

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

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March 9, 2023

David Livingston, County Council
County of El Dorado
330 Fair Lane
Placerville, CA 95667

Dear David Livingston:

**RE: Cameron Park Housing Project – State Density Bonus Law and AB 2334 –
Letter of Technical Assistance**

The purpose of this letter is to provide technical assistance to the County of El Dorado (County) regarding the application of the State Density Bonus Law (SDBL) (Gov. Code, § 65915 et seq.) as it pertains to the County's consideration of a proposed 161-lot single family residential subdivision to be located on a 104-acre site located in the unincorporated community of Cameron Park (APN: 070-011-051) (Project). The California Department of Housing and Community Development (HCD) received a request for technical assistance from the applicant, TTLC Cameron Park-Meadows, LLC., on February 21, 2023. The applicant seeks to utilize the SDBL by providing at least 10 percent of the Project's units at a rate affordable to moderate-income households. HCD understands that the County has raised the issue of whether the base density specified in the Zoning Code¹ (one dwelling unit per acre) or that of the General Plan² (one to five dwelling units per acre), applies. The proposed Project would have a gross density of approximately 1.6 dwelling units per acre. This letter describes relevant changes to the SDBL that took effect on January 1, 2023, because of the passing of Assembly Bill (AB) 2334 (Chapter 653, Statutes of 2022) that directly affect the proposed Project.

Background

To calculate a density bonus under the SDBL, it is essential to first determine the number of units that could ordinarily be built on a site without the use of the SDBL. This starting point is known as the "maximum allowable residential density" or "base density."

¹ The applicable Zoning Designation is "R1A - One-acre Residential" (El Dorado County Code section 130.24.030).

² The applicable General Plan Land Use Designation is "HDR – High Density Residential" (El Dorado County General Plan – Land Use Element, Table 2-2 [Land Use Densities and Residential Population Ranges], pg. 20).

It is calculated by multiplying the gross acreage of the project site with the applicable density standard expressed in dwelling units per acre (du/ac).³ Unfortunately, it is not always clear to applicants and local agencies exactly which density standard applies. The following are a few of the complicating factors:

- **Multiple Regulatory Documents.** In many instances, a project site will be assigned a different density (or range of densities) by the associated General Plan Land Use Designation, the Zoning District in Zoning Code, and the Specific Plan. Occasionally, additional planning documents such as Redevelopment Plans, Community Plans, Small Area Plans, Precise Plans, Master Plans, etc. may also apply.
- **Relationships Unclear.** In many instances, competing planning documents do not adequately describe the relationship (i.e., hierarchy) between the plans or how to proceed in case of conflict or inconsistency between or among the plans. In some instances, the documents state the relationship explicitly while in others the relationship is implied, and sometimes the relationship appears completely unconsidered.
- **Inconsistencies Are Common.** Inconsistencies between planning documents are common across California. Not only do different documents sometimes specify different maximum densities (and density ranges), but many also differ regarding allowable land uses and development standards. For instance, a General Plan Land Use Designation may clearly allow multifamily residential uses, but the implementing Zoning District may prohibit residential uses altogether. Indeed, until the passing of Senate Bill (SB) 1333 (Chapter 856, Statutes of 2018) a charter city was not legally required to maintain consistency between its General Plan and Zoning Code at all.

These factors combined have caused countless disagreements and resulted in project delays – ultimately slowing the production of much needed affordable housing in SDBL-enabled projects.

Evolution of “Maximum Allowable Residential Density” in SDBL

To understand how base density is established by applicants under the SDBL, it is helpful to review the most recent iterations of this provision of the law. The paragraphs below describe the evolution of the SDBL and reflect the shifting focus and purpose of the definition of “maximum allowable residential density.”

³ The SDBL provides an alternative method of calculating base density when the applicable planning document does not provide a density standard in the form of dwelling units per acre. See Government Code section 65915, subdivisions (o)(6)(A-B)

“Maximum allowable residential density” meaning from 2006 through 2008

Prior to January 1, 2009, the SDBL provided that the maximum allowable residential density meant, “the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.” (Gov. Code, § 65915, subd. (o)(2) [effective January 1, 2006, to December 31, 2008].) This one-sentence definition simply established the expectation that the density expressed in the Zoning Code would be used to determine the base density of a project. It did not contemplate potential inconsistencies between documents.

