MONCHAMP ELDRUM LLP

February 26, 2026

Steven Golden
Principal Planner
Department of Planning
City of San Mateo
330 West 20th Avenue
San Mateo, CA 94403

Re: *Passage Project (PA-2025-011; PA-2025-064); State Density Bonus Law*

Dear Mr. Golden:

As you know, we represent Brookfield Residential (the "Applicant"), for the proposed Passage mixed-use residential development project (PA-2025-011;PA-2025-064), located at 640, 666, 678, & 690 Concar Drive, 1820 & 1850 S. Grant Street, and 1855 S. Delaware Street (the "Project") in the City of San Mateo ("City"). As documented in the Project application materials submitted August 1, 2025, including a letter from this firm dated July 30, 2025, the Project is eligible for density bonus, waivers, and/or concessions and incentives under the State Density Bonus Law (Gov. Code § 65915, the "SDBL") and San Mateo Municipal Code ("SMMC") Ch. 27.15. Throughout the application process we have provided City staff with copies of and references to technical assistance letters from the California Department of Housing and Community Development ("HCD") providing guidance on "the City's obligation to process, without discretion, housing development projects that seek a density bonus and associated waivers pursuant to the SDBL and qualify as a use by right pursuant to Housing Element Law."[1]

As explained in the application materials, the density bonus request for the Project includes a concession to waive Guideline VII of the City's Below Market Rate ("BMR") Guidelines. The planning application for the Project was resubmitted November 25, 2025, in response to City comments regarding completeness dated August 30, 2025, and another round of "completeness" comments was received from the City on December 25, 2025. With regard to the requested concession, both the August 30, 2025 and December

[1] HCD Letter of Technical Assistance to City of Newport Beach dated October 1, 2025, at p. 1.

25, 2025 letters from the City simply indicated "a Density Bonus concession is being requested which is being reviewed by the City."

More than six months after the application was submitted, in an email from the Assistant City Attorney on February 3, 2026, the City indicated that rather than a single concession to waive Guideline VII of the City's BMR Guidelines, a separate concession must be requested for each subsection of Guideline VII from which the Applicant seeks relief.

We have reviewed the City's email explanation and respectfully disagree with the City's interpretation and proposed application of SDBL. The California Department of Housing and Community Development ("HCD") has been consistent in its direction that jurisdictions must be willing to modify their inclusionary housing programs and ordinances in order to grant SDBL requests for waiver or incentives/concessions.[2] In addition, HCD has provided directly relevant technical guidance clarifying that where an applicant requests a concession to waive an overarching requirement on a project, there is no need to separately request concessions for each regulation that is nested within that requirement.[3] This HCD guidance was specifically referenced in the Applicant's November 15, 2025 resubmittal and response to City comments[4] but is not acknowledged or addressed in the City's February 2, 2026 email.

The City's position is not consistent with HCD guidance on this specific issue (that a request for relief from an overarching standard should be treated as a single request), and the case cited by the City does not stand for the position the City is taking, or address the scope of a required concession.

As cited in the case referenced by the City and confirmed in HCD guidance we have discussed and referenced in communications with the City[5], SDBL "shall be interpreted

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[2] Dec. 17, 2024 Letter of Technical Assistance to City of Menlo Park, at p. 2; Apr. 26, 2024 Letter of Technical Assistance to County of Sonoma, at pp. 3-4; Sep. 2, 2022 Letter of Technical Assistance to City of West Hollywood, at p. 3.

[3] Sep. 4, 2025 Letter of Technical Assistance to City of Los Angeles, at p. 2.

[4] The November 25, 2025 resubmittal package included "Project Objective Design Standards Checklist Response 11-25-2025", an Excel file which addressed each of the City's comments from its August 30, 2025 incompleteness letter. With regard to City's comments on the BMR guidelines, the Applicant response stated: "We note that HCD has confirmed in a recent technical assistance letter to another jurisdiction that a request for relief from an overarching standard should be treated as a single request, and the applicant is not required to request an additional incentive or concession for every subsequent development standard that is 'nested' under the main development standard (HCD Letter of Technical Assistance to City of Los Angeles dated September 4, 2025)."

[5] City of Encinitas Notice of Violation [NOV] Under State Density Bonus Law, the Housing Accountability Act, Housing Element Law, and Affirmatively Furthering Fair Housing, dated January 20, 2022, at p. 4.

liberally in favor of producing the maximum number of total housing units."[6] While we disagree with the City's interpretation and believe it to be inconsistent with State guidance as well as the letter and intent of SDBL, in the interest of moving forward and avoiding further delay on the by-right housing development, the Applicant has revised its original density bonus request as set forth below.

To be clear, despite the City's determination that the requested concession to waive Guideline VII of the City's Below Market Rate Guidelines is not a single concession, the City remains obligated to process the Project without discretion and "is not permitted to apply any development standard that physically precludes the construction of the Project as proposed at its permitted density and with the granted concession and incentives."[7]

1. Requested Concession. The Applicant requests a concession to waive Guideline VII(b) of the City's Below Market Rate (BMR) Guidelines to allow the project to locate all affordable units in one building as proposed rather than distributed throughout the Project.

