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June 16, 2021

Lori Rieger, City Recorder
City of Garibaldi
P.O. Box 708
Garibaldi, OR 97118

Re: Conditional Use Application No. CU-2020-01

Dear Ms. Rieger:

In proceeding with Coastal Housing Solutions' conditional use application following remand from the Land Use Board of Appeals ("LUBA"), the City Council has decided to make its decision on the existing record. This letter provides the applicant's arguments in support of approval, based on evidence in the record.

LUBA's remand was narrowly focused on the first assignment of error: LUBA agreed with the petitioner that the City Council's decision document did not comply with ORS 227.173(3), in that it didn't adequately identify relevant facts and explain the justification for its approval based on those facts. LUBA also sustained, in part, the second assignment of error. Specifically, LUBA agreed that the City's findings were not adequate to explain how the 40 percent restriction in GMC 18.10.050(G) was satisfied.

Both of these inadequacies can be fixed by simply using the materials in the record — the applicant's narrative and the Staff Report — and incorporating them into the City's final decision to approve the application. On April 10, 2021, we submitted to you a draft decision document that does just that, together with the two documents to be incorporated. We urge the City Council to make use of the draft decision to address LUBA's concerns and reissue its approval.

Because LUBA elected not to address petitioner's third assignment of error, we want to bring that to the City's attention as well.¹ That assignment concerned the requirement in GMC 18.185.020(A) that the proposed use be consistent with "the policies in the comprehensive plan." The draft decision we provided on April 10 addresses comp plan consistency and supports the finding of consistency with evidence in the record. Much of that evidence underscores the important Goal 10 policy of providing needed housing, especially housing for low- and moderate-income households. For example, Michelle Adler's testimony before the

¹ LUBA denied petitioner's fourth assignment of error.

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Planning Commission spoke to the school district's need for affordable housing options for both employees and for students' families. In addition, Paul Daniel testified that his existing 44 apartments are fully occupied with a waiting list.

It is critical that the Council recognize that this decision is governed by ORS 197.307(4). That law provides that "a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing" (emphasis added).

Nonbinding housing projections, such as Table 6 on page 15 of the Comprehensive Plan, are not "clear and objective standards" and cannot form a legitimate basis for denial of this application. Likewise, petitioner's argument that GMC 18.05.020 somehow supports denial cannot meet the "clear and objective" requirement, because it is a general statement of purpose for GMC Title 18, not a standard of approval — and certainly not a "clear and objective" standard.

Bottom line, this application has met the City's review criteria and standards. References to Comp Plan studies or projections, or to nonspecific statements of purpose, are not clear and objective standards and cannot be grounds for denial.

Finally, and in conclusion, I remind you that all parties in a local government proceeding are entitled to a full and fair hearing. Oregon law protects that right by ensuring that members of city government do not vote on a project against which they have personal bias. Under ORS 197.835(9)(a)(B), LUBA may reverse a decision where a decision maker's bias should disqualify him or her from voting, but the decision maker fails to recuse him or herself. *Torgeson v. City of Canby*, 19 Or LUBA 511, 520 (1990).

As you know, several positions on City Council have changed since the original vote on this application. We hope and expect the Council will make an honest assessment of the impartiality of its members, that members will disclose *ex parte* contacts, and that the Council will be rigorous in addressing any issues of bias.

Please place this letter before the City Council, and do let me know if you have any questions.

Very truly yours,



Jennie Bricker
Attorney for Coastal Housing Solutions, LLC