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Via Submission by Applicant

July 21, 2025

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Re: ADC Fletcher 15, LLC's Proposed 15-unit Residential Project
715 W Fletcher Ave, Orange, CA 92865, APN: 374-261-10

Dear Mr. Bunim and Mr. Agbayani,

This law firm represents the applicant, ADC Fletcher 15, LLC (the "Applicant"), with regard to the above-referenced project (the "Project"). We understand that City of Orange (the "City") sent the Applicant a letter on June 13, 2025 that highlighted several design features that the City found conflicted with the applicable design standards. After reviewing the letter, Mr. Hamilton requested that we provide a summary of California Density Bonus Law (the "DBL") and the Housing Accountability Act (the "HAA"). To that end, this letter summarizes the DBL and HAA and analyzes their application to the Project in order to provide the City with assistance and guidance in its review of the Project application.

I. BACKGROUND ON DENSITY BONUS LAW

A. State Density Bonus Law, Government Code Section 65915

The DBL incentivizes the development of affordable housing and other under-produced housing types by providing additional density as well as incentives and waivers to qualifying projects. Cities and counties are required to adopt ordinances to specify how their jurisdictions will comply with the DBL, but failure to adopt such ordinances does not relieve a jurisdiction from compliance.[1]

[1] Gov. Code § 65915(a).

Projects can qualify for a density bonus and other benefits prescribed by the DBL by meeting a number of different affordability criteria, including reserving a minimum percentage of base units at specified income levels, or by providing other categories of housing for underserved populations.[2] The specific requirements are delineated in Government Code section 65915(b)(1). For the sake of clarity, this letter will refer to the income-based requirements as "DBL Affordability Requirements" and such qualifying projects as "DBL Qualifying Projects" or, a "DBL Qualifying Project", as applicable. Affordable units reserved in DBL Qualifying Projects must be subject to a restrictive covenant which ensures that the units will remain affordable for fifty-five (55) years.[3]

The DBL defines the term "density bonus" as the "density increase over the otherwise maximum allowable gross residential density as of the date of the application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density."[4] Density bonus calculations are to be rounded up to the next whole number, and the grant of a density bonus cannot be interpreted to trigger a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.[5] The DBL grants flexibility for local agencies willing to grant greater density bonuses than required by state law.[6]

The DBL provides that DBL Qualifying Projects are entitled to incentives,[7] and codifies the only criteria under which a local jurisdiction can refuse to grant an applicant's request for incentive:

- The incentive "does not result in identifiable and actual cost reductions… to provide for affordable housing costs… or for rents for the targeted units to be set as specified";

- The incentive would "have a specific, adverse impact… upon public health and safety or on any real property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the

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2 Gov. Code § 65915(b)(1)(B).
3 Gov. Code § 65915(c).
4 Gov. Code § 65915(f).
5 Gov. Code § 65915(f)(5).
6 Gov. Code § 65915(n).
7 Technically, the DBL refers to "incentives or concessions." We simplify by using the term incentives to refer to both.

development unaffordable to low income and moderate-income households; or

- The incentive would be contrary to state or federal law.[8]

An applicant may take legal action against a city or county if it denies a requested incentive, and the applicant is entitled to recover its attorneys' fees if successful.[9] The local jurisdiction carries the burden of proof if it decides to reject an incentive request.[10]

The DBL also provides for waivers of development standards that would have the effect of physically precluding the construction of a DBL Qualifying Project at the density or with incentives permitted by the DBL.[11] Similar to incentives, an applicant is entitled to recover its attorneys' fees if a court finds that a waiver request was improperly denied. As with incentives, local agencies are not required to grant a waiver request that would be illegal, have a specific adverse impact upon health, safety, or the physical environment where that impact cannot be mitigated, or have any adverse impact on a property on the California Register of Historical Resources, but written findings must be made and supported on one of those grounds.

The DBL also specifies the maximum vehicular parking ratios that can be required for DBL Qualifying Projects.[12] Finally, the DBL provides that it "shall be interpreted liberally in favor of producing the maximum number of total housing units."[13]

The City also has a Density Bonus Ordinance ("DBO"), which implements the DBL and utilizes the DBL Affordability Requirements.[14] Therefore, the DBO requires the City to grant waivers to DBL Qualifying Projects according to the same framework contained within the DBL.

II. PROJECT DETAILS

A. Project Background

The Low Medium Residential general plan designation permits up to 15 dwelling units per acre. Given the 0.72-acre site area, this equates to a base density of 10.8 units, which is rounded up to 11 units. The Project will restrict one unit for very low income households, which equates to just

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8 Gov. Code § 65915(d)(1).
9 Gov. Code § 65915(d)(3).
10 Gov. Code § 65915(d)(4).
11 Gov. Code § 65915(e).
12 Gov. Code § 65915(p).
13 Gov. Code § 65915(r).
14 Orange Municipal Code ("OMC") §17.15.010.

over nine percent of the base units. This entitles the applicant to a density bonus of 30 percent, or 3.3 additional units, rounded up to four additional units. Therefore, the Project is entitled a total density of 15 units provided that one unit is reserved for very low income households.

