SUBJECT:

City Council consideration and possible action and/or staff direction relating to changes in the application and/or interpretation of the City’s policies related to state density bonus law. (See July 9, 2014 Item 12A agenda report prepared by Council Member Barth for the specific issues related to this item.)

RECOMMENDATION:

Council consideration and possible action and/or staff direction.

STRATEGIC PLAN:

The action before the Council is discussion and possible action and/or staff direction relating to changes in the application and/or interpretation of the City’s policies related to state density bonus law, which relates to the Community Planning Focus Area of the City’s Strategic Plan.

FISCAL CONSIDERATIONS:

There are no fiscal impacts associated with this report.

BACKGROUND:

On July 9, 2014, Council Member Barth presented a Council-initiated item relative to the City’s Density Bonus Ordinance. Council Member Barth proposed, as reflected in Attachment A, that the Council direct the Planning Commission to interpret the following relative to density bonus regulations.

- Should fractional units be rounded down?
- Should environmental constraints (i.e., detention basin) be subtracted when calculating developable acreage?
- Should affordable units be required to be the same size, bedroom count and amenities as market rate units?
- Should a pro-forma be required for developer incentives and concessions?
- Should an Environmental Impact Report be required for all density bonus projects?
Following substantial community input and comment at the hearing, the Council directed that the matter be placed on the agenda for the next City Council hearing to allow the Council to discuss and take possible action on the above listed of items.

ANALYSIS:

A. Rounding Fractional Units

Section 30.16.010(B)(1) of the Encinitas Municipal Code (EMC), which can be found in Attachment B, currently states the following regarding rounding the base density calculation.

“In determining the mid-range or maximum number of dwelling units allowed for a property. Multiply the net acreage by the mid-range density or maximum density….Any fraction of a dwelling unit shall be reduced to the next lower whole unit not less than one.”

An explanation/reason for why the City currently rounds up fractional units contrary to the current code can be found in Attachment C.

A survey of local codes in neighboring jurisdictions found that several jurisdictions require fractional units to be rounded down when the fraction is <0.5; otherwise the unit is rounded up. Jurisdictions that follow this model include the County of San Diego and the City of Carlsbad. Jurisdictions that require that units be rounded down irrespective of the fractional unit value include the cities of Lemon Grove, La Mesa and Imperial Beach. It should be noted that this survey is limited given the short timeframe to return to the Council.

Policy Question: Should the Council apply the current rounding provisions as outlined in EMC Section 30.16.010(B)(1) or continue its current practice?

B. Environmental Constraints

The definition of the Net Acreage under the EMC, which can be found in Attachment D, is reflected below.

“NET ACERAGE” for the purpose of calculating density, shall mean the slope adjusted unconstrained gross acreage within the subject property. Constrained acreage shall include flood plains, beaches, permanent bodies of water, significant wetlands, major power transition easements, railroad track beds, existing and future right of way and easements for public or private streets/roads, and the area contained within the panhandle portion of a panhandle lot in a zone where the minimum required lot size is 10,000 square feet or less.”

Section 30.16.010(B)(2) of the EMC, which can be found in Attachment E establishes the development standards for residential zones and describes Net Acreage similar to the above definition, with the following notable addition: “Environmental constraints may reduce density.”

It is unclear what the impacts/implications would be should the Council interpret this sentence to mean that environmental constraints (detention basins) are to be deducted...
from the Net Acreage calculation. Specifically, what constitutes “environmental constraint?” Fire buffers? Coastal bluff setbacks? Inland bluff setbacks? All sensitive habitats? Depending upon how inclusive the definition, by including environmental constraints as part of the net acerage calculation may adversely impact our ability to implement the General Plan and may affect a property owner’s right to use their property.

At the time this staff report was being prepared, Staff did not find another jurisdiction that included “environmental constraints” as part of net acerage calculation.

**Policy Question:** Should staff, as part of the Density Bonus Ordinance Update, evaluate and assess the impacts of amending the “Net Acreage” definition in the EMC to include environmental constraints, including detention basins?

C. **Size of Affordable Units**

The State Density Bonus Law (Government Code Section 65915, located in Attachment F) is silent on the issue of design and minimum living area requirements of an affordable unit. Furthermore, EMC Section 30.16.020 (Density Bonus Ordinance, located in Attachment G) lacks any specific design requirements for affordable units that are part of a density bonus project. EMC Section 24.21 (Inclusionary Housing Regulations, located in Attachment H) also lacks any specific development standards for affordable housing units.

However, in the absence of specific standards requiring a minimum size limit for any affordable unit, the Department, as standard practice, has been requiring that the applicant enter into and record an Affordable Housing Regulatory Agreement. This agreement is to be provided by the City, which contains requirements for the design, phasing, construction, marketing, occupancy, and maintenance of any required affordable unit.

This agreement is required for any affordable units, whether the units are part of a density bonus project or inclusionary housing project.

It has been longstanding City practice that the affordable unit must have a minimum size of 1,500 square feet of living space with a minimum of 3 bedrooms and 2 baths and a 2-car garage. The affordable unit is also required to have an exterior appearance that is compatible with the market rate units and units in the surrounding neighborhood and to provide interior amenities that are comparable to the market rate units within the subdivision/development.

Constructing a “market rate unit” and expecting a “very-low” income household to maintain such unit is counterproductive given the cost associated with the long-term maintenance of a larger home. The cost to maintain the affordable unit and lot should be proportionate to the income of the household. Otherwise, the unit would no longer be ‘affordable.’

A survey of local codes in neighboring jurisdictions found that the City of San Diego and County of San Diego’s density bonus regulations include development standards for affordable units. While staff did not find that these jurisdictions require that the affordable units be the same size as the market rate units, we did find that the City of
San Diego and County do require that affordable units have comparable bedroom mix and amenities as the market-rate units.

**Policy Question:** Should the Density Bonus Ordinance Update include the requirement that the affordable dwelling unit be substantially the same size as the market rate unit with the same amenities, including number of bedrooms and bathrooms?

**D. Requiring a Pro-Forma**

“Incentives” under State Density Bonus Law (§65915(d)(1); §65915(k)) are reductions in design standards or other regulations (those that affect the cost of the project) potentially making the project, at the density authorized under State law, economically infeasible for the developer. In addition to an increase in density, the City is required under State law to provide one or more “incentives” for density bonus projects.

A financial pro-forma is a form that is submitted to the City as part of the density bonus project whenever the applicant requests any incentives. The pro-forma requires financial information which compares revenue, cost, and income of the project with and without reserved or bonus units. The financial information must demonstrate that the requested incentive results in identifiable, financially sufficient, and actual cost reductions that contribute significantly to the economic feasibility of the reserved affordable units.

Conversely, “waivers” are yet another form of assistance under State law (Government Code §65915(e)(1); §65915(e)(2)) that are separate from incentives. A waiver is a reduction in development standards (those that directly regulate density) potentially making the construction of the project, at the density allowed under State law, physically infeasible, if not approved. For example, a waiver can include reductions in setbacks, lot configuration and lot size. There is no limit in the number of waivers an applicant can request.

As part of the current review process, the developer must justify to the City the need for the waiver (written explanation and justification). That justification is reviewed by staff and presented to the decision-maker.

**Policy Question:** Should the Density Bonus Ordinance Update include a requirement that a ‘pro-forma’ be required, that clearly justifies the need for the incentives and waivers, consistent with State law?

**E. Environmental Impact Report**

By itself, density is not a significant impact under the California Environmental Quality Act (CEQA) because State Density Bonus Law allows the density increase. However, with implementation of these density bonus provisions, a project’s increase in density may result in certain environmental effects.

However, the City Council does not have the authority to unilaterally require that ALL Density Bonus projects complete an Environmental Impact Report (EIR). There are legal requirements under CEQA that govern how and when an EIR is warranted for a project, which is completed on case-by-case basis based on the specific facts of the particular project.
F. **Applicability of any Changes**

It should be noted that the State law includes provisions that afford protections to applicants from changes in local land use codes and policies. Specifically, Government Code Section 65915(f) defines “density bonus” as the density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the City.

This code section is important as any changes considered by the Council relative to the items in this Agenda Report can only be applied “point forward,” and cannot be applied retroactively to the Density Bonus projects currently being processed.

**ENVIRONMENTAL CONSIDERATIONS:**

For matters involving interpreting the City’s density bonus regulations, along with the State’s Density Bonus Law, the City Council’s actions are exempt as a ministerial action, pursuant to CEQA Guidelines Section 15268. The City Council may provide policy direction on how its regulations are interpreted. This does not constitute a discretionary action because no new activity is being undertaken, as the decision relates to interpreting existing regulations. This exemption applies to the policy questions of rounding and developable acreage. Deciding the size of affordable housing units is exempt pursuant to CEQA Guidelines Subsection 15061(b)(3), the General Rule, because the size of the affordable housing unit does not increase the intensity of the associated land use when the number of bedrooms is equivalent to a market rate unit and therefore there is no reasonable possibility of significant effect on the environment. Requiring a pro-forma for developer incentives and concessions is exempt because the establishment of administrative policy for future development applications itself is not a project and does not affect the environment, pursuant to CEQA Guidelines Section 15378. The City Council hereby declares that if any single CEQA exemption is for any reason held to be invalid, such decision shall not affect the validity of the remaining exemptions. The City Council further declares that it would have found its other actions to be exempt from CEQA irrespective of the fact that any one or more of the exemptions may be declared invalid.

**ATTACHMENTS:**

Attachment A – July 9, 2014 City Council Agenda Report
Attachment B – EMC Section 30.16.010(B)(1)
Attachment C – March 26, 2014 City Council Agenda Report
Attachment D – EMC “Net Acreage” Definition
Attachment E – EMC Section 30.16.010(B)(2)
Attachment F – Government Code Section 65915 (State Density Bonus Law)
Attachment G – EMC Section 30.16.020 (Encinitas Density Bonus Ordinance)
Attachment H – EMC Section 24.21 (Encinitas Inclusionary Housing Ordinance)
Attachment A
July 9, 2014 City Council Agenda Report
AGENDA REPORT
City Council

MEETING DATE: July 9, 2014

PREPARED BY: Councilmember
Teresa Arballo Barth

DEPARTMENT: CITY COUNCIL
INITIATED ITEM

SUBJECT:
Council initiated item from Councilmember Teresa Arballo Barth regarding Encinitas Density
Bonus Ordinance.

INTRODUCTION:
The state Density Bonus Law has had significant impact on the City of Encinitas.
The Planning Department is currently reviewing and updating the City's Density Bonus
Ordinance.

