

City Council Regular Meeting, June 24, 2020

Addendum to Staff Report, Item 6A:

Subject: A Resolution Approving a Site Plan and Architectural Review Application for Development of the 56-unit Affordable Housing Project at 170 Ridge Road

In response to several public comments received throughout the subject project, the applicant's attorney, Chris Butcher has prepared a memorandum relating to the City's objective zoning and design standards and providing further analysis supporting City staff's determination that the Project qualifies for SB 35 Streamlined Review. Staff has reviewed the attached memorandum and concurred with its conclusions. Butcher has also provided a letter from David Shaw of Wildfire DefenseWorks discussing the Project's compliance with fire mitigation including in the California Building Code as well as Mr. Shaw's resume.

Addendum Attachments:

- 1) Memorandum from Chris Butcher dated 6/24/20
- 2) Letter from David Shaw of Wildfire DefenseWorks, dated 6/22/20 (w/ attached resume)

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June 24, 2020

To: Nevada City Planning Department and City Council

From: Christopher J. Butcher on behalf of the Cashin's Field Project Development Team

RE: Discussion of the City's Objective Zoning & Design Standards and Evaluation of Cashin's Field Project's Eligibility for Streamlined, Ministerial Approval Under California State (SB 35 (2017)) and Density Bonus Law

I. Overview: Streamlined Ministerial Review of Affordable Housing Project under SB 35 and the Density Bonus Law

Under SB 35 a development "is subject to the streamlined, ministerial approval process... and is not subject to a conditional use permit" if it meets a number of specified criteria.¹ The approval process for such qualifying projects in jurisdictions subject to SB 35 allows for only an assessment of compliance with the criteria required for streamlining and the application of objective design review standards. The locality is also required determine the project's conformity with objective design review standards within a set period of time.² Due to the ministerial approval process, qualifying projects are exempt from the California Environmental Quality Act (CEQA).³

The Density Bonus Law allows eligible developments containing affordable or senior housing to build at a higher density than allowed by local ordinance.⁴ In additions, projects may be eligible for incentives which allow the project to be excused from specified development standards.⁵

As discussed further herein the Cashin's Field Project (the Project) qualifies for the SB 35 streamlined, ministerial approval process and for incentives under the Density Bonus Law.

¹ (Gov. Code, § 65913.4, subd. (a).)

² (Gov. Code, § 65913.4, subd. (b).)

³ (Pub. Resources Code, § 21080, subd. (b)(1).)

⁴ (Gov. Code, § 65915, subd. (b)(1).)

⁵ (Gov. Code, § 65915, subd. (k).)

II. Discussion of the City's Objective Zoning & Development Standards as defined Pursuant to SB 35.

1. SB 35's Definition of Objective Zoning & Development Standards

Several members of the public have asked questions, or expressed concerns, regarding how to differentiate between objective and subjective City standards for the purposes of SB 35. SB 35, the Guidelines promulgated by the California Department of Housing and Community Development (HCD Guidelines)⁶, and several trial court decisions addressing SB 35 provide guidance on this issue.

Pursuant to the plain language of SB 35, objective zoning and design review standards are “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal.” (Gov. Code, § 65913.4, subd. (a)(5).)

The HCD Guidelines explain further that “design review standards that require subjective decision-making, such as consistency with ‘neighborhood character’, cannot be applied as an objective standard unless ‘neighborhood character’ is defined in such a manner that is non-discretionary.” (SB 35 Guidelines, Section 300(b)(1).) The HCD Guidelines also emphasize that a city’s “[d]etermination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.” (SB 35 Guidelines, Section 300(b)(8).)

Additionally, in *Friends of Better Cupertino v. City of Cupertino*, Santa Clara Superior Court Case No. 18CV330190 (*Friends*), the petitioner alleged, in part, that the challenged project was not eligible for SB 35 streamlined review because the project conflicted with the City of Cupertino’s objective planning standards. (*Id.* at p. 3.) As explained by the trial court in denying the petition, SB 35 permits a city to subject a project “to design review or public oversight with the limitation that this oversight ‘shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction.’” (*Id.* at p. 4, quoting Gov. Code, § 65913.4, subd. (c)(1).) The trial court also explained that such design review “shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect....” (*Id.* at pp. 4-5, quoting Gov. Code, § 65913.4, subd. (c)(1).) In consideration of these principles, the trial court rejected petitioner’s argument that the city failed to impose objective standards relating to the development of parks and open space and the provision of safe and easy access to such facilities to all residents and workers. (*Friends*, p. 56.) Specifically, the trial court explained that petitioner improperly attempted to

⁶ (Available at: <https://www.hcd.ca.gov/policy-research/docs/SB-35-Guidelines-final.pdf>)

treat the city's "broad objectives" as "separate, technical requirements" applicable to the project. (*Ibid.*)

Similarly, in *40 Main Street Offices v. City of Los Altos*, Santa Clara Superior Court Case No. 19CV349845 (*40 Main*), the City of Los Altos denied a project that sought to use SB 35, in part, based on the city's conclusion that the project did not comply with its objective standards. In this case, the trial court held that the city improperly concluded that the project was not subject to SB 35 streamlined review and, therefore, directed "that the City must rescind its decision to deny and instead approve and permit the project at the requested density." (*40 Main*, p. 39.) In reaching its holding the trial court rejected the city's argument that a development standard requiring projects to include "adequate access/egress" constituted an objective development standard. (*40 Main*, pp. 26-27.) The trial court explained that "[w]hat qualifies as adequate – in the absence of an identifiable standard or definition – is simply a matter of personal or subjective judgment." (*Id.* at p. 27.) Accordingly, the trial court held that the city "impermissibly relied on a subjective standard in its denial letter." (*Ibid.*)

2. Public Comments regarding the City's Zoning & Development Standards

With the above guidance in mind, we have examined the goals, policies and design standards that some members of the public have asserted are objective standards pursuant to SB 35.

Mother Lode type of architecture

Some members of the public have expressed concern that the project does not conform with Mother Lode type of architecture standards including Chapter 5 of the City's Design Guidelines.

In existing residential neighborhoods, Section 5.1 of the City's Design Guidelines state that residential development should conform to the "context of the neighborhood", which may include the Mother Lode type of architecture. The determination of whether a building conforms with the style considers "all factors which affect the external appearance" including without limitation "architectural elevations, building materials, colors, finish, lighting, ornamental devices and signs". This section of the Design Guidelines additionally lists and describes "[f]eatures typical of Mother Lode era architecture".

Similarly, Section 5.2 provides that "[n]ew homes in new subdivisions or previously undeveloped neighborhoods must exhibit high quality design which is compatible and sympathetic to Nevada City's Mother Lode architecture incorporating traditional materials, building lines, features, and landscaping wherever possible." Section 5.2 also lists "typical" Mother Lode era architecture features.

However, neither Section 5.1 nor 5.2 mandates that projects include each, or any specific number, of these "typical" features. For example, Section 5.2 only requires that projects use "high quality design" and be "compatible and sympathetic to Nevada City's Mother Lode

architecture.” As a result, the guidelines included in Chapter 5 of the City’s Design Guidelines constitute subjective design review standards pursuant to SB 35.

Additionally, Chapter 6 of the City’s Design Guidelines does not mandate that projects adhere to each of the standards set forth therein. Instead, Chapter 6 provides that the standards should be “reviewed with project applications with the goal being development that minimizes the impact on the natural environment and the character of the area.” Therefore, Chapter 6 establishes goals not mandates. As design goals, the individual standards set forth in Chapter 6 constitute discretionary standards and do not constitute objective design standards pursuant to SB 35. Nevertheless, as discussed further below, including the conditions of approval proposed by City Staff, the Project complies with relevant standards set forth in Chapter 6.

Section 6.1 (Site Planning / Site Constraints):

The position of buildings on the site and overall site coverage must also fit in with the neighborhood and particularly adjacent structures. City front yard, side yard and rear yard setback requirements apply to all projects. Site constraints and natural features such as rock outcroppings, steep slopes, stream zones and drainages, as well as existing trees and important vegetation shall be delineated on site plans and often preserved. Building orientation and alignment should be in context with the neighborhood.

The requirement to “fit in with the neighborhood” and for “building orientation and alignment” to be “in context with the neighborhood” constitute subjective design standards. Under SB 35, consistency with objective standards is analyzed “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law”. (Gov. Code, § 65913.4, subd. (a)(5).) Here, with the exception of the Density Bonus Law concessions requested by the Applicant, the Project complies with all objective setback requirements. Additionally, consistent with Section 6.1, the Project site plan delineates site constraints and natural features. Therefore, the Project complies with all elements of this goal that may be considered objective design standards.

Section 6.4 (Volume, Scale, Massing):

The mass and scale of new structures and additions should be reviewed within the context of the neighborhood; structures should be located on a site in a way that follows the predominant pattern of buildings along the street, maintaining traditional setbacks, orientation of entrances, and alignment along the street.

Prominence of new structures and additions within older neighborhoods is not desirable. Mass and scale of new structures and additions which would detract

from important architecture is also not desirable. To determine if this is the case, the following question should be asked:

- Is the proposed structure taller than those surrounding it and in close proximity to it?
- Is the proposed structure closer to the street than others in the surrounding neighborhood?
- Is the mass of the structure proposed greater than those surrounding it or greater in lot coverage and volume ratio and in close proximity?
- Will it block views from existing homes or businesses?
- Does it complement the predominant architecture of the primary structures?

As demonstrated above, Section 6.4 states that “the mass and scale of new structures... should be reviewed within the context of the neighborhood”. Section 6.4, however, includes no mandatory criteria. Instead, Section 6.4 identifies various questions that should be considered relating to mass and scale to identify development that “is not desirable.” This type of evaluation of desirability allows for subjective considerations and, therefore, does not constitute an objective design standard pursuant to SB 35.

Furthermore, to the extent the Project does not comply with the City’s subjective mass and scale criteria, those inconsistencies relate to the Project’s proposed height and deviation from the City’s standard setback requirements. As the City is required to grant the height and setback concessions requested by the Applicant pursuant to the Density Bonus Law, these subjective mass and scale criteria are not applicable to the Project.

Section 6.8 (Design to Ensure Privacy - Lighting):

Outdoor lighting shall not be directed toward existing residences and shall not increase the lighting intensity on surrounding residential properties such that a nuisance is created. For example, parking lot lighting is discouraged, as is amber lighting or a level of lighting, which is not normally expected in a residential area. (The specific lighting standards can be found within the zoning ordinance in Section 17.80.215.)

Section 6.8 summarizes and supports “[t]he specific lighting standards can be found within the zoning ordinance in Section 17.80.215.” Project Condition of Approval 8 requires the Project’s lighting plan to comply with Section 17.80.215 of the City Municipal Code. Among other requirements, Section 17.80.215: establishes height requirements for outdoor light fixtures, mandates use of energy efficient lighting, requires use of shielded or recessed lights with a maximum 30-degree horizontal light deflection to minimize light spill, and prohibits on-site light sources from directly illuminating offsite areas. Therefore, as conditioned, the Project is consistent with objective lighting standards set forth in the Municipal Code.

Architectural Review Process

Section 17.88.040 articulates the considerations required by the City's architectural review process. While the architectural review process provides that projects should be evaluated in the context of the neighborhood of the project, it also provides that for new residential projects outside the historical district – such as the Cashin's Field Project – “any modern building material can be used.” (Municipal Code, § 17.88.040(C).) Therefore, the plain language of Section 17.88.040 confirms that, as applied to the Cashin's Field Project, an evaluation of conformance with Mother Lode type architecture constitutes a subjective design review standard.

Development Fees and Objective Off-Site Infrastructure Criteria

Municipal Code Section 17.88.010(D)(3) requires a condition of approval that “actual improvements shall be constructed and/or a development fee, as established by resolution of the city council, shall be paid to the public works department in order to offset the cumulative impacts on the road system within the city and urban area as defined in the Nevada County regional transportation plan and the fire protection, water and sewer system within the city.” The Conditions of Approval proposed for the Project include conditions requiring that the Applicant comply with all City resolutions relating to offsite improvements and/or development fees that were in place when the Project application was submitted to the City for review. (See, e.g., Project Conditions of Approval, Nos. 2, 12, 17, 21, 22, 28, 34, 35.) Therefore, as conditioned, the Project is consistent with all objective offsite improvement and/or development fee requirements adopted by the City.

Frontage Requirement

As a residential project on a SL zoned parcel, the lot width requirements for the R2 zone apply. (Municipal Code, § 17.52.060(B).) In the R2 zone, lot width standards include a frontage standard. (Municipal Code, § 17.28.060.) Specifically, the lot frontage requirement is seventy-five (75) feet plus ten (10) feet for every unit over 1. (Municipal Code, § 17.28.060(A).) As the Project includes 56 units, the frontage requirement for the Project is 625 feet (75 ft. + 55 units x 10 feet) pursuant to Section 17.28.060(A). The Project's frontage along Ridge Road is over 1,000 feet. Thus, the Project is consistent with the City's frontage requirement.

Additionally, pursuant to the Density Bonus Law, “[i]n no case may a city ... apply any development standard that will have the effect of physically precluding the construction of a development” consistent with the Density Bonus Law. (Gov. Code, Sec. 65915, subd. (e)(1).) Here, as the City's frontage standard is calculated based on the number of units developed on a site, the only way to achieve compliance with the frontage requirement (where a project exceeds the standard) is to reduce the number of units proposed to be developed. In other words, compliance with the standard creates a unit maximum that may not be exceeded on a specific project site. As a result, where the development maximum established by the City's frontage

requirement is less than the density permitted under the Density Bonus Law, the frontage requirement – if applied – would physically preclude development of a project otherwise permitted pursuant to the Density Bonus Law. Thus, the City’s frontage requirement, if enforced in a manner that prohibited the density authorized by the Density Bonus Law, would violate the Density Bonus Law.

Development Limitation

Municipal Code Section 17.09.010 provides:

No more than thirty-five (35) residential units whether single-family or multifamily shall be approved on any one (1) parcel of property or on two (2) or more parcels of property adjacent to each other and under the same ownership within any twelve (12) month period. Applications will be accepted for development of over thirty-five (35) units on the same parcel of property or on two (2) or more parcels of property under the same ownership within twelve (12) months of each other but no more than thirty-five (35) units shall be approved during any twelve (12) month period. However, more than thirty-five (35) units may be approved by the city council if a finding is made that it will be in the public good to approve additional units in light of all the circumstances of the project and will promote the public health, safety or welfare.

The City’s development limitation does not constitute an objective development standard pursuant to SB 35 because it permits the City Council to exercise its discretion whether or not to enforce the limitation on a case-by-case basis in consideration of a subjective determination whether the project “will be in the public good to approve additional units in light of all the circumstances of the project and will promote the public health, safety or welfare.” Therefore, this development limitation is not applicable pursuant to SB 35.

Furthermore, as stated above, pursuant to the Density Bonus Law, “[i]n no case may a city ... apply any development standard that will have the effect of physically precluding the construction of a development” consistent with the Density Bonus Law. (Gov. Code, Sec. 65915, subd. (e)(1).) Imposing a thirty-five (35) unit limitation on development on the Project site in a single calendar year would limit permitted residential development below the level authorized pursuant to the Density Bonus Law. As a result, the development limitation – if applied to the Project – would physically preclude development of the Project at the density otherwise permitted pursuant to the Density Bonus Law. Thus, the City’s development limitation cannot be applied to the Project.

III. The Project qualifies for SB 35 Streamlining because it meets all criteria found in Government Code Section 65913.4, subdivision (a).

- 1. The development is a multifamily housing development that contains two or more residential units.⁷**

The Project is a multifamily housing development composed of 56 residential units.

- 2. The development is located on a site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.⁸**

The project is located on a legal parcel: APN 005-290-026. This parcel is within the city of Nevada City, which is within the “Grass Valley” Urban Cluster as designated by the United States Census Bureau.⁹ Therefore, the Project site is a legal parcel in a city within an urban cluster.

- 3. The development is located on a site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined. (Gov. Code, § 65913.4, subd. (a)(2)(B).)**

“‘Urban uses’ means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.”¹⁰

The Project is located at 170 Ridge Road. The site is bordered on the northeast by three parcels, on the southeast by a road bordering a highway, on the south by one parcel separated by Ridge Road, and on the northwest by four parcels separated by Zion Road. The northeastern parcels are commercial. The southern parcel is occupied by a church, a public institutional use. The northwestern parcels are occupied by commercial and residential uses. Therefore, the project is adjoined at least 75% by parcels that are developed with urban uses.

- 4. The development is located on a site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be**

⁷ (Gov. Code, § 65913.4, subd. (a)(4)(A).)

⁸ (Gov. Code, § 65913.4, subd. (a)(2)(A).)

⁹ (See United States Census Bureau Grass Valley Urban Cluster Map at: https://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/uc/uc34597_grass_valley_ca/DC10UC34597.pdf.)

¹⁰ (Gov. Code, § 65913.4, subd. (i)(12).)

included in the square footage calculation. The square footage of the development shall not include underground space, such as basements or underground parking garages.¹¹

The parcel is zoned SL, for Service Lodging.¹² The general plan land use designation for the project site is also Service Lodging.¹³ The Service Lodging Zone designation allows as permitted uses, “[a]ll permitted uses of the R1 [Single-Family Residential] and R2 [Multiple-Family Residential] zoning districts.”¹⁴ Therefore, the site is zoned for residential use.

The Project, a 56-unit apartment complex in six buildings, will be composed of 100% residential square footage including associated residential amenities. The requirement that at least two-thirds of the square footage is designated for residential use is therefore satisfied.

- 5. The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower or moderate income housing units required pursuant to [Government Code Section 65913.4] subparagraph (B) of paragraph (4) of subdivision (a) shall remain available at affordable housing costs or rent to persons and families of lower or moderate income for no less than the following periods of time:**

- (i) Fifty-five years for units that are rented.**
- (ii) Forty-five years for units that are owned.**

The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.¹⁵

Pursuant to Government Code section 65913.4(a)(4)(B)(i), the project must, at minimum, deed restrict ten percent (10%) of the total number of units to housing affordable to households making at or below 80 percent of the area median income for fifty-five years. The project proposes to deed restrict all residential units to be affordable to low, very low, or extremely low income households exclusive of the manager’s unit. A condition of approval requires the applicant to record, prior to the issuance of the first building permit, covenants or restrictions that require the residential units to remain available at affordable housing rent to persons and families of lower income for no less than fifty-five years.

- 6. The development is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits, as shown on the most recent production report received by the department, is less than the locality’s share of the regional housing needs, by**

¹¹ (Gov. Code, § 65913.4, subd. (a)(2)(C).)

¹² (Nevada City Zoning Map, available at: [https://www.mynevadacounty.com/DocumentCenter/View/12452/Nevada-City-Zoning-Map-2010-Update-PDF?bidId=.](https://www.mynevadacounty.com/DocumentCenter/View/12452/Nevada-City-Zoning-Map-2010-Update-PDF?bidId=;))

¹³ (Nevada City General Plan Map, available at: [https://www.nevadacityca.gov/files/documents/GeneralPlanMap131302063701116PM.pdf.](https://www.nevadacityca.gov/files/documents/GeneralPlanMap131302063701116PM.pdf))

¹⁴ (Nevada City Code, § 17.52.020.)

¹⁵ (Gov. Code, § 65913.4, subd. (a)(3).)

income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.¹⁶

Determinations of jurisdictions subject to SB 35 are performed by HCD, and published annually.¹⁷ The HCD Statewide Determination Summary shows the jurisdictions subject to SB 35.¹⁸

As shown on the HCD Statewide Determination Summary, Nevada City has not met its current RHNA goals for either moderate or low income housing, so HCD has determined that it is subject to SB 35 for proposed development with at least 10% affordability. Therefore, Nevada City is subject to SB 35, and must process projects with at least 10% affordability that meet SB 35's project specific criteria under the streamlined, ministerial review process set forth in SB 35.

The project is proposed as a 100% affordable housing project, excluding the manager's unit, and satisfies this criterion for Nevada City.

- 7. The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:**
 - a. The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project dedicates a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.**
 - b. The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the area median income, that local ordinance applies.¹⁹**

¹⁶ (Gov. Code, § 65913.4, subd. (a)(4)(A).)

¹⁷ (HCD Guidelines, Section 200.)

¹⁸ (HCD Guidelines, Section 201; Statewide Determination Summary available at: https://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary.pdf.)

¹⁹ (Gov. Code, § 65913.4, subd. (a)(4)(B)(i).)

HCD annually publishes each jurisdiction's housing production for various income levels and whether this production met RHNA targets in the Annual Progress Report Permit Summary.²⁰ The Report reflects that Nevada City did not meet its RHNA targets, including for the above-moderate income, low-income, and very low income categories.

The Project contains 56 housing units, 100% of which will be dedicated to housing affordable to households making below 80% of the area median income exclusive of the manager's unit. Therefore, though the project must only satisfy one of the above requirements, both are satisfied.

- 8. The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:**
- (A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.**
- (B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.²¹**

As discussed in greater detail in Section II above, the project meets all of the City's current general plan, zoning, subdivision and design review standards in effect at the time the application for the project was submitted. The applicant has requested a density bonus and two incentives under California Density Bonus Law, discussed in more detail below. These are excluded from the evaluation of whether the Project meets the objective standards.²²

²⁰ (See HCD 5th Annual Progress Report Permit Summary, available at: https://www.hcd.ca.gov/community-development/housing-element/docs/Annual_Progress_Report_Permit_Summary.xlsx.)

²¹ (Gov. Code, § 65913.4, subd. (a)(5).)

²² (Gov. Code, § 65913.4, subd. (a)(5).)

The SL zone allows for a density of 8 dwelling units per acre. The site of the Project is 4.59 acres. Normally this would allow for up to 37 units. As a 100% affordable Project, the Project is subject to an 80% density bonus pursuant to the Density Bonus Law.²³ Therefore, up to 67 units are permitted by law. The Project proposes 56 units and, therefore, is consistent with the permitted density on the project site.

9. The development is not located on a site that is a coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.²⁴

The Project is not located on a coastal zone.²⁵

10. The development is not located on a site that is either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.²⁶

The Project is not located on prime farmland or farmland of statewide importance.²⁷

11. The development is not located on a site that is wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).²⁸

The Project is not located on wetlands.²⁹

12. The development is not located on a site that is within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.³⁰

The City of Nevada City is designated as being within the Very High Fire Hazard Severity Zone

²³ (Gov. Code, § 65915, subd. (f)(3)(D)(i).)

²⁴ (Gov. Code, § 65913.4, subd. (a)(6)(A).)

²⁵ (Coastal Zone Map, available at: <https://www.coastal.ca.gov/maps/czb/>.)

²⁶ (Gov. Code, § 65913.4, subd. (a)(6)(B).)

²⁷ (Farmland Map for Nevada County, available at: <ftp://ftp.consrv.ca.gov/pub/dlrp/FMMP/pdf/2018/nev18.pdf>.)

²⁸ (Gov. Code, § 65913.4, subd. (a)(6)(C).)

²⁹ (Department of Fish and Wildlife Wetlands Mapper, available at: <https://www.fws.gov/wetlands/data/Mapper.html>.)

³⁰ (Gov. Code, § 65913.4, subd. (a)(6)(D).)

as identified by the California Department of Forestry and Fire Protection District (CalFire), however the Project site is subject to fire hazard mitigation measures pursuant to existing building standards or state mitigation measures applicable to the development.

The Nevada City Council adopted Ordinance 2008-06 designating the Building Official to enforce the requirements and provisions contained in Section 3203 of Title 24 California Code of Regulations in such designated zones, and all properties within Nevada City are provided fire protection. The City Council adopted the most current versions of the state Building and Fire Codes (2019 versions) by Ordinance No. 2020-02, which was effective March 12, 2020. The Project is conditioned on meeting all requirements in the California Building Code including the requirements of Chapter 7A (Materials and Construction Methods for Exterior Wildfire Exposure), which establishes “standards for the protection of life and property by increasing the ability of a building located in any Fire Hazard Severity Zone within State Responsibility Areas or any Wildland-Urban Interface Fire Area to resist the intrusion of flames or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses.”³¹ Therefore, the project will be constructed consistent with adopted fire hazard mitigation measures pursuant to existing building standards.³² (See also Wildfire DefenseWorks Wildfire Comments (June 22, 2020) submitted to the City concurrently with this memorandum.)

13. The development is not located on a site that is a hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.³³

The Project is not located on a hazardous waste site.³⁴

14. The development is not located on a site that is within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2. (Gov. Code, § 65913.4, subd. (a)(5)(F).)

The Project is not located in a delineated earthquake fault zone.³⁵

³¹ (California Building Code, § 701A.2.)

³² (HCD Guidelines, Section 401, subd. (b)(4)(A).)

³³ (Gov. Code, § 65913.4, subd. (a)(6)(E).)

³⁴ (Hazardous Waste and Substances Site List, available at <https://dtsc.ca.gov/dtscs-cortese-list/>.)

³⁵ (State Geologist Regulatory Map, available at: <https://maps.conservation.ca.gov/cgs/informationwarehouse/regulatorymaps/>.)

15. The development is not located on a site that is within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.³⁶

The Project is not located in a flood plain.³⁷

16. The development is not located on a site that is within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. (Gov. Code, § 65913.4, subd. (a)(5)(H).)

The Project is not located in a floodway.³⁸

17. The development is not located on a site that is lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.³⁹

The Project is not located in an adopted natural community conservation plan.⁴⁰

18. The development is not located on a site that is habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species

³⁶ (Gov. Code, § 65913.4, subd. (a)(6)(G).)

³⁷ (FEMA National Flood Hazard Layer Viewer, available at: <https://msc.fema.gov/nfhl>.)

³⁸ (FEMA National Flood Hazard Layer Viewer, available at: <https://msc.fema.gov/nfhl>.)

³⁹ (Gov. Code, § 65913.4, subd. (a)(6)(I).)

⁴⁰ (California Natural Community Conservation Plans Map, available at: <https://wildlife.ca.gov/conservation/planning/NCCP>.)

Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).⁴¹

The California Natural Diversity Database (CNDDDB 2019) was consulted to determine if special-status species have been documented on or near the site and to assess the potential for special-status species to occur in the project area. The search included a nine-quadrangle area centered on the Nevada City 7.5-minute US Geological Survey (USGS) quadrangle. The CalFlora occurrence library (2019) – a consortium of university herbaria – and the California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants (2019) were reviewed to determine if there are additional rare plant species known from the vicinity that are not currently in the CNDDDB. No habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code) has been identified on the project site or the surrounding area.

19. The development is not located on a site that is lands under conservation easement.⁴²

The Project site is not under any conservation easement.

20. The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

- (i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.**
- (ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.**
- (iii) Housing that has been occupied by tenants within the past 10 years.**

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.⁴³

⁴¹ (Gov. Code, § 65913.4, subd. (a)(6)(J).)

⁴² (Gov. Code, § 65913.4, subd. (a)(6)(K).)

⁴³ (Gov. Code, § 65913.4, subd. (a)(7).)

The Project is located on a vacant lot and no housing or historic structure will be demolished to develop the Project. Additionally, no housing previously existed on the site that has been demolished in the last ten years.

21. The development proponent has certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a

project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, “project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code. (VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.⁴⁴

On May 26, 2020, the development proponent submitted a letter to the City certifying that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. The City has also included a condition in the Project’s Conditions of Approval requiring that the Project comply with the requirements of Government Code section 65913.4, subdivision (a)(8)(A)(ii).

22. The development proponent has for developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.⁴⁵

The Project consists of 56 units and is 100% affordable, and is therefore not required to certify that a skilled and trained workforce will be used.

23. The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement

⁴⁴ (Gov. Code, § 65913.4, subd. (a)(8)(A).)

⁴⁵ (Gov. Code, § 65913.4, subd. (a)(8)(B).)

that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).⁴⁶

The Project application does not include a subdivision of property.