   The requested concession maximizes the number of affordable units that can be built and the number of affordable units that are appropriately sized for families, a priority indicated by the City Council. It would result in identifiable and actual cost reductions to provide affordable housing in the Project, including by increasing the depth of affordability and total number of affordable units provided by the Project beyond the City's inclusionary requirements, enhancing the ability to potentially qualify for tax-exempt financing and tax credits, as well as creating efficiencies in providing and management of affordable units. Application of Guideline VII(b) to the Project would (1) increase the cost of each affordable unit, (2) reduce the number of overall affordable units, and (3) reduce the level of affordability that can be provided for affordable units in the Project. (Govt. Code § 65915 (k).)

2. Requested BMR Waivers. The following waivers from BMR Guideline VII are requested in order to allow construction of the Project as proposed at its permitted density and with the requested concession above:

[6] *Schreiber v. City of Los Angeles,* 69 Cal.App.5th 549, 554 (2021), citing Gov't Code § 65915(r).
[7] City of Encinitas NOV at p. 2, internal citations omitted.

a. Modification of City's BMR Guidelines section VII(d) requirement for BMR units to contain proportionately the same number of bedrooms as market rate units.

b. Modification of City's BMR Guidelines section VII(e) requirement for BMR units to generally be of comparable size to similar market rate units.

3. Requested General Project Waivers. Furthermore, the Applicant has identified the following waivers of development standards which are necessary to construct the proposed Project. SDBL bars the City from applying any development standard that would have the effect of physically precluding construction of the proposed SDBL project. (Govt. Code § 65915(e); see also SMMC § 27.15.050):

i. Modification of the maximum allowed building height limit for the Mixed-Use Medium II designation in Table LU-1 of the City's General Plan to permit seven stories for project buildings instead of six.

ii. Modification of Standard 7.6.1 of the City's Multi-Family and Residential Mixed Use Objective Design Standards which sets setbacks of up to 10 feet (mixed-use) or 15 feet (residential) and establishes entry orientation requirements to allow increased setback for landscaping and open space and orientation of building entries as proposed.

iii. Modification of Standard 7.6.3 of the City's Multi-Family and Residential Mixed Use Objective Design Standards which requires a publicly accessible park of at least 10,000 square feet with a minimum 50-foot dimension on any side, to allow the proposed open space to be distributed throughout the project as proposed.

iv. Modification of Section 4.1.5 of the City's Multi-Family and Residential Mixed Use Objective Design Standards which requires a minimum 18 inch-deep wall plane break for every 15 to 30 feet of horizontal wall length of low-rise buildings, to allow a 6 inch-deep wall plane break for the rear elevations of the project's low-rise buildings.

v. Modification of the City's Parking Standard Drawings 3.1.190 – 3.1.194 which require parking stall dimensions in two adjacent restricted or end stalls to be a minimum of 10 x 18 feet, to allow townhome parking stall dimensions to be 9 x 18 feet.

vi. Modification of the City's Parking Standard Drawings 3.1.190 – 3.1.194 to decrease the distance from drive aisle to column in the apartments garage from 7 feet to 3 feet.

vii. Waiver from bicycle parking stall quantity from the chart below per section 27.64.262. We will meet 2025 Calgreen standards of .5 stall / unit for apartments.

c. Multiple-Family Dwelling (two-family, townhouse, condominium, apartments and apartment hotels)		
Studio	0.05 per unit	1.0 per unit
One-bedroom	0.05 per unit	1.0 per unit
Two-bedroom	0.10 per unit	1.25 per unit
Three or more bedroom (or any dwelling unit over 1,400 square feet in floor area)	0.15 per unit	1.5 per unit

viii. Modification of SMMC Section 27.71.120(a)(2) and Street Tree Master Plan requirement to plant street trees no greater than 30 feet apart to allow street trees to be planted as proposed due to utility conflicts. [8]

ix. City comment: "The adopted San Mateo Rail Corridor Transit-Oriented Development Plan states that streets and parks should be "framed" by buildings and not surface parking lots; however, the Trader Joe's parking lot and the new parking lot for the new retail/7-Eleven building are surface parking lots along the proposed street side. It is recommended to provide surface parking that is not visible from the public street."[9]

x. Modification of City's Objective Design Standards 3.1.2.D and 3.1.2 F to allow pathways, paseos and pedestrian amenities as proposed.

[8] As previously discussed between the Applicant and the City, the Applicant disagrees that this is an objective standard applicable to the Project. However, the Applicant is requesting a waiver of this standard in the interest of moving the entitlement process forward.
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The Applicant makes the above requests at this time as part of the Project application process prescribed by the City, but the Applicant reserves the right to identify new and/or modify and supplement its current SDBL requests as the Project entitlement process progresses. We appreciate the City's attention to this matter.

MONCHAMP MELDRUM LLP



Rob Taboada



Shivaun Cooney

cc: Mazarin Vakharia, Assistant City Attorney