

**From:** Stacy Hatfield [<mailto:stacyhatfieldart@gmail.com>]  
**To:** Council  
**Subject:** Re: In Favor of North 40

Hello Coucil Members

I feel obligated to inform you of a conversation i had eith avyowns person during the break at the meeting.

The person aparently is heading the town not city fb page and spoke at the meeting.

He told my husband and myself that the people who will be buying the homes will be multiple families living in one home. Most likley from cupertino and they wont look like us. ( we are white)He was trying to sway us to not be in favor of the project using rave as a reason.

It is disturbing that he was bold enough to make a statement such as that with out even knowing us.

Thsnk you all for your service to our community. You have my support in what ever decision you make.

Respectfully

Stacy Hatfield

Markene Smith spoke with Parks and Public Works staff on July 28, 2017. Ms. Smith has two major concerns about pedestrian access to/from North 40:

1. Pedestrian access to transit. Light rail is north of 85 and there is no safe pedestrian access to the station. Lark is unsafe for pedestrians to walk on, especially at the freeway ramps. The only way to get in and out of North 40 is by car.
2. Pedestrian access to the Los Gatos Creek Trail. She suggested a pedestrian overcrossing from North 40 to the Trail.

Ms. Smith would like the pedestrian access in the project design be shown and explained. She also asked these comments be forwarded to the Town Manager and Council. Her contact information is:

Markene Smith, Drakes Bay Avenue, Los Gatos, CA  
[markene@comcast.net](mailto:markene@comcast.net)

**From:** Bob Simmons [<mailto:bsimmons@aslcpa.com>]  
**Sent:** Friday, July 28, 2017 4:34 PM  
**To:** Council  
**Subject:** Opposition to the present North 40 development

Dear Council Members,

Although the specific plan for this project was developed many years ago when traffic conditions were much less of a problem, the present traffic situation in Silicon Valley including Santa Cruz County has changed dramatically for the worse. This undisputed fact should require the Town and the developers to significantly scale back the residential and commercial plans for this site. We congratulate the Council on the moratorium on all development in Los Gatos until the traffic issues can be resolved.

Bob and Margo Simmons  
29 Chestnut Ave  
Los Gatos

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## Joel Paulson

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**From:** Tom Calderwood <tom-calderwood@comcast.net>  
**Sent:** Saturday, July 29, 2017 7:21 AM  
**To:** Joel Paulson  
**Subject:** north 40

I support moving forward with the North 40 plan because it;

- provides low income housing
- provides walk vs drive alternative to those who live in the immediate area
- was developed following the process and requirements laid out
- the sellers of the property seem more in touch both with our agrarian past and current community

needs than those that oppose

So much of the recent arguments are distractions. I don't expect the developers to provide transportation solutions for seniors. If they can't drive and the new location isn't convenient, they can choose not to move in. Its not safe to live within 1,000 feet of a freeway - well I guess we need to eliminate freeways or buy out all the existing homes within 1,000 feet, tear them down and convert to park land.

Time to move forward.

Tom Calderwood  
Los Gatos

## Joel Paulson

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**From:** Guillermo Hernandez <losgatosdrummer@gmail.com>  
**Sent:** Saturday, July 29, 2017 7:46 AM  
**To:** Joel Paulson  
**Subject:** North 40

Great article! Enjoyed reading it. 50 low income units for seniors. What about units for low income Los Gatos residents or below market value?

**From:** "John Shepardson" <[shepardsonlaw@me.com](mailto:shepardsonlaw@me.com)>

**To:** "Marico Sayoc" <[MSayoc@losgatosca.gov](mailto:MSayoc@losgatosca.gov)>, "Rob Rennie" <[RRennie@losgatosca.gov](mailto:RRennie@losgatosca.gov)>, "Steven Leonardis" <[SLeonardis@losgatosca.gov](mailto:SLeonardis@losgatosca.gov)>, "Marcia Jensen" <[MJensen@losgatosca.gov](mailto:MJensen@losgatosca.gov)>, "BSpector" <[BSpector@losgatosca.gov](mailto:BSpector@losgatosca.gov)>, "Laurel Prevetti" <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>, "Robert Schultz" <[RSchultz@losgatosca.gov](mailto:RSchultz@losgatosca.gov)>

**Subject:** No. 40 (AB-2222 Legislative History)

JS

John Shepardson, Esq.  
[shepardsonlaw@me.com](mailto:shepardsonlaw@me.com)

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**AB-2222 Housing density bonus. (2013-2014)**

Date	Action
09/27/14	Chaptered by Secretary of State - Chapter 682, Statutes of 2014.
09/27/14	Approved by the Governor.
09/08/14	Enrolled and presented to the Governor at 3:30 p.m.
08/27/14	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 78. Noes 0. Page 6570.)
08/27/14	Assembly Rule 77 suspended. (Page 6550.)
08/26/14	In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 28 pursuant to Assembly Rule 77.
08/26/14	Read third time. Passed. Ordered to the Assembly. (Ayes 35. Noes 0. Page 4864.)
08/25/14	Read second time. Ordered to third reading.
08/22/14	Read third time and amended. Ordered to second reading.
06/26/14	Read second time and amended. Ordered to third reading.
06/25/14	From committee: Do pass as amended. (Ayes 11. Noes 0.) (June 24).
06/17/14	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on T. & H.
06/11/14	In committee: Set, first hearing. Hearing canceled at the request of author.
06/05/14	Referred to Com. on T. & H.
05/23/14	In Senate. Read first time. To Com. on RLS. for assignment.
05/23/14	Read third time. Passed. Ordered to the Senate. (Ayes 72. Noes 0. Page 5097.)
05/12/14	Read second time. Ordered to third reading.
05/08/14	From committee: Do pass. (Ayes 8. Noes 0.) (May 7).
05/06/14	Re-referred to Com. on L. GOV.
05/05/14	(pending re-referral to the Com. on L. GOV.)
05/05/14	Joint Rule 62(a), file notice suspended. (Page 4737.)
05/05/14	Assembly Rule 56 suspended. (Page 4737.)
05/05/14	Read second time and amended.
05/01/14	From committee: Do pass as amended and re-refer to Com. on L. GOV. (Ayes 7. Noes 0.) (April 30).
04/23/14	Re-referred to Com. on H. & C.D.
04/22/14	From committee chair, with author's amendments: Amend, and re-refer to Com. on H. & C.D. Read second time and amended.
04/01/14	Re-referred to Com. on H. & C.D.
03/28/14	From committee chair, with author's amendments: Amend, and re-refer to Com. on H. & C.D. Read second time and amended.
03/28/14	Referred to Coms. on H. & C.D. and L. GOV.
02/21/14	From printer. May be heard in committee March 23.
02/20/14	Read first time. To print.

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Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

AB 2222 (Nazarian) – As Amended: April 22, 2014

SUBJECT: Housing: Density Bonus.