The application of a number of specific provisions have caused confusion and frustration for the
staff, planning commission, city council and the general public. The planning commission has
authority to interpret zoning regulations under EMC section 30.01.020. I propose that we ask
them to provide input to the staff and Council on the following topics:

1. When the base density results in a fractional unit, should it be rounded up, down, or by
   standard math convention as is used in other city code application (below .5 round down,
   above .5 round up)? (EMC section 30.16.010 (B)(1)

2. If a detention basin or other feature is required to address environmental conditions, should
   they be subtracted from the calculation of developable acreage? (EMC section 30.16.010
   (B)(2)

3. Can the City require that affordable units be substantially the same size as the market rate
   units with the same amenities, including number of bedrooms and bathrooms, consistent
   with our Inclusionary Housing policy?

4. The Density Bonus Law permits developers to seek incentives and concessions, pursuant to
   Government Code section 65915(k). Such incentives may be denied if they are not
   necessary to provide for the project's affordable housing costs. Can the City require density
   bonus projects to provide a pro forma for the entire development to demonstrate the need
   and enable the City to evaluate the request?

5. Can the City, as standard policy, require an EIR for all density bonus projects?

Discussing these issues in the context of the ordinance update rather than in a project specific
context will allow broad discussion on the scope of the ordinance; receive direction from the
Planning Commission; allow for early public input; and provide guidelines for implementing the
Density Bonus Law requirements.

DIRECTION TO STAFF:

07/09/2014 Item #12A
07/16/2014 Item #10E
Seek direction from the Planning Commission specifically concerning the interpretation of the above questions and in general, the scope of the ordinance being drafted.

Bring the item before the Planning Commission, at a publicly notice meeting (Regular or Special) no later than August 7, 2014.

**FISCAL CONSIDERATIONS:**

Staff time to write the agenda report.
Attachment B
EMC Section 30.16.010(B)(1)
3. Note: Substandard lot under floor area ratio refers to a lot that does not meet the standard for lot area (Ord. 84-91)

4. See Section 30.16.010B9 (Ord. 90-15)

5. See “Lot, Interior” in Section 30.04.

B. ALL RESIDENTIAL ZONES. The following development standards shall apply to all residential zones:

1. In determining the mid-range or maximum number of dwelling units allowed for a property, multiply net acreage by the mid-range density or maximum density given in 30.16.010A. Any fraction of a dwelling unit shall be reduced to the next lower whole unit not less than one.

2. Net acreage is the slope adjusted gross acreage not including acreage of the flood plains, beaches, permanent bodies of water, significant wetlands, major power transmission easements, railroad track beds, existing and future rights-of-way and easements for public or private streets/roads, and the area contained within the panhandle portion of a panhandle lot in a zone where the minimum required lot size is 10,000 square feet or less. The portion of access roadways or easements internal to a project that are used exclusively to provide access to rear-loaded garages are not required to be deducted from gross acreage. Driveways providing access to dwelling unit(s) on one lot are not deducted from gross acreage. Environmental constraints may reduce density. (Ord. 2003-10).

   a. The slope adjustment shall be required and is as follows:

   (1) All land in 0-25% slope of natural grade is allowed to use 100% of acreage.

   (2) All land in 25-40% slope of natural grade is allowed to use 50% of acreage.

   (3) All land in 40% + slope of natural grade is allowed to use 0% of acreage.

   (4) Five-foot contour maps available from the City shall be used for calculating the slope adjustment.

   b. The density of development shall be based on net acreage. Projects proposing to create a total of four units/residential lots or less may exceed mid-range density regulations without having to comply with the following findings, so long as the project will not exceed maximum density. In order to exceed mid-range density up to the maximum density for projects containing 5 or more dwelling units or residential lots, allowed for the subject site, the following findings must be made by the appropriate agency:
Attachment C
March 26, 2014 City Council Agenda Report
Density Bonus: An overview and discussion of local and state requirements and how they are applied to development projects in the City of Encinitas.

RECOMMENDATION:

Receive the report and provide direction as appropriate.

STRATEGIC PLAN:

The action before the Council is to receive an overview of the application of Density Bonus regulations, which coincides with the Community Planning Focus Area of the City's Strategic Plan.

FISCAL CONSIDERATIONS:

There are no fiscal impacts associated with this report.

BACKGROUND:

At the February 12, 2014 Council Meeting, Council directed staff to provide a report regarding the City's Density Bonus policies; in particular, policies on rounding fractional units regarding base density calculations. The topic of Density Bonus was originally scheduled to be discussed during the Community Planning Focus Area workshop in May, but considering the amount of public confusion and disagreement in how the City is applying Density Bonus regulations it was determined that a public discussion on this subject should be heard sooner.

ANALYSIS:

A. State Density Bonus Law

Density bonus is a state law (Government Code §65915; Attachment A) that allows a property owner to increase density (the number of new, market-rate homes) on their property above the maximum set under a city's local land use plan. In exchange for these additional units, a certain number of the new homes must be reserved for very low, low or moderate income households or for seniors.
In its simplest terms, density bonus is based upon a sliding scale. As the percentage of a project’s proposed affordable units increases, so does the percentage of density bonus allowance. State law caps the bonus at 35%. For the ‘very low income’ category, a project reaches the 35% maximum when 11% or more of the project’s base density is reserved for ‘very low income’ households. For the ‘low income’ category, 35% is reached when 20% or more is reserved for households meeting the ‘low income’ category.

To better understand density bonus regulations, Attachment B includes a City prepared draft Density Bonus FAQ sheet. The sheet provides summary responses, with relevant state code section references, to key questions about density bonus. Some of the questions found in the FAQ include the following:

- “What is density bonus?”
- “How does it work?”
- “How do you count fractional units?”
- “What are waivers?”
- “What are incentives?”

The FAQ also provides an example of how the City applies the density bonus regulations to a fictitious site.

B. City Density Bonus Ordinance

The requirement for a local density bonus ordinance is stipulated under state density bonus law. Specifically,

§65915(a)

“All cities...shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city...from complying with this section.”

In 1995, the City adopted a local density bonus ordinance, which largely followed the requirements and standards specified under the state law in existence at the time. However, a number of legislative changes occurred over the years that modified state density bonus regulations. The City’s current density bonus ordinance needs to be updated in order to attain consistency with the current state density bonus law. The City’s current density bonus regulations can be found in Attachment C. Some of the more notable conflicts include the following.

- **Maximum density increase** – City code limits the density bonus increase to 25% of the base density; state law stipulates a maximum of 35% (2005; SB1818)

- **Maximum number of incentives** – City code limits the number of incentives to one; state law allows up to three (2005; SB1818)

- **Use permit requirement** – City code requires a major use permit with findings as part of project approval; state legislature eliminated this requirement from density bonus law (2005; SB1818)

It is important to note that a jurisdiction may not enact local laws that conflict with State law or prohibit what the legislature intends to authorize. In other words, the City is required to follow all aspects of state law. As such, over the past several years, the

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\[1\text{ Cal Const Art XI, Section 7; Northern Cal. Psychiatric Soc'y v. City of Berkeley (1986) 178 CA 3d 90} \]
City has applied the standards as outlined under state law, as opposed to amending its current ordinance.

C. Rounding Fractional Units

There have been significant competing discussions recently on the appropriate approach to rounding fractional units involving the base density calculation. The base density is the units allowed according to the local land use regulations for the project site (before any density bonus).

1. City Policy History

In September 2005, the Department issued an inter-departmental memorandum (Attachment D) describing the method of calculating density bonus projects. In short, the City determined that the calculation methods described in the City’s Zoning Ordinance are applicable, and the base density calculations for density bonus projects should be rounded down.

In November 2008, the City Council approved a density bonus subdivision located off Saxony Road pursuant to the rounding down policy. In February 2009, a lawsuit was filed by the developer against the City of Encinitas in Superior Court arguing, among other claims, that the City violated Government Code §65915(f)(5), which reads as follows.

“All density calculations resulting in fractional units shall be rounded up to the next whole number.”

In the early stages of the litigation, the developer presented a copy of a letter dated February 27, 2008 addressed to Chairman Greg Cox of the County Board of Supervisors from California State Senator Roderick D. Wright (Attachment E). In short, the Senator Wright clarified, as the sponsor of the bill (AB1866) that introduced the quoted section above, that...

“This new language made it clear that all density calculations for the calculation of base density and the density bonus component would be rounded up.”

As a result, the City revised its method of calculating density (requiring both base and density bonus calculations be rounded up) and memorialized the change in a Departmental letter dated March 24, 2009 (Attachment F).

2. The Impacts of Rounding

Attachment G shows how rounding up/down generates different density (unit) counts depending upon the size of the site (2.1, 4.1 and 6.1 acre site). This range was selected because most density bonus projects in the City are small in scale. The .1 was used to generate fractional units in our calculations.

As shown in the three cases, the calculation differences resulted in one additional unit when you round up the base density. Staff also applied the

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2 In 2002, AB1866 introduced the language in §65915(g)(1); in 2008, AB2280 changed the code numbering for the language to §65915(f)(5).
calculations to random sized parcels (analysis not shown), which also resulted, in most cases, in a difference of one additional unit.

3. Relevant Court Cases

As of this date, the City Attorney advises that there are no reported cases regarding §65915(f)(5); or the similar language that appeared in AB 1866.

ENVIRONMENTAL CONSIDERATIONS:

Pursuant to Public Resources Code Section 21065, this action does not constitute a “project” within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review. The action before the Council is to receive an overview of the Density Bonus law.

ATTACHMENTS:

Attachment A – Government Code §65915: State Density Bonus law
Attachment B – Density Bonus FAQ sheet
Attachment C – Encinitas Density Bonus Regulations
Attachment D – September 2005 Departmental Memo
Attachment E – February 27, 2008 Letter from Senator Wright
Attachment F – March 2009 Departmental Letter
Attachment G – Unit Calculation Comparison
Attachment H – Public Correspondence
Attachment A
Government Code §65915: State Density Bonus law
GOVERNMENT CODE
SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 4100 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.
Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the
moderate-income units that are directly related to the receipt of the
density bonus in the common interest development, as defined in
Section 4100 of the Civil Code, are persons and families of moderate
income, as defined in Section 50093 of the Health and Safety Code,
and that the units are offered at an affordable housing cost, as that
cost is defined in Section 50052.5 of the Health and Safety Code.
The local government shall enforce an equity sharing agreement,
unless it is in conflict with the requirements of another public
funding source or law. The following apply to the equity sharing
agreement:

(A) Upon resale, the seller of the unit shall retain the value of
any improvements, the downpayment, and the seller's proportionate
share of appreciation. The local government shall recapture any
initial subsidy, as defined in subparagraph (B), and its
proportionate share of appreciation, as defined in subparagraph (C),
which amount shall be used within five years for any of the purposes
described in subdivision (e) of Section 33342 of the Health and
Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's
initial subsidy shall be equal to the fair market value of the home
at the time of initial sale minus the initial sale price to the
moderate-income household, plus the amount of any downpayment
assistance or mortgage assistance. If upon resale the market value is
lower than the initial market value, then the value at the time of
the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's
proportionate share of appreciation shall be equal to the ratio of
the local government's initial subsidy to the fair market value of
the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision
(b) may submit to a city, county, or city and county a proposal for
the specific incentives or concessions that the applicant requests
pursuant to this section, and may request a meeting with the city,
county, or city and county. The city, county, or city and county
shall grant the concession or incentive requested by the applicant
unless the city, county, or city and county makes a written finding,
based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to
provide for affordable housing costs, as defined in Section 50052.5
of the Health and Safety Code, or for rents for the targeted units to
be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse
impact, as defined in paragraph (2) of subdivision (d) of Section
65589.5, upon public health and safety or the physical environment or
on any real property that is listed in the California Register of
Historical Resources and for which there is no feasible method to
satisfactorily mitigate or avoid the specific adverse impact without
rendering the development unaffordable to low- and moderate-income
households.

(C) The concession or incentive would be contrary to state or
federal law.

(2) The applicant shall receive the following number of incentives
or concessions:

(A) One incentive or concession for projects that include at least
10 percent of the total units for lower income households, at least
5 percent for very low income households, or at least 10 percent for
persons and families of moderate income in a common interest
development.

(B) Two incentives or concessions for projects that include at
least 20 percent of the total units for lower income households, at
least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to
which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

<table>
<thead>
<tr>
<th>Percentage Low-Income Units</th>
<th>Percentage Density Bonus</th>
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(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

<table>
<thead>
<tr>
<th>Percentage Very Low Income Units</th>
<th>Percentage Density Bonus</th>
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</table>

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

<table>
<thead>
<tr>
<th>Percentage Moderate-Income Units</th>
<th>Percentage Density Bonus</th>
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</table>
(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

<table>
<thead>
<tr>
<th>Percentage Very Low Density Bonus</th>
<th>Income</th>
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<tbody>
<tr>
<td>10</td>
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</table>

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density.
bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to
or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(1) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section shall not be construed to supersede or in any way alter or lessen the effect or application of the California
Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited
to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of
children as defined under applicable state licensing requirements for
the facility.

(2) "Density bonus" means a floor area ratio bonus over the
otherwise maximum allowable density permitted under the applicable
zoning ordinance and land use elements of the general plan of a city,
including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one
square foot of floor area contained in the child care facility for
existing structures.

(B) A maximum of 10 square feet of floor area for each one square
foot of floor area contained in the child care facility for new
structures.

For purposes of calculating the density bonus under this section,
both indoor and outdoor square footage requirements for the child
care facility as set forth in applicable state child care licensing
requirements shall be included in the floor area of the child care
facility.

(3) "Developer" means the owner or other person, including a
lessee, having the right under the applicable zoning ordinance of a
city council, including a charter city council, city and county board
of supervisors, or county board of supervisors to make an
application for development approvals for the development or
redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project,
the floor area as calculated under the applicable zoning ordinance of a
city council, including a charter city council, city and county
board of supervisors, or county board of supervisors and as to a
child care facility, the total area contained within the exterior
walls of the facility and all outdoor areas devoted to the use of the
facility in accordance with applicable state child care licensing
requirements.

(b) A city council, including a charter city council, city and
county board of supervisors, or county board of supervisors may
establish a procedure by ordinance to grant a developer of a
commercial or industrial project, containing at least 50,000 square
feet of floor area, a density bonus when that developer has set aside
at least 2,000 square feet of floor area and 3,000 outdoor square
feet to be used for a child care facility. The granting of a bonus
shall not preclude a city council, including a charter city council,
city and county board of supervisors, or county board of supervisors
from imposing necessary conditions on the project or on the
additional square footage. Projects constructed under this section
shall conform to height, setback, lot coverage, architectural review,
site plan review, fees, charges, and other health, safety, and
zoning requirements generally applicable to construction in the zone
in which the property is located. A consortium with more than one
developer may be permitted to achieve the threshold amount for the
available density bonus with each developer's density bonus equal to
the percentage participation of the developer. This facility may be
located on the project site or may be located offsite as agreed upon
by the developer and local agency. If the child care facility is not
located on the site of the project, the local agency shall determine
whether the location of the child care facility is appropriate and
whether it conforms with the intent of this section. The child care
facility shall be of a size to comply with all state licensing
requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or
may contract with a licensed child care provider to operate the
facility. In all cases, the developer shall show ongoing coordination
with a local child care resource and referral network or local
governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.
Attachment B
Density Bonus FAQ sheet
WHAT IS DENSITY BONUS?

Density Bonus is a State law that allows a property owner to increase density (the number of new homes) on their property above the maximum set under a city’s local land use plan (referred to as the General Plan). In exchange for this increase, a certain number of the new homes must be reserved for very low, low or moderate income households or for seniors.

Government Code §65915

ARE THERE CRITERIA FOR WHERE DENSITY BONUS PROJECTS MUST BE LOCATED (I.E. NEAR MASS TRANSIT)?

No. For a project to be eligible for density bonus, State law only requires that the maximum density established under the local General Plan results in five or more homes. Any project meeting State law requirements can qualify for density bonus and be located anywhere in the City.

Government Code §65915(b)(1); §65915(f)

IS THE CITY REQUIRED TO FOLLOW ALL ASPECTS OF THE DENSITY BONUS LAW (STATE LAW)?

Yes. A jurisdiction may not enact local laws that conflict with State law or prohibit what the legislature intends to authorize.

[Cal Const Art XI, Section 7; Northern Cal Psychiatr Socy v. City of Berkeley (1986) 178 CA 3d 90.

HOW DOES DENSITY BONUS WORK?

Jurisdictions are required to grant a density bonus and other incentives or waivers to housing projects that contain one of the following:

- At least 5% of the housing units are restricted to very low income residents;
- At least 10% of the housing units are restricted to low or moderate income residents;
- At least 1 acre of land is dedicated to the City for very low income units, and the land is appropriately zoned and includes access to necessary public utilities needed for such housing; or,
- A mobile home park, age-restricted to seniors.

Government Code §65915(b)(1)(A-C); §65915( g)(1)

WHAT IS THE DENSITY BONUS AMOUNT?

The amount of additional units allowed under this program is set on a sliding scale, based upon two factors:

- The percentage (number) of units in the project that will be set aside as affordable.
- The household income category of those affordable units (very low, low, or moderate household income).

Refer to the chart located on page 3 of this FAQ sheet for the sliding scale.

Government Code §65915(f); §65915(o)(2)

CAN THE CITY APPLY ITS MID-RANGE DENSITY REQUIREMENTS TO DENSITY BONUS PROJECTS?

No. The City’s General Plan includes a policy requiring subdivisions of five lots or more to apply a lesser “mid-range” density calculation. State law dictates that density bonus calculations must be based on the maximum allowable residential density under the local General Plan. This density is often referred to as the Base Density.

Government Code §65915(f); §65915(o)(2)

HOW DO YOU COUNT FRACTIONAL UNITS?

State law requires “All density calculations resulting in fractional units shall be rounded up to the next whole number.” This applies to both Base Density and Density Bonus calculations.

In determining the percentage of units being reserved as affordable is the exception, State law requires that the percentage of affordable units on the site must exceed the percentage established in the sliding scale. Staff interpreted this to mean that the fractional percentage can be rounded down.

Government Code §65915(f) and §65915(f)(5)

CAN YOU PROVIDE A THEORETICAL EXAMPLE OF THE DENSITY CALCULATION?

A property is 1.4 net acres in size, with a General Plan designation of R-8 (8 dwelling units per acre) has Base Density of 11.2 units (1.4 acres multiplied by 8 units per acre), which rounds up to 12 units.

The applicant proposes that one of those units will be reserved for a very low income household. This results in 8.3% of the 12 units that will be reserved for affordable housing (1
affordable unit divided by 12 Base Density units), which rounds down to 8%.

Based on the sliding scale found at the end of this FAQ sheet, with 8% of the units being affordable (see first column), the project’s Base Density can increase by 27.5%, for a total of 15.3 units, which rounds up to 16 total units.

Here is the math:

1.4 acres X 8 dwelling units/acre = 11.2 units (rounded to 12)
1 affordable unit + 12 units = 8.3%
8% of “very low income” on scale found on page 3 = 27.5%
12 units X 1.275 = 15.3 units (rounded to 16 units)

WHAT IS AN INCENTIVE?

Incentives are reductions in design standards or other regulations potentially making the project, at the density authorized under State law, economically feasible for the developer.

In addition to an increase in density, the City is required under State law to provide one or more “incentives” for density bonus projects.

Government Code §65915(d)(1); §65915(k)

HOW MANY INCENTIVES CAN BE REQUESTED?

The number of incentives requested varies with the amount and type of reserved units as reflected below. Percentages between these ranges are rounded down. For example, the sample project that reserved 8% of the units for very low income receives one incentive.

<table>
<thead>
<tr>
<th>Income Category</th>
<th>% of Reserved Unit</th>
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<tbody>
<tr>
<td>Very Low</td>
<td>5%</td>
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<tr>
<td>Low</td>
<td>10%</td>
</tr>
<tr>
<td>Moderate</td>
<td>10%</td>
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<tr>
<td>Senior</td>
<td>n/a</td>
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</table>

The financial information must demonstrate that the requested incentive results in identifiable, financially sufficient, and actual cost reductions that contribute significantly to the economic feasibility of the reserved affordable units.

WHAT ARE WAIVERS?

Waivers are yet another form of assistance under State law, separate from incentives. A waiver is a reduction in development standards potentially making the construction of the project, at the density allowed under State law, physically infeasible, if not approved.

For example, a waiver can include reductions in setbacks, lot configuration and lot size. There is no limit in the number of waivers an applicant can request. While the developer must justify the need for a waiver, a pro-forma (or special study) is not required.

Government Code §65915(a)(1); §65915(a)(2)

PROP A SET NEW HEIGHT LIMITS OF TWO STORIES OR 30 FEET, CAN A DEVELOPER PROCESS A WAIVER FROM THIS STANDARD?

Yes. A height limitation qualifies as a development standard for which a developer may request a waiver.

Government Code §65915(o)(1)

CAN THE CITY DENY AN INCENTIVE OR WAIVER?

Yes. Nothing in the State law requires a local government to grant an incentive or waiver potentially resulting in a specific, adverse impact upon public health, safety or environment. However, the burden is on the jurisdiction to determine there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

Under the law, the court shall award the plaintiff attorney’s fees and costs should the City not adequately justify the denial of a waiver or incentive.

Government Code §65915(d)(3); §65915(e)(1)

HOW LONG MUST THE RESERVED UNITS REMAIN AFFORDABLE?

Units reserved as affordable must remain so for a period of no less than 30 years. A longer period may be necessary if required by the mortgage financing assistance program.

Government Code §65915(c)(1)

WHERE CAN I LEARN MORE?

For more information on Density Bonus, please contact Roy Sapau, Senior Planner, at 760/633-2734 or via email at Rsapau@encinitas.ca.gov.

03/26/2014
07/16/2014
Item #10C
Item #10E
## Density Bonus Calculation Chart

<table>
<thead>
<tr>
<th>Affordable Units Being Reserved</th>
<th>Very Low Income Density Bonus (1)</th>
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(1) Government Code §65915(f)(2)
(2) Government Code §65915(f)(1)
(3) Government Code §65915(f)(4)
(4) Government Code §65915(g)(1)
(5) Government Code §65915(f)(3); No affordable units are required for senior housing units to receive a density bonus.
Attachment C
Encinitas Density Bonus Regulations
ATTACHMENT C
ENCINITAS ZONING ORDINANCE

30.16.020 Special Provisions

C. DENSITY BONUSES PURSUANT TO GOVERNMENT CODE SECTION 65915. When a developer of residential units agrees to construct any one of the types of residential projects described in Government Code Section 65915(b), and which complies with all standards set forth in Government Code Section 65915, the City shall grant a density increase of 25 percent over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan and one other concession or incentive in accordance with Section 65915 of the Government Code and all of the following: (Ord. 95-04)

1. Approval of a density bonus and any other regulatory concession(s) shall be obtained through a MUP application. In the coastal zone, approval of a coastal development permit shall also be required. (Ord. 95-04)

2. Very low, lower income, and housing units reserved for qualifying residents as defined by Civil Code Section 51.2 shall be maintained for a minimum of thirty (30) years through execution and recordation of a covenant between the developer (property owner) and the City.

3. In lieu of a density bonus and other concessions, the City may instead provide other incentives of equivalent financial value based upon the land cost per dwelling unit, provided they are not inconsistent with the policies and development standards of the certified Local Coastal Program. (Ord. 95-04)

4. In the coastal zone, the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. The otherwise maximum allowable residential density shall mean the maximum potential density modified by applying all site-specific environmental development constraints identified within the coastal zoning ordinances and land use element certified by the Coastal Commission. The density bonus shall be applicable to housing developments consisting of five or more units. (Ord. 95-04)

5. In the coastal zone, any housing development approved pursuant to Government Code Section 65915 shall be consistent, to the maximum extent feasible and in a manner most protective of coastal resources, with all otherwise applicable certified Local Coastal Program policies and development standards. Approval of development proposed under this Section shall require a finding that the development, if it had been proposed without the 25 percent density increase, would have been fully consistent with the policies and development standards of the certified Local Coastal Program. In cases where a 25 percent density increase is granted pursuant to Government Code Section 65915 and results in development inconsistent with otherwise applicable certified Local Coastal Program policies and development standards, such as height, parking, and setback requirements, the relief
ATTACHMENT C
ENCINITAS ZONING ORDINANCE

granted from such standards shall be considered an additional incentive under Government Code Section 65915 (h). (Ord. 95-04)

6. A qualifying housing development shall receive one of the incentives identified in Government Code Section 65915(h) in addition to a 25 percent density bonus unless it is found that the additional incentive is not required in order to provide for affordable housing costs or rents. In the coastal zone, any incentives must be consistent, to the maximum extent feasible and in a manner most protective of coastal resources, with all certified Local Coastal Program policies and standards otherwise applicable to development not subject to Government Code Section 65915. In choosing between incentives, priority shall be given to those incentives most protective of coastal resources so as to avoid any development within or adjacent to wetlands or other environmentally sensitive areas or any development within or adjacent to geologic hazard areas, or any development which would result in any significant adverse impacts on coastal access and recreation. (Ord. 95-04)

7. The City may prepare an LCP amendment for certification by the Coastal Commission that would include maps identifying areas within the City where density bonuses in excess of 25 percent may be permitted based on a finding that no adverse impacts on coastal resources would result. (Ord. 95-04)
NOTICE OF APPLICATION OF GOVERNMENT CODE SECTION 65915(G)
METHOD OF CALCULATING DENSITY

Attached is a memorandum that clarifies the City of Encinitas' application of Government Code Section 65915(g) with respect to density bonus calculations. In the past, staff required that "all" density calculations be rounded up to the next highest whole number, including the base number of units before calculating a density bonus. Staff has been re-evaluating this provision along with other provisions of state density bonus law and local requirements.

Staff will be calculating the density for the base number of units as prescribed within the Encinitas Municipal Code, Section 30.16.010(B)(1), which states, in part:

"In determining the .... maximum number of dwelling units allowed for a property, multiply net acreage by the ... maximum density. Any fraction of a dwelling unit shall be reduced to the next lower whole unit."

Once the base number of units is determined, density bonus shall be applied, which requires rounding up to the next highest whole number.

Staff will be scheduling this item to the City Council at their October 19, 2005 meeting. The purpose of this meeting is to allow anyone to address the City Council regarding the City's application of Government Code Section 65915(g), as outlined in the attachment.

Sincerely,

Patrick Murphy
Director of Planning and Building

cc: City Council
Kerry Miller, City Manager
Planning Commission
Glenn Sabine, City Attorney
Planning Staff
CITY OF ENCINITAS
MEMORANDUM
Date: September 20, 2005

TO: Planning Staff

FROM: Planning and Building Department

SUBJECT: METHOD OF CALCULATING DENSITY BONUS FOR PROJECTS AUTHORIZED BY GOVERNMENT CODE SECTION 65915

BACKGROUND: The purpose of the memorandum is to clarify the City of Encinitas’ application of Government Code (GC) Section 65915(g) with respect to density bonus calculations. In the past, staff construed GC 65915 to require that all density calculations be rounded up to the next highest whole number, including the base number of units before calculating a density bonus. This was based on, in part, a clause in state density bonus law that “all” density calculations shall be rounded up. Staff has been re-evaluating this provision along with other provisions of state law and local requirements. In August 2005, Planning Department staff contacted the California Department of Housing and Community Development (HCD) for guidance regarding density bonus calculation methodology. On September 12, 2005 HCD concurred with the City that the calculation methodology described below was a “fair and reasonable” application of GC 65915(g).

ANALYSIS: Section 65915(g)(1) states in part, that

[for purposes of this chapter... ‘density bonus’ means a density increase of at least 20 percent... over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city...” [emphasis added]

In determining the total number of dwelling units allowed by state density bonus law, two calculations must be performed. The first calculation determines the base number of units allowable according to the zoning designation of the project site. This calculation is governed by the City’s zoning ordinance and General Plan Land Use Element/Local Coastal Program Land Use Plan (LUP). The second calculation determines the number of bonus units, which is a percentage ranging between 20% and 35% of the base units, depending on the targeted income level and percentage of affordable units provided. This calculation is governed by state law.

Calculation #1 – Determine base density using “applicable zoning ordinance”
The base number of units is calculated according to Encinitas Municipal Code Section 30.16.010(B)(1), which states:

“In determining the mid-range or maximum number of dwelling units allowed for a property, multiply net acreage by the mid-range density or maximum density
given in 30.16.010A. Any fraction of a dwelling unit shall be reduced to the next lower whole unit not less than one" [emphasis added].

Net acreage is determined according to Encinitas Municipal Code Section 30.16.010(B)(2)(a). Maximum density, rather than mid-range density, is applied to density bonus projects in accordance with GC Section 65915(o)(2). In arriving at the base number of units, the fractional part of the calculated number is dropped, resulting in rounding down to the next lowest whole number.

Calculation #2 – Determine number of density bonus units
Once the base number of units is determined as described above, this number is multiplied by the applicable percentage (not to exceed 35%) to determine the number of bonus units. Fractional units resulting from this calculation are rounded up to the next highest whole number, consistent with GC 65915.

Other Calculations (#3 and #4) – Determine number of affordable and market rate units
Two other calculations will determine the number of affordable units and market rate units in a density bonus project. The number of affordable units is determined by multiplying the base number of units by the applicable set-aside percentage (depending on targeted income group). Fractional units resulting from this calculation are rounded to the next highest whole number. The number of market rate units is the difference between the total units (base + bonus units) and the number of affordable units.

The following example illustrates the proper density bonus calculations.
✓ Development Site Net Acreage: 3.2 ac.
✓ Zoning Designation: R-3, density range 2.01-3.0 dwelling units (d.u.) per net acre
✓ Density Bonus: 35%
✓ Affordable unit reservation: 11% of base units targeted to Very-low income households

<table>
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<tr>
<th>Calculation #1 – Determine Base Density (EMC 30.16.010B1)</th>
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<td>Net Ac.</td>
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<td>3.2 ac.</td>
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<th>Calculation #2 – Determine Bonus Units (GC 65915g)</th>
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<th>Calculation #3 – Determine Number of Affordable Units (GC 65915b)</th>
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<th>Calculation #4 – Determine Number of Market Rate Units</th>
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03/26/2014  Item #10C  Page 27
07/16/2014  Item #10E  Page 38
CONCLUSION: This methodology will be applied to all density bonus applications that have not received approval by the City as of the date of this memorandum. Staff is applying city and state regulations in a manner that is consistent with those regulations.

EFFECTIVE DATE: The effective date of the method of calculating density bonus for projects authorized by Government Code Section 65915 as outlined above is September 12, 2005.

* The application of this methodology does not impact the number of affordable units provided under density bonus law.
Attachment E
February 27, 2008 Letter from Senator Wright
February 27, 2008

Honorable Greg Cox
Chairman, San Diego County Board of Supervisors
1600 Pacific Highway
San Diego, CA  92101

Re: Government Code Section 65915

Dear Supervisor Cox:

In the 2002, I sponsored AB 1866, a bill that amended Government Code §65915 in several significant ways. The overall purpose of the bill was to create more affordable housing by strengthening and enhancing the incentives in the density bonus law. These incentives encourage housing developers to help create both more affordable housing and market rate housing to help solve the housing shortage crisis in California. One of the important changes we made was to add the following language to §65915(g)(1): “All density calculations resulting in fractional units shall be rounded up to the next whole number.”

The purpose of this language was to eliminate the practice of rounding down density calculations that necessarily result in the development of fewer homes. This new language made it clear that all density calculations for the calculation of base density and the density bonus component would be rounded up. Doing so serves the important state policies supporting the creation of more homes and lowering the cost of housing for all Californians.

I understand that a density bonus project is currently on your agenda for consideration where the developer has submitted a housing development for 14 homes which uses the rounding up program. I firmly support this program and this development concept.

