



Recent Changes to Density Bonus Law: Legislative Overview

April 13, 2023

WWW.SCAG.CA.GOV

Development Streamlining Services

Funded and managed by:

**Southern California Association of Governments
(SCAG)**



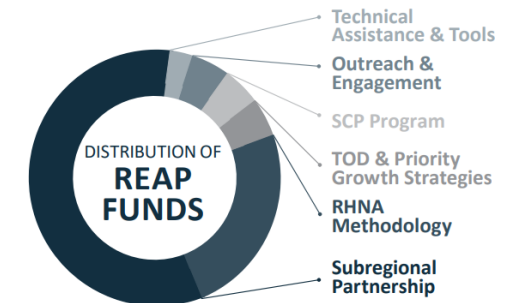
With grant funding from:

**State of California Department of Housing and
Community Development (CA HCD)**



From a grant through:

Regional Early Action Program (REAP)



Development Streamlining Materials

SCAG

CONNECT SoCal REAP 2.0 RDP TRANSLATE

ABOUT US MEETINGS OUR WORK DATA & TOOLS GET INVOLVED NEWS & EVENTS

OUR WORK

- Connect SoCal +
- Inclusion, Diversity, Equity & Awareness
- Programs & Projects -
- Housing -
 - Regional Housing Needs Assessment
 - Housing Element Support +
 - Regional Early Action Planning -
 - Development Streamlining Efforts
 - Housing Policy Leadership Academy
 - Housing Policy Forum Series
 - REAP 2.0
 - Other To Residential Toolkit
- Sustainable Communities

DEVELOPMENT STREAMLINING EFFORTS

In response to the results from the Development Streamlining Questionnaire, and as part of our efforts to accelerate housing production, SCAG has prepared a series of guidance materials included below. The guidance material topics were carefully selected based on feedback and include a combination of streamlining options or exemptions under CEQA and other state laws.

Development Streamlining Materials

Recent changes in State laws to CEQA's environmental review process as well as new State laws to streamline administrative review processes have created new opportunities for jurisdictions with regulatory land use control to streamline and shorten the entitlement process and accelerate the production of much needed housing.

The guidance materials below were developed to provide support and pathways for local jurisdictions and land use practitioners to address these challenges.

DEVELOPMENT STREAMLINING GUIDANCE MATERIALS +

<https://scag.ca.gov/streamlining>















Development Streamlining Materials

Development Streamlining Materials

Recent changes in State laws to CEQA's environmental review process as well as new State laws to streamline administrative review processes have created new opportunities for jurisdictions with regulatory land use control to streamline and shorten the entitlement process and accelerate the production of much needed housing.

The guidance materials below were developed to provide support and pathways for local jurisdictions and land use practitioners to address these challenges.

DEVELOPMENT STREAMLINING GUIDANCE MATERIALS

-  What is CEQA Streamlining?
-  Senate Bill 375: CEQA Streamlining
-  CEQA Streamlining Options for Non-Exempt Housing Projects Covered by an Existing EIR: Project Eligibility Review Matrix
-  CEQA Streamlining For Infill Projects and Projects Consistent With Community Plan and Zoning
-  CEQA Categorical Exemptions
-  CEQA Exemptions for Housing Projects: Project Eligibility Review Matrix
-  Transit Priority Project and Transit-Oriented Project CEQA Exemptions
-  CEQA Article 12.5 - Exemptions For Agricultural Affordable and Infill Housing
-  Legislative Summary of AB 2345 - Density Bonus Law
-  Density Bonus Law: What are Incentives, Concessions, and Waivers?
-  Senate Bill 9: Ministerial Approval of Duplexes and Urban Lot Splits
-  Senate Bill 10: Local Rezoning for "Missing Middle" Housing Production
-  Senate Bill 35: Affordable Housing Streamlined Approval
-  Senate Bill 330 and Senate Bill 8: Summary of Housing Crisis Act of 2019

