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Via email to ELowe@sandiego.gov

Elyse Lowe, Director
Development Services Department
122 First Ave.
San Diego, CA 92101

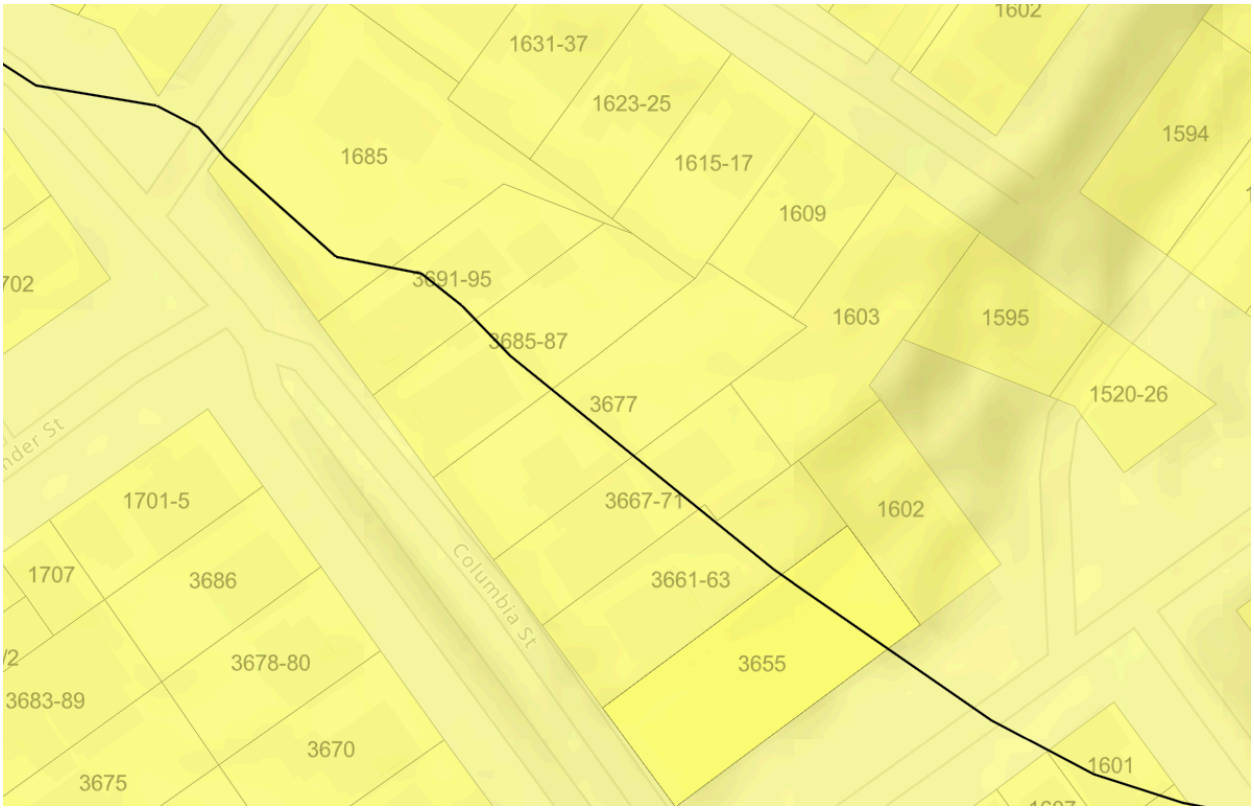
Re: Proposed Celine Residences Project at Mission Hills

Dear Ms. Lowe:

On behalf of Mission Hills Cares, we provide the following comments regarding the Proposed Celine Residences Project at Mission Hills ("Project") at 3677, 3685, and 3687 Columbia Street, San Diego, CA 92103. Should the Project proceed, it would violate the State Mining and Geology Board's policy against erecting structures for human occupancy on fault traces, as detailed below. As such, this Project may not be approved. We have also identified numerous issues relating to the incentives and waivers requested by Elda Developments ("the Applicant") pursuant to the City of San Diego's ("City") Complete Communities Program.

I. The Project is Proposed on an Active Fault in Violation of the State Mining and Geology Board's Policy

This project is proposed to be sited at 3677 and 3685/3687 Columbia Street. These parcels are located entirely within a fault zone, shown in yellow below, and sit upon an active fault trace, the Rose Canyon Fault, as identified by the black line:



(California Geological Survey, Earthquake Zones of Required Investigation.)

The Alquist-Priolo Earthquake Fault Zoning Act is applicable, as the project is sited within a delineated earthquake fault zone. (*See* Pub. Res. Code § 2621.5(b).) The Alquist-Priolo Earthquake Fault Zoning Act provides, in part, "[t]he approval of a project by a city or county shall be in accordance with policies and criteria established by the State Mining and Geology Board and the findings of the State Geologist." (Pub. Res. Code § 2623(a).)

The Policies and Criteria of the State Mining and Geology Board provide:

> **No structure for human occupancy, identified as a project under Section 2621.6 of the Act, shall be permitted to be placed across the trace of an active fault**. Furthermore, as the area within fifty (50) feet of such active faults shall be presumed to be underlain by active branches of that fault

> unless proven otherwise by an appropriate geologic investigation and report prepared as specified in Section 3603(d) of this subchapter, no such structures shall be permitted in this area.

(Cal. Code Regs., tit. 14, § 3603, subd. (a), emphasis added; *see also* Cal. Geological Survey, Special Publication 42, Revised 2018.) The Alquist-Priolo Earthquake Fault Zoning Act defines "project" as structures for human occupancy, with the exception of certain single-family structures. (Pub. Res. Code § 2621.6, subd. (a)(2).)

For development in fault zones, *but not directly on fault lines*, the State Mining and Geology Board requires the applicant to include a geologic reported prepared by a geologist registered in the State along with its application for a development permit. (Cal. Code Regs., tit. 14, § 3603, subd. (d).) "The required report shall be based on a geologic investigation designed to identify the location, recency, and nature of faulting that may have affected the project site in the past and may affect the project site in the future. The report may be combined with other geological or geotechnical reports." (*Ibid*.) A State-registered geologist, retained by the lead agency, will then evaluate the reports and advise the lead agency. (Cal. Code Regs., tit. 14, § 3603, subd. (e).)

Here, the Applicant has elected to prepare a geological report, perhaps based on the mistaken belief that such a report could allow the project to proceed despite its location atop a fault trace. In an email dated January 6, 2025, Development Project Manager Francisco Mendoza provided the following update: "At this point, the project has passed the focused preliminary review and has moved on to the EO2-CCHS Now program to be reviewed as a full project for all program, building code, and public safety code requirements. The *geotechnical issues may still present an issue to the applicant*, and it is up to the applicant to determine how to handle those issues within the allowances of the building and public safety codes." (Emphasis added.)

The Project's geological report has yet to be released. As of March 27, 2025:

> 'Geocon' has taken over the project from 'Verdantas' *to do the additional subsurface fault investigation deemed necessary to provide optimal coverage per*

> *the City's Guidelines for Geotechnical Reports*. The fault investigation was logged by a CA licensed Engineering Geologist and the need for an additional geologist to review is not necessary. In conclusion, the project at 3677 Columbia St has met all State and City geotechnical requirements at this time. Please note, we will be placing a Tier-2 hold on the building that will not allow for foundation inspections until we have received an interim as-graded report that *includes complete logging of the excavation to confirm the absence of faults*.

(Email from Development Project Manager, Amir Taleghani, emphasis added.)

The Applicant appears to be proceeding as if it is yet to be determined whether there is a fault trace. However, the existence of the fault has already been determined by the California Department of Conservation. The State Mining and Geology Board does not provide an option for applicants to ignore the policy against building on fault traces merely because the applicant has prepared a geological report. Rather, the policy is clear: a structure for human occupancy *may not be built on a fault trace*. Any determination that this Project would be permitted by the State Mining and Geology Board's policies would be erroneous.

II. The City Should Deny the Applicant's Requested Waivers and Incentives

A. Background on the Complete Communities Program

The Complete Communities Program offers applicants the ability to waive certain zoning restrictions and other requirements in exchange for the provision of affordable housing. "The applicant intends to utilize the Complete Communities Program. 40% of the units allowed by the underlying base zone will be provide (sic) as affordable units in at (sic) the AMI levels required by the program." (PRJ-1113794, Prelim Review Assessment Letter, cmt. 5.) "The required affordable unit contribution per SDMC 143.1015(a) shall be 2 very low income unit (sic), 2 low income units, and 2 moderate income units." (*Id.* at cmt. 93.)

A development "that includes at least 20 percent of the pre-density dwelling units for lower income households" shall be entitled to two incentives and unlimited waivers. (S.D. Muni. Code § 143.1010 subds. (h)(4), (i)(3).) An incentive can be either a "deviation to a *development* regulation, with the exception of any regulations or requirements of this Division" or "[a]ny other incentive proposed by the *applicant*, other than those identified in section 143.1010(h)(2), that results in identifiable, actual cost reductions." (S.D. Muni. Code § 143.1010 subd. (h)(1).)

