

Ms. Payal Bhagat
City of Menlo Park
Planning Division
701 Laurel Street
Menlo Park, CA 94025

February 10, 2022 (REVISED October 28, 2022)

Subject: Below Market Rate Proposal

Project Name: 123 Independence (“The Project”)

Project Address: 119, 123–125, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive

Dear Payal:

The Sobrato Organization (TSO), in partnership with Habitat for Humanity Greater San Francisco (HGSF), is pleased to propose the following Below Market Rate Proposal for 123 Independence located at 119 Independence Drive, 123–125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive in Menlo Park. TSO and HGSF have used both Chapter 16.96, *Below Market Rate Housing Program*, as well as the *Below Market Rate Housing Program Guidelines* (BMR Guidelines) to develop this proposal. In addition, State Density Bonus Law concessions and waivers are used to allow HGSF to be the affordable housing developer to develop the affordable townhomes

General Overview

The General Plan requires developers to participate in the City’s Below Market Rate (BMR) Program. The latest City of Menlo Park Housing Element (2015-2023) identifies the benefits of market rate developers partnering with affordable housing developers to provide BMR units, noting that units developed in this manner are more likely to serve lower income households.

The purpose of the City’s BMR Program is to increase the housing supply for households that have very low, low, and moderate incomes, with a primary objective of creating actual housing units rather than collecting fees. According to the City’s BMR Guidelines and City Municipal Code Chapter 19.96, residential development projects that include 20 or more units must provide not less than 15 percent of these units at below market rates to very low, low, and moderate-income households. The BMR Program permits BMR units to be provided across the full range of affordability levels, provided that the provision of units at extremely low, very low, low and/or moderate income is “roughly equivalent” to the provision of all of the units at the low-income level.

The 123 Independence Project (Project), which consists of 316 apartments and 116 townhomes, would provide BMR units meeting the City’s requirements on site. The for-rent apartments will comply with Chapter 16.96 and the BMR Guidelines. TSO and HGSF have requested State Density Bonus Law concessions and waivers, to allow variances from certain requirements in the BMR Guidelines for the BMR



townhomes.

As outlined in more detail in the State Density Bonus Law letter attached as Attachment A, the Project seeks two concessions that would result in actual cost savings: (i) to allow the affordable townhomes to be developed on one parcel, and (ii) to allow the affordable townhome units to be completed on an independent timeline from the market rate units in the project. TSO and HGSF also request waivers that support these concessions and allow the Project to fit on the site as designed and at the density allowed.

In addition, the Project proposes reasonably equivalent alternatives (“Equivalent Alternatives Proposal”) pursuant to Section 13 of the Menlo Park BMR Guidelines to allow HGSF to develop the affordable townhomes in a manner consistent with HGSF’s development model. The Equivalent Alternatives Proposal is included as Attachment B.

Program Design

As proposed, the Project has 316 for-rent apartments and 116 for-sale townhomes. The breakdown of unit mix and types for both the apartments and townhomes is shown below in Table 1.

Table 1: Program Breakdown with Unit Type, Size, & Mix

Unit Type	Ownership Type	Average SF	Total Count by Unit Type
Studio	Rental	539	88
One-Bedroom	Rental	725	185
Two-Bedroom	Rental	1,006	43
<i>Avg./Total Count Apartments</i>		<i>711</i>	<i>316</i>
TH 1 (Three-Bedroom)	Ownership	1,749	34
TH 2 (Two-Bedroom)	Ownership	1,199	34
TH 3 (Three-Bedroom)	Ownership	2,052	10
TH 3.1 (Three-Bedroom)	Ownership	2,052	20
TH 4 (Four-Bedroom)	Ownership	1,480	6
TH 4.1 (Four-Bedroom)	Ownership	1,514	3
TH 4.2 (Four-Bedroom)	Ownership	1,416	3
TH 4.3 (Two-Bedroom)	Ownership	958	3
TH 5 (Four-Bedroom)	Ownership	1,581	3
<i>Avg./Total Count Townhomes</i>		<i>1,613</i>	<i>116</i>

Apartment BMR Proposal

Based on the City’s 15 percent BMR requirement, the Project will provide 48 BMR apartments with low-AMI levels. In addition, TSO proposes an additional 8 low-income apartments as a community amenity, making the Project 17 percent affordable. There is no difference between the market-rate and BMR apartment units. The apartment BMR units will be mixed in throughout the community, indistinguishable from the exterior, and contain standard appliances common to new units.

