

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

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Elyse Lowe  
Director, Development Services  
City of San Diego  
550 West C St. DSD-2A  
San Diego, CA 92101

SENT VIA EMAIL TO: [elowe@saniego.gov](mailto:elowe@saniego.gov)

Dear Elyse Lowe:

**RE: City of San Diego – Midway Rising Project, State Density Bonus Law –  
Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) understands that the City of San Diego (City) will be considering land use approvals for a multi-year, phased, residential mixed-use project (Project) on a 49-acre City-owned property located along Sports Arena Boulevard (Site). Approval of the Project would facilitate the building of 4,254 new housing units, 2,000 of which would be deed-restricted affordable rental units for lower-income households (making up to 80 percent of area median income), a new sports arena, commercial and retail space, and public parks and open space. The Project assumes reliance on the State Density Bonus Law (SDBL) to achieve bonus units, concessions, and waivers. In response to questions raised by the City and Midway Rising (Applicant), this letter provides technical assistance regarding implementation of the SDBL in relationship to the Project.

## **Background**

### ***Surplus Land Act***

HCD is aware that, unlike most development projects, the City has an unusually high degree of control over the makeup of this Project. In 2021, the City declared the property to be surplus land and followed the process prescribed by the Surplus Land Act (SLA).<sup>1</sup> Pursuant to the SLA, the City issued a Notice of Availability (NOA) and received five responses, one of which was from the Applicant. After completion of the required negotiating process, the City selected the Applicant – in large part, because the Applicant proposed the highest number of affordable housing units. The City and

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<sup>1</sup> Gov. Code, §§ 54220-54234.

Applicant then entered into an Exclusive Negotiating Agreement (ENA) for development of the Site consistent with the conditions of the NOA and the Applicant's responsive proposal. HCD therefore recognizes the Project's unique circumstances in that the City, and not the Applicant, is determining the Project components; aside from the substantial affordable housing commitment (in alignment with the SLA), this includes a requirement to replace the existing sports arena and direction to incorporate specified parks, open space, and a multi-modal circulation network. Each of these project elements are intended to implement the City's vision for the area to be a mixed-use village.

### ***Affordable Housing and Sports Arena Redevelopment***

With respect to the affordable housing commitment, where the SLA requires a minimum 25 percent affordability (1,064 affordable units),<sup>2</sup> the Project would exceed this requirement by ultimately making 47 percent of the units affordable. It would also exceed the City's typical 10 percent affordability (or in lieu fee payment) requirement. Based on information provided by the City, HCD understands that all components of the Project are financially interdependent, and that the Applicant's ability to complete the Project, including the affordable housing, is dependent upon construction and operation of the new sports arena and other commercial uses.

Specifically, the City has stated that "[t]he City and its consultant reviewed, among other items, the applicant's development proformas, sources and uses of funds, operating cash flow projections, financing assumptions, sensitivity analyses, and phasing schedules, as well as supplemental financial narratives provided by the applicant. *Notable is the fiscal interconnectedness of the project components. The applicant has provided information describing how each component is phased relative to the others and how each relies on others for overall financial viability.* This is a level of disclosure and insight not normally available to the City..."<sup>3</sup> (Emphasis added.)

### ***State Density Bonus Law (SDBL)***

HCD is aware that the Site is located within the City's Coastal Height Limit Overlay Zone (CHLOZ), which imposes a 30-foot height limit. As the City considers the Project – and seeks to facilitate a substantial amount of affordable housing through the creation of a new Midway Rising Specific Plan – in light of the height limit, the City has raised questions about how the SDBL would apply in the context of such a large, mixed-use, multi-phased project where the City, and not the developer, is largely dictating the Project components and where the City is directly involved in review of the Applicant's financial feasibility documentation.

The City's questions (as paraphrased by HCD) and HCD's responses are presented below. HCD further notes that the analysis provided in this letter is based on the specific facts and circumstances of this particular project and cannot necessarily be applied to

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<sup>2</sup> Gov. Code, § 54222.5.

<sup>3</sup> City of San Diego letter to HCD re: Midway Rising, February 12, 2026, pgs. 6-7.

other projects in the same manner. This is because the project addressed here is unique in several ways. As described above, the Site is City-owned land, and, through the SLA process, the City imposed a requirement to include specific project elements, most notably a “regional entertainment venue,”<sup>4</sup> and, pursuant to the SLA, prioritized the greatest number of affordable housing units. HCD also understands that the provision of substantial park space in the Project was a priority for the community. In other words, the arena and these other project elements are essential parts of the Project that will utilize available land, and the Project will make a significant contribution to meeting the City’s Regional Housing Needs Allocation (RHNA), especially at the lower-income level. Based on these specific circumstances, HCD provides the following analysis regarding the use of concessions or waivers to exceed the applicable height limit.