"A waiver means a request by an *applicant* to waive or reduce a *development* standard that physically precludes construction of *development* meeting the criteria of this Division." (S.D. Muni. Code § 143.1010 subd. (i)(1).) Waivers may be used to seek relief from base-zoning-provided maximum structure height, maximum lot area, street frontage requirements, maximum lot coverage, and maximum "front *setback* or street side *setback if* the maximum is less than 20 feet and the development is constructing a public space." (S.D. Muni. Code § 143.1010 subd. (c).) Waivers may also be used to preclude the application of overlay zone regulations. including maximum permitted residential density.

A developer is generally entitled to waivers and incentives unless the City makes a "written finding of denial based upon substantial evidence of any of the following" (S.D. Muni. Code § 143.1010 subds. (h)(3)(A) [incentives] & (i)(2) [waivers]):

- The incentive would have a "specific adverse impact upon public health and safety" or the waiver "would have a significant, quantifiable, direct, and unavoidable impact upon health or safety." (S.D. Muni. Code § 143.1010 subds. (h)(3)(A)(ii) [incentives] & (i)(2)(A) [waivers].)
- The incentive or waiver would have an adverse impact on real property listed in the California Register of Historical Resources. (S.D. Muni. Code § 143.1010 subds. (h)(3)(A)(ii) [incentives] & (i)(2)(B) [waivers].)
- The incentive or waiver would be contrary to state or federal law. Requested waivers or incentives "shall be analyzed in compliance with the California Environmental Quality Act" and no waiver or incentive "shall be granted without

such compliance." (S.D. Muni. Code § 143.1010 subds. (h)(3)(A)(iii) [incentives] & (i)(2)(C) [waivers].)

- "Within the Coastal Overlay Zone," the incentive or waiver "would be inconsistent with the resource protection standard of the City's Local Coastal Program or the environmentally sensitive lands regulations, with the exception of density." (S.D. Muni. Code § 143.1010 subds. (h)(3)(A)(iv) [incentives] & (i)(2)(D) [waivers].)

Incentives may also be denied if the City makes the written finding that "*[t]he incentive is not required in order to provide for affordable housing costs*." (S.D. Muni. Code § 143.1010 subd. (h)(3)(A)(i), emphasis added.) Waivers, but not incentives, may be denied if the City makes the written finding that "[w]ithin the Airport Land Use Compatibility Overlay Zone, the waiver would be inconsistent with any of the noise compatibility, safety compatibility, aircraft overflight notification requirements, or airspace protection compatibility regulations in Sections 132.1510 through 132.1525." (S.D. Muni. Code § 143.1010 subd. (i)(2)(E).)

Accordingly, waivers and incentives are similar and may be denied by the City on similar grounds. However, a key difference is that incentives are available to seek relief from standards that would make the project *economically* infeasible, whereas waivers are available to seek relief from standards that make the project—meaning the project including its density bonuses—*physically* infeasible. Incentives must be tied to the provision of affordable housing, and waivers are intended to allow the development to proceed despite applicable zoning regulations where those zoning regulations would preclude the development of the project in accordance with the granted incentives and density bonuses.

B. Application of the Complete Communities Code to the Project

Here, the Applicant has requested two incentives and numerous waivers. (PRJ-1126254, Project Issues Report, cmt. 47.) DSD notified the Applicant that its two requested incentives—relief from parking requirements and the granting of a density bonus of 8.0 FAR—did not need to be requested as incentives, because they are already granted by

virtue of the Complete Communities program and the Project's location in a Transit Priority Area. (*Ibid*.)

The Applicant has also requested various waivers, some of which DSD rejected or requested more information for. For example:

- SDMC 131.0443 requires 15–20-foot front setbacks, 5-foot side setbacks, and 15-foot rear setbacks. The Applicant requested a waiver allowing for a 0-foot front setback and 5-foot rear setback. DSD stated that each setback would require its own request and rationalization, and notified the Applicant that it must resubmit these requests. (*Ibid*.; PRJ-1113794, Preliminary Review Assessment Letter, at 1.)
- The Applicant requested a waiver of visibility areas, to which DSD responded that such a waiver cannot be granted absent approval of the City Engineer. (PRJ-1126254, Project Issues Report, cmt. 47.)
- The Applicant requested a waiver of drive aisle width, which DSD denied, citing the risk to health and safety. (*Ibid*.)
- The Applicant further requested a waiver of the requirements for refuse and recyclable materials. DSD also denied this request based on risk to health and safety, but stated that alternative compliance may be allowed. (*Ibid*.)
- The Applicant's requests also included a waiver of maximum structure height and the requirement that balconies be provided, among others. (*Ibid*.)

Notably, the Applicant appears to have conflated incentives and waivers, which are intended to seek relief from economically infeasible and physically infeasible restrictions, respectively. Here, it appears that the Applicant somewhat arbitrarily categorized its requests as incentives or as waivers, as no context was provided regarding the economic need for incentives or the physical need for waivers.

As established above, incentives and waivers may both be denied for health and safety reasons or where they conflict with state or federal law, and incentives may be denied where they are not required to provide affordable housing. Waivers are intended to allow a developer to seek relief from zoning restrictions that would preclude the project from being built in accordance with its density bonus.

DSD has already alerted the Applicant that neither of the requested incentives needed to be requested, so the Applicant is likely to resubmit its requests. This Project is proposed as having 161 units, only six of which will be affordable. Any incentives requested moving forward may be denied if they are not related to the provision of affordable housing, and there is no evidence to support the fact that such dramatic reductions of development standards are necessary to provide for those limited affordable units.

With respect to waivers, the Complete Communities Program authorizes a FAR of 8.0 for this Project, allowing the floor area of the building to be eight times the lot size. Any waivers requested must be necessary to *physically* allow the Applicant to build the Project at this FAR (and in accordance with granted incentives). The Applicant is already entitled to an unlimited maximum structure height by virtue of the Complete Communities Program. Because the Applicant can build *up*, the Applicant's requested waivers of setback restrictions, balconies, and drive aisle width are not necessary, as these restrictions would not physically preclude the development of the Project at 8.0 FAR. Additionally, DSD has already alerted the Applicant that various requests cannot be granted due to health and safety risks, which serves as additional grounds for the City to deny waivers.

Accordingly, the City may deny any incentives not tied to affordable housing once the Applicant resubmits its materials, and is further free to deny waivers where the waivers are not physically necessary. Waivers and incentives that pose a substantial safety risk, such as those already identified as posing a hazard by DSD, should be denied.

III. Undefined Terms in the Complete Communities Code Result in Arbitrary Enforcement of its Provisions

Undefined terms contained within the Complete Communities Code ("the Code") can be interpreted in various ways, resulting in arbitrary enforcement of the Code's provisions.

A statute "is void for vagueness if persons of common intelligence must guess as to its meaning and differ as to its applications." (*Schweitzer v. Westminster Investments, Inc.*

(2007) 157 Cal.App.4th 1195, 1206.) A statute must meet two requirements: "'(1) The statute must be sufficiently definite to provide adequate notice of the conduct proscribed; and (2) the statute must provide sufficiently definite guidelines . . . to prevent arbitrary and discriminatory enforcement.'" (*Benson v. Kwikset Corp.*, (2007) 152 Cal.App.4th 1254, 1269, *citing Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1106.)

The Complete Communities Code provides:

> FAR Tier 2 means any *premises* where any portion of the *premises* is located in a regional or subregional employment area, as identified in the General Plan Economic Prosperity Element, or within a one-mile radius of any **university campus that includes a medical center** and is within a *Sustainable Development Area* that is located in a community planning area within Mobility Zone 3 as defined in Section 143.1103(a)(3).

(S.D. Muni. Code § 143.1001(b)(2), emphasis added.)

The Code does not provide a definition for "university campus that includes a medical center." This phrase is open to vast differences in interpretation. For example, it could be interpreted as applying only to a central university campus that has a medical center on-site, or to a satellite medical center associated with a separate and distant university campus, or even to a satellite non-medical structure (i.e., an off-campus dormitory) associated with a larger university center. Each of these interpretations could be supported by the text of the Complete Communities Code, and the application of each would have starkly different consequences. For example, according to its published campus maps, UCSD considers both off-campus apartments and other satellite structures to be part of the UCSD campus, including the East Campus Medical Center at UC San Diego Health[1]. The East Campus Medical Center is intended to be the "'academic home for [UCSD's] department of psychiatry,'"[2] and would therefore be closely related to the

[1] This medical center was formerly Alvarado Hospital.
[2] Paul Sisson, *Alvarado Hospital Medical Center gets new name: UC San Diego Health East Campus Medical Center*, S.D. UNION TRIBUNE (Dec. 12, 2023),

larger university. This facility is also sited within a Sustainable Development Area, so—given UCSD's decision to expand its campus to this facility—any parcels within one mile of this facility could suddenly become available for a rapid intensification of development under the Complete Communities Code, depending on the interpretation of the Code's ill-defined terms.

The applicability of the Complete Communities Code appears to be subject entirely to the discretion of UCSD and local universities in determining what health facilities will be identified as a larger part of the campus. A reasonable person could not discern which of the possible interpretations of the Code is appropriate, and therefore, enforcement of the Code is arbitrary. As such, the Code is impermissibly and unconstitutionally vague and may not be relied on.

Even assuming that the Complete Communities Code *should* be interpreted as applying to parcels near satellite medical offices, the Code would still fail to advance its goals of providing for accessibility and mobility. The Complete Communities Code is "intended to materially assist in providing adequate housing for all economic segments of the community; to provide a balance of housing opportunities within the City of San Diego with an emphasis on housing near transit; and to encourage use of mobility alternatives through the construction of neighborhood-serving infrastructure amenities." (S.D. Muni. Code § 143.1001(a).) To interpret the Complete Communities as applying to parcels within one mile of a satellite medical facility, as the City has done here, is in conflict with the very purpose of the code, as this interpretation has no bearing on accessibility.

A parcel is not "accessible" merely because it is located within one mile of a satellite medical center associated with a larger university. In this instance, only one corner of one parcel to be used for the Project falls within a one-mile radius of the UCSD Hillcrest Medical Center. In fact, the walk from the Project site to the UCSD Hillcrest Medical Center would be nearly two miles, given the terrain and features of the area. This Project

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http://sandiegouniontribune.com/2023/12/11/alvarado-hospital-medical-center-gets-new-name-uc-san-diego-health-east-campus-medical-center/.

is not accessible or mobility-friendly merely by virtue of its proximity to the UCSD Hillcrest Medical Center.

The application of the Complete Communities Code to parcels within one mile of *any* medical center with university affiliations is misguided and at odds with the purpose of these regulations. Moreover, the various potential interpretations of the term "university campus that includes a medical center" result in a regulation that is arbitrarily enforced, and therefore unconstitutionally vague.

IV. The Complete Communities Code Requires this Project to be Processed Discretionarily

The Complete Communities Code provides:

> Standards for Buildings over 95 in Height of Premises over 20,000 Square Feet in Area . . . Buildings over 95 feet in height located on a premises over 20,000 square feet in area, outside of the Centre City Planned District, shall comply with the following requirements: **For a development that includes one or more structures over 95 feet in height**, or development which exceeds the height limit of the base zone, whichever is greater**, a Neighborhood Development Permit decided in accordance with Process Two is required**.

(S.D. Muni. Code § 143.1025(c)(1), emphasis added.)

Premises are defined as "an area of land **with its structures** that, because of its unity of use, is regarded as the smallest conveyable unit." (S.D. Muni. Code § 113.0103, emphasis added.) Thus, the Complete Communities Code requires discretionary (i.e., Process Two) review for a project that is over 95 feet in height and exceeds 20,000 square feet including the square footage of both the parcel and the structures sited there.

This Project far exceeds 20,000 square feet in area and 95 feet in height. The building would be nearly 270 feet tall and would include 107,875 square feet worth of residential units alone, as well as 36,941 square feet of garage space and 4,469 square feet of

amenities. (Celine Residences at Mission Hills Investor Package, pp. 20-21.) Accordingly, a Neighborhood Development Permit decided in accordance with Process Two is required.

V. Conclusion

The Applicant proposes to construct 160 units on top of an active fault trace, directly in conflict with the State Mining and Geology Board's policies against such construction. Accordingly, this Project *may not be approved* at this location. Furthermore, the Applicant has requested numerous incentives and waivers in exchange for the provision of affordable housing, yet these incentives are not tied to affordable housing and the waivers are not physically necessary to allow the Project to be developed. Numerous requested waivers also pose a risk to health and safety, as already identified by DSD. For these reasons, the City should deny these waivers, and deny any incentives proposed in the future that are not tied to affordable housing. Furthermore, the Complete Communities Code's definition of FAR Tier 2 parcels is unconstitutionally and impermissibly vague and results in arbitrary enforcement, as seen with respect to this Project. As such, the definition should be voided and may not be relied upon here. Additionally, the Complete Communities Code requires this Project be processed discretionarily, not ministerially.

Thank you for your consideration of these comments.

Sincerely,

Isabella Coye
Josh Chatten-Brown
Kathryn Pettit

cc:

California State Mining and Geology Board (smgb@conservation.ca.gov)
Councilmember Stephen Whitburn (*StephenWhitburn@sandiego.gov*)