SUMMARY: Prohibits an applicant from receiving a density bonus unless the proposed housing development or condominium project would maintain the number and proportion of affordable housing units within the proposed development, and increases the required affordability from 30 years or longer to 55 years or longer. Specifically, this bill:

- 1) Prohibits an applicant from receiving a density bonus or any other incentives or concessions if a proposed housing development or condominium project is located on any property that includes a parcel on which dwelling units have, at any time in the five-year period preceding the application, been:
  - a) Occupied by lower- or very low-income households;
  - b) Subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower- or very low-income; or
  - c) Subject to any other form of rent or price control through a public entity's valid exercise of its police power.
- 2) Provides that the above prohibition shall not apply if the proposed housing development or condominium project would maintain the number and proportion of affordable housing units within the development, as well as include the additional set aside of affordable units under the density bonus formula.
- 3) Increases the affordability requirement of all low- and very low-income units that qualified an applicant for a density bonus from 30 years or longer to 55 years or longer.

EXISTING LAW:

- 1) Defines "density bonus" as a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the local government.
- 2) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.
- 3) Requires local governments to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:
  - a) 10% of the total units for lower-income households;
  - b) 5% of the total units for very-low income households;

- c) A senior citizen housing development or mobilehome park; and,
  - d) 10% of the units in a common-interest development (CID) for moderate-income households.
- 4) Provides that, when an applicant for approval to convert apartments to a condominium project agrees to provide at least 33% of the total units of the proposed condominium project to persons and families of low- or moderate-income, or 15% of the total units of the proposed condominium project to lower-income households, and agrees to pay for the reasonably necessary administrative costs incurred by a local government, the local government must either grant a density bonus or provide other incentives of equivalent financial value.
- 5) Provides that a local government, when considering an application for approval to convert apartments to a condominium project, may place reasonable conditions on the granting of a density bonus or other incentives.
- 6) Provides that the density bonus for low-, very low-, and moderate-income units increase incrementally according to a set formula.
- 7) Requires that the applicant agree to continued affordability of all low- and very low-income units that qualified the applicant for the density bonus for at least 30 years.
- 8) Provides a 15% density bonus to the developer of a market-rate housing project who donates land to a local government that could accommodate housing for very low-income households equal to at least 10% of the number of units in the development, subject to certain conditions. For each one percent increase above the 10%, the density bonus increases by 1% up to a maximum combined density increase of 35%.
- 9) Requires that applicants receive incentives or concessions unless the local government makes a written finding, based upon substantial evidence, that
- a) The concession or incentive is not needed to provide the affordable housing;
  - b) The concession or incentive would have a specific adverse impact on health and safety, the environment, or an historical resource; or
  - c) The concession or incentive would be contrary to state or federal law.
- 10) Specifies that concessions or incentives may include 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.
  - 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 are compatible with the project and the surrounding area.

- c) Other regulatory incentives or concessions proposed by the developer or the local government that result in identifiable, financially sufficient, and actual cost reductions.
- 11) Requires local governments to provide applicants with the following number of incentives or concessions:
- a) One incentive or concession for projects that include at least 10% of the total units for lower-income households, at least 5% for very low-income households, or at least 10% for persons and families of moderate-income in a common interest development.
  - b) Two incentives or concessions for projects that include at least 20% of the total units for lower-income households, at least 10% for very low-income households, or at least 20% for persons and families of moderate-income in a common interest development.
  - c) Three incentives or concessions for projects that include at least 30% of the total units for lower-income households, at least 15% for very low-income households, or at least 30% for persons and families of moderate-income in a common interest development.
- 12) Authorizes an applicant to initiate judicial proceedings if the local government refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant the request is in violation of density bonus law, the court will award the plaintiff reasonable attorney's fees and costs.
- 13) Prohibits a local government from applying any development standard that will have the effect of precluding the construction of housing that qualifies for a density bonus at the densities or with the concessions or incentives required by density bonus law.
- 14) Authorizes a developer to request a waiver or reduction of development standards that will have the effect of physically precluding the construction of housing that qualifies for a density bonus at the densities or with the concessions or incentives required by density bonus law.
- 15) Requires the local government to grant either an additional density bonus or and additional concession or incentive when the applicant proposes to include a child care facility in or adjacent to the housing development.
- 16) Provides that, upon the developer's request, the local government may not require parking standards greater than the following:
- d) Zero to one bedrooms: one onsite parking space;
  - e) Two to three bedrooms: two onsite parking spaces; and
  - f) Four or more bedrooms: two and one-half parking spaces.

FISCAL EFFECT: None.

COMMENTS:

To help address California's affordable housing shortage, the Legislature enacted density bonus law to encourage the development of more affordable units. Under current law, a city or county must grant a density bonus, concessions and incentives, prescribed parking requirements, as well as waivers of development standards upon a developer's request when the developer includes a certain percentage of affordable housing in a housing development project.

Density bonus law was originally enacted in 1979, but has been changed numerous times since. SB 1818 (Hollingsworth), Chapter 928, Statutes of 2004, made significant changes to the law, including reducing the number of housing units required to be provided at below market rate in order to qualify for a density bonus. Developers are entitled to benefits under the density bonus law when they include as few as one affordable housing unit as part of an otherwise market-rate project. A housing project with only 5% very low-income housing is entitled to a 20% density bonus, one concession, unlimited waivers from development standards, and reduced parking standards for the entire project.

AB 2222 addresses the preservation of existing affordable units. Under existing law, a developer proposing to develop a residential project, or an applicant for approval to convert apartments to a condominium project, qualifies for a density bonus if the proposed project has a specific percentage of units set-aside for affordable housing. This bill would prohibit an applicant from receiving a density bonus, incentive, or concession if a proposed housing development or condominium project is located on property where dwelling units have, at any time in the five-year period preceding the application, been occupied by very-low or lower-income households or subject to rent control.

However, an applicant may overcome this prohibition by, in addition to the percentage of units already set-aside for affordable housing under the density bonus formula, replacing all existing affordable units with units of equivalent affordability and size and/or type. The Committee may wish to accept amendments, listed below under "Committee Amendments", that provides a 100% affordable project must only replace all existing affordable units. Additionally, AB 2222 increases the required affordability from 30 years or longer to 55 years or longer for all affordable units that qualified an applicant for a density bonus.

Purpose of the bill:

Adequate and affordable housing is an issue of statewide concern but, according to the author, the change made to density bonus law by SB 1818 had the reverse effect and resulted in fewer affordable units. AB 2222 ensures that affordable units are preserved when a developer proposes to demolish a site and the new proposal is to replace the prior structure with a new residential structure by ensuring that the project begins with the same number of affordable units. AB 2222 also increases the affordability requirement from 30 years to 55 years for all affordable units that qualified an applicant for a density bonus, which is consistent with other state and local programs and promotes the supply of affordable units for years to come.