“Maximum allowable residential density” meaning from 2009 through 2022

From January 1, 2009, to the close of 2022, the SDBL provided that maximum allowable residential density meant, “the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.” (Gov. Code, § 65915, subd. (o)(2) [effective January 1, 2009, through December 31, 2022].) This expanded two-sentence definition references the General Plan density for the first time. However, the structure of first sentence suggests an expectation that “the density allowed under the zoning ordinance **and** the land use element of the general plan” will be the same. Helpfully, the second sentence instructs that, in the event of an inconsistency, the General Plan density shall prevail. This approach is consistent with the general hierarchical relationship between the General Plan and the subordinate documents that implement it (e.g., zoning code, specific plan, etc.) described in the Planning and Zoning portion of the Government Code (Gov. Code, §§ 65000-66499.58).⁴ Furthermore, the law did not define the term “inconsistent.” This letter does not propose to define the term “inconsistent.” It instead focuses on how a local agency should determine the applicable base density for a density bonus project following the effective date of AB 2334 (which represents a significant change in the application of the SDBL).

“Maximum allowable residential density” meaning beginning January 1, 2023

Beginning in 2023, and because of AB 2334, maximum allowable residential density or base density means, “...the maximum number of units allowed under the zoning ordinance, specific plan, **or** land use element of the general plan, or, if a range of

⁴ The California Supreme Court has held that “[b]ecause of its broad scope, long-range perspective, and primacy over subsidiary land use decisions, the ‘general plan has been aptly described as the ‘constitution for all future developments’ within the city or county.’” (*Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 152 [citations omitted].)

density is permitted, means the maximum number of units allowed by the specific zoning range, specific plan, **or** land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan, the **greater** shall prevail...” (Gov. Code, § 65915, subd. (o)(6) [emphasis added].) AB 2334 made two significant changes to the definition: (1) the word “and” is replaced by “or” and (2) the second sentence now requires the greater density to apply, rather than deferring to the General Plan density as before. These are changes significant and represent a change in procedure.

First, the new language acknowledges the frequency and severity of inconsistencies between planning documents across the state. Inconsistency is now anticipated and addressed in the primary operative sentence. The language instructs that the highest density available in any of the competing documents is the one that applies and provides no automatic deference to the General Plan. For this narrow purpose under the SDBL, the hierarchies between the plans are flattened. Further underscoring this point is the appearance of the term “specific plan,” representing a common contender among competing plans.

Second, the restructured second sentence now mirrors the directive of the first sentence. It contains the comparative word “greater,” underscoring the need to select the highest density available (and departing from its prior restatement of the primacy of the General Plan). The restructured second sentence also reassures practitioners that in some instances the applicable density will be greater than that expressed in the General Plan. While this may be initially jarring to some given the established relationship between the General Plan and the subordinate plans that implement it, it is not problematic for the narrow purposes of applying the SDBL.⁵

Liberal Interpretation for Maximum Housing

The changes made by AB 2334 are consistent with the SDBL’s directive that it, “shall be interpreted liberally in favor of producing the maximum number of total housing units.” (Gov. Code, § 65915, subd. (r).) By instructing local agencies to apply the highest available density standard, it ensures that the greatest amount of housing production is achieved – regardless of any confusing or conflicting local circumstances resulting from competing, differing regulatory documents.

⁵ A fundamental aspect of the SDBL is that it allows a project to exceed the maximum allowable densities expressed in the General Plan (i.e., a density bonus) and to exceed certain development standards that may be expressed in the General Plan (i.e., maximum floor area ratios, building heights, etc.). SDBL has, since its inception, allowed developments to be inconsistent with the General Plan for the explicit purpose of producing affordable housing.

Conventional Land Use Practice

HCD recognizes that some local agencies have a local regulatory framework where a single General Plan Land Use Designation is implemented by more than one Zoning District. For instance, a General Plan may have a Land Use Designation (e.g., Medium Density Residential, allowing 20-40 du/ac) that is implemented by two Zoning Districts (e.g., R-2 and R-3, allowing a maximum of 20 du/ac and 40 du/ac, respectively). This approach has been used across the state, typically because (1) it is broadly consistent with the established role of the General Plan as a high-level policy document that is implemented by fine grained subordinate plans (e.g., Zoning Code, Specific Plan, etc.) and (2) it can allow for limited rezoning without the need for General Plan Amendments in certain circumstances. Local agencies with a system like this should be prepared to use the highest available density (per the above discussion), which in some instances will result in SDBL-enabled projects utilizing a higher base density than the Zoning District would indicate.

Conclusion

In summary, the proposed Project's applicable base density is five dwelling units per acre because that is the highest available density. This is the highest end of the range expressed in the applicable General Plan Land Use Designation.

HCD appreciates the challenges of implementing ever changing state housing laws and commends the County on its proactive efforts to understand and implement the SDBL as amended by AB 2334.

HCD would like to remind the County that HCD has enforcement authority over the SDBL, 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 city's or county'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).) If you have questions or need additional information, please contact Brian Heaton, of our staff, at Brian.Heaton@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name being more prominent.

Shannan West
Housing Accountability Unit Chief