

**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



October 29, 2025

Joel Pullen
Community Development Director
City of Fremont
3300 Capitol Avenue
Fremont, CA 94538

Dear Joel Pullen:

RE: City of Fremont – Lopes Road Multifamily Project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from the City of Fremont (City) regarding a proposed housing development project located at 44960 Lopes Road (Project). This letter provides technical assistance regarding the use of a State Density Bonus Law (SDBL)¹ concession to reduce a local minimum density requirement.

Project Background

HCD understands the Project site has a general plan land use designation of Innovation Center and a zoning designation of Warm Springs Innovation District – Planning Area 5. The Project site is also located within a quarter mile of the Warm Springs/South Fremont Bay Area Rapid Transit (BART) station. The intent of this planning area is to create a mix of urban uses surrounding the BART station that maximizes development intensities and residential densities to encourage the use of transit and reduce emissions, among other things. To achieve this goal, the City's general plan and zoning requires a minimum residential density within a quarter mile of the BART station of 50 dwelling units per acre.

The Project proposes to construct 127 multifamily residential units on an approximately 6.6-acre lot. The Project provides ten percent of the units to lower-income (LI) households and five percent of the units to moderate-income (MI) households, which makes the Project eligible for the SDBL. The applicant has requested an SDBL concession to reduce the minimum density requirement from the required 50 dwelling units per acre to 19 dwelling units per acre, the density of the proposed project. In addition, HCD understands that the City has determined the application to be incomplete.

¹ Gov. Code, §§ 65915 – 65918.

As a courtesy, the City provided the applicant with a letter containing a list of comments addressing inconsistencies with state housing law, codes, policies, and other applicable standards along with the incomplete determination. This letter notified the applicant that staff would recommend that the Planning Commission deny the requested SDBL concession. The City's municipal code allows applicants to appeal staff recommendations.² Accordingly, the applicant filed an appeal of the staff's recommendation on August 6, 2025, and the appeal was heard by the Planning Commission on September 25, 2025. The Planning Commission upheld staff's recommendation and denied the applicant's appeal. The applicant appealed the Planning Commission's denial to the City Council on September 26, 2025, and an appeal hearing is scheduled for November 4, 2025.

Statutory Background

The SDBL defines a concession to mean 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 that results in identifiable cost reductions to provide for affordable housing costs, 2) approval of mixed-use zoning if that would reduce the cost of the housing development, or 3) other regulatory incentives or concessions proposed by the developer or the local government that result in identifiable and actual cost reductions to provide for affordable housing costs.³

A development standard is defined in the statute to mean a site or construction condition, including, but not limited to, a height limitation, setback requirement, floor area ratio, onsite open-space requirement, minimum lot area per unit requirement, or parking ratio.⁴

Analysis

Minimum Density Cannot be Modified with a Concession

The applicant is seeking a concession to reduce the minimum density requirement from 50 dwelling units per acre to 19 dwelling units per acre. However, minimum density cannot be modified with a concession. The statute is clear that the intent of the law is "to include more total units in a project than would otherwise be allowed by the local zoning ordinance"⁵ and to "produc[e] the maximum number of total housing units."⁶ Using a

² Fremont Municipal Code § 18.300.020(a).

³ Gov. Code, § 65915, subd. (k).

⁴ Gov. Code, § 65915, subd. (o)(2).

⁵ Gov. Code, § 65915, subd. (u)(1).

⁶ Gov. Code, § 65915, subd. (r).

concession to reduce a minimum density requirement would result in *less* housing and is therefore contrary to the fundamental intent and purpose of the law.⁷

The SDBL allows an applicant to obtain “a density increase over the otherwise maximum allowable gross residential density... or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.”⁸ However, nothing in the SDBL permits a *decrease* in density.

Further, if a concession could be used to decrease the density allowed on the parcel, there is no reason it could not be used to increase the density allowed on the parcel. This would result in unlimited density, which is not the purpose of the SDBL.⁹

Minimum Lot Area Per Unit

It is important to note that the definition of a development standard includes “minimum lot area per unit,”¹⁰ which can generally be converted to “dwelling units per acre,” the typical expression of density. However, minimum lot area per unit should be analyzed carefully in context to determine how it is being used.

The application of the SDBL involves three primary steps:

- **Step 1: Establish base density:** The applicant must first determine the base density for the project site (i.e., identify the number of units that could ordinarily be built on the site without the SDBL). This requires identification of the land use and zoning designation and any applicable specific plan or overlay to determine the maximum permitted density on a project site.¹¹
- **Step 2: Determine affordability levels provided and number of bonus units received:** Next, the applicant must determine the level of affordability (low income, very low income, moderate income) and the percentage of affordable

⁷ Note that numerous other state housing laws support the use of minimum densities, particularly in areas near transit. These include Housing Element Law (Gov. Code, § 65583.2, subd. (c)), the Affordable Housing and High Roads Jobs Act (Gov. Code, § 65912.123, subd. (b)(1)(E)), and the Abundant and Affordable Homes Near Transit Act (Gov. Code, § 65912.157, subd. (a)(1), which will take effect January 1, 2026 (text available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB79)).

⁸ Gov. Code, § 65915, subd. (f).

⁹ See HCD's Letter of Technical Assistance to the County of Los Angeles, April 1, 2025, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/la-county-hau-1777-ta-sdbl-04012025.pdf>.

¹⁰ “Minimum lot area per unit” was added to the SDBL’s definition of “development standard” with the passing of AB 2334 (Chapter 651, Statutes of 2022).

¹¹ Gov. Code, § 65915, subd. (o)(6).

units a project will provide in order to determine the number of bonus units¹² and concessions¹³ the project is entitled to.

- **Step 3: Identify development standards or regulatory requirements to modify or eliminate:** The applicant then begins to assess all development standards and other policies and regulations applicable to the site to design the project at the density permitted by the statute. Waivers are typically requested when an applicant encounters a development standard or other requirement that would physically preclude development of the project at the densities permitted by statute,¹⁴ and concessions are typically requested to reduce costs to provide affordable housing.¹⁵

In some instances, a local government may determine density using the minimum lot area per dwelling unit, which can be converted to a dwelling unit per acre standard. Also, where a dwelling units per acre standard does not exist, a combination of the minimum lot area and the allowable residential use(s) may be used to derive residential density.¹⁶ In either of these cases, where minimum lot area per unit is being used to determine base density in Step 1, it cannot be modified by a concession *for the purposes of calculating base density*.

However, once the base density has been established in Step 1, and the number of affordable units provided and number of bonus units and concessions for which the project is eligible have been determined in Step 2, an applicant can request a modification of the minimum lot area per unit standard via a concession or a waiver to facilitate construction of the project with the allotted bonus units.

Conclusion

In summary, an SDBL concession may not be used to modify a local minimum density requirement. Moreover, using a concession to reduce the minimum density is antithetical to the intent and purpose of the SDBL.

¹² Gov. Code, § 65915, subd. (f).

¹³ Gov. Code, § 65915, subd. (d)(2).

¹⁴ Gov. Code, § 65915, subd. (e).

¹⁵ Gov. Code, § 65915, subd. (k).

¹⁶ Gov. Code, § 65915, subd. (o)(6)(A).

HCD understands the intricacies of implementing ever-changing state housing laws and is committed to supporting local agencies in the successful implementation of state housing laws, including the SDBL. If you have questions or need additional information, please contact Jessica Evans at Jessica.Evans@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability