



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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TOM BURNS, PLANNING DIRECTOR

October 5, 2009

AGENDA DATE: October 28, 2009

ITEM #: 11

TIME: After 9 AM

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Public Hearing to consider amending County Code Chapter 17.12 relating to residential density bonuses and affordability incentives to reflect changes in State law, and to consider formal adoption of the Santa Cruz Density Bonus Guidelines

Members of the Commission:

Density bonuses are regulated by State law and codified in County Code Chapter 17.12: Residential Density Bonuses and Affordability Incentives. As State law changes, Chapter 17.12 needs to be amended accordingly. Today your Commission is to consider the proposed minor amendments to Chapter 17.12 to be consistent with recent State law changes and make a recommendation to the Board of Supervisors.

Additionally, staff has updated the "Santa Cruz Density Bonus Guidelines" – a staff-prepared set of guidelines to implement Chapter 17.12 and State density bonus law – to reflect these same changes in State law. Staff is requesting that your Commission also review and recommend formal adoption of these Guidelines to the Board.

Changes to State Law and corresponding amendments to Chapter 17.12

State law (Government Code Section 65915) outlines the conditions under which an applicant for a housing development who agrees to provide additional affordable units beyond those required as inclusionary units, donates land, provides a childcare facility, or provides senior housing, is entitled to receive a density bonus, incentives and concessions from the County.

Although the language in Government Code Section 65915 relating to the provision of density bonuses, incentives and concessions has been amended extensively, most of the changes merely clarify State law provisions, and do not change the substance of the law. Staff has identified only three minor substantive changes in State law which may affect the manner in which the County grants density bonuses, incentives and concessions:

- New senior mobile home parks are included among the types of senior housing developments that may qualify for density bonuses, incentives and concessions.
- All types of common interest developments with at least 10% of the total dwelling units affordable to moderate income households and available as ownership units would qualify for a density bonus, concessions and incentives.
- An applicant applying for a waiver or reduction in development standards beyond those allowed as incentives or concessions will now be required to show that the development standard would have the effect of physically precluding the development of the density bonus units, as opposed to making the project economically infeasible.

The proposed amendments to Chapter 17.12 include the substantive changes mentioned above as well as changes in the wording and organization of state density bonus law (Attachment 1 to Exhibit A).

Density Bonus Guidelines

In addition to the proposed amendments to Chapter 17.12, staff has also revised the Density Bonus Guidelines to include the minor substantive changes to State Law discussed above. Staff is recommending that these revised Guidelines be formally adopted by the Board of Supervisors and be recognized as an official tool to assist staff and the public in understanding and implementing Chapter 17.12 and State Density Bonus law.

CEQA Exemption

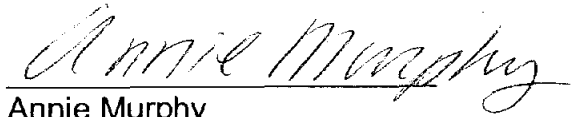
The project qualifies for a categorical exemption under CEQA Guidelines Section 15308, because there is no possibility that the minor amendments to Chapter 17.12 will have an impact on the environment. The amendments to our local regulations are required under State law to implement minor changes to State law regarding density bonuses, and merely codify existing State law already in effect.

Recommendations

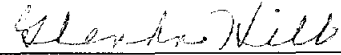
It is therefore RECOMMENDED that your Commission take the following actions:

1. Conduct a public hearing on the proposed ordinance amendments to Chapter 17.12 implementing changes in State Law regarding residential density bonuses and on the adoption of the Santa Cruz County Density Bonus Guidelines; and
2. Adopt the resolution (Exhibit A) recommending that the Board of Supervisors approve the proposed ordinance amendments and adopt the Santa Cruz County Density Bonus Guidelines and certify the Environmental Notice of Exemption (Exhibit D).

Sincerely,



Annie Murphy
Planner II



Glenda Hill, AICP
Principal Planner

Exhibits:

- Exhibit A: Proposed Resolution recommending approval of the proposed ordinance amendments
 - Attachment 1 to Exhibit A – Strikeout copy of proposed ordinance amendments
- Exhibit B: Clean Copy of the Ordinance
- Exhibit C: Revised Density Bonus Guidelines
- Exhibit D: CEQA Notice of Exemption
- Exhibit E: Government Code Section 65915

cc: County Counsel

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. _____

On the motion of Commissioner
duly seconded by Commissioner
the following is adopted:

PLANNING COMMISSION RESOLUTION RECOMMENDING MINOR AMENDMENT TO
CHAPTER 17.12 OF THE SANTA CRUZ COUNTY CODE TO INCORPORATE CHANGES
TO STATE LAW

WHEREAS, State law preempts the County's regulation of Density Bonus policies; and

WHEREAS, in recent years, State law regarding Density Bonus regulations has changed; and

WHEREAS, it is necessary to amend the County's density bonus regulations in Chapter 17.12 to be consistent with State law; and

WHEREAS, amendments are being made to Chapter 17.12 to reflect minor changes to State law regarding density bonuses (Attachment 1 to Exhibit A); and

WHEREAS, the Santa Cruz County Density Bonus Guidelines, updated to reflect changes in State law, provide a useful tool for implementing the State law regarding Density Bonuses as represented in Chapter 17.12 (Exhibit C); and

WHEREAS, on October 28, 2009, the Planning Commission conducted a public hearing to consider the minor amendments to Chapter 17.12 of the Santa Cruz County Code (Attachment 1 to Exhibit A) and the formal adoption of the Santa Cruz County Density Bonus Guidelines (Exhibit C); and

WHEREAS, the Planning Commission finds that the proposed amendments will be consistent with the policies of the General Plan and other provisions of the County Code, and will implement State law; and

WHEREAS, the ordinance amendments have been found to be categorically exempt from further review under Section 15308 of the California Environmental Quality Act; and

Exhibit A

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the Planning Commission recommends that the minor amendments to Chapter 17.12 of the Santa Cruz County Code, and the Notice of Exemption, incorporated by reference, be approved by the Board of Supervisors, and the Santa Cruz County Density Bonus Guidelines be adopted by the Board of Supervisors.