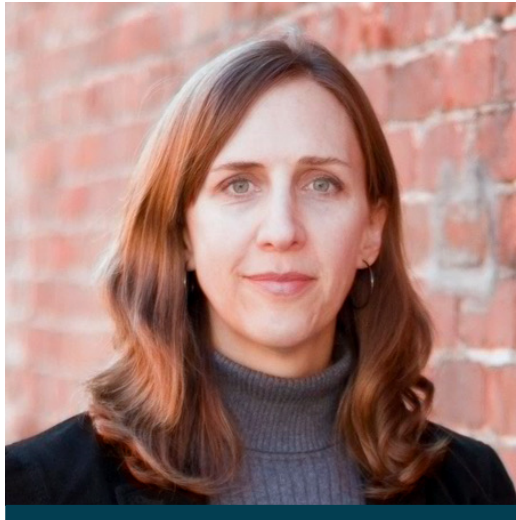
<https://scag.ca.gov/streamlining>

Legal Disclaimer

The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.



Introductions



Jean Ward, AICP

Community Planning Services Manager
Civic Solutions



Edith Medina, MPP, PhD

Associate Planner
Civic Solutions



Margaret Sohagi, Esq.

The Sohagi Law Group, PLC



Recent Changes to Density Bonus Law: Legislative Overview

April 13, 2023

WWW.SCAG.CA.GOV

Agenda

- Housekeeping Items and Workshop Announcements
- Polls
- Overview of Density Bonus Law
- What are Incentives/Concessions?
- What are Waivers?
- Other Recent Amendments to the Density Bonus Law
- Q & A

Housekeeping Items



Webinar will be recorded and available on SCAG website:
<https://scag.ca.gov/streamlining>



Questions in Q&A box will be addressed at end of presentation



You can also send questions to Nashia Lalani at
lalani@scag.ca.gov



Upcoming "Office Hours" – dates and registration forthcoming

Poll #1: Office Hours

1. Are you interested in participating in office hours to receive additional information and guidance?
2. If so, which Office Hours format is preferred:
 - Zoom meeting in a small group setting
 - One-on-one pre-scheduled appointment
3. Which topic(s) are of most interest to discuss:
 - SB 330/SB 35
 - Density Bonus Law
 - CEQA Exemptions and Tiering
 - Other



<https://scag.ca.gov/streamlining>

Workshop #3

What: CEQA Streamlining Overview & Housing Exemptions

When: Tuesday, May 23rd, 2023

Time: 11:30 a.m.

Sign up online at:

<https://scag.ca.gov/streamlining>



Workshop #4

What: CEQA Streamlining from Prior CEQA Documents for Housing Projects

When: Tuesday, June 20th, 2023

Time: 11:30 a.m.

Sign up online at:

<https://scag.ca.gov/streamlining>



Poll #2: Knowledge of Density Bonus Law

1. Are you familiar with recent legislation passed that made amendments to the Density Bonus Law (DBL)?

Examples: AB 2345, AB 2334, AB 1551, AB 682 and case laws such as Schreiber v. City of Los Angeles (2021) and Bankers Hill 150 v. City of San Diego (2022)

2. Has your jurisdiction processed density bonus projects?
3. If yes, how many?



QUICK OVERVIEW OF DENSITY BONUS LAW

Government Code Sections 65915 to 65918

Background on Density Bonus Law (DBL)

- Originally enacted in 1979
- Allows developer to increase density above the maximum allowable per the general plan land use
- In exchange: provide affordable units



What DBL Requires

DBL requires jurisdictions to grant:

- 1) incentives (or concessions) that provide cost reductions
- 2) waivers of development standards
- 3) reductions in parking requirements



Project Eligibility

Any project that proposes 5+ units and meets one criteria below, is eligible for Density Bonus:

% of Total Units	Restriction Applied
5%	"Very Low Income"
10%	"Low Income" rental units OR "Moderate Income" for sale units
10%	"Very Low Income" units restricted for transitional foster youth OR disabled veterans, OR homeless
20%	"Low Income" units for student housing at accredited colleges
100%	Affordable units (excludes manager's units) with a max of 20% moderate units (includes shared housing)
0%	Senior housing or age-restricted mobile home park or shared housing OR at least 1 acre of land donated to jurisdiction for very low-income units OR will include childcare facility

Requirements for Units and Location

- 5+ housing development project including mixed-use
- Units restricted to their level of affordability for at least 55 years
- AB 491 (2021) requires all residents to have equal access to common areas and amenities



How is Density Bonus Amount Calculated?

- Two factors:
 - % of units set aside as affordable
 - Household income category of those affordable units and housing type
- Fractional units are rounded **up** when making calculations, this includes base density and density bonus
 - % of affordable units on the site must exceed % established in the density bonus calculation table

DENSITY BONUS CHART*

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	MODERATE INCOME DENSITY BONUS***	LAND DONATION DENSITY BONUS	SENIOR****	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%	-	-	-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	38.75%	23%	7%	17%	20%	20%	-
13%	42.5%	24.5%	8%	18%	20%	20%	-
14%	46.25%	26%	9%	19%	20%	20%	-
15%	50%	27.5%	10%	20%	20%	20%	-
16%	50%	29%	11%	21%	20%	20%	-
17%	50%	30.5%	12%	22%	20%	20%	-
18%	50%	32%	13%	23%	20%	20%	-
19%	50%	33.5%	14%	24%	20%	20%	-
20%	50%	35%	15%	25%	20%	20%	35%

Example of Density Bonus Calculation

Project Information

- **Property:** 1.4 acres
- **General Plan:** R-8
- **Base Density:** 11.2 units (rounded to 12 units)
- **Applicant:** 1 unit reserved for "very low" income or 8.33%

Density Bonus Calculation

- $1.4 \text{ acres} \times 8 \text{ dwelling units/acre} = 11.2$
 - Rounded up to 12 units
- $1 \text{ affordable unit} / 12 \text{ units} = 8.33\%$
 - Rounded up to 9%
- 9% of "very low income" (refer to scale) = 30% density bonus
- **$12 \text{ units} \times 30\% \text{ "bonus"} = 15.6$ or rounded up to 16 units**

Parking Requirements

Maximum Parking Requirements

Studio / 1 bedroom	1 space
2 – 3 bedrooms	1.5 spaces
4+ bedrooms	2.5 spaces

Jurisdictions cannot require parking standards if project is:

- Transit oriented housing (20% low-income **OR** at least 11% very low-income **OR** at least 40% moderate-income) **AND** located within 1/2 mile of major transit stop (with no unobstructed access)
- Transit oriented housing for “special needs” **OR** “for-rent housing development for individuals 55 years of age or older” with 1/2 mile access to bus service

Gov. Code Section 65915 (p)



WHAT ARE INCENTIVES/CONCESSIONS?

What is an incentive/concession?

- The law uses both “concession” and “incentive” synonymously
- Incentives/concessions include “[a] reduction in site development standards or a modification of zoning code requirements or architectural design requirements... that results in identifiable and actual cost reductions, to provide for affordable housing costs” [Gov. Code Section 65915(d)(1) and Section 65915(k)].
- Concessions/incentives allow developers to deviate from design standards and/or development regulations when the requirements make construction ***economically infeasible***, if not approved

Determining Economic Infeasibility

Jurisdictions cannot require applicants to submit documentation to prove that incentives/concessions will make housing development financially infeasible

- *Schreiber v. City of Los Angeles (2021) 69 Cal. App.5th 549*

How many incentives/concessions can be requested?

Income Category	% of Affordable Units Reserved			
Very Low Income	5%	10%	15%	Up to 80%
Low Income	10%	17%	24%	Up to 80%
Moderate Income	10%	20%	30%	Up to 80%
Student Housing	20%	N/A	N/A	N/A
Senior Housing	N/A	N/A	100%	N/A
Max Incentive(s) or Concession(s)	1	2	3	4^{1,2}

¹ To qualify for 4 incentives/concessions, a project must reserve at least 80% of the units to lower income households (very low, low, or combination thereof). The remaining 20% may be reserved for moderate income households.

Government Code §65915(d)(2)(D).

² AB 2334: 100% affordable projects in very low vehicle travel areas within designated (17) counties are eligible for 4 incentives/concessions.



WHAT ARE WAIVERS?

What are waivers?

