

APPENDIX VI – UPDATED PRELIMINARY AFFORDABLE HOUSING PLAN¹

I. Introduction

The Rise (Project) proposes a total of 2,669 units, of which 890 units will be set aside as affordable housing for lower income households. This document serves as the Project’s Affordable Housing Plan as required by the City of Cupertino and to document how the following affordable housing standards will be complied with:

- SB 35 (Cal. Gov. Code § 65913.4 et seq.)
- State Density Bonus law (Cal. Gov Code § 65915 et seq.)
- City of Cupertino Below Market Rate (BMR) Housing Program

The following income definitions are used throughout this document:

- Very Low Income (VLI): 50 percent or below of the Area Median Income (AMI), adjusted for household size
- Low Income (LI): 80 percent or below of AMI, adjusted for household size

Combined, lower income refers to households earning 80 percent or below of the AMI.

II. Overview of Requirements and Compliance

1. General

This Affordable Housing Plan demonstrates how the Project proposes to meet the requirements of all three regulations (SB 35, Density Bonus Law, and City BMR Program). Table 1 summarizes the proposed Affordable Housing Program at the Project.

In general:

- A unit may satisfy multiple requirements, for example:
 - The Very Low Income (VLI) units count toward requirements under the State Density Bonus law and BMR Program; and
 - All units that satisfy the BMR Program or Density Bonus law also satisfy SB 35 requirements.

¹ A Preliminary Affordable Housing Plan was submitted to the City as part of the SB 35 streamlined process for approval of the Project in 2018, and thereafter in connection with the 2022 Modification Approval. The City requested the Plan pursuant to Section 2.3.3 of the City’s BMR Housing Mitigation Program Procedural Manual. While VPO submitted the Plan, it also noted that SB 35 preempts any local affordable requirements, unless the local ordinance requires that greater than 50% of the units are affordable, and did not waive any rights. Since then, the court in *Ruegg & Ellsworth v. Berkeley*, 63 Cal. App. 5th 277, 326 fn. 34 (2021) confirmed that in SB 35 50% jurisdictions, the terms of the local ordinance apply only if the local ordinance requires more than 50% affordable units. If the local ordinance requires less than 50% affordable units, then none of the elements of the local ordinance apply, such as deeper affordability than is required by SB 35. In connection with the modification request, VPO is updating this Preliminary Affordable Housing Plan in a manner that continues to contemplate compliance with the City’s local requirements, but continues to assert these requirements do not apply and reserves all rights.

- Where affordable housing units are developed with other state or federal housing program assistance, the rental price requirements of the state or federal housing program will supersede the price limitations established in this Affordable Housing Plan where the state or federal housing programs are more stringent.

2. **SB 35 Requirements**

- Type and of Number of Affordable Units:
 - 50% of the total project units must be “affordable to households making at or below 80 percent of the area median income.” Pursuant to SB 35 and HCD’s SB 35 Guidelines, the 50% is calculated based on the total number of units in the development exclusive of additional units provided by a density bonus. (See § 65913.4(k)(2)(B); see also HCD Guidelines § 402(b)(3).) The “base density” is 1,779 units, meaning that SB requires 890 units at or below the 80% AMI level.
 - These affordable units are referred to as “80% AMI Units” in this Affordable Housing Plan.
- Allowable Rent:
 - “Affordable” generally means that rent shall not exceed 30% of the area median income - the maximum rental rate is therefore established at 30% of 80% AMI (adjusted for household size appropriate for the unit).
 - SB 35 provides that affordable rent for at least 30 percent of Affordable Units shall be set at an affordable rent as defined in Section 50053 of the California Health and Safety Code, and affordable rent for the remaining Affordable Units may be set in a manner consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.
 - Rent includes a reasonable utility allowance
- Term of Recorded Covenant:
 - 55 years if rented;
 - 45 years if sold (no for-sale affordable units, so not applicable to the Project)

3. **Cupertino BMR Program**

- Type and Number of Affordable Units:
 - City’s BMR Program requires that 15% of the units must be affordable, broken down between 9% as VLI units and 6% as LI units. The City’s practice, consistent with state law, is to base these requirements on a project’s unit count prior to any density bonus units. Therefore, the City’s BMR Program requires 267 affordable units (i.e., 15% of 1,779 base units), broken down between 160 VLI units and 107 LI units.
- Allowable Rent:
 - VLI units: 30% of 50% AMI (adjusted for household size appropriate for the unit)
 - LI units: 30% of 60% AMI (adjusted for household size appropriate for the unit)
 - Maximum housing allowance of 30% of gross income for a household size of one person more than the number of bedrooms in the rental BMR unit

- “Rent” includes utilities and fees for other housing services²
- Term of Recorded Covenant:
 - 99 years
- 4. **Density Bonus Program**
 - Type and Number of Affordable Units:
 - In order to qualify for a 50% density bonus and 3 concessions, 15% of the “total units” must be VLI, where “total units” excludes density bonus units; therefore, 267 units must be VLI
 - These 267 VLI units are inclusive of the 160 VLI units that are required under the City BMR program
 - Allowable Rent:
 - VLI units: 30% of 50% AMI (adjusted for household size appropriate for the unit)
 - Rent includes a “reasonable utility allowance”
 - Term of Recorded Covenant:
 - 55 years

III. **City BMR Program Specific Requirements**

This section details specific requirements that apply only to the 267 units that satisfy the City BMR Program requirements (160 VLI and 107 LI units).