24. The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).⁴⁷

The Project not located on a site governed by the Mobilehome Residency Law, Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

25. Parking

Under SB 35 a locality can only impose a maximum requirement of up to one parking space per dwelling unit.⁴⁸ Under Nevada City’s Zoning Ordinance, the Project would be required to provide two spaces for each dwelling unit unless an exception is found.⁴⁹ However, under SB 35 this requirement is reduced to one space per unit.

The Project will have 81 parking spaces for its 56 units, thereby satisfying this requirement.

IV. Density Bonus Law

The Density Bonus Law⁵⁰ is a state law that requires local governments to allow affordable and senior housing developments to be built at higher densities than otherwise allowed under local ordinances and allows developers of such projects to receive certain requested additional incentives relaxing local development standards if certain criteria are met.

1. Density Bonus

Under the statute, a project can receive a density bonus by constructing some portion of its housing units as affordable housing.⁵¹ The percentage density bonus granted to such a project

⁴⁶ (Gov. Code, § 65913.4, subd. (a)(9).)

⁴⁷ (Gov. Code, § 65913.4, subd. (a)(10).)

⁴⁸ (Gov. Code, § 65913.4, subd. (d)(2).)

⁴⁹ (Nevada City Code, § 17.80.030(G)(1).)

⁵⁰ (Gov. Code, § 65915.)

⁵¹ (Gov. Code, § 65915, subd. (b).)

increases with the share of affordable housing it contains at each income level.⁵² A project composed of 100% affordable housing, exclusive of a manager's unit, is eligible for a density bonus of up to 80%.⁵³

The Project is composed of 100% affordable housing exclusive of its manager's unit, and is therefore eligible for an 80% density bonus.

When otherwise applicable development standards would prevent a project eligible for a density bonus from being constructed at the density allowed by the Density Bonus Law the developer may propose a waiver or reduction of development standards to allow the project to be constructed at the allowed density.⁵⁴ Under Nevada City's Density Bonus Ordinance the City has established procedures for providing the developer incentives for the production of lower income housing units within the development.⁵⁵

2. Density Bonus Law Concessions

In addition to density bonuses and waivers to allow for density bonuses, the law also provides for a developer who meets certain conditions to request and receive additional concessions or incentives.⁵⁶

The applicant has requested two concessions under these provisions:

- (a) Increase in building height from the standard maximum of 40 feet to 46 feet in the areas indicated on the project's elevation details; and
- (b) Incursion on required setbacks, to allow for up to an 8-foot encroachment within the standard 10-foot corner street- side setback and within the standard 25-foot front yard setback in some areas of the project.

An applicant is entitled to four incentives if "[o]ne hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code."⁵⁷ Lower income households are those with income of no more than 80% of the area median income (AMI).⁵⁸ Very low income households are those with income of no more than 50% AMI.⁵⁹ Lower income households includes very low income households and extremely

⁵² (Gov. Code, § 65915, subd. (f).)

⁵³ (Gov. Code, § 65915, subd. (f)(3)(D)(i).)

⁵⁴ (Gov. Code, § 65915(e).)

⁵⁵ (Nevada City Code, § 17.80.220(A)-(C).)

⁵⁶ (Gov. Code, § 65915, subd. (d).)

⁵⁷ (Gov. Code, § 65915, subds. (b)(1)(G), (d)(2)(D).)

⁵⁸ (Health & Saf. Code, § 50079.5, subd. (a).)

⁵⁹ (Health & Saf. Code, § 50105, subd. (a).)

income households,⁶⁰ and low income likewise households includes extremely low income households.⁶¹

The Project contains 56 units, of which 6 are 30% AMI, 6 of which are 40% AMI, 28 are 50% AMI, 15 are 60% AMI, and the single remaining unit is a Manager's Unit which is not income restricted. Pursuant to the Density Bonus Law, this means that 100% of the units are low income and 72% are very low income, given the inclusive definitions.⁶² As a result, as set forth in the Density Bonus Law, the Project is entitled to four concessions or incentives.⁶³

A city is required to grant concessions or incentives for qualifying developments unless the city makes a written finding, based upon substantial evidence, that either the concession or incentive does not result in actual cost reductions or would have an adverse impact upon public health and safety or the physical environment or historical resources, or the incentive would be contrary to state or federal law.⁶⁴

Here, the requested incentives pose no threat to public health or safety, the physical environment, or historical resources. In addition, the requested incentives are not contrary to any state or federal law. Without the incentives, the Project could not be built at the proposed density and intensity. While the Project could theoretically develop a larger portion of the project site in order to achieve the same density proposed without requiring the requested incentives, due to site constraints including tree cover and elevation changes, even if such an alternative site plan was physically feasible from an engineering perspective, such a modified site plan would result in cost increases to complete the Project. Therefore, the applicant is entitled to receive the two requested incentives.

V. Conclusion

The Project meets all SB 35 criteria and is eligible for streamlined, ministerial approval under that law. Under the Density Bonus Law, the Project is also eligible for (i) an 80% density bonus and (ii) the two requested incentives to help facilitate feasible development of the Project.

⁶⁰ (Health & Saf. Code, § 50079.5, subd. (b).)

⁶¹ (Health & Saf. Code, § 50105, subd. (b).)

⁶² (Gov. Code, § 65915, subd. (b)(1)(G) [manager's unit is excluded from the calculation].)

⁶³ (Gov. Code, § 65915, subd. (d)(2)(D).)

⁶⁴ (Gov. Code, § 65915, subd. (d)(1).)



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Date: June 22, 2020

To: Laurie Doyle, Executive Vice President
Affordable Housing Development Corporation
3128 Willow Avenue, Suite 101
Clovis, CA 93612

Re: Cashin's Field Affordable Housing Project
170 Ridge Road
Nevada City, CA

Dear Ms. Doyle,

I am pleased to offer this report on the compliance of the Cashin's Field Affordable Housing Project within the parameters of Senate Bill 35 (SB-35), specifically related to wildfire mitigation impacts. SB-35 was signed by Governor Jerry Brown on September 29, 2017, and went into effect on January 1, 2018. The focus of this new law was to allow a developer to submit an application for a multifamily housing development, which satisfies specified planning objective standards, and that is subject to a streamlined, ministerial approval process, and not a conditional use permit. However, there are certain fire safety requirements that still apply to these proposed developments.

SB-35 provides restrictions for projects that are proposed on sites that have a multitude of designations, such as wetlands, farmland, flood plains, and others. One of these designations is a Very High Fire Hazard Severity Zone (VHFHSZ), as determined on maps by the California Department of Forestry and Fire Protection (CAL FIRE). The entire town of Nevada City is designated as lands within a VHFHSZ. However, SB-35 also states that restrictions for development of a site designated as VHFHSZ does not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures that would be applicable to the development. This site falls into that category.

Chapter 15.08 of the Nevada City Municipal Code has adopted the Fire Safety Standards and California Fire Code Amendments. In addition, Chapter 15.16 allows provisions for the Fire Chief to designate lands as being in the VHFHSZ areas. And finally, Chapter 15 of the Nevada City Municipal Code identifies all adopted codes for enforcement in Nevada City. One of these identified codes is the California Building Code (CBC) which includes Chapter 7A, and addresses Materials and Construction Methods for Exterior Wildfire Exposure. All of these provisions dictate that this project falls under the requirements for Chapter 7A of the CBC, which is the only state and local code in Nevada City that pertains to building construction and wildfire resiliency.

