TEXT 14-54 (CONTINUED): INTRODUCE AND WAIVE FIRST READING OF ORDINANCE No. 999 FOR AMENDMENTS TO TITLE 18, ZONING ORDINANCE, OF THE LARKSPUR MUNICIPAL CODE TO AMEND AND RE-NUMBER CHAPTER 18.31 (AFFORDABLE HOUSING FUND AND INCLUSIONARY / IN-LIEU FEE REQUIREMENTS) AND ADD A NEW CHAPTER 18.26 (RESIDENTIAL DENSITY BONUS, CONCESSIONS, AND INCENTIVES).

SUMMARY / ACTION REQUESTED

Hold a public hearing to consider an Ordinance amending Larkspur Municipal Code Title 18, Zoning to:

1. Amend Chapter 18.31, regulating the City’s affordable housing fund and inclusionary/in-lieu fee requirements to eliminate prior provisions for density bonuses and concessions; and
2. Re-number Chapter 18.31 to Chapter 18.25; and
3. Add a new Chapter 18.26 (Residential Density Bonus, Concessions, and Incentives) to add provisions for administering density bonuses and incentives and concessions as required by State law (CA Government Code §65915 through §65918).

These amendments are intended to codify implementation of existing State law requirements for the provision of density bonuses, concessions, and incentives for affordable housing units proposed in conjunction with housing development projects under review by the City of Larkspur. Government Code §65915 through §65918 (“State density bonus law”) requires cites to grant density bonuses to applicants who request them, and also requires the provision of incentives or concessions to encourage development of the housing. All cities must adopt an ordinance that specifies how State density bonus law will be implemented.

**Note:** The density bonuses, incentives, and concessions outlined in State density bonus law are currently applicable to eligible residential development projects regardless of whether or not there is an adopted local ordinance.

The City Council is requested to conduct the public hearing, take public comment, and move adopt Ordinance No. 999.

FISCAL IMPACT
Staff does not anticipate an immediate fiscal impact resulting from the adoption of this Ordinance. Adoption of the ordinance is necessary to qualify for a streamlined Housing Element Update and to maintain adequate status to receive regional funding for roadway and utility infrastructure. In the event that the projects involving density bonuses or other concession are brought before the City, the City will either charge fees or may potentially waive fees (if requested) for the purpose of supporting affordable housing projects.

ENVIRONMENTAL STATUS

The project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines because adoption of the zoning ordinance amendment is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and this project does not have the potential for causing a significant effect on the environment. The amendments are necessary to conform the zoning code to state law and to the policies and goals expressed in the general plan; the amendments themselves do not state new policy for the City; and it is not reasonably foreseeable what specific projects would be proposed, so there can be no reasonable examination of environmental impacts. Further, all specific projects subject to a density bonus or other incentives and/or concessions are subject to their own CEQA review to determine potential impacts and effects on the environment.

BACKGROUND

City Council Review November 2014

This item was considered by the City Council on November 19, 2014. At that time, the City Council considered the Planning Commission Resolution No. 02/14 recommending approval of the draft ordinance. Additionally, the Council heard public testimony from Michael Hooper objecting to the submittal requirements prescribed in the draft ordinance, as well as testimony from James Holmes, in support of the submittal requirements. Specifically at issue was the requirement for a ‘pro forma’ or other financial analysis to verify the need for concessions to achieve the affordability req.

In conclusion, the City Council continued the matter with direction for staff:

- Clarify the necessity for adopting this standards separate from discussions on the Housing Element update.
- To provide additional clarity as to the process and legality for reviewing a pro-forma or other type of financial document to analysis concession and incentives.

Some Council Members also indicated a need to simply review the documents to better understand the intent of the ordinance. The matter was continued to January 7, 2015.

Revised Draft Ordinance and Information

In response to the City Council’s discussion, staff has provided an updated draft of the ordinance which modifies proposed Section 18.26.050.A(3), pertaining to submittal requirements for requested incentives, concessions, or waivers of development standards. Staff has deleted the reference to pro forma and, rather, simply requires a financial analysis of the requested incentive.
or concession. Additionally, the draft ordinance indicates that such financial reports, and possibly third-party review, are optional, and may be required at the discretion of the City.

While the language of both the statutes and the ordinances are complex, in effect the ordinance simply adjusts the Municipal Code to recognize currently mandated standards for density bonuses and concessions/incentives and to outline procedures for submittal and review of such proposals. The follow Table is a basic summary of the principal issues addressed under the proposed ordinance.

<table>
<thead>
<tr>
<th>Required By Government Code §65915 through §65918 (Status Quo)</th>
<th>What Proposed Density Bonus Ordinance Accomplishes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Density bonuses permitted for development of 5 or more units. Identifies specific increases over the maximum allowable units depending on percentage of affordable units and affordability levels. Allows up to a maximum 35% increase. Identifies density bonuses required for senior housing (20% bonus), moderate income ownership housing (up to 35% bonus)</td>
<td>De-couples outdated density bonus language from Inclusionary Housing Ordinance. Refers to State Law for density bonus standards relative to percentages of affordable units and affordability levels. Provides application submittal and review process to assure compliance with State Law and local ordinance.</td>
</tr>
<tr>
<td>Granting of concession and/or incentives (waiver of development standards) permitted as necessary to provide for affordable housing costs. Identifies granting of one to three concessions or incentives, depending percentage of affordable units and affordability levels.</td>
<td>De-couples outdated concessions/incentives language from Inclusionary Housing Ordinance. Refers to State Law for standards for concessions/incentives relative to percentages of affordable units and affordability levels. Provides application submittal and review process to assure compliance with State Law and local ordinance. Includes findings for denial of concessions / incentives based on State Law.</td>
</tr>
<tr>
<td>Density bonus adjustments and concessions permitted in conjunction with land donations, child care facilities, and conversion of exiting market-rate units to affordable units (alternative equivalents).</td>
<td>Refers to State Law for standards for adjustments and concessions/incentives. Provides application submittal requirements and review process to assure compliance with State Law and local ordinance.</td>
</tr>
<tr>
<td>Requires process for assuring affordability of units for no less than 30 years.</td>
<td>Outlines process for assuring future affordability of units (consistent with State Law), but for no less than 55 years.</td>
</tr>
</tbody>
</table>

Staff Report: 1/07/2015
Density Bonus Ordinance
The prior staff report, dated 11/19/14, provides a comprehensive background on the both the directives under Housing Element law for updating the zoning ordinance, a detailed explanation of the proposed amendments, and the Planning Commission review and recommendation. The prior staff report can be accessed and downloaded via the City’s website from this link here:

http://ca-larkspur.civicplus.com/DocumentCenter/View/4454

DISCUSSION

Eligibility for Streamlined Housing Element Update

In the previous discussion, the City Council raised questions as to whether the density bonus should be considered in conjunction with the Housing Element update scheduled for early in 2015.

While density bonuses are certainly related to housing production, the implementation of the density bonus ordinance is a required as part of a variety of measures that local governments must have already undertaken in order to qualify for a streamlined review process for the 5th housing element cycle.

For this housing element update cycle, HCD is providing eligible local governments with the option to utilize a ‘streamlined update’ process. This new process is intended to create efficiencies in preparation of the updated element as well as clarity in HCD’s review process. Recognizing that much of the information in a certified Housing Element such as Larkspur’s is still current, the streamlined update allows the local government to submit a housing element that indicates where changes have been made to the previously-certified element, in ‘track changes’ formatting. HCD will review only the changes that have occurred since the prior planning period and will accept those sections that have not changed as continuing to be in compliance with statutory requirements.

The advantages of pursuing a streamlined update:

- HCD will rely upon the element in compliance in the prior planning period and review will be limited to only those changes that have occurred since the prior period. HCD review will not review those areas that have not changed and will focus only on minor updates. This is sensible for Larkspur as it is largely a “built-out” community with limited options for alternative opportunity sites for housing development.

- A streamlined update will qualify the City for an 8-year planning period for the housing element. If a jurisdiction elects not to conduct a streamlined update, the jurisdiction must conduct a comprehensive update (and HCD review) every 4 years. While it is unlikely that the RHNA allocations would change within a 4-year time frame, the updated element must consider anew statutory requirements effective since the prior adoption.

- Streamlined adoption of the Housing Element will retain the City’s eligibility for numerous infrastructure and grant funding programs, such as Safe Routes Programs and bike path infrastructure provided under the One Bay Area Grant program. Failure to adopt a Housing Element according to statutes, and with HCD certification, exposes the City to potential lawsuit for failure to meet Housing Element Law.
• Adoption of a Streamlined Element at this time, does not preclude the City from Modifying land use densities and/or opportunity sites as part of the more comprehensive General Plan update in the near future. The City could further update its Housing Element at that time, in conjunction with any land use changes should that occur as part of the broader planning effort.

Essentially, the City cannot participate in a streamlined update process, if it has not adopted a density bonus ordinance consistent with State Law by January 31, 2015. Further, the Government Code sections 65915-65918 require all cities and counties to adopt an ordinance that describes how the jurisdiction will implement existing State density bonus law. State density bonus requirements apply only to new developments with five (5) or more residential units. **It should be noted that the density bonuses, incentives, and concessions outlined in State density bonus law are currently applicable to eligible residential development projects regardless of whether or not there is an adopted local ordinance.** The function of the local ordinance is to outline the process by which the local agency will process and review requests for density bonuses, incentives, and/or concessions.

This ordinance must be adopted by January 31, 2015 in order for the City to remain eligible for the Streamlined Update. This can be achieved if the City Council concludes a second reading on January 21, 2013.

**Submittal Requirements**

As previously discussed, the City Attorney's office concluded density bonus law allows the City to require the applicant to submit basic evidence showing that the concession or incentive is necessary (in legal terms; the burden of production). It is ultimately the burden of the City to show that an incentive or concession is not required, based on substantial evidence (the burden of proof). Government Code section 65915(d)(1) provides that an applicant for a density bonus may submit a proposal for specific incentives or concessions. The statute continues that the City shall grant the concession or incentive unless the City makes a written finding, based on substantial evidence that:

A) The concession or incentive is not required in order to provide for affordable housing costs … or for the rents for the targeted units

B) The concession or incentive would result in a specific adverse impact on public health and safety or on a historical resource and there is no feasible method to mitigate without rendering the development “unaffordable” or

C) That the concession or incentive would be contrary to state or federal law.

As noted above, staff has modified proposed Sections 18.26.050 of the draft ordinance to eliminate the reference to *pro forma*. Rather, staff has included reference to a *financial analysis* and third party review as an optional requirement of the City. Staff believes that in some circumstances it may not be necessary to conduct a full financial analysis for minor waivers to standards, which may typically be granted for planned development projects. In other cases, a financial analysis may be helpful in supporting the extent of particular, or multiple, waivers.

Staff has provided an example of such an analysis that was done for a recent mixed-use development in Palo Alto (see attached). The analysis demonstrated a necessary financial benefit.
of permitting three development incentives/concessions to permit 10 upper level apartment units, including 3 affordable BMR (below market rate) units.

While the City cannot entirely shift the burden onto an applicant to prove that the incentives or concessions are required, 65915(d)(1)(A) does allow the City to make findings that the incentives or concessions are not required. As such, it is not a stretch to require the applicant to submit evidence for the need for the concessions or incentives, even if the burden for proving that the concessions or incentives are not needed falls on the City.

While staff recommends adoption of the language as proposed, staff is continuing to research alternative practices, should the City Council find that the language is not consistent with the ‘spirit’ of the density bonus law.

AB 2222: Time Limitations for Agreement and Recognition of Exiting Affordable Units

As noted that since the preparation of the draft Ordinance, it has come to staff’s attention that AB2222, which introduces recent amendment to the State Law also includes requirements for agreements for affordable rental units to be units to be in effect for no less than 55 years (an increase from 30 years). Staff has amended prior language to specify that agreement for all affordable units meet this minimum criteria.

Staff has also added language to the text that also requires identification of existing affordable units (up to five years prior to the application) as part of the consideration of a density bonus.

RECOMMENDATION

As enumerated throughout the staff report, adoption of a local density bonus ordinance would outline a process for reviewing requests for density bonuses, concessions, and/or incentives in concert with the review of other discretionary permit requests. Further, adoption of the Density Bonus Ordinance is key to effectively implementing the Housing Element of the Larkspur General Plan and establishing eligibility for a streamlined update of the Housing Element for the 2015-2023 planning period.

Staff recommends that the City Council introduce and waive first reading of Ordinance No. 999.

OPTIONS, INCLUDING THE RECOMMENDED ACTION

The City Council has the following options:
  1. Approve the attached draft Ordinance (recommended action).
  2. Approve the draft Ordinance subject to specific modifications.
  3. Direct staff to further evaluate specific issues and postpone action on the draft Ordinance to a date certain.

Note: adoption of a Density Bonus Ordinance compliant with state law is required by January 31, 2015 in order to comply with HCD guidelines for streamlined housing element timelines.
ATTACHMENTS

1. Ordinance No. 999; Density Bonus Ordinance (Revised)
2. Minutes of City Council, 11/19/14
3. Density Bonus Analysis for 441 Page Mill Road, Keyser Marston Associates, 5/07/14
WHEREAS, California Government Code Sections 65915-65918 ("State Density Bonus Law") require local jurisdictions to adopt an ordinance that specifies how compliance with State Density Bonus Law will be implemented;

WHEREAS, the City Council adopted the Housing Element for the 2007-2014 planning period on November 17, 2010 through Resolution 39/10;

WHEREAS, on March 18, 2011 the California Department of Housing and Community Development certified the adopted Housing Element to be in compliance with State Housing Element Law;

WHEREAS, the adopted Housing Element contains Policy H7.1 and Implementing Program H7.A directing the City to enact density bonus zoning and other incentives to encourage and increase the supply of well-designed housing for low-income households;

WHEREAS, on October 28, 2014 the Planning Commission conducted a duly-noticed public hearing to review the draft Density Bonus Ordinance, at which time all interested persons were given an opportunity to be heard;

WHEREAS, on October 28, 2014 the Planning Commission adopted Planning Commission Resolution No. 02/14, which recommended City Council adoption of the Density Bonus Ordinance;

WHEREAS, on November 19, 2014, and on January 7, 2015 the City Council conducted duly-noticed public hearings at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council finds that the Density Bonus Ordinance is consistent with the goals, policies, and programs of the Larkspur General Plan, specifically Policy H7.1 and Implementing Program H7.A of the Housing Element.

THE CITY COUNCIL OF THE CITY OF LARKSPUR DOES HEREBY ORDAIN AS FOLLOWS:
 Section 1. AMENDMENT TO THE LARKSPUR MUNICIPAL CODE. Chapter 18.31 is hereby re-numbered as Chapter 18.25 and amended to read as follows:

CHAPTER 18.2531

AFFORDABLE HOUSING FUND AND INCLUSIONARY/IN-LIEU FEE REQUIREMENTS

Sections:
18.2531.010 Purpose
18.2531.020 Definitions
18.2531.030 Affordable Housing Fund
18.2531.040 Residential Development Project: Inclusionary/In-Lieu Fee Requirements
18.2531.050 Enforcement Provisions
18.2531.060 Adjustment

18.2531.010 Purpose.
The purpose of this chapter is to maintain the City's affordable housing fund and establish an inclusionary requirement or an in-lieu fee on developers of residential development projects to mitigate the impacts caused by these development projects on the rising land prices for a limited supply of available residential land. The purpose is also to achieve a balanced community with housing available for households with a range of income levels. In-lieu fees will be used to defray the costs of providing affordable housing for very low-, low-, and moderate-income households in the City of Larkspur. The fees and inclusionary requirements required by this chapter do not replace other regulatory, development and processing fees or exactions, funding required pursuant to a development agreement or reimbursement agreement, assessments charged pursuant to special assessments or benefit assessment district proceedings, etc., unless so specified. (Ord. 941 § 1, 2005)

18.2531.020 Definitions.
For the purposes of this chapter, the following words, phrases, and terms shall have the meanings set forth herein. Words not defined shall be given their common and ordinary meaning.

A. "Affordable rent" means: (1) monthly rent that does not exceed one-twelfth of thirty percent of eighty percent of median income for low-income households; and (2) monthly rent that does not exceed one-twelfth of thirty percent of fifty percent of median income for very low-income households.

In each case, the median income applicable to Marin County is as determined annually by the Marin Housing Authority in consultation with the City of Larkspur, adjusted for household size, less a reasonable allowance for utilities. Affordable rent shall be based on presumed occupancy levels of one person in a studio apartment, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter.

B. "Affordable sales price" means the maximum purchase price that will be affordable to the specified target income household. A maximum purchase price shall be considered affordable only if the owner-occupied monthly housing costs, including principal,
interest, utilities, and insurance, is equal to or less than one-twelfth of thirty percent of the annual household income for the specified target income household. Affordable sales price shall be based upon presumed occupancy levels of one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter.

C. “Affordable units” means those dwelling units which are required to be rented at affordable rents or purchased at an affordable sales price to specified households as described in LMC 18.3425.040.

D. “Annual household income” means the combined gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.

E. “Building permit” means a permit issued pursuant to Chapter 15.08 LMC.

F. “Building Official” means the chief building official of the City of Larkspur, or the designee of such individual.

G. “Concession” or “incentive” shall have the same meaning and applicability as set forth in Government Code Section 65915. Concessions and incentives may include, at the discretion of the City, any of the following:

1. A reduction in site development standards, or a modification of zoning requirements or architectural design requirements which exceed the minimum building standards approved by the State, including but not limited to minimum lot size, open space, yard, landscape maintenance, fencing, utility undergrounding, sidewalk, right-of-way dedication (not including curb-to-curb street width standards), parking and/or setback requirements;

2. Approval of mixed use zoning in conjunction with the housing project if the nonresidential uses will reduce the cost of the residential development and if the City determines that the nonresidential uses are compatible with both the housing project and the existing or planned development in the area in which the housing project will be located; or

3. Other regulatory incentives or concessions proposed by the developer which the developer shows will result in identifiable cost reductions, including but not limited to a waiver, reduction and/or reimbursement of taxes and fees which otherwise would be imposed on the project.

G.H. “Construction costs” means the estimated cost per square foot of construction, as established by the Building Official using the most current International Code Council (ICC) assessed valuation data with a regional modifier that is used in the setting of regulatory fees and building permits, multiplied by the total square footage, minus the garage floor area, to be constructed.

H.I. “Developer” means every person, firm, or corporation constructing, placing, or creating residential development directly or through the services of any employee, agent, independent contractor or otherwise.

IJ. “Dwelling unit” shall have the meaning set forth in Chapter 18.08 LMC.

JK. “Housing fund” means the City of Larkspur’s affordable housing fund.
**KL.** "Housing in-lieu fee" means the fee established pursuant to LMC 18.31.040 for residential development projects.

**LM.** "Low-income households" means those households with incomes of up to eighty percent of median income as determined annually by the Marin Housing Authority in consultation with the City of Larkspur.

**MN.** "Market rate units" means those dwelling units in a residential project which are not affordable units.

**NO.** "Median income" means the annual median income, adjusted for household size, applicable to Marin County as determined annually by the Marin Housing Authority in consultation with the City of Larkspur.

**OP.** "Moderate income households" means those households with incomes of up to one hundred twenty percent of median income as determined annually by the Marin Housing Authority in consultation with the City of Larkspur.

**PQ.** "Owner-occupied monthly housing payment" means the sum equal to the principal, interest, homeowner's insurance and homeowner's association dues paid on an annual basis divided by twelve.

**QR.** "Residential development project" means a project for the new construction, creation, or placement of any dwelling unit in a permanent location, or the subdivision of land which is planned, designed, or used for the following land use categories:

1. Single-Family Residential. This category consists of single-family detached units and duplexes.

2. Multifamily Residential. This category consists of buildings containing three or more dwelling units and mobile home parks.

For purposes of this chapter, this term does not include remodels where no new dwelling units are created, but does include projects where an existing structure is voluntarily demolished for rebuilding.

