Appendix T. Memorandum

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Memorandum

To: City of Santee

From: BBK

Date: February 20, 2025

Re: *Density Bonus Law Waivers and Essential Housing Program Certification for the Fanita Ranch Project, Santee, California*

I. OVERVIEW

The purpose of this memorandum is to provide the legal support to the City of Santee (City) and its City Council to address the deficiencies noted by the San Diego County Superior Court in the Final Recirculated Revised Environmental Impact Report (Final Recirculated REIR) for the Fanita Ranch project (Fanita Ranch or Project). Specifically, the trial court granted relief to petitioners based on General Plan inconsistencies,[1] highlighting the need for a clearer explanation of how the Project approvals align with the City's General Plan land use hierarchy, particularly with respect to reliance on the State Density Bonus Law (DBL) (Gov. Code, § 65915) and the Housing Accountability Act (HAA) (Gov. Code, § 65589.5). Additionally, the trial court found that the City must better articulate how the Project's processing under the Essential Housing Program conforms to the General Plan and land use hierarchy.

This memorandum provides the legal analysis to support the City's resolution of the identified deficiencies. As to the DBL, it demonstrates that the City may find that the Project is entitled to mandatory waivers, which eliminate any General Plan constraints, such as minimum lot size standards and the requirement for a golf course/lake outlined in the Guiding Principles for Fanita Ranch. Further, the analysis explains how the City may find that the Project qualifies for incentives due to its significant contribution to affordable and senior housing.

The memorandum also examines the Project's processing under the City's Essential Housing Program and the City's recent amendments to that program. It clarifies how the program lawfully extends DBL benefits to projects addressing critical housing needs during the declared housing crisis. It also discusses the applicant's entitlement to rely on the Essential Housing Program under Senate Bill (SB) 330 and the Housing Crisis Act of 2019, which freezes applicable development regulations at the time a preliminary housing application is submitted.

The memorandum also explains that because the City may find that the Project qualifies for mandatory waivers, which renders General Plan constraints inapplicable, and is therefore deemed consistent under the City's Essential Housing Program, the City may find that the Project

[1] The ruling did not specify the precise General Plan inconsistencies found, but recited the inconsistencies alleged by petitioners and identified the need for a clearer explanation of how the Project approvals align with the General Plan's land use hierarchy. (See Ruling, at pp. 7-8.)

does not require a General Plan Amendment or any other legislative act, and so a public vote on the Project under Measure N is not required.

The memorandum first addresses the application of the DBL to the project, clarifying how its provisions resolve alleged General Plan inconsistencies and support the project's compliance with state housing laws. Second, it addresses the Essential Housing Program and related amendments, explaining how the Program extends DBL benefits to meet critical housing needs.

This memorandum addresses the trial court's ruling and its implications beyond the specific requirements of the California Environmental Quality Act (CEQA). Under CEQA, the environmental review process mandates an assessment of whether a proposed project may result in significant environmental impacts due to conflicts with applicable land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating environmental effects. However, the trial court's decision raised considerations that extend beyond CEQA's requirements, warranting further analysis and extending into consistency/inconsistency with the City's General Plan and the application of state DBL. For these reasons, this memorandum provides an analysis of such issues for completeness.

II. Factual Background

The Fanita Ranch project initially sought a General Plan Amendment, Specific Plan, Development Agreement, and Rezoning approval, as detailed in the August 2020 Final Revised EIR.

However, with the 2022 Final Recirculated REIR, the proposed project instead requested EIR certification and approvals for a Development Plan, Vesting Tentative Map, Development Review Permit, and Conditional Use Permits. This change reflected the declared housing crisis and impact of state housing laws—including the State Density Bonus Law (DBL) (Gov. Code § 65915 et seq.) and the HAA—which in certain circumstances may limit the City's discretion to impose legislative entitlements to further statewide housing objectives. The change also reflected the City's adoption of its Essential Housing Program under the authority granted by the DBL to streamline and spur housing development.

The City certified the 2022 Final Recirculated REIR and approved the Project on September 14, 2022, and an action to challenge those approvals was filed. The court granted the challenge in part, finding that the 2022 Final Recirculated REIR failed to adequately disclose the Project's purported land use inconsistencies.

The proposed Project's physical characteristics and requested entitlements have not changed compared to the 2022 Final Recirculated REIR. However, the Project attributes that entitle it to DBL benefits, as opposed to those benefits available under the Essential Housing Program, were not plainly detailed in the 2022 Project approval. Those attributes include the provision of 445 senior housing units within the Project's Active Adult Community, as well as the development of 150 low-and moderate-income units and $2.6 million contribution towards the provision of very-low-income units.

