site with a general plan designation and zoning classification *that allow the density and unit type proposed by the applicant.*" (Gov. Code § 65589.5, subd. (f)(6)(A) [emphasis added].) Because these are the

underlying single-family zoning standards that do not permit the density proposed, they are inapplicable. Even if they were applicable - which they are not - each of these standards would physically preclude development at the density proposed and, as such, they are subject to waivers and reductions under SDBL as needed for the Applicant to achieve the desired Project and the density proposed. (*See* Gov. Code § 65915, subd. (e).)

We look forward to bringing this project to fruition and resolving our pending appeal.

If you have any further questions or need any additional information, I can be reached at 415-265-1086 or at mg@hsw-legal.com.

Kind regards,



MELANIE GRISWOLD, Partner
HSW, LLP

cc: Nardos Girma
ngirma@smwlaw.com

Gabriel Ross
ross@smwlaw.com

EXHIBITS

EXHIBIT A-1 – AB 1893

“BUILDER REMEDY PROJECT” CHECKLIST

1. Qualified Affordable Housing Development Project ✓

Is the project a housing development project that provides housing for very low, low-, or moderate-income households?

It is a “housing development project”¹

- ☒ All residential units,
- ☐ A qualified mixed-use development,
- ☐ Transitional or supportive housing, OR
- ☐ Farmworker housing.

It provides “housing for very low, low-, or moderate-income households”²

- ☐ 100 percent of the units, excluding managers’ units, are dedicated to lower income households,
- ☒ At least 7 percent of the total units, excluding managers’ units, are dedicated to extremely low-income households
- ☐ At least 13 percent of the units, excluding managers’ units, are dedicated to lower income households,
- ☐ There are 10 or fewer total units, that is on a site that is smaller than one acre, and that is proposed for development at a minimum density of 10 units per acre, OR
- ☐ 100 percent of the units are sold or rented to moderate-income households.

Evaluation/Notes: The proposed project qualifies. It is all residential and more than 7% of the total units, *i.e.*, 3 of the 35 units proposed, will be deed-restricted for a period of 45 years and provided at an affordable housing cost to extremely-low income households as required by Government Code section 65589.5(3)(h)(C)(ii).

2. Non-Compliant Housing Element ✓

Did the jurisdiction lack a compliant housing element when housing development was deemed complete?

- ☒ Complete SB330 Preliminary Application submitted while jurisdiction lacked compliant housing element, OR

¹ Found at Government Code section 65589.5(h)(11)(A) and further defined at section 65589.5(h)(2).

² Found at Government Code section 65589.5(h)(11)(A) and further defined at section 65589.5(h)(3)(A).

- ☐ Complete formal development application submitted while jurisdiction lacked compliant housing element.

Evaluation/Notes: Pursuant to prior correspondence detailed in the appeal, the Project has been deemed complete by operation of law and, even if it were not, there has been no loss of vesting.

3. Density ✓

Does the Project comply with the maximum and minimum density requirements before density bonus units?

- ☒ Proposed density is no more than 50% of the "Mullin density" required for lower-income housing sites under Gov. Code § 65583.2(c)(3)(B),
- ☐ Proposed density is no more than three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater,
- ☐ Proposed density is consistent with the density specified in the housing element,

OR,

- ☐ If a minimum density applies, the density of the project shall not be less than the minimum density required on the site.

Evaluation/Notes: The Mullins density for Saratoga is 30 DUs/AC, which means the Project has a base density of 15 DUs/AC before density bonus units are considered. The Parker Ranch Project proposes a density of 15 DUs/AC, which complies.

4. Adjacency to Industrial Exclusion ✓

Is the Project site located near a disqualifying industrial use?

- ☒ Site does not abut property where more than one-third of the square footage on the site has been used, within the past three years, by a heavy industrial use, or a Title V industrial use, as those terms are defined in Section 65913.16.

Evaluation/Notes: The site complies in that it does not abut any industrial use and is surrounded by residential uses.

EXHIBIT A-2 – AB 130 CEQA EXEMPTION CHECKLIST

PROJECT & SITE ELIGIBILITY CRITERIA

1. Project Type ✓

Is the project a qualified "housing development project"?

☒ At least 2/3 of the building square footage is dedicated for residential use,

OR

☐ At least 50% of the building square footage is dedicated for residential use if in mixed-use developments

If deemed complete after January 1, 2025, is any portion of the project proposed for use as transient lodging (motel, hotel, bed and breakfast, etc.)

☒ No transient lodging is proposed as part of the project.

Evaluation/Notes: The proposed project qualifies. It is all residential and there is no transient lodging proposed.

2. Project Size ✓

Is the project site within the size limits?

☐ **Standard projects:** Site is 20 acres or less

☒ **Builder's Remedy projects:** Site is 5 acres or less (Gov. Code § 65589.5(d)(5))

Evaluation/Notes: The proposed project qualifies. The site is 2.35 AC.

