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July 21, 2020

Navarre Oaks  
Assistant Planner  
City of Emeryville  
1333 Park Ave.  
Emeryville, CA 94608

Re: SB 35 Eligibility Checklist for Resources for Community Development's  
Proposed Affordable Housing Development at 3600 San Pablo Avenue

Dear Navarre:

Buchalter, a Professional Corporation, represents Resources for Community Development ("RCD") during the entitlement process for the proposed construction of a 100% affordable housing development at 3600-3620 San Pablo Avenue in the City of Emeryville (the "Project"). The purpose of this letter is to provide the City of Emeryville (the "City") with the necessary information regarding the Project's eligibility for streamlined ministerial approval of qualifying affordable housing projects.

After receiving comments and feedback from City staff during the pre-application process for the above-referenced application, RCD intends to seek ministerial approval of the Project under Senate Bill ("SB") 35, codified at Government Code section 65913.4. Under SB 35, qualifying mixed use and affordable housing projects located in jurisdictions that have not made sufficient progress in achieving their regional housing need obligations, are entitled to a ministerial, streamlined approval process. This approval process provides the City with an opportunity to make a sizable contribution to its affordable housing stock during this dire housing shortage. Based on the information outlined below, this Project is an eligible project located on a qualifying site, and therefore streamlined, ministerial review will apply upon RCD's submission of a formal application.

### **Background on Ministerial Approval under SB 35**

In September 2017, Governor Jerry Brown signed a package of fifteen bills aimed to address California's crippling affordable housing crisis. Among the bills included in the package

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was SB 35, also known as the Housing Accountability and Affordability Act. Senate Bill 35 establishes an alternate streamlined housing process in jurisdictions that the Department of Housing and Community Development (“HCD”) has determined are not currently meeting their Regional Housing Needs Allocation (“RHNA”). Once a locality timely determines that a proposed housing project is eligible under SB 35, the locality must review and approve the project based only on objective qualifying criteria subject only to time-limited design review that cannot impact building height or unit count.

The City’s 2018 General Plan Annual Progress Report indicated that the City issued 78 building permits for residential units in 2018. The City’s 2019 General Plan Annual Progress Report<sup>1</sup> indicated that zero building permits for residential units were issued in 2019. Of the RHNA period running from 2014 to 2022, the City has issued building permits that meet only 39% of its housing goals for all income categories. Specifically, the City has issued building permits for only: 32% of its allocated share of very low income housing units, 9% for its share of low income housing, and 10% for its share moderate income housing. Based on the City’s 2018 Progress Report, HCD has [determined](#) that, since Emeryville is not meeting its allocation for very low and low-income housing, qualifying projects providing at least 50 percent of the proposed units for low-income households are eligible for streamlining. The City must complete its review within 90 days of formal submittal for a project that contains 150 or fewer residential units. (*See* Gov. Code § 65913.4, subd. (c)(1).)

Once HCD has designated a local government as subject to the streamlined ministerial approval process, the local government is required to provide, in a manner readily accessible to the general public, information about the locality’s process for applying and receiving ministerial approval, materials required for an application, and relevant objective standards to be used to evaluate the application. (*See* HCD Guidelines for Streamlined Ministerial Approval Process, Section 300(a).<sup>2</sup>) We are not aware of whether the City has promulgated such guidelines, but we look forward to working with the City to provide any additional information necessary for City staff to timely determine SB 35 eligibility for RCD’s proposal.

After RCD submits this formal application for streamlined review, the City will be required to make a determination of consistency with applicable objective planning standards within 60 calendar days. (Gov. Code § 65913.4, subd. (b).) Any determination that the proposed development is in conflict with the objective planning standards must be accompanied with written documentation of the conflicting standard(s) and an explanation of reasons. (*Id.*)

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<sup>1</sup> The 2018 General Plan Annual Progress Report is available [here](#), and the 2019 General Plan Annual Progress Report is available [here](#).