Committee Amendments:

The Committee may wish to accept the following amendments:

- 1) On page 5, in line 4, strike out "." and insert:

unless all of the units in the development are affordable to and occupied by lower-income households.

- 2) On page 16, in line 7, strike out "." and insert:

unless all of the units in the development are affordable to and occupied by lower-income households.

Double referred: If AB 2222 passes this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Rebecca Rabovsky / H. & C.D. / (916) 319-2085

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Date of Hearing: May 7, 2014

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

K.H. "Katcho" Achadjian, Chair

AB 2222 (Nazarian) – As Amended: May 5, 2014

SUBJECT: Housing: density bonus.

SUMMARY: Modifies provisions of density bonus law. Specifically, this bill:

- 1) Increases the affordability requirement of all low- and very low-income units that qualified an applicant for a density bonus from 30 years or longer to 55 years or longer.
- 2) Prohibits an applicant from receiving a density bonus or any other incentives or concessions if a proposed housing development or condominium project is located on any property that includes a parcel on which dwelling units have, at any time in the five-year period preceding the application, been:
  - a) Occupied by lower- or very low-income households;
  - b) Subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower- or very low-income; or,
  - c) Subject to any other form of rent or price control through a public entity's valid exercise of its police power.
- 3) Provides that the prohibition in 2), above, shall not apply if the proposed housing development or condominium project would replace the existing units with at least the same number of units of equivalent size or type, or both, to be made available for rent at affordable housing costs to, and occupied by, persons and families in the same or lower income category in the same proportion as the existing affordable units, and either of the following applies:
  - a) The proposed housing development includes the additional required set aside of affordable units at the percentages set forth in existing law; or,
  - b) Each unit in the development is affordable to, and occupied by, either a low- or very low-income household.

EXISTING LAW:

- 1) Defines "density bonus" as a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the local government.
- 2) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.

- 3) Requires local governments to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:
  - a) 10% of the total units for lower-income households;
  - b) 5% of the total units for very-low income households;
  - c) A senior citizen housing development or mobilehome park; and,
  - d) 10% of the units in a common-interest development (CID) for moderate-income households.
- 4) Provides that, when an applicant for approval to convert apartments to a condominium project agrees to provide at least 33% of the total units of the proposed condominium project to persons and families of low- or moderate-income, or 15% of the total units of the proposed condominium project to lower-income households, and agrees to pay for the reasonably necessary administrative costs incurred by a local government, the local government must either grant a density bonus or provide other incentives of equivalent financial value.
- 5) Provides that a local government, when considering an application for approval to convert apartments to a condominium project, may place reasonable conditions on the granting of a density bonus or other incentives.
- 6) Provides that the density bonus for low-, very low-, and moderate-income units increase incrementally according to a set formula.
- 7) Requires that the applicant agree to continued affordability of all low- and very low-income units that qualified the applicant for the density bonus for at least 30 years.
- 8) Requires that applicants receive incentives or concessions, unless the local government makes a written finding, based upon substantial evidence, that:
  - a) The concession or incentive is not needed to provide the affordable housing;
  - b) The concession or incentive would have a specific adverse impact on health and safety, the environment, or an historical resource; or,
  - c) The concession or incentive would be contrary to state or federal law.
- 9) Specifies that concessions or incentives may include 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;
  - 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 are compatible with the project and the surrounding area.; and,

- c) Other regulatory incentives or concessions proposed by the developer or the local government that result in identifiable, financially sufficient, and actual cost reductions.
- 10) Requires local governments to provide applicants with the following number of incentives or concessions:
- a) One incentive or concession for projects that include at least 10% of the total units for lower-income households, at least 5% for very low-income households, or at least 10% for persons and families of moderate-income in a common interest development;
  - b) Two incentives or concessions for projects that include at least 20% of the total units for lower-income households, at least 10% for very low-income households, or at least 20% for persons and families of moderate-income in a common interest development; and,
  - c) Three incentives or concessions for projects that include at least 30% of the total units for lower-income households, at least 15% for very low-income households, or at least 30% for persons and families of moderate-income in a common interest development.
- 11) Authorizes an applicant to initiate judicial proceedings if the local government refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant the request is in violation of density bonus law, the court will award the plaintiff reasonable attorney's fees and costs.
- 12) Prohibits a local government from applying any development standard that will have the effect of precluding the construction of housing that qualifies for a density bonus at the densities or with the concessions or incentives required by density bonus law.
- 13) Authorizes a developer to request a waiver or reduction of development standards that will have the effect of physically precluding the construction of housing that qualifies for a density bonus at the densities or with the concessions or incentives required by density bonus law.

FISCAL EFFECT: None

COMMENTS:

- 1) Background on density bonus. To help address California's affordable housing shortage, the Legislature enacted density bonus law to encourage the development of more affordable units. Under current law, a city or county must grant a density bonus, concessions and incentives, prescribed parking requirements, as well as waivers of development standards upon a developer's request when the developer includes a certain percentage of affordable housing in a housing development project.

Density bonus law was originally enacted in 1979, but has been changed numerous times since. SB 1818 (Hollingsworth), Chapter 928, Statutes of 2004, made significant changes to the law, including reducing the number of housing units required to be provided at below market rate in order to qualify for a density bonus. Developers are entitled to benefits under the density bonus law when they include as few as one affordable housing unit as part of an otherwise market-rate project. A housing project with only 5% of very low-income housing

is entitled to a 20% density bonus, one concession, unlimited waivers from development standards, and reduced parking standards for the entire project.

- 2) Purpose of this bill. This bill makes a number of changes to density bonus law. First, this bill increases the affordability requirement of all low- and very low-income units that qualified an applicant for a density bonus from 30 years or longer to 55 years or longer. Also, the bill prohibits an applicant from receiving a density bonus or any other incentives or concessions if a proposed housing development or condominium project is located on any property that includes a parcel on which dwelling units have, at any time in the five-year period preceding the application, been occupied by lower- or very low-income households, subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower- or very low-income, or subject to any other form of rent or price control through a public entity's valid exercise of its police power. This prohibition shall not apply if the proposed housing development or condominium would replace the existing units with at least the same number of units of equivalent size or type, or both, to be made available for rent at affordable housing costs to, and occupied by, persons and families in the same or lower income category in the same proportion as the existing affordable units, in specified instances.

This bill is author-sponsored.

- 3) Author's statement. According to the author, "Adequate and affordable housing is an issue of statewide concern. Yet, the change made to the density bonus law by SB 1818 had the reverse effect and has resulted in fewer affordable units....buildings that were built pre-SB 1818 that are proposed to be demolished and replaced may now qualify for a density bonus under the new SB 1818 structure.

"SB 1818 inadvertently created a loophole whereby developers that propose to demolish pre-SB 1818 buildings are not required to begin the new project with the same number of affordable units. As a result, a new project may result in less affordable units than previously existed on the parcel.

