

March 29, 2024

Kavitha Kumar, Project Planner  
San Rafael Community Development Agency  
1400 Fifth Street  
San Rafael, CA 94903

**Re: Dominican Valley Applicant Response Letter (File No: CDR23-002, ED23-062, TS23-001 (PLAN23-081))**

Dear Kavitha:

In response to the January 4, 2024, incompleteness letter, we are writing to provide the requested information needed to satisfy the City of San Rafael's Incompleteness pursuant to Government Code section 65943 et seq. Attached to this response letter are response letters from BAR Architects and Oberkamper Engineers specific to the Environmental and Design Review (Item #3) permit and Tentative Map (Item #5).

Per the requested information for the Density Bonus (Item #4) of the incompleteness letter, please also see the requested affordable housing requirements as detailed in Chapter 14.16 of the San Rafael Municipal Code, below.

1. GENERAL PLANNING APPLICATION

The City requires, as a condition of filing a planning and/or development application, that an applicant agrees to the indemnification language set forth in the City's General Planning Application. You have indicated that you are "signing the Indemnification Provision under protest." Please remove said statement and resign and resubmit the General Planning Application.

**The City has requested that the general planning application be resubmitted without adding that the "Indemnification provision is signed under protest". Although we will remove this statement from the application form, we do not waive our right to challenge the legality and enforceability of this requirement. The City's letter states that the City "requires" an applicant to "agree" to this provision in order for the City to file a planning application. We note that the City has a ministerial duty to accept and process development applications pursuant to the Permit Streamlining Act. This type of coerced indemnification "agreement" has already been rejected by courts when an agency "has a statutory duty to accept all completed applications." (San Luis Obispo Local Agency Formation Comm'n v. City of Pismo Beach (2021) 61 Cal.App.5th 595, 600.) Further, a local government has no legal authority to refuse to accept an application and "cannot circumvent the Permit Streamlining Act by refusing to accept an application for filing." (Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles (2010) 187 Cal.App.4th 1461, 1473.)**

2. CONCEPTUAL DESIGN REVIEW

Design Review Board (DRB) Meeting to review and formulate recommendations on all major physical improvements requiring environmental and design review permits, and to provide

professional design analysis, evaluation and judgment as to the completeness, competence and appropriateness of development proposals for the use and setting and to recommend approval, approval with conditions, redesign or denial based on applicable objective design standards adopted by the City Council. (SRMC 2.216.122.).

**Please see BAR response letter, dated March 25, 2024, appended to this response letter**

3. MAJOR ENVIRONMENTAL AND DESIGN REVIEW PERMIT

Planning Commission Meeting to review the details of the overall site plan, architecture, landscaping, building design, and other site improvements for the project.

**Please see revised application set dated March 25th, 2024, with requested revisions. Sheet A1 provides project compliance with development objective standards. Pursuant to the Permit Streamlining Act, all that is required for application completeness is for the applicant to submit the materials actually required on the City's application checklist. (Gov. Code § 65943(a).)**

**Please see BAR response letter, dated March 25, 2024, and Oberkamper response letter, dated March 25, 2024, appended to this response letter.**

4. DENSITY BONUS. Per Section 14.16.030, submit a Density Bonus Application for a density bonus and/or concessions/incentives or waivers for Residential Development Projects. Application for a density bonus and/or concessions or incentives for a residential project shall be made by filing a separate application along with the following information (See Resolution 14891 for specific references to items listed, below):

i. Fees: \$6,280 are required to be paid.

**Density Bonus fees have been paid with re-submission of the requested completeness information.**

ii. Density Bonus submittal checklist: This checklist shall include, but not be limited to the following information: Property location; lot size, zoning allowable residential density, and allowable number of base units;

- **The proposed project is located at the end of Gold Hill Road in the San Dominican area of San Rafael.**
- **The Assessor's Parcel Number is 015-163-03.**
- **The proposed development area including driveways, roads, pathways, common areas and undisturbed area is a total of 20.79 acres.**
- **The Development proposes to Sub-Divide the 20.79 acres into 50 individual lots. Lot area, depth and width vary depending on the location of each parcel on the site as shown in submitted planning package.**

- **The project consists of 50 residential housing units with 14 attached junior accessories dwellings (JADUs)**
- **The 50 residential housing units will comprise of the following,**
  - **27 single-family homes ranging in size from 2595 sq ft - 3165 sq ft.**
  - **17 townhomes ranging in size from 1150 sq ft - 1380 sq ft (Townhomes with attached junior ADUs)**
  - **6 Duplex units each 1805 sq ft.**
- **The project provides 86 Covered parking spaces and 70 guest spaces.**

**Consistent with Builders Remedy affordability requirements, the project proposes 20% + of the housing units as affordable. 14 attached junior accessories dwellings (JADUs) shall be deed restricted “affordable” for low-income households. Attached JADUs are identified on Architectural sheet (A.6) unit matrix as “D2”.**

- iii. Density Bonus eligibility table: This table shall include: the number of market rate units in the project; the number of affordable housing units proposed & level of affordability for each of the designated affordable units; the number of other eligible units (senior housing, supportive housing, etc.); number of density bonus units requested; total allowable density bonus (see Table 3 of City Council Resolution);

**The project, by providing 20% of units as affordable housing, qualifies for two incentives /concessions (meaning reduction in development standards pursuant to California government code section 65915(d)(3) or 65915(e) and applicant reserves the right to request as needed through the application process.**

**The project also qualifies for unlimited waivers or reductions to any development standard and the applicant reserves the right to request as needed through the application process.**

- iv. Project plans showing the total number of units, the number and location of the affordable units and the number and location of the proposed density bonus units;

**Please see the revised Dominican Valley Housing Planning Submittal, dated March 25, 2024, that includes Tentative Map and Architectural details. Please see Sheet A1 that depicts the proposed site plan and unit types (including the ADUs).**

- v. Parking Ratios Table: this table shall include the total number of proposed parking and the total number of required parking spaces for affordable housing units or for special projects;

**All units would have two, covered off-street parking spaces, with the exception of the townhome unit types D-2, where only one space is provide per unit (no parking is proposed for the JADUs). As discussed below, a development standard waiver**

is requested to reduce the parking requirement for these units.

Unit Type	No. units	Parking Required	Parking Included
A – Margarita Duplex	6	2	2
B – Deer Park SFR	5	2	2
C – Margarita SFH	4	2	2
D.1 – Deer Park Townhome	3	2	2
D.2 – Deer Park Townhome	14	2	1
E – Gold Hill SFR	5	2	2
F – Loop Road SFR	9	2	2
<b>Unit Total</b>	<b>50</b>	<b>100</b>	<b>86</b>
<b>Project Total (70 guest spaces)</b>			<b>156</b>

- vi. List of requested Concessions/Incentives: The application shall include the total number of concessions or incentives being requested; the total number of concessions or incentives for which the project is eligible for by the City Council Resolution Table 4;

**No concessions or incentives are requested currently. The applicant reserves the right to request concessions or incentives in the future if needed to process the application as proposed.**

- vii. A list of requested waivers or reduction of development standards. Any request for waivers or reduction of development standards shall be accompanied with evidence that the development standards for which a waiver is requested would have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by Government Code Section 65915;

**At this time, the applicant is requesting a waiver to the development standards for certain units within the Hillside area designations (See Sheet A1 for details) and the requirement for two covered off-street parking spaces for all residential units. Several of the townhome units only include one covered off street parking space, and therefore a waiver is needed for this requirement.**

**The applicant reserves the right to request additional waivers to applicable development standards in the future.**

- viii. If a density bonus is requested for a qualified land donation, the application shall show the location of the land to be dedicated and provide evidence that the requirements of Subsection C.g. of the City Council Resolution have been met, thus entitling the project to the requested density bonus;

**No Density Bonus is requested at this time. As a “Builder’s Remedy” application, the project proposal does not require a density bonus for additional units over the**

allowed base density. However, as noted above, the 14 JADU's represent over a 200% increase in the potential affordable units of typical base density project (20 units).

The Development Application includes 50 single-family detached, duplex, and townhome residential units, which under the City's inclusionary housing requirement for 10% affordable units will require 5 units of affordable housing. To meet those requirements, we are proposing an alternative consisting of 14 Deed Restricted Junior Accessory Dwelling Units ("ADUs") integrated throughout the townhomes (Unit Type F) at the Low-Income affordable levels.