<sup>2</sup> HCD SB 35 Guidelines are available at <http://www.hcd.ca.gov/policy-research/docs/SB-35-Guidelines-final.pdf>.

## **Project Eligibility for Streamlined Ministerial Approval under SB 35**

RCD's Project meets all housing type requirements and site requirements for eligibility for streamlining under SB 35 and therefore the City must apply a streamlined ministerial review of the Project. A detailed explanation of the Project's eligibility for SB 35 streamlined review is discussed below.

### **Housing Type Requirements**

<b>Requirements Met</b>	<b>Requirements</b>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b><i>Multifamily housing.</i></b> The proposed development must be a multifamily housing development that contains two or more residential units. (Gov. Code § 65913.4, subd. (a)(1).)
<b>Response:</b> The Project proposes 90 residential units, including 5 three-bedroom units, 16 two-bedroom units, 42 one-bedroom units, and 27 studios. Therefore, the Project <b>meets eligibility requirements.</b>	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b><i>Affordability Requirements.</i></b> The proposed development must be located in a locality that the department has determined is subject to ministerial approval of infill affordable housing projects, and must include requisite percentage of affordable housing. (Gov. Code § 65913.4, subs. (a)(3), (a)(4).)
<b>Response:</b> Because the City has not met its allocation of regional housing needs for very low, low, and moderate-income households, the proposed development must dedicate at least fifty percent of the total number of units to housing affordable to households making below 80 percent of AMI. RCD proposes that at least fifty percent of units, with the exception of a manager's unit, will serve individuals, families, and disabled households with average annual household incomes of less than 80 percent of AMI. RCD will be required to record a land use restriction for the affordable units. Therefore, the Project <b>meets eligibility requirements.</b>	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b><i>Compliance with Objective Development Standards.</i></b> The proposed development must be consistent with objective zoning standards and design review standards in effect at the time the development is submitted. (Gov. Code § 65913.4, subd. (a)(5).)
<b>Response:</b> Objective zoning standards and design review standards are defined as standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and proponent and the public official prior to submittal. (Gov. Code § 65913.4, subd. (a)(5).) Requests for additional density or other	

concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law are excluded from the City's analysis of compliance with objective zoning standards and design review standards. (*Ibid.*)

The Project is compliant with all objective zoning standards applicable within the Mixed Use with Residential South ("MURS") zoning District. If the City concludes the project is in conflict with any of the applicable objective planning standards or objective design standards, the City must provide the development proponent with written documentation of which standards the development conflicts with and an explanation for the reasons the development conflicts with those standards within 60 calendar days of the submittal of the formal SB 35 application. (*See* Gov. Code section 65913.4(b)(1); HCD Guidelines, Section 301(a)(3).) While this letter is submitted as part of RCD's pre-application, we kindly request that the City provide RCD with information on any applicable objective zoning standards or objective design standards that the proposed Project currently does not meet. Based on information currently available, the Project **meets eligibility requirements**.

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Subdivision Restrictions.</b> The development must either not involve a subdivision of a parcel that would otherwise be subject to the Subdivision Map Act unless the development will receive financing or funding by means of a low-income housing tax credit and is subject to prevailing wage. (Gov. Code § 65913.4, subd. (a)(9).)
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**Response:** The Project will receive financing through low-income housing tax credits and will comply with prevailing wage requirements. Therefore, this subdivision restriction does not apply, and the Project **meets eligibility requirements**.

## Site Requirements

Requirements Met	Requirements
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Legal Parcel.</b> A city in which a development site is located must include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau. (Gov. Code § 65913.4, subd. (a)(2)(A).)
<b>Response:</b> The Project is located at 3600-3620 San Pablo Avenue within the City of Emeryville, which is located within an urbanized area. <sup>3</sup> Therefore, the Project <b>meets eligibility requirements</b> .	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Infill Development.</b> At least 75 percent of the perimeter of the site must adjoin parcels that are developed with urban uses. (Gov. Code §

<sup>3</sup> See urbanized area outline map for the San Francisco—Oakland, CA Urbanized Area at [https://www2.census.gov/geo/maps/urbanarea/uaoutline/UA2000/ua78904/ua78904\\_00.pdf](https://www2.census.gov/geo/maps/urbanarea/uaoutline/UA2000/ua78904/ua78904_00.pdf).