"This bill addresses the loophole created by SB 1818 and ensures that affordable units are preserved when a development proposes to demolish a site and the new proposal is to replace the outdated structure with a new residential structure by ensuring that the project begins with the same number of affordable units. Additionally, this bill increases the classification of affordability from 30 years to 55 years. This change is consistent with other state and local programs and ensures that affordable units remain affordable. AB 2222 will preserve and promote the supply of affordable units for years to come."

- 4) Arguments in support. None on file.
- 5) Arguments in opposition. None on file.
- 6) Double-referral. This bill was heard by the Housing and Community Development Committee on April 30, 2014, and passed with a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958

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**SENATE TRANSPORTATION & HOUSING COMMITTEE**  
**SENATOR MARK DESAULNIER, CHAIRMAN**

**BILL NO: AB 2222**  
**AUTHOR: NAZARIAN**  
**VERSION: 6/17/14**  
**FISCAL: NO**

**Analysis by: Mark Stivers**  
**Hearing date: June 24, 2014**

**SUBJECT:**

Density bonus law

**DESCRIPTION:**

This bill generally makes an applicant ineligible for a density bonus if the proposed housing development will displace units that are affordable to, or occupied by, lower income households.

**ANALYSIS:**

Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. Density bonus law (referred to below as the traditional density bonus) allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more thinly over the market-rate units. The idea of density bonus law is to cover at least some of the financing gap of affordable housing with regulatory incentives rather than additional subsidy.

Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits:

- A density bonus
- Incentives or concessions (hereafter referred to as incentives)
- Waiver of any development standards that prevent the developer from utilizing the density bonus or incentives
- Reduced parking standards

To qualify for the benefits of this provision, a proposed housing development must meet one of the following criteria: 1) include at least 5% of the units affordable to very low-income households, 2) include at least 10% of the units affordable to low-income households, 3) include at least 10% of the units in a for-sale common-interest development affordable to moderate-income households, or 4) be a senior housing development. Units affordable to lower income households must remain affordable for 30 years, and for-sale units affordable to moderate-income households must be subject to an equity sharing agreement that returns a proportionate share of appreciation to the local governments upon resale of the home. If one of these four options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. At higher levels of affordability,

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the developer is entitled to a sliding scale of density bonuses, up to a maximum of 35% of the maximum zoning density and up to three incentives.

While a local government is not required to provide financial assistance or fee waivers, the incentives a local government must grant include any of the following:

- A reduction in site development standards
- A modification of zoning code requirements (including a reduction in setbacks, square footage requirements, or parking spaces, or architectural design requirements that exceed the minimum building standards)
- 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 such non-residential uses are compatible with the project
- Other regulatory incentives or concessions that result in identifiable, financially sufficient, and actual cost reductions

A local government may not apply development standards that preclude the density bonus or incentives from being used unless waiving such standards would have a significant, adverse impact upon public health, public safety, or the environment.

In addition, parking requirements are capped for density bonus developments. A city or county may not require more than one parking space per studio or one-bedroom unit, two parking spaces per two- or three-bedroom unit, or two and one-half parking spaces per four-bedroom or larger unit. In addition, a developer may meet these standards with uncovered spaces or tandem parking. These parking caps are automatic. A developer may request further parking reductions by using one of the incentives to which the development is entitled.

A similar section of law (referred to here as the conversion density bonus) requires a local government to grant a developer a density bonus of 25% or other incentives of equivalent financial value if the developer is converting apartments to condominiums and agrees to make at least 33% of the units affordable to low- or moderate-income households or 15% of the units affordable to low-income households.

**This bill**, with respect to both the traditional density bonus and the conversion density bonus statutes, makes an applicant ineligible for a density bonus or the incentives described above if the proposed housing development is located on a parcel from which dwelling units have, at any time in the previous five years, been occupied by low-income households, been subject to a recorded covenant or law that restricts rents to levels affordable to low-income households, or been subject to any local rent-control ordinance, unless the proposed housing development replaces these units.

At a minimum, the replacement units must be of equivalent size or type and affordable for 55 years to the same or lower income category as the units to be replaced. The replacement units do not count towards the qualifying percentages for the density bonus (i.e., the density bonus units are in addition to the replacement units), unless the proposed project will already be 100% affordable to low-income households. The number of units the developer must replace is calculated as follows:

- 
- For developments occupied on the date of application, the developer must replace all units occupied by lower-income households at the same or lower level of affordability. Unoccupied units within the development are replaced in the same proportion as the occupied units.
  - For developments vacated or demolished within the five-year period preceding the application, the developer must provide a number of units at the same or lower level of affordability that is equivalent to the highest number of units affordable to or occupied by low-income households as existed in that five-year period. If the incomes of the former residents were unknown, then one-half of the replacement units must be affordable to very low-income households and one-half to low-income households.

The bill further provides that all affordable ownership units that qualify a development for a density bonus shall be subject to an equity sharing agreement, as opposed to a resale restriction. Lastly, the bill clarifies that, other than through the incentive or concession provisions described above, the granting of a density bonus does not require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

#### COMMENTS:

1. Purpose of the bill. According to the author, density bonus law is intended to encourage private developers to increase the supply of affordable housing. Because the law does not require replacement of existing affordable units, however, a density bonus project may result in fewer affordable units than previously existed on the parcel. This bill seeks to correct this unintended consequence by requiring that density bonus projects start with the same number of affordable units before calculating the bonus. This will ensure an overall increase in affordable housing.
2. Equity sharing for homeownership units. Current law provides that lower-income homeownership units in a density bonus project must remain affordable to and occupied by lower income households for 30 years. As a result, a homebuyer who later seeks to resell is limited in whom he or she may sell to and in the price he or she may ask. This creates complicated sales and often results in the homebuyer seeing little to no price appreciation, except for whoever owns the property at year 30 and may sell the home at full market value for a windfall profit. Moreover, local governments rarely monitor these requirements, and many cases exist of the homeowner simply receiving a windfall profit at sale prior to year 30.

Moderate-income density bonus units, on the other hand, are subject to an equity sharing agreement, whereby the homeowner may later sell the home at any price to any buyer, but must repay to the local government the initial price break he or she received as well as a proportionate share of appreciation. While the original unit is no longer affordable, the city must reuse these proceeds to assist another homeowner buy a home. As a result, the equity sharing model is administratively simpler and ensures perpetual affordability, as opposed to 30-year affordability. This bill places *all* density bonus homeownership units under the equity sharing model.