Pursuant to Government Code Sections 65852.2(m) and Section 65583.1, ADU's may be utilized towards meeting the Regional Housing Need Allocation (RHNA) and Annual Progress Report pursuant to Government Code section 65400. The definition of ADUs includes both attached and detached product. In this case, the proposal conforms to the definition of an attached ADU under Government Code section 65852.22.

5. MAJOR SUBDIVISION MAP (TENTATIVE MAP)

Public hearing before the Planning Commission to review a Tentative Map Application to subdivide the site into 50 parcels. Pursuant to Sections: 15.02.020 - Application filing for tentative map, 15.02.030 - Information on tentative map, 15.02.040 - Information in statement, and Chapter 15.07 - STANDARDS FOR HILLSIDE SUBDIVISIONS, the following items are necessary to complete the application process for a Major Subdivision.

**Please see revised application set dated March 25th, 2024, with requested revisions. Please also see Oberkamper response letter, dated March 25, 2024, appended to this response letter.**

6. ZONING AMENDMENT (REZONING)

Although the current zoning for the site is Planned Development (PD), the current application requests changes in the contents of approval of a PD zoning and development plan and shall be treated as a zoning amendment (rezoning). Pursuant to Section 14.07.060 - Required plans and materials, in addition to the requisite fee listed below, the following items are necessary to complete the application process for a rezoning.

**See Below**

7. GENERAL PLAN AMENDMENT

Planning Commission & City Council Meeting to review the General Plan Amendment as the project proposal does not meet the applicable maximum height and density limit set by the General Plan. In addition to requisite fee below, please submit the following items:

### **General Plan and Zoning Amendment**

Your letter states that the project does not meet the applicable zoning and general plan standards and will therefore be treated as a request for a zoning and general plan amendment. The letter further requests that we submit zoning and general plan amendments.

First, the Permit Streamlining Act only applies to “development projects,” which is defined as “any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” (Gov. Code, § 65931.) Rezoning and general plan amendments, however, are not “development projects” that involve the issuance of an entitlement. Rather, these are legislative actions that involve the formulation of rules to be applied in future cases. Courts have confirmed that the Permit Streamlining Act “cannot be used to compel legislative changes to a zoning ordinance or a general plan because the act is limited to projects that are adjudicatory in nature.” (Land Waste Management v. Contra Costa County Bd. of Supervisors (1990) 222 Cal.App.3d 950, 959.) In short, the City cannot compel us to seek a legislative general plan amendment or zoning change through the Permit Streamlining Act. Rather, the City must only apply the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted. (Gov. Code § 65589.5(o).)

Moreover, as explained above, the City cannot use a code compliance determination to impermissibly raise the bar to achieving a complete application in violation of the PSA. Further, HCD has explained that “inconsistency with local zoning standards is a reason to deny an application in some circumstances, but it is not a basis for deeming an application incomplete.

*(HCD Notice of Violation issued to City of La Cañada Flintridge, CA on June 8, 2023, p. 5 fn. 4, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/la-canada-flintridge-nov-060823.pdf>.)*

However, as we have previously explained, this project provides at least 20% of the total units as affordable to low-income households and therefore qualifies as “housing for very low, low-, or moderate-income households” under the Housing Accountability Act. (Gov. Code § 65589.5(h).) Therefore, the City is required to approve the project, or not otherwise condition approval in a manner that renders the housing development project infeasible, unless the City can make one of the five written findings listed in HAA subdivision (d)(1)-(5). Under subdivision (d)(5), a local government cannot deny a housing development project for low-income households, even if the project is inconsistent with the jurisdiction’s zoning and inconsistent with the general plan land use designation, unless the local government can make written findings that it has adopted a housing element in substantial compliance with the Housing Element law. This Project was submitted at a time when the City was not in substantial compliance with the Housing Element law, and therefore the City cannot deny the project based on any purported zoning code or general plan inconsistency.

We look forward to working with San Rafael staff to process this application. Please do not hesitate to contact us should you have any questions.

Sincerely,

*Raymond cassidy*

Ray Cassidy  
Dominican Valley, LLC