PASSED AND ADOPTED by the Planning Commission of the County of Santa Cruz, State of California, this _____ day of _____, 2009 by the following vote:

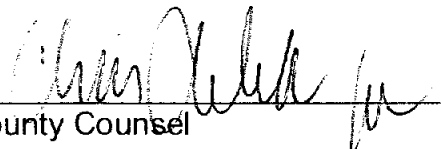
AYES: COMMISSIONERS
NOES: COMMISSIONERS
ABSENT: COMMISSIONERS
ABSTAIN: COMMISSIONERS

Chairperson of the Planning Commission

ATTEST:

Secretary

APPROVED AS TO FORM:



County Counsel

DISTRIBUTION: County Counsel
Planning Department

Exhibit A

ORDINANCE No. _____

**ORDINANCE AMENDING CHAPTER 17.12 OF THE SANTA CRUZ COUNTY
CODE RELATING TO RESIDENTIAL DENSITY BONUSES AND
AFFORDABILITY INCENTIVES**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Chapter 17.12 of the Santa Cruz County Code is hereby amended to read as follows:

Chapter 17.12

Residential Density Bonuses and Affordability Incentives

Sections:

- 17.12.010 Introduction.
- 17.12.020 Applicability of requirements.
- 17.12.030 Affordability restrictions.
- 17.12.040 Request for incentive or concession.
- 17.12.050 Request for waiver or reduction of standard.
- 17.12.060 Density bonuses.
- 17.12.070 Land donations.
- 17.12.080 Child care facilities.
- 17.12.090 Parking.
- 17.12.100 Housing development—Defined.
- 17.12.110 Concession or incentive—Defined.
- 17.12.120 Development standard—Defined.
- 17.12.130 Maximum allowable residential density—Defined.
- 17.12.140 Interpretation of provisions.
- 17.12.150 Coastal Act applicability.
- 17.12.160 County retained discretion.

17.12.010 Introduction.

When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of the County, that County shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this chapter. (Ord. 4816 § 1 (part), 2/7/06)

17.12.020 Applicability of requirements.

The County shall grant a density bonus and incentives or concessions described in Section 17.12.040 of this chapter when the applicant for the housing development seeks and agrees to construct at least any one of the following:

- (a) Ten (10) percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code;
- (b) Five percent of the total units of a housing development for very low-income households, as defined in Section 50105 of the Health and Safety Code;
- (c) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing older persons pursuant to Section 798.76 or 799.5 of the Civil Code; or

Note: The State law has been amended to include senior mobilehome parks as qualifying for density bonus and incentives or concessions

- (d) Ten (10) percent of the total dwelling units in a ~~condominium project as defined in subsection (f) of, or in a planned common interest development as defined in subdivision (k) of, Section 1351 of the Civil Code,~~ for persons and families of moderate-income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase. (Ord. 4816 § 1 (part), 2/7/06)

Note: The State law has been amended to include include all common interest developments, as opposed to only allowing condominium projects or planned developments

17.12.030 Affordability restrictions.

- (a) An applicant shall agree to, and the County shall ensure, continued affordability of all ~~lower income density bonus units for thirty (30) years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.~~ Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30) percent of sixty (60) percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30) percent of fifty (50) percent of area median income. low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.
- (b) An applicant shall agree to, and the County shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the ~~condominium project~~ common interest development as defined in subdivision (f) of, or in the planned unit development as defined in

subdivision (k) of, Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code.

Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The County shall recapture any initial subsidy, as defined below, and its proportionate share of appreciation, as defined below, which amount shall then be used within three five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the County's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value. For purposes of this subdivision, the County's proportionate share of appreciation shall be equal to the ~~the~~ percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(Ord. 4816 § 1 (part), 2/7/06)

17.12.040 Request for incentive or concession.

(a) An applicant may submit a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the ~~city, county, or city and~~ County. The County shall grant the concession or incentive requested by the applicant unless the County makes a written finding, based upon substantial evidence, of either any of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Section 17.12.030 of this chapter.

(2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(3) The concession or incentive would be contrary to state or federal law.

(b) The applicant shall receive the following number of incentives or concessions:

(1) One incentive or concession for projects that include at least ten (10) percent of the total units for lower income households, at least five percent for

very low-income households, or at least ten (10) percent for persons and families of moderate income in a ~~condominium or planned~~ common interest development.

(2) Two incentives or concessions for projects that include at least twenty (20) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least twenty (20) percent for persons and families of moderate income in a ~~condominium or planned~~ common interest development.

(3) Three incentives or concessions for projects that include at least thirty (30) percent of the total units for lower income households, at least fifteen (15) percent for very low income households, or at least thirty (30) percent for persons and families of moderate income in a ~~condominium or planned~~ common interest development.

(c) The applicant may initiate judicial proceedings if the County refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit.

Note: The above language was also in the earlier state law, and was previously was incorporated by reference into our local regulations.

Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require the County to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The County shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section. ~~The County shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.~~ (Ord. 4816 § 1 (part), 2/7/06)

Note: Examples of development standards have been relocated to the end of the chapter, under definitions, as is consistent with state law.

17.12.050 Request for waiver or reduction of standard.

(a) In no case may the County apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of Section 17.12.020 of this chapter at the densities or with the concessions or incentives permitted by this section. An applicant may submit a proposal for the waiver or reduction of development standards that will have the

effect of physically precluding the construction of a development meeting the criteria of Section 17.20.020 at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the County. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit.

Note: Examples of development standards have been relocated to the end of the chapter, under definitions, as is consistent with state law.

Nothing in this section shall be interpreted to require the County to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

(b) Nothing in this section shall be interpreted to require the County to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(c) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 17.12.040.