3. Technical amendments.
  - On page 5, line 31, after “development” insert “, exclusive of a manager’s unit or units,”

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- On page 6, lines 1-2, strike “this paragraph” and insert “subparagraph (A)”
  - On page 6, line 25, after the period insert “All replacement calculations resulting in fractional units shall be rounded up to the next whole number.”
  - On page 18, line 4, after “development” insert “, exclusive of a manager’s unit or units,”

**Assembly Votes:**

**Floor:** 72-0  
**L Gov:** 8-0  
**H&CD:** 7-0

**POSITIONS:** (Communicated to the committee before noon on Wednesday,  
June 18, 2014.)

**SUPPORT:** Association of Regional Center Agencies  
Western Center on Law and Poverty  
California Rural Legal Assistance Foundation  
Studio City Neighborhood Council  
Councilmember Mike Bonin, City of Los Angeles  
City of Los Angeles  
Coalition of Economic Survival  
Public Counsel  
Women Organizing Resources, Knowledge, and Services

**OPPOSED:** None received.

**SENATE RULES COMMITTEE**

AB 2222

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: AB 2222  
Author: Nazarian (D)  
Amended: 6/26/14 in Senate  
Vote: 21

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SENATE TRANSPORTATION & HOUSING COMMITTEE: 11-0, 6/24/14  
AYES: DeSaulnier, Gaines, Beall, Cannella, Galgiani, Hueso, Lara, Liu, Pavley,  
Roth, Wyland

ASSEMBLY FLOOR: 72-0, 5/23/14 - See last page for vote

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**SUBJECT:** Density bonus laws

**SOURCE:** Author

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**DIGEST:** This bill makes an applicant ineligible for a density bonus if the proposed housing development will displace units that are affordable to, or occupied by, lower income households.

**ANALYSIS:** Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. Density bonus law (referred to below as the traditional density bonus) allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more thinly over the market-rate units. The idea of density bonus law is to cover at least some of the financing gap of affordable housing with regulatory incentives rather than additional subsidy.

CONTINUED

Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits:

1. A density bonus.
2. Incentives or concessions (hereafter referred to as incentives).
3. Waiver of any development standards that prevent the developer from utilizing the density bonus or incentives.
4. Reduced parking standards.

To qualify for the benefits of this provision, a proposed housing development must meet one of the following criteria: (1) include at least 5% of the units affordable to very low-income households, (2) include at least 10% of the units affordable to low-income households, (3) include at least 10% of the units in a for-sale common-interest development affordable to moderate-income households, or (4) be a senior housing development. Units affordable to lower income households must remain affordable for 30 years, and for-sale units affordable to moderate-income households must be subject to an equity sharing agreement that returns a proportionate share of appreciation to the local governments upon resale of the home. If one of these four options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. At higher levels of affordability, the developer is entitled to a sliding scale of density bonuses, up to a maximum of 35% of the maximum zoning density and up to three incentives.

While a local government is not required to provide financial assistance or fee waivers, the incentives a local government must grant include any of the following:

1. A reduction in site development standards.
2. A modification of zoning code requirements (including a reduction in setbacks, square footage requirements, or parking spaces, or architectural design requirements that exceed the minimum building standards).
3. 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 such non-residential uses are compatible with the project.

CONTINUED

4. Other regulatory incentives or concessions that result in identifiable, financially sufficient, and actual cost reductions.

A local government may not apply development standards that preclude the density bonus or incentives from being used unless waiving such standards will have a significant, adverse impact upon public health, public safety, or the environment.

In addition, parking requirements are capped for density bonus developments. A city or county may not require more than one parking space per studio or one-bedroom unit, two parking spaces per two- or three-bedroom unit, or two and one-half parking spaces per four-bedroom or larger unit. In addition, a developer may meet these standards with uncovered spaces or tandem parking. These parking caps are automatic. A developer may request further parking reductions by using one of the incentives to which the development is entitled.

A similar section of law (referred to here as the conversion density bonus) requires a local government to grant a developer a density bonus of 25% or other incentives of equivalent financial value if the developer is converting apartments to condominiums and agrees to make at least 33% of the units affordable to low- or moderate-income households or 15% of the units affordable to low-income households.

This bill, with respect to both the traditional density bonus and the conversion density bonus statutes, makes an applicant ineligible for a density bonus or the incentives described above if the proposed housing development is located on a parcel from which dwelling units have, at any time in the previous five years, been occupied by low-income households, been subject to a recorded covenant or law that restricts rents to levels affordable to low-income households, or been subject to any local rent-control ordinance, unless the proposed housing development replaces these units.

At a minimum, the replacement units must be of equivalent size or type and affordable for 55 years to the same or lower income category as the units to be replaced. The replacement units do not count towards the qualifying percentages for the density bonus (i.e., the density bonus units are in addition to the replacement units), unless the proposed project will already be 100% affordable to low-income households. The number of units the developer must replace is calculated as follows:

1. For developments occupied on the date of application, the developer must replace all units occupied by lower-income households at the same or lower level of affordability. Unoccupied units within the development are replaced in the same proportion as the occupied units.
2. For developments vacated or demolished within the five-year period preceding the application, the developer must provide a number of units at the same or lower level of affordability that is equivalent to the highest number of units affordable to or occupied by low-income households as existed in that five-year period. If the incomes of the former residents were unknown, then one-half of the replacement units must be affordable to very low-income households and one-half to low-income households.

This bill further provides that all affordable ownership units that qualify a development for a density bonus shall be subject to an equity sharing agreement, as opposed to a resale restriction. Lastly, this bill clarifies that, other than through the incentive or concession provisions described above, the granting of a density bonus does not require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

### Background

Equity sharing for homeownership units. Existing law provides that lower-income homeownership units in a density bonus project must remain affordable to and occupied by lower income households for 30 years. As a result, a homebuyer who later seeks to resell is limited in whom he/she may sell to and in the price he/she may ask. This creates complicated sales and often results in the homebuyer seeing little to no price appreciation, except for whoever owns the property at year 30 and may sell the home at full market value for a windfall profit. Moreover, local governments rarely monitor these requirements, and many cases exist of the homeowner simply receiving a windfall profit at sale prior to year 30.

Moderate-income density bonus units, on the other hand, are subject to an equity sharing agreement, whereby the homeowner may later sell the home at any price to any buyer, but must repay to the local government the initial price break he/she received as well as a proportionate share of appreciation. While the original unit is no longer affordable, the city must reuse these proceeds to assist another homeowner buy a home. As a result, the equity sharing model is administratively simpler and ensures perpetual affordability, as opposed to 30-year affordability. This bill places all density bonus homeownership units under the equity sharing model.

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**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 6/26/14)

Alliance for Community Transit – Los Angeles  
California Rural Legal Assistance Foundation  
City of Los Angeles  
Coalition of Economic Survival  
Councilmember Mike Bonin, City of Los Angeles  
Public Counsel  
Studio City Neighborhood Council  
Western Center on Law and Poverty  
Women Organizing Resources, Knowledge, and Services

**ARGUMENTS IN SUPPORT:** According to the author, “The overall purpose of the density bonus law was to encourage developers to build affordable housing by requiring local municipalities to provide developers incentives to do so. However, developers are not required to begin the new project with the same number of affordable units. Specifically, developers are not required to preserve affordable units. As a result, a new project may result in less affordable units than previously existed on the property.