3. Location Requirements ✓

Is the project located in:

☒ An incorporated municipality (city), OR

☐ An urban area as defined by the U.S. Census Bureau

Evaluation/Notes: This criterion is met. The City of Saratoga is a legally incorporated city.

4. Urban Use Test ✓

Does the site meet one of the following “urban use” criteria?

- ☒ **Previously Developed:** Site has been previously developed with urban uses
- ☐ **75% Perimeter is Adjacent to Urban Uses:** At least 75% of the site's perimeter adjoinsⁱ parcels developed with urban uses
- ☐ **75% Quarter-Mile Radius:** At least 75% of the area within a 1/4-mile radius is developed with urban uses
- ☐ **Four-Sided Test:** For sites with four sides, at least 3 out of 4 sides are developed with urban uses AND at least 2/3 of the perimeter adjoins parcels with urban uses

Evaluation/Notes: This criterion is met. The site has been previously developed with a single-family use.

5. General Plan & Zoning Consistency ✓

Is the project consistent withⁱⁱ the applicable general plan and zoning ordinance (only one required), as well as a local coastal program, if applicable?

- ☒ **General Plan or Zoning Consistency**
- ☒ **Local Coastal Program:** Either consistent or none is applicable

Evaluation/Notes: This criterion is met. The P(CG) zoning allows for residential use with a density ranging from 5 to 15 units per acre. With the benefits of density bonus law, the project will comply with the local zoning ordinance.

6. Density Requirements ✓

Does the project meet minimum density requirements?

- ☒ Project achieves at least 50% of the "Mullin density" required for lower-income housing sites under Gov. Code § 65583.2(c)(3)(B)

Evaluation/Notes: The proposed project complies. The Mullins density for Saratoga is 30 DUs/AC, which means a minimum of 15 DUs/AC is required. The project has a proposed density of 15 DUs/AC. Note that there is no basis in law to exclude any housing unit from the calculation of density. Multiple provisions of state law refer to ADUs and JADUs as housing units. Several HCD letter also address how ADUs can be used to qualify for deed-restricted residential units and how those units may be treated for calculating the total number of housing units under SDBL¹

¹ See, e.g., HCD Technical Assistance Letter to the City of Carlsbad dated February 16, 2024, available at [Carlsbad State Density Bonus Law Implementation – Letter of Technical Assistance](#), and HCD

7. Environmental Exclusions ✓

The site of the proposed Project does not contain any excluded environmental conditions under Government Code § 65913.4(a)(6):

- ☒ Site is not located in certain coastal zone areas where not subject to certified LCP or certified land use plan or where vulnerable to 5' sea level riseⁱⁱⁱ
- ☒ Site does not consist of prime farmland, farmland of statewide importance, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction^{iv}
- ☒ The development is not located on a site that is a wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
- ☒ Site is not located within a very high fire hazard severity zone or within a state responsibility area as defined in Section 4102 of the Public Resources Code except where jurisdictions have adopted fire hazard mitigation measures.^v
- ☒ Site is not located within a hazardous waste sites as defined except in certain limited circumstances^{vi}
- ☒ Site is not located within special flood hazard area by the 1 percent annual chance floor or within a regulated floodway unless exceptions exist^{vii}
- ☒ Site is not located within a delineated earthquake fault zones unless development complies with applicable seismic protection building code standards adopted under the California Building Standards law and by any local building department
- ☒ Site is not located within a protected species habitat or natural community conservation plan area^{viii}
- ☒ Site is not located on lands that are under a conservation easement

Evaluation/Notes: The site complies in that it does not include any exempted environmental conditions. The site is located within a Local Responsibility Area per <https://osfm.fire.ca.gov/what-we-do/community-wildfire-preparedness-and-mitigation/fire-hazard-severity-zones>. The site is not located within any earthquake fault zone as shown on https://maps.conservation.ca.gov/cgs/informationwarehouse/eqzapp/#data_s=id%3Adata_Source_4-191d8e6d993-layer-25%3A11286623.

7. Historic Resource Exclusions ✓

The project does not involve demolition of historic structures:

Technical Assistance Letter to the City of Antioch dated November 15, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/antioch-hau-1174-ta-111524.pdf>.

- ☒ The Project does not propose to demolish any historic structures where those structures were listed on federal, state, or local registers prior to the submittal of a preliminary application

Evaluation/Notes: The site is vacant and there are no structures on the site that are listed on a historical register as of the date that the SB 330 preliminary application was submitted.

ADDITIONAL POTENTIAL MANDATORY REQUIREMENTS & CONDITIONS

8. Tribal Consultation ✓

Has the mandatory tribal consultation process been initiated?