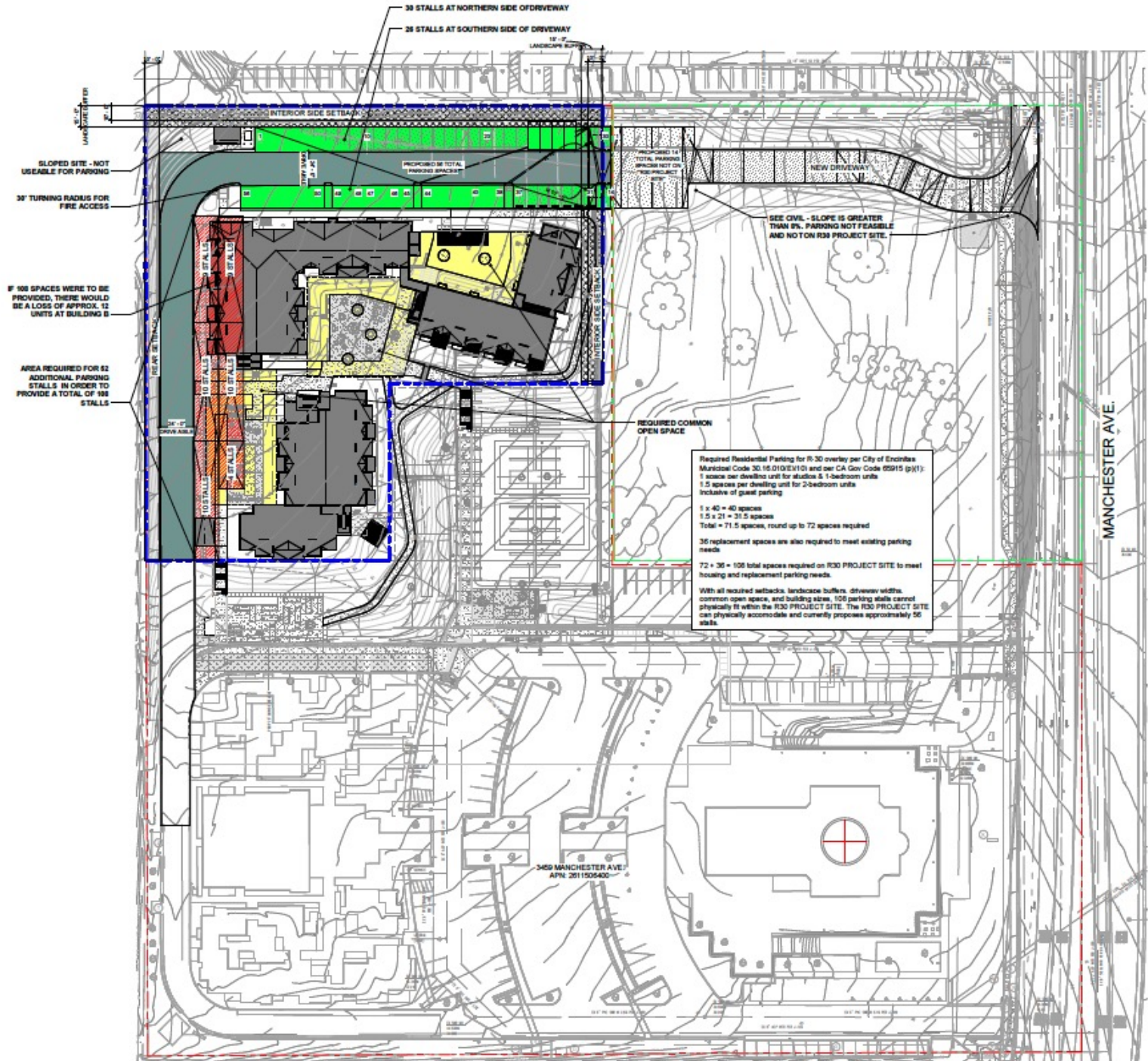
- A waiver is a reduction or modification of any “development standards” and other regulations when the requirements make construction ***physically infeasible***, if not approved
- Developer must provide written documentation to justify why waivers are needed
- Waivers are **unlimited**, unlike concessions/incentives

Determining Physical Infeasibility




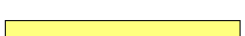




- Applicants to provide sufficient documentation to demonstrate physical infeasibility if all development standards are applied
- Example of sufficient documentation:
 - written explanation of the requested waiver(s) and a waiver exhibit showing developable envelope remaining once all development standards are met

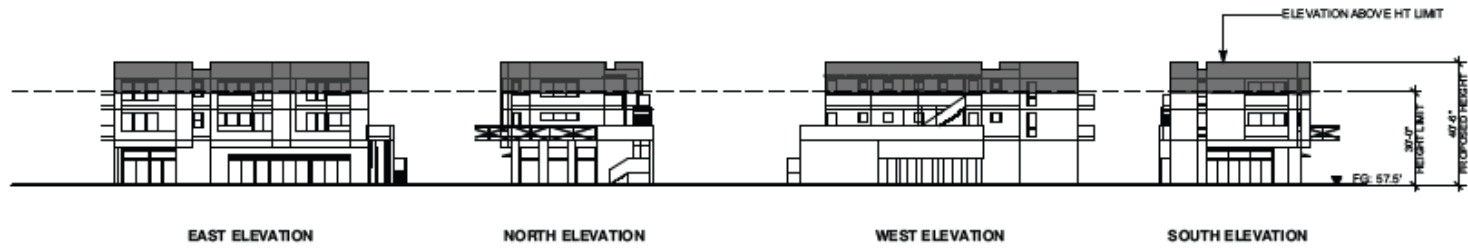


EXAMPLES OF WAIVER EXHIBITS



Legend - Parking Waiver

-  Building Area
-  Proposed area of parking for typical 18' length parking stalls
-  Required Driveway Width
-  Required Common Open Space
-  Additional area required to provide 108 total parking stalls
-  Property line
-  "R30 Project Site"
-  Setback line