“Adequate and affordable housing is an issue of statewide concern. Yet, the density bonus law has had the reverse effect and has resulted in fewer affordable units.

“AB 2222 corrects this issue by requiring proposed housing projects to preserve affordable units and requires any other price or rent control requirements to be met.

“Additionally, the change in affordability for rental units will ensure these units remain affordable for a longer period of time. AB 2222 will preserve and promote the supply of affordable units for years to come.”

**ASSEMBLY FLOOR:** 72-0, 5/23/14

AYES: Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Bocanegra, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dababneh, Dahle, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Medina, Melendez, Mullin, Muratsuchi, Nazarian,

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Nestande, Olsen, Pan, Patterson, Perea, John A. Pérez, Quirk, Quirk-Silva,  
Rendon, Ridley-Thomas, Rodriguez, Salas, Skinner, Stone, Ting, Wagner,  
Weber, Wieckowski, Wilk, Williams, Yamada, Atkins  
NO VOTE RECORDED: Bonilla, Daly, Harkey, Roger Hernández, Mansoor, V.  
Manuel Pérez, Waldron, Vacancy

JA:d 6/27/14 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**

AB 2222

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: AB 2222  
Author: Nazarian (D)  
Amended: 8/22/14 in Senate  
Vote: 21

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SENATE TRANSPORTATION & HOUSING COMMITTEE: 11-0, 6/24/14  
AYES: DeSaulnier, Gaines, Beall, Cannella, Galgiani, Hueso, Lara, Liu, Pavley,  
Roth, Wyland

ASSEMBLY FLOOR: 72-0, 5/23/14 - See last page for vote

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**SUBJECT:** Density bonus laws

**SOURCE:** Author

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**DIGEST:** This bill makes an applicant ineligible for a density bonus if the proposed housing development will displace units that are affordable to, or occupied by, lower income households.

Senate Floor Amendments of 8/22/14 (1) allow replacement units to be either rental or for-sale units; (2) count the replacement units towards the density bonus; and (3) exempt applications for density bonuses submitted before January 1, 2015.

**ANALYSIS:** Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. Density bonus law (referred to below as the traditional density bonus) allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning in exchange for affordable units. Allowing more total units permits the developer to

CONTINUED

spread the cost of the affordable units more thinly over the market-rate units. The idea of density bonus law is to cover at least some of the financing gap of affordable housing with regulatory incentives rather than additional subsidy.

Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits:

1. A density bonus.
2. Incentives or concessions (hereafter referred to as incentives).
3. Waiver of any development standards that prevent the developer from utilizing the density bonus or incentives.
4. Reduced parking standards.

To qualify for the benefits of this provision, a proposed housing development must meet one of the following criteria: (1) include at least 5% of the units affordable to very low-income households, (2) include at least 10% of the units affordable to low-income households, (3) include at least 10% of the units in a for-sale common-interest development affordable to moderate-income households, or (4) be a senior housing development. Units affordable to lower income households must remain affordable for 30 years, and for-sale units affordable to moderate-income households must be subject to an equity sharing agreement that returns a proportionate share of appreciation to the local governments upon resale of the home. If one of these four options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. At higher levels of affordability, the developer is entitled to a sliding scale of density bonuses, up to a maximum of 35% of the maximum zoning density and up to three incentives.

While a local government is not required to provide financial assistance or fee waivers, the incentives a local government must grant include any of the following:

1. A reduction in site development standards.
2. A modification of zoning code requirements (including a reduction in setbacks, square footage requirements, or parking spaces, or architectural design requirements that exceed the minimum building standards).

3. 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 such non-residential uses are compatible with the project.
4. Other regulatory incentives or concessions that result in identifiable, financially sufficient, and actual cost reductions.

A local government may not apply development standards that preclude the density bonus or incentives from being used unless waiving such standards will have a significant, adverse impact upon public health, public safety, or the environment.

In addition, parking requirements are capped for density bonus developments. A city or county may not require more than one parking space per studio or one-bedroom unit, two parking spaces per two- or three-bedroom unit, or two and one-half parking spaces per four-bedroom or larger unit. In addition, a developer may meet these standards with uncovered spaces or tandem parking. These parking caps are automatic. A developer may request further parking reductions by using one of the incentives to which the development is entitled.

A similar section of law (referred to here as the conversion density bonus) requires a local government to grant a developer a density bonus of 25% or other incentives of equivalent financial value if the developer is converting apartments to condominiums and agrees to make at least 33% of the units affordable to low- or moderate-income households or 15% of the units affordable to low-income households.

This bill, with respect to both the traditional density bonus and the conversion density bonus statutes, makes an applicant ineligible for a density bonus or the incentives described above if the proposed housing development is located on a parcel from which dwelling units have, at any time in the previous five years, been occupied by low-income households, been subject to a recorded covenant or law that restricts rents to levels affordable to low-income households, or been subject to any local rent-control ordinance, unless the proposed housing development replaces these units.

At a minimum, the replacement units must be of equivalent size or type and affordable for 55 years to the same or lower income category as the units to be replaced. Allows the replacement units to count towards the density bonus. The number of units the developer must replace is calculated as follows:

1. For developments occupied on the date of application, the developer must replace all units occupied by lower-income households at the same or lower level of affordability. Unoccupied units within the development are replaced in the same proportion as the occupied units.
2. For developments vacated or demolished within the five-year period preceding the application, the developer must provide a number of units at the same or lower level of affordability that is equivalent to the highest number of units affordable to or occupied by low-income households as existed in that five-year period. If the incomes of the former residents were unknown, then one-half of the replacement units must be affordable to very low-income households and one-half to low-income households.

This bill further provides that all affordable ownership units that qualify a development for a density bonus shall be subject to an equity sharing agreement, as opposed to a resale restriction. This bill clarifies that, other than through the incentive or concession provisions described above, the granting of a density bonus does not require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards. Lastly, this bill exempts applications for density bonuses submitted before January 1, 2015, from the bill's provisions.

### Background

Equity sharing for homeownership units. Existing law provides that lower-income homeownership units in a density bonus project must remain affordable to and occupied by lower income households for 30 years. As a result, a homebuyer who later seeks to resell is limited in whom he/she may sell to and in the price he/she may ask. This creates complicated sales and often results in the homebuyer seeing little to no price appreciation, except for whoever owns the property at year 30 and may sell the home at full market value for a windfall profit. Moreover, local governments rarely monitor these requirements, and many cases exist of the homeowner simply receiving a windfall profit at sale prior to year 30.

Moderate-income density bonus units, on the other hand, are subject to an equity sharing agreement, whereby the homeowner may later sell the home at any price to any buyer, but must repay to the local government the initial price break he/she received as well as a proportionate share of appreciation. While the original unit is no longer affordable, the city must reuse these proceeds to assist another homeowner buy a home. As a result, the equity sharing model is administratively simpler and ensures perpetual affordability, as opposed to 30-year affordability.

