

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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December 15, 2022

Suzi Merriam
Community Development Director
City of Watsonville
250 Main Street
Watsonville, CA 95076

Dear Suzi Merriam:

RE: 482 & 484 Beck Street – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) is aware that the City of Watsonville (City) is reviewing an application for a housing development project located at 482 & 484 Beck Street (Project). HCD received a request for technical assistance from the Project applicant on October 14, 2022. The applicant expressed concerns that some of the requirements included by the City in its pre-application response letter, dated October 10, 2022, were contrary to the State Density Bonus Law (SDBL) (Gov. Code, § 65915). Specifically, the applicant disagreed with the City's use of net acreage, rather than gross acreage, to calculate base density (and ultimately the density bonus) and the City's requirement that the Project conform to (presumably all) R-1 Zoning District Regulations. The purpose of this letter is to provide technical assistance on this matter.

Background

HCD understands the Project proposes a 12-lot single family residential subdivision project to be located on an infill site. The Project would provide two for-sale units that would be affordable to moderate-income (MI) households and ten for-sale market rate units. The proposed Project utilizes the SDBL to achieve a density bonus of 15 percent (i.e., two units [rounded up]). The base density for the Project is ten units.¹

¹ 1.159 gross acres multiplied by 7.99 dwelling units per acre (Low Density Residential [R-LD] General Plan Land Use Designation) equals 10 units, rounded up. The General Plan density, rather than the Zoning Code density, applies per Government Code section 65915, subdivision (o)(5).

Gross Acreage vs. Net Acreage

The SDBL requires that base density calculations be performed using gross acreage, rather than net acreage. The distinction is made explicitly in Government Code section 65915, subdivision (f), by the appearance of the word “gross” in the first sentence. The word “gross” was added to the SDBL in 2016 by Assembly Bill 2501 (Chapter 758, Statutes of 2016). HCD recognizes that the City’s General Plan² and Zoning Code³ call for the use of net acreage. However, the provisions of the SDBL supersede those of local governments in the event of a conflict. While there is no ambiguity in this case, HCD would like to further note that even if there *were* ambiguity, the SDBL contains a directive that it “be interpreted liberally in favor of producing the maximum number of total housing units.” (Gov. Code, § 65915, subd. (r)). The use of net acreage in the context of the Project would result in fewer housing units being produced because the area used for the access drive would be subtracted from the site area. HCD would also like to note that net acreage is typically less than gross acreage depending on a variety of potential site conditions beyond access drives. Examples include riparian areas, wetlands, steep slopes, easements, and any other condition that renders a portion of a site undevelopable.

Granting of Concessions and Development Standard Waivers

The Project is entitled to one incentive/concession (Gov. Code, § 65915, subd. (d)(2)(A)) and a potentially unlimited number of development standard waivers (Gov. Code, § 65915, subd. (e)). A project that meets the eligibility requirements of the SDBL is entitled to a density bonus, incentives/concessions, development standard waivers, and limited parking ratios (Gov. Code, § 65915, subd. (b)). The City must grant (i.e., “shall approve”) the specific incentives/concessions requested by the applicant unless the City makes written findings, based on substantial evidence, that the incentive/concession would (1) not result in a cost reduction, (2) have a specific adverse impact on health or safety (as defined), or (3) be contrary to state or federal law (Gov. Code, § 65915, subd. (d)). The City is also strictly limited in denying requested development standard waivers, preventing it from applying any development standard that would physically preclude a project as proposed unless doing so would have a specific adverse impact on health or safety (as defined) which could not be mitigated (Gov. Code, § 65915, subd. (e)). The City bears the burden of proof for the denial of a requested incentive/concession (Gov. Code, § 65915, subd. (d)(4)). HCD reminds the City that appellate courts have established (and continue to affirm) that local agencies cannot lawfully redesign a qualifying SDBL project on the theory that if the project were configured differently, it would not need the requested incentives/concessions and waivers. (*Wollmer v. City of Berkeley* (2011) 193

² City of Watsonville 2005 General Plan, Chapter 4 Land Use and Community Development, p. 52.

³ City of Watsonville Municipal Code §14-16.205 (Minimum net land area.)

Cal.App.4th 1329, 1346-47.) The City must consider the Project as proposed, inclusive of any requested concessions and waivers.

Conclusion

HCD respects the challenges inherent in infill development, especially on unusually shaped sites surrounded by existing development. The City should be pragmatic in its consideration of the proposed Project. Given the long narrow shape of the Project site, it is likely that a considerable number of development standards will need to be modified or eliminated to facilitate the 12-lot subdivision. HCD would also like to remind the City that HCD has enforcement authority over the SDBL, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

If you have questions or need additional information, please contact Brian Heaton at Brian.Heaton@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name being more prominent.

Shannan West
Housing Accountability Unit Chief