~~(c) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible. (Ord. 4816 § 1 (part), 2/7/06)~~

17.12.060 Density bonuses.

(a) For the purposes of this chapter, ~~except as provided in subsection (b) of this section,~~ "density bonus" means a density increase of at least twenty (20) percent, ~~unless a lesser percentage is elected by the applicant,~~ over the otherwise maximum allowable residential density under the applicable Zoning Ordinance and land use element of the General Plan as of the date of application by the

Note: The definition of density bonus has been moved to the end of the chapter under definitions, as consistent with state law

applicant to the County. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Section 17.12.020 of this chapter. ~~For each one percent increase above ten (10) percent in the percentage of units affordable to lower income households, the density bonus shall be increased by one and one-half percent up to a maximum of thirty-five (35) percent. For each one percent increase above five percent in the percentage of units affordable to very low income households, the density bonus shall be increased by two and one-half percent up to a maximum of thirty-five (35) percent. All density calculations resulting in fractional units shall be rounded up to the next whole~~

number. The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan Amendment, Local Coastal Plan Amendment, Zoning Change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to five or ten (10) percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(b) — For the purposes of this chapter, if a development does not meet the requirements of Sections 17.12.020(a), (b) or (c) of this chapter but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of, or a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, in which at least ten (10) percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a “density bonus” of at least five percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable Zoning Ordinance and land use element of the General Plan as of the date of application by the applicant to the County. For each one percent increase above ten (10) percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by one percent up to a maximum of thirty-five (35) percent.

Note: The amended state law has deleted the calculations above and has converted them to tables included below.

(1) For housing developments meeting the criteria of Subsection 17.12.020(a), the density bonus shall be calculated as follows:

<u>Percentage Low-Income Units</u>	<u>Percentage Density Bonus</u>
<u>10</u>	<u>20</u>
<u>11</u>	<u>21.5</u>
<u>12</u>	<u>23</u>
<u>13</u>	<u>24.5</u>
<u>14</u>	<u>26</u>
<u>15</u>	<u>27.5</u>
<u>16</u>	<u>29</u>
<u>17</u>	<u>30.5</u>
<u>18</u>	<u>32</u>
<u>19</u>	<u>33.5</u>
<u>20</u>	<u>35</u>

(2) For housing developments meeting the criteria of Subsection 17.12.020(b), the density bonus shall be calculated as follows:

<u>Percentage Very Low-Income Units</u>	<u>Percentage Density Bonus</u>
<u>5</u>	<u>20</u>
<u>6</u>	<u>22.5</u>
<u>7</u>	<u>25</u>
<u>8</u>	<u>27.5</u>
<u>9</u>	<u>30</u>
<u>10</u>	<u>32.5</u>
<u>11</u>	<u>35</u>

(3) For housing developments meeting the criteria of Subsection 17.12.020(c), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of Subsection 17.12.020(d), the density bonus shall be calculated as follows:

<u>Percentage Moderate- Income Units</u>	<u>Percentage Density Bonus</u>
<u>10</u>	<u>5</u>
<u>11</u>	<u>6</u>
<u>12</u>	<u>7</u>
<u>13</u>	<u>8</u>
<u>14</u>	<u>9</u>
<u>15</u>	<u>10</u>
<u>16</u>	<u>11</u>
<u>17</u>	<u>12</u>
<u>18</u>	<u>13</u>
<u>19</u>	<u>14</u>
<u>20</u>	<u>15</u>
<u>21</u>	<u>16</u>
<u>22</u>	<u>17</u>
<u>23</u>	<u>18</u>
<u>24</u>	<u>19</u>
<u>25</u>	<u>20</u>
<u>26</u>	<u>21</u>
<u>27</u>	<u>22</u>
<u>28</u>	<u>23</u>
<u>29</u>	<u>24</u>
<u>30</u>	<u>25</u>
<u>31</u>	<u>26</u>
<u>32</u>	<u>27</u>
<u>33</u>	<u>28</u>
<u>34</u>	<u>29</u>
<u>35</u>	<u>30</u>
<u>36</u>	<u>31</u>

<u>37</u>	<u>32</u>
<u>38</u>	<u>33</u>
<u>39</u>	<u>34</u>
<u>40</u>	<u>35</u>

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan Amendment, Local Coastal Plan Amendment, Zoning Change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to ten (10) percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units. (Ord. 4816 § 1 (part), 2/7/06)

17.12.070 Land donations.

When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the County as provided for in accordance with this section, the applicant shall be entitled to a fifteen (15) percent increase above the otherwise maximum allowable residential density under the applicable Zoning Ordinance and land use element of the General Plan for the entire development, as follows: For each one percent increase above the minimum ten (10) percent land donation described in subsection (b) of this section, the density bonus shall be increased by one percent, up to a maximum of thirty-five (35) percent.

Note: The amended state law has deleted the calculations above and has converted them to tables , which are included below.

<u>Percentage Very Low Income</u>	<u>Percentage Density Bonus</u>
<u>10</u>	<u>15</u>
<u>11</u>	<u>16</u>
<u>12</u>	<u>17</u>
<u>13</u>	<u>18</u>
<u>14</u>	<u>19</u>
<u>15</u>	<u>20</u>
<u>16</u>	<u>21</u>
<u>17</u>	<u>22</u>
<u>18</u>	<u>23</u>
<u>19</u>	<u>24</u>
<u>20</u>	<u>25</u>
<u>21</u>	<u>26</u>
<u>22</u>	<u>27</u>
<u>23</u>	<u>28</u>
<u>24</u>	<u>29</u>
<u>25</u>	<u>30</u>

<u>26</u>	<u>31</u>
<u>27</u>	<u>32</u>
<u>28</u>	<u>33</u>
<u>29</u>	<u>34</u>
<u>30</u>	<u>35</u>

This increase shall be in addition to any increase in density mandated by Section 17.12.020 of this chapter up to a maximum combined mandated density increase of thirty-five (35) percent if an applicant seeks both the increase required pursuant to this section and Section 17.12.020 of this chapter. All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this section shall be construed to enlarge or diminish the authority of the County to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this section if all of the following conditions are met:

(a) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(b) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten (10) percent of the number of residential units of the proposed development.

(c) The transferred land is at least one acre in size or of sufficient size to permit development of at least forty (40) units, has the appropriate General Plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Government Code Section 65583.2 for development as affordable housing, and is or will be served by adequate public facilities and infrastructure.

~~The land shall have appropriate zoning and development standards to make the development of the affordable units feasible.~~

(d) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the County may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 of the Government Code if the design is not reviewed prior to the time of transfer.

~~No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the County may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed prior to the time of transfer.~~

(e) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Sections

17.12.030(a) and (b) of this chapter which shall be recorded on the property at the time of dedication the transfer.

(f) The land is transferred to the local agency or to a housing developer approved by the County. The County shall require the applicant to identify and transfer the land to the developer.

(g) The transferred land shall be within the boundary of the proposed development or, if the County agrees, within one-quarter mile of the boundary of the proposed development. (Ord. 4816 § 1 (part), 2/7/06)

(h) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

17.12.080 Child care facilities.

(a) When an applicant proposes to construct a housing development that conforms to the requirements of Section 17.12.020 of this chapter and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the County shall grant either of the following:

(1) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(b) ~~The city, county, or city and county~~ shall require, as a condition of approving the housing development that the following occur:

(1) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to Section 17.12.030 of this chapter.

(2) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to Section 17.12.020 of this chapter.

(c) Notwithstanding any requirement of this section, the County shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(d) "Child care facility," as used in this chapter, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers. (Ord. 4816 § 1 (part), 2/7/06)

17.12.090 Parking.

(a) Upon the request of the developer, the County shall require a vehicular parking ratio, inclusive of disabled and guest parking, of a development meeting

the criteria of subsection (b) of this Section 17.12.020, that exceeds the following ratios:

- (1) Zero to one bedrooms: one onsite parking space;
 - (2) Two to three bedrooms: two onsite parking spaces;
 - (3) Four and more bedrooms: two and one-half parking spaces.
- (b) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subsection, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.
- (c) This subsection shall apply to a development that meets the requirements of subsection (b) of this Section 17.12.020, but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to Section 17.12.040 of this Chapter. (Ord. 4816 § 1 (part), 2/7/06)

17.12.100 Housing development—Defined.

"Housing development," as used in this chapter, means ~~one or more groups of projects for residential units constructed in the planned development a~~ development project for five or more residential units. For the purposes of this chapter, "housing development" also includes a subdivision or common interest development ~~a planned unit development or condominium project~~, as defined in Section 1351 of the Civil Code, approved by the County and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located. (Ord. 4816 § 1 (part), 2/7/06)

17.12.110 Concession or incentive—Defined.

"Concession" or "incentive" as used in this chapter, means any of the following:

- (a) 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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, 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, financially sufficient, and actual cost reductions.

(b) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(c) Other regulatory incentives or concessions proposed by the developer or the County that result in identifiable, financially sufficient, and actual cost reductions. This section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the County, or the waiver of fees or dedication requirements. (Ord. 4816 § 1 (part), 2/7/06)

17.12.120 Development standard—Defined.

“Development standard” as used in this chapter, includes site or construction conditions including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that apply to a residential development pursuant to any ordinance, General Plan Element, Specific Plan, Charter Amendment, or other local condition, law, policy, resolution, or regulation. (Ord. 4816 § 1 (part), 2/7/06)

17.12.130 Maximum allowable residential density—Defined.

“Maximum allowable residential density” as used in this chapter, means 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. (Ord. 4816 § 1 (part), 2/7/06)

17.12.140 Interpretation of provisions.

The granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Plan Amendment, Local Coastal Plan Amendment, Zoning Change, or other discretionary approval. (Ord. 4816 § 1 (part), 2/7/06)

17.12.150 Coastal Act applicability.

Nothing in this chapter shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). (Ord. 4816 § 1 (part), 2/7/06)

17.12.160 County retained discretion.

Nothing in this chapter shall be construed to prohibit the County from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately

lower density bonus than what is required by this section for developments that do not meet the requirements of this chapter. (Ord. 4816 § 1 (part), 2/7/06)

SECTION II

This Ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this _____ day of _____, 2009 by the following vote:

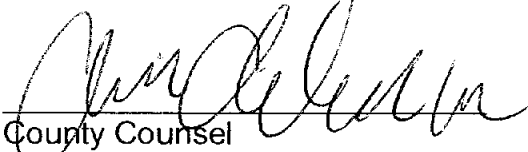
AYES:	SUPERVISORS
NOES:	SUPERVISORS
ABSENT:	SUPERVISORS
ABSTAIN:	SUPERVISORS

Chair of the Board of Supervisors

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:



County Counsel

Copies to: County Counsel
 Planning Department

ORDINANCE No. _____

**ORDINANCE AMENDING CHAPTER 17.12 OF THE SANTA CRUZ COUNTY
CODE RELATING TO RESIDENTIAL DENSITY BONUSES AND
AFFORDABILITY INCENTIVES**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Chapter 17.12 of the Santa Cruz County Code is hereby amended to read as follows:

Chapter 17.12

Residential Density Bonuses and Affordability Incentives

Sections:

- 17.12.010 Introduction.
- 17.12.020 Applicability of requirements.
- 17.12.030 Affordability restrictions.
- 17.12.040 Request for incentive or concession.
- 17.12.050 Request for waiver or reduction of standard.
- 17.12.060 Density bonuses.
- 17.12.070 Land donations.
- 17.12.080 Child care facilities.
- 17.12.090 Parking.
- 17.12.100 Housing development—Defined.
- 17.12.110 Concession or incentive—Defined.
- 17.12.120 Development standard—Defined.
- 17.12.130 Maximum allowable residential density—Defined.
- 17.12.140 Interpretation of provisions.
- 17.12.150 Coastal Act applicability.
- 17.12.160 County retained discretion.

