

Exhibit B
HIDDEN GROVE DENSITY BONUS, CONCESSIONS & INCENTIVES, WAIVERS,
AND PARKING RATIOS REQUEST

The Density Bonus Law (Cal. Gov't. Code § 65915; all code references herein are to the California Government Code unless otherwise indicated.) mandates that local governments provide density bonuses, concessions or incentives, waivers and reductions of development standards and prescribed parking ratios to projects that propose to create specified ratios of affordability housing units. The proposed Hidden Grove Project (the "Project") includes affordable housing units which will be located on the lot labeled "Unit E" on the draft tentative map (the "Affordable Lot"). As further specified below, either (a) 24% of the Project's total units will be rented to low income households; *or* (b) 15% of the Project's total units will be rented to very low income households. Inclusion of those affordable units entitles the Project to a 50% density bonus, three incentives and concessions, waivers from development standards and prescribed parking ratios, all of which are hereby requested by Hidden Grove Development Co., LLC (the "Applicant") and more fully explained below.

1. Hidden Grove is Eligible for Density Bonus, Concessions or Incentives, Waivers from Development Standards, and Prescribed Parking Ratios.

An applicant for a housing development may request a density bonus, concessions or incentives, waivers reductions from development standards and prescribed parking ratios when at least 10% of the housing units within such project are reserved for rental to lower income households *or* at least 5% of such units are reserved for rental to very low income households. (§ 65915(b)(1)(A)&(B).) Increasing that ratio to either 24% of total units for rent to low-income households or 15% of total units for rent to very low-income households allows for an increase in the Project's density of up to 50% and up to three concessions or incentives as detailed below. A "housing development" is defined to include any development containing 5 or more residential units and includes subdivision projects. (§ 65915(i).) Also, to qualify under the density bonus law, the project's units that are reserved for affordable housing must be restricted for a period of at least 55 years. (§ 65915(c)(1)(A).)

The proposed Hidden Grove Project is a subdivision that, as submitted, will contain 353 residential units. Within the Project, the Affordable Lot is approximately 5.6 net acres, and after that lot is created by the subdivision process, it will be developed at a minimum density of 20 du/ac or a maximum density of 25 du/ac (before any allowed density bonus described below). Thus, the Affordable Lot will contain between 112 and 140 multifamily units unless a density bonus is applied. Of those units, a minimum number will be built and reserved (by the mechanism described below) for affordable housing, with such number calculated as either:

- (a) The number that is 24% all units within Hidden Grove will be reserved for rent to lower income households; *or*

- (b) The number that is 15% of all units within Hidden Grove will be reserved for rent to very low income households.

As indicated, applying these ratios, the minimum number of affordable units developed on the Affordable Parcel will be within the numbers specified on the table below, while the actual number of units will be dependent on the density at which the Affordable Parcel ultimately develops.

Project Component	Net Acres	Residential Unit Count	
		Unit E @ 20 du/ac	Unit E @ 25 du/ac
Unit A	13.2	97	97
Unit B	9	39	39
Unit C	6	50	50
Unit D	4.8	18	18
Unit E	5.6	112	140
Lot D	0.6	9	9
Total	39.2	325	353
Minimum Number of Low Income Units		78	85
or			
Minimum Number of Very Low Income Units		49	53

In order to guarantee that the affordable units are developed and rented to households of the required income levels, the Applicant is proposing that the Project contain certain conditions of approval. Those conditions will accomplish the following:

- (a) The first final map must create the Affordable Lot;
- (b) Development on the Affordable Lot will be restricted so that it must contain at least the number of affordable housing units needed to achieve either of the ratios specified above;¹ and
- (c) Development on the Affordable Lot will be required to provide appropriate restrictions (such as a deed restriction) whereby the level of affordability is ensured for at least 55 years as required by § 65915(c)(1)(A). As contemplated in that government code section, the ultimate form of any such restriction will be determined at the time of development and is dependent on funding sources utilized for the development of the multifamily housing complex.

By including these features, Hidden Grove satisfies the eligibility requirements for a density bonus, incentives or concessions, waivers or reductions from development standards and prescribed parking ratios as provided by § 65915.

¹ The ratio of affordable units required by the Project is computed before any additional units are included by operation of a density bonus. (§ 65915(o)(6).)

