

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

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July 10, 2006

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

Dear Mr. Hart:

RE: Application of State Density Bonus Law

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

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

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Cathy E. Creswell". The signature is written in a cursive style with a large initial "C".

Cathy E. Creswell
Deputy Director