The Project qualifies for one (1) incentive because it reserves nine percent of the base units for very low income households.[15] The Applicant has not yet determined how to apply its incentive but nonetheless expressly reserves the right to utilize such incentive at a later date. The Applicant requests waivers for building standards relating to front yard setbacks, rear yard setbacks, private open space dimensions (width of yard area), drive aisle width, minimum back up distance for 90 degree parking stalls, and front door orientation, all of which regulations would physically preclude the construction of a DBL Qualifying Project. It is our understanding that the City agrees the Applicant is entitled to waivers for all of the building standards mentioned above, except for the standard relating to the orientation of front doors. As such, the following analysis will focus on the applicability of waivers to the front door orientation standard.

B. Waiver Requests

We understand there may be some confusion regarding requested waivers, as it is not uncommon for reviewers to seek to mold a project toward compliance with the otherwise applicable development standards. The idea of asking a project applicant to propose an alternative design in order to reduce or eliminate requested waivers for a DBL Qualifying Project was rejected by the California Court of Appeal in *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346-1347 (known as *Wollmer II*). In particular, the court flatly stated that "standards may be waived that physically preclude construction of a housing development meeting the requirements of a density bonus, period. The statute does not say that what must be precluded is a project with no amenities, or that amenities may not be the reason a waiver is needed."

More recently, the decision in *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, underscores that the City cannot and should not require an alternative design with fewer waiver requests: “the interpretation of section 65915 set forth by the court in *Wollmer* leads us to conclude that the City (or, by extension, the Association via this lawsuit) could not demand Greystar remove the courtyard or redesign its building to satisfy the Association’s subjective concerns.”[16]

Here, incorporating the extra units that come from the density bonus while creating a functional and efficient design to accommodate the affordable unit will require the waiver of certain development standards that would physically preclude the construction of the Project. Specifically, even though the Project arguably complies with the with the objective building orientation standards

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[15] Gov. Code § 65915(d)(2)(B).
[16] *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775.

found in Section B.1. of the City's Small Lot Subdivision Guidelines, the Applicant is requesting a waiver from Section B.1. to allow the Project to proceed as designed.

As explained above, this wavier must be granted unless the City can make the findings required by section 65915(d), and there is no evidence that such findings can be made here. Thus, the waiver should be granted.

III. **HOUSING ACCOUNTABILITY ACT IMPLICATIONS**

The HAA, also known as the anti-NIMBY law, was first implemented in 1982 and has been strengthened in recent years by pro-development housing legislation. To address the statewide housing shortage, the HAA promotes the approval of housing development projects, which include exclusively residential developments such as the Project, by limiting the discretion agencies have to deny or impose density-reducing conditions.[17]

Where a housing development project "complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards," an agency cannot deny the project or impose conditions that lower the project's density unless the agency makes written findings based on a "preponderance of the evidence" that the project will have a specific, adverse, and unmitigable impact to public health and safety.[18] The preponderance of the evidence evidentiary standard is a higher standard than the typical substantial evidence standard. Senate Bill 330 can be used as a tool to prevent the City from applying subjective standards, even as part of design review, or applying objective design or development standards in a way that is overly restrictive or in an otherwise subjective manner.

When applying the HAA to the Project, it is important to understand that the HAA only requires compliance with "applicable" objective standards. For DBL Qualifying Projects, development standards that are the subject of waivers or incentives are not applicable. Therefore, development standards that are waived by the DBL do not prevent the Project from relying on the HAA's protections. Specifically, the City may only evaluate the Project against its objective general plan, zoning, and subdivision standards, and it may not reject the Project simply due to an aversion to the Project or discomfort with its proposed density. Therefore, if the Project complies with the City's objective general plan and zoning standards, including design review standards, the City *must* approve the Project unless it can make the requisite written findings.

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[17] Gov. Code § 65589.5(a)(2)(K), (h)(2), (j).
[18] Gov. Code § 65589.5(j)(1).

IV. CONCLUSION

We hope that the information provided above proves useful to City staff as you continue with your evaluation of the Project. Our client is committed to helping the City to address its housing needs, including units for very low income households, while providing an outstanding product. While this letter provides a preliminary response to issues raised by City staff to date, the Applicant reserves its rights under state and local law, including the right to request additional incentives or waivers under the DBL.

If you have questions about any of the issues discussed herein, please feel free to contact me directly or work with the Applicant team to arrange a meeting.

Sincerely,

Timothy M. Hutter

TMH/bp

cc: Matt Hamilton, ADC Fletcher 15, LLC