17.12.010 Introduction.

When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of the County, that County shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this chapter. (Ord. 4816 § 1 (part), 2/7/06)

17.12.020 Applicability of requirements.

The County shall grant a density bonus and incentives or concessions described in Section 17.12.040 of this chapter when the applicant for the housing development seeks and agrees to construct at least any one of the following:

- (a) Ten (10) percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code;
- (b) Five percent of the total units of a housing development for very low-income households, as defined in Section 50105 of the Health and Safety Code;
- (c) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing older persons pursuant to Section 798.76 or 799.5 of the Civil Code; or
- (d) Ten (10) percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code, for persons and families of moderate-income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase. (Ord. 4816 § 1 (part), 2/7/06)

17.12.030 Affordability restrictions.

- (a) An applicant shall agree to, and the County shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.
- (b) An applicant shall agree to, and the County shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The County shall recapture any initial subsidy, as defined below, and its proportionate share of appreciation, as defined below, which amount shall then be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the County's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value. For purposes of this subdivision, the County's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale. (Ord. 4816 § 1 (part), 2/7/06)

17.12.040 Request for incentive or concession.

- (a) An applicant may submit a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the County. The County shall grant the concession or incentive requested by the applicant unless the County makes a written finding, based upon substantial evidence, of any of the following:
- (1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Section 17.12.030 of this chapter.
 - (2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.
 - (3) The concession or incentive would be contrary to state or federal law.
- (b) The applicant shall receive the following number of incentives or concessions:
- (1) One incentive or concession for projects that include at least ten (10) percent of the total units for lower income households, at least five percent for very low-income households, or at least ten (10) percent for persons and families of moderate income in a common interest development.
 - (2) Two incentives or concessions for projects that include at least twenty (20) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least twenty (20) percent for persons and families of moderate income in a common interest development.
 - (3) Three incentives or concessions for projects that include at least thirty (30) percent of the total units for lower income households, at least fifteen (15) percent for very low income households, or at least thirty (30) percent for persons and families of moderate income in a common interest development.
- (c) The applicant may initiate judicial proceedings if the County refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require the County to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The County shall establish procedures for carrying out this section that shall include legislative body

approval of the means of compliance with this section. (Ord. 4816 § 1 (part), 2/7/06)

17.12.050 Request for waiver or reduction of standard.

(a) In no case may the County apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of Section 17.12.020 of this chapter at the densities or with the concessions or incentives permitted by this section. An applicant may submit a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of Section 17.20.020 at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the County. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this section shall be interpreted to require the County to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

(b) Nothing in this section shall be interpreted to require the County to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(c) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 17.12.040. (Ord. 4816 § 1 (part), 2/7/06)

17.12.060 Density bonuses.

(a) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the County. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Section 17.12.020 of this chapter.

(1) For housing developments meeting the criteria of Subsection 17.12.020(a), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23

13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of Subsection 17.12.020(b), the density bonus shall be calculated as follows:

Percentage Very Low-Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of Subsection 17.12.020(c), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of Subsection 17.12.020(d), the density bonus shall be calculated as follows:

Percentage Moderate- Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19

25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan Amendment, Local Coastal Plan Amendment, Zoning Change, or other discretionary approval. (Ord. 4816 § 1 (part), 2/7/06)

17.12.070 Land donations.

When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the County as provided for in this section, the applicant shall be entitled to a fifteen (15) percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27

23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

This increase shall be in addition to any increase in density mandated by Section 17.12.020 of this chapter up to a maximum combined mandated density increase of thirty-five (35) percent if an applicant seeks both the increase required pursuant to this section and Section 17.12.020 of this chapter. All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this section shall be construed to enlarge or diminish the authority of the County to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this section if all of the following conditions are met:

- (a) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
- (b) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten (10) percent of the number of residential units of the proposed development.
- (c) The transferred land is at least one acre in size or of sufficient size to permit development of at least forty (40) units, has the appropriate General Plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Government Code Section 65583.2 for development as affordable housing, and is or will be served by adequate public facilities and infrastructure.
- (d) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the County may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 of the Government Code if the design is not reviewed prior to the time of transfer.
- (e) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Sections 17.12.030(a) and (b) of this chapter which shall be recorded on the property at the time of the transfer.
- (f) The land is transferred to the local agency or to a housing developer approved by the County. The County shall require the applicant to identify and transfer the land to the developer.

(g) The transferred land shall be within the boundary of the proposed development or, if the County agrees, within one-quarter mile of the boundary of the proposed development. (Ord. 4816 § 1 (part), 2/7/06)

(h) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

17.12.080 Child care facilities.

(a) When an applicant proposes to construct a housing development that conforms to the requirements of Section 17.12.020 of this chapter and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the County shall grant either of the following:

(1) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(b) The city, county, or city and county shall require, as a condition of approving the housing development that the following occur:

(1) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to Section 17.12.030 of this chapter.

(2) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to Section 17.12.020 of this chapter.

(c) Notwithstanding any requirement of this section, the County shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(d) "Child care facility," as used in this chapter, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers. (Ord. 4816 § 1 (part), 2/7/06)

17.12.090 Parking.

(a) Upon the request of the developer, the County shall require a vehicular parking ratio, inclusive of disabled and guest parking, of a development meeting the criteria of subsection (b) of this section, that exceeds the following ratios:

(1) Zero to one bedrooms: one onsite parking space;

(2) Two to three bedrooms: two onsite parking spaces;

(3) Four and more bedrooms: two and one-half parking spaces.

(b) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.