As noted within the *Below Market Rate Housing Program Guidelines* subsection 4.1.2 and 11.1.2, *Initial Price for Rental Unit* and *BMR Rent*, the initial monthly rental amounts for the BMR rental units will be equal to or less than 30 percent of the applicable income limits for very low, low, and moderate income households adjusted for occupancy, but in no case will the monthly rental amounts exceed 75 percent of comparable



market rents.

Townhome BMR Proposal

Based on the City's 15 percent BMR requirement, the Project will provide 18 BMR townhomes with low-AMI levels. As mentioned above, TSO and HGSF plan to work together on the Project. TSO plans to donate the land for the BMR townhomes to HGSF. As further noted above, State Density Bonus Law concession and waivers together with an Equivalent Alternatives Proposal are being requested to enable HGSF to maximize its unique program. HGSF offers affordable homeownership opportunities to low-income families through a unique program that requires no down payment and provides zero-interest rate mortgages to homeowners. HGSF's ability to provide this unique program and deep levels of affordability is predicated on keeping construction costs low, optimizing the use of staff and volunteer labor, donated construction materials and finishes, and receiving funding from various private and public sources.

State funding for affordable housing is extremely competitive. TSO is committed to working with HGSF but if HGSF cannot obtain financing or otherwise chooses not to develop the affordable townhomes, TSO would partner with a different affordable housing developer to ensure compliance with the Project's BMR requirements under this proposal. If no affordable housing developer is interested in such a partnership, TSO would construct the BMR townhomes in a manner consistent with the City's Municipal Code and BMR Guidelines, and the BMR townhomes may be offered at different affordability levels than the current HGSF proposal.

Concessions for BMR Townhomes

The BMR Guidelines generally requires that units be distributed throughout the development. Because of TSO's partnership with HGSF and HGSF's need to have its own parcel, the BMR townhomes cannot be mixed throughout the community. Instead, the BMR townhomes will be located on Lot C. The placement and configuration for Lot C was selected for the BMR townhomes with equality in mind. The location is prominent on the site and feels integrated into the overall community. The location is also centrally located and adjacent to the park and paseo amenities.

HGSF's model is designed to have all the homes clustered on the same piece of land. Providing HGSF's units together on a dedicated parcel allows HGSF to apply for grants and other funding sources that support affordable housing and construct homes more efficiently than if units are spread throughout the Project site. In addition, having all the affordable townhomes on one parcel builds community, equity, and continuity for HGSF's homeowners. Below are specific reasons why:

- HGSF builds and sells homes on a single lot because it is more efficient and cost-effective than building across multiple lots. For example, working with one lot simplifies the land transaction, which keeps legal costs low. In addition, having the future homeowners, who must put in sweat equity to help build their homes, working on a single lot builds community and allows HGSF to increase its positive outcomes and impacts on the community.
- Construction mobilization and the coordination of its volunteer labor and homeowner sweat equity becomes significantly more expensive, complicated, and time consuming when homes are located on separate lots rather than a single lot.
 - *Expensive:* It is easier and more effective to oversee and coordinate volunteer labor and future homeowners within one lot rather than being spread over multiple lots, creating additional costs and operational complications – multiple superintendents, procurement dates for



materials, staging areas, etc. Economies of scale are lost when affordable townhomes are embedded within the market-rate townhomes.

- *Complicated:* When affordable townhomes are interspersed within the market-rate townhomes, there will be two developers and two sets of construction teams working within the same building, which would be a logistical nightmare and essentially impossible due to coordination and insurance issues. For example, coordinating the shared responsibilities of a plumbing pipe between one contractor and another, to determine where one plumber's work stops and another plumber's starts within the same building envelope is extremely difficult. From a safety and insurance standpoint, it is also challenging to have two separate groups working that closely together as contractors will have different protocols and rules.
- *Time Consuming:* Due to volunteer labor and HGSF's homeowner sweat equity program, the market-rate and affordable townhomes will have different schedules and timing. Having different contractors, with different construction schedules, reporting to different owners, is destined to lead to on-site construction coordination conflicts and eventual finger pointing.
- In addition to HGSF being the lender that requires no down payment and provide a zero-interest rate mortgages to homeowners, they also cap the homeowners' expenses to thirty percent of their incomes. This includes capping the Homeowner Association (HOA) fees, which required these units to be on one parcel under their own HOA.
- Lastly, HGSF's public funding sources only provide subsidy to very low and low-income townhomes. These funding sources account for approximately 30 percent of HGSF's capital stack and are crucial to HGSF's ability to provide affordable homeownership opportunities. The funding process typically includes a detailed application to be awarded funds and predetermined milestones (e.g., completion of foundation pour, framing, utility installation, sheetrock inspections, etc.) are required to receive funds. Due to the requirements of these funding sources, HGSF would be unable to obtain them without its own parcel.

