

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

651 Bannan Street, Suite 400  
Sacramento, CA 95811  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



June 12, 2025

Brenda Wisneski  
Director of Community Development  
City of Dana Point  
33282 Golden Lantern  
Dana Point, CA 92629

Dear Brenda Wisneski:

**RE: City of Dana Point – Villas at Monarch Beach State Density Bonus Law  
Project – Notice of Violation**

The California Department of Housing and Community Development (HCD) is providing this letter as a follow-up to the Letter of Technical Assistance (TA Letter) HCD sent on September 25, 2024 (enclosed and incorporated herein). HCD is aware that the proposed project known as The Villas at Monarch Beach, located at 23731 and 23781 Mariner Drive (Project) is currently the subject of a lawsuit.<sup>1</sup> The lawsuit is related to a dispute between a developer and the City of Dana Point (City) about the appropriate method for calculating the base density of the site for purposes of implementing State Density Bonus Law (SDBL).

**Background**

The Project site has a general plan land use designation of “Residential 14-22” and a zoning designation of “Residential Multiple Family 22 (RMF 22).” Both designations allow for multifamily residential uses. The Project site has a gross land area of 561,924 square feet (12.9 acres),<sup>2</sup> of which approximately 44,012 square feet is comprised of public rights-of-way, easements, and dedicated facilities. The proposed development includes 208 existing multi-family dwelling units and proposes construction of 500 new multifamily dwelling units, for a total of 708 units.

HCD understands that the Project applicant (Applicant) has been working with the City since 2017 to determine the maximum allowable residential density (i.e., base density) for the Project site. A relevant timeline is below:

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<sup>1</sup> ST Apartments LLC v. City of Dana Point. Orange County Superior Court (2024).

<sup>2</sup> Based on Tract Map No. 7782, available at <https://webapps.ocgis.com/oclandinsights/map-viewer?id=2>.

- 2017 to approximately 2022. The City confirmed in writing on several occasions that the General Plan and zoning code allowed for a base density of 325 dwelling units on the site.<sup>3</sup>
- May 18, 2023. The Applicant submitted a preliminary application for a project with a base density of 325 dwelling units. The City deemed the application incomplete on June 14, 2023. The Applicant resubmitted on August 4, 2023, but the application expired because the Applicant never submitted a full development application.<sup>4</sup>
- June 16, 2023. The City Attorney provided a letter to the Applicant stating the base density on the site is lower than the previously stated 325 dwelling units without specifying an alternate base density.
- September 27, 2023. The City Attorney issued another letter stating that City staff erroneously communicated the base density of 325 units and that the base density of the site is 261 dwelling units.
- January 31, 2024. The Applicant submitted a second preliminary application for the Project.
- March 21, 2024. The City wrote to the Applicant indicating it had deemed the preliminary application complete and that the full development application was still due, and arguing that the base density of 261 units was correct.
- May 7, 2024. ST Apartments LLC filed a lawsuit against the City primarily regarding the base density dispute for the Project.
- May 2024 – May 2025. ST Apartments and the City filed a series of legal briefs with the court.
- July 29, 2024. The application that was submitted on January 31, 2024 expired after 180 days because the Applicant never submitted a full development application. (Note that the Applicant argues it would have been pointless to submit the full application while the City is defending an inaccurate determination on base density.)

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<sup>3</sup> City code requires rounding down for densities that result in a fractional unit pursuant to Dana Point Municipal Code (DPMC) § 9.09.030(3).

<sup>4</sup> See Gov. Code, § 65941.1, subd. (e).