On February 12, 2025, the City Council adopted an Amendment to Urgency Ordinance No. 592 (the ordinance that adopted the Essential Housing Program) to address the Court's ruling. The Amendment explains that the Essential Housing Program is authorized by the DBL and other state

housing laws. It also clarifies that projects that follow its procedures and meet its strict requirements are deemed to be in compliance with the Santee General Plan through the use of density bonus units, concessions, incentives, and/or waivers to eliminate any inconsistency with inconsistent development standards or regulations, as appropriate, to allow certified housing projects to develop at the density and with the amenities proposed. Pursuant to the DBL, the Amendment explains the granting of the bonus, concessions, incentives, or waivers do not require an amendment to the Santee General Plan or any other legislative action/approval, as any such regulations do not apply to the Project. (Gov. Code, §§ 65915(f)(5), (j)(1).) The Fanita Ranch Project remains certified as an Essential Housing Project under the City's Essential Housing Program.

III. The Density Bonus Law

A. Density Bonus Law Background and Relationship to Land Use Hierarchy

Originally enacted in 1979, California's Density Bonus Law (Gov. Code, §§ 65915, et seq.) offers advantages for applicants/owners/developers that provide market-rate, affordable, and senior housing projects. The Legislature stated that the DBL is to be "interpreted liberally in favor of producing the maximum number of total housing units." (Gov. Code, § 65915, subd. (r).) Projects that meet the eligibility requirements of DBL are entitled to (1) a density bonus (or bonuses) above the maximum allowable residential density, (2) incentives/concessions, (3) development standard waivers, and (4) significantly reduced parking requirements. (Gov. Code, § 65915 (b).) The DBL requires cities to adopt an ordinance to implement the state law; however, the failure to do so does not relieve a city from complying with the statute. (Gov. Code, § 65915, (a)(1).)

Under the DBL, a density bonus applies to the maximum allowable residential density, defined as the "greatest number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project." (Gov. Code, § 65915 (o)(6).) In a July 2024 Letter of Technical Assistance to the City of Los Angeles, the State Department of Housing and Community Development (HCD) stated: "For the purposes of the S[tate] DBL, any hierarchy between planning documents is flattened" to permit the greatest number of housing units.[2] (Emphasis added.) It thus appears that according to HCD, the DBL eliminates the "hierarchy" in regulatory planning documents by flattening any prior hierarchy.

The DBL requires an agency to grant certain incentives or concessions, and waive or reduce development standards that would have the effect of physically precluding the construction of a housing development at the density, or with the requested incentives, permitted by the DBL, unless one or more of the listed exceptions apply. (Gov. Code, § 65915 (d)(1)(B)-(C), (e)(1).) Density bonus benefits do not require a general plan amendment, local coastal plan amendment,

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[2] See Letter to City of Los Angeles, *City of Los Angeles Density Bonus Law Implementation – Letter of Technical Assistance* (July 31, 2024). https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/los-angeles-hau399-ta-qcondition-073124.pdf

HCD is the state agency responsible for accountability and enforcement of state housing laws, including DBL, and provides guidance on implementation and enforcement of state housing laws, including DBL. (Gov. Code, § 65585 (j)(3).)

zoning change, or other discretionary approval. (Gov. Code, §§ 65915(f)(5), (j)(1).) As HCD explained in another Letter of Technical Assistance, explained:

> A fundamental aspect of the S[tate] DBL is that it allows a project to exceed the maximum allowable densities expressed in the General Plan (i.e., a density bonus) and to exceed certain development standards that may be expressed in the General Plan (i.e., maximum floor area ratios, building heights, etc.). SDBL has, since its inception, allowed developments to be inconsistent with the General Plan for the explicit purpose of producing affordable housing.[3]

(See also, *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1349 [stating that waived development standards are not applicable for determining consistency with general plan designations or policies or zoning designations and regulations]; and *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 783 [stating that agency is preempted from denying a project for inconsistency with a waived development standard].)

Section 65915, subdivision (n) provides that an agency may award a development extra units or benefits or extend density bonus benefits to developments that do not meet the minimum requirements of the DBL. The Legislature has also directed that DBL be "interpreted liberally in favor of producing the maximum number of total housing units." (Gov. Code, § 65915 (r).)

B. The DBL applies because the Project "seeks a density bonus"

The DBL applies when a qualifying project "seeks a density bonus" for a housing development. (Gov. code § 65915(a)(1).) The statute defines a "density bonus" as "a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, *no increase in density."* (Gov. Code, § 65915 (f), emphasis added.) The definition of "density bonus" thus explicitly includes projects, like Fanita Ranch, that do not seek to increase density, but seek other benefits of the DBL, such as incentives, concessions or waivers.[4] The Project seeks a "density bonus" within the meaning of the DBL.