Sincerely,

Roderick D. Wright
Member of the Legislature
1996-2002
Attachment F
March 2009 Departmental Letter
METHOD OF CALCULATING DENSITY
March 24, 2009

BACKGROUND: On September 26, 2005, the Planning and Building Department issued a Notice of Application of Government Code Section 65915(G), Method of Calculating Density for density bonus projects. Section 65915(g)(1) stated “density bonus means a density increase of at least 20 percent ... over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan ...” In addition, Section 65915(o)(2) stated ‘Maximum allowable residential density’ means the density allowed under the zoning ordinance ...”

Section 30.16.010B1 of the Encinitas Municipal Code provides that any fraction of a dwelling unit resulting from density calculations shall be rounded down to the next whole unit number not less than one. Since the Encinitas Zoning Code requires that the “maximum allowable residential density” to be rounded down, it was determined that the base density to use to determine the density bonus would be rounded down. The density bonus calculation would then be rounded up based on state law.

Since the September 2005 notice was released, Section 65915, density bonus law, was amended by AB 2280, which changed the method of density calculation. The following discusses this change.

DISCUSSION OF AB 2280: Prior to the adoption of AB 2280 in 2008, the “maximum allowable residential density” was defined as the maximum density under the zoning ordinance but the definition did not include the caveat that the density identified in the land use element of the general plan would prevail over the zoning ordinance density.

The changes of AB 2280 to Government Code Section 65915 require that the City perform density calculations in conformance with the land use element density requirements. For the City of Encinitas, the General Plan Land Use Element does not address rounding of density calculations. The requirement of AB 2280 for density to be consistent with the land use element of the general plan combined with the requirement of Section 65915(f)(5) to round up all density calculations to the next whole number requires the City to round up the initial calculation of maximum allowable residential density when density calculations result in fractional units. The following Government Code sections apply:

Section 65915(f) – “For purposes of this chapter, ‘density bonus’ means a density increase over the otherwise maximum allowable residential density ...”
Section 65915(f)(5) – “All density calculations resulting in fractional units shall be rounded up to the next whole number.”

Section 65915(o)(2) – “Maximum allowable residential density’ means the density allowed under the zoning ordinance and land use element of the general plan ... Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.”

Note: Previous Density Bonus law simply stated for Section 65915(o)(2) “Maximum allowable residential density’ means the density allowed under the zoning ordinance.” It did not make reference to the general plan or which would prevail if there are conflicts between the general plan and zoning.

CONCLUSION: When calculating the maximum density, all density calculations resulting in fractional units are to be rounded up to the next whole number (Govt. Code Sec. 65915(f)(5)). Where an inconsistency exists between the density in the zoning ordinance and the density in the land use element of the general plan, the density of the land use element shall prevail (Govt. Code Sec. 65915(o)(2)).
Attachment G
Unit Calculation Comparison
## ATTACHMENT G: UNIT CALCULATION COMPARISON

### 2.1 ACRE SITE IN THE R3 ZONE

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<tr>
<th>CALCULATION DESCRIPTION</th>
<th>STARTING NUMBER</th>
<th>ROUND DOWN (Base Density)</th>
<th>ROUND UP (Base Density)</th>
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<tbody>
<tr>
<td>Base Density = 2.1 net acres X 3 dwelling units/acre (R3 Zone)</td>
<td>6.3 units</td>
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<td>7 units</td>
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<tr>
<td>Percentage of Base Density that will be affordable</td>
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<td>16.7%</td>
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<td>The project's percent increase in Density Bonus</td>
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<td>Total units with the Density Bonus</td>
<td>1.35 X 6 = 8.1</td>
<td>9 Units</td>
<td>1.35 X 7 = 9.45</td>
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### 4.1 ACRE SITE IN THE R3 ZONE

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<th>CALCULATION DESCRIPTION</th>
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<th>ROUND UP (Base Density)</th>
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<td>Percentage of Base Density that will be affordable</td>
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<td>8.3%</td>
<td>7.7%</td>
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<tr>
<td>The project's percent increase in Density Bonus</td>
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<td>27.5%</td>
<td>25%</td>
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<td>Total units with the Density Bonus</td>
<td>1.275 X 12 = 15.3</td>
<td>16 Units</td>
<td>1.25 X 13 = 16.25</td>
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### 6.1 ACRE SITE IN THE R3 ZONE

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<th>ROUND UP (Base Density)</th>
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<tr>
<td>Base Density = 6.1 net acres X 3 dwelling units/acre (R3 Zone)</td>
<td>18.3 units</td>
<td>18 units</td>
<td>19 units</td>
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<tr>
<td>Percentage of Base Density that will be affordable</td>
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<td>5.6%</td>
<td>5.3%</td>
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<td>The project's percent increase in Density Bonus</td>
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<td>20%</td>
<td>20%</td>
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<tr>
<td>Total units with the Density Bonus</td>
<td>1.20 X 18 = 21.6</td>
<td>22 Units</td>
<td>1.20 X 19 = 22.8</td>
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</tbody>
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1 Assumes that the developer is proposing that one unit will be reserved as affordable for 'very low' income.
Attachment H
Public Correspondence
To be included with your agenda report.

Kathy Hollywood, CMC
City Clerk, City of Encinitas
760-633-2603

Correspondents should be aware that all communications to and from this address are subject to public disclosure and may be reviewed by third parties.

From: Lynn Autumn [mailto:boxofpoems@gmail.com]
Sent: Tuesday, March 04, 2014 9:03 AM
To: Mark Muir; Glenn Sabine; Kathy Hollywood
Cc: Lorri Greene; Doug Fiske; wsbutler1619@att.net
Subject: Re: Correction: Request for Information regarding Density Calculations

Dear Mark,

I am copying our public document e-mails to Council to Glenn Sabine, so that we can all be better prepared and better understand how the City arrives at its base density bonus calculations, as compared to the County and State, prior to the March 26 CC Meeting.

Also, these e-mails should be a part of the March 26 agenda report, so I will cc Kathy Hollywood.

Thanks again.

Lynn

On Sun, Mar 2, 2014 at 10:39 PM, Lynn Autumn <boxofpoems@gmail.com> wrote:
Mark, in reading over your e-mail to Gus, again, I would still ask that you ask Glenn Sabine, specifically, not just Gus Vina, to put the City's basis for the "base" density bonus calculations in writing. Sabine should know, ahead of time, that there will be questions put to him on this subject on March 26.

It would be excellent for the City Attorney to review the State, County and City methods for arriving at their base density bonus figures, and to write a short report, before the March 26 meeting.

Thanks again,
Lynn

On Sun, Mar 2, 2014 at 10:21 PM, Mark Muir <Mmuir@encinitasca.gov> wrote:
Already did - see below.
Begin forwarded message:

Subject: Request for Information regarding Density Calculations
Date: March 2, 2014 at 10:07:55 PM PST
To: Gus Vina <gvina@encinitasca.gov>
Cc: Lorri Greene <LGreene98@aol.com>, Doug Fiske <dougkfiske@gmail.com>, <wsbutler1619@att.net>

Hi Gus,

Can these folks get a copy of staff’s position, presentation and/or report before the meeting takes place? This will allow them the opportunity to review and develop their questions before the meeting actually takes place.

Sincerely,
Mark Muir

Begin forwarded message:

From: Lorri Greene <LGreene98@aol.com>
Subject: Base Density Calculation request
Date: March 2, 2014 at 5:40:13 PM PST
To: <tbarth@ci.encinitas.ca.us>, <mmuir@ci.encinitas.ca.us>, <kgaspar@ci.encinitas.ca.us>, <lishaffer@encinitasca.gov>, <tkranz@encinitasca.gov>

Dear Mayor, Deputy Mayor and Council members:
I am writing to ask you to please request that our City Attorney, Glen Sabine, put, into writing, his opinion on the “base density calculation”. I also would like you to request Mr. Sabine have this done before the March 26, 2014, City Council meeting. You have all mentioned that you believe in transparency, and many are looking forward to Peak Democracy, so this would seem a great first step.
Thank you so much for considering, and hopefully acting upon, my suggestion.
As always thank you all for doing what is best for our entire community. We all love Encinitas.
Warmly,
Lorri Greene, Ph.D.
Psychologist
2058 Oxford Ave.
Cardiff-by-the-Sea, CA 92007
760-436-6798

Begin forwarded message:

From: Doug Fiske <dougkfiske@gmail.com>
Subject: 378 Fulvia Street Density Bonus
Date: March 2, 2014 at 4:12:57 PM PST
To: <tbarth@encinitasca.gov>, <mmuir@encinitasca.gov>, <kgaspar@encinitasca.gov>, <tkranz@encinitasca.gov>, <lishaffer@encinitasca.gov>, <blewis@encinitasca.gov>, <khollywood@encinitasca.gov>

Dear Council Members,
I'm interested to know City Attorney Glenn Sabine's base density bonus calculation for the project proposed for 378 Fulvia Street.

Please provide me with this information well ahead of the March 26 City Council meeting.

Many thanks,

Doug Fiske
Leucadia

Begin forwarded message:

From: Bill Butler <webutler1619@att.net>
Subject: Position Statement
Date: March 2, 2014 at 2:31:03 PM PST
To: <jbarth@encinitasca.gov>, <mmuir@encinitasca.gov>, <kgaspar@encinitasca.gov>,
     <tkranz@encinitasca.gov>, <jshaffer@encinitasca.gov>, <blewis@encinitasca.gov>,
     <khollywood@encinitasca.gov>

Dear Council Members:

It has come to my attention that a citizens group is seeking a position statement from the City Attorney regarding the City's calculation method for the density bonus calculation. It is imperative that all parties involved, developers, citizens and the various City departments understand and know the rules. I request that, prior to the City Council meeting on March 26th, the City Attorney issue a written methodology for calculating density bonus within the City of Encinitas.

Sincerely,

Bill Butler
Ms. Brumfield,

On March 26th, the City Attorney and I will be bringing forward an Agenda Report to the Council on the topic of Density Bonus ...the intent is to provide an overview of Density Bonus regulations/process as it is applied in the City, with a focus on the rounding provisions.

We encourage you to attend the meeting. The Council will not be able to talk about the Fulvia project specifically, as it will not be on the agenda for discussion — however, how we apply density bonus requirements to projects (particularly rounding) can be discussed.

JEFF

From: Chriss Brumfield [mailto:Brumfour@cox.net]
Sent: Monday, February 24, 2014 8:56 AM
To: Jeff Murphy
Cc: Teresa Barth; Lisa Shaffer; Tony Kranz; Kristin Gaspar; Mark Muir
Subject: 378 Fulvia Street

Planning Director Murphy,

You posted the entire calculation table that showed the base density round down, referred specifically to base density rounding and yielding 9 units, and omitted any reference to a retention basin. We showed your response below to several people in the neighborhood and all assumed you meant that the number of units on the project was reduced to 9 on the basis of base density rounding down.