As of the writing of this report, the application has gone through a public review by the Advisory Review Committee (ARC). The ARC provided a recommendation to the Planning Commission to recommend approval of both the Site Plan and Architectural Review applications to the City Council. Subsequently, the Planning Department for Nevada City submitted a report which included Conditions of Approval (COA) for the project at their public meeting (via Zoom) on June 18, 2020. These COA's are now scheduled to be heard by the City Council of Nevada City at their next meeting on June 24, 2020. The Planning Department has recommended the City Council review and approve the proposal for both the Site Plan and Architectural Review applications for this project. Item #46 in the Conditions of Approval (COA), as set forth by the Fire Department, states, "All materials and construction methods shall comply with California Building Code Chapter 7A, and Chapter 47."

This report is in agreement with these recommendations, and supports approval of this project. In preparing this report, I have reviewed the project to the extent possible, within the context of Chapter 7A of the CBC, SB-35, and recommendations by the Fire Department as included in the COA. In addition, I have captured additional comments from both the reviewing agencies as well as public comments, and will be providing some perspective on several issues as they relate to this project and wildfire impacts.

PROJECT OVERVIEW:

The Cashin's Field Affordable Housing Project is a development proposed for a 4.59 acre parcel with a 56-unit apartment complex in six buildings up to three stories in height, totaling approximately 57,000 square feet. The site, located at 170 Ridge Road in Nevada City, California, will feature a mix of eleven one-bedroom units, thirty two-bedroom units, and fifteen three-bedroom units. All units are proposed to be affordable, to low, very low, and extremely low income households. There will be one manager's unit that will not fall under the affordable housing requirements.

The property is relatively flat with an average slope of approximately 5%, sloping from a high point near the southwest corner, toward the low point near the northeast corner. The perimeter and eastern half of the site exhibits coniferous forest vegetation that appears to be dominated by ponderosa pine and cedar trees. The Staff Report states that approximately 89 trees out of 375 trees will need to be removed from the site in order to accommodate the project. Proposed landscaping plans indicate additional trees and vegetation will be planted to conform with local guidelines for maintaining the forest environment of the area.

The Staff Report also states that because the project is subject to SB-35 project streamlining, only objective code standards can be applied as a condition of approval. Non-discretionary recommendations may be made as an advisory request only. This report will provide comments on the project including the COAs from the Planning Department and Fire Department.

COMPLIANCE WITH CALIFORNIA STATE BUILDING CODE, CHAPTER 7A:

Cashin's Field Affordable Housing Project complies with wildfire mitigation standards as required in CBC Chapter 7A. The comments provided below will clarify this, and are based on architectural drawings and materials specifications identified as part of the application for this project. In addition, I consulted with the architect and landscape architect in preparing this report.

Chapter 7A applies to building materials, systems and/or assemblies used in the exterior design and construction of new buildings located within a Wildland-Urban Interface (WUI) Fire Area. This project falls within that classification. The purpose of Chapter 7A is to establish minimum standards for the protection of life and property by increasing the ability of a building located in any Fire Hazard Severity Zone (FHSZ) within State Responsibility Areas (SRA) or any WUI Fire Area to resist the intrusion of flames or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses. These requirements were first adopted in California in 2008, and have proven to be successful in reducing the risk of structures when exposed to wildfires. There is a long list of associated factors that can determine whether a structure survives a wildfire exposure, both environmental and human-influenced. Some of these factors will be discussed as we review the application of Chapter 7A requirements to this project.

CBC Chapter 7A contains ten subsections that address the following topics:

- 701A Scope, Purpose, and Application
- 702A Definitions
- 703A Standards of Quality
- 704A Ignition Resistant Construction
- 705A Roofing
- 706A Vents
- 707A Exterior Covering
- 708A Exterior Windows, Skylights, and Doors
- 709A Decking
- 710A Accessory Structures

I will review each of these subsections as they apply to this project as follows:

Subsections 701 – 704: The scope, purpose, and application of Chapter 7A is explained in the paragraph above, and as has already been established, this code section applies to this project. I will not repeat all the definitions as they appear in Chapter 7A, but will provide descriptions as necessary within this report.

The standards of quality refer to fire testing requirements as they apply to building materials, components, and assemblies in order to comply with Chapter 7A. These standards can often be quite detailed in nature, and will not be presented as part of this report. Likewise, the subsection describing ignition resistant construction also refers to flame testing and acceptance criteria for materials that have specifically been tested to resist fire ignition.

Roofing: The project's roofing material is proposed as metal roofing panels. This will include metal caps at roof peaks, and metal flashing for any valleys or joints between horizontal and vertical surfaces. In addition, design elements such as sunshades and supporting braces will also be constructed with metal materials. The use of metal materials for these applications is one of the highest rated fire resilient materials available today. Not only are they fire resistant, but they typically require less maintenance over time, and typically have a longer life span than some other roofing options. Gutters and downspouts will also be installed. These will be constructed of metal materials, and include a leaf screen to prevent debris build-up in the gutters.

Vents: All structures are designed with a concrete slab on grade base, which eliminates any need for vents below the floor surfaces. The attics in the gabled space of the roof configuration will require venting with air flows to meet CBC requirements. Vents to accommodate this air exchange will be located in one of three places – at the peak of the roof, in the soffits under the roof overhangs, at the gable ends of the attic space, or a combination of all three of these locations. In all cases, the individual vents will meet Chapter 7A requirements to provide the needed air exchange by code, yet also be constructed with metal, corrosion resistant mesh screens that will have a minimum of 1/16" opening, but no larger than 1/8" opening. The vent design will resist ember intrusion into the attic spaces, and meet the accepted testing requirements as established by the State Fire Marshal's (SFM) approved product list. The installed vents will have the required testing approval mark, along with the SFM stamp of acceptance.

Exterior Coverings: All exterior wall surfaces are designed with a highly fire resistive construction assembly. This assembly will consist of the standard plywood or oriented strand board (OSB) material applied directly to the wood framing structure, which also serves to meet the shear strength requirements for the buildings. In addition to a weatherproof membrane, a layer of 5/8" Type "X" sheet rock will be applied prior to the exterior siding material. This type of sheet rock is the material required to provide a one-hour fire separation layer on walls were required by code. The exterior wall surfaces will be a fiber-cement manufactured material, which is also fire resistant. This wall assembly will extend continuously from the top of the concrete slabs to the underneath side of the roof assembly. All trim pieces shall also be fiber-cement material, and joints will be carefully sealed to eliminate openings for ember intrusion and heat exposure to any combustible framing components or materials.

All soffits and overhangs will be enclosed, using non-combustible materials. These surfaces will be detailed as to resist the penetration of embers and heat sources into the attic areas. This will eliminate as much as possible the ability for embers, heat, or flames to ignite any combustible construction materials behind the non-combustible surfaces of the soffits. Facias shall be constructed using fiber-cement boards also to help create a more continuous fire resistive barrier

between the edge of the roof and the soffits. These same details apply to the ceiling areas over the exterior stairwells.