**RS.** "Very low-income households" means those households with incomes of up to fifty percent of median income as determined annually by the Marin Housing Authority in consultation with the City of Larkspur. (Ord. 959 § 1, 2007; Ord. 941 § 1, 2005)

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**18.2531.030 Affordable Housing Fund.**

**A.** The housing fund shall be administered by the City Manager, or his/her designee, who shall have the authority to govern the housing fund consistent with this chapter, and with prescribed procedures for said purpose, subject to approval by the Council.

**B.** Purposes and Use of Funds.

1. Monies deposited in the housing fund along with any interest earnings on such monies shall be used solely to increase and improve the supply of housing affordable to moderate-, low- and very low-income households. Monies may be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the housing fund and reasonable expenses for administering the process of calculating, collecting, and accounting for
inclusionary fees and any deferred City fees authorized by this section. No portion of
the housing fund may be diverted to other purposes by way of loan or otherwise.

2. Expenditures by the City Manager from the housing fund shall be by contract and
controlled, authorized and paid in accordance with general City budgetary policies.

3. Investment of monies from the housing fund shall be made in accordance with the
City's investment policy. (Ord. 941 § 1, 2005)

18.2534.040 Residential Development Project: Inclusionary/In-Lieu Fee
Requirements.

A. Inclusionary Requirement.

1. In a residential development of five to fourteen units, at least fifteen percent of all
dwelling units shall be affordable, and shall be constructed and completed not later
than the related market rate units, as follows:
   a. In a rental housing project the affordable units shall be affordable to very low-
and low-income households.
   b. In a for-sale project the affordable units shall be affordable to low- and
moderate-income households.

2. In a residential development of fifteen or more units, at least twenty percent of all
dwelling units shall be affordable as outlined above in subsection (A)(1)(a) and (b) of
this section, and shall be constructed and completed not later than the related
market rate units.

3. In subdivisions of two or more parcels, where five or more additional housing units
could be developed, developable parcels shall be set aside to allow for the future
development of the equivalent percentages of affordable units as outlined above. The
applicant or another for-profit or nonprofit applicant may develop the land. The
units built on the parcels may be rental or owner-occupied, and shall be in
compliance with this chapter. The method of providing inclusionary units from lot
subdivisions shall be specified in the conditions of approval of each applicable
subdivision.

Notwithstanding the above, this section shall not apply to projects which fall into one
or more of the following categories:
   a. A residential development project to the extent it has received a vested right to
proceed without payment of housing impact fees pursuant to state law.
   b. Building permits for residential development projects if compliance with this
section for such project has already been satisfied including, but not limited to,
building permits on newly created lots where the subdivider has built affordable
units or otherwise satisfied this section.
   c. Any dwelling unit or residential development project which is damaged or
destroyed by fire or other calamity so long as the square footage and use of the
building remains the same.

B. For fractions of required affordable units, the developer may elect, at his or her
option, to construct the next higher whole number of affordable units, perform an
equivalency action alternative which has received the approval of Council pursuant to
subsection C of this section, or pay the in-lieu fee specified in subsection D of this section for such fraction.

C. Alternative Equivalent Action.

1. A developer of a residential development project may propose to meet the requirements of subsection A of this section by an alternative equivalent action, subject to the review and approval by the City Council.

2. An alternative equivalent action may include, but is not limited to, dedication of vacant land suitable for housing to a nonprofit housing development (see subsection (C)(2)(a) of this section), transfer of inclusionary unit credits (see subsection (C)(2)(b) of this section), construction of affordable units on another site or enforcement of required rental/sales price restrictions on existing market-rate dwelling units consistent with this section, and development of second dwelling units (see subsection (C)(2)(c) of this section).

All applicants proposing the use of an alternative equivalent action shall show how the alternative will further affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements of subsection A of this section.

a. Land Donation. Upon approval of the City Council, an applicant may donate land to a nonprofit housing developer in place of actual construction of required affordable units. The dedicated land must be appropriately zoned, buildable (e.g., fully improved as noted below), and free of toxic substances and contaminated soils as defined by the State Department of Toxics Substance Control. The land must be large enough to accommodate the number of required affordable units as indicated by a conceptual development plan. The land that is donated shall be fully improved with access infrastructure, adjacent utilities, and grading, and fees paid.

b. Transfer of Inclusionary Unit Credits. Upon approval of the City Council as set forth herein, the requirements of this section may be satisfied by acquiring inclusionary unit credits that are transferable from one residential development project to another; provided, that no other bonuses, incentives, or concessions pursuant to LMC 18.26 have been granted to the developer acquiring the credits. The City Council may approve issuance of a credit certificate for each affordable unit provided by a particular residential development project in excess of the minimum number required for the project and it may establish a cap on the value of the certificates. Credit certificates shall be issued for specific income categories and may only be used to satisfy the requirements for affordable units within that same income category. If the holder of the credit certificates transfers any or all certificates to a developer of a residential development project, the parties shall report the transaction to the Planning Director, who will document the transfer. When a credit certificate is applied to meet the affordable unit requirement of a particular project, it shall be recorded at the time of project approval, and subject certificates shall be returned to the Planning Director.

c. Second Dwelling Units. Not more than fifty percent of the requirements of this chapter may be satisfied through the development of second dwelling units at a ratio of two-second dwelling units counted as one affordable housing unit. All second units counted toward meeting the affordable unit requirement shall be subject to the provisions of subsection K of this section, Continued Affordability.
3. The City Council's consideration of an alternative equivalent action shall follow the procedures outlined in subsection (G)(1)(a) of this section. An alternative equivalent action shall be considered on a case-by-case basis by the City Council and may be approved at the City Council's sole discretion, if the City Council determines that such alternative will further affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements of subsection A of this section.

D. In-Lieu Housing Fee.

1. For fractions of required affordable units for a residential development of fifteen or more units, an applicant may pay the in-lieu fee equivalent to one whole unit.

2. For a residential development of five to fourteen units and which is not, and has not been, part of a larger residential project, an applicant may propose to meet the requirements of subsection A of this section by submitting at the time of application for a discretionary approval or building permit, whichever comes first, a request to pay the in-lieu fee along with a report identifying:
   a. All overriding conditions impacting the project that prevent the development from meeting the requirement to construct the affordable units;
   b. Sufficient independent data, including appropriate financial information, that supports the developer's claim that it is not feasible to construct the required affordable units; and
   c. A detailed analysis of why the concessions and incentives identified in subsection G of this section will not mitigate the identified overriding conditions that are preventing the construction of the affordable units.

3. The City Council's consideration of an in-lieu housing fee for a residential development of five to fourteen units shall follow the procedures outlined in subsection (G)(1)(a) of this section. In-lieu housing fees shall be considered on a case-by-case basis by the City Council and may be approved at the City Council’s sole discretion, if the Council determines that there are overriding conditions impacting the project that prevent the developer of a residential development project from meeting the requirement to construct affordable units and that payment of the in-lieu fee will further affordable housing opportunities.

E. Time of Payment of In-Lieu Fee. Unless otherwise preempted by law, the housing in-lieu fee shall be paid prior to the issuance of a building permit.

F. Calculation of Housing In-Lieu Fee. The amount and calculation of the housing in-lieu fee shall be established by resolution of the City Council.

G. Affordable Housing Concessions and Incentives.

4. For residential development projects, which meet the requirements of LMC 18.26.010 et seq., concessions and incentives shall be awarded as set forth in that Chapter 18.26. Density bonuses, concessions, and incentives shall only be given to residential development projects that actually construct new affordable housing or dedicate land for affordable housing, as set forth in Chapter 18.26. Residential development projects paying only in-lieu fees or obtaining or using Inclusionary Unit Credits shall not be eligible for density bonuses, concessions, or incentives. subsection A of this section through the construction of affordable units, the City shall follow the procedures...
described below and provide concessions and/or incentives as described in LMC 18.31.020(G).

a. Within ninety days of an applicant submitting a written preliminary development proposal, the City Council shall review the proposal at a noticed public hearing and indicate conceptual approval or disapproval of the proposed development and any requests for additional affordable housing incentives, concessions or waivers or modification of development or zoning standards. The proposal shall describe and specify the number, type, location and size of the housing development, and identify any requests for density bonus, additional incentives, concessions, waivers or modification of development or zoning standards. The proposal shall provide an explanation of the applicant’s opinion that the benefits requested of the Council are necessary to make construction feasible for the proposed development, including the affordable units. The preliminary development proposal must be submitted prior to any formal application for a discretionary approval (e.g., general plan amendment, rezoning, use permit, tentative subdivision or parcel map or other permit or entitlement).

Such preliminary approval or disapproval shall not bind the City Council but rather shall be subject to the discretion of the City Council to modify its preliminary recommendations based upon a full review of all pertinent project information, including any environmental impact report, presented at the public hearing on the application. An application for such a request shall be submitted to the Planning Director.

b. Complete applications for a residential development project, which include all required submittal documents and which include the construction of affordable units, shall be processed by all City departments before other residential land use applications regardless of the original submittal date. Complete applications which include all required submittal documents and which include affordable rental units shall be processed before applications including owner-occupied units.

c. Payment of all City-required fees on affordable units may be deferred for payment, but shall be made prior to, and as a condition of, release of utilities and issuance of a certificate of occupancy. Bonding, in a form approved by the City Attorney, may be required by the City as a condition of deferring payment.

2. The City Council may consider, on a case-by-case basis, in its sole discretion the provision of the following additional concessions or incentives identified in Government Code Section 65915 which are consistent with state law and the Housing Element of the City of Larkspur General Plan for projects which meet or exceed the requirements as specified in subsection A of this section:

a. An additional density bonus or other incentives of equal financial value (i.e., on a cost basis) subject to the City Council's review and approval.

b. Waiver or modification of City standards thereby directly reducing project costs while remaining consistent with the latest edition of the California Building Code. The developer shall be responsible for documenting that the waiver or modification is necessary for the feasibility of the residential development project and is consistent with all applicable provisions of the California Building Code.

c. Provision of direct financial assistance in the form of a loan or grant using trust fund or other appropriate available funds subject to the recommendation of the City Manager.
d. Deferral of payment of all City-required fees on market rate units, but payment shall be made prior to, and as a condition of, release of utilities and issuance of a certificate of occupancy.

H. Requirements for Rental Affordable Units.

1. One-half of the affordable units, which are required to be constructed in connection with construction of rental market rate units, shall be available at affordable rents to very low-income households. The remaining one-half of the required affordable units shall be available at affordable rents to low-income households. Where the number of required affordable units is an odd number, the number of affordable units constructed for very low-income households may be one less than the number of affordable units construction for low-income households.

2. With respect to any particular rental residential project, the City Council may, upon the recommendation of the City Manager, forgive all or a portion of the affordability requirement set forth in subsection A of this section upon a showing by the applicant that imposition of such requirement on the residential project will cause undue hardship and that such residential project will contribute significantly to affordable housing opportunities in the City.

I. Requirements for Owner-Occupied Affordable Units. One-half of the affordable units, which are required to be constructed in connection with the construction of market rate units, intended for owner-occupancy shall be available at affordable sales prices to moderate-income households whose annual household income does not exceed one hundred twenty percent of median income. The remaining one-half of the required affordable units shall be available at affordable sales prices to households whose annual household income does not exceed eighty percent of median income. Where the number of required affordable units is an odd number, the number of units affordable to moderate income households may be one greater than the number affordable at or below eighty percent of median income.

J. Basic Requirements for Owner-Occupied and Rental Affordable Units. Affordable units shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the same residential project. Subject to the approval of the Planning Commission through the design review process, square footage of affordable units and interior features in affordable units are not required to be the same as or equivalent to those in market rate units in the same residential project, so long as they are of good quality and are consistent with contemporary standards for new housing. Affordable units shall be dispersed throughout the residential project, or, subject to the approval of the Planning Commission, may be clustered within the residential project when this furthers affordable housing opportunities.

K. Continued Affordability.

1. Prior to the issuance of certificates of occupancy or approval of the final inspection for affordable units, regulatory agreements and, if the affordable units are owner-occupied, resale restrictions, deeds of trust and/or other documents, all of which must be acceptable to the City Manager and consistent with the requirements of this chapter, shall be recorded against parcels having such affordable units and shall be effective in perpetuity, unless reduced by the City Council to a specific term to meet the requirements of a financing institution or subsidy program, with respect to each affordable unit.
2. The following shall apply during the affordability period for an affordable unit subject to this chapter:

   a. The maximum sales price permitted on resale of an affordable unit intended for owner-occupancy shall not exceed the seller's purchase price, adjusted for the percentage increase in median income since the seller's purchase, plus the cost of substantial structural or permanent fixed improvements to the property, plus the cost of reasonable seller's broker fee as determined by the City Manager.

   b. The resale restrictions shall provide that, in the event of the sale of an affordable unit intended for owner-occupancy, the City shall have the right to purchase or assign its right to purchase such affordable unit at the maximum price which could be charged to an eligible household.

3. No household shall be permitted to occupy an affordable unit, or purchase an affordable unit for owner-occupancy, unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by a regulatory agreement or resale restrictions. If the City or its designee maintains a list of eligible households, households selected to occupy affordable units shall be selected first from that list to the extent provided in the regulatory agreement or resale restrictions.

4. For any affordable unit that is no longer restricted at the time of the sale, the seller is only entitled to the maximum sales price permitted as defined in subsection (K)(2)(a) of this section. The proceeds above and beyond that shall be placed back into the Housing Fund and used as defined in LMC 18.2534.030(B).

5. If the City granted concessions at the time of a development, the City shall recapture its proportionate share of appreciation. For purposes of this subsection, the City's proportionate share of appreciation shall be equal to the discount given to make a unit affordable divided by the fair market value of the unit at the time of the initial sale; such fair market value shall be documented through an appraisal of the property by a qualified appraiser and provided to the City by the developer. This amount shall be placed into the housing fund and used as defined in LMC 18.2534.030(B).

L. Annual Monitoring and Transfer Fees.

   1. For each rental affordable unit provided hereunder, the current owner may be required to pay an annual monitoring fee for the term of required affordability. Such fee shall be specified in the regulatory agreement(s) required hereunder.

   2. For each owner-occupied affordable unit provided under this section, the current owner may be required to pay a transfer fee for any change of ownership during the term of required affordability. Such fee shall be specified in the resale restrictions required by subsection K of this section.

M. Discretionary Permit Requirements. Every discretionary permit for a residential development project of five or more units approved after the effective date of the ordinance codified in this chapter shall contain a condition detailing the method of compliance with this chapter. Every final and parcel map shall bear a note indicating compliance with the requirements of this section must be met prior to issuance of a building permit for each lot created by such map.
N. Professional Assistance for City Review and Determinations. Whenever an approval or determination is required, the Planning Director may, at the applicant's sole cost and expense, retain a suitably qualified independent professional consultant to evaluate the adequacy of the application to achieve the purposes of this chapter.

O. Requirements for Certificate of Occupancy/Final Inspection.

1. No temporary or permanent certificate of occupancy shall be issued, final inspection approved or release of utilities authorized for any new dwelling unit in a residential development project until the developer has satisfactorily completed the requirements hereunder, i.e., on-site construction of affordable units, alternative equivalent action(s) or payment of the housing in-lieu fee.

2. No temporary or permanent certificate of occupancy shall be issued, final inspection approved or release of utilities authorized for a dwelling unit described as exempt from the requirements of this chapter in subsection A of this section until the developer has made a showing acceptable to the City Manager that such an exemption is appropriate. (Ord. 941 § 1, 2005)

18.2531.050 Enforcement Provisions.

A. It shall be unlawful, a public nuisance and a misdemeanor for any person to sell or rent an affordable unit at a price or rent exceeding the maximum allowed under this chapter or to a household not qualified under this chapter, and such person shall be subject to a fine of five hundred dollars ($500.00) per month plus restitution of the amount charged that exceeded the maximum allowed under this chapter from the date of original noncompliance until the affordable unit is in compliance with this section. Fine monies collected that exceed the cost of enforcement shall be deposited in the housing fund.

B. The Larkspur City Attorney's Office or the Marin County District Attorney, as appropriate, shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing regulatory agreements and resale controls placed on affordable units by civil action, injunctive relief, and any other proceeding or method permitted by law.

C. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity. (Ord. 941 § 1, 2005)

18.2531.060 Adjustment.

A. A developer of any project subject to the requirements of this chapter may appeal to the City Council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement.

B. A developer subject to the requirements of this chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval and who submits a new or revised tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.
C. Any such appeal shall be made in writing and filed with the City Clerk not later than ten calendar days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, the appeal shall be filed within ten calendar days after payment of the fees objected to.

D. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The City Council shall consider the appeal at the public hearing on the permit application or at a separate hearing within sixty calendar days after the filing of the appeal, whichever is later. The appellant shall bear the burden of presenting substantial evidence to support the appeal including comparable technical information to support appellant's position.

E. No waiver shall be approved by the City Council for a new tentative subdivision or parcel map, use permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the Council finds that the new tentative subdivision or parcel map, use permit or similar discretionary approval is superior to the approved project both in its design and its mitigation of environmental impacts. The decision of the Council shall be final. If a reduction, adjustment, or waiver is granted, any change in the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement. (Ord. 941 § 1, 2005)

Section 2. AMENDMENT TO THE LARKSPUR MUNICIPAL CODE.
A new Chapter 18.26 is added to the Larkspur Municipal Code as follows:

CHAPTER 18.26
RESIDENTIAL DENSITY BONUS, CONCESSIONS, AND INCENTIVES

Sections:
18.26.010 Purpose
18.26.020 Definitions
18.26.030 Applicability
18.26.040 State Density Bonus and Affordable Housing Concessions and Incentives
18.26.050 Application Requirements and Review
18.26.060 Density Bonus Agreements
18.26.070 Enforcement

18.26.010 Purpose.
To demonstrate the standards and procedures in granting affordable housing density bonuses, concessions, and incentives for housing developments, in an effort to incentivize the construction of Affordable Units within new developments in the City. This section implements the requirements of Government Code Sections 65915 through 65918, as may be amended from time to time ("State Density Bonus Law").

Unless otherwise specified in this Division, the definitions found in State Density Bonus Law shall apply to the terms contained herein.


This Chapter shall apply to all zoning districts that permit housing at a prescribed density by the General Plan Land Use Designation and/or zoning district. Where the density allowed under the zoning district is inconsistent with the density allowed under the General Plan Land Use Designation, the Land Use Designation density shall prevail. This Chapter works in conjunction with, and does not replace or prevail over the City’s inclusionary housing ordinance, LMC Chapter 18.25.

18.26.040 State Density Bonus and Affordable Housing Concessions and Incentives.

A developer of a housing development in the City may be permitted a density bonus and incentives in accordance with the provisions of California Government Code Sections 65915 through 65918 (State Density Bonus Law) as provided below:

A. Density Bonus. In compliance with Government Code Section 65915 et seq., or successor sections thereto, the City shall provide a density bonus for a qualifying housing development, as defined therein. This section shall apply to all zoning districts within the City that allow residential use. The bonus granted pursuant to this section shall apply only to residential projects or residential components of mixed-use projects, not including units granted as a density bonus. The proposed project shall have all of the following characteristics in order to qualify for a density bonus:

1. The residential development must include a minimum of five (5) dwelling units.
2. The applicant seeks and agrees to provide housing units to very-low, low or moderate income households or senior citizens consistent with the ratios specified in Government Code Section 65915.
3. The resulting density is beyond that permitted by the applicable zoning district.
4. The applicant agrees to retain the affordable status of housing units for at least fifty-five (55) years through the recordation of a deed restriction and through entering a Density Bonus Housing Agreement as set forth in section 18.26.060.
5. If the residential development is replacing existing affordable housing, the replacement fully complies with Government Code Section 65915(c)(3).

B. Concessions and Incentives. Applicants who voluntarily agree to develop a housing development that complies with the affordability requirements referenced in subsection A above, may submit to the City a proposal for the specific incentive(s) or concession(s) described in subsections 18.25.020.G or otherwise provided by applicable state law, including all provisions of the Density Bonus Law, Government Code sections 65915 through 65918. A proposal shall be submitted concurrently with the application for a density bonus.
18.26.050 Application and Review.

A. An application for a state density bonus, incentive, or concession, shall be submitted with the first application for approval of a housing development and shall be processed concurrently with all other applications required for the housing development. The application shall be submitted on a form prescribed by the city and shall include, at a minimum, the following information:

1. A site plan showing the total number and location of all proposed housing units and the number and location of proposed housing units which qualify the housing development for density bonus housing units.

2. The manner in which the applicant shall satisfy the affordability requirements for the housing units which qualify the housing development for density bonus units including:
   a. Evidence that the project meets thresholds set by State Density Bonus Law, excluding the units added by the granted density bonus;
   b. Evidence showing the number of affordable housing units on the property in the five (5) years preceding the date of the application;
   c. Calculations showing the maximum base density;
   d. Number or percentage of affordable units and the income level at which the units will be restricted
   e. Number of market rate units to result from the granted density bonus;
   f. Resulting density, described in units per square foot; and
   g. A written acknowledgement that the project will be subject to a condition of approval and deed restriction to retain affordability of the affordable unit(s) for at least fifty-five (55) years.

3. A description of any requested incentives or concessions, waivers or modifications of development standards, or modified parking standards, including:
   a. A description of how the requested incentives or concessions would reduce project costs.
   b. A description of how any development standards requested to be waived or modified would physically preclude the construction of the proposed housing.

4. For all incentives or concessions, except mixed use development, the application shall include information deemed sufficient by the city that the requested incentives or concessions result in identifiable, financially sufficient, and actual cost reductions.
   a. For waivers or modifications of development standards, the application shall include evidence deemed sufficient by the city that the development standard from which a waiver or modification is requested will have the effect of precluding the construction of the housing development at the densities to which the applicant is entitled pursuant to this article and with the concessions and incentives permitted by this article.
b. Information required by this subsection may include a financial analysis or other report demonstrating that the requested incentives or concessions result in identifiable, financially sufficient and actual cost reductions necessary to ensure the financial feasibility of the proposed units.

c. The information required by Section 18.26.050A.4.b shall be provided directly to an independent analyst hired by the city. The analyst shall prepare a written report for the city that evaluates whether the requested incentives or concessions would result in identifiable, financially sufficient and actual cost reductions necessary to ensure the financial feasibility of the proposed units. The applicant shall be responsible for all consulting costs for document preparation and review.

5. If a density bonus is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions pursuant to Government Code Section 65915 (g)(2)(A through H) are met.

6. If a density bonus or incentive or concession is requested for a child care facility pursuant to Government Code Section 65915 (h), the application shall show the location and square footage of the child care facility and provide evidence that the community lacks adequate child care facilities.

B. Review and Consideration. An application for a density bonus, incentive or concession, waiver or modification of a development standard, or revised parking standard shall be considered and acted upon by the City body with review authority for the housing development. Complete applications for a residential development project, which include all required submittal documents and which include the construction of affordable units, shall be processed by all City departments before other residential land use applications regardless of the original submittal date. Complete applications which include all required submittal documents and which include affordable rental units shall be processed before applications including owner-occupied units.

C. Approval. Before approving an application for a density bonus, incentive or concession, or waiver or modification of a development standard, the approval body shall make the following findings:

1. If the density bonus is based all or in part on a donation of land, the conditions of Government Code Section 65915 (g)(2)(A through H) are met.

2. If the density bonus, incentive or concession is based all or in part on the inclusion of a child care facility, that the conditions included in Government Code Section 65915 (h)(2)(A) and (B) are met.

3. If the incentive or concession includes mixed use development, the finding included in Government Code Section 65915 (k)(2) are met.

4. If a waiver or modification of a development standard is requested, the developer has demonstrated, for each requested waiver or modification, that the waiver or modification is necessary to make the housing units economically feasible and that the development standards from which a waiver or modification is requested will have the effect of precluding the construction of a housing development at the densities to which the applicant is entitled pursuant to this Division or with the concessions and incentives permitted by this Division.
5. If affordable housing existed on the site in the five years preceding the application, that the application meets all of the requirements of Government Code Section 65915(c)(3).

D. The approval body may deny a concession or incentive if it makes a written finding based upon substantial evidence of either of the following:

1. The concession or incentive is not required to provide for affordable rents or affordable housing costs as required by this article.

2. The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower, very low or moderate income households. For purposes of this subsection, "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 that the application was deemed complete.

3. The concession or incentive would be contrary to state or federal law.

E. The approval body may deny a waiver or modification of a development standard only if it makes a written finding based upon substantial evidence of either of the following:

1. The waiver or modification would have a specific adverse impact upon health, safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to lower, very low or moderate income households. For purposes of this subsection, "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 that the application was deemed complete.

2. The waiver or modification would have an adverse impact on any real property listed in the California Register of Historical Resources.

3. The concession or incentive would be contrary to state or federal law.

F. If a density bonus or concession or incentive is based on the provision of child care facilities, the approval body may deny the density bonus or concession or incentive if it finds, based on substantial evidence, that the City already has adequate child care facilities.

G. For projects which meet or exceed the inclusionary requirements as specified in Section 18.25.040.A, the City Council may consider, on a case-by-case basis, at its sole discretion, the provision of the following additional concessions or incentives the Housing Element of the City of Larkspur General Plan:

1. Waiver or modification of City standards thereby directly reducing project costs while remaining consistent with the latest edition of the California Building Code. The developer shall be responsible for documenting that the waiver or modification is necessary for the feasibility of the residential development project and is consistent with all applicable provisions of the California Building Code.
2. Provision of direct financial assistance in the form of a loan or grant using trust fund or other appropriate available funds subject to the recommendation of the City Manager.

3. Deferral of payment of all City-required fees on market rate units, but payment shall be made prior to, and as a condition of, release of utilities and issuance of a certificate of occupancy.

The concessions and incentives described in this section are in addition to any incentives or concessions to which a project may be entitled pursuant to this Chapter, the State Density Bonus Law, or other provision of law.

18.26.060 Density Bonus Housing Agreement.

A. Density Bonus Housing Agreement. An applicant requesting a density bonus shall agree to enter into an affordable housing agreement ("agreement") with the city in the city's standard form of agreement. Execution of the agreement shall be made a condition of approval for any discretionary planning permit for housing developments pursuant to this article and shall be recorded as a restriction on any parcels on which the housing units which qualify the housing development for a density bonus will be constructed.

B. Recording of Agreement. The agreement shall be recorded prior to the final or parcel map approval, or, where the housing development does not include a map, prior to the issuance of a building permit.

C. Contents of the Agreement. Each agreement shall include, but not be limited to, the following:

1. A description of the residential development, including whether the housing units which qualify the housing development for a density bonus will be rented or owner-occupied;

2. The number, size and location of the housing units which qualify the housing development for a density bonus;

3. Provisions and/or documents for resale restrictions, deeds of trust, right of first refusal or rental restrictions;

4. Provisions for monitoring the ongoing affordability of the housing units which qualify the housing development for a density bonus, and the process for qualifying prospective resident households for income eligibility; and

5. Any additional obligations relevant to the compliance with this Division.

D. Owner-Occupied Agreements. The purchaser of each owner-occupied housing unit which qualified the housing development for a density bonus shall execute the City's standard form agreement, to be recorded against the parcel, and which includes such provisions as the city may require to ensure continued compliance with this Division.

E. Agreements for Child Care Facilities and Land Donations. Density bonus housing agreements for child care facilities and land dedications shall ensure continued compliance with all conditions included in Government Code Section 65915 (h)(2)(A) and (B) and Government Code Section 65915 (g)(2)(A through H), respectively.

Enforcement of this Chapter shall be through the same enforcement set forth in LMC 18.25.050.

Section 3. The City Council finds that the proposed ordinance, which implements policy H7.1 and programs H6.G and H7.A in the Housing Element, is consistent with the Larkspur General Plan and the Housing Element in all aspects.

Section 4. Environmental Clearance. The project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15061.b.3 of the CEQA Guidelines because adoption of the zoning ordinance amendment is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and this project does not have the potential for causing a significant effect on the environment. The amendments are necessary to conform the zoning code to state law and to the policies and goals expressed in the general plan; the amendments themselves do not state new policy for the City; and it is not reasonably foreseeable what specific projects would be proposed, so there can be no reasonable examination of environmental impacts. Further all specific projects, subject to a density bonus or other incentives, and concessions, are subject to their own CEQA review to determine potential impacts and effects on the environment.

Section 5. If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Larkspur hereby declares that it would have passed and adopted this ordinance and each and all sections, subsections, sentences, clauses, phrases and words thereof irrespective of the fact that any one or more of said sections, subsections, sentences, clauses, phrases or words be declared unconstitutional, unlawful or otherwise invalid.

Section 6. This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause this ordinance to be published or posted in at least three (3) public places in the City in accordance with Section 36933 of the Government Code of the State of California.

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IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the Larkspur City Council held on the 7th day of January, 2015 and thereafter passed and adopted by the Larkspur City Council on the 21st day of January, 2015 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:
ABSTENTIONS: Councilmembers:

ABSENT: Councilmembers:

____________________________

MAYOR

__________________________

CITY CLERK

2378584.1
• She hosted the Larkspur Community Foundation Board at her home that was well attended with other community nonprofits. They met to brainstorm and share ideas and resources.
• There will be a parenting presentation on November 20 at 6:30 pm at Neil Cummins School. The title of the presentation is Parenting Now for Healthy Teens Later and would discuss how to model good behaviors and discourage substance use in teens.

Councilmember Haroff gave the following report:
• He attended a meeting with the Mayor and representatives from Marin Catholic to discuss the installation of new lights on their renovated stadium.
• He attended the farewell dinner for exiting Planning Commissioner Jeff Stahl. It was a nice opportunity to wish him well and reflect on the commission’s purpose.
• He was appointed to the Executive Committee of Marin Clean Energy (MCE) and attended his first meeting in that capacity. He looked forward to continuing to serve in that capacity.
• He will be attending the next Transportation Authority of Marin (TAM) meeting in Councilmember Hillmer’s stead.