In separate emails between us, you said that city attorney Sabine did not provide his opinion to you in writing - only verbally - on base density rounding. We were not part of that conversation and are only hearing secondhand what Mr. Sabine told you. We are requesting Mr. Sabine's opinion in writing, with citations, to support his legal interpretation on base density rounding for 378 Fulvia.

Thank you,
Chriss Brumfield
Bill Probert
Lansing Ross
Ms. Brumfield,

My intent was to only point out that the applicant submitted a revised project and have reduced the unit count to 9. This is the total maximum units allowed on this site SHOULD the base density be rounded down. I made no indication that the reduced number was a result in using a rounding down calculation for the base number.

- JEFF

On Feb 21, 2014, at 4:55 PM, "Chriss Brumfield" <brumfour@cox.net> wrote:

Planning Director Murphy,

There is a discrepancy between your response below and the recently-submitted, revised February 7 plans.

You indicated that the project was re-submitted recently for 9 units from 10 using a round down on the base density. However, the February 7 plans show that the number of units was reduced to 9 due to a retention basin taking the place of one house, not from rounding down on the base density. In fact, the plans still show the calculation rounding up to 7 for the base density.

Why were we not given the real reason for the reduction of one unit?

Begin forwarded message:
Ms. Brumfield,

We do not believe that we have "twisted and misconstrued the law in its entirety." I again extend you an offer to discuss our differences with me and the City Attorney.

I should also point out that the applicant has recently submitted a revised project and have reduced the unit count to 9. This is the total maximum units allowed on this site should the base density be rounded down. The calculations are below.

<table>
<thead>
<tr>
<th>CALCULATION DESCRIPTION</th>
<th>STARTING NUMBER</th>
<th>BASE DENSITY ROUNDED UP/DENSITY BONUS ROUNDED UP</th>
<th>BASE DENSITY ROUNDED DOWN/DENSITY BONUS ROUNDED UP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Base Density = 2.16 Net Acres (site size) X 3 dwelling units/acre (R3 Zone)</td>
<td>6.48 units</td>
<td>7.0 units</td>
<td>6.0 units</td>
</tr>
<tr>
<td>Percentage of Maximum Base Density that will be affordable (1 affordable unit proposed for 'very low' income, which is divided by the Maximum Base Density)</td>
<td>---</td>
<td>14.3%</td>
<td>16.7%</td>
</tr>
<tr>
<td>The project's Density Bonus (a percentage increase over the Maximum Base Density in exchange for providing that one affordable unit) *</td>
<td>---</td>
<td>35%</td>
<td>35%</td>
</tr>
<tr>
<td>Total units with the Density Bonus</td>
<td>1.35 X 7.0 = 9.45 or 10 Units</td>
<td>1.35 X 6.0 = 8.1 or 9 Units</td>
<td></td>
</tr>
</tbody>
</table>
* Density bonus is based on a sliding scale. As the percentage of allowable units increases, so does the density bonus. State law caps the bonus at 35%. For the 'very low income' category, a project reaches the 35% maximum when 11% or more of the projects Maximum Base Density is reserved as affordable.

JEFF

From: Chriss Brumfield [mailto:brumfour@cox.net]
Sent: Sunday, February 16, 2014 6:00 PM
To: Jeff Murphy
Cc: Teresa Barth; Lisa Shaffer; Tony Kranz; Kristin Gaspar; mmuir@encintasca.gov
Subject: 378 Fulvia St project

Planning Director Murphy

You are taking density bonus calculation §65915(f)(5) out of context and applying it to residential base density calculations. We are sure Mr. Sabine knows how to read government code, but his misapplication of one subsection to other sections is not valid. There is no specific reference in the section that the subsection below should be used elsewhere. Section §65915(f): states "For purposes of this chapter..." and makes no reference to any other section.

Using a subsection that discusses only bonus calculations and inappropriately using that bonus calculation on base calculations is not valid.

§65915(f)(5): Note that the quotes have to be read in the context of the complete Government Code chapter §65915(f). Here is the beginning of §65915(f):

For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

§65915(f)(5) is a subsection of the chapter. Here it is in its entirety:

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

We know that you and Mr. Sabine have been working together to come up with your response and in doing so, really appear to have twisted and misconstrued the law in its entirety.

Chriss Brumfield
Bill Probert
Lansing Ross
Ms. Brumfield,

On March 26th, the City Attorney and I will be bringing forward an Agenda Report to the Council on the topic of Density Bonus ...the intent is to provide an overview of Density Bonus regulations/process as it is applied in the City, with a focus on the rounding provisions.

We encourage you to attend the meeting. The Council will not be able to talk about the Fulvia project specifically, as it will not be on the agenda for discussion — however, how we apply density bonus requirements to projects (particularly rounding) can be discussed.

JEFF
Jeff Murphy

From: Jeff Murphy
Sent: Friday, February 28, 2014 9:14 AM
To: Chriss Brumfield
Cc: Teresa Barth; Lisa Shaffer; Tony Kranz; Kristin Gaspar; Mark Muir; Gus Vina; Glenn Sabine; glennsabine@cox.net; Brandi Lewis
Subject: Re:

The information will be provided as part of the staff report that he and I are working on.

- JEFF

> On Feb 28, 2014, at 9:07 AM, "Chriss Brumfield" <brumfour@cox.net wrote:
> 
> 
> Planning Director Murphy,
> 
> Thank you for that information on an agenda item that you have scheduled a month from now, but we requested information that should be provided now.
> 
> As we stated in a previous email: In separate emails between us, you said that city attorney Sabine did not provide his opinion to you in writing - only verbally - on base density rounding. We were not part of that conversation and are only hearing secondhand what Mr. Sabine told you. We are still requesting Mr. Sabine's opinion in writing, with citations, to support his legal interpretation on base density rounding for 378 Fulvia.
> 
> 
> Thank you
> 
> Chriss Brumfield
> Bill Probert
> Lansing Ross
> 
> 
>
Hi Jeff,

I'm writing again on the question of base density rounding (Chriss Brumfield's 2/16/14 email on the same question is copied below).

The rounding up calculations are only for the density bonus and not the base density. This is backed up by the fact that there are two 65915 subsections that "round up" - subsection (f)(5) and subsection (g)(2), which are not within the scope of subsection (b). If the rounding up applied to the base density units, then the same clause would have also appeared in subsection (b) for the base density units or the clause would have been placed in a parent section and applied globally.

Clauses are usually limited in scope to the subsection they are contained unless they explicitly state a scope beyond the subsection. If a subsection is to be applied more broadly, that is always noted. Also, for the subsection for child care (h) that conforms to subsection (b) there is no clause for rounding up.

The next point is that even if a city wants to give more than what 65915 allows, changes in 65915 a few years ago prohibits it. Subsection (h) reads:

"If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section"

The "If permitted by local ordinance," was added over the last few years to prevent cities from giving more than what 65915 allows. In other words, it requires that the city have an ordinance to permit a greater density. Cities can give no more and no less.

Can you cite specifically, without going beyond the scope of 65915 (f)(5), where it states in subsection (f)(5) that base density must be rounded up?

Thank you,
Susan

Chriss Brumfield and the neighbors sent previously:

You are taking density bonus calculation §65915(f)(5) out of context and applying it to residential base density calculations. We are sure Mr. Sabine knows how to read government code, but his misapplication of one subsection to other sections is not valid. There is no specific reference in the section that the subsection below should be used elsewhere. Section §65915(f): states "For purposes of this chapter..." and makes no reference to any other section.

Using a subsection that discusses only bonus calculations and inappropriately using that bonus calculation on base calculations is not valid.

§65915(f)(5): Note that the quotes have to be read in the context of the complete Government Code chapter §65915(f). Here is the beginning of §65915(f):

For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

§65915(f)(5) is a subsection of the chapter. Here it is in its entirety:
Planning Director Murphy,

Thank you for that information on an agenda item that you have scheduled a month from now, but we requested information that should be provided now.

As we stated in a previous email: In separate emails between us, you said that city attorney Sabine did not provide his opinion to you in writing - only verbally - on base density rounding. We were not part of that conversation and are only hearing secondhand what Mr. Sabine told you. We are still requesting Mr. Sabine’s opinion in writing, with citations, to support his legal interpretation on base density rounding for 378 Fulvia.

Thank you

Chriss Brumfield
Bill Probert
Lansing Ross
Jeff Murphy

From: Chriss Brumfield <Brumfour@cox.net>
Sent: Monday, February 24, 2014 8:56 AM
To: Jeff Murphy
Cc: Teresa Barth; Lisa Shaffer; Tony Kranz; Kristin Gaspar; Mark Muir
Subject: 378 Fulvia Street

Planning Director Murphy,

You posted the entire calculation table that showed the base density round down, referred specifically to base density rounding down yielding 9 units, and omitted any reference to a retention basin. We showed your response below to several people in the neighborhood and all assumed you meant that the number of units on the project was reduced to 9 on the basis of base density rounding down.

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Thank you,
Chriss Brumfield
Bill Pobert
Lansing Ross
Attachment D
EMC ‘Net Acreage’ Definition
___ NET ACREAGE for the purpose of calculating density, shall mean the slope adjusted unconstrained gross acreage within the subject property. Constrained acreage shall include flood plains, beaches, permanent bodies of water, significant wetlands, major power transmission easements, railroad track beds, existing and future right-of-way and easements for public or private streets/roads, and the area contained within the panhandle portion of a panhandle lot in a zone where the minimum required lot size is 10,000 square feet or less. (Ord. 97-17).

___ NET LOT AREA shall mean total area exclusive of street within the boundary lines of a lot and the area contained within the panhandle portion of a panhandle lot in a zone where the minimum required lot size is 10,000 square feet or less. (Ord. 97-17).

___ NONCONFORMING LOT shall mean a lot, the area, frontage or dimensions of which do not conform to the provisions of this Code.

___ NONCONFORMING STRUCTURE shall mean a building, structure or portion thereof which was lawful when established but which does not conform to the provisions of this Code.

___ NONCONFORMING USE shall mean a use lawful when established but which does not conform to the provisions of this Code.

___ OUTDOOR LIGHT FIXTURE shall mean an outdoor artificial illuminating device, outdoor fixture, lamp, and other similar devices, permanently installed or portable, used for flood lighting, general illumination or advertisement. (Ord. 2003-10).