C. Project's Entitlement to Mandatory DBL Benefits

The City may legally find that the proposed Project's provision of a qualifying senior citizen housing development entitles it to density bonus benefits under the DBL. (Gov. Code, § 65915(b)(1)(C), *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 832-

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[3] See Letter to County of El Dorado, *Cameron Park Housing Project – State Density Bonus Law and AB 2334 – Letter of Technical Assistance* (March 9, 2023). Cameron Park Housing Project – State Density Bonus Law and AB 2334 – Letter of Technical Assistance

[4] The Project does not seek an increase in density because under the General Plan, there is no density limit for the Project site. With respect to the General Plan, the site is designated Planned Development (PD), which provides for "[m]ixed-use development potential including employment parks, commercial, recreational, and various densities of residential development pursuant to a development plan and entitlements being approved by the City Council." (Santee General Plan, Land Use Element, p. 1-29. The designation itself "does not, in itself, limit the extent or mix of development to occur…" (Santee General Plan, p. 1-29.)

833) ("*Friends of Lagoon Valley*"). Specifically, the Project would develop 445 age-restricted units within an Active Adult community. (See Section 3.3.1.4 of Final Recirculated REIR.)

Under the DBL, a project is eligible for a density bonus, waiver, and reduced parking benefits if it qualifies as a "senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code." (Gov. Code, § 65915, subds. (b)(1)(C), (e)(1), (f)(3)(A), (p)(1).) Civil Code section 51.3(b)(4) defines a "senior citizen housing development" as "a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units." (*Id.,* emphasis added.) In this context, "senior citizens" means people who are 55 years of age or older. (Civ. Code, § 51.3(b)(1).) The Project provides considerably more "senior citizen housing development" than required by law (compare 35 units to the Project's 445 age-restricted units within an Active Adult community in Fanita Ranch).

In *Friends of Lagoon Valley,* the First District Court of Appeal clarified the DBL benefits that flow from providing "senior citizen housing development" regardless of project size:

> "The statute states that a developer is entitled to a density bonus if it agrees to construct a "senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code." (Gov. Code, § 65915, subd. (b)(3) [2005 version].) Under Civil Code section 51.3, "'[s]enior citizen housing development' means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units." (Civ. Code § 51.3, subd. (b)(4).) Here, Triad agreed to provide a senior citizen housing development of 100 units—nearly three times as many units as were necessary to obtain a density bonus. Thus, pursuant to Government Code section 65915, subdivision (g)(1), Triad was entitled to a density bonus of "at least 20 percent," and the City had discretion to provide a greater bonus. (Gov. Code, § 65915, subd. (n)). …
>
> We recognize that, under our interpretation, the senior housing provision of Section 65915 has the potential to create a windfall for developers in some circumstances. In a large-scale project with development of 2,000 units, for example, a developer would have to build 200 low income units or 100 very low income units to qualify for a density bonus of 20 percent . . . *but could obtain the same density bonus by constructing only 35 units of senior citizen housing*."

Friends of Lagoon Valley, *supra*, 154 Cal.App.4th 807, 832-833 (emphasis added.)

The Court in *Friends of Lagoon Valley* also found that"[no]thing in [the DBL] states or suggests that the density bonus for senior citizen housing could not be applied to the development project as a whole." (See *Friends of Lagoon* Valley, *supra*, 154 Cal.App.4th at 832.)

The Project Description in the Final Recirculated REIR, which has not changed, explains the proposed Project would develop an "Active Adult" neighborhood, which would provide 445 "age-restricted residential uses in a variety of building types with densities ranging from 5 to 25 residential units per acre." (Section 3.3.1.4 of Final Recirculated REIR.) The Project's 445 age-restricted "senior citizen housing" units far surpass the 35 units needed to qualify for the density bonus and waiver benefits under the state DBL. (Gov. Code, § 65915, subds. (b)(1)(C), (e)(1).)

Thus, the City may legally find that the Project is a qualifying density bonus project and is entitled to mandatory density bonus benefits, including a density bonus and waivers of development standards, for meeting the senior housing requirements of Government Code section 65915 (b)(1)(C). (*Id., Friends of Lagoon Valley*, *supra*, 154 Cal.App.4th at pp. 832-833.) DBL benefits are mandatory and do not require discretionary review. (Gov. Code, § 65915 subd. (e)(1).)[5]

The proposed Project would additionally develop 150 low-and moderate-income units on- or off-site and contribute $2.6 million to a City fund for development of very-low-income units. As the court in *Friends of Lagoon Valley* noted, the DBL allows developers to obtain greater density bonus benefits "in exchange for even more low income or senior housing than is provided for in Section 65915." (*Friends of Lagoon* Valley, *supra*, 154 Cal.App.4th at 825-826, Gov. Code, § 65915 (n).)

