

831 Water Street, Santa Cruz, CA
Government Code Section 65913.4 Project Submittal
Density Bonus Statement
Revised November 12, 2021

The following density bonus statement is revised following the Santa Cruz City Council meeting of October 12, 2021, to reflect the elimination of the request pursuant to State Density Bonus Law for a concession to group the affordable units into a “block” of units, contrary to the City’s requirements for dispersal. In addition, the statement also eliminates a concession requested for EV charging for parking spaces. Although these concessions are supported in the record and consistent with state law, the project applicant is removing these concession requests.

This Density Bonus Statement is submitted as an attachment to the application by Novin Development for a proposed mixed-use housing project at 831 Water Street in the City of Santa Cruz (“City”). The application is for a streamlined ministerial development permit pursuant to Government Code Section 65913.4, otherwise known as SB35, and as well as Government Code 65915 et seq (“State Density Bonus Law”).

The document provides the relevant information for the application pursuant to Santa Cruz Municipal Code Chapter SCMC 24.16 and is organized as follows:

1. Legislative Context
2. Density Bonus Requests
3. Information required by SCMC 24.16.265.3

1. Legislative Context

Pursuant to Government Code section 65915, because at least 20%, 22 of the total 109 units, (except for the manager’s unit as allowed by State Density Bonus Law) of the “base” project will be affordable to low-income households, the project is entitled to a 35% density bonus over the otherwise allowable maximum residential density (“base project”).

The project is located within the East Side Business Area Plan, is zoned for Community Commercial, and has a Mixed-Use High Density General Plan designation. The zoning district does not have a density standard and therefore the project relies on the General Plan density standards per State Density Bonus Law (65915 (o)(4)). The General Plan designation of MXHD has a density standard of 30 dwelling units per acre as of right.

Because the project is entitled to a 35% density bonus it is therefore eligible for 40.5 dwelling units per acre. The General Plan also allows that studios and small one-bedrooms do not count towards the underlying density. This was confirmed by Council Resolution No. NS 29-077.

LU 3.8: “Allow the following residential uses to exceed the maximum densities in this chapter: Cf. LU1.3 and 3.7.1.

- Single-room occupancy (SRO) units;
- Small ownership units (SOU);
- **Small studio and one-bedroom units;**
- Accessory dwelling units (ADU);

- **Density bonus units;** and
- Residential uses within areas designated High-Density Overlay District (HD-O).”

Due to this general plan standard, only the project’s two-bedroom units are counted under the dwelling unit per acre density standard. The project proposes 15 two-bedroom units and 3 three-bedroom units which equate to just less than 20 du/acre in conformance with this standard.

Per City Staff’s request, the project has also calculated the allowable density bonus based on the total floor area and average unit sizes allowed in the base case project. Plan Set page G02.0 provides the necessary diagrams and calculations that demonstrate the allowable square footage in the base and proposed density bonus building:

Lot Size	39,659 SF	0.91 acres
Base FAR	1.75	
Max Base GSF	69,403 SF	
Proposed Total GSF	90,536 SF	
Proposed Residential GSF	85,434 SF	
Proposed # of Units	140 units	
GSF / Building Area	611 SF	
Base Unit Count	109 units	
50% DB (Max # of Units)	164 units	(24) unused density bonus units
50% DB (Max GSF)	104,105 SF	(18,671) unused density bonus sf
50% DB (Max FAR)	2.625	

Specifically, the table above demonstrates that project is able to achieve a base unit count of 109 units at 611 gross square feet per unit while meeting all the underlying development standards such as FAR, height, setbacks and open space among others. Please see the Plan Set pages G0.20 through G02.4 for an analysis of the base and proposed projects. With the 35% density bonus, this permits the project to build up to 148 units and 93,695 gross square feet and requires the City to waive any development standards precluding the construction of this project.

Under State Density Bonus Law, the City must waive or modify any development standards that, if applied, “will have the effect of physically precluding the construction of a development ... at the densities or with the concessions or incentives permitted [by the density bonus]” Gov. Code 65915 (e). Development standards are defined in this section as “a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio” Gov. Code 65915 (o)(1).