For purposes of this subsection, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(c) This subsection shall apply to a development that meets the requirements of subsection (b) of this section but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to Section 17.12.040 of this Chapter. (Ord. 4816 § 1 (part), 2/7/06)

17.12.100 Housing development—Defined.

"Housing development," as used in this chapter, means a development project for five or more residential units. For the purposes of this chapter, "housing development" also includes a subdivision or common interest development as defined in Section 1351 of the Civil Code, approved by the County and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located. (Ord. 4816 § 1 (part), 2/7/06)

17.12.110 Concession or incentive—Defined.

"Concession" or "incentive" as used in this chapter, means any of the following:

(a) 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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, 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, financially sufficient, and actual cost reductions.

(b) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(c) Other regulatory incentives or concessions proposed by the developer or the County that result in identifiable, financially sufficient, and actual cost reductions. This section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned

land, by the County, or the waiver of fees or dedication requirements. (Ord. 4816 § 1 (part), 2/7/06)

17.12.120 Development standard—Defined.

“Development standard” as used in this chapter, includes site or construction conditions including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that apply to a residential development pursuant to any ordinance, General Plan Element, Specific Plan, Charter Amendment, or other local condition, law, policy, resolution, or regulation. (Ord. 4816 § 1 (part), 2/7/06)

17.12.130 Maximum allowable residential density—Defined.

“Maximum allowable residential density” as used in this chapter, means 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. (Ord. 4816 § 1 (part), 2/7/06)

17.12.140 Interpretation of provisions.

The granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Plan Amendment, Local Coastal Plan Amendment, Zoning Change, or other discretionary approval. (Ord. 4816 § 1 (part), 2/7/06)

17.12.150 Coastal Act applicability.

Nothing in this chapter shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). (Ord. 4816 § 1 (part), 2/7/06)

17.12.160 County retained discretion.

Nothing in this chapter shall be construed to prohibit the County from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this chapter. (Ord. 4816 § 1 (part), 2/7/06)

SECTION II

This Ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this _____ day of _____, 2009 by the following vote:

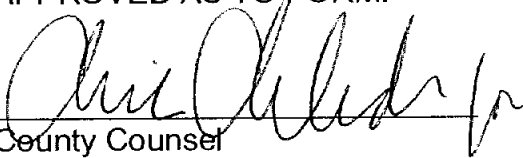
AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chair of the Board of Supervisors

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:


County Counsel

Copies to: County Counsel
Planning Department

Santa Cruz County Density Bonus Guidelines

2009 Edition

The Santa Cruz County Density Bonus Guidelines are provided to help implement State law regarding Density Bonus as set forth in Government Code Section 65915 et seq. and in Chapter 17.12 of the Santa Cruz County Code. These Guidelines shall be revised and updated to reflect future changes in State Density Bonus law and are utilized by the County to accomplish the objectives of State Density Bonus law, and establish regulations in addition to all other applicable State and County laws and regulations governing Density Bonus.

Upon request by a developer, development proposals that meet the requirements set forth in these Guidelines shall be granted a density bonus and incentives or concessions, as applicable.

The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan amendment, Local Coastal Plan amendment, zoning change, or other discretionary approval.

Density Bonus regulations apply only to housing developments consisting of five (5) or more dwelling units or lots. All dwelling units (affordable and market rate) that are part of a density bonus project must be constructed on-site, except as allowed under #6. Land Donation (below).

1. Definitions

As used in these Guidelines, the words below shall be defined as follows:

Child care facility - a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

Common interest development – a community apartment project, a condominium project, a planned development, or a stock cooperative, as defined in Section 1351 of the California Civil Code.

Community apartment project – a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment in the development.

Condominium - a condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof.

Development standard – includes site or construction conditions that apply to a residential development pursuant to any ordinance, General Plan element, charter amendment, or other local condition, law, policy, resolution or regulation.

Lower income - households are lower income when the household income of the person or family does not exceed the qualifying limits for lower income, adjusted for family size, as established and amended from time to time pursuant to Section 8 of the United States

Housing Act of 1937. This means 80 percent of area median income, adjusted for family size and revised annually. See the Affordable Housing Guidelines for allowed rent levels

Maximum allowable residential density – 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.

Moderate income – households are moderate income when the household income of the person or family does not exceed 120 percent of area median income, adjusted for family size as established and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. See the Affordable Housing Guidelines for allowed purchase prices

Planned development - a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

1. The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.
2. A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests.

Senior Housing Project – residential development developed and housing persons 55 years of age or older, including mobilehome parks for seniors.

Specific, adverse impact - a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Stock cooperative – a development in which a corporation is formed primarily for the purpose of holding title to improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation.

Very low income households - persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. Generally, 50 percent of area median income, adjusted for family size and revised annually. See the Affordable Housing Guidelines for allowed rent levels.

2. Qualifications for Density Bonus

For a project to qualify for a density bonus, it must first meet any affordable requirements applicable to the project, such as inclusionary units under Chapter 17.10, non-residential to residential designation conversion requirements, and any affordable requirement specific to the parcel through a Combining District or specific General Plan policy. A project will qualify for density bonus when adding affordable units beyond those required for the project. As such, affordable units developed to meet the County's inclusionary housing requirements pursuant to Chapter 17.10 of the County Code do NOT qualify as affordable units for the

purposes of calculating density bonus. Similarly, affordable units developed to meet the County's non-residential to residential conversion requirements pursuant to County Code sections 13.01.060, 13.10.215 and 17.10.030 do not qualify as affordable units for the purposes of calculating density bonus. However, non-residential to residential designation conversion projects do qualify for up to 3 incentives and concessions, as described in these Guidelines, even if a density bonus is not requested. Similarly, while projects developed on parcels zoned with the "R" Combining District do not qualify for a density bonus, an eligible project does qualify for incentives and concessions. See Tables 7 through 11 below for examples on how to calculate density bonus, and Section 3 below to determine eligibility for incentives or concessions.

