

ELLIS F. RASKIN
PARTNER
DIRECT DIAL (415) 995-5835
E-MAIL eraskin@hansonbridgett.com



RECEIVED

December 8, 2025

12/10/2025

VIA E-MAIL christina.ratcliffe@cityofsanrafael.org

**MARIN COUNTY
CLERK**

Christina Ratcliffe, AICP
Planning Consultant
City of San Rafael
1400 Fifth Ave.
San Rafael, CA 94901

Re: Response to November 21, 2025 AB 2011 Consistency Determination Regarding 700 Irwin Street ("**Property**") Mixed-Income Housing Project ("**Project**") and Follow Up Regarding Challenged Conduct Notice (Gov. Code § 65589.5(h)(6)(D))

Dear Ms. Ratcliffe:

As you know, our firm has been retained by 700 Irwin Street Partners, LLC to take remedial action to address the City of San Rafael's ("**City**") ongoing violations of the Housing Accountability Act ("**HAA**") and other applicable laws.

On November 21, 2025, we served the City with notice that the City has effectively disapproved the 700 Irwin St. Project by causing unnecessary delay and needlessly increasing the cost of the proposed Project. (Gov. Code § 65589.5(h)(6)(D).) We explained that the City's ongoing violations could result in fines, fees, and other penalties. We also noted that the City's failure to implement the programs and policies in its Housing Element could result in the decertification of the Housing Element and could subject the City to a "Builder's Remedy" scenario.

That same day (November 21), the City sent a letter to our co-counsel at Reuben, Junius & Rose, LLP titled "700 Irwin Street (PLAN25-046) – AB 2011 Consistency Determination." We were disappointed to see that your November 21 letter repeated the same spurious allegations as the City's prior AB 2011 letters.¹ The City has, once again, failed to properly evaluate the Project's eligibility for AB 2011 by ignoring the evidence, misconstruing AB 2011's substantive and procedural requirements, and by attempting to impose backdoor CEQA requirements even though AB 2011 exempts the Project from CEQA.

While we appreciate the City's recent willingness to meet with our client to attempt to find a workable pathway forward, we also need to emphasize that we refuse to be subjected to gamesmanship or any attempts to circumvent the City's obligations under the HAA. We reserve all rights to seek equitable and legal remedies in the Superior Court to enforce the City's failure

¹ The City previously issued letters dated July 9, 2025 and July 31, 2025, finding that the Project is not consistent with all AB 2011 objective standards. Our November 21 Challenged Conduct Letter explains why the City's analysis in these July letters is not supported by facts or the law.

to comply with its duty to process and approve the Project's AB 2011 application. Further delay or obfuscation is unacceptable.

Like our prior November 21 letter, we provide the following information, including information responsive to prior incorrect positions taken by the City, to ensure that the City properly discharges its obligations to consider the Project under AB 2011.

I. THE PROJECT COMPLIES WITH ALL OF AB 2011'S SITE CRITERIA

In our November 21 letter, we anticipated that the City would reiterate its incorrect position that the Project site is not eligible for AB 2011. So that the record is clear, we provide information showing without question that the Project is eligible for streamlined processing under AB 2011 and ask that the City acknowledge that its prior positions were incorrect.

A. Section 65912.121(c) – Commercial Corridors

The City's November 21 AB 2011 consistency letter repeats the same misinformation that appeared in the City's prior letters. Specifically, the City claims that "the maximum width of the portion of Second Street abutting the Project Site is 65 feet wide and the maximum width of the portion of Irwin Street abutting the Project Site is 61.5 feet wide." (Nov. 21 letter at p. 2.)

In both our November 21 Challenged Conduct letter and the Applicant's prior July 17 letter, the City received substantial evidence showing that the pedestrian easement on the east side of Irwin Street was dedicated to the City in order to connect Second Street to the San Rafael Canal. (See easement documentation attached as Exhibit 2 to our Nov. 21 letter.)

As a permanent pedestrian easement, this pathway *is part of the street* and counts toward the width of Irwin Street as a qualifying commercial corridor for the purposes of AB 2011.² Indeed, AB 2011 is clear that for the purposes of defining a "commercial corridor," a street includes the sidewalk. (Gov. Code § 65912.101(s).) The measurement from the eastern boundary of the easement to the west curb of Irwin ranges from 71 feet to 78.2 feet, well above the 70 feet required for a street to be considered a commercial corridor under AB 2011.