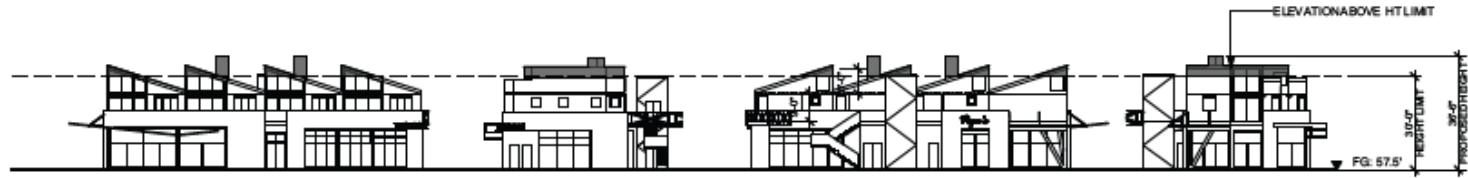
EAST ELEVATION

NORTH ELEVATION

WEST ELEVATION

SOUTH ELEVATION

BUILDING 1 MIXED USE



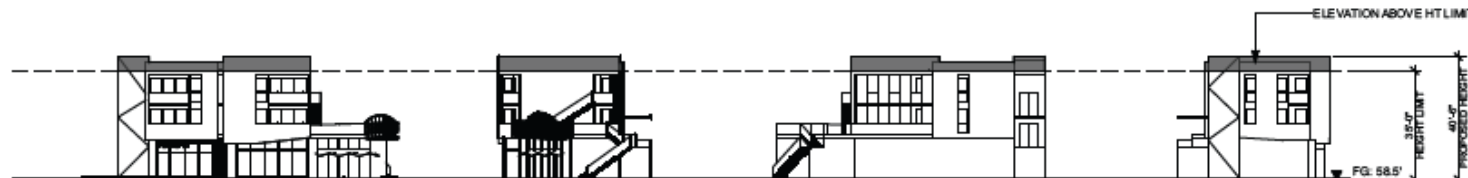
EAST ELEVATION

NORTH ELEVATION

WEST ELEVATION

SOUTH ELEVATION

BUILDING 2 MIXED USE



EAST ELEVATION

NORTH ELEVATION

WEST ELEVATION

SOUTH ELEVATION

BUILDING 4 MIXED USE



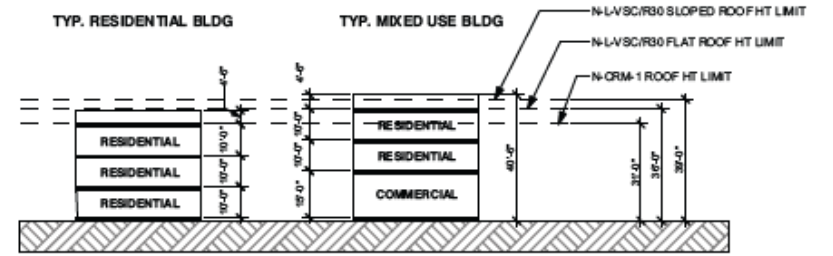
EAST ELEVATION

NORTH ELEVATION

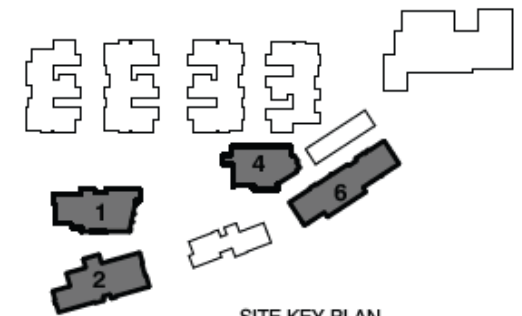
WEST ELEVATION

SOUTH ELEVATION

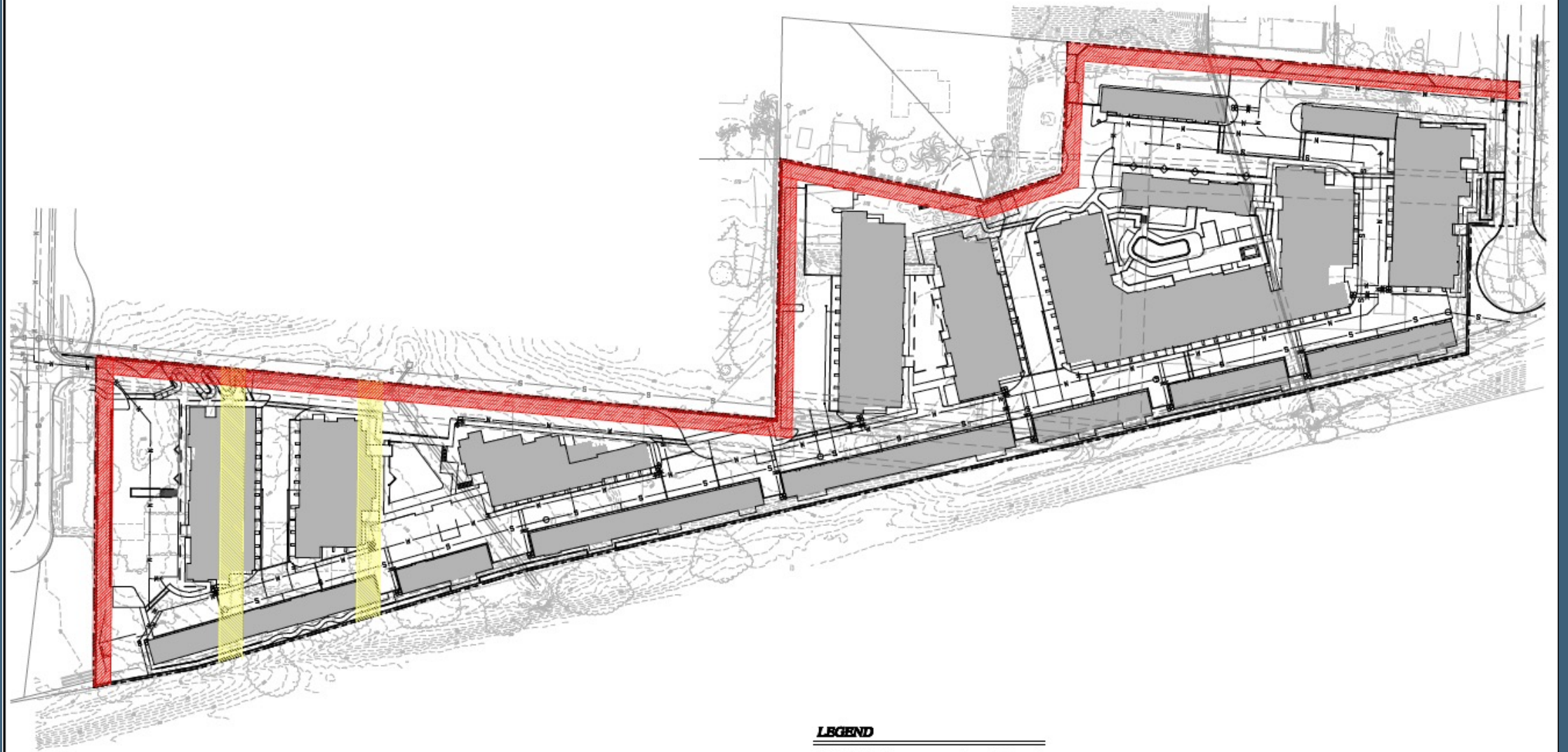
BUILDING 6 MIXED USE





HEIGHT DIAGRAM



SITE KEY PLAN



LEGEND

- | | |
|--------------------------------------|---|
| SUBDIVISION BOUNDARY | — — — — — |
| PROPOSED CENTERLINE | — · — · — · — |
| ADJACENT PROPERTY LINE | — — — — — |
| STANDARD INTERIOR SIDE YARD SET BACK |  |
| 15 FOOT LANDSCAPE BUFFER |  |
| PROPOSED STRUCTURE |  |

To summarize...

Incentives/Concessions	Waivers
Economic infeasibility	Physical infeasibility
Limited #	Unlimited #

Can Jurisdictions Deny an Incentive/Concession or Waivers?

Yes. Jurisdictions can deny an incentive/concessions or waivers if they find substantial evidence that they would be:

- 1) contrary to state/federal law;
- 2) would have a specific, adverse, and unavoidable impact on public health, safety; or
- 3) property is listed in the California Register of Historical Resources

Gov. Code Section 65915 (d)(1)

What is meant by “specific, adverse impact”?

- A “specific, adverse impact” means a “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards.”
- What is not a “specific, adverse impact” –
 - “...inconsistency with the zoning ordinance or general plan land use designation.”

Gov. Code Section 65589(d)(2)

Bankers Hill 150 v. City of San Diego

- Density Bonus Law upheld mixed-use 20-story development applying density bonus for affordable housing