65913.4, subd. (a)(2)(B).)	
<p><b>Response:</b> Parcels separated by a street are considered to be adjoined. “Urban uses” means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination thereof. (See subd. (h)(12).) The Project site is surrounded by urban uses, residential apartments to the north, and mixed commercial uses to the west, and a Chevron gas station across the 580 Freeway to the south. These are all urban uses. Therefore, the Project <b>meets eligibility requirements</b>.</p>	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p><b>Residential Zoning.</b> The site must be zoned for residential use or residential mixed-use development, or have a general plan designation that allows residential use or a mix of uses, with at least two-thirds of the square footage of the development designated for residential use. (Gov. Code § 65913.4, subd. (a)(2)(C).)</p>
<p><b>Response:</b> The Project site is designated Mixed Use with Residential South (“MURS”), which allows for residential use. Sites in an MURS zoning district of less than one acre in size may be comprised of a single use. The Project site is located on a parcel of less than one acre in size. Additionally, the Project will include ground floor retail and six stories dedicated entirely to affordable housing and ancillary uses. Therefore, the Project <b>meets eligibility requirements</b>.</p>	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p><b>Site Environmental Considerations.</b> The development site must not be located on a site that is within the coastal zone, designated prime farmland or farmland of statewide importance, designated wetlands, within a very high fire hazard severity zone, listed as a hazardous waste site, within a delineated earthquake zone, within a flood plain or floodway, identified for conservation in an adopted natural community conservation plan or through a conservation easement, or on land designated habitat for protected species. (Gov. Code § 65913.4, subd. (a)(6)(A).)</p>
<p><b>Response:</b> The project site is a highly urbanized parcel in the City of Emeryville. No portion of the City is within the coastal zone. The City does not include any prime farmland or wetlands. No portion of the City is located within a very high fire hazard severity zone.<sup>4</sup> The project site is not listed as a hazardous waste site on Geotracker<sup>5</sup> or EnviroStor.<sup>6</sup> Though the project site is located southwest of the Hayward Fault Zone<sup>7</sup>, the Project will nonetheless comply with seismic protection building code standards. The project site does not appear on</p>	

<sup>4</sup> See [https://osfm.fire.ca.gov/media/7271/fhszs\\_map1.pdf](https://osfm.fire.ca.gov/media/7271/fhszs_map1.pdf).

<sup>5</sup> <https://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=3600+san+pablo>.

<sup>6</sup> <https://www.envirostor.dtsc.ca.gov/public/map/?myaddress=3600+san+pablo+ave>.

<sup>7</sup> See <https://maps.conservation.ca.gov/cgs/EQZApp/app/>.

any FEMA designated flood zone or floodway. <sup>8</sup> Finally, the City General Plan explains that the City is mostly developed with very little native habitat remaining. The General Plan does not indicate that the project site is identified for conservation in an adopted natural community conservation plan or habitat for protected species, or that the land is subject to a conservation easement. Therefore, the Project <b>meets eligibility requirements</b> .		
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Displacement Protections.</b> The development must not be located on a site where development would require demolition of housing subject to affordability protections or rent control, or which has been occupied by tenants within 10 years, or on a parcel governed by the Mobilehome Residency Law. (Gov. Code § 65913.4, subds. (a)(7), (a)(10).)	
<b>Response:</b> The Project site does not contain any current residential units, has not contained housing units within the last 10 years, and is not subject to the Mobilehome Residency Law. The site is currently improved with a commercial businesses. Therefore, the Project <b>meets eligibility requirements</b> .		
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Historic Structure Preservation.</b> The development must not be located on a site that would require the demolition of a historic structure placed on a national, state, or local historic register. (Gov. Code § 65913.4, subd. (a)(7)(C).)	
<b>Response:</b> No historic structures have been registered for the 3600-3620 San Pablo Ave. parcel. Therefore, the Project <b>meets eligibility requirements</b> .		