Furthermore, as we explained in our November 21 letter, the City's position is inconsistent with both the HAA and AB 2011's standards for determining consistency with objective development standards. The Applicant has provided substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. We therefore expect the City to confirm that the Project abuts a commercial corridor.

B. 65912.121(e) – 75 Percent of Perimeter of Site Adjoining Urban Uses

The City's November 21 consistency letter continues to take the unfounded and unsupported position that the San Rafael Channel (or Canal) is not a "parcel," is not developed with "urban uses," and is not a "street." (Nov. 21 letter, p. 3.) The City is wrong. Our November 21 Challenged Conduct letter and the Applicant's prior correspondence provided substantial

² See also Vehicle Code § 555, which confirms that sidewalks and/or pedestrian easements are the "portion of a highway" (i.e., roadways) designated "for pedestrian travel."

evidence showing that the City has already considered the Canal to be an “urban use.” The San Rafael Creek Federal Navigation Channel Factsheet prepared by the City and Marin County states that the “San Rafael Channel is an urban waterfront.” (See Exhibit 5 to the November 21 Challenged Conduct Letter.) The City’s Canalfront Design Guidelines describe the Canal as an open space - a public amenity for all the neighborhoods of San Rafael. (*Id.* at Exh. 6.)

The City’s public statements regarding the Canal can be considered by a court to be a judicial admission that the Canal is, in fact, an urban use. (See *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48 [“A judicial admission is a party’s unequivocal concession of the truth of a matter, and removes the matter as an issue in the case.”].)

The City’s analysis also completely ignores the fact that “parcels that are only separated by a street, pedestrian path, or bicycle path shall be considered to be adjoined.” (Gov. Code § 65912.121(e).) For over 90 years, California courts have considered public and navigable canals to be “highways” for the purposes of the Vehicle Code. In *City of Long Beach v. Payne* (1935) 3 Cal.2d 184, the California Supreme Court held unequivocally that canals should be treated as streets for the purposes of the California Vehicle Act (the predecessor to the Vehicle Code). The Court wrote: “We are therefore of the opinion that the term ‘highway’ as generally used and understood is sufficiently comprehensive to include canals as an integral part of a highway system.” (*Id.* at p. 190.) Therefore, the Canal should be considered a “street.”

It is undisputed that the parcels to the south of the Canal are “urban uses” for the purposes of AB 2011. Accordingly, we expect the City to confirm that the 700 Irwin St. Property qualifies for AB 2011 because 75 percent of its perimeter is adjoined by urban uses.

C. Section 65912.121(g) – FEMA Floodplain

The City’s November 21 consistency letter incorrectly stated that “[n]o Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) has been recorded to remove the site from the floodplain, and there is no indication that the site meets FEMA requirements necessary to meet minimum flood plain management criteria of the NFIP.” (Nov. 21 letter, p. 4.) Both of these contentions are wrong.

Our November 21 Challenged Conduct letter provided substantial evidence showing that the Project was revised so that the entire footprint of the Project would sit outside the surrounding FEMA special flood hazard area. With this revision, and subject to a Letter of Map Amendment issued by FEMA and supported by a revised grading and building elevation, the Project would no longer be subject to the floodplain management criteria. (See Exh. 7 & Exh. 8 to Nov. 21 Challenged Conduct Letter.) We therefore expect the City to confirm that the Project site complies with all FEMA floodplain requirements for the purposes of AB 2011.

In any event, we understand that at a recent meeting with our co-counsel at Reuben, Junius & Rose, LLP, the City indicated that the Project could alleviate the City’s FEMA floodplain objections if the community room is re-designated as commercial space. To be clear, there is no basis for this request, and the City’s position is completely contrary to AB 2011 and HAA protections against unreasonable or unfounded demands to modify projects. While we and our colleagues at Reuben, Junius & Rose, LLP will continue to seek collaborative solutions, we do not waive any right to seek legal or equitable remedies to address the City’s unfounded demands.

II. THE PROJECT COMPLIES WITH AB 2011'S AFFORDABLE HOUSING STANDARDS

In its November 21 consistency letter, the City continues to take the legally unsupported position that the Project is not consistent with AB 2011's inclusionary housing design standards. (Nov. 21 letter, p. 4, citing Gov. Code § 65912.122(d).) Again, the City is wrong.

