

# Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law  
Three Embarcadero Center, 12<sup>th</sup> Floor | San Francisco, CA 94111-4074  
Telephone: 415.837.1515 | Facsimile: 415.837.1516  
www.allenmatkins.com

**David H. Blackwell**  
E-mail: dblackwell@allenmatkins.com  
Direct Dial: 415.273.7463 File Number: 394037.00003/4904-8052-5145.7

## **Via Electronic Mail**

October 28, 2025

Planning Division  
City of San Mateo  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403

**Re: Density Bonus Law Information  
1650 S. Amphlett Blvd., Bayshore Commons**

Dear Planning Division:

On behalf of B9 Sequoia Bayshore Owner LP (“Applicant”), the owner and developer of the above-referenced project, we submit information regarding the project’s implementation of the state Density Bonus Law (“DBL,” Gov. Code § 65915). This information is intended to update the information provided in our August 15 correspondence as requested by the City in its September 15, 2025 incompleteness letter and during recent meetings with Staff.

As set forth in our August 15 DBL cover letter, the DBL has three distinct primary components relevant to the project: (1) Density Bonuses; (2) Incentives/Concessions;<sup>1</sup> and (3) Development Standard Reductions or Waivers.<sup>2</sup> Although interrelated, each component serves a different purpose and is governed by unique standards.

### **I. Density Bonus**

Section 65915(b)(1) of the DBL provides that a project qualifies for a density bonus “when an applicant for a housing development seeks and agrees to construct a housing development” that meets one or more of the statute’s thresholds, including providing at least 10% of the units for sale to moderate income households, as here. (Gov. Code § 65915(b)(1)(D)). By setting aside 38 moderate income units, the project exceeds the DBL’s 10% threshold<sup>3</sup> and entitles the project to the

---

<sup>1</sup> Referred to as “incentives” herein since the terms are synonymous.

<sup>2</sup> Referred to as “waivers” herein.

<sup>3</sup> Providing 38 moderate income units also complies with the City’s Below Market Rate Program requirements. 15% of 256 equates to 38.4 units, which is not rounded up per Section III(b) of the Program. As required by Staff, the Applicant will provide a fee for the remaining 0.4 fractional unit

incentive and waivers discussed below. The project's 256 total units are well below the project site's maximum allowable residential density of 50 dwelling units per acre, thus no density bonus is requested or necessary.

## **II. Incentives**

The number of incentives is derived from the number of affordable units that are provided. In this case, the project is entitled to at least one incentive because it is setting aside at least 10% of its units for sale to moderate income households. (Gov. Code § 65915(d)(2)(A).) A local agency bears the burden of proof if it denies an incentive request. (Gov. Code § 65915(d)(4).) For example, a "municipality has the burden of proof of demonstrating that an incentive would *not* generate cost savings." (HCD Letter of Technical Assistance to City of Larkspur, May 12, 2022, p. 3.) Section 65915(d)(1) requires cities to approve incentives unless specified written findings based on substantial evidence are made, and the only reasons for denial are set forth in subdivisions (d)(1), referenced above.

This burden was further established in *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 555, where the court of appeal explained that there is a presumption that an incentive will result in cost reductions and that an applicant "is not required to establish that cost reductions will result." Instead, a city must approve the incentive request unless it makes one of the written findings set forth in Section 65915(d)(1). (*Ibid.*) "By requiring the city to grant incentives unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions." (*Id.* at 556.)

## **III. Development Standard Waivers**

In addition to, and separate from, requests for incentives, a density bonus applicant may request a waiver or reduction of development standards that would have the effect of physically precluding the construction of the project at the densities or with the incentives permitted under the statute. (Gov. Code § 65915(e)(1).)

The definition of a "development standard" includes a site or construction condition, including, without limitation, local height, setback, floor area ratio, onsite open space, and parking area ratio requirements that would otherwise apply to residential development pursuant to ordinances, general plan elements, specific plans, charters, or other local condition, law, policy, resolution, or regulation. (Gov. Code § 65915(o)(2).) A request for a development standard waiver neither reduces nor increases the number of incentives to which the developer is otherwise entitled. (Gov. Code § 65915(e)(2).) Furthermore, there is no limit on the number of waivers that may be issued.

As with incentives, recent case law has clarified the legal principles regarding waivers. The *Schreiber* case discussed above confirms (at p. 556) that a city may refuse a request to waive or reduce development standards *only* if it makes written findings that the waiver or reduction would have a specific adverse impact on the public health or safety. (See Gov. Code § 65915(e)(1).) In addition, another recent case upholding a city’s approval of a DBL project confirmed that waivers are based on the project as proposed by the developer: “even if we assume the Project as designed is inconsistent with some of the City’s design standards, the Density Bonus Law would preclude the City from applying those standards to deny this project.” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5<sup>th</sup> 755, 775.) Therefore, a local agency may not respond to a waiver request that a project could be redesigned to avoid the need for a waiver. (*Id.* at 774-775 [rejecting argument that the project “could have been built more horizontally” to comply with design standards.”].)

The following requests for waivers or reductions in development standards are identified below. These development standards are derived from the City’s Objective Design Standards, effective January 3, 2024. For depictions of the applicable development standards, please refer to the “Page Number” column of the ODS Checklist submitted herewith.

- **3.1.2.D – Pedestrian Paseos.** This standard requires a minimum eight-foot-wide public access easement within the required minimum paseo width for pedestrian access. This waiver is requested to allow pathways and paseos to be private pedestrian easements. Without the requested waiver, the project could not be developed as proposed.
- **3.1.2.F - Pedestrian Paseos.** This standard requires a minimum of three pedestrian amenities identified therein for at least every twenty linear feet. This waiver is requested to allow development shared spaces and public spaces to include additional amenities. Without the requested waiver, the project could not be developed as proposed.
- **4.1.2 - Articulation Details.** This development standard requires that for low-rise buildings, at least two of the following shall be provided.
  - A. Architectural projections such as roof eaves, overhangs, cornices, pergolas, or metal, wood, or glass awnings
  - B. Balconies per unit
  - C. Box or bay windows per unit
  - D. Window recesses and edges, including mouldings and reveals with at least three-inch depth

- E. Projecting or recessed rooms or units for a minimum of ten percent of the units along the building façade for low-rise development or a minimum of thirty (30) percent of the units for mid and high-rise development
- F. Horizontal mouldings that are at least three inches minimum

This waiver is requested to allow for units that provide sun-rooms per AB 130's balcony limitations to provide only one of the details (item A). (All other units will include details A and B and therefore comply.) Without the requested waiver, the project could not be developed as proposed.

- **4.1.3.B - Building Materials and Colors.** This standard provides that color or material excluding trim shall constitute at least 10% of the building façade. The waiver is requested to allow color or materials to constitute less than 10% of the building façade. Without the requested waiver, the project could not be developed as proposed.
- **4.1.3.C - Building Materials and Colors.** This standard requires any change in color or material to be characterized by a minimum six-inch offset from the adjacent building plane, or architectural element such as moldings or bandings shall be used to create the offset. The waiver is requested to allow changes in color or materials without a six-inch offset. Without the requested waiver, the project could not be developed as proposed.
- **4.1.4 - Massing Breaks – Generally.** This standard provides that structures three or more stories and sixty feet or greater in length shall follow the rule of thirds in which a structure is divided into at least three primary masses. This waiver is requested to allow elevations to be divided into two primary masses. Without the requested waiver, the project could not be developed as proposed.
- **4.1.5 - Massing Breaks – Low-rise buildings.** Under this standard, low-rise buildings shall have a minimum 18 inch-deep wall plane break for every 15 to 30 feet of horizontal wall length. A waiver is requested to instead allow for plane breaks every 81 feet. Without the requested waiver, the project could not be developed as proposed.
- **4.2.2 - Residential Entries.** According to this standard, entries to ground-floor residential uses shall be located 18 to 42 inches above or below the grade of the adjacent public sidewalk. Some of the project's residential entries will be located at heights less than 18 inches above grade. Without the requested waiver, the project could not be developed as proposed.

