1201 San Pablo Ave. Project: Summary Response to Appeal, by James Hart, Applicant (Date of submittal = 04 March 2005)

1. The project is modest:
   FAR = 2.28; FAR permitted = 3.00.
   FAR is 76% of what is permitted, without density bonus.
   With the 15% density bonus to which this project is entitled, **a 50% larger project could have been proposed, without variance.**

2. The project:
   (a) Is in Gilman/San Pablo node, where more intense development is encouraged.
   (b) Conforms to district height limits and property line setbacks.
   (c) Conforms to the West Berkeley Plan.
   (d) Provides much needed market rate and inclusionary housing.
   (e) Implements smart growth and urban infill along a major transportation corridor.

3. "Fifth Floor":
   (a) Consists only of one bedroom and bathroom.
   (b) Removing the bathroom and reducing floor area to meet definition of a mezzanine would yield an inferior bedroom, while providing no benefit to Appellants.
   (c) Exists only on western units; and is within district's 50' height limit.
   (d) Elimination of this floor would not affect the building's contours.

4. In all meetings with Applicant, Design Review, and ZAB, Appellants have objected that the project is too large and too dense. They propose to downsize the project as follows:
   (a) *Property line setbacks*
      Status: Staff and ZAB have applied zoning code regulations on property line setbacks, in a manner consistent with past applications.
   (b) *Traffic issues*
      Status: City traffic engineer and private consultant state that traffic impact is minimal.
   (c) *Issues of state density bonus and Berkeley inclusionary regulations*
      Status: **Appellant's arguments are in error, according to the Department of Housing and Community Development, State of California.** See attached 10 July 2006 letter from Deputy Director Cathy Creswell, addressed to Applicant and this specific project, in response to attached letter from Applicant to Creswell.

STATE OF CALIFORNIA -BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
1800 Third Street, Suite 430
P. O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3177
FAX (916) 327-2643

July 10, 2006

Mr. James E. Hart
1337 Josephine Street
Berkeley, CA 94703-1113

Dear Mr. Hart:

RE: Application of State Density Bonus Law

This letter responds to your May 24, 2006 correspondence regarding a project and request pursuant to Government Code Section 65915 et. seq., State density bonus law (SDBL). The Department of Housing and Community Development (Department) appreciates the opportunity to respond to this inquiry.

The Department understands the application proposes to reserve 20 percent of the units for occupancy by moderate-income households, and requests the two concessions or incentives to contribute to the feasibility of the housing development as authorized by SDBL. The units for moderate-income households must meet the criteria specified in subsections (b) and (c) of Section 65915 in order to be eligible for the use of SDBL.

Local governments have a responsibility to significantly contribute to the feasibility of developing housing for lower- and moderate-income households, including granting incentives or concessions even where an applicant has not elected to accept a density bonus under SDBL. This responsibility is expressed in the intent language of SDBL, Government Code Section 65917, as well as other State housing and planning statutes including housing element law, in particular, Government Code Sections 65583(c) 2 and 3 and Government Code Section 65913 et. al. Further, subsection (g) of Section 65915 expressly allows an applicant to elect a lesser density bonus. Although subsection (b) states a city or county shall grant a density bonus and concessions or incentives for qualifying projects, an applicant is not required to request both a density bonus and a concession in order to be eligible for the other. Interpreting the statute to require a developer to request both a density bonus and a concession or incentive is clearly inconsistent with subsections (b) and (g), and is further contradictory to the intent of the law. This is particularly true whereby the requirement to incorporate the additional bonus units would jeopardize project feasibility.

Further, an applicant is not explicitly required to submit financial data such as a financial pro-forma under SDBL and particularly where the application is requesting the entitled concessions and incentives under subsection (d) of Government Code Section 65915. However, an applicant might be required to submit general financial data to demonstrate a waiver or reduction is necessary to make housing units economically feasible, but when requesting a waiver or reduction under subsection (e) due to local development standards that preclude a development eligible under SBDL.

The Department hopes this information is helpful to address housing needs in Berkeley. If you have any questions or need additional assistance, please contact Paul McDougall at (916) 445-5854.

Sincerely,

Cathy E. Creswell

Cathy E. Creswell
Deputy Director

James E. Hart
1337 Josephine Street
Berkeley, CA 94703-1113
(510) 527-2016
jamesehart@comcast.net

24 May 2006

Cathy E. Creswell, Deputy Director
Department of Housing and Community Development
1800 Third Street, Suite 430/P. O. Box 952053
Sacramento, CA 94252-2053

Re: State Density Bonus Law

Dear Ms. Creswell,

I am a contractor/developer in Berkeley. On 06 April 2006, the Zoning Adjustments Board (ZAB) of the City of Berkeley voted to approve my mixed use project, consisting of 30 residential condominiums above five ground floor retail spaces. In my application to the City, I asked for no density bonus. I did, however, ask for and was granted two concessions.

ZAB's approval of my application has been appealed to the City Council by a group of neighbors, who oppose a building of this size. However, since the project conforms to zoning regulations (e.g., it is at ¾ of permitted FAR) and provides that 20% of the units be sold as moderate income housing, these neighbors have appealed on whatever bases they hope might be successful.

The first two of their five arguments are based on state density bonus law:

(1) Since the project asks for no density bonus, it is not entitled to any concessions.

Recently I have had conversations with Donald Thomas, who has kindly faxed me a copy of your letter of 24 February 2006 to Ms. Plowman, where you addressed this same issue regarding her project in Goleta. From your letter, it appears to me that this first point of appeal has no validity.

I have forwarded a copy of your letter to the City Planning Department's senior planner, who suggested that I see if I could obtain from you a similar letter specifically addressing my project. On the chance that this is possible, I am enclosing the staff report approved by ZAB and the neighbors' appeal.

(2) I, the developer, must file financial data justifying the concessions for which I have asked.

From what I have learned from the planning staff and from my reading of the law, I believe that the appeal is in error here, also. Would it be possible for you to address this?

The appeal of my project has been put on the agenda of the City Council for 18 July, where Council can affirm the decision of ZAB, remand the project to ZAB, or schedule a hearing of the appeal.

I shall be deeply grateful for any assistance you can provide on these issues of state density bonus law.

Sincerely,

James E. Hart