Apart from the affordable requirements noted above, a project must propose one of the following to qualify for density bonus:

Table 1. Minimum Percentage of Affordable Units
5% very low income
10% lower income
100% senior project
10% ownership for moderate income (common interest development)

This minimum percentage is based on the percent of the maximum number of units allowed under the zoning for the parcel.

For example: if the zoning allows 20 units on the parcel, 2 units of lower income (10% of 20 units) – in excess of Chapter 17.10 requirements - qualifies the project for a density bonus.

a) Calculating Basic Density Bonus

If a developer proposes to meet the minimum affordable units required to qualify for a density bonus, then the density bonus is calculated as follows:

Table 2. Basic Density Bonus	
5% very low income	20% base density bonus
10% lower income	20% base density bonus
100% senior project	20% base density bonus
10% ownership for moderate income	5% base density bonus

b) Calculating Possible Additional Density Bonus

A development may qualify for more density bonus if a higher percentage of affordable units is proposed beyond the minimum required percentage above. Density bonus beyond the minimum requirements for density bonus is calculated on a sliding scale based on affordability level.

Table 3. Sliding Scale Density Bonus	
Income level	For each percentage increase beyond the minimum density bonus listed above, the density bonus percentage is increased by:
Very Low Income	2.5%
Lower Income	1.5%
Moderate Income (ownership)	1%

In no case may the total density bonus allowed (basic density bonus plus sliding scale density bonus) exceed 35%.

This sliding scale density bonus calculates as follows:

Table 4 Very Low Income Calculation	
Percentage Very Low Income Units (beyond 17.10 requirements)	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

18	32
19	33.5
20	35

*All calculations resulting in fractional units shall be rounded up to the next whole number.

Table 5 Low Income Calculation	
Percentage of Low Income Units (beyond 17.10 requirements)	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5

Table 6 Moderate Income Calculation Common Interest Development	
Percentage Moderate Income Ownership Units (beyond 17.10 requirements)	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19

25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28

34	29
35	30
36	31
37	32
38	33
39	34
40	35

c) Sample Calculations

EXAMPLES:

Based on the zoning and General Plan allowing for 20 units on a site (Chapter 17.10 would require 3 affordable units - 15% of the development):

Table 7 Very Low Income Minimum Density Bonus Example	
Maximum Units allowed by Zoning	20 units
Moderate income units required under Chapter 17.10	3 moderate income units (and 17 market rate units)
Number of units offered to qualify for minimum Density Bonus (from Table 1)	5% of the 20 units allowed by the zoning = 1 very low income unit
Number of units offered (subtotal)	1 very low income unit, 3 moderate income units, and 16 market rate units
Density Bonus percentage (from Table 4)	20% X 20 total units = 4 additional units
Final unit distribution of project (total)	24 units (1 very low income unit, 3 moderate income units, and 20 market rate units)

Table 8 Very Low Income Maximum Density Bonus Example	
Maximum Units allowed by Zoning	20 units
Moderate income units required under Chapter 17.10	3 moderate income units (and 17 market rate units)
Number of units offered to qualify for maximum Density Bonus (from Table 4)	11% of the 20 units allowed by the zoning = 3 very low income units (2.2 units rounded up to 3)
Number of units offered (subtotal)	3 very low income units, 3 moderate income units, and 14 market rate units
Density Bonus percentage (from Table 4)	35% X 20 total units = 7 additional units
Final unit distribution of project (total)	27 units (3 very low income units, 3 moderate income units, and 21 market rate units)

Table 9 Low Income Density Bonus Example	
Maximum Units allowed by Zoning	20 units
Moderate income units required under Chapter 17.10	3 moderate income units (and 17 market rate units)
Number of units offered to qualify for minimum Density Bonus (from Table 5)	10% of the 20 units allowed by the zoning = 2 low income units
Number of units offered (subtotal)	2 low income units, 3 moderate income units, and 15 market rate units
Density Bonus percentage (from Table 5)	20% X 20 units = 4 additional units
Final unit distribution of project (total)	24 units (2 low income units, 3 moderate income units, and 19 market rate units)

Table 10 Senior Density Bonus Example	
Maximum Units allowed by Zoning	20 units
Moderate income units required under Chapter 17.10	3 moderate income units (and 17 market rate units)
Number of units offered to qualify for minimum Density Bonus from Table 1)	100% of the 20 units allowed by the zoning and designated as Senior = 20 Senior units
Number of units offered (subtotal)	3 Senior moderate units, 17 Senior units
Density Bonus percentage (from Table 2)	20% X 20 units = 4 additional units
Final unit distribution of project (total)	24 units (3 Senior moderate income units, 21 Senior market rate units)

Table 11 Moderate Income Density Bonus Example Common Interest Developments Only	
Maximum Units allowed by Zoning	20 units
Moderate income units required under Chapter 17.10	3 moderate income units (and 17 market rate units)
Number of units offered to qualify for minimum Density Bonus (from Table 6)	10% of the 20 units allowed by the zoning and designated as ownership units = 2 moderate income units
Number of units offered (subtotal)	5 moderate income units (2 must be ownership units), 15 market rate units
Density Bonus percentage (from Table 6)	5% X 20 units = 1 additional unit
Final unit distribution of project	21 units (5 are moderate income of which 2 must be ownership units, 16 market rate units)

3. Concessions/Incentives

- a. The developer may submit a proposal for specific incentives or concessions. The County, through the approving body, shall grant the incentive or concession requested unless the approving body makes one of the following written findings:
 1. The incentive or concession is not required in order to provide the affordable housing units OR

2. The incentive or concession requested would result in a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to mitigate or avoid such impact without making the development of low and moderate income units unaffordable.
- b. Depending on the percentage of affordability, projects qualify for one, two or three incentives or concessions. The number of concessions or incentives a project qualifies for is determined as follows:
1. Projects qualifying for the base density bonus also qualify for one concession or incentive. (5% very low, 10% low, and 10% moderate ownership)
 2. To qualify for 2 concessions or incentives, projects must double their base percentage of affordable units. (10% very low, 20% low, and 20% moderate ownership)
 3. To qualify for 3 concessions or incentives, projects must triple their base percentage of affordable units. (15% very low, 30% low and 30% moderate ownership)
- c. Incentive or concession means:
1. A reduction in site development standards or a modification of zoning code 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. The incentive or concession shall result in identifiable, financially sufficient, and actual cost reductions.
- Examples of the types of concessions or incentives offered as modifications or reductions in site development standards include the following.
- i. Reduced setback requirements
-each setback constitutes one concession
 - ii. Increased height
 - iii. Increase number of stories (maximum 3 stories) within the Urban Services Line
 - iv. Floor Area Ratio increase
 - v. Incremental lot coverage increase
 - vi. Reduction in minimum lot size
(commensurate with final density)
 - vii. Priority processing (may already be triggered by affordability level of project)

2. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
3. Other regulatory incentives or concessions proposed by the developer or the County that result in identifiable, financially sufficient, and actual cost reductions. This does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land by the County, or the waiver of fees or dedication requirements.

4. Waiver of Development Standards

In addition to the incentives and concessions listed above, a developer may request a waiver or modification of "development or zoning standards" (such as winter grading) that would physically preclude the utilization of the density bonus, incentives or concessions on specific sites. The final decision on granting of a waiver will be made by the approving body. Affordability requirements are not considered "development standards".

Nothing in this subdivision shall be interpreted to require the County to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

5. Parking Requirement Reduction

Under State Law, the parking standards for Density Bonus projects must be reduced upon the request of the developer. (Such reduction in parking standards does not count as one of the incentives or concessions in #3 above)

The reduced parking standards are as follows:

Table 12	
Parking Requirements (after requested reduction)	
0 to 1 bedroom	One on-site parking space
2 to 3 bedrooms	Two on-site parking spaces
4 or more bedrooms	Two and a half on-site parking spaces

If the resulting number of parking spaces results in a fractional number, the number shall be rounded to the next whole number. Utilization of this parking requirement allows tandem or uncovered parking. On street parking shall not be allowed to satisfy the parking requirement.

The number of parking spaces includes disabled and guest parking.

An applicant may request additional parking incentives or concessions beyond those provided in this section.

6. Land Donation

Under State law, a developer may opt to donate land in exchange for the granting of a Density Bonus. The requirements for qualifying for density bonus through land donation are as follows:

- a. Developer must donate at least one acre of land of sufficient size to accommodate 40 units (defined by State law as a minimum of one acre);
- b. The number of units accommodated on the donated land shall not be less than 10% of the total proposed development;
- c. The land must be appropriately zoned to accommodate very low income affordable housing;
- d. The land must be served by adequate public facilities and infrastructure;
- e. The land shall have all necessary permits and approvals, other than building permits, necessary for the development of very low income housing no later than the date of approval of the final subdivision map, subdivision map, or residential development application;
- f. Design review can occur later if it is not reviewed prior to transfer;
- g. The land is transferred no later than final approval of the final subdivision map, final map or residential development application for the donating project;
- h. The land and affordable units must be subject to deed restrictions ensuring continued affordability, which shall be recorded on the property at the time of dedication;
- i. The County may require the developer to identify and transfer the land to a specific affordable housing developer if the land is not donated directly to the County. If the land is not transferred to the County, the County shall approve of the affordable housing developer;
- j. The transferred land must be within the boundaries of the development or, with approval of the County, within ¼ mile (1,320 feet) of the boundary of the development.

If the developer meets these qualifications, the development would qualify for a basic 15% density bonus above the maximum allowed density.

- a. The density bonus may be increased on a sliding scale such that: for each 1% above 10% of the total development, the development can have a 1% increase in density bonus, up to a maximum of 35%.
 - i. For example: Land and permits for 15% of the number of units in the development on donated land = 15% density bonus

7. Child Care

A developer may qualify for a density bonus by providing a child care center (not a family day care home) within or adjacent to the development.

Where the development otherwise qualifies for a density bonus as described in Table 1 above, AND the developer agrees to include a child care facility onsite or adjacent to the site, the developer is entitled to a density bonus in the amount of the square footage of the child care OR an additional concession or incentive if that concession or incentive contributes to the economic feasibility of construction of the child care facility.

Where a child care facility is provided in conjunction with the granting of a density bonus, the following provisions apply:

- a. The child care facility shall be operable at least as long as the affordable units are required to remain affordable;
- b. The children attending the child care center are required to qualify based on household income in the same percentage as the percentage of affordable housing in the development in accordance with the proportional affordability level;
- c. The number of children at each affordability level must be the same or greater than the percentage required

If a finding can be made that there is sufficient child care facilities in the community, no concession or density bonus is required to be given.

CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of the CEQA Guidelines for the reason(s) which have been specified in this document.

Application Number: N/A

Assessor Parcel Numbers: Various parcels throughout County

Project Location: Countywide

Project Description: Minor amendments to Chapter 17.12 of the Santa Cruz County Code to implement changes in Government Code Section 65915 regarding residential density bonuses.


Person or Agency Proposing Project: County of Santa Cruz

Contact Phone Number: Annie Murphy (831) 454-3111

- A. ☐ The proposed activity is not a project under CEQA Guidelines Section 15378.
B. ☐ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. ☐ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
D. ☐ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
E. ☒ **Categorical Exemption** under CEQA Guidelines section 15308, Actions by Regulatory Agencies for Protection of the Environment

Reasons why the project is exempt: The project categorically exempt under CEQA Guidelines Section 15308, because the amendments to Chapter 17.12 are minor in nature and will not have an impact on the environment. The minor amendments are required to be consistent with changes to State law.


Annie Murphy: Project Planner


Date:

GOVERNMENT CODE

SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost

as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least

10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e) (1) In 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 criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate- Income Units	Percentage Density Bonus
10	5
11	6

12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26

22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final

subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, 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, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes 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 that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means 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.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).