DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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April 26, 2024

Tennis Wick, Director
Permit Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

Dear Tennis Wick:

RE: Sonoma County Sonoma Developmental Center – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from Bridget McDonald of Remy Moose Manley, LLP on behalf of Eldridge Renewal, LLC (ER) on January 30, 2024, regarding the application of the State Density Bonus Law (SDBL) (Gov. Code, § 65915), the Housing Accountability Act (HAA) (Gov. Code, § 65589.5), and Sonoma County's own Affordable Housing Program for Residential Development (Chapter 26, Article 89 of the Sonoma County Code of Ordinances). The purpose of this letter is to provide technical assistance for the benefit of both Sonoma County (County) and ER regarding eligibility of a project to change affordability levels and build more units than would otherwise be allowed by the County's development standards.

Background

HCD understands that the proposed project is located at the site of the former Sonoma Developmental Center (SDC) (15000 Arnold Drive in Eldridge) for people with developmental disabilities. The land is currently owned by the California Department of General Services, which selected ER in April 2023 to purchase, design, and redevelop the 180-acre Core Campus according to the County's Sonoma Developmental Center Specific Plan (Specific Plan) adopted in December 2022. On August 22, 2023, ER submitted a preliminary application to vest rights for the project under the HAA. At the time, Sonoma County did not have a substantially compliant adopted housing element; HCD found the County's adopted housing element in substantial compliance on October 26, 2023.

At the time of the preliminary application submittal on August 22, 2023, the project would provide 620 base units, of which 15 percent would be affordable to very low-income households to qualify for a 50-percent state density bonus (310 units), which

would increase the overall unit count to 930 units. Using the SDBL, the project also sought one concession and three waivers to the Specific Plan's standards. Following the initial submittal of the full application, the five percent of the total units (31 units) that were originally intended to be affordable to moderate-income households were changed to be affordable to lower-income households so that the project would meet the minimum 20-percent lower-income unit threshold pursuant to Government Code section 65589.5, subdivision (d)(5) (i.e., the "Builder's Remedy"). ER requests technical assistance regarding the following five questions:

Question 1: Does changing project affordability levels without changing unit counts require resubmittal of a preliminary application?

No, affordability levels can be revised without losing the vesting rights gained via the submittal of a preliminary application. Housing development projects lose vesting rights if "the number of residential units or square footage of construction changes by 20 percent or more," exclusive of any increase resulting from an SDBL provision.[1] In this case, neither the number of residential units nor the square footage of construction has changed by at least 20 percent; rather, only the level of affordability of some of the units has changed.

Question 2: Can the project concurrently use the SDBL and the Builder's Remedy?

Yes, the project can use both, provided it meets the affordability requirements of both. The provisions of the SDBL and the Builder's Remedy are not meant to be mutually exclusive. The SDBL is meant to incentivize the production of affordable housing by exchanging bonus units for more affordability, reducing cost barriers to providing affordable housing, and providing relief from development standards that preclude development at allowed densities. The Builder's Remedy limits the ability of a local government to deny a housing development project when it does not have a compliant housing element.

Because the project proposes that 15 percent of the base units be affordable to very low-income households, it is eligible for a 50-percent density bonus, three concessions, and the necessary number of waivers.[2]

[1] Gov. Code, § 65941.1, subd. (c).
[2] Gov. Code, § 65915, subds. (f)(2), (d)(2)(C), and (e)(1).

Question 3: Is the Builder's Remedy's 20-percent affordability requirement applied to the number of base units or to the combined base and bonus units?

The 20-percent affordability requirement is applied to the overall number of units in the project, including both base units and bonus units added pursuant to the SDBL. "Housing for very low, low-, or moderate-income households" that is eligible for the Builder's Remedy is defined as a project where "at least 20 percent of the *total* units shall be sold or rented to lower income households" (emphasis added) or 100 percent of the units are affordable to moderate-income or middle-income households.[3] The use of "total" means that 20 percent of the overall unit count, inclusive of density bonus units, must be affordable to lower-income households. Although the SDBL defines "total units" as excluding SDBL density bonus units,[4] that definition is limited to the SDBL and does not carry over to the HAA.

Question 4: Does a local inclusionary zoning requirement that a minimum percentage of a project's units be affordable apply to density bonus units?

HCD declines to provide an interpretation on this topic at this time.

Question 5: Can a project use an SDBL concession to modify a local inclusionary zoning tenancy-based requirement?

Yes, a concession can be used to modify certain provisions of an inclusionary ordinance. In addition to requiring that a minimum percentage of units in a project are provided as deed-restricted affordable units, inclusionary ordinances sometimes contain other requirements and development standards, such as dispersal requirements, design comparability requirements, mandated proportions of affordability,[5] or (as seen in the subject project) a requirement that a proportion of the affordable units be provided for-sale. An SDBL concession can be used to modify a development standard or zoning code requirement if doing so would result in a construction or operational cost reduction in providing affordable housing (i.e., improve the economic feasibility of the project).[6]

Therefore, the County must consider the applicant's request to provide the affordable units in the form of rental housing instead of for homeownership and evaluate whether this concession results in identifiable, financially sufficient, and actual cost reductions as required by the SDBL. In order for the County to deny the requested concession, it must make at least one of the three statutorily defined findings of denial.[7]

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[3] Gov. Code, § 65589.5, subd. (h)(3).
[4] Gov. Code, § 65915, subd. (o)(8).
[5] See letter of technical assistance to the City of West Hollywood on September 2, 2022: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/West-Hollywood-TA-090222.pdf
[6] Gov. Code, § 65915, subd. (d)(1)(A).
[7] Gov. Code, § 65915, subd. (d)(1).

Conclusion

HCD has provided an analysis of the relationship between SDBL, the Builder's Remedy of the HAA, and the County Affordable Housing Program for Residential Development in the context of the Sonoma Developmental Center. HCD would also like to remind the County that HCD has statutory authority to enforce the SDBL and the HAA, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a local government's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law (Gov. Code, § 65585, subd. (j)). HCD remains committed to supporting the County in facilitating housing and hopes it finds this clarification helpful. If you have questions or need additional information, please contact David Ying at david.ying@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief