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July 8, 2026

VIA E-MAIL zab@cityofberkeley.info

Zoning Adjustments Board
1947 Center Street, 2nd Floor
Berkeley, CA 94704

Re: 2700 Shattuck - #ZP2024-00589

Dear Chairperson Gaffney and members of the Zoning Adjustments Board:

Hanson Bridgett LLP represents the applicant for the above-referenced matter. This letter is submitted to clarify to the Zoning Adjustments Board ("ZAB") that the applicant has requested a total of three concessions, as authorized for this project pursuant to state density bonus law, given that the project reserves 15% of the base density units for very-low income households.¹

The staff report, on page 2, includes a section titled "Concessions Requested" but only identifies two of the three concessions that the applicant requested. The staff report subsequently states on page 8 that the applicant "also requested to use a concession for exemption from BMC 23.328.030(B)" but then concludes erroneously that "the City's Inclusionary Housing requirements are not an eligible concession under the density bonus law."

To be clear, the applicant included the following, third concession request as part of the project application: Waiver of the City's local inclusionary requirements that exceed the project's reservation of 38 units onsite for very-low income households pursuant to state density bonus law. This concession effectively waives the City's local requirement to reserve units onsite for low-income households, along with any associated inclusionary in-lieu fees. The applicant submitted correspondence documenting the basis of this exemption during the City's processing of this project.

In addition, we note that this project is subject to the statutory CEQA exemption for urban infill projects ("AB 130"). The applicant's AB 130 CEQA exemption request triggered a requirement for the City to initiate consultation with California Native American tribes. This, in turn, triggered a requirement under the Permit Streamlining Act ("PSA") for the City to approve or disapprove the project within 30 days from the conclusion of the AB 130 tribal consultation.²

Under the City's timeline, tribal consultation concluded on June 2, 2026. As such, the PSA clearly establishes that this project was approved, as a matter of law, on July 2, 2026:

In the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the [30-day] time limits required by [the PSA,

¹ Gov. Code § 65915, subd. (d)(2)(C).

² Gov. Code § 65950, subd. (a)(7)(A).

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including Government Code section 65950], the failure to act shall be deemed approval of the permit application for the development project.³

Courts have upheld the 30-day reviews and associated Permit Streamlining Act deadlines, such as the above-referenced hearing requirement, as mandatory timeframes that must be met within the 30-day timeframe.⁴

In conclusion, the project was deemed approved as a matter of law, on July 2, 2026, and the deemed approval includes the third concession that was presented to the City as part of the project application. The applicant respectfully requests that the ZAB issue findings memorializing that the project has been deemed approved, and that such approval includes the applicant's concession request to waive the City's inclusionary housing requirements, and associated in lieu fees, that exceed the project's reservation of 38 units onsite for very-low income households pursuant to state density bonus law.

If the ZAB were to take action to purportedly approve the project as presented in the agenda packet, the City will be taking action to unlawfully unwind the project from its statutory approval in violation of the PSA, and unlawfully denying the applicant's third concession request in violation of state density bonus law. If the ZAB chooses to take such action, the applicant respectfully requests that the ZAB issue those findings and direct staff to promptly prepare a Notice of Decision, so that a final determination may be issued via an appeal to the City Council.

Sincerely,

Hanson Bridgett LLP



Robin R. Baral
Partner

RRB

cc: City Attorney
Client

³ Gov. Code § 65956.

⁴ *Orsi v. City Council* (1990) 219 Cal.App.3d 1576.