D. The Project is Entitled to The Project's Entitlement to Mandatory Waivers of Development Standards

To accommodate the proposed Project at the density and with the amenities proposed, the City may conclude that the Project is entitled to under the DBL to waivers of the following General Plan Guiding Principles:

1. Guiding Principle 3, which provides the Planned Development plan "shall contain a mix of house sizes on lot sizes distributed as follows:
   - 6,000 sq. ft. lots – 20 percent of total lots
   - 10,000 sq. ft. lots – 20 percent of total lots
   - 20,000 sq. ft. lots – 60 percent of total lots or greater."
2. Guiding Principle 9, which provides:

   > "The plan shall contain a championship level, minimum 6,800-yard, par 70-75, 18-hole golf course, including support facilities. A hotel/conference complex shall be included in conjunction with the golf-course facility. An alternative plan may also be designated which, in lieu of a golf course and hotel/conference facility, includes a recreational facility based around a man-made lake, using non-reclaimed water, and which is approximately 200 acres in area.

3. Guiding Principle 14, subdivision (e), which provides the plan "shall include a Comprehensive Implementation Element which shall consist of:… (e) A Development Agreement….

1. Legal Principles

For qualifying projects, the DBL requires an agency to waive any development standard that will have the effect of physically precluding project construction at the densities and with the amenities proposed. (Gov. Code, § 65915, subd. (e)(1).) A "development standard" is defined as "a site or construction condition, including, *but not limited to*, a height limitation, a setback

[5] See also Letter to City of Glendale, *Discretionary Review of State Density Bonus Law Waiver Requests – Letter of Technical Assistance.* Department of Housing and Community Development (February 5, 2024) Discretionary Review of State Density Bonus Law Waiver Requests – Letter of Technical Assistance.

requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation that is adopted by the local government or that is enacted by the local government's electorate exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the local government." (Gov. Code, § 65915, subd. (o)(2), emphasis added.)

If the City finds that the Project is subject to the DBL, HCD's technical assistance explains that the granting of appropriate development standard waivers is mandatory and does not require or permit discretionary review.[6] The DBL states: "[I]n no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section." (Gov. Code, § 65915 subd. (e)(1).)[7] The City's authority to disapprove waivers is limited to a request that "would have a specific, adverse impact … upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact," or if the waiver "would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law." (*Ibid*.)

HCD has advised that an agency is "strictly limited in denying requested development standard waivers, preventing it from applying any development standard that would physically preclude a project as proposed unless doing so would have a specific adverse impact on health or safety (as defined), which could not be mitigated (Gov. Code, § 65915, subd. (e))."[8] As with other DBL benefits, granting waivers does not require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. (See Gov. Code, §§ 65915, subds. (f)(5), (j)(1).)

Interpreting the DBL, the Court of Appeal in *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775 held that "so long as a proposed housing development project meets the criteria of the Density Bonus Law by including the necessary affordable units, a city may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes 'amenities' beyond the bare minimum of building components."

The Court of Appeal in *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1349 ("*Wollmer"*) held that "waived zoning standards are not 'applicable'" for purposes of determining

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[6] See also Letter to City of Glendale, *Discretionary Review of State Density Bonus Law Waiver Requests – Letter of Technical Assistance.* Department of Housing and Community Development (February 5, 2024) Discretionary Review of State Density Bonus Law Waiver Requests – Letter of Technical Assistance.

[7] *Id.* ["A development project meeting the requirements of the SDBL is entitled to not only an increase in the number of units allowed on the site (*i.e*., a "density bonus"), but also to a prescribed number of concessions/incentives and any development standard waivers which are necessary to facilitate the project overall."]

[8] Letter to City of Mill Valley, *Blithedale Terrace Mixed-Use Project – Notice of Potential Violation,* Department of Housing and Community Development (January 9, 2023). Blithedale Terrace Mixed-Use Project – Letter of Support and Technical Assistance

"consistency with applicable general plan designations and policies and applicable zoning designations and regulations."

2. Grounds for granting the requested mandatory waivers

The lot size development standard and mix in Guiding Principle 3 would preclude the Project from being built as proposed, as it would limit the number of units allowed to be constructed. Guiding Principle 3 lot size development standard is consistent with the previously approved project in 2007 (the Barratt American Development Plan), which would allow for up to 1,395 residential units on site based on the lot size mix. Based on that previous design, only 1,465 acres of the site would be designated as habitat preserve. The Project's design condenses the previous development footprint to respect existing topography and preserve 1,650.4 acres of the site as habitat. This approach is consistent with other Guiding Principles that encourage "creative product design" and "alternative residential design" as alternatives to conventional lotting across the site. (Guiding Principles 4 and 6.)