 - City could not deny setback waiver without specific DB findings, which it could not make
 - City could not demand redesign unless necessary for DB exception
 - Project consistent with applicable land use plans

(2022) 74 Cal. App. 5th 755



Projects in Coastal Zones

- Density bonuses, incentives, waivers and parking reductions are to be permitted so that they are consistent with both the Density Bonus Law and California Coastal Act





RECENT AMENDMENTS TO THE DENSITY BONUS LAW

AB 290 (2021)

- Allows 1 concession or incentive to student housing projects with 20% lower-income students
- Jurisdictions can only deny incentives/concession and waivers based on health or safety impacts
- Additional parking incentives for moderate income projects



AB 571 (2021)

- Amends DBL to prohibit affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, from being imposed on housing development's affordable units



AB 2334 (2022)

- Defines "base density"
- Provides further concessions and unlimited density bonus for 100% below market rate projects in low VMT areas
- Changes to residential senior development project (age 55+) to qualify for reduced parking



AB 1551 (2022)

- DBL benefits for mixed-use projects
 - Extends DBL for mixed-used/commercial projects with affordable units to January 1, 2028



AB 682 (2022)

- DBL benefits for shared housing
 - Definition of shared housing: residential or mixed-used structure with 5+ housing units and one or more common kitchen and dining areas, designed for permanent residence for more than 30 days
- Prohibits requiring any minimum unit size or bedroom requirements





QUESTIONS?

Feel free to type your questions in the Q&A box.

Contact Nashia Lalani at lalani@scag.ca.gov

<https://scag.ca.gov/streamlining>



THANK YOU!

For more information, please visit:

<https://scag.ca.gov/streamlining>