**Question 1: The City understands that the SDBL applies to “housing development” projects of at least five residential units, including mixed-use developments that meet specified affordability requirements. The City expects that the Project, as a whole, will meet the applicable criteria. It is proposed to contain residential and nonresidential uses and to exceed the minimum affordability requirements. However, the project materials at this time do not specify the exact locations of the residential units, including the affordable units. Under these circumstances, may the City still consider the project as a whole a single “housing development”?**

The answer is “yes,” in this case. Ordinarily, if the precise location and nature of the affordable housing component is not known, this would raise concerns about whether the Applicant actually “seeks and agrees”<sup>5</sup> to construct the affordable housing required by the statute, which forms the basis for receiving the benefits of the SDBL. HCD raised this concern in a previous Technical Assistance Letter to the Town of Loomis,<sup>6</sup> noting that the proposed project did not qualify for a density bonus and other incentives pursuant to the SDBL. In that scenario, the developer proposed a combination of single-family lots, a mixed-use lot, and a multifamily lot, but the project submittal did not specify the total number of units nor the number or income level(s) of deed-restricted affordable units.<sup>7</sup> Additionally, the deed-restricted portion of the housing units would have been sold to an as-yet unidentified affordable housing developer, where 75 percent of the market rate housing units are built while the affordable housing site is unable to proceed.

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<sup>4</sup> The City’s NOA for the site included the following: “...on the condition that future development of the Property includes renovation or replacement of the City’s existing and operational current sports arena on the Property as a regional entertainment venue and operation of that venue for concerts, sports, and other events, consistent with similar arenas in large cities in the United States.”

<sup>5</sup> Gov. Code, § 65915, subd. (b)(1).

<sup>6</sup> Letter of Technical Assistance to the Town of Loomis re: Hidden Grove Project, February 2, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/loomis-hau22-227-ta-02022024.pdf>.

<sup>7</sup> Id.

Here, however, a number of factors alleviate any concerns HCD might otherwise have. In particular, the Applicant will be subject to a clearly defined affordable housing commitment with the City pursuant to the SLA and memorialized in various agreements. These include a Development Agreement and a Disposition and Development Agreement (DDA) that each contain a phasing plan with a specific timeline for constructing the affordable housing, as well as associated leases, an agreement between the Applicant and an identified affordable housing developer, and an affordable housing deed restriction between the Applicant and the City's Housing Commission. Collectively, it appears to HCD that the steps the Applicant has taken and the contractual agreements that detail the precise affordability commitment, including quantity, affordability level, and sequencing of the affordable units, are sufficient to show that the Applicant "seeks and agrees" to building the required affordable housing.

More generally, the SDBL provides a definition for "housing development." In relevant part, the statute provides that a housing development "... means a development project for *five or more residential units, including mixed-use developments...* [and] also *includes a subdivision* or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county *and consists of residential units or unimproved residential lots...*" and that "[f]or the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are *the subject of one development application...*"<sup>8</sup> (Emphasis added.)

HCD understands that the Project will be entitled as part of a single project application, proposed by a single master developer, and encompasses the whole Site. The set of land use approvals would entitle (i.e., authorize) buildout of market rate and affordable residential units well in excess of the five-unit minimum, and would include a mix of uses as allowed by the SDBL. The entitlements also include subdivision of the existing parcel into residential and mixed-use lots<sup>9</sup> consistent with the above definition. Although future individual building permit applications may include only portions of the overall Project, some of which may not include any residential units, the Project and all of its component parts will have already been entitled as part of the current application that applies to the Site as a whole. In other words, the future building permit applications will merely implement portions of the already-approved Project. Based on this understanding, the City may consider the Project a "housing development" for purposes of the SDBL.

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<sup>8</sup> Gov. Code, § 65915, subd. (i)

<sup>9</sup> City of San Diego Report to the Planning Commission for Midway Rising, September 18, 2025, pg.9.

**Question 2: The City already understands that it is HCD's position that the SDBL can result in overriding local voter initiatives just as it can supersede local development regulations, and the City has granted SDBL benefits consistent with this position. The City's question in this case is not whether it can grant an exception to the 30-foot height limit, but to what extent it may do so, particularly for the non-residential portions of the Project, including the sports arena.**

### *Incentives/Concessions*

The statute does not provide precise direction regarding how to determine whether the benefit of a requested incentive or concession has the requisite nexus to the provision of affordable housing. However, the Legislature's intent language on this issue is instructive: "In enacting this chapter it is the intent of the Legislature that the density bonus *or other incentives* offered by the city, county, or city and county *pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments.*"<sup>10</sup> (Emphasis added.)<sup>11</sup>

As the City is aware, HCD previously issued a Letter of Technical Assistance<sup>12</sup> to the City that addressed a similar question but under different circumstances. In that scenario, the project would have included 74 dwelling units, a requisite portion of which would be affordable pursuant to the SDBL, plus 139 visitor accommodation units, which are considered a commercial use under the City's Municipal Code. The developer also sought to use a concession to receive a 2.31 Floor Area Ratio (FAR) bonus strictly for the commercial component of the project. This arrangement raised concerns as to whether the project and proposed concession were consistent with the intent of the SDBL, as it appeared that the developer sought to use it in a way that predominately benefited the commercial use. HCD advised the City that it must consider the requested concession in light of the SDBL's required findings of denial,<sup>13</sup> particularly the finding that the concession does not "result in identifiable and actual cost reductions... *to provide for affordable housing costs*, as defined in Section 50052.5 of the Health and

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<sup>10</sup> Gov. Code, § 65917.