Based on the above evidence, if the City determines that the Project is a qualifying project, the Project is entitled to a mandatory waiver of the lot size development standard in Guiding Principle 3 because the applicant has provided documentation showing that imposing this development standard would physically preclude construction of the project's 2,949 to 3,008 units — including the 445 age-restricted senior citizen housing units — as designed and with the amenities proposed. (Gov. Code, § 65915, subds. (e)(1), (o)(2) [providing for waivers of a minimum lot area per unit requirement]; *Bankers Hill 150, supra,* 74 Cal.App.5th at p. 775.)

Also based on the above evidence, if the City determines that the Project is a qualifying project, the Project is entitled to mandatory waivers of Guiding Principles 9 (approximately 200-acre golf course or lake amenity) and 14 (Development Agreement) as it would physically preclude construction of the Project's 2,949 to 3,008 units and Guiding Principle 14 (See also, Gov. Code, § 65915 (e)(1), (o)(2) [providing for waivers of open space requirements and other conditions].)

With respect to Guiding Principle 14's requirement of a Development Agreement, the Second Recirculated Sections of the Final REIR Land Use section confirms that the although the Project's Development Plan does not incorporate a "Development Agreement," it does include a comprehensive implementation element (Chapter 10, Implementation). Here, it appears that the purpose of Guiding Principle 14 is not to avoid or mitigate environmental effects, but instead to ensure that public improvements are constructed concurrently with their anticipated need. The Project's Development Plan addresses phasing, financing, operation, maintenance, administration, implementation, modification, and monitoring of public facilities and improvements, thereby addressing the purpose of the principle. And even if the principle concerned project impacts on the environment, here, the Project's conditions of approval and MMRP ensure that the Project's environmental effects will be mitigated to the extent feasible.

Accordingly, with mandatory waivers and concessions, the City may conclude that the conditions of approval satisfy the requirements of Guiding Principle 14. The Project would not conflict with any Guiding Principle and does not require — or propose — a General Plan Amendment, Specific Plan, Rezone, Development Agreement, or any other legislative act, which can be associated with increased costs. (See Legislative Analyst report, "California's High Housing Costs, Causes and Consequences," March 17, 2015 at p. 17 [A study of jurisdictions in

the Bay Area found that each additional layer of independent review was associated with a 4 percent increase in a jurisdiction's home prices].)

IV. Housing Accountability Act and SB 330

Pursuant to the Housing Accountability Act ("HAA"; Gov. Code § 65589.5) and SB 330, codified at Government Code section 65905.5 and adopted as part of the Housing Crisis Act of 2019, if a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, the agency may not disapprove a housing development project or require projects be developed at a lower density unless the agency makes specific statutory findings supported by a preponderance of the evidence in the record. (Gov. Code, § 65589.5, subd. (j)(1), 65905.5, subd. (c)(1)).

Additionally, the HAA and SB 330 clarify that the receipt of a density bonus, incentive/concession, waiver, or reduction of development standards pursuant to the DBL is not a valid basis on which to find that a proposed housing development project is inconsistent, not in compliance, or not in conformity with an applicable objective standard or other similar provision. (Gov. Code, §§ 65589.5, subd. (j)(3), 65905.5, subd. (c)(1)). Thus, the City may find that with the required DBL waivers and/or incentives, the Project complies with applicable objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete.

V. Essential Housing Program

A. The Essential Housing Program Extends DBL Benefits to Projects that Meet the Program's Criteria

Since 2021, Urgency Ordinance No. 592, the City's Essential Housing Program, has provided an expedited pathway to increase housing production and improve affordability for eligible projects (City of Santee 2021). However, in the litigation challenging the Fanita Ranch project, the trial court found that the City did not clearly explain how the project approvals under that Program aligned with the established land use hierarchy and state housing laws.

On February 12, 2025, the Santee City Council will take final action on an Amendment to Urgency Ordinance No. 592 to address the trial court's concerns. The amended ordinance explicitly details that the DBL and other state housing laws authorize the City's Essential Housing Program to streamline housing production and enhance affordability by circumventing unnecessarily burdensome governmental and legislative processes.

The amendment emphasizes that the DBL empowers local governments to adopt ordinances that grant density bonuses, incentives, concessions, waivers, and parking reductions beyond those mandated by state law. Specifically, Government Code section 65915, subdivision (n) states:

> "If permitted by local ordinance, nothing in this section shall be construed to prohibit a city county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section."

This provision, subdivision (n), allows the Essential Housing Program to exceed state requirements, creating opportunities for local flexibility in supporting housing projects. (*Friends of Lagoon Valley, supra,* 154 Cal.App.4th at p. 825.) This ensures that proposed projects can achieve their intended density with the amenities proposed without requiring amendments to the General Plan or other legislative actions. (Gov. Code, §§ 65915, subds. (f)(5), (j)(1).)