___ PACKING (Agriculture/Horticulture) shall mean the packing of fresh agricultural and horticultural products including the customary preparation for market of fresh produce and flowers produced both on and off premises. Assembly of boxes, cartons, crates and pallets for handling and transporting crops provided this use is accessory to agricultural or horticulture packing on the premises shall be permitted. (Note: There shall be no utilization of processes which result in substantial change in identity of the agricultural or horticultural product.) (Ord. 94-11)

___ PARCEL shall mean a contiguous quantity of land in the possession of, or owned by, or recorded as the property of, the same person.

___ PARK shall mean any park, playground, swimming pool, golf course within the City which is under the City's control, operation and management. (Ord. 2002-02).

___ PARKING AREA shall mean an open area, other than a street or alley, which contains 5 or more motor vehicle parking spaces.

___ PARKING SPACE shall mean an unobstructed space or area other than a street or alley which is permanently reserved and maintained for the parking of one motor vehicle.
Attachment E
EMC Section 30.16.010(B)(2)
3. Note: Substandard lot under floor area ratio refers to a lot that does not meet the standard for lot area (Ord. 84-91)

4. See Section 30.16.010B9 (Ord. 90-15)

5. See “Lot, Interior” in Section 30.04.

B. ALL RESIDENTIAL ZONES. The following development standards shall apply to all residential zones:

1. In determining the mid-range or maximum number of dwelling units allowed for a property, multiply net acreage by the mid-range density or maximum density given in 30.16.010A. Any fraction of a dwelling unit shall be reduced to the next lower whole unit not less than one.

2. Net acreage is the slope adjusted gross acreage not including acreage of the flood plains, beaches, permanent bodies of water, significant wetlands, major power transmission easements, railroad track beds, existing and future rights-of-way and easements for public or private streets/roads, and the area contained within the panhandle portion of a panhandle lot in a zone where the minimum required lot size is 10,000 square feet or less. The portion of access roadways or easements internal to a project that are used exclusively to provide access to rear-loaded garages are not required to be deducted from gross acreage. Driveways providing access to dwelling unit(s) on one lot are not deducted from gross acreage. Environmental constraints may reduce density. (Ord. 2003-10).

a. The slope adjustment shall be required and is as follows:

(1) All land in 0-25% slope of natural grade is allowed to use 100% of acreage.

(2) All land in 25-40% slope of natural grade is allowed to use 50% of acreage.

(3) All land in 40% + slope of natural grade is allowed to use 0% of acreage.

(4) Five-foot contour maps available from the City shall be used for calculating the slope adjustment.

b. The density of development shall be based on net acreage. Projects proposing to create a total of four units/residential lots or less may exceed mid-range density regulations without having to comply with the following findings, so long as the project will not exceed maximum density. In order to exceed mid-range density up to the maximum density for projects containing 5 or more dwelling units or residential lots, allowed for the subject site, the following findings must be made by the appropriate agency:
(1) The project shows high sensitivity to the neighboring properties and area to ensure compatibility with land uses and community character, and;

(2) The project design significantly exceeds the minimum standards for development (lot size, setbacks, lot width and depth, landscape standards and design standards) and;

(3) The project either:
   ◦ Provides needed public improvements that are significantly beyond the requirements for the project, or;
   ◦ Provides private or public recreational facilities that significantly exceed the project's requirements.
   ◦ Or provides other significant benefits.

3. Street setbacks shall be measured from the ultimate street right-of-way according to the City Engineer or the maximum required street width if the street is proposed to be private or is now a private street.

4. When landscaping is required, landscaping shall consist predominantly of trees, shrubs, ground cover and decorative rocks, except for necessary walks, drives and fences. All required landscaping shall be maintained in a healthy and thriving condition, free from weeds, trash, and debris.

5. Varieties of plants chosen for landscaping may be restricted through the development review process to protect or preserve views. All required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with required landscaping, buffering, and screening requirements. All landscaping shall be maintained in a manner that will not depreciate adjacent property values or otherwise adversely affect adjacent properties.

6. The following standards shall apply to building height limits for residential buildings. (Ord. 2003-10).

   a. The standard height limit for residential buildings shall be the lesser of two stories or the following height, all as measured to the top of a flat roof (or in the case of a pitched roof to the top of the roof immediately above the exterior plane of the wall below, including roofing material):

     • 26 ft. - RR to RR-1 zones citywide, RR through RR-2 in the Olivenhain Community.
     • 22 ft. - RR-2 (except Olivenhain Community) and higher zones, and substandard lots in the Olivenhain Community.
Attachment F
Government Code Section 65915 (State Density Bonus Law)
GOVERNMENT CODE
SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the condominium project as defined in subdivision (f) of, or in the planned unit development as defined in subdivision (k) of, Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income
household was less than the fair market value of the home at the
time of initial sale.

d) (1) An applicant may submit to a city, county, or city and
county a proposal for the specific incentives or concessions that the
applicant requests pursuant to this section, and may request a
meeting with the city, county, or city and county. The city, county,
or city and county shall grant the concession or incentive requested
by the applicant unless the city, county, or city and county makes a
written finding, based upon substantial evidence, of either of the
following:

(A) The concession or incentive is not required in order to
provide for affordable housing costs, as defined in Section 50052.5
of the Health and Safety Code, or for rents for the targeted units to
be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse
impact, as defined in paragraph (2) of subdivision (d) of Section
65589.5, upon public health and safety or the physical environment or
on any real property that is listed in the California Register of
Historical Resources and for which there is no feasible method to
satisfactorily mitigate or avoid the specific adverse impact without
rendering the development unaffordable to low- and moderate-income
households.

(2) The applicant shall receive the following number of incentives
or concessions:

(A) One incentive or concession for projects that include at least
10 percent of the total units for lower income households, at least
5 percent for very low income households, or at least 10 percent for
persons and families of moderate income in a condominium or planned
development.

(B) Two incentives or concessions for projects that include at
least 20 percent of the total units for lower income households, at
least 10 percent for very low income households, or at least 20
percent for persons and families of moderate income in a condominium
or planned development.

(C) Three incentives or concessions for projects that include at
least 30 percent of the total units for lower income households, at
least 15 percent for very low income households, or at least 30
percent for persons and families of moderate income in a condominium
or planned development.

(3) The applicant may initiate judicial proceedings if the city,
county, or city and county refuses to grant a requested density
bonus, incentive, or concession. If a court finds that the refusal
to grant a requested density bonus, incentive, or concession is in
violation of this section, the court shall award the plaintiff
reasonable attorney's fees and costs of suit. Nothing in this
subdivision shall be interpreted to require a local government to
grant an incentive or concession that has a specific, adverse impact,
as defined in paragraph (2) of subdivision (d) of Section 65589.5,
upon health, safety, or the physical environment, and for which there
is no feasible method to satisfactorily mitigate or avoid the
specific adverse impact. Nothing in this subdivision shall be
interpreted to require a local government to grant an incentive or
concession that would have an adverse impact on any real property
that is listed in the California Register of Historical Resources.
The city, county, or city and county shall establish procedures for
carrying out this section, that shall include legislative body
approval of the means of compliance with this section. The city,
county, or city and county shall also establish procedures for
waiving or modifying development and zoning standards that would
otherwise inhibit the utilization of the density bonus on specific
sites. These procedures shall include, but not be limited to, such
items as minimum lot size, side yard setbacks, and placement of
public works improvements.

(e) In no case may a city, county, or city and county apply any
development standard that will have the effect of precluding the
construction of a development meeting the criteria of subdivision (b)
at the densities or with the concessions or incentives permitted by
this section. An applicant may submit to a city, county, or city and
county a proposal for the waiver or reduction of development
standards and may request a meeting with the city, county, or city
and county. If a court finds that the refusal to grant a waiver or
reduction of development standards is in violation of this section,
the court shall award the plaintiff reasonable attorney’s fees and
costs of suit. Nothing in this subdivision shall be interpreted to
require a local government to waive or reduce development standards
if the waiver or reduction would have a specific, adverse impact, as
defined in paragraph (2) of subdivision (d) of Section 65589.5, upon
health, safety, or the physical environment, and for which there is
no feasible method to satisfactorily mitigate or avoid the specific
adverse impact. Nothing in this subdivision shall be interpreted to
require a local government to waive or reduce development standards
that would have an adverse impact on any real property that is listed
in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is
necessary to make the housing units economically feasible.

(g)(1) For the purposes of this chapter, except as provided in
paragraph (2), "density bonus" means a density increase of at least
20 percent, unless a lesser percentage is elected by the applicant,
over the otherwise maximum allowable residential density under the
applicable zoning ordinance and land use element of the general plan
as of the date of application by the applicant to the city, county,
or city and county. The amount of density bonus to which the
applicant is entitled shall vary according to the amount by which the
percentage of affordable housing units exceeds the percentage
established in subdivision (b). For each 1 percent increase above 10
percent in the percentage of units affordable to lower income
households, the density bonus shall be increased by 1.5 percent up to
a maximum of 35 percent. For each 1 percent increase above 5
percent in the percentage of units affordable to very low income
households, the density bonus shall be increased by 2.5 percent up to
a maximum of 35 percent. All density calculations resulting in
fractional units shall be rounded up to the next whole number. The
granting of a density bonus shall not be interpreted, in and of
itself, to require a general plan amendment, local coastal plan
amendment, zoning change, or other discretionary approval. The
density bonus shall not be included when determining the number of
housing units that is equal to 5 or 10 percent of the total. The
density bonus shall apply to housing developments consisting of five
or more dwelling units.

(2) For the purposes of this chapter, if a development does not
meet the requirements of paragraph (1), (2), or (3) of subdivision
(b), but the applicant agrees or proposes to construct a condominium
project as defined in subdivision (f) of, or a planned development as
defined in subdivision (k) of, Section 1351 of the Civil Code, in
which at least 10 percent of the total dwelling units are reserved
for persons and families of moderate income, as defined in Section
50093 of the Health and Safety Code, a "density bonus" of at least 5
percent shall be granted, unless a lesser percentage is elected by
the applicant, over the otherwise maximum allowable residential
density under the applicable zoning ordinance and land use element of
the general plan as of the date of application by the applicant to the city, county, or city and county. For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(4) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.
(5) The land is transferred to the local agency or to a housing
developer approved by the local agency. The local agency may require
the applicant to identify and transfer the land to the developer.

(6) The transferred land shall be within the boundary of the
proposed development or, if the local agency agrees, within
one-quarter mile of the boundary of the proposed development.

(i) When an applicant proposes to construct a housing
development that conforms to the requirements of subdivision (b) and
includes a child care facility that will be located on the premises
of, as part of, or adjacent to, the project, the city, county, or
city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet
of residential space that is equal to or greater than the amount of
square feet in the child care facility.

(B) An additional concession or incentive that contributes
significantly to the economic feasibility of the construction of the
child care facility.