Finally, the project is entitled to up to three (3) concessions or incentives (Gov Code 65915 (d)(2)(C)) that provide actual and identifiable cost reductions for the affordable units per Gov Code 65915 (d)(1)(A). Concessions may include any “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... including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that

would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs” Gov Code 65915 (k)(1).

The State statute makes clear that when an applicant requests concessions/incentives, the local jurisdiction may request reasonable documentation but then the local jurisdiction must approve the applicant’s requests absent very specific findings. A concession/incentive must be granted unless the jurisdiction “makes a written finding, based upon substantial evidence” that the concession doesn’t result in cost reductions, would have a specific, adverse public health and safety impact, or is in violation of federal or state law Gov Code 65915 (d)(1) (emphasis added). A "specific, adverse impact" is defined as a "significant, quantifiable, direct and unavoidable impact based upon objective, identified written public health or safety standards, policies or conditions." Gov Code 65589.5(d)(2). To resolve any potential ambiguity, the statute also declares that the jurisdiction “shall bear the burden of proof for the denial of a requested concession or incentive.” Gov Code 65915 (d)(4).

Similarly, the statute allows jurisdictions to deny waivers based on specific, adverse health and safety impacts that cannot be mitigated, adverse impacts to historic properties, or violations of state or federal law. Gov Code 65915 (e)(1).

2. Summary of Density Bonus Requests

Density Bonus Law Waivers and Modifications

Standard	Regulation	Proposed	Rationale for Granting
SCMC 24.10.750.1.a Height of buildings	Maximum. 3 stories and 40 ft.	5 stories and 59 ft.	Waiver 1: Complying with the standard would require the building to reduce the number of floors and eliminate a substantial number of residential units. This would physically preclude the construction of the Project that would include the number of residential units allowed under the State Density Bonus Law.

<p>24.10.750.1.d Open Space per unit Private 100 sq ft per unit</p>	<p>14,100 sf of private open space.</p>	<p>6,510 SF</p>	<p>Waiver 2: The constrained site physically prohibits the inclusion of this amount of private open space. Inclusion of this additional outdoor space would require reducing the building mass to provide this additional open space through ground floor patios. Adding more private balconies would require different engineering standards which cannot be accommodated by the proposed project.</p> <p>Inclusion of this private open space would physically preclude the construction of the Project that would include the number of residential units that are allowed under the State Density Bonus Law.</p>
<p>24.10.750.1.d Open Space per unit Common 150 sq ft per unit</p>	<p>21,150 sf of private open space.</p>	<p>19,830 sf</p>	<p>Waiver 3: The constrained site physically prohibits the inclusion of this amount of common open space. Inclusion of this additional outdoor space would require reducing the building mass to provide additional common open space on the ground floor.</p> <p>Inclusion of this common open space would physically preclude the construction of the Project that would include the number of residential units that are allowed under the State Density Bonus Law.</p>

<p>General Plan Mixed-Use High Density (MXHD)</p>	<p>1.75 FAR</p>	<p>2.15 FAR (residential, 2.28 FAR for the entire project).</p>	<p>Waiver 4: The project proposes an FAR in excess of the allowable maximum prescribed by the general plan. As demonstrated earlier and on Plan Set page G02.0, the increased FAR is within the allowable density provided by the density bonus. Reducing the floor area to meet the 1.75 FAR standard would require reducing the unit count. Therefore, meeting this standard would physically preclude the construction of the Project that would include the number of residential units that are allowed under the State Density Bonus Law.</p>
<p>24.14.030.1.d SLOPE REGULATION</p> <p>THIS WAIVER REQUEST WAS ADDED ON 10/13/2021 PURSUANT TO CITY COUNCIL ACTION.</p>	<p>requires a setback of 20 feet from slopes greater than 30%</p>	<p>A 20' buffer from the building to the Water St. property line has been included, while the garage structure abuts the Water St. property line.</p>	<p>Waiver 5: The constrained site physically prohibits the inclusion of this amount of setback. Inclusion of this additional setback would require reducing the building mass to provide additional parking on the ground floor.</p> <p>Inclusion of this setback would physically preclude the construction of the Project that would include the number of residential units that are allowed under the State Density Bonus Law.</p>