State housing laws, including the HAA, mandate that locally authorized density bonus benefits are treated equivalently to those under State law. For example, Government Code sections 65589.5, subdivision (o)(2)(E) and 65655, subdivision (a) provide that local programs extending additional density bonuses or waivers for affordable housing the same as benefits required under the DBL. As discussed above, waived zoning standards are considered not "applicable" to a project (*Wollmer, supra*, 193 Cal.App.4th at p. 1349), and receipt of density bonus benefits are not a basis for a finding of general plan inconsistency. (Gov. Code, 65589.5, subd. (j)(3), 65905.5, subd. (c)(1).) If the City approves incentives, concessions or waivers in accordance with the DBL, then the Housing Accountability Act precludes a determination that the project is inconsistent or non-compliant with the local plans, development standards or policies based on the benefits received under the DBL.

This streamlined approach reinforces the City's commitment to accelerating housing development while maintaining compliance with state housing mandates. Urgency Ordinance No. 592 further strengthens this commitment by controlling over any conflicting City plan or ordinance, and with the City's interpretation afforded the fullest possible weight to the interest, approval, and provision of housing.

B. Legal Precedent Supporting Expanded Local Density Programs

In the Fanita Ranch litigation, questions arose regarding whether Urgency Ordinance No. 592 served as the City of Santee's implementation of the state-mandated provisions of the Density Bonus Law (DBL). For instance, the trial court noted:

> "City and HomeFed emphasized that the ordinance no. 592 is essentially the local ordinance version of the density bonus law that gave it express statutory authority to proceed with its essential housing program based on Government Code section 65915(n)."

(*Ruling, at p. 8.*)

To clarify, the City's Zoning Ordinance, Section 13.26.010, explicitly states that it, "implements the housing element of the General Plan; Sections 65915 through 65918 of the California Government Code; and, in accordance with those general regulations, provides incentives to developers for the production of housing affordable to lower income households, moderate income households and senior citizens." (Gov. Code, § 65915, subd. (a)(1).) This provision ensures that the City is in full compliance with the state-mandated requirements of the DBL.

Urgency Ordinance No. 592 is not the City's version of state DBL. Instead, it is a state-authorized program designed to expand density bonus benefits under the authority of Government Code section 65915, subdivision (n). This provision empowers local jurisdictions to adopt additional density bonus incentives, concessions and waivers through ordinances, in addition to the minimum requirements to implement the DBL. Importantly, Section 65915, subdivision (n)

does not require expanded bonuses or incentives to be incorporated into an agency's density bonus ordinance implementing state law — they may instead be authorized by a separate local ordinance.

The Court in *Banker's Hill* upheld a local program that exceeded the DBL requirements. In *Bankers Hill 150, supra,* 74 Cal.App.5th at p. 771, fn. 6, the Court of Appeal affirmed that local ordinances may exceed state-mandated DBL provisions. Citing *Friends of Lagoon Valley* (154 Cal.App.4th at pp. 824-830), the Court of Appeal noted, "A city's local ordinance may provide for a density bonus or incentives that exceed the Density Bonus Law." (*Id.*)

Bankers Hill considered San Diego's Affordable Homes Bonus Program, adopted in 2016. It exceeded state DBL by offering increased density bonuses and additional incentives to qualifying projects, leading to the entitlement of 2,300 homes within 20 months — a significant improvement over what would have been achieved under state law alone. The program also eliminated parking requirements for certain projects, further boosting housing production. (*Id.*)

The Court of Appeal in *Bankers Hill 150* observed that, by the time the matter was heard, the specific density bonus provisions under state law had been expanded to align with San Diego's local program. (*Bankers Hill 150, supra,* 74 Cal.App.5th at p. 771, fn. 7, referencing AB 2345.) It emphasized that agencies retain the authority to exceed and expand upon state DBL requirements, enabling further innovation in housing production. (*Id.*)

Other municipalities have also established successful local programs,[9] which have been demonstrated to be a lawful and successful means of expanding and extending DBL benefits.

C. The Fanita Ranch Project is a Certified Essential Housing Project

The Essential Housing Program is available to expedite: (1) any new application for a Housing Development Project, (2) any Housing Development Project currently under City review, or (3) any approved, entitled, and/or permitted Housing Development Project not yet built by the date application for certification is made. An application under the Essential Housing Program was submitted for the proposed Project in December 2021. On December 27, 2021, the City's Director of Development Services certified the Project as an Essential Housing Project based on the criteria adopted by the City Council. Nothing has changed concerning the Project's physical or affordable attributes that impacts its certification.