CONTINUED

This bill places all density bonus homeownership units under the equity sharing model.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 8/22/14)

Alliance for Community Transit – Los Angeles  
California Rural Legal Assistance Foundation  
City of Los Angeles  
Coalition of Economic Survival  
Councilmember Mike Bonin, City of Los Angeles  
Public Counsel  
Studio City Neighborhood Council  
Venice Community Housing Corporation  
Western Center on Law and Poverty  
Women Organizing Resources, Knowledge, and Services

**ARGUMENTS IN SUPPORT:** According to the author, “The overall purpose of the density bonus law was to encourage developers to build affordable housing by requiring local municipalities to provide developers incentives to do so. However, developers are not required to begin the new project with the same number of affordable units. Specifically, developers are not required to preserve affordable units. As a result, a new project may result in less affordable units than previously existed on the property.

“Adequate and affordable housing is an issue of statewide concern. Yet, the density bonus law has had the reverse effect and has resulted in fewer affordable units.

“AB 2222 corrects this issue by requiring proposed housing projects to preserve affordable units and requires any other price or rent control requirements to be met.

“Additionally, the change in affordability for rental units will ensure these units remain affordable for a longer period of time. AB 2222 will preserve and promote the supply of affordable units for years to come.”

**ASSEMBLY FLOOR:** 72-0, 5/23/14

AYES: Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Bocanegra, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dababneh, Dahle, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, John A. Pérez, Quirk, Quirk-Silva, Rendon, Ridley-Thomas, Rodriguez, Salas, Skinner, Stone, Ting, Wagner, Weber, Wieckowski, Wilk, Williams, Yamada, Atkins

NO VOTE RECORDED: Bonilla, Daly, Harkey, Roger Hernández, Mansoor, V. Manuel Pérez, Waldron, Vacancy

JA:d 8/25/14 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

## CONCURRENCE IN SENATE AMENDMENTS

AB 2222 (Nazarian)

As Amended August 22, 2014

Majority vote

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ASSEMBLY: 72-0 (May 23, 2014) SENATE: 35-0 (August 26, 2014)

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Original Committee Reference: H. & C.D.

SUMMARY: Prohibits an applicant from receiving a density bonus unless the proposed housing development or condominium project would, at a minimum, maintain the number and proportion of affordable housing units within the proposed development. Specifically, this bill:

- 1) Prohibits an applicant from receiving a density bonus or any other incentives or concessions if a proposed housing development or condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, been:
  - a) Occupied by very low- or low-income households;
  - b) Subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of very low- or low-income; or
  - c) Subject to any other form of rent or price control through a public entity's valid exercise of its police power.
- 2) Provides that a developer may overcome the above prohibition if the proposed housing development or condominium project would replace the existing affordable units with at least the same number and type of affordable units and either of the following applies:
  - a) For mixed-income housing, the development must include additional affordable units at the percentage required by existing density bonus law, inclusive of the units replaced pursuant to this bill; or,
  - b) For 100% affordable developments all units, except for the manager's unit or units, are occupied by either very low- or low- income households.
- 3) Defines "replace," for purposes of replacing units affordable to or occupied by lower income households, as meaning:
  - a) For developments occupied on the date of application, the developer must provide at least the same number of units of equivalent size or type, or both, to be made available for affordable rent or ownership to, and occupied by, persons and families in the same or lower income category. Unoccupied units within the development are replaced in the same proportion as the occupied units.
  - b) For developments vacated or demolished within the five-year period preceding the application, the developer must provide a number of units available for rent or ownership, affordable to persons and families in the same or lower income category, that is

equivalent to the highest number of units affordable to or occupied by low-income households as existed in that five-year period. If the incomes of the former residents are unknown, then one-half of the replacement units must be affordable to very low-income households and one-half to low-income households.

- 4) Provides that rental replacement units must be subject to a recorded affordability restriction for at least 55 years.
- 5) Increases the affordability requirement of all very low- and low-income rental units that qualified an applicant for a density bonus from 30 years or longer to 55 years or longer.
- 6) Provides that affordable ownership units that qualify a development for a density bonus must be subject to an equity sharing agreement, as opposed to a resale restriction.
- 7) Clarifies that, other than through the incentive or concession provisions under density bonus law, the granting of a density bonus does not require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.
- 8) Provides that this bill does not apply to applicants for density bonuses with applications submitted to, or processed by, a local government before January 1, 2015.

The Senate amendments:

- 1) Clarify that a density bonus applicant is prohibited from receiving a density bonus or any other incentives or concessions if a proposed housing development or condominium project is located on any property that includes a parcel or parcels on which affordable rental dwelling units existed at any time in the five-year period preceding the application, including units that have since been vacated or demolished.
- 2) Clarify that a manager's unit or units is not counted towards determining whether a project is 100% affordable for purposes of overcoming the prohibition on density bonus on sites where affordable rental housing has existed within the five-year period preceding the application.
- 3) Define the term "replace," for purposes of replacing units affordable to or occupied by lower-income households, as meaning:
  - a) For developments occupied on the date of application, the developer must provide at least the same number of units of equivalent size or type, or both, to be made available for affordable rent or ownership to, and occupied by, persons and families in the same or lower income category. Unoccupied units within the development are replaced in the same proportion as the occupied units.
  - b) For developments vacated or demolished within the five-year period preceding the application, the developer must provide a number of units available for rent or ownership, affordable to persons and families in the same or lower income category, that is equivalent to the highest number of units affordable to or occupied by low-income households as existed in that five-year period. If the incomes of the former residents are unknown, then one-half of the replacement units must be affordable to very low-income households and one-half to low-income households.

- 4) Provide that rental replacement units must be subject to a recorded affordability restriction for at least 55 years.
- 5) Provide that, for mixed-income housing developments, replacement units count towards the density bonus formula.
- 6) Provide that affordable ownership units that qualify a development for a density bonus must be subject to an equity sharing agreement, as opposed to a resale restriction.
- 7) Clarify that, other than through the incentive or concession provisions under density bonus law, the granting of a density bonus does not require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.
- 8) Provide that this bill does not apply to applicants for density bonuses with applications submitted to, or processed by, a local government before January 1, 2015.

FISCAL EFFECT: None

COMMENTS: To help address California's affordable housing shortage, the Legislature enacted density bonus law to encourage the development of more affordable units. Under current law, a city or county must grant a density bonus, concessions and incentives, prescribed parking requirements, as well as waivers of development standards upon a developer's request when the developer includes a certain percentage of affordable housing in a housing development project.

Density bonus law was originally enacted in 1979, but has been changed numerous times since. SB 1818 (Hollingsworth), Chapter 928, Statutes of 2004, made significant changes to the law, including reducing the number of housing units required to be provided at below market rate in order to qualify for a density bonus. Developers are entitled to benefits under the density bonus law when they include as few as one affordable housing unit as part of an otherwise market-rate project. A housing project with only 5% very low-income housing is entitled to a 20% density bonus, one concession, unlimited waivers from development standards, and reduced parking standards for the entire project.