(2) The city, county, or city and county shall require, as a
condition of approving the housing development, that the following
occur:

(A) The child care facility shall remain in operation for a period
of time that is as long as or longer than the period of time during
which the density bonus units are required to remain affordable
pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the
children of very low income households, lower income households, or
families of moderate income shall equal a percentage that is equal to
or greater than the percentage of dwelling units that are required
for very low income households, lower income households, or families
of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city,
county, or a city and county shall not be required to provide a
density bonus or concession for a child care facility if it finds,
based upon substantial evidence, that the community has adequate
child care facilities.

(4) "Child care facility," as used in this section, means a child
day care facility other than a family day care home, including, but
not limited to, infant centers, preschools, extended day care
facilities, and schoolage child care centers.

(5) "Housing development," as used in this section, means one or
more groups of projects for residential units constructed in the
planned development of a city, county, or city and county. For the
purposes of this section, "housing development" also includes a
subdivision or a planned unit development or condominium project, as
defined in Section 1351 of the Civil Code, approved by a city,
county, or city and county and consists of residential units or
unimproved residential lots and either a project to substantially
rehabilitate and convert an existing commercial building to
residential use or the substantial rehabilitation of an existing
multifamily dwelling, as defined in subdivision (d) of Section
65863.4, where the result of the rehabilitation would be a net
increase in available residential units. For the purpose of
calculating a density bonus, the residential units do not have to be
based upon individual subdivision maps or parcels. The density bonus
shall be permitted in geographic areas of the housing development
other than the areas where the units for the lower income households
are located.

(k) The granting of a concession or incentive shall not be
interpreted, in and of itself, to require a general plan amendment,
local coastal plan amendment, zoning change, or other discretionary
approval. This provision is declaratory of existing law.

(1) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or
concessions beyond those provided in this section, subject to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.
65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section
shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for any purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. Any penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for childcare services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998, by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.
65918. The provisions of this chapter shall apply to charter cities.
Attachment G
EMC Section 30.16.020(Encinitas Density Bonus Ordinance)
f. Phasing. If the PRD is to be developed in phases, the PRD plan shall coordinate improvement of the open space, construction of buildings, and other improvements so that each development stage achieves a proportionate share of the total open space and recreational amenities.

6. Street Improvements. All public streets within or abutting the proposed planned development shall be dedicated and improved to City specifications for the particular classification of street. When the developer desires to retain any private streets within the development, such streets and their maintenance shall conform to the applicable provisions of Municipal Code Chapter 24.29, and shall be consistent with the private road standards as adopted by the City Council.

7. Parking and Recreational Vehicle Storage. Recreational vehicle storage facilities are not required. However, all open parking areas and any provided storage facilities shall be adequately screened with landscaping from nearby residences within the development, residentially-zoned properties adjacent to the development boundaries, and any significant public views into the project. Parking spaces reserved for the storage of recreational vehicles or equipment shall not be counted toward fulfilling the development's minimum parking requirement.

8. The minimum lot size, design, setback (except for bluff setbacks and setbacks from environmental resources) and coverage standards for residential zones may be modified or reduced through a PRD project to allow for smaller lots, including individual "postage-stamp" lots with individual attached dwelling units.

9. In planned residential developments, the need for trash receptacle areas and adequate areas for collecting and loading recyclable materials will be evaluated on a case by case basis. If it is determined that a development project must provide the aforementioned areas, trash enclosures and adequate areas for collecting and loading recyclable materials must be architecturally compatible with the development, screened from view of the roadway and convenient to all dwelling units within the project. (Ord. 93-14)

C. DENSITY BONUSES PURSUANT TO GOVERNMENT CODE SECTION 65915. When a developer of residential units agrees to construct any one of the types of residential projects described in Government Code Section 65915(b), and which complies with all standards set forth in Government Code Section 65915, the City shall grant a density increase of 25 percent over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan and one other concession or incentive in accordance with Section 65915 of the Government Code and all of the following: (Ord. 95-04)
1. Approval of a density bonus and any other regulatory concession(s) shall be obtained through a MUP application. In the coastal zone, approval of a coastal development permit shall also be required. (Ord. 95-04)

2. Very low, lower income, and housing units reserved for qualifying residents as defined by Civil Code Section 51.2 shall be maintained for a minimum of thirty (30) years through execution and recordation of a covenant between the developer (property owner) and the City.

3. In lieu of a density bonus and other concessions, the City may instead provide other incentives of equivalent financial value based upon the land cost per dwelling unit, provided they are not inconsistent with the policies and development standards of the certified Local Coastal Program. (Ord. 95-04)

4. In the coastal zone, the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. The otherwise maximum allowable residential density shall mean the maximum potential density modified by applying all site-specific environmental development constraints identified within the coastal zoning ordinances and land use element certified by the Coastal Commission. The density bonus shall be applicable to housing developments consisting of five or more units. (Ord. 95-04)

5. In the coastal zone, any housing development approved pursuant to Government Code Section 65915 shall be consistent, to the maximum extent feasible and in a manner most protective of coastal resources, with all otherwise applicable certified Local Coastal Program policies and development standards. Approval of development proposed under this Section shall require a finding that the development, if it had been proposed without the 25 percent density increase, would have been fully consistent with the policies and development standards of the certified Local Coastal Program. In cases where a 25 percent density increase is granted pursuant to Government Code Section 65915 and results in development inconsistent with otherwise applicable certified Local Coastal Program policies and development standards, such as height, parking, and setback requirements, the relief granted from such standards shall be considered an additional incentive under Government Code Section 65915 (h). (Ord. 95-04)
6. A qualifying housing development shall receive one of the incentives identified in Government Code Section 65915(h) in addition to a 25 percent density bonus unless it is found that the additional incentive is not required in order to provide for affordable housing costs or rents. In the coastal zone, any incentives must be consistent, to the maximum extent feasible and in a manner most protective of coastal resources, with all certified Local Coastal Program policies and standards otherwise applicable to development not subject to Government Code Section 65915. In choosing between incentives, priority shall be given to those incentives most protective of coastal resources so as to avoid any development within or adjacent to wetlands or other environmentally sensitive areas or any development within or adjacent to geologic hazard areas, or any development which would result in any significant adverse impacts on coastal access and recreation. (Ord. 95-04)

7. The City may prepare an LCP amendment for certification by the Coastal Commission that would include maps identifying areas within the City where density bonuses in excess of 25 percent may be permitted based on a finding that no adverse impacts on coastal resources would result. (Ord. 95-04)
Attachment H
EMC Section 24.21 (Encinitas Inclusionary Housing Ordinance)
CHAPTER 24.21

DEDICATION: AFFORDABLE HOUSING ASSISTANCE

24.21.010 Intent. The intent of this Chapter is to insure that the private sector, as well as the public sector, contributes to and shares our government's responsibility of providing adequate housing opportunities for all segments of the population. (Ord. 87-10)

24.21.020 Requirement. As a condition of approval of any tentative subdivision map for residential dwellings, condominiums, community apartments, stock cooperatives or conversions comprising ten (10) or more lots or ten (10) or more dwelling units, the subdivider shall reserve a unit or units for sale to tenants qualified by the Encinitas Housing Authority or shall alternatively rent the inclusionary unit subject to the applicable Encinitas Affordable Housing Policy adopted by City Council Resolution or pay a fee in-lieu thereof, at the option of the subdivider, for the purpose of providing affordable housing assistance. (Ord. 2010-08)

24.21.030 Filing. At the time of filing of a tentative subdivision map, the subdivider shall, as part of the filing, elect whether to reserve a unit or units for sale, or to alternatively rent the inclusionary unit subject to the applicable Encinitas Affordable Housing Policy adopted by City Council Resolution or pay the in-lieu fee. (Ord. 2010-08)

24.21.040 Amount of Reservation/In-lieu Fee Required.

A. Unit Reservation. If the subdivider elects to reserve units, the number of units required shall be equal to one unit for every ten (10) lots or ten (10) dwelling units in the proposed development. Said unit or units shall be sold or rented to persons qualified by the Encinitas Housing Authority. (Ord. 2010-08)

B. In-Lieu Fee. If the subdivider elects to make payment in-lieu of unit reservation, the amount of the fee shall be fixed by a schedule adopted, from time to time, by resolution of the City Council. Said amount shall be reasonably calculated to provide the subdivider's fair share contribution towards meeting the City's affordable housing objective without placing an unreasonable financial burden on any applicant.

24.21.050 Affordable Housing Fund. All fees collected hereunder shall be deposited in an Affordable Housing Fund. Said fund shall be administered by the City and shall be used only for the purpose of providing funding assistance for the provision of affordable housing units consistent with the goals and policies contained in the Housing Element of the Community Plan.
24.21.060 Procedure.

A. Where a unit or units are to be reserved for sale or for rent pursuant to the provisions herein, the subdivider shall prepare covenants, conditions, and restrictions applicable to the subdivision in accordance with the provisions herein. (Ord. 2010-08)

B. Where a subdivider has elected to pay a fee in-lieu of unit reservation, approval of the tentative map or tentative parcel map shall be conditioned upon a requirement that the subdivider, prior to approval of the final or parcel map, shall pay an in-lieu fee for the subdivision in an amount established by resolution of the City Council in effect at the time of payment. Or, in the alternative, the subdivider shall execute a secured, recorded agreement whereby:

1. The owner of each lot within the subdivision shall pay an in-lieu fee for such lot as a condition to the owner's entitlement to obtain a building permit for such lot.

2. The in-lieu fee for the lot shall be calculated as follows: The number of units or portions thereof required to be reserved from the subdivision shall be multiplied by the per unit in-lieu fee fixed by the resolution of the City Council in effect at the time of payment. The resulting product shall be divided by the number of units created by the subdivision. The resulting quotient shall equal the amount of the fee for the lot.

3. In the case of condominiums, community apartments, stock cooperatives or conversions, payment of the in-lieu fee for each unit shall be included as a condition of the escrow for the initial sale of each unit within the project.

24.21.070 Refund.

A. Any fee paid pursuant to the provisions of this Chapter shall be refunded upon written request by the subdivider following withdrawal of the application or abandonment of the approval of the subdivision, provided such withdrawal or abandonment occurs prior to the recordation of the final map.

B. The in-lieu funds shall be segregated from City funds. The in-lieu funds may be invested in the same manner and at the same rate as allowed for City funds. If the City has not, within a ten (10) year period from receipt of in-lieu funds committed the funds to a low or moderate income housing project, then the in-lieu funds, together with any earnings thereon, shall be refunded to the payor. The ten year period shall be suspended during the pendency of any litigation involving the above.
24.21.080 New Condominiums: Rental Unit Agreement. Notwithstanding any other provisions in this Title, the City may enter into an agreement with the subdivider proposing to construct a condominium development to provide apartment rental units in accordance with Section 66452.50 of the Act.