1. **BMR Unit Design Requirements**

Pursuant to the City’s BMR Housing Mitigation Program Procedural Manual, the design of the BMR units must meet specific requirements. Table 2 demonstrates the Project’s plan for compliance.

² As part of the Project’s overall TDM program, parking is “unbundled” from all units and is paid for separately so is not included in rent. Further, under SB 35, the City cannot require any parking, so the fact that the Project elected to include parking does not mean that such spaces must be offered free of charge.

Table 1: BMR Unit Design Requirements

BMR Requirements	Project Compliance
<p>BMR units shall be comparable to market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.</p>	<p>Pursuant to the Density Bonus law, the City has determined that the Project qualifies for the following concession, which is now subject to a request for revision, as shown in strike through/<u>underline</u> below, and as more fully described in the Appendix III, Density Bonus Application Materials:</p> <ul style="list-style-type: none"> ● A concession to allow the affordable units to be studios and one-bedroom units instead of a mix of units <u>to deviate from the requirement that unit types be comparable to the market rate units</u> within the development pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4(A).
<p>BMR unit size should be generally representative of the unit sizes within the market-rate portion of residential project.</p>	<p>Pursuant to the Density Bonus law, the City has determined that the Project qualifies for the following concession:</p> <ul style="list-style-type: none"> ● To allow the affordable units to be smaller in size than the comparable market rate units pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4(B).
<p>Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing.</p>	<p>The Project will comply with this requirement. The Furniture, Fixture, and Equipment (FF&E) plans will be submitted to the City for review on a building-by-building basis.</p>
<p>The BMR units shall be dispersed throughout the residential project.</p>	<p>The modification request maintains City affordable unit dispersal, albeit through a modified site plan as compared to the SB 35 Approval. Under the modification request, affordable units will be provided in standalone buildings, which are distributed throughout the west and east side of the Project site. This dispersal strategy allows for project financing through low-income housing tax credit programs, as well as to provide and allocate key services and amenities to those affordable units. The location of BMR units is identified in the SB 35 Plan Set, as modified.</p> <p>Nevertheless, compliance with this requirement is not required under SB 35 because the requirement for City affordable units to be “dispersed throughout the project” is not an applicable objective standard because it involves personal judgment and there are no “uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.”</p>

2. Initial Maximum Sales Prices and Rents of BMR Units

A. For-Sale BMR Units

All affordable units at the Project are for-rent units. No for-sale units are included as part of this Affordable Housing Plan in general or for the BMR requirements specifically.

B. Rental BMR Units

All 267 BMR units will be rental units and subject to the following maximum initial rents:

- 1) The maximum initial rents for BMR units are set at a level affordable to LI and VLI households. The maximum initial rents for BMR units shall be determined based on:
 - a. Maximum housing allowance of 30% of the applicable income limit for a household size of one person more than the number of bedrooms in the rental BMR unit, and
 - b. For LI units, assume household income at 60% of AMI, and for VLI units, assume household income at 50% of AMI.
- 2) The maximum rents for BMR units and maximum household income limits are revised annually following the annual publication of HCD income limits for Santa Clara County.
- 3) "Rent" includes monthly rent paid to the property owner, utilities, and all fees for housing services. Parking is not included in "rent." A reasonable utility allowance, as determined by the tables published annually by the Santa Clara County Housing Authority, shall be deducted from the maximum monthly rents for those utilities paid by the tenant.

3. Administration

Administration of the 267 units that satisfy the City BMR Program requirements are subject to the City of Cupertino Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units (City BMR Administration Manual). The City BMR Administration Manual includes procedures and guidelines for prioritizing applicants, evaluating the eligibility of applicants, setting maximum affordable rents, and monitoring compliance of tenants with the recorded affordability covenants. The remaining 623 affordable units that are not subject to the City BMR program, are subject to administration under the California Tax Credit Allocation Committee's compliance manual that sets out similar procedures and guidelines for those units.

In order to ensure consistent and efficient administration of all BMR units within the Project, Applicant requests that all 890 BMR units be administered under the California Tax Credit Allocation Committee's compliance manual.

IV. Terms of Affordability

Affordable housing is subject to recorded covenants that require the units be occupied at prices/rents that are affordable to VLI and LI households for:

- A period of not less than 99 years for 267 City BMR units; and

- A period of not less than 55 years for the remaining 623 affordable units pursuant to State Density Bonus law and SB 35.

The terms of affordability shall be established from the date of first occupancy of the units. These deed restrictions shall run with the land and remain in effect for subsequent buyers and owners.

V. Agreement between Developer and City

1. Affordable Housing Agreement

Prior to recordation of a building permit for the superstructure, a master affordable housing agreement shall be recorded against the Project. The master affordable housing agreement shall include, but not be limited to, the following:

- Total number of affordable units (City BMR units, affordable units pursuant to Density Bonus, and 80% AMI pursuant to SB 35), type, location, square footage, and number of bedrooms, and anticipated construction schedule of market-rate and affordable units;
- Provision to ensure concurrent construction and completion of affordable and market-rate units;
- Affordability levels for each affordable unit;
- Provisions for income certification and screening of potential occupants of affordable units; and
- Financing of ongoing administrative and monitoring costs (City and private).