2. By Providing Affordable Units as Specified, Hidden Grove is Entitled to up to a 50% Density Bonus, Three Concessions or Incentives, Waivers from Development Standards, and Parking Ratios.

As indicated above, the maximum density bonus and number of concessions or incentives allowed for a project depend on the ratio of affordable housing units that it contains. Waivers and prescribed parking ratios, on the other hand, are allowed for all applicants/projects that qualify for a density bonus. Based on the ratio of affordable units that will be developed within Hidden Grove, the Applicant is entitled to, and hereby does request the following:

a. A Density Bonus up to 50%

Projects that reserve either (a) 24% of total units for rent to low income households or (b) 15% of total units for rent to very low income households are allowed a up to a 50% “density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.” (§§ 65915(b), 65915(f)(1) & (2).) Accordingly, the ratio of income-restricted units in Hidden Grove detailed above affords the Project up to a 50% increase in density.

Pursuant to the Project’s application, no increase in density is presently shown on the draft tentative map. Importantly, though, the final densities of the Affordable Lot and the parcel labeled “Lot D” on the draft tentative map will be determined at a future date when design review and/or use permit applications for buildings to be built on those parcels are submitted. In order to incorporate the Project’s up-to 50% density bonus, a maximum of 50 additional residential units shall be allowed to be placed on either the Affordable Lot or Lot D.² Inclusion of these density bonus units shall be more particularly described by design review applications for the Affordable Lot and Lot D when submitted to the Town, for now, the Applicant is requesting that an allowance of up to 50 additional units be specified in the Project’s approval documents.

b. Three Concessions or Incentives

A density bonus applicant is entitled to request a certain number of mandatory concessions or incentives. (§ 65915(d)(1).) Three concessions or incentives are allowed when a project reserves either (a) at least 24% of its total units for rent to low income households *or* (b) at least 15% of its total units for rent to very low income households. (§ 65915(d)(2)(A) & (B).) A concession or incentive is any reduction in site development standards, modification of other regulatory requirements, or some other proposal by a developer which results in “identifiable and actual cost reductions to provide for affordable housing costs[.]” (§ 65915(k).) Courts have consistently concluded that “The applicant is not required to prove the requested incentives will lead to cost reductions; the incentive is presumed to result in cost reductions and the city bears the burden to demonstrate otherwise if it intends to deny the incentive.” (*Bankers Hill 150 v. City of San Diego*, 74 Cal. App. 5th 755 (4th Dist. 2022); see also *Schreiber v. City of Los Angeles*, 69 Cal. App. 5th

² The density of Lot D may be increased because the allowed increase in density may be located “in geographic areas of the housing development other than the areas where the units for the lower income households are located.” (§ 65915(i).)

549, 555 (2021) explaining, with respect to concessions, that “The applicant, however, is not required to establish that cost reductions will result.”)

Also important is the mandatory nature of concessions or incentives. The court in *Bankers Hill* recognized that a locality is required to grant concessions and incentives when they are requested under the Density Bonus Law. There, the court explained “Although application of the statute can be complicated, its aim is fairly simple: When a developer agrees to construct a certain percentage of the units in a housing development for low- or very-low-income households, or to construct a senior citizen housing development, the city or county **must grant** the developer one or more itemized concessions and a 'density bonus,' which allows the developer to increase the density of the development by a certain percentage above the maximum allowable limit under local zoning law.” (*Bankers Hill 150 v. City of San Diego*, 74 Cal.App.5th 755, 769 (4th Dist. 2022) (citing *Latinos Unidos Del Valle De Napa Y Solano v. County of Napa* 217 Cal.App.4th 1160,1164 (1st Dist. 2013) (emphasis added).)

There are very limited circumstances, however, when a locality is not required to grant a concession or incentive, all of which require that the locality make certain written findings supported by substantial evidence. Specifically, as provided by § 65915(d)(A)-(C), the locality must find at least one of the following:

“(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).³

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.”

As described in section 2a above, Hidden Grove Development Co. qualifies as an applicant for a density bonus and is thus entitled to request incentives or concessions. Further, the Hidden Grove project will reserve either (a) at least 24% of its units for rent to low income households; or

³ As is clear from the definition of “concession or incentive” above, the concessions and incentives requested by an applicant must result in identifiable and actual cost reductions. Importantly though, case law has clarified that an applicant is “not required to prove the requested incentive will lead to cost reductions; the incentive is *presumed to result in cost reductions and the city bears the burden to demonstrate otherwise if it intends to deny the incentive.*” (See *Bankers Hill 150 v. City of San Diego*, 74 Cal. App. 5th at 770 (4th Dist. 2022) (emphasis added).) Thus, the burden is on the local agency to establish that a requested concession or incentive will not result in cost reductions for the applicant.