5. PUBLIC COMMENT - None

6. PUBLIC HEARINGS

6.1 INTRODUCE AND WAIVE FIRST READING OF ORDINANCE No. 999 FOR AMENDMENTS TO TITLE 18, ZONING ORDINANCE, OF THE LARKSPUR MUNICIPAL CODE TO AMEND AND RE-NUMBER CHAPTER 18.31 (AFFORDABLE HOUSING FUND AND INCLUSIONARY / IN-LIEU FEE REQUIREMENTS) AND ADD A NEW CHAPTER 18.26 (RESIDENTIAL DENSITY BONUS, CONCESSIONS, AND INCENTIVES)

Director of Planning and Building Neal Toft discussed the staff report. All cities must adopt a density bonus ordinance that is in compliance with state law. In review of this issue, and with consultation with the city’s attorney, there were no absolute best practices. It is a very complex set of regulations and therefore, they took a conservative approach. The Planning Commission recommended approval of the ordinance and he recommended that the City Council introduce and waive first reading and continue the matter for adoption at the next council meeting.

Councilmember Haroff went to the workshop on the housing element and came away with a sense of being at the beginning stages of putting the element together. He was questioning the move forward to decouple the density bonus issue from the housing element update issue. He also wondered about the nature of the requirement to act and any flexibility to put off the timing.
Mr. Toft replied that there was no intent to decouple and that the density bonus was a required element. It was an appropriate discussion within the context of the housing element. Ultimately, they could not do the streamlined housing element without the density bonus in place. The deadline for qualifying for the streamlined element is to have the density ordinance in place by the end of January of 2015.

Councilmember Way wondered what the value to the city would be with a four-year vs. an eight-year housing element cycle.

Mr. Toft replied that an advantage of an eight-year cycle is a locked in, general housing plan for eight years that could be updated at any time. Resources and time would be saved in not having to re-evaluate in the shorter term.

The City Manager also responded that the longer cycle for the housing element allows for more certainty. The general plan dictates that it must be revisited much more frequently than other parts.

Vice Mayor Chu asked if the numbers would change between the four and eight year cycles.

Mr. Toft said that there was no certainty in that.

Vice Mayor Chu indicated that he would not be in a position for an approval this evening and would like more time to study the issue as concessions could cost the city funds and it was not clear what was being given up.

Councilmember Way also expressed concern over having a little more time to review. She asked for more elaboration on the spirit of the density bonus law.

Mr. Toft said that the intent of the law is to incentivize affordable housing. The state law does not provide guidance on what must be submitted by developers, but provides guidance on incentives being justifiable and the need for making projects financially feasible.

The City Attorney also noted that the intent was to incentivize the production of affordable housing units. One of the other purposes of the statute is to ensure that incentives and concessions that are requested are necessary to make the project financially feasible with the number of affordable units. In order to make the concession and incentive determination, it is fairly common to have a third party consultant who will provide an analysis on the necessity of concessions through a report to the city.

Mr. Toft explained again that there was no best practices language in this regard. Marin County cities were trying to band together and use similar language to address this issue. He was concerned with protecting the city and to make the most informed decision possible.
Vice Mayor Chu had read through the California Government Code encouraging a city to create affordable housing. There was blunt writing to remove impediments to creating affordable housing. Many governments do not give adequate attention to this problem. If they were to come up with a quantitative approach to analyzing an approval or disapproval, data would be required. The ordinance, as currently written, did not appear to provide that clear direction.

Mr. Toft said the density bonus is very descriptive, per state law. The city has the ability to disapprove concession requests based on environmental impacts, or if the concession was not financially necessary.

Councilmember Haroff asked for clarification on state law and denying concessions based on environmental impacts.

Mr. Toft said their intent was to state that, regardless of density bonus, each project was subject to its own CEQA review.

Councilmember Haroff reiterated, and it was affirmed by Mr. Toft, that the intent of the ordinance was simply to codify state law and not to add new requirements.

Councilmember Haroff continued to say that the county was going through its own housing process and took out language from an earlier draft that outlined bonus density law due to the need for more time to consider. It was a different approach wherein they were pinning down the housing element first, then addressing the density bonus law later.

The Mayor opened the hearing for public comment.

Mike Hooper thanked the council for taking the contents of his letter seriously as Larkspur was his hometown. His intent was to generate the debate over density bonus. He has been interested for some time in providing more affordable housing units though he has no project in Larkspur at this time but has suffered through inconsistencies within the law. He was anxious to have local law consistent with state law. The law is complex and poorly written with a limited number of reasons to turn down a concession, and the burden of proof is with the jurisdiction. The pro-forma was also problematic due to the levels of interpretation, and they provide information to the public that should remain confidential. The pro-forma was not referenced in the state law. An incentive, concession, modification or waiver could not be turned down due to an economic condition.

James Holmes, Larkspur, noted that in his research of the government code, physical environmental impacts were listed as a reason to deny concessions or incentive. It was his view that more information and more transparency were better than less and that the council should reserve the right to obtain as much information as necessary to make an appropriate decision.
The public hearing was closed.

The City Attorney clarified that the definition of concessions and incentives was “modification to development standards that result in identifiable, financially sufficient and actual cost reductions.” Incentive and concessions need to be proven to reduce costs for the applicant and that was the reason cities might require a pro-forma.

Mr. Toft questioned what the council would need for further study and requested direction. State law prescribes what the city would be adopting. They were not trying not to expand or change the state law standards.

Mayor Morrison questioned the consistency with state law as the ordinance was currently written.

Mr. Toft explained that they have tried to be as consistent as possible with state law. They could moderate the ordinance if the requirement for a pro-forma was expanding unnecessarily, or eliminate it altogether, if they so desire. He would like further clarity.

Councilmember Haroff asked if there was flexibility to deal with this issue consistent with best practices and in conjunction with the housing element update.

Mr. Toft affirmed but advised that the housing update was an element of the general plan. This ordinance, if adopted, could include some minor language changes and adopted at the next meeting or could be taken up at a different time. It was a complex issue with determining the number of affordable housing units and maintenance of the units. He had not found language any more specific or detailed than what was presented in the ordinance. It was possible to make the third party review more clear and part of the process, if desired.

Councilmember Way said she would like to know more about the pros and cons of a third party intermediary between the applicant and the city.

Mr. Cooper suggested to the council that they adopt what state law requires prior to the January deadline for an eight-year housing element cycle. The council could continue to study the issue and make amendments as they see fit if so desired after that time. In his view, this issue would not happen very often in this community. He was interested in clarity and consistency, and not necessarily based on a pro-forma.

The City Manager recommended continuing this item to the January 7, 2015 meeting with a public hearing, and possible adoption at the January 21 meeting.

Vice Mayor Chu commented that he would provide suggestions for changes to Mr. Toft after further review of the ordinance.
M/s, Chu/Way, and approved 4-0-1, to continue this item to the January 7, 2015 meeting. For the record the vote was: Chu, Haroff, Morrison, Way- Ayes all. Councilmember Hillmer absent.

7. BUSINESS ITEMS

7.1 BIKE/PEDESTRIAN PLAN UPDATE

Public Works Director Mary Grace Houlihan discussed the Bicycle / Pedestrian Master Plan update. She provided some history on the plan dating back to the 1970's, as well as the mission statement outlining the many benefits that the community would gain from an increased walk and bike friendly environment. Ms. Houlihan described the many plan projects that have been completed or are currently in construction.

The draft plan was expected in early 2015 for public review and council direction. Currently, they have completed initial public workshops, are in the process of collecting public comment, and would be moving toward creating an Administrative Draft Plan that would be submitted for adoption.

The goals of the plan are to develop a more bike / pedestrian friendly community that is safe for all. Some of the improvements include new bike lanes and striping, ADA improvements, pavement improvements and completion of the Central Marin Ferry Connector. Additional goals for the team are to educate the public, encourage bike to work days and appreciate the value in taking a bike for short trips. The next public meeting would occur in February 2015.

Councilmember Way appreciated the detail on the core areas of improvement. She noticed many bike riders coming through town in packs on the weekends and wondered if there were any safety solutions.

Ms. Houlihan said that they have investigated the concept of educational outreach, not just for vehicle drivers but to cyclists as well, as to how to share the road safely. Another tactic could be to post “rules of the road” type posters to help with education.

The Mayor opened the hearing for public comment.

Laura Effel, Larkspur, expressed her concern over the bicyclists who are invading the town and not obeying the rules of the road. She found them to be a menace to the community, as well as all over Marin County, especially on the weekends. She encouraged police enforcement of infractions.
MEMORANDUM

To: Russ Reich, Cara Silver
   City of Palo Alto

From: Reed Kawahara

Date: May 7, 2014

Subject: 441 Page Mill Road: State Density Bonus Analysis

I. Introduction & Summary Conclusion

In accordance with your request, Keyser Marston Associates, Inc. (KMA) has undertaken an analysis of the proposed development at 441 Page Mill Road in the City of Palo Alto, specifically as it relates to the request by the project’s owner and applicant (“Applicant”)¹, to obtain three development incentives/concessions in exchange for inclusion of below market rate (BMR) housing units in the project. The project is eligible for incentives/concessions pursuant to the State Density Bonus Law. The purpose of KMA’s analysis is to review and analyze the development economics of the project in order to render an opinion as to whether the three requested incentives/concessions are required to offset the costs of the BMR units.

In summary and as further described in this memorandum, KMA concludes that the costs of including the BMR units in the proposed project exceed the value gained from the three incentives/concessions. Therefore, it is our conclusion that the project satisfies the requirement of the State Density Bonus Law that the requested incentives/concessions are required “in order to provide for affordable housing costs” and also satisfies the city’s requirement that they result in “identifiable, financially sufficient, and actual cost reductions” that “allows the applicant to provide affordable rents or affordable sale prices”.

¹ For this assignment, the Applicant has been represented by Norman Schwab.
II. Background: State Density Bonus Law & City’s Ordinance

The City of Palo Alto recently adopted a new chapter to the city’s Municipal Code (Chapter 18.15) to implement the State Density Bonus Law (Government Code Section 65915). In summary, the State Density Bonus Law allows a development to increase its residential density by up to 35% if the project includes a certain amount of below market rate (BMR) housing. In addition, the project is entitled to up to three incentives or concessions from local planning/building standards if needed to deliver the BMR housing units. According to the State Density Bonus Law, the project is entitled to the requested incentives/concessions unless a written finding can be made, based upon substantial evidence, that the incentive/concession

1) is not required in order to provide for affordable housing costs;
2) would have a “specific adverse impact … upon public health and safety or the physical environment” that cannot be feasibly mitigated without rendering the development unaffordable to low- and moderate-income households; or
3) would be contrary to state or federal law.