- **4.5.1 - Roof Form. Variation.** This standard provides that all buildings up to four stories in height shall provide variations of roof height and/or form for 30% minimum of the roofline. A waiver is requested to avoid a roof height variation requirement. Without the requested waiver, the project could not be developed as proposed.
- **4.5.2.B - Roof From – Additional Requirements.** This standard states that eave treatment including depth, material, style, and brackets shall match on a building. A waiver is requested to allow non-matching eave depths. Without the requested waiver, the project could not be developed as proposed.
- **4.6.1.A - Window and Door Alignment – Vertical Alignment.** This standard provides that for building facades that front a street or public right-of-way, windows, doors, arches, and balconies shall align vertically along a center line through these elements. Where the ground floor or base of a building is a nonresidential use, vertical alignment shall begin from the second floor or wherever the residential use begins. A waiver is requested to allow non-centrally aligned windows, doors, and balconies. Without the requested waiver, the project could not be developed as proposed.
- **4.6.1.B - Window and Door Alignment – Horizontal Alignment.** This standard provides that sets of windows, doors, arches, or balconies may span more than the width of a single element above or below if the left- most and right-most outside edges of the set of elements align with the width of the elements above or below and if the elements within a set are evenly spaced. A waiver is requested to allow non-horizontally aligned windows, doors, and balconies. Without the requested waiver, the project could not be developed as proposed.
- **4.6.1.C.1-3 - Window and Door Size.** This standard has four subparts, and waivers are requested for the first three. The first requires that windows, bays, and doors shall be vertically oriented, rectangular, and taller than they are wide. The second requires vertical window elements to be maintained through proportionality and divided lites. The third provides that windows, doors, arches, and balconies must be equal in size or smaller than the element they are aligned with on the floor below. Waivers are necessary because the townhome units will include windows that are horizontally oriented. These windows are either grouped to create a sense of verticality or are located at the higher elevations for privacy purposes. Without this development standard waiver, the proposed project could not be developed.
- **4.6.2 - Windows – Depth.** This standard requires windows to be recessed a minimum of three inches from the exterior wall surface unless the architectural style

dictates flush (curtain wall) or protruding windows. Alternatively, a three-inch window trim may be provided. Where a curtain wall is used, no recess or protrusion is required. Wainscoting, sills, and/or reveals shall be incorporated into deep-set windows. A waiver is requested to allow windows that are not recessed. Without this development standard waiver, the proposed project could not be developed.

- **4.6.3.C – Window Details.** This standard requires all windows to include detailing using at least two of the following: window trim, projected lintel, projected sill, and sashes. The project’s windows will include window trim, but not the other details. Without the requested waiver, the project could not be developed as proposed.
- **4.6.3.D - Lites.** Lites are required to “be square or vertically oriented rectangles.” Less than 10% of the lites will be horizontal and rectangular, which will be grouped in assemblies to provide natural light within certain units or to maintain privacy. Requiring the project to strictly comply with this development standards would preclude development of the project as proposed.
- **4.6.3.E - Windows – Reflectivity, Transparency, and Details – Matching Lite Size and Proportions.** Under this standard, the size and proportion of lites shall be consistent among windows in a group. A waiver is requested to allow variation in lite sizes and proportions. Without this development standard waiver, the project could not be developed as proposed.
- **4.6.5.A - Entries, Doors, and Stairways – Entry Locations.** This standard requires each façade adjacent to a street to have at least one pedestrian or main entry fronting the primary or secondary street frontage or, where public paseo exists, to that paseo. A waiver is requested to allow entries that do not face S Amphlett frontage. Without this development standard waiver, the project could not be developed as proposed.
- **4.6.5.D.2 - Entries, Doors, and Stairways.** This standard requires that all individual garage doors be recessed a minimum of six inches from the surrounding building wall. This waiver is requested to allow garage doors that are recessed, but less than six inches due to limitations on framing materials. Without the requested waiver, the project could not be developed as proposed.
- **4.6.5.E.1-3 - Utility Room Entries.** This development standard contains three subparts from which waivers are requested. The first does not allow exterior-facing utility rooms to be located on the primary street frontage. The second provides that when visible from a public right-of-way, utility room doors and emergency exits shall be the same materials, colors, and style as the main entry doors. The third provides an exception by stating that the above standards shall not apply if they

conflict with the rules and regulations of PG&E, another private or public utility conveyor, or the Fire or Building Code. The project's utility closets will face S. Amphlett Blvd. To the extent that the project would conflict with the first two subparts of this development standard, a waiver is necessary because the project could not otherwise be developed as proposed. The third subpart is an exception to the first two subparts, which technically would not require a waiver, but this waiver request is meant to clearly seek relief from 4.6.5.E to the extent that it is otherwise applicable.

- **5.1.1.B – Private Open Space.** This standard consists of the following criteria: (1) the fronts and sides of balconies shall consist of obscured glass, slats, or partially transparent grating or railing that is at least 50% open; (2) enclosed private ground-floor open spaces fronting a public street and/or sidewalk shall have an enclosure between 3-4 feet in height; and (3) enclosure materials shall be limited to the following: walls of a color and materials that match those used for the main buildings; wrought iron fencing; glass; or wood. Some of the project's balconies will be enclosed by solid walls, and the private courtyards adjacent to S. Grant Street will be enclosed by 3-4 foot high wood fencing. Requiring the project to comply with this development standard would preclude its development as proposed.
- **6.2.1 – Transformers.** This standard provides that transformers “shall be located within a structure or placed underground,” and if this is not feasible, then “an above-ground transformer shall be permitted but shall be located outside of any required setbacks and open space areas and shall be screened from public view with landscaping and fencing/walls.” The project will include approximately 15 transformers, which cannot be located within a structure or underground, nor will they be screened by landscaping and fencing or walls. Requiring the project to comply with this development standard would preclude its development as proposed.
- **6.3 – Required Screening.** This development standard requires all above-ground onsite ancillary features to be screened via certain identified methods. As noted above, the project's transformers will not be screened, and compliance with this development standard would preclude construction of the project as proposed.
- **7.6.1.B.3 - Site Planning – Building, Siting, Orientation, and Frontage Features – Setbacks.** Section 7.6 pertains to the ODS applicable to the San Mateo Corridor TOD Plan Area. This subsection requires residential setback areas to include at least one of the following for every unit that fronts the sidewalk: (1) porch/stoop; (2) landscaped areas; (3) small private gardens. A waiver is requested to allow entries and porches that do not face the S. Amphlett frontage. Requiring the project to comply with this development standard would preclude its development as proposed.

- **7.6.1.C - Site Planning – Building, Siting, Orientation, and Frontage Features – Entries.** This standard requires all primary building entries to face the public street and sidewalk. A waiver is requested to allow primary building entries that do not face the S. Amphlett frontage. Requiring the project to comply with this development standard would preclude its development as proposed.
- **7.6.2.A.1 - Building Design and Architecture – Articulation.** This standard contains various articulation requirements for upper floor residential units facing local streets. A waiver is requested to allow side and rear elevations of upper-floor residential units facing local streets that do not include occupiable outdoor deck designed as usable open space, balconies, or bay windows. Requiring the project to comply with this development standard would preclude its development as proposed.
- **7.6.2.A.2 - Building Design and Architecture – Articulation.** This standard contains various articulation requirements for building facades visible from a public street or public area. A waiver is requested to allow such facades, specifically facing S. Amphlett, to not provide the identified features. Requiring the project to comply with this development standard would preclude its development as proposed.

Applicant also seeks waivers from certain development standards imposed via the Municipal Code. For example, **Municipal Code section 27.48.065** requires a minimum of 20% at-grade open space to be provided on the parcel. Per the data provided on sheet L3.01 and the lot area, the project will provide 18% open space, and therefore requires a waiver from the Code's 20% requirement. Without the requested waiver, the project could not be developed as proposed.

**Municipal Code section 27.48.100** requires landscape buffers for project within the E2 zoning district that are contiguous to a residential district. If the City determines that this development standard applies to the property, Applicant cannot comply with its requirement that an 18.5-foot buffer (one-half of the building height) be provided. Instead, the project will provide a 15-foot buffer. Requiring the project to comply with this development standard as described herein would preclude development of the project as proposed.

**Municipal Code section 27.71.120** requires certain-sized street trees to be planted no greater than 30 feet apart. In the City's September 15, 2025 letter, the City Arborist requested Applicant to clarify if waivers were needed from these requirements. Please see the letter dated October 28, 2025 from Sage Consulting Engineers, filed herewith, that provides the waiver request in detail. Without the requested waivers, the project could not be developed as proposed.



Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

Planning Division  
October 28, 2025  
Page 9

The information contained in this letter satisfies Staff's requests for additional information regarding the project's requested development standard waivers. We look forward to bringing this matter before the Planning Commission.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David H. Blackwell". The signature is fluid and cursive, with a large initial "D" and a stylized "B".

David H. Blackwell