## **Density, Concessions, and Unenforceable Standards Pursuant to Density Bonus Law**

Government Code section 65913.4(a)(5) excludes from the objective development standard compliance analysis “additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915.” The state Density Bonus Law prohibits the imposition of any maximum controls on density because the Project is located within ½ mile of a major transit stop. (Gov. Code § 65915, subd. (f)(3)(D)(ii).) Additionally, because this Project is providing 100% affordable units, RCD is entitled to a total of four development standard incentives or concessions. (*Id.* § 65915, subd. (d)(2)(D).) Finally, pursuant to the Density Bonus Law, an applicant may request that the city reduce or decline to enforce development standards that would physically preclude construction of an eligible project. (*Id.*, § 65915(e)(1).) Accordingly, RCD will be requesting the following additional density, concessions, incentives, and waiver of unenforceable standards pursuant to the applicable state laws:

<sup>8</sup> See <https://www.propertyshark.com/mason/ca/Alameda-County/Maps/Fema-Flood-Hazard-Areas>.

## Inapplicable Due to State Density Bonus Law

Standard <sup>9</sup>	Regulation	Proposed	Rationale
9-4.203 Residential Density	50 du/acre	240 du/acre	Housing development in which 100% of units are for lower income households and located within ½ mile of a major public transit stop is provided unlimited density per Gov. Code § 65915(f)(3)(D)(ii)
9-4.202 Height and Bulk.	40 ft (base)	73 ft	Housing development in which 100% of units are for lower income households and located within ½ mile of a major transit stop is provided with a 33 ft. height bonus per Gov. Code § 65915(d)(2)(D). This does not count toward the Project's 4 concessions and incentives.

## Inapplicable Due to SB 35

Standard	Regulation	Proposed	Rationale
9-4.401 to 9-4.405 Parking	No minimum parking required.	37 spaces	SB 35 removes local parking requirements for projects that are within a ½ mile of a major public transit stop. (Gov. Code § 65913.4(d)(1)(A))
9-5.2008(a)-(b) Transportation Demand Management	Approval of a TDM Plan or attainment of GreenTRIP certification	N/A	SB 35 requires ministerial approval and application of only objective zoning standards that involve no subjective judgment by a public official. Because adoption of a TDM plan requires discretionary approval of the City and the GreenTRIP requirement is not a zoning standard, these requirements are inapplicable.

<sup>9</sup> All "9-" standards are references to the Emeryville Municipal Code.

## Concessions

Standard	Regulation	Proposed	Rationale for Concession
Design Guideline J-55	Provide each bedroom with access to a full bathroom without going through the living room, dining room, or kitchen	B1 and B2 unit layouts will not satisfy this guideline	<p><b>Concession 1:</b> Compliance with this design guideline would require additional bathrooms which would result in additional costs related to bathroom fixtures, plumbing, and building design. Furthermore, the inclusion of additional bathrooms that meet this guideline would reduce the number of leasable units, which would impact the financial viability of the project at the authorized density and therefore the ability to provide 100% of units affordable to lower income households.</p> <p>Accordingly, this concession would result in a reduction of hard costs associated with additional bathrooms and would allow for a greater number of units leasable to a diversity of lower income households. This ensures the ability to provide units that qualify as affordable for lower income households.</p>
Design Guidelines A-2, A-3, and I-8	Maintain unobstructed sidewalks, design pedestrian pathways, and landscaping of sufficient width	Placement of bulb out on 36 <sup>th</sup> St. precludes sidewalks of greater than 8'-8"	<p><b>Concession 2:</b> Compliance with these guidelines would require widening of the sidewalks along the perimeter of the building. This would result in an overall decreased project footprint and a reduction in the number of leasable units, thereby increasing project costs.</p> <p>Accordingly, this concession would allow for a greater number of units leasable to lower income households and ensures the project's financial ability to provide units that qualify as affordable to those households.</p>