- ☐ Local government has notified all traditionally and culturally affiliated California Native American tribes within 14 days of application completeness^{ix}

Evaluation/Notes: Because the application is complete, tribal consultation should be initiated within 14 days of submittal.

9. Environmental Assessment Requirements ✓

Has the project completed required environmental assessments?

- ☒ **Phase I Environmental Site Assessment** required as condition of approval

Potential additional requirements to be met: N/A

- ☐ **Preliminary Endangerment Assessment** (if any recognized environmental condition is found in Phase 1)
- ☐ **Hazardous substance removal/mitigation** is completed before certificate of occupancy meeting federal and state standards if a release of a hazardous substance is found to exist on the site)
- ☐ **Mitigation of any potential for exposures** to significant hazards from surrounding properties or activities, if found, before certificate of occupancy

Evaluation/Notes: A Phase I is included in the submittal materials. No additional follow-up measures are required.

10. Freeway Proximity Requirements ✓

Is any housing on the site located within 500' of a freeway?

☒ **Site is not located within 500 feet of a freeway**

If project is within 500 feet of a freeway, does it include:

- ☐ Centralized HVAC with outdoor intakes facing away from freeway
- ☐ No balconies facing the freeway
- ☐ MERV 16 air filtration replaced at manufacturer's designated intervals

Evaluation/Notes: The site is not located within 500' of a freeway.

11. Prevailing Wage Requirements ✓

Does the proposed project trigger any prevailing wage requirements? No.

- ☐ **100% affordable housing projects:** Prevailing wage required for all construction workers
- ☐ **Buildings over 85 feet:** Subject to Gov. Code § 65913.4(a)(8) labor standards
- ☐ **San Francisco projects (50+ units):** Subject to Gov. Code Article 4 labor standards if market-rate multifamily projects in SF met specific criteria (2022-2024)

Evaluation/Notes: The proposed project does not trigger any prevailing wage requirements. It is a market rate project with inclusionary housing units, it is under the height threshold, and it is not located in San Francisco.

Statutory References:

- i Per Public Resources Code §21080.66(f)(1), “ ‘Adjoins’ includes parcels that are only separated by a street, pedestrian path, or bicycle path.”
- ii Per Government Code section 65589.5(f)(6)(D)(iii), compliant “builder remedy projects” are deemed consistent with all applicable plans, programs, and policies. Public Resources Code section

21080.66(a)(4)(C) further provides that "[t]he approval of a density bonus, incentives or concessions, waivers or reductions of development standards, and reduced parking ratios pursuant to Section 65915 of the Government Code shall not be grounds for determining that the project is inconsistent with the applicable general plan, zoning ordinance, or local coastal program."

iii Gov. Code § 65913.4(a)(6)(A) covers sites that are:

- (i) An area of the coastal zone subject to paragraph (1) or (2) of subdivision (a) of Section 30603 of the Public Resources Code.
- (ii) An area of the coastal zone that is not subject to a certified local coastal program or a certified land use plan.
- (iii) An area of the coastal zone that is vulnerable to five feet of sea level rise, as determined by the National Oceanic and Atmospheric Administration, the Ocean Protection Council, the United States Geological Survey, the University of California, or a local government's coastal hazards vulnerability assessment.
- (iv) In a parcel within the coastal zone that is not zoned for multifamily housing.
- (v) In a parcel in the coastal zone and located on either of the following:
 - (I) On, or within a 100-foot radius of, a wetland, as defined in Section 30121 of the Public Resources Code.
 - (II) On prime agricultural land, as defined in Sections 30113 and 30241 of the Public Resources Code.

iv Gov. Code § 65913.4(a)(6)(B) covers sites that are:

Either prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

v Gov. Code § 65913.4(a)(6)(D) covers sites that are:

Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within the state responsibility area, as defined in Section 4102 of the Public Resources Code. This subparagraph does not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development, including, but not limited to, standards established under all of the following or their successor provisions:

- (i) Section 4291 of the Public Resources Code or Section 51182, as applicable.
- (ii) Section 4290 of the Public Resources Code.
- (iii) Chapter 7A of the California Building Code (Title 24 of the California Code of Regulations).

vi Gov. Code § 65913.4(a)(6)(E) covers sites that are:

A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply:

- (i) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on

closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Section 65962.5.

- (ii) The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.

vii Gov. Code § 65913.4(a)(6)(G) covers sites that are:

Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

- (i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.
- (ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

Gov. Code § 65913.4(a)(6)(H) covers sites that are:

Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

viii Gov. Code § 65913.4(a)(6)(I) covers sites that are:

Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

Gov. Code § 65913.4(a)(6)(J) covers sites that are:

Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

ix Note: (1) Tribes have 60 days to request consultation; (2) If requested, consultation must begin within 14 days of tribe's request; and (3) Consultation must conclude within 45 days (plus optional 15-day extension)