Density Bonus Law Concessions and Incentives

Standard	Regulation	Proposed	Rationale for Granting
<p>24.16.260 STANDARDS FOR DENSITY BONUS HOUSING DEVELOPMENTS</p> <p>THIS CONCESSION REQUEST WAS RE-INTRODUCED ON 11/9/2021 PURSUANT TO HCD'S LETTER OF SUPPORT AND TECHNICAL ASSISTANCE REGARDING AB 491</p>	<p>Requirement to disperse affordable units throughout the development.</p>	<p>Two separate buildings with inclusionary and density bonus units reasonably dispersed throughout and with SB35 units consolidated in Building B.</p>	<p>Concession 1: The project is required by its financing to separate the affordable units from the market rate units in order to record a deed restriction on the parcel with the affordable units. Specifically, Section 10337(a)¹ of the California LIHTC regulations requires a separate deed restriction for the affordable unit necessitating a different building. Dispersing the units throughout the two buildings would render the project ineligible for one of its major sources of funding. Without these tax credits, the project would be unable to find sufficient financing to move forward.</p> <p>Therefore, not complying with this standard provides an actual and identifiable cost savings to the project by allowing for its financing.</p>

¹ <https://www.treasurer.ca.gov/ctcac/programreg/2021/20210616/2021-regulations-clean.pdf>

<p>24.12.241 ELECTRIC VEHICLE CHARGING STATION REQUIREMENTS.</p> <p>THIS CONCESSION REQUEST WAS ELIMINATED ON 10/13/2021 PURSUANT TO CITY COUNCIL ACTION BECAUSE THE PLANS SHOW EV CHARGING STATIONS EXCEEDING THE CITY'S STANDARD.</p>	<p>12% of provided parking spaces must be equipped within EVSE. This equates to 16 spaces out of the total 136.</p>	<p>No EVSE spaces provided.</p> <p>Six EVSE spaces are provided in the parking garage. All parking stacker spaces are EV ready.</p>	<p>Concession 2: Adding EVSE spaces would increase the cost of the project significantly due to the material and labor cost of increasing the capacity of the electrical panel and installing charging stations. Each EVSE station costs at least \$500 in parts alone leading to a cost savings of at least \$5,000 just in parts. Labor costs for installation depends upon the level of charge. Level 3 charges are generally used in multi-unit projects to accommodate multiple vehicles. Labor cost for a Level 3 charger is between \$14,740 and \$40,500. The true savings are much greater as the project does not need to engage in expensive electrical system upgrades.</p> <p>Therefore, not complying with this standard provides actual and identifiable cost savings to the project in the form of reduced construction costs.</p>
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No concessions or incentives are being requested.

As stated above, the requested concessions/incentives must be granted unless the jurisdiction “makes a written finding, based upon substantial evidence” that the concession does not result in cost reductions, would have a specific, adverse public health and safety impact, or is in violation of federal or state law Gov Code” and the jurisdiction bears the burden of proof for the denial of a requested concession or incentive.

Parking Requirements

The project is subject to commercial and residential automobile requirements contained in Section 24.12.240. The project is applying under SB35 which prohibits a city from applying minimum parking requirements to the entire project when a project is within a half mile of public transit, see Gov Code § 65913.4(e)(1)(a). The project site is in front of SCMTD bus stops for the 66 and 71. Therefore, the project does not have to provide any automobile parking for residential units, commercial space, or guest parking.

3. Information required by SCMC 24.16.265/Affordable Housing Plan

- a) *Site plan showing total number of units, number and location of affordable units, and number and location of proposed density bonus units.*

The inclusionary units and density bonus units will be reasonably dispersed throughout both structures (Buildings A & B). Pursuant to HCD Technical Assistance letter dated November 9, 2021 the project reserves the right to cluster the SB35 affordable units. See Plan Set pages A01.1 through G02.4 for calculations and descriptions.

- b) *A description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, modified parking standards, or commercial development bonus.*

See Section 2 above.

- c) *Summary table showing the maximum number of units permitted by the zoning and general plan excluding any density bonus units, affordable units qualifying the project for a density bonus, level of affordability of all affordable units, proposed bonus percentage, number of density bonus units proposed, and total number of dwelling units proposed on the site.*

See below and Section 2 above.