9-4.409 Loading	1 small off-street loading space (multi-unit residential 50-149 units)	1 small on-street loading space.	<p><b>Concession 3:</b> Compliance with this regulation would require dedication and construction of additional floor space that would accommodate truck parking. Modification of the parking arrangement would require abandonment of the parking lift, reducing parking efficiency, and would increase costs by requiring construction of additional parking space, potentially on multiple levels. Further, expansion of the parking garage reduces the amount of leasable commercial and residential space, by requiring movement of infrastructure and building amenities into those areas.</p> <p>Accordingly, this concession is required to reduce costs by maximizing efficiency, carefully balancing space for building infrastructure, ADA parking spaces, electric vehicle charging, and bicycle parking within the podium. This concession allows for the financial viability of offering affordable units at the density authorized under state law.</p>
9-4.302(a)-(d) Courts	Court dimensions shall extend 10 ft from centerline of a required window	Units facing the open space courtyard may not meet this standard	<p><b>Concession 4:</b> Compliance with this regulation would increase costs because it would require expansion of the podium courtyard and costs associated with courtyard infrastructure such as pavement and landscaping. An expanded courtyard would result in a reduction of useable office, amenity, and residential space across all 5 residential levels. Leasable residential spaces would be abandoned to accommodate the necessary management offices.</p> <p>Accordingly, this concession would result in a reduction of hard costs associated with additional courtyard space and would allow for a greater number of units leasable to a diversity of lower income households. This ensures the ability to provide units that qualify as affordable for lower income households at the authorized density.</p>

## Unenforceable Standards

Standard	Regulation	Proposed	Rationale for Unenforceability
9-4.201 Building Intensity (Floor Area Ratio)	1.5 FAR (base)	5.22 FAR	Required to physically enable construction at the bonus density provided by the state Density Bonus Law.
9-5.2003 Unit Mix	At least 50% of units will have 2+ bedrooms. At least 15% will have 3+ bedrooms. At most 10% will be studios	24% 2 bedroom units 6% 3 bedroom units 31% studios	Providing enough larger units to satisfy this standard at the density provided would require additional floors to accommodate these units. Adding any floors would require transitioning from Type III to financially infeasible Type I construction.
9-4.504 Landscaping requirements	Subsection (b) requires landscaped areas to consist of at least 10% of the project site, which translates to about 1633 ft <sup>2</sup>	Current landscaped areas add up to 1262 ft <sup>2</sup>	Compliance would require reducing the building footprint to create space for landscaping. This would dramatically reduce the amount of buildable space and physically precludes development of the property at the density provided.
9-4.303(a)-(b) Open Space	40 ft <sup>2</sup> /unit private (3,600 ft <sup>2</sup> total) 20 ft <sup>2</sup> /unit public (1,800 ft <sup>2</sup> total)	1,541 ft <sup>2</sup> of common space	Compliance would require reducing the building size and/or footprint to provide the requisite amount of open space on the podium. This would physically preclude development of the property at the density provided.

## Conclusion

Because the Project and project site meet all of the criteria established above, the Project is eligible for ministerial approval under SB 35. In addition to meeting these requirements, RCD commits that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and the geographic area as required by subdivision (a)(8) of Government Code section 65913.4.

We would greatly appreciate receiving a response from you regarding the Project's eligibility for ministerial review under SB 35. If you reach the conclusion that additional information is required to establish the Project's eligibility for ministerial review, we request that you provide that information in response to this letter as part of the pre-application process.

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Sincerely,

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A Professional Corporation

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Associate

cc: Nick Cranmer, Resources for Community Development