## Analysis

### ***Methodology for Calculating Base Density***

In the time since HCD issued its TA Letter, there has been no change to SDBL that affects HCD's prior conclusion about the proper calculation of base density for the Project.<sup>5</sup> Base density means "the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the greatest number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project."<sup>6</sup> SDBL requires the calculation of base density to use "gross" acreage to yield the maximum number of total housing units, which includes all portions of a property owned in fee simple.<sup>7</sup>

The City's General Plan Land Use Element (LUE) designates the Project site Residential 14-22.<sup>8</sup> This designation allows for "22 dwelling units per net acre of land."<sup>9</sup> The LUE defines a "net acre" as 35,000 square feet of site area.<sup>10</sup> This standard translates to 354 dwelling units for the Project site, or 27.4 units per (gross) acre.<sup>11</sup> Therefore, the base density for this project site is 354 dwelling units or 27.4 dwelling units per acre.

For the RMF 22 district, the City's 1996 zoning ordinance for High Density Residential Districts identifies a maximum density of 22 dwellings per net acre of land.<sup>12</sup> "Net acreage" in the City's zoning is defined as "[t]he total area of a site or lot minus any and all required dedications for public streets and rights-of-way, public parks, school sites, and other facilities."<sup>13</sup>

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<sup>5</sup> Since HCD's TA Letter, Government Code section 65915 was amended by AB 3116 (Chapter 432, Statutes of 2024, effective January 1, 2025). However, these amendments are related to density bonuses for student housing developments and are not relevant to the project at hand.

<sup>6</sup> Gov. Code, § 65915, subd. (o)(6).

<sup>7</sup> Gov. Code, § 65915, subd. (f). See also Technical Assistance Letter to the City of Agoura Hills (July 26, 2023), available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/agoura-hills-hau220-ta-07262023.pdf>.

<sup>8</sup> Dana Point LUE, page 41.

<sup>9</sup> Dana Point LUE, page 34.

<sup>10</sup> Dana Point LUE, page 32.

<sup>11</sup> One acre contains 43,560 square feet (SF). The site area is 12.9 acres or 561,924 SF.  $561,924 \text{ SF} / 35,000 \text{ SF} = 16.055$  portions of 35,000 SF each.  $16.055 \text{ portions of } 35,000 \text{ SF} * 22 \text{ dwelling units} = 353.2$  dwelling units, which rounds up to 354 dwelling units (per Gov. Code, § 65915, subd. (f)(5).)  $354 \text{ dwelling units} / 12.9 \text{ acres} = 27.4$  dwelling units per acre.

<sup>12</sup> DPMC § 9.09.010(d).

<sup>13</sup> DPMC § 9.75.010.

Although the densities in the LUE and zoning ordinance expressed in units per net acre appear to be equivalent (22 units per net acre of land), the calculation of net land area is not the same between the LUE (which calculates net land area as approximately 80 percent of gross land area) and the zoning (which calculates net land area as gross land area minus public rights-of-way and facilities). These differences mean that the same density per net acre results in a different base density for the LUE versus the zoning ordinance, because the calculation to determine units per gross acre based on the units per net acre is different under the two models.

The net area for the project site under the 1996 zoning ordinance, after subtracting areas used for public rights-of-way and facilities, equates to 517,912 square feet or 11.89 acres. At a density of 22 units per net acre, the base density allowed by zoning is 262 units. As a result, the zoned density equates to 262 units per 11.89 acres, or 20.3 units per gross acre.

Although the zoning and General Plan result in different base densities, state law clearly contemplates this possibility and requires that base density be determined as “the *greatest* number of units allowed by the specific zoning range, specific plan, or land use element of the general plan.”<sup>14</sup> Compared to the 20.3 units per (gross) acre, or 262 units, in the zoning ordinance (RMF 22), the LUE provides the highest number of units—27.4 units per gross acre or 354 units for the 12.9 acre site—and therefore sets the SDBL base density pursuant to Government Code section 65915, subdivision (o)(6). See Table 1 below for a summary of this comparison between the base density calculation in the LUE and the RMF 22 zone.