<sup>11</sup> The Legislature has since provided additional clarity on the topic of concessions for commercial uses in the SDBL. Senate Bill 92 (Chapter 484, Statutes of 2025), applicable to proposed projects that have submitted a preliminary application or an entitlement application on or after January 1, 2026, amended the statute to specify that a concession or incentive shall not result in a proposed project with a commercial floor area ratio that is greater than a specified amount above the base zone's commercial floor area. Assembly Bill 87 (Chapter 486, Statutes of 2025) amended the statute to specify that local agencies are not required to grant incentives, concessions, or waivers for specified hotel uses.

<sup>12</sup> Letter of Technical Assistance to the City of San Diego re: 970 Turquoise Street Project, December 12, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/san-diego-hau-1268-ta-121224.pdf>.

<sup>13</sup> Gov. Code, § 65915, subd. (d)(1).

Safety Code, *or for rents for the targeted units* to be set as specified in subdivision (c).<sup>14</sup> (Emphasis added.)

Elaborating further, HCD noted that the concession, in other words, must not just reduce costs (i.e., support the economic feasibility of the project), but that the reduction in cost must be for the purpose of *providing affordable housing for lower-income or moderate-income households*. With this understanding, HCD explained that the City might conclude that the requested concession facilitated the affordable housing, in which case the City would have been compelled to approve the request. Conversely, the City might conclude that the project did not need the requested concession to cover the cost of “provid[ing] for affordable housing costs”<sup>15</sup> and, in that case, the SDBL places the burden of proof on the City to deny the requested concession by making a written finding, based on substantial evidence, that it would not result in identifiable and actual cost reductions to provide for affordable housing.<sup>16</sup>

While the same guidance and statutory provisions apply here, HCD is aware of significant differences between this Project and the one described above. As previously noted, the Midway Rising Project includes a significant number of housing units, particularly affordable housing units, and a Project of this magnitude hinges on a degree of flexibility and complex financing. Whereas the previous project would have been predominately commercial, with only 10 affordable housing units, this Project includes 2,000 affordable housing units and, based on HCD’s understanding of the information presented, would consist of predominately residential use. Lastly, as described earlier in this letter, the City in this case has direct knowledge of the financial and economic documentation for the Project and therefore can readily assess whether the requested concession does or does not facilitate the affordable housing in this case.

### *Waivers*

The SDBL provides that “[i]n no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the [affordability] criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section...”<sup>17</sup>

As previously noted, in addition to requiring a substantial amount of housing, the City’s SLA NOA for the site included a requirement to either renovate or replace the existing sports arena, while other non-residential project components, including commercial and retail uses, parks and open space, and street network, were of high priority to the City. Each of these required project features necessarily occupy significant portions of the land that would otherwise be available for the housing. Moreover, HCD understands that the Applicant has demonstrated to the City that the relocation of the existing sports

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<sup>14</sup> Gov. Code, § 65915, subd. (d)(1)(A).

<sup>15</sup> Id.

<sup>16</sup> Gov. Code, § 65915, subds. (d)(1)(A), (d)(4).

<sup>17</sup> Gov. Code, § 65915, subd. (e)(1).

arena to its proposed location is necessary to physically accommodate the quantity of housing, including affordable housing, being proposed. Under these specific circumstances, it is apparent that the Project as proposed, including relocation and reconstruction of the required arena, more than 4,000 housing units, and other project elements, would be physically precluded by the 30-foot height limit.

## **Conclusion**

In sum, based on HCD's understanding of the information presented by the City and Applicant, the Midway Rising Project qualifies as a "housing development" for purposes of the SDBL, which makes the Project eligible for concessions and waivers as described above. HCD defers to the City as to how exactly it processes the anticipated SDBL request consistent with the requirements of the statute. However, the SDBL request must be processed concurrent with or prior to issuance of any building permit that incorporates any of the benefits of the SDBL being sought.

As previously noted, the analysis in this letter is based on the specific and unique facts and circumstances of this project as represented to HCD and therefore cannot necessarily be applied to other projects in the same manner. HCD commends the City on its efforts to facilitate housing at all income levels and appreciates the opportunity to provide technical assistance on this matter. If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Lisa Frank at [Lisa.Frank@hcd.ca.gov](mailto:Lisa.Frank@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long, sweeping horizontal stroke extending to the right.

Melinda Coy  
Housing Accountability Unit Chief