(b) at least 15% of its units for rent to very low income households, and is thus entitled to three mandatory incentives or concessions. (§ 65915(d)(2)(A) & (B).)

The Applicant accordingly requests the following three mandatory incentives or concessions:

(1) A concession of the mitigation requirements for the removal of trees which are contained in Chapter 13.54 of the Municipal Code. By this concession, mitigation will not be required for trees that are removed in connection with the Project. Nonetheless, trees will be planted (a) within the Project's parks and open space areas in accordance with landscape plans created at a future date; and (b) as street trees per the Town's objective standards; and

(2) A concession, if necessary, of General Plan policies mandating maintenance of specified levels of service (LOS) on roadways and intersections (i.e. General Plan policies requiring a minimum level of service shall be waived for all roads and intersections impacted by the project).

(3) A concession, if necessary, of any open space and park land dedication requirements contained in Chapter 14.60.030 of the Municipal Code and any other Town regulatory requirement which seeks to require a project applicant to dedicate land for open space and/or park purposes. While the Applicant requests this concession, the Applicant has also provided the Town documentation showing how the Project, as proposed, satisfies the Town's open space and/or park land dedication requirements. Because it is the Applicant's position that the Project complies with the Town's open space and park land dedication requirements, this concession shall only be necessary in the event it is determined that the Project, as proposed, does not satisfy such requirements.

Each of these concessions will individually reduce the overall costs of the Project so that the Affordable Lot can be developed with housing units that will be rented to households making the incomes specified in Section 2a. Without these concessions, the Project cannot be developed to include affordable housing units.

Should any of these enumerated concessions be determined to be unnecessary for any reason, applicant retains the right to advance alternative concessions.

c. An Unlimited Number of Waivers or Reductions of Development Standards that Physically Preclude the Project as Designed

The Density Bonus Law also provides for waivers or reductions of "any development standard that will have the effect of physically precluding the construction of a development [which qualifies for a Density Bonus] at the densities or with the concessions or incentives permitted by this section." (§ 65915(e).) Courts liberally construe all provisions of the Density Bonus Law in favor of allowing a housing development (§ 65915(r)), and in so interpreting the subdivision allowing waivers, courts have consistently concluded "so long as a proposed housing

development project meets the criteria of the Density Bonus Law by including the necessary affordable units, a city may not apply any development standard that would physically preclude construction of that project **as designed**.” (*Bankers Hill 150 v. City of San Diego*, 74 Cal. App. 5th 755, 775, 289 Cal. Rptr. 3d 268, 282 (4th dist. 2022) (emphasis added), see also *Wollmer v. City of Berkeley*, 193 Cal.App.4th 1329, 1347 (1st dist. 2011) explaining “Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period.”) Also indicated in the *Bankers Hill* citation is that granting waivers for qualifying projects is mandatory (subject to certain statutory exceptions), an aspect which obviously parallels the other provisions of the Density Bonus Law. Procedurally, an applicant may propose waivers, and any request for waivers has no bearing on the number of concessions or incentives allowed for a project. (§ 65915(e)(2).)

The Applicant hereby requests the following waivers or reductions of development standards in order to allow the project as designed:

- (1) **Waiver of Height Limitation for the Affordable Lot:** A building that conforms to the Affordable Lot’s required 20-25 du/ac density cannot physically be constructed with the Town’s two-story height limitation. (Loomis Municipal Code Chapter 13.24.040.) Accordingly, the Applicant is hereby requesting a waiver of the application of the Town’s two-story height limitation to the Affordable Lot, and that waiver is reflected in the Project’s Proposed Phasing, Massing Standards & Architectural Styles.
- (2) **Waiver of Two-Story Limitation for Lot 1 in Unit A:** The Project has been designed to include a two-story home on Unit A’s Lot 1, and thus a waiver from application of Loomis Municipal Code Chapter 13.42.265 with respect to that lot is requested.
- (3) **Waiver of Setback Requirements for the Affordable Lot:** The Project has designed the Affordable Lot to have setbacks as reflected in the Project’s Proposed Phasing, Massing Standards & Architectural Styles so that the 20-25 du/ac density of multifamily units can be achieved on that lot. The proposed setbacks are less than those contained in the Loomis Municipal Code, and a waiver those standards is accordingly requested.
- (4) **Waiver of Side Yard Setback Requirements for Unit B Lots:** As designed, the Project’s lots within Unit B would have minimum 5-foot side yard setbacks for interior lots which is less than the minimum combined 20-foot setback called-for in the Loomis Municipal Code. In order to allow development of the Project’s Unit B lots as designed, the Project is requesting a waiver from application of the Town’s combined 20-foot setback standard.
- (5) **Waiver of Certain Roadway Standards:** The Project has been designed to contain roadways with dimensions shown on the submitted tentative map. The as-designed roadway dimensions are different from those contained in the Town’s Land Development Manual and Construction Standards Manual, and accordingly a waiver from those standards is requested. Notably, the roadways within the Project as designed are consistent with other roads within the Town of Loomis and elsewhere in the region, and thus such roadways have been established as being safe.

(6) **Waiver of Driveway Distance from Street Corners Requirement:** Due to the project’s required minimum density and proposed design, driveways for single family homes cannot be located at least 150 feet from the centerline of an intersection as required by Loomis Municipal Code Chapter 13.36.100(B). That is, application of that standard results in excessive space between intersections and driveways, in turn precluding development consistent with the minimum density and lot dimensions called for by applicable provisions of the zoning code and general plan. The Applicant is hereby requesting a waiver of the application of such standard to the Project. It is also noteworthy that residential subdivisions within Loomis and in numerous jurisdictions have allowed driveways to be located less than 150 feet from the centerline of intersections.

The Applicant believes that the Project, as submitted, complies with all other applicable development standards as modified by the requested concessions and incentives. If, however, it is later determined that the Project, including any subsequent design review or use permit applications for buildings to be built within the Project, does not comply with any of the Town’s development standards, and application of such standard would physically preclude the construction of the Project or those buildings as designed, the Applicant reserves the right to request a waiver to such standard in accordance with § 65915(e).

d. Prescribed Parking Ratios

When a housing development qualifies for a density bonus, it is also entitled to the prescribed parking ratios set forth in § 65915(p). The maximum parking requirements (inclusive of parking for persons with disabilities) that may be imposed on qualifying projects are as follows:

Unit Type	Spaces Required
Studio	1 Space
1 Bedroom	1 Space
2 Bedroom	1.5 Spaces
3 Bedroom	1.5 Spaces
4 Bedroom	2.5 Spaces

As explained in section 2a above, Hidden Grove qualifies for a density bonus, and thus the above-enumerated parking ratios are applicable to the Project. As reflected in the Project’s Proposed Phasing, Massing Standards & Architectural Styles, the prescribed parking ratios imposed pursuant to § 65915(f) only apply to the buildings ultimately built on the Affordable Lot and Lot D. That is, such ratios would not apply to the single-family units within the Project as each single family residence will contain the parking required by Loomis’ municipal code.

3. CEQA Review for Density Bonus Law Projects is Limited.

Under the California Environmental Quality Act (“CEQA”), any environmental review of the density bonus units, the granting of concessions or incentives, the waiver or reduction of development standards, and the prescribed parking ratios should be limited. Specifically, any analysis for (a) the granting of concessions or incentives, or (b) the waiving or reduction of

development standards, should be limited to whether such an act would have “a specific, adverse impact, as defined in paragraph (2) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.” (See § 65915(d)(1)(B) and (e)(1).) This is because this statutory provision reflects the degree of discretion involved in deciding whether or not to deny the requested incentive or concession or the requested waiver or reduction of a development standard. That being the case, it circumscribes the environmental review required since only discretionary decisions are subject to CEQA. (See Cal. Pub. Resources Code § 21080(a) and (b)(1).) Any environmental review of the applicant’s requests for concessions and incentives or waivers under sections 2b and 2c above should accordingly be so limited. Finally, no environmental review should be required for the density bonus units or the prescribed parking ratios – as described under sections 2a and 2d of this document – since these requests are mandatory and not subject to any element of discretion whatsoever.