**Table 1. Base Density Calculation**

Base Density	Gross Area (acres)	Density (du/ac)	Base Density (units) (Gross Area x Density)
General Plan Land Use Element	12.90	27.4	354
Zoning Ordinance	12.90	20.3	262

### ***City's Response***

HCD emailed the City on April 23, 2025 requesting a response to the TA Letter. On April 29, 2025, HCD received an email response stating: “There currently is no active application to develop the property at 23731 and 23781 Mariner Drive. If one is submitted in the future, the City will certainly consider your guidance at that time.”

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<sup>14</sup> Gov. Code, § 65915, subd. (o)(6). (Emphasis added.)

HCD's understanding is also that there is no unexpired application for the Project currently pending with the City. However, the City's response does not address the substance of the TA Letter regarding the base density calculation. The City is currently defending the ST Apartments lawsuit, in which the central dispute is whether the base density for this project site is 27.4 units per acre, as the developer alleges and the TA Letter and this Notice conclude, or 22 units per acre, as the City alleges. A vague commitment to "consider" HCD's guidance at some point in the future is not an acceptable response. This Project is currently unable to proceed because the City has insisted on a base density calculation that contradicts the plain language of the SDBL.

### ***Housing Element***

HCD found the City's 6<sup>th</sup> Cycle housing element substantially compliant with Housing Element Law on October 20, 2022. HCD's certification letter notes: "The City must continue timely and effective implementation of all programs."<sup>15</sup> This includes Program 1.2, which commits the City to update its Density Bonus Ordinance, which currently dates to 2006,<sup>16</sup> to conform to the current version of the SDBL.<sup>17</sup>

The City's 2024 General Plan Annual Progress Report states, regarding Program 1.2, that the City has "initiated the code update of the City's Density Bonus Ordinance..." and anticipates finalizing the ordinance this year.<sup>18</sup> However, the program's timeline in the housing element states, "Initiate Code update by 2022 with the intent to adopt in 2022 (subject to future certification by the California Coastal Commission)...."<sup>19</sup> Thus, the City is behind the approved schedule for adopting an update to its Density Bonus Ordinance. The delay in updating the City's Density Bonus Ordinance appears to be having tangible impacts: the City's housing element noted in its review of 5<sup>th</sup> Cycle programs that the City received no applications for density bonus projects between 2014 and 2021.<sup>20</sup> These facts underscore the importance of abiding by SDBL and fulfilling the housing element's commitment to update the Density Bonus Ordinance in a manner that complies with SDBL.

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<sup>15</sup> HCD Letter re: City of Dana Point's 6<sup>th</sup> Cycle (2021-2029) Adopted Housing Element (October 20, 2022), available at <https://hcdpowerbi.blob.core.windows.net/housing-elements/oraDanaPointAdoptedIN102022.pdf>.

<sup>16</sup> DPMC, Chapter 4.40.

<sup>17</sup> City of Dana Point 2021-2029 Housing Element (Adopted September 2022), pg. H-168, available at <https://hcdpowerbi.blob.core.windows.net/housing-elements/dana-point-6th-adopted092322.pdf>.

<sup>18</sup> See Housing Element Implementation and APR Dashboard, Implementation, Programs, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-element-implementation-and-apr-dashboard>.

<sup>19</sup> Dana Point Adopted Housing Element, pg. 168.

<sup>20</sup> *Ibid.* at pg. H-163.

## Conclusion

The City has failed to apply the base density of 27.4 units per acre to the Project as required by SDBL. As a result, the City is in violation of state housing law.

As a reminder, if HCD finds that a city's actions do not comply with state law, including SDBL and Housing Element Law, HCD may notify the Office of the Attorney General.<sup>21</sup> The City has 30 days to respond to this Notice of Violation and must provide a written response and plan of action to remedy the violations of state law no later than July 11, 2025. HCD will consider this response before taking further action authorized by state law.

If you have questions or would like to discuss the contents of this letter, please contact David Barboza at [david.barboza@hcd.ca.gov](mailto:david.barboza@hcd.ca.gov).

Sincerely,



David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability

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<sup>21</sup> Gov. Code, § 65585, subd. (j).