Exterior Windows, Skylights, and Doors: Exterior windows are specified to be vinyl frames, with dual pane glass. All windows will comply with at least one of the following specifications:

- a. Be constructed of multipane glazing with a minimum of one tempered pane meeting the requirements of Section 2406 Safety Glazing, or
- b. Have a fire-resistance rating of not less than 20 minutes when tested according to NFPA 257, or
- c. Be tested to meet the performance requirements of SFM Standard 12-7A-2.

All windows throughout the complex will meet one of these requirements to comply with Chapter 7A.

All exterior doors in the complex shall comply with at least one of the following requirements:

- a. The exterior surface or cladding shall be of noncombustible material.
- b. The exterior surface or cladding shall be of ignition-resistant material.
- c. The exterior door shall be constructed of solid core wood that complies with the following requirements:
 - a. Stiles and rails shall not be less than 13/8 inches thick.
 - b. Panels shall not be less than 11/4 inches thick, except for the exterior perimeter of the panel that shall be permitted to taper to a tongue not less than 3/8 inch thick.
- d. The exterior door assembly shall have a fire-resistance rating of not less than 20 minutes when tested according to NFPA 252.
- e. The exterior surface or cladding shall be tested to meet the performance requirements of Section 707A.3.1 when tested in accordance with ASTM E2707.
- f. The exterior surface or cladding shall be tested to meet the performance requirements of SFM Standard 12-7A1.

If an exterior door contains any glazing, it will comply with the requirements listed for windows above.

Decking: Porches and/or patios at the first-floor level will be constructed with either poured concrete or surfaced with a fire-resistant material, such as a manufactured decking material. The exterior staircases shall be framed using steel construction, and all treads, risers, and landings for the stairways will be of precast concrete members. Railings along all stairways and balconies will also be constructed of metal. Balcony surfaces will also be constructed with a concrete material.

Accessory Structures: Trash enclosures on the compound will be constructed using masonry with metal trellises. All covered parking structures will be framed with either timber framing or metal construction that exceeds one-hour fire ratings, and include a one-hour rated ceiling surface. In addition, the location and extension of these roofs will not impede fire department access at any time.

Collectively, each element of all structures within this development will meet or exceed Chapter 7A requirements. By meeting these standards, this project also meets the requirements established under SB-35.

However, the key to a building surviving a wildfire, as stated earlier, involves a lot of variable factors. Building with fire resistive materials, designing details that will resist ember impacts, and maintaining these features over time will all contribute greatly to whether a structure can survive a wildfire. But the other primary factors involve the surrounding landscape, created using efficient defensible space principles. The next section will focus on the surrounding landscape of the complex.

Landscape: The application includes a landscape plan, with proposals for necessary tree removal to build the complex, native landscaping to relate to the surrounding environment, drought tolerant plantings to reduce irrigation needs, and potentially additional tree plantings to satisfy guidelines as set forth in the Nevada City Municipal Code related to scenic corridors and tree removal.

It is important to note the current landscape plan is a preliminary proposal, and is subject to change based on input from the approval process and fire safety regulations. For the purposes of this report, I will provide comments related to the fire safety aspect of the landscape design. These comments will identify three zones for discussion:

- a. Zone 1 – 0 to 5 feet surrounding structures
- b. Zone 2 – 5 to 30 feet from structures
- c. Zone 3 – 30 to 100 feet from structures

Zone 1: Current fire science and research has identified this 5 foot zone to be a critical component related to ember ignitions of structures. Traditional bark mulch has been shown to be a highly fire prone landscape material that easily ignites, and can then ignite the structure it surrounds. By modifying this zone to a non-combustible surface, such as rock, gravel, or other non-combustible materials, it can significantly reduce ember ignitions of structures. Landscaping in this zone should be kept to a minimum, using only fire-resistive plantings. No shrubs or other flammable plants should be placed underneath windows or immediately adjacent to door openings to help reduce fire impacts to these vulnerable openings to the interior of structures. Keeping this zone free of dead materials, leaves, pine needles, and other flammable materials is critical to help reduce the likelihood of ember ignitions immediately surrounding the structures.

Zone 2: Guidelines for this zone address the spacing of plants, both horizontally and vertically. The goal in this zone is to reduce the “fuel continuity” which help reduce the spread of an active fire from moving toward structures. Grasses should be kept mowed to four inches or less, plants watered to maintain a high moisture content, and ladder fuels should be removed from trees to help reduce the spread of fire up into the crown of trees. Numerous guidelines exist for this zone, providing variables related to heights and spacing of plantings. These can be found on CAL FIRE’s “Ready for Wildfire” app, the National Fire Protection Association, California State Fire Safe Council, and other sources.

Zone 3: This zone again stresses the need for reduced vegetation, again to help create a break that makes it difficult for a fire to travel near a structure. Studies have shown that even an intense wildfire 100 feet away from a structure may do little damage if there is not enough fuel for the fire to travel to the structure. However, more studies are being conducted in research labs around the

world on this issue. Again, guidelines to provide direction for plant spacing, both horizontally and vertically, exist in the same resources as mentioned above in the Zone 2 discussion.

Item #45 in the COA from the Fire Department state that all buildings shall comply with Public Resources Code (PRC) Section 4290 and 4291 defensible space standards. As stated above, these guidelines are readily available on a number of websites, including CAL FIRE's.

Sprinklers: Another safety factor to be incorporated into this complex is a fully designed interior sprinkler system in accordance with the National Fire Protection Association's Standard 13, which is the recognized standard for the installation of sprinkler systems. This system will include sprinkler protection even in enclosed spaces such as the attics. While this system will not protect the complex from an encroaching wildfire, it provides a high level of safety that is proven to save lives, and prevent a potential fire ignition within the structures from becoming a fire exposure that could escape and threaten the surrounding landscape. Therefore, this system provides a high level of protection to ensure it will not pose a risk to start a wildfire itself.

Evacuations: A final comment regarding wildfire safety pertains to a potential evacuation of the complex. The applicant added a secondary means of egress to address comments by the Fire Chief relating to emergency evacuation. There have been many comments suggesting concern over the normal traffic flow from this secondary egress route. As designed, it is intended to be a right turn only when leaving the complex, and has been correctly pointed out that this is the opposite direction from the potential flow of other evacuees as they head toward Highway 49/20.

I would like to state that this right turn only traffic pattern is designed to ease traffic flow on a normal day to day occurrence. But evacuating a community in front of an oncoming wildfire is anything but normal. Day to day "normal" traffic patterns can – and routinely are - immediately abandoned in situations such as this, and in the case of Ridge Road, it is virtually a guarantee that law enforcement, in helping guide evacuees toward Highway 49/20 will utilize all lanes to go in one direction toward the highway. For this reason, I strongly believe that the addition of this secondary egress with right hand turn only configuration will allow for a faster evacuation of the complex as all traffic will be directed to travel the short distance to the east toward the highway onramp, utilizing all lanes of traffic headed in one direction. Based on this assumption (acquired from many years of dealing with evacuation plans such as this in numerous wildfires around the state), I believe the evacuation issues that have been raised in some public comments do not consider how traffic operations are modified during emergencies and that the addition of the secondary access allows for quicker evacuation of the complex.

CONCLUSION:

This project has an opportunity to create a complex that is composed of highly fire resilient structures, surrounded by a more fire resistive landscape, which can help reduce the likelihood of a wildfire from igniting these structures. Compared to the existing site conditions, it is my opinion that by constructing these highly fire resilient structures that include life-saving sprinkler systems that can help reduce the likelihood of an ignition in this complex from escaping to the surrounding area, coupled with a well-planned and maintained fire resistive landscape around the complex,

this project can potentially serve to provide a higher level of fire safety for the surrounding neighborhood than leaving the site as it is. SB-35 was written to apply directly to sites and projects such as this. I applaud the applicant on meeting the requirements set forth, and proposing such a thoughtful and appropriate project on this site. By meeting the requirements set forth in the COA, this project will comply with SB-35, specifically for wildfire and life safety standards as required in CBC Chapter 7A, and PRC Sections 4290 and 4291.

I thank you for this opportunity to provide a review of this project as it relates to SB-35, and to provide additional insight and recommendations to improve the wildfire safety of this development. I wish the developers and Nevada City all the success possible for this project.

Prepared by: David Shew, Owner/CEO
Wildfire DefenseWorks

A handwritten signature in black ink that reads "David B. Shew". The signature is written in a cursive style with a large, looped initial "D".

David Shew Consultant, LLC

WILDFIRE DEFENSEWORKS

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BACKGROUND AND VISION

During an exceptional 32 year career with CAL FIRE, I gained expertise in wildfire behavior, operational control, fire science, fire prevention actions and methodologies, as well as government regulations and processes. I am committed to identifying solutions to extreme wildfire impacts to communities and human lives, with a focus on reducing the risk of structure ignitions from embers, land use planning efforts, and increasing resiliency from wildfires for both the natural and built environment.

CONSULTING

- Wildfire DefenseWorks established in August, 2018
- Providing expert advice to insurance and re-insurance companies on wildfire risk analysis models.
- Helping communities join Firewise USA with the National Fire Protection Association.
- Author of numerous wildfire risk assessment reports for large landowners and communities concerned with their exposure to potential wildfires, with focused steps to help reduce these risks.
- Guest lecturer on wildfire issues at Stanford University, UC Berkeley, MIT, and the Rand Corporation.
- Board of Directors, California State Fire Safe Council.
- Board of Directors, RSG 3D, an international manufacturer of fire resilient construction panels.
- Presenter at numerous local, state, national and international conferences on wildfire issues.

EMPLOYMENT HISTORY

CAL FIRE / Office of the State Fire Marshal (OSFM)

Staff Chief:	Division of Planning and Risk Analysis:	4/2013 – 7/31/2018
	California Strategic Fire Plan, Land Use Planning, California All Incident Reporting System (CAIRS), Wildland Pre-Fire Engineering, Pre-Fire Planning and GIS State Responsibility Area Fire Prevention Fee Program	

CAL FIRE / Sonoma–Lake–Napa Unit (LNU)

Assistant Chief:	Administrative Division Chief	7/2012 – 4/2013
	South Division Operations Chief	6/2009 – 7/2012
Battalion Chief:	Special Operations Chief, Napa County Fire Department	1/2007 – 6/2009
	Napa Battalion, LNU	1/2002 – 1/2007
	Napa County Fire Marshal, LNU	10/1998 – 1/2002

CAL FIRE / Nevada-Yuba-Placer Unit (NEU)

Fire Captain:	Fire Protection Planner for Nevada County	2/1997 – 10/1998
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CAL FIRE / Santa Clara Unit (SCU)

Fire Captain:	Sunshine Station, Contra Costa County	7/1993 – 2/1997
Fire Engineer:	Sunshine Station, Contra Costa County	8/1989 – 7/1993
Firefighter II:	South Santa Clara County Fire Protection District	5/1988 – 8/1989
Firefighter I:	Seasonal Firefighter, Sonoma County	5/1986 – 10/1987

EMPLOYMENT HISTORY (continued)

Architect

David Shew, Architect, The Sea Ranch, CA
Dan Levin, Architect, The Sea Ranch, CA
Herron + Rumansoff Architects, Hemet, CA

12/1986 – 10/1996
2/1984 – 12/1986
8/1981 – 2/1984

PROFESSIONAL EXPERIENCE, RELEVANT SKILLS, AND AWARDS

- Leading expert in understanding structural ignitions from wildfires, land use planning issues, defensible space programs, and best practices for wildfire mitigation for communities and property owners
- 32 years' experience with *CAL FIRE* in State and Local Assignments, both Operational and Administrative positions
- Assigned to Office of the State Fire Marshal for 5 years, overseeing statewide fire prevention programs
- Many presentations to Board of Forestry and Fire Protection, California Public Utilities Commission, California Office of Insurance, Offices of Emergency Services, and others
- Recipient of *CAL FIRE* Director's Outstanding Achievement Award – 2014 and 2015
- Awarded Governor's Medal of Valor in 2007 from Governor Schwarzenegger
- Served as Lead Cadre member for *CAL FIRE* Supervision 2 and Supervision 4 Courses for 20 years
- Type I Information Officer, Incident Command Team 3, functioning in numerous major incidents throughout California for 11 years
- Established new Auto Aid Agreements with surrounding local agencies in Napa County
- Provided Leadership during extensive reorganization of Napa County Fire Department, including new MOU and operating policies between volunteer agencies and *CAL FIRE* / NCFD personnel
- Instrumental in implementing new Fire Protection Plans, coordinating Community Groups, Local Agencies, and County Governments in both Nevada County and Napa County
- Served 10 years on The Sea Ranch Volunteer Fire Department, 2 years as Assistant Chief
- Instructor for numerous courses for *CAL FIRE* on various subject matters throughout career, with a focus on Leadership and Supervision
- Architectural background has provided exceptional insight in structural details for fire resiliency, inspections, prevention, and fire planning programs, as well as experience in managing large projects with strict budgetary constraints
- Elder, First Presbyterian Church, Napa

EDUCATION and TRAINING

Bachelor of Architecture – University of Cincinnati, 1981

Architectural License – State of California, #C-018180 (Currently Inactive)

Executive Fire Officer Program – National Fire Academy, 2011 - 2015

Lifetime Teaching Credential – California Community Colleges, 1982

Fire Service Related Training – Numerous Certificates from both *CAL FIRE*, State Fire Marshal, and other related organizations such as National Fire Protection and the International Association Fire Chiefs

Continuing Education – Fire Prevention Engineering, UC Davis, Attended several classes at the National Fire Academy, and continue to attend training workshops, meetings and national conferences

Professional Presentations – Presenter of Fire Prevention related topics at State and National Conferences such as ESRI User's Conference (Plenary Presentation, National Safety Conference, 2015), National Fire Protection Association Conference and Expo, Fire Rescue International, International Association of Fire Chiefs Wildland Urban Interface Conference, International Association of Wildfire, California Nevada Hawaii Annual Wildfire Conference, Western Fire Chiefs Association, Cal Chiefs Fire Prevention Officers Workshop, and others