This bill addresses the preservation of existing affordable rental and ownership units. Under existing law, a developer proposing to develop a residential project, or an applicant for approval to convert apartments to a condominium project, qualifies for a density bonus if the proposed project has a specific percentage of units set-aside for affordable housing. This bill would prohibit an applicant from receiving a density bonus, incentive, or concession if a proposed housing development or condominium project is located on property where dwelling units have, at any time in the five-year period preceding the application, been occupied by very low- or low-income households or subject to rent control. This includes units and projects that have since been vacated or demolished.

However, an applicant may overcome this prohibition by replacing, as specified, the affordable units with rental or ownership units of equivalent affordability and size and/or type, as well as either providing an additional set-aside of affordable housing units under the density bonus formula (inclusive of the replacement units) or developing a 100% affordable project. This bill also increases the required affordability from 30 years or longer to 55 years or longer for all affordable rental units that qualified an applicant for a density bonus, and requires replacement

rental units to be subject to a recorded affordability restriction for at least 55 years. If the units that qualified an applicant for a density bonus are affordable ownership units, as opposed to rental units, they must be subject to the equity sharing model rather than a resale restriction. Under existing law, only moderate income affordable ownership units are subject to the equity sharing model.

This bill also clarifies that, other than through the incentive or concession provisions under density bonus law, the granting of a density bonus does not require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

Lastly, this bill does not apply to applicants for density bonuses with applications submitted to, or processed by, a local government before January 1, 2015.

Analysis Prepared by: Rebecca Rabovsky / H. & C.D. / (916) 319-2085

FN: 0005515



### AB-2222 Housing density bonus. (2013-2014)

Date	Result	Location	Ayes	Noes	NVR	Motion
08/27/14	(PASS)	Assembly Floor	78	0	1	AB 2222 NAZARIAN Concurrence in Senate Amendments
<p><b>Ayes:</b> Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dababneh, Dahle, Daly, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Roger Hernández, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Mansoor, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, John A. Pérez, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Ridley-Thomas, Rodriguez, Salas, Skinner, Stone, Ting, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams, Yamada, Atkins</p> <p><b>Noes:</b></p> <p><b>No Votes Recorded:</b> Harkey</p>						
08/26/14	(PASS)	Senate Floor	35	0	5	Assembly 3rd Reading AB2222 Nazarian By DeSaulnier
<p><b>Ayes:</b> Anderson, Beall, Berryhill, Block, Cannella, Corbett, Correa, DeSaulnier, Evans, Fuller, Gaines, Galgiani, Hernandez, Hill, Hueso, Huff, Jackson, Knight, Lara, Leno, Lieu, Liu, Mitchell, Monning, Morrell, Nielsen, Padilla, Pavley, Roth, Steinberg, Torres, Vidak, Walters, Wolk, Wyland</p> <p><b>Noes:</b></p> <p><b>No Votes Recorded:</b> Calderon, De León, Hancock, Wright, Yee</p>						
06/24/14	(PASS)	Sen Transportation and Housing	11	0	0	Do pass as amended.
<p><b>Ayes:</b> Beall, Cannella, DeSaulnier, Gaines, Galgiani, Hueso, Lara, Liu, Pavley, Roth, Wyland</p> <p><b>Noes:</b></p> <p><b>No Votes Recorded:</b></p>						
05/23/14	(PASS)	Assembly Floor	72	0	7	AB 2222 NAZARIAN Assembly Third Reading
<p><b>Ayes:</b> Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Bocanegra, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dababneh, Dahle, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, John A. Pérez, Quirk, Quirk-Silva, Rendon, Ridley-Thomas, Rodriguez, Salas, Skinner, Stone, Ting, Wagner, Weber, Wieckowski, Wilk, Williams, Yamada, Atkins</p> <p><b>Noes:</b></p> <p><b>No Votes Recorded:</b> Bonilla, Daly, Harkey, Roger Hernández, Mansoor, V. Manuel Pérez, Waldron</p>						
05/07/14	(PASS)	Asm Local Government	8	0	1	Do pass.
<p><b>Ayes:</b> Achadjian, Alejo, Bradford, Gordon, Levine, Melendez, Mullin, Rendon</p> <p><b>Noes:</b></p> <p><b>No Votes Recorded:</b> Waldron</p>						
04/30/14	(PASS)	Asm Housing and Community Development	7	0	0	Do pass as amended and be re-referred to the Committee on Local Government.
<p><b>Ayes:</b> Brown, Chau, Beth Gaines, Gordon, Maienschein, Quirk-Silva, Yamada</p> <p><b>Noes:</b></p> <p><b>No Votes Recorded:</b></p>						

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**AB-2222 Housing density bonus.** (2013-2014)

Current Version: 09/27/14 - Chaptered

Compared to Version: 09/27/14 - Chaptered

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## Assembly Bill No. 2222

### CHAPTER 682

An act to amend Sections 65915 and 65915.5 of the Government Code, relating to housing.

[ Approved by Governor September 27, 2014. Filed with Secretary of State  
September 27, 2014. ]

### LEGISLATIVE COUNSEL'S DIGEST

AB 2222, Nazarian. Housing density bonus.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low-, or moderate-income households or qualifying residents.

Existing law requires continued affordability for 30 years or longer, as specified, of all very low and low-income units that qualified an applicant for a density bonus.

This bill instead would require continued affordability for 55 years or longer, as specified, of all very low and low-income rental units that qualified an applicant for a density bonus. This bill would also include very low and low-income persons among the initial occupants of for-sale units. This bill also would prohibit an applicant from receiving a density bonus unless the proposed housing development would, for units subject to certain affordability requirements that were occupied by qualifying persons on the date of application, provide at least the same number of units of equivalent size or type, or both, to be made available for rent at affordable housing costs to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For those subject types of units that have been vacated or demolished at the time of application, this bill would condition a density bonus upon at least the same number of units of equivalent size or type, or both, as existed at the highpoint in the preceding 5 years being made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known.

Existing law also requires a city, county, or city and county to grant a density bonus or other incentives, as specified, when an applicant for approval to convert apartments to a condominium project agrees, among other things, to provide a specified percentage of units for low- or moderate-income persons and families or for lower income households, as defined.

This bill also would prohibit an applicant from receiving a density bonus unless the proposed condominium project would replace the existing affordable units with at least the same number of affordable units of equivalent size or type, or both, and the proposed development, inclusive of the units replaced pursuant to the requirements described above, contains affordable units according to specified percentages or consists entirely of affordable units.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 65915 of the Government Code is amended to read:

**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 4100 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 very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 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.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, 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.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category in the same proportion of affordability as the occupied units. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, then one-half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by, very