The city’s ordinance elaborates on the first requirement by stating that the requested concessions and incentives must “result in identifiable, financially sufficient, and actual cost reductions” that “allows the applicant to provide affordable rents or affordable sale prices”.

III. KMA Work Tasks

For this assignment, KMA has undertaken the following tasks:

- Reviewed background materials regarding the proposed project;
- Participated in a work session with the Applicant, the Applicant’s architect and other team members, and city staff regarding the proposed project, potential lower density alternatives, and the economics of the project alternatives;
- Reviewed documentation supplied by the Applicant regarding construction cost estimates and other aspects of the project and its development economics;
- Conducted independent market research and independent cost analysis in order to assess the reasonableness of the Applicant’s estimates, and to modify the estimates where KMA felt appropriate;

2 According to the State Density Bonus Law, the burden of proof is on the city or other challenger to deny an Applicant’s request for incentives or concessions.
• Prepared an independent financial analysis of the costs of including the BMR housing units in the project and whether the three incentives/concessions are required to address those costs.

IV. Project Background & Requested Incentives/Concessions

The proposed project is located on a 0.62-acre site on Page Mill Road mid-block between El Camino Real and Ash Street. The site is improved with single family homes that will be cleared to allow for development of the proposed project. The site was purchased in July of 2012 for an amount equal to $147 per sq. ft. of land area, or $3,959,000 for the 0.62-acre (26,926 sq. ft.) site. The site is zoned Service Commercial (CS zoning) which permits a maximum 0.6 FAR for residential and a 0.4 FAR for commercial, for an overall 1.0 FAR. CS zoning allows a maximum of 30 dwelling units per acre irrespective of the percentage of the site dedicated to commercial uses. The maximum density of 30 units per acre would yield a maximum of 18.6 total residential units for the subject site (averaging 870 gross square feet per unit). Since most residential developments are larger than 870 gross square feet per unit, for all practical purposes the 0.6 residential FAR is a more limiting factor than the residential density.

The proposed project is a mixed use residential/office/retail project at an overall FAR of 1.33. The project is proposed to be a three story building above grade and a one-level subterranean garage. The retail will be located on the ground floor, the office on the second floor, and the 10 rental apartment units on the third floor. The Applicant is requesting three incentives/concessions: (1) additional lot coverage, (2) additional commercial FAR, and (3) additional total FAR. In order to qualify for the three concessions, three of the 10 residential units will be restricted to Low-income households, with rents priced at 30% of 60% of Area Median Income (AMI). Based on KMA’s assessment, each of the three requested concessions provides an economic benefit to the project and helps address the cost of the BMR units.

Under the city’s density bonus ordinance, the Applicant is able to increase the project’s lot coverage and FAR by the total square footage of the BMR housing units, or 3,544 sq. ft. 3

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3 The original site purchase included an adjoining site on Pepper Avenue which included a single family home. Subsequent to purchase, the Applicant made some improvements to the home and re-sold the property. The $3,959,000 land value represents the initial site purchase allocated to the remaining 0.62-acre site.

4 Applying a residential efficiency factor of 15%, 870 gross square feet per unit (which would include hallways, lobbies, and other common areas) would result in a net livable area of about 740 square feet.
ft. for the three proposed units. However, the Applicant is seeking to further increase the lot coverage and FAR as shown in the following table.

<table>
<thead>
<tr>
<th>Concession 1: Lot Coverage</th>
<th>CS Zoning Maximum</th>
<th>With On-Menu Concessions</th>
<th>With Proposed Off-Menu Concessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage</td>
<td>SF</td>
<td>Coverage</td>
<td>SF</td>
</tr>
<tr>
<td>50.0%</td>
<td>13,462</td>
<td>63.2%</td>
<td>17,006</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Concessions 2 &amp; 3: FAR</th>
<th>CS Zoning Maximum</th>
<th>With On-Menu Concessions</th>
<th>With Proposed Off-Menu Concessions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>a) Residential</strong></td>
<td>FAR</td>
<td>FAR</td>
<td>FAR</td>
</tr>
<tr>
<td>0.60</td>
<td>16,156</td>
<td>0.73</td>
<td>19,700</td>
</tr>
<tr>
<td>0.40</td>
<td>10,770</td>
<td>0.40</td>
<td>10,770</td>
</tr>
<tr>
<td><strong>b) Commercial</strong></td>
<td>1.00</td>
<td>1.13</td>
<td>30,470</td>
</tr>
<tr>
<td><strong>Total FAR</strong></td>
<td>26,926</td>
<td>1.33</td>
<td>35,711</td>
</tr>
</tbody>
</table>

It is noted that the actual State Density Bonus is not needed for the proposed project, as the 10 proposed units equates to just 16 units per acre (compared to 30 units per acre permitted by CS zoning).

V. Financial Analysis

As called for in the State Density Bonus Law and the city’s implementing ordinance, in order to be eligible for the incentives/concessions, the requested incentives/concessions must be needed to in order to address the costs of the BMR housing units. In order to analyze this issue, it is necessary to undertake the following:

- Quantify the cost of including the three BMR housing units in the proposed project; and
- Quantify the value benefit to the project of the requested incentives/concessions.

If the costs of including the BMR housing units exceed the value benefit of the incentives/concessions, it is concluded that the incentives/concessions are needed to offset the BMR housing costs. If the value of the incentives/concessions exceed the cost of the BMR housing units, one or more of the incentives/concessions may not be required.

a) Cost of BMR Housing Units

The net costs of developing the three below market rate (BMR) units in the proposed project is estimated by comparing the construction costs to build the three BMR units with the private investment supported by the rental income produced by those three units. The restricted rents for the Low-income units are calculated pursuant to the California Health & Safety Code Section 50052.5, which specifies that Low-income rents are to be based on 30% of 60% of the local Area Median Income (AMI), adjusted for.
household size, and net of an allowance for tenant-paid utilities. On this basis, the monthly Low-income rents are estimated at $1,227, $1,377, and $1,525 for the 1-, 2-, and 3-bedroom units respectively (there is one of each in the proposed development). After taking into account a vacancy factor, operating expenses and taxes, the project’s net operating income (NOI) is estimated at approximately $27,000 (see the following table).

From the project’s NOI, the amount of supported private investment can be calculated. Based on a 7.0% unleveraged project return⁵, the total supported private investment is estimated at $385,000. The construction costs for the three BMR units are estimated at $2,232,000 based on a pro rata share of the total project costs (land acquisition costs have been excluded because the land costs would apply whether or not there are BMR units).

Based on these calculations, the net cost of providing the three BMR units in the proposed project is $1,847,000.

### Net Cost of Low Income Units

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1-Bedroom (Low Income)</td>
<td>$1,227</td>
<td>/month</td>
<td>$14,724</td>
</tr>
<tr>
<td>2-Bedroom (Low Income)</td>
<td>$1,377</td>
<td>/month</td>
<td>$16,524</td>
</tr>
<tr>
<td>3-Bedroom (Low Income)</td>
<td>$1,525</td>
<td>/month</td>
<td>$18,300</td>
</tr>
<tr>
<td>Gross Rental Income</td>
<td></td>
<td></td>
<td>$49,548</td>
</tr>
<tr>
<td>(Less) Vacancy</td>
<td>5.0%</td>
<td></td>
<td>($2,477)</td>
</tr>
<tr>
<td>(Less) Operating Expenses &amp; Taxes</td>
<td></td>
<td></td>
<td>($20,100)</td>
</tr>
<tr>
<td>NOI</td>
<td></td>
<td></td>
<td>$26,971</td>
</tr>
<tr>
<td>Supported Investment</td>
<td>7.0% return</td>
<td></td>
<td>$385,000</td>
</tr>
<tr>
<td>(Less) Construction Costs</td>
<td>$630 /sq.ft.</td>
<td></td>
<td>($2,232,000)</td>
</tr>
<tr>
<td>Net Cost of Low Income Units</td>
<td></td>
<td></td>
<td>($1,847,000)</td>
</tr>
</tbody>
</table>

b) Development Program Comparison

As noted previously, the proposed project is a mixed use building comprised of residential, office, and ground floor retail uses with an overall FAR of 1.33 (see the following table).

In order to test whether the requested incentives and concessions are needed to offset the costs of the BMR units, it is necessary to estimate the value increment that can be realized from the incentives/concessions over an alternative case without those incentives/concessions. Since as was described previously the State Density Bonus is

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⁵ A 7.0% return for the BMR units is higher than would be the case for unrestricted market rate units because the future escalation of BMR rents is capped by increases in median incomes.
not needed to build the 10 BMR units, the proposed project is instead compared against a project that could be built with straight CS zoning.

For the CS zoning alternative, KMA’s analysis indicates that the project that maximizes value is actually less than the maximum building permitted. Our analysis indicates that the maximum value project is a 0.4 office FAR combined with approximately seven residential units, for an overall FAR of roughly 0.78. The reason why this lower density program is financially superior to the maximum 1.0 FAR is that the 0.78 FAR building can be built with all the parking in an at-grade garage, thus relieving the project of significant excavation and underground parking costs as well as environmental remediation costs. The resulting cost savings more than offsets the fact that the fixed land acquisition costs are higher on a per building square foot basis.

c) Value of Incentives/Concessions

The value of the requested incentives and concessions is quantified by comparing the development economics of the base case (CS zoning) project with the proposed project with the incentives/concessions. The economics of the two projects in their entirety are analyzed because the three requested incentives/concessions (lot coverage, commercial FAR, and total FAR) are of benefit to the entire project and not to the residential alone.

As shown in the following summary table, the base case project yields an overall development return of 6.15% as compared to a 6.50% return for the proposed project
with the incentives/concessions. Therefore, the proposed project, inclusive of the three BMR units, is an improvement over the base case alternative. This result indicates that the requested incentives/concessions, each of which contributes to the project’s value, are a financial benefit to the project (i.e., they help reduce the costs of the BMR units) and it also demonstrates why the Applicant is motivated to build the proposed project rather than the base case under CS zoning.

It is noted that the returns for the two alternatives are relatively similar despite the fact that the proposed project is significantly larger. The reason for this result is attributable to the fact that the proposed project requires an expensive subterranean garage and associated environmental remediation costs, which is not assumed in the CS zoning alternative. This cost premium is a partial offset against the ability of the larger project to spread the fixed land costs over a larger building.

<table>
<thead>
<tr>
<th>Net Operating Income (NOI)</th>
<th>Alternative under CS Zoning</th>
<th>With Proposed Off-Menu Concessions</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>$/NSF</td>
<td>Total</td>
<td>$/NSF</td>
<td>Total</td>
</tr>
<tr>
<td>Residential</td>
<td>$39</td>
<td>$346,171</td>
<td>$29</td>
</tr>
<tr>
<td>Office</td>
<td>$63</td>
<td>$607,774</td>
<td>$63</td>
</tr>
<tr>
<td>Retail</td>
<td>$0</td>
<td>$0</td>
<td>$57</td>
</tr>
<tr>
<td>Total NOI</td>
<td>$51</td>
<td>$953,944</td>
<td>$49</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Development Costs</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition, Carry,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental</td>
<td>$239</td>
<td>$4,442,000</td>
<td>$161</td>
</tr>
<tr>
<td>Direct Construction</td>
<td>$452</td>
<td>$8,384,000</td>
<td>$462</td>
</tr>
<tr>
<td>Indirects</td>
<td>$110</td>
<td>$2,043,000</td>
<td>$99</td>
</tr>
<tr>
<td>Financing</td>
<td>$35</td>
<td>$650,000</td>
<td>$32</td>
</tr>
<tr>
<td>Total Costs</td>
<td>$836</td>
<td>$15,519,000</td>
<td>$755</td>
</tr>
</tbody>
</table>

| Return on Cost (ROC)       | 6.15%                      | 6.50%                            | 0.36%    |

Note: See Appendix I for a discussion of the assumptions behind the income and cost estimates.

The value increment of the proposed project over the base case alternative can be quantified in dollar terms by capitalizing the annual income stream generated by the two alternatives and then deducting the development costs. On this basis, it is estimated that the three incentives/concessions add $1,284,000 in value to the proposed project.

<table>
<thead>
<tr>
<th>Capitalized Project Value</th>
<th>Alternative under CS Zoning</th>
<th>With Proposed Off-Menu Concessions</th>
<th>Value Increment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Project Value</td>
<td>5.59%</td>
<td>5.82%</td>
<td>$9,652,000</td>
</tr>
<tr>
<td>(Less) Development Costs</td>
<td>($17,053,000)</td>
<td>($26,705,000)</td>
<td>($8,368,000)</td>
</tr>
<tr>
<td>Net Project Value</td>
<td>$1,534,000</td>
<td>$2,818,000</td>
<td>$1,284,000</td>
</tr>
</tbody>
</table>

*Based on a 5.0%, 6.0%, and 7.0% cap rate for residential, office, and retail respectively.
d) Conclusion

The net cost of delivering the three BMR units in the proposed project is estimated at $1,847,000. The net value increment of the three concessions is estimated at $1,284,000. Since the cost of the BMR housing exceeds the value increment, and since each of the three concessions independently contributes to the value increment, it is concluded that all three of the requested concessions are needed to address the BMR housing costs in the proposed project.

<table>
<thead>
<tr>
<th>Comparison of BMR Housing Cost to Value Increment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Cost of 3 BMR Housing Units</td>
</tr>
<tr>
<td>Net Value Increment from 3 Incentives/Concessions</td>
</tr>
</tbody>
</table>
APPENDIX I

Summary of Pro forma Assumptions
441 Page Mill Road: State Density Bonus Analysis

Development Costs

- **Acquisition, Carry, Environmental.** Land acquisition costs were based on the July 2012 purchase price for the site, adjusted for the Pepper Avenue parcel subsequently sold. Land carry costs include taxes and interest carry from the July 2012 purchase to today. Environmental mitigation costs related to the HP plume estimated at $664,000 based on a third party general contractor estimate plus a 5% contingency (provided at request of Applicant).

- **Direct Construction Costs.** Direct construction costs were estimated by KMA based on a review of three general contractor estimates provided for the Applicant, on third party data sources such as RS Means, and on pro formas for other recent mixed-use projects in the Bay Area. Costs include tenant improvements estimated by KMA at $60 per sq. ft. for office and $40 per sq. ft. for retail.

- **Indirect & Financing Costs.** Indirect costs include all architecture and engineering costs, governmental fees and permits, taxes, insurance, legal, leasing/marketing, and overhead/administration costs. Fees and permits costs were estimated by the Applicant based on the city’s fee worksheets and were reviewed relative to other projects in Palo Alto. Other indirect costs were estimated by KMA based on industry standards and other mixed use developments in the Bay Area. Financing costs based on an assumed 65% loan to cost and a 24-month construction/lease-up period.

Operating Income

- **Residential Income.** Market rate residential rents estimated at $4.10/sq. ft./month, or about $5,200/unit/month, based on a review of asking rents for apartments in Palo Alto, Menlo Park, and a survey of newer apartment developments in Mountain View and Sunnyvale (see Appendix II). BMR rents were based on 2014 Area Median Income (AMI) for Santa Clara County, adjusted for household size and net of estimated tenant-paid utility allowances. Operating expenses for apartments were based on current pro formas for other Bay Area apartments at similar densities. Taxes were based on the land purchase price plus apartment unit values from recently built projects in Santa Clara County.
• **Office Income.** Office rents estimated at $5.50/sq. ft./month on a triple net (NNN) basis based on rent comps for Class A office space in Palo Alto as well as third party market data from commercial brokers such as Cassidy Turley and Colliers. For reference, current and recent rent listings in downtown Palo Alto are in the range of $6.00 to $7.00 per sq. ft. on a triple net basis. A 5% vacancy rate is assumed.

• **Retail Income.** Retail rents estimated at $5.00/sq. ft./month on a triple net basis based on recent retail listings in strong retail locations in Palo Alto (downtown and along high traffic corridors). These listings are in the rough range of $4.00 to $6.00/sq. ft./month on a triple net basis, with the higher end of the range located downtown. For reference, the 2013 average asking retail rent in the Palo Alto/Mountain View/Los Altos submarket was $37.33/sq. ft./year ($3.11/month) according to Terranomics. A 5% vacancy rate is assumed.
# APPENDIX II

## Apartment Asking Rents - Palo Alto & Menlo Park Projects

441 Page Mill Road: State Density Bonus Analysis

City of Palo Alto

<table>
<thead>
<tr>
<th>Address</th>
<th>BR</th>
<th>BA</th>
<th>Sq. Ft.</th>
<th>Rent</th>
<th>$/SF</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Palo Alto Comps</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3875 Park Blvd.</td>
<td>1</td>
<td>1</td>
<td></td>
<td>$2,050</td>
<td></td>
</tr>
<tr>
<td>3081 Alma St.</td>
<td>1</td>
<td>1</td>
<td>500</td>
<td>$2,095</td>
<td>$4.19</td>
</tr>
<tr>
<td>535 Arastradero Rd.</td>
<td>1</td>
<td>1</td>
<td>700</td>
<td>$2,195</td>
<td>$3.14</td>
</tr>
<tr>
<td>2106 Willimans St.</td>
<td>1</td>
<td>1</td>
<td></td>
<td>$2,450</td>
<td></td>
</tr>
<tr>
<td>573 Lytton Ave. #B</td>
<td>1</td>
<td>1</td>
<td></td>
<td>$2,600</td>
<td></td>
</tr>
<tr>
<td>746 Sutter Ave.</td>
<td>1</td>
<td>1</td>
<td>750</td>
<td>$3,035</td>
<td>$4.05</td>
</tr>
<tr>
<td>2850 Middlefield Rd. (Southwood)</td>
<td>1</td>
<td>1</td>
<td>850</td>
<td>$3,295</td>
<td>$3.88</td>
</tr>
<tr>
<td>337 Hawthorne Ave. #337</td>
<td>1</td>
<td>1</td>
<td>1,033</td>
<td>$3,300</td>
<td>$3.19</td>
</tr>
<tr>
<td>765 San Antonio Rd.</td>
<td>1</td>
<td>1</td>
<td>970</td>
<td>$3,495</td>
<td>$3.60</td>
</tr>
<tr>
<td>700 Clark Way (Stanford West)</td>
<td>1</td>
<td>1</td>
<td>995</td>
<td>$3,520</td>
<td>$3.54</td>
</tr>
<tr>
<td>3075 Alma St. #3075</td>
<td>3</td>
<td>2</td>
<td>1,100</td>
<td>$3,695</td>
<td>$3.36</td>
</tr>
<tr>
<td>565 Arastradero Rd.</td>
<td>2</td>
<td>2</td>
<td>1,419</td>
<td>$3,890</td>
<td>$2.74</td>
</tr>
<tr>
<td>665 Waverly St.</td>
<td>2</td>
<td>1</td>
<td>1,629</td>
<td>$4,200</td>
<td>$2.58</td>
</tr>
<tr>
<td>734 Webster</td>
<td>2</td>
<td>1</td>
<td></td>
<td>$4,250</td>
<td></td>
</tr>
<tr>
<td>700 Clark Way (Stanford West)</td>
<td>3</td>
<td>2</td>
<td>1,333</td>
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Source: Zumper.com; ApartmentGuide.com; project websites (May 2014)
### Apartment Asking Rents - Newer Built Projects

**Carmel The Village**
555 San Antonio Rd, Mountain View

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2-Bedroom Avg 1,091 $4,322 $3.96

**Lawrence Station Apartments**
1271 Lawrence Station Rd, Sunnyvale

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2-Bedroom Avg 1,035 $2,730 $3,970 $2.64 $3.84

**Solstice**
299 W. Washington Avenue, Sunnyvale

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2-Bedroom Avg 1,208 $3,914 $3,917 $3.27 $3.51

**Via**
621 Tasman Drive, Sunnyvale

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2-Bedroom Avg 1,134 $3,167 $4,380 $2.80 $3.87

Source: Property websites, Apartmentguide.com (April 2014)