Our November 21 Challenged Conduct letter showed that the Project will provide comparable bedroom and bathroom counts between the market rate and affordable units (subject to SDBL waivers and/or concessions), the affordable units will be equitably distributed, and the affordable units will have the same quality of materials as the market rate units, as required by AB 2011 (and SRMC Section 14.16.030 and City Council Resolution 14890). Affordable 3-bedroom or affordable penthouse units are not required, as the Project will provide a comparable mix of affordable units, and all units will have access to the same amenities. Therefore, the Project complies with AB 2011's inclusionary housing requirements.

The City also incorrectly alleges that the State Density Bonus Law's waivers, incentives, or concessions cannot be used to seek relief from AB 2011's inclusionary housing distribution requirements. The City claims that Subdivision (f)(1) of Government Code Section 65912.124 only allows waivers, incentives, or concessions to be used to relieve developers from *local* development standards. But that is not what Subdivision (f)(1) says. That subdivision says, in its entirety:

A housing development proposed pursuant to this article shall be eligible for a density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios pursuant to Section 65915, except that the project shall not use a concession to reduce a local government requirement for the provision of ground floor retail that is consistent with the allowance contained in paragraph (3) of subdivision (j) of Section 65912.123.

The only limitation on the use of the State Density Bonus Law is when a developer seeks relief from local ground floor retail requirements. There is no limitation on the use of waivers, incentives, or concessions for the requirements of Government Code 65912.122(d).

Again, we expect the City to confirm that the Project complies with AB 2011's affordable housing design and distribution standards.

III. THE PROJECT COMPLIES WITH AB 2011'S SETBACK STANDARDS

The City's November 21 consistency letter alleges that the Project "is inconsistent with AB 2011's 0-foot setback requirement." (Nov. 21 letter at p. 5.) To be clear, there is no such requirement in AB 2011. The law simply says that "[n]o setbacks shall be required." (Gov. Code § 65912.123(d)(1)(A).) And encroachments into neighboring properties is not a basis to find a project inconsistent with AB 2011.

The project design includes upper level bay windows that would encroach a maximum of three (3) feet over the Second Street right of way, consistent with San Rafael Municipal Code Section 11.04.030.020(J), which provides that within the downtown zoning district, an encroachment

permit or license agreement is not required “for bay windows, balconies and projecting awnings provided that these architectural features: 1) are approved through design review; 2) extend no more than four feet (4’) into the public right-of-way; 3) are designed to provide adequate vertical clearance from the street grade; and 4) do not obstruct or impair above-ground utilities, street lights or street signals.” The proposed windows provide sufficient vertical clearance from the street and would not obstruct utilities, street lights, or street signals. Accordingly, the Second Street façade does not violate AB 2011 or local objective standards.

On the canal frontage, the proposed boardwalk and canalfront amenities have been designed to be consistent with the City’s own Canalfront Design Guidelines (page 5), which specifically contemplate a cantilevered pathway over the Canal. The Applicant has committed to obtaining any encroachment or other post-entitlement permits required to authorize the construction of these features.

Additionally, and in an effort to work collaboratively with the City and to address the City’s concerns about these features, the Applicant is preparing a variant of the Project that would eliminate all of the Project elements that extend over the Canal. That variant will illustrate a

IV. CONCLUSION

Both the HAA and AB 2011 require cities to reasonably interpret the law to facilitate the production of desperately-needed housing. Projects shall be deemed consistent with applicable objective standards if the record contains substantial evidence that would allow a reasonable person to conclude that the housing development project conforms to those standards. (Gov. Code § 65589.5(f)(4); 65912.124(b)(1).) Here, the record contains ample evidence supporting consistency with all AB 2011 standards. We expect the City to confirm, without further delay, that the Project is consistent with all AB 2011 standards and that the Project will be processed and approved accordingly.

Further, the City has 90 days from our November 21 notice to cease the challenged conduct described in our November 21 letter, or else the City bears the burden to establish its course of conduct does not constitute a disapproval of the housing development project. (Gov. Code § 65589.5(h)(6)(D)(v).)

If you have any questions, please do not hesitate to contact us.

Very truly yours,



Ellis F. Raskin
Partner

cc:

Cristine Alilovich, City Manager (Cristine.Alilovich@cityofsanrafael.org)
Micah Hinkle, Director of Comm. & Econ. Dev. (Micah.Hinkle@cityofsanrafael.org)
Greg Minor, Assistant Director of Comm. & Econ. Dev. (Greg.Minor@cityofsanrafael.org)

Christina Ratcliffe, AICP
December 8, 2025
Page 6

Nira Doherty, Counsel for City of San Rafael (ndoherty@bwslaw.com)
700 Irwin Street Partners LLC