Table c)					
Base Project Total Units	109				
Required Density Bonus Units at Low Income Level	22				
Proposed bonus percentage	35%				
# of density bonus units proposed	31				
Total # of dwelling units proposed	140				
Total # of units allowed with density bonus	148				
	% of base units	Income Target	# of units	Max Household Income Level	Rent Level AMI
City Inclusionary Requirement	20%	Low-Income	22	80% AMI	80%
Density Bonus Requirement*	20%	Low-Income	22	80% AMI	60%
Affordable Units Required Per SB 35*	50%	Low-Income	55	80% AMI	60%
TOTAL PROPOSED AFFORDABLE UNITS:	50%	Low-Income	55	80% AMI	60%

* affordable rent is calculated pursuant to Health and Safety Code Section 50053, however if the actual household's income is between 60-80% AMI, the rent may be set at 30% of that particular household's gross income.

- d) *Tenure (rental versus for-sale) of target units and proposals for ensuring affordability.*

The affordable units will be deed restricted in accordance with the State Density Bonus Law and SB35 requirements. The affordable units required in accordance with the City's inclusionary ordinance will be deed restricted in perpetuity.

- e) *A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size, if known, of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size, if known, of residents occupying dwelling units when the site contained the maximum number of dwelling units.*

There have been no dwelling units on the site in the previous five-year period. The project site has been a commercial development.

- f) *Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very-low- or lower-income households in the five-year period preceding the date of submittal of the application.*

There have been no dwelling units on the site in the previous five-year period. The project site has been a commercial development.

- g) *For all incentives and concessions except those listed in Section 24.16.255(2), a pro forma demonstrating that the requested incentives and concessions result in identifiable and actual cost reductions and evidence that the cost reduction allows the applicant to provide affordable rents or affordable ownership costs. If a mixed-use building or project is proposed as an incentive, the applicant shall also provide evidence that nonresidential land uses will reduce the cost of the residential project and that the nonresidential land uses are compatible with the residential project and the existing or planned surrounding development.*
- h) *Any pro forma submitted to comply with subsection (2)(g) may not include the lost opportunity cost of any affordable units (i.e., the revenue that would have been generated had the units been rented or sold at market rate) and may include as an additional cost only those additional expenses that are required solely because of the proposed construction of the affordable units. The cost of reviewing any required pro forma data submitted in support of a request for a concession or incentive, including but not limited to the cost to the city of hiring a consultant to review the pro forma, shall be borne by the applicant. The pro forma shall also include: (1) the actual cost reduction achieved through the incentive or concession; and (2) evidence that the cost reduction allows the developer to provide affordable rents or affordable sales prices.*

Please see the rationale in Section 2 for why the requested incentives will result in identifiable and actual cost reductions. State Density Bonus Law no longer permits a local jurisdiction to require a pro forma to substantiate costs savings.

The State Density Bonus Law statute make clear that when an applicant requests concessions/incentives, the local jurisdiction may request "reasonable documentation" but no

additional 'study or report'. The local jurisdiction must approve the applicant's requests absent very specific findings. A concessions/incentive must be granted unless the jurisdiction "makes a written finding, based upon substantial evidence" that the concession doesn't result in cost reductions, would have a specific, adverse public health and safety impact, or is in violation of federal or state law. Gov Code 65915 (d)(1) (emphasis added). To resolve any potential ambiguity, the statute also declares that the jurisdiction "shall bear the burden of proof for the denial of a requested concession or incentive." Gov Code 65915 (d)(4). In addition, the project is subject to the Housing Accountability Act (HAA) as it complies with all objective standards. The HAA requires a municipality to issue written findings based on a preponderance of the evidence in the record in order to deny a project, see Gov Code § 65589.5(j)(1).

- i) For waivers or modifications of development standards: the application shall provide evidence that each development standard for which the waiver is requested will have the effect of physically precluding the construction of the housing development at the densities or with the incentives or concessions permitted by this Part 3.*

See Section 2.

- j) If a parking modification is requested, a table showing parking required by the zoning ordinance and proposed parking. If a parking reduction provided by Section 24.16.256(2) is requested, evidence that the project is eligible for the requested parking reduction.*

No parking modifications are requested pursuant to SDBL, rather the City is prohibited from requiring parking under SB35 as demonstrated above.

Subsections k through p are not applicable as none of those project types are proposed.