As demonstrated by the certification and project conditions, the Project would address the City's housing crisis by providing a mix of residential and nonresidential uses and a mix of housing types and sizes. A total of 2,949 housing units would be developed if the proposed Project includes a school, or 3,008 units without a school, including 435 moderate-income units and 445 age-restricted senior citizen housing units. The Project would also develop 150 low-and moderate-income units and contribute up to $2.6 million for affordable housing.

Stringent environmental and Santee General Plan consistency criteria established by the Essential Housing Program would be met. The proposed Project would implement mobility improvements, including bus stops, traffic calming, an up to $300,000 contribution to relieve congestion on SR-52, and rideshare/carshare parking. Open space would be conserved. In

[9] *See* Transit Oriented Communities Incentive Program (https://planning.lacity.gov/plans-policies/transit-oriented-communities-incentive-program); HOME-SF (https://sfplanning.org/home-sf#:~:text=The%20HOME-SF%20program%20is%20San%20Francisco%E2%80%99s%20local%20density,and%20up%20to%20two%20extra%20stories%20of%20height.)

addition to preserving 1,650.4 acres in the Habitat Preserve, it would provide at least $300,000 in funding for the management of City-owned natural open space and plant at least 10 trees per acre of land to be developed. Water use would be reduced by connections to recycled or advanced treated water when PDMWD's East County Advanced Water Purification project is completed.

As to energy, air quality, and GHG emissions, the Project's residential units would be all-electric and exceed Title 24 standards by all-electric residential development, implementing heat pump technology, increasing solar production, and expanding ventilation systems. Appliances would be Energy Star rated, electric vehicle chargers would be provided in the Village Center, and solar panels would be installed on accessory buildings and car ports. Wildfire safety would be ensured through implementation of fuel management zones and the Fire Protection Plan (FPP), among the many other measures set forth in the FPP and Wildland Fire Evacuation Plan (see Appendices P1 and P2).

Many miles of trails and sidewalks would be provided, and up to $300,000 would be provided to the City to fund additional improvements to trail facilities. Finally, the proposed Project's extensive park and recreational facilities would exceed the Santee Municipal Code standards by at least 5 percent and provide multi-purpose playing fields and public recreational facilities for Citywide use.

Certification of the Project based on the City's Essential Housing Project Credits Assessment Guide and Checklist demonstrates that it addresses the City's immediate housing needs and furthers Santee General Plan objectives and policies. Therefore, the Project is deemed Santee General Plan consistent under the Essential Housing Program and does not require an amendment to the Santee General Plan or other legislative act for approval. Any Guiding Principles with which the Project is in conflict, including Guiding Principles 3, 9, and 14 (e), are waived under DBL and not "applicable" to the project. (*Wollmer, supra,* 193 Cal.App.4th at p. 1349.) Any conflict is also *not* considered an inconsistency with the General Plan or other regulations under state housing law. (Gov. Code, §§ 65589.5 (j)(3), 65905.5 (c)(1).)

VI. DBL AND SB 330'S LIMITATION ON GROWTH CONTROL MEASURES PREEMPT AND NEGATE MEASURE N

The trial court's ruling noted that petitioners argued a General Plan Amendment (GPA) was required for the Project, which would trigger Measure N's requirement for a public vote prior to approval. (Ruling p. 5.) However, as detailed above, if the City finds that no GPA or other legislative action is required for the Project, Measure N does not mandate a public vote. Measure N also specifically provides that it shall not be construed to interfere with rights to obtain density bonuses or other entitlements available under affordable housing laws.

Measure N added Policies 12.1 through 12.4 to the City's General Plan Land Use Element:

- Policy 12.1: Permitted land uses in the City shall be intensified only when the voters approve such changes. No General Plan amendment, Planned Development Area or new Specific Planning Area shall be adopted which would: (1) increase the residential density permitted by law, (2) change, alter, or increase the General Plan Residential Land Use categories if the change intensifies use; or (3) change any residential designation to commercial or industrial designation on

any property, or vice versa, if the change intensifies use; unless and until such action is approved and adopted by the voters of the City at a special or general election, or approved first by the City Council and then adopted by the voters in such an election.

- Policy 12.2: No change to the slope criteria and minimum parcel sizes and lot averaging provisions of this General Plan which would permit increased density or intensity of use shall be adopted unless and until such change is approved by ordinance adopted by the voters of the City at a special or general election, or approved first by the City Council and then adopted by the voters in such an election.

- Policy 12.3: The City Council shall set any election required by this Objective to the next available general municipal election at no cost to the proponent of the land use change, or set a special election, the cost of which shall be borne by the proponent.

- Policy 12.4: The voter approval requirement of subsection (a) shall not apply where the General Plan amendment is necessary to comply with state or federal law governing the provision of housing, including, but not limited to affordable housing requirements. This exception applies only if the City Council first makes each of the following findings based on substantial evidence in the record: 1) a specific provision of state or federal law requires the City to accommodate the housing that will be permitted by the amendment; 2) the amendment permits no greater density than that necessary to accommodate the required housing; and 3) an alternative site that is not subject to the voter approval requirement in this Policy is not available to satisfy the specific state or federal housing law.

The City Attorney's Impartial Analysis for Measure N noted that judicial interpretation of the measure "may be required to assess the Measure under Government Code section 66300(b)(1)(B)." Section 66300(b)(1)(B), also known as SB 330, appears to include language that would limit a city or its voters through initiative power from enacting or enforcing any development standard that imposes a cap on housing development. It states that with respect to land where housing is an allowable use, the city (defined to include voters through initiative power) "shall not enact a development policy, standard, or condition" that would have any of the following effects: (A) decreasing the intensify of land uses; (B) imposing a moratorium or limitation on housing development; (C) imposing new subjective design standards post January 1, 2020; and (D) places caps or limits on the number of applications or permits during time period. (Government Code §§ 66300, subds. (a)(3), (b)(1)(B)(i), (b)(1)(D)(i) – (iii).) We also note that SB 330 is to be "broadly construed so as to maximize the development of housing within this state." (Gov. Code, § 66300 (e)(2).)

An argument could be made that Measure N conflicts with state housing law and policy and are prohibited. In *Building Industry Assn. v. City of Oceanside* (1994) 27 Cal.App.4th 744, 771, the court held that a proposition conflicting with state housing policy on its face can be invalidated as a matter of law, rendering it invalid from the date of adoption. (See also, *Yes in My*

Back Yard v. City of Culver City (2023) 96 Cal.App.5th 1103, 1112-1120; Gov. Code, §§ 66300, 66301 [extending Section 66300's effect to January 1, 2034].)

Even if not preempted, Measure N does not apply to the Project. First, no public vote is triggered under Policy 12.1. As explained in section III above, neither the General Plan nor the Zoning Ordinance prescribe a density limit for the Project site, so the Project does not "increase the residential density permitted by law." And as explained in section III, with DBL waivers, the Project is permitted onsite; no "increase" in permitted density would occur. (Policy 12.1 (1); Gov. Code, §§ Gov. Code, §§ 65915,subds. (e)(1), (f)(5), (j)(1); 65589.5, subd. (j)(1), (3); *Bankers Hill 150, supra,* 74 Cal.App.5th at p. 783; *Wollmer, supra,* 193 Cal.App.4th 1329, 1349 [waived development standards are not applicable].) Additionally, under the Essential Housing Program, the residential density proposed is permitted and lot size standard waived. Lastly, there is no proposed change in land use category or redesignation to residential, commercial, or industrial. (Policy 12.1(2), (3).)

Second, the Project does not propose changes to the slope criteria, minimum parcel sizes, or lot averaging provisions of the City's General Plan that would permit increased density or intensity under Policy 12.2. As explained in section III(D), if the City finds that the Project is a qualifying project, the Project is entitled to waive the lot size provision of Guiding Principle 3 under DBL. (Gov. Code, § 65915, subds. (e)(1), (n); *Wollmer, supra,* 193 Cal.App.4th 1329, 1349 [waived development standards are not "applicable."]) Further, the Essential Housing Program provides such waivers. No GPA or other legislative action is required for the waiver. (Gov. Code, § 65915, subds. (f)(5), (j)(1).)

Thus, the City can legally find that under the text of Policy 12.4 and state law, including DBL, the voter requirements are inapplicable and preempted. (Gov. Code, §§ 65915, subds. (e)(1), (f)(5), (j)(1); 65589.5, subds. (j)(1), (j)(3).) Additionally, Section 5 of Urgency Ordinance No. 592 makes the findings set forth in Policy 12.4 for Essential Housing Projects:

> "The City Council finds that the adoption of this Ordinance is necessary to comply with state law governing the provision of housing, including but not limited to, Government Code sections 65583 and 65584 and additional affordable housing requirements, and is necessary to achieve the goals set forth in the City's Housing Element. The City Council finds that this Ordinance permits no greater density than is necessary to accommodate the required housing. The City Council finds that the criteria identified in the Essential Housing Program as establishing eligible Essential Housing Project sites have been narrowly tailored to the housing needs of the City, and alternative sites for Essential Housing Projects are not available to satisfy the requirements of state housing law."

VII. CONCLUSION

The City may legally conclude that the Fanita Ranch Project complies with state housing laws, including the DBL, the HAA, and SB 330, and adheres to the City's Essential Housing Program without requiring a GPA or any other legislative action.