As explained in the attached State Density Bonus Law letter, the Project seeks concessions and waivers to support HGSF affordable housing project, including concessions for allowing HGSF to cluster its units and to construct its units on its own timeline.

Waivers for BMR Townhomes

Although HGSF is constructing its own project, the architecture and exterior finishes of the BMR townhomes will be of the same quality as the market-rate townhomes and the level of detail and time spent designing these townhomes will be on par with the market-rate townhomes. The overall architectural design approach and vision of the project is to propose distinctively different architectural styles for the townhomes, while having pieces of resemblance in each townhome style to the apartment building. This approach ties the project together visually as a community while creating architectural variety. In addition, the architecture of the BMR townhomes is designed to meet HGSF's specifications and as such, will differ from the market rate townhomes. Similar to the market-rate townhome designs, the architecture of the proposed BMR townhomes provides a variety of façade breaks, materials changes and roof level changes, as shown in Attachment C.

The BMR Guidelines note that the design and materials used in construction of BMR units must be of a quality comparable to other new units constructed in the development but need not be of luxury quality. As noted above, the BMR townhome units will have architecture and exterior materials of comparable quality to the market rate units. But the BMR units have different layouts and ratios of bedrooms to unit size, bathrooms



to unit size, and living room size to unit size, as well as fewer parking spaces and balconies in different locations. On the interior, the BMR townhomes will have standard appliances common to new units such as a washer/dryer, dishwasher, oven/range, and refrigerator. Due to HGSF's donated construction materials and finishes, the finishes will be durable and high quality, however, they may differ from the market-rate units. To facilitate the concession allowing the affordable townhomes to be developed on an independent timeline and to allow the units to fit on Lot C, State Density Bonus Law waivers have been requested to allow the affordable townhomes to differ from the market-rate townhomes. The attached State Density Bonus Law Letter provides additional information regarding the requested waivers.

In sum, having all 18 BMR ownership townhomes developed by an affordable developer using their program enables them to be offered at deeper levels of affordability and ensure the permanent affordability of these homes.

* * *

Thank you for the opportunity to present this preliminary BMR proposal. We look forward to continuing our work with you as well as other City Staff to develop the BMR program for 123 Independence.

Warmest regards,



Peter Tsai

Resources

<https://www.codepublishing.com/CA/MenloPark/#!/MenloPark16/MenloPark1696.html#16.96>
<https://www.menlopark.org/369/Below-Market-Rate-BMR-housing-program>
<https://beta.menlopark.org/files/sharedassets/public/community-development/documents/20220303-below-market-rate-guidelines.pdf>

Attachment A – State Density Bonus Law Letter

Attachment B - Proposal for Reasonably Equivalent Alternatives Pursuant to BMR Guidelines Section 13

Attachment C – Exterior Rendering Comparison



Attachment A – State Density Bonus Law Letter





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File No. 087389

October 28, 2022

VIA E-MAIL

Ms. Payal Bhagat
City of Menlo Park
Planning Division
701 Laurel Street
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Re: Density Bonus Law Request for 123 Independence Drive Project

Dear Eric:

This letter amplifies and modifies the State Density Bonus Law (“SDBL”) request previously submitted with the application for the 123 Independence Drive housing development application (“Project”). The requests in this letter respond to the City’s recent comments on the Project as well as an increase in the proposed number of affordable units and additional design information that has been developed by the Project applicant and its affordable housing partner, Habitat for Humanity Greater San Francisco (“HGSF”), since our last request.

This letter is organized in three sections. Section 1 summarizes the Project’s affordable housing proposal, Section 2 explains what qualifies as a concession/incentive and waiver under SDBL, and Section 3 has the Project-specific requests for SDBL benefits.

1. The Project’s Affordable Housing Proposal

The Sobrato Organization (“TSO”) proposed the Project, which contains 316 apartment units and 116 townhomes on approximately 8.15 acres located at 119 Independence Drive, 123–125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive (“Property”) in the City of Menlo Park (“City”). Of the 316 apartment units, 56 would be deed-restricted low-income affordable units. Of the 116 townhomes, 18 would be deed restricted to low-income households. The 18 affordable townhomes would be financed and constructed by TSO’s development partner, HGSF.

In total, the Project would provide 74 low-income units, which equals 17 percent of the total Project units. The Project’s apartments would comply with all City standards and guidelines, but the affordable townhomes would not. Because HGSF would be developing the affordable townhomes, they are located on a single parcel and have a different design than the TSO townhomes. As discussed in Section 3, below, TSO and HGSF request to use SDBL

concessions and waivers to allow the development of HGSF’s portion of the Project as proposed. TSO reserves the right to request additional waivers if needed to address additional, applicable development standards.

2. Density Bonus Law Concessions and Waivers

a. Concessions

Incentives or concessions¹ 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, subd. (k)(3); see generally *id.*, subd. (k).) The City bears the burden of proof for the denial of a requested concession. (See *id.*, subd. (d)(4).)

The definition of “concessions” is broad and includes:

(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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, 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.

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

(*Id.*, subd. (k).) According to California Department of Housing and Community Development (“HCD”), the SDBL definition of concessions “clearly indicates that requirements beyond development standards are eligible,” including “regulatory requirements,” as long as the concession results in identifiable and actual cost reductions. (HCD Letter of Inquiry and Technical Assistance to City of San Jose (Dec. 14, 2021), available at

¹ SDBL uses the terms “incentive” and “concession” interchangeably. For readability, this letter uses “concessions” to refer to both incentives and concessions.

<https://www.hcd.ca.gov/community-development/housing-element/docs/sclSanJose-LOI-TA-121421.pdf>.)

Cities must approve concessions unless specified written findings based on substantial evidence are made. (Gov. Code, § 65915, subd. (d)(1).) The only reasons to deny a concession are: (i) the concession does not result in identifiable and actual cost reductions; (ii) the concession would have a specific, adverse impact (as defined) upon public health and safety or the physical environment or on real property listed in the California Register of Historical Resources, and there is no feasible method to mitigate or avoid the impact; or (iii) the concession would be contrary to state or federal law. (*Id.*) 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.” (§ 65589.5, subd. (d)(2).) Conditions that would have a specific, adverse impact upon the public health and safety “arise infrequently.” (*Id.*, subd. (a)(3).) Notably, Government Code section 65915, subdivision (r) declares: “[t]his chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.” Therefore, if in doubt regarding a concession (or waiver), the City should make the decision that facilitates housing development.

b. Waivers

The SDBL provides that “an applicant may submit to a city . . . a proposal for a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development” that is entitled to the benefits of the SDBL. (Gov. Code, § 65915, subd. (e)(1).) 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.” (*Id.*, subd. (o)(1).) An applicant is not limited in the number of waivers that may be requested and granted. (*Id.*, subd. (e)(1).) Waivers can be requested for “any development standard that will have the effect of physically precluding the construction of a development” that meets the State Density Bonus Law’s minimum affordable requirements “at the densities *or with the concessions or incentives permitted* by [SDBL].” (*Id.* [emphasis added].)

A local government may deny a requested waiver only in limited circumstances. Specifically, a local government may deny a requested waiver only if granting the waiver “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 “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.*) As noted above, conditions that would have a specific, adverse impact on public health and safety “arise infrequently.” (§ 65589.5, subd. (a)(3).)

A local government can require “an applicant to provide reasonable documentation to establish eligibility” for a requested waiver or reduction of a development standard. (§ 65915(a)(2).) According to HCD, the “showing or ‘reasonable documentation’ required by the applicant is that the project qualifies for a density bonus.” (HCD’s Notice of Violation Letter to the City of Encinitas (Jan. 20, 2022), available at <https://www.hcd.ca.gov/community-development/housing-element/docs/sdiencinitas-nov-012022.pdf>.) HCD also has concluded that “[a] project that meets the requirements of the [SDBL] is entitled to waivers if they are needed, ‘period.’” (*Id.*, quoting *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346–1347.)

A recent California Court of Appeals case has further confirmed that a local government cannot deny a requested waiver based on whether a developer could have designed its project in a way that minimizes the need for requested waivers. (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755.) In *Bankers Hill 150*, project opponents claimed that the project could be redesigned to be more consistent with the city’s development standards and therefore the city should have denied the requested waivers. The Court of Appeals rejected that argument, holding that the city could not demand the developer to redesign its building to better meet the city’s development standards *even if* a design existed that would allow fewer deviations than the proposed project. (*Id.* at p. 775.)

In addition, HCD has clarified that a waiver must be granted if it is necessary to facilitate a requested concession. (HCD Letter of Technical Assistance to the City of San Jose (May 20, 2022), available at <http://www.hcd.ca.gov/community-development/housing-element/docs/sclSanJose-TA-052022.pdf>.) To illustrate the point, HCD provides an example in which an applicant seeks a concession to remove the requirement for ground floor commercial space in a mixed-use zoning district and instead provide residential uses on the ground floor. Under such a scenario, an applicant can seek a waiver of ground floor transparency requirements because such requirements “would be incompatible” with the concession allowing ground floor residential uses. (*Id.*) According to HCD, “these derivative waivers should be considered and approved in a perfunctory manner by the local agency.”

3. The Project’s SDBL Benefits and Requests

Based on the number of affordable units provided and their level of affordability, the Project is entitled to a 30.5 density bonus (Gov. Code, § 65915, subd. (f)(1)), two concessions (*id.*, subd. (d)(2)(B)), unlimited waivers (*id.*, subd. (e)(1)), and use of SDBL’s parking ratios (*id.*, subd. (p)). The Project requests two concessions and two waivers, as explained below.

a. Concessions

i. Concession 1: Clustered Affordable Townhomes

Municipal Code section 16.97.100 requires that affordable units be “integrated into the project.” The City’s Below Market-Rate Guidelines (“BMR Guidelines”) further state that “[t]he BMR units should be distributed throughout the development.” (BMR Guidelines, § 5.1.) These

requirements would preclude a market-rate developer from partnering with an affordable housing developer to provide the affordable component of a project. Affordable housing developers require their own parcel on which they can construct a one hundred percent affordable housing development to be able to leverage certain lower cost financing that result in actual and identifiable cost savings. For the affordable townhomes, TSO wishes to work with an affordable housing developer, namely HGSF, due to HGSF's greater expertise in providing for-sale affordable housing. Accordingly, TSO and HGSF request a concession from BMR Guidelines section 5.1 to allow the affordable townhomes to be developed on one parcel and not distributed throughout the townhome portion of the Project.

ii. Concession 2: Different Construction Schedule

Municipal Code section 16.97.100 requires that affordable units be "constructed concurrently with market rate units." TSO and HGSF request a concession to this requirement because the affordable townhome units may not be constructed concurrently with the market rate townhomes due to TSO's partnership with HGSF. TSO and HGSF have different construction practices that lead to potentially different delivery timelines. Specifically, HGSF relies on (i) a volunteer labor and "sweat equity" model whereby the future owners of homes provide some labor and (ii) donated goods and materials. Both volunteer labor and donated materials result in cost savings for affordable housing but lead to a less predictable timeline than traditional construction methods and procurement practices.

b. Waivers

The waivers requested below are needed to either allow the Project to physically fit on the Property as designed and with the density allowed or to facilitate the "different timing" concession that allows the affordable townhomes to be constructed by HGSF with volunteer labor and donated goods.

i. Waiver 1: Equal Design

Municipal Code section 16.97.100 requires that the affordable units to "be of equal design and quality as the market rate units." Section 5.2 of the BMR Guidelines clarifies that the "design and materials used in construction of BMR units shall be of a quality comparable to other new units constructed in the development but need not be of luxury quality."

TSO and HGSF request a waiver to Municipal Code 16.97.100 and BMR Guidelines section 5.2 to allow the affordable townhomes to differ from the market-rate townhomes. The differences are that compared with the market-rate units, the affordable townhomes will have: (i) smaller average unit size, resulting in different interior layouts with fewer bathrooms, smaller living rooms, and more bedrooms than a similar sized market-rate townhome; (ii) less parking; (iii) smaller windows; (iv) different exterior finishes and massing, including different roof lines, (v) fewer balconies and balconies located in different locations; and (vi) different interior finishes, lighting, and appliances.

Regarding the differences in overall size, layout, bathrooms, living rooms, bedrooms, and parking spaces, these differences allow the Project to fit on the Property as designed and at the density allowed. Making the townhomes larger would allow more bathrooms, larger living rooms, fewer bedrooms per square foot, and more parking, but doing so would decrease open space or necessitate another change, such as a loss of a unit.

Regarding the differences in window size, massing inclusive of rooflines, and balconies, these differences result in a product that is easier to construct than the market-rate townhomes. Providing an easy to construct product supports the concession above for separate timing, which is predicated in part by HGSF's use of volunteer labor.

Regarding the differences in exterior and interior finishes, including appliances, these differences allow HGSF to use donated materials, thereby supporting the concession above for separate timing, which is predicated in part by HGSF's use of donated materials.

ii. Waiver 2: Common Open Space


Municipal Code section 16.45.120(4)(C)(iii) requires a parcel with 10 to 50 units to provide a minimum of 400 square feet of common open space, with minimum dimension of 20 feet. The parcel with the affordable townhomes (Lot C) includes 400 square feet of common open space, but its dimensions are 10 feet by 40 feet rather than 20 feet by 20 feet. Accordingly, TSO and HGSF request a waiver to reduce the 20-foot minimum dimension to 10 feet on this lot. The Project cannot fit the affordable townhome units as designed at the density allowed and provide a common open space on Lot C that is 20 feet wide. To provide another 10 feet of open space, the Project would need to have fewer units and different parcel lines.

* * *

Please do not hesitate to contact me if you have questions about TSO's SDBL requests. We look forward to continuing to work with the City to bring much needed housing, including affordable housing, to the area.

Sincerely,

Cox, Castle & Nicholson LLP



Linda C. Klein

CC: Peter Tsai, The Sobrato Organization
Christina Burke, The Sobrato Organization

Attachment B – Proposal for Reasonably Equivalent Alternatives
Pursuant to BMR Guidelines Section 13





October 28, 2022

Ms. Payal Bhagat
City of Menlo Park
Planning Division
701 Laurel Street
Menlo Park, CA 94025

RE: Proposal for reasonably equivalent alternatives to the BMR Guidelines under Section 13

Dear Payal Bhagat,

Habitat for Humanity Greater San Francisco (“HGSF”) would like to propose reasonably equivalent alternatives to a few BMR guidelines included in Resolution 6708 - BMR Guidelines, approved March 2022. Our proposed alternatives have been developed by HGSF for the project applicant, **The Sobrato Organization (“TSO”)**, and in coordination with the last submitted request under the State Density Bonus Law.

HGSF’s proven model includes an ongoing partnership with future homeowners and our high touch approach prepares families for the responsibility and opportunity of being a first-time homeowner. Our sweat equity program, which includes 500 hours of sweat equity for all households, is designed to provide meaningful interaction among families, affiliate representatives, and Habitat volunteers.

HGSF strives to make affordable homeownership and our sweat equity program available to all income qualified applicants regardless of age and physical ability. In order to ensure the equality of our sweat equity program, we make accommodations for the elderly and people with limited physical mobility. To accomplish this, we allow friends and family to contribute sweat equity hours to families, and we also provide customized opportunities for people based on their individual needs. For example, we offer accommodations such as counting administrative tasks such as Spanish translations, phone calls, and attending educational classes in home repair, public speaking, and leadership development towards the sweat equity requirement. HGSF makes reasonable accommodations and will ensure the success of all homeowners through customization and accommodations for their needs.

HGSF accepts the BMR Guidelines and requests only minor amendments to help facilitate **HGSF’s** proven affordable homeownership program and enable an effective partnership between the City of Menlo Park, TSO, and HGSF. This letter identifies those minor modification requests, and as always, HGSF is open to meeting with City staff to walk through this request and continue collaborating on this request and other beneficial approaches.

The project:

*Proposal for construction of 316 apartment units (56 deed-restricted low-income affordable units) including 116 townhomes (18 deed-restricted low-income townhomes financed and constructed by HGSF), as the project commonly referred to as 123 **Independence (“Project”)** located at 119 Independence Drive, 123-125 Independence*

Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive in the City of Menlo Park.

The Project's deed-restricted apartments would comply with all City standards, and this proposal relates specifically to the 18 deed-restricted townhomes.

1. City of Menlo Park Below Market Rate Guidelines - Section 13

The BMR Guidelines set the framework for how affordable housing will be created within the City of Menlo Park. Within Section 13 of these guidelines, the City allows reasonably equivalent alternatives to be proposed to and approved by City Council. Section 13 states:

Nothing set forth herein shall preclude the City from approving reasonably equivalent alternatives to these BMR Guidelines, including, but not limited to, in lieu fees, land dedication, off-site construction or acquisition and rehabilitation of units. Additionally, the City reserves the right to approve reasonably equivalent alternatives to the characteristics of the proposed BMR units and the affordability mix. Any modifications to these Guidelines shall be approved by the City Council and shall contain findings that the alternative is commensurate with the applicable requirement(s) in the BMR Guidelines and is consistent with the goals of the BMR Guidelines.

Modification of the BMR Guidelines will result in identifiable efficiencies in the ability of HGSF to apply its model to the benefit of affordable housing delivery.

The reasonably equivalent alternatives are proposed in such a way that, should the City Council accept them, they are commensurate with the intent and purpose of the BMR Guidelines. The narrative evaluation provides evidence for the findings to be made.

2. **The Project's** Reasonably Equivalent Alternative Requests

HGSF has a unique and tested method of financing and constructing 100% affordable homeownership projects and the reasonable equivalent alternatives are needed to facilitate the established and successful process that allows HGSF, as the affordable housing developer, to develop the townhomes in the most efficient and cost-effective manner.

BMR Guidelines section 5.5: *requires that affordable units have a right of first refusal in favor of the City.*

HGSF requests the right of first refusal, with the City in second position. HGSF uses the right of first refusal to resell properties to second generation affordable homeowners

and maintains a 99-year deed restriction on all homes sold. Also, by granting HGSF the right of first refusal, the City would be allowing HGSF to maintain its unique and time-tested approach to marketing, homebuyer engagement, and home sales for any future resale. This guideline is in place to ensure that affordable homes continue to be part of the Menlo Park affordable housing stock. Since HGSF guarantees the resale of the properties to a second generation of affordable homeowners and a 99-year deed restriction on the properties resold, granting HGSF this request meets the intent and purpose of this guideline to ensure affordable housing remains affordable.

BMR Guidelines section 7.1: **requires “[a]ll members of the applicant household to be first time homebuyers.”**

Given our current guidelines, HGSF requests the city allow only those on title be required to be first-time homebuyers.

HGSF’s households are made up of multigenerational individuals, often, seniors who may need to live with their adult children or adult children in need of temporary and/or part-time residence. These seniors and adult children may have been prior homebuyers. By requiring first-time homeownership only for the title holders, the ability to have more inclusive, diverse, and multigenerational households can be achieved. The intent of this guideline is to prevent current homeowners from **acquiring secondary properties**. Through HGSF’s thorough application and vetting process, such a scenario will not occur.

BMR Guidelines section 7.1.1: *makes an exception to the first-time homebuyer preference for households that already own BMR units.*

HGSF requests that the City waive this exception. Given the extreme scarcity of affordable homeownership opportunities in Menlo Park and surrounding region, HGSF seeks to provide homeownership opportunities to buyers who do not already own homes.

BMR Guidelines section 7.2: **states, “Only households that have completed the education requirement will be invited to apply when units become available” and provides detailed requirements about the education provider and content of such programs.**

HGSF requires homeownership education during the **“sweat equity”** phase of its homebuyer process, which follows the application period and the initial selection of homebuyer candidates and takes place as part of the 500-hour sweat equity requirement that occurs during unit construction. For this reason, HGSF must identify households for its units before the units are available.

HGSF is comfortable establishing a requirement that interested applicants attend a 90-minute information session prior to applying, where information on homeownership and program requirements are thoroughly reviewed. In sum, although HGSF invites applicants to apply prior to the full completion of their education and before units become available, **HGSF’s education model accomplishes the same purpose as BMR**

Guideline section 7.2, which is to ensure potential new homeowners are prepared for **ownership, and the alteration in timing is necessary for HGSF's sweat equity model.**

BMR Guidelines section 7.4: provides a list of assets and how they count towards income limits for the purchasers of affordable units.

HGSF requests an alternative to section 7.4 which only qualifies households having non-retirement assets that do not exceed the purchase price of the BMR units. Instead, HGSF asset test requires liquid assets over \$60k to be assessed at 10% of their value and added to annual income. This approach factors in larger substantial savings as part of the household annual income, which helps to ensure lower income households are served and sets reasonable conditions that allow as many potential homebuyers as possible to qualify. This alternative accomplishes the purpose of BMR Guideline section 7.4, which is to provide BMR units only to those households that truly need them, equally as well by allowing households with lower incomes to count a small percent of other assets to show that they qualify for an affordable home.

BMR Guidelines section 10.2 discusses refinancing options.

HGSF does not allow homeowners to refinance homes or assume second loans. To ensure affordability, HGSF offers mortgages to first-time homebuyers with 0% down payment and 0% interest loans and caps **homeowners'** total housing payment at 30% of their gross household income at the time of sale. Refinancing is not part of the HGSF process because the property value is shared between the homeowner, who receives their principle plus CPI adjustment at the time of a resale, and HGSF who uses any realized capital appreciation to build more affordable homes. Allowing second mortgages also jeopardizes affordability and increases foreclosure risk. Accordingly, not allowing refinancing provides an equivalent means of accomplishing the BMR Guidelines purpose of protecting low-income homeowners from predatory lending practices and foreclosure.

BMR Guidelines section 11 sets forth a detailed process for the resale of affordable units, including how the sales price will be set and that the City will retain the realtor for the sale.

We request the city allow HGSF to use its standard process for calculating the resale price of the home during the second-generation sale and our process for the actual sale of the home. HGSF sets the resale price at the time of the first-generation sale and the price is based on the original price plus appreciation (HGSF caps the resale price appreciation at the lower of CPI or 3%). HGSF construction staff rehabilitates the repurchased home at the same time as a second affordable homebuyer is identified. HGSF repeats the steps normally performed during an application cycle to find a qualified buyer, including marketing and outreach, performing a lottery, determining eligibility and ultimately selection a qualified household. Please note that in the case of a previously owned home, buyers are only required to perform 250 hours of sweat equity (versus the 500 required for new constructions). **HGSF's model accomplishes the**

goal of BMR Guidelines section 11, which is to ensure that homes remain affordable upon resale and are sold to qualified low-income households with an affordable mortgage.

3. HGSF as the **City's Designee** and Program Provider for Education, Marketing, Applicant Selection, and Title

Several of the City's BMR Guidelines allow the City to choose a designee or program provider to undertake certain actions. For example, **BMR Guidelines section 9.1.8 states, "[c]ontact is established between the City or its designee and the developer's representative to work out a schedule and convenient strategy for advertisements, if needed, when the units will be open for viewing, and for when the interested applicants may obtain detailed information about the units."** Similarly, **BMR Guidelines section 9.1.11 states, "[t]he City or the City's BMR Housing Program provider holds an application orientation meeting(s)."** In addition, **BMR Guidelines section 9.1.13: states, "[w]hen the application period closes, the City or its designee reviews the completed applications. The complete, eligible, qualifying applications are ranked according to legacy list order and/or lottery ranking."** And **BMR Guidelines section 9.1.15 states, "[t]he City of Menlo Park or its designee submits to the title insurance company the Grant Deed, BMR Agreement and Deed Restrictions, and Request for Notice to be recorded with the deed to the property."**

HGSF understands that the City is amenable to selecting HGSF as its designee and program provider to assist with the orientation and other educational meetings, marketing, applicant selection, and title requirements. In a meeting with City staff on October 17, 2022, the City stated that no modifications are needed to these guidelines, but recommended we provide the **City with an explanation of HGSF's** education, marketing, and selection strategies. Below, we provide a **summary of how HGSF would handle these important tasks as the City's designee and program provider** and affirm our commitment to working with the City on these items to accomplish the purposes of the BMR Guidelines.

Regarding orientation and other educational meetings, HGSF has a clear and effective **curriculum for these sessions. HGSF's staff are trained and prepared to both provide content and manage the extensive Q&A process.** HGSF uses a culturally relevant approach in the design and delivery of these sessions and ensures that translation is available and/or separate sessions are provided to non-English speaking attendees.

Regarding marketing, HGSF will develop marketing strategies in collaboration with City staff. **A fundamental component of HGSF's self-help housing model is sweat equity.** All homeowner candidate households complete 500 hours of sweat equity, primarily through the labor they contribute to the construction of their own homes.¹ We intentionally initiate marketing several months before homes are fully constructed so that the candidates who are selected are directly involved in building their homes. The sweat equity provides homeowners an opportunity to invest in their community and directly contribute to the building and development of their homes. At the same time, HGSF will provide interested applicants with information on the units

¹ HGSF values diversity and inclusion. To accommodate the varying needs and abilities of potential homeowners, HGSF allows applicants' family members and community to help fulfill sweat equity requirements.

during information sessions. HGSF develops a marketing plan that takes into consideration affirmative fair housing marketing practices, funder requirements, and the target audience(s) for our affordable homeownership program. HGSF would ask that the City approve any marketing plan before launching outreach and marketing. Our marketing plan includes identifying target market(s), building information, buyer qualifications, marketing strategy, marketing activities, assessment, advertising deliverables, and timeline. Marketing traditionally starts 1.5 years prior to home sales.

Regarding applicant selection, HGSF, **as the City's designee, would** manage the process of reviewing applications for initial eligibility and the use a lottery to select candidates for underwriting and selection by rank order. **This process would include accommodating the City's** preference for identifying applicants from its legacy list. HGSF welcomes the opportunity to develop preference qualifying strategies in collaboration with City staff, as it has done before with many other Bay Area cities. Regarding loan documents and title, HGSF would review all loan documents with the buyers prior to closing, answering any questions that borrowers may have. HGSF has a longstanding relationship with a title company who understands its model and is able to work with buyers in an efficient and thoughtful manner.

* * *

Please do not hesitate to contact me if you have questions about HGSF's reasonably equivalent alternatives requests **or HGSF's qualifications to be the City's designee and program provider**. We look forward to continuing to work with the City to bring much needed affordable housing to the area.

If additional information is needed or you have questions, please contact me directly at:

t: 415-625-1001; or
e: msedonaen@habitatgsf.org.

Sincerely



Maureen Sedonaen
Chief Executive Officer
Habitat for Humanity Greater San Francisco

CC:
Christina Burke, The Sobrato Organization
Peter Tsai, The Sobrato Organization
Linda Klein, Esq.

Attachment C – Exterior Rendering Comparison



AFFORDABLE 6-PLEX FRONT ELEVATION



MARKET RATE TYPE A 6-PLEX FRONT ELEVATION



MARKET RATE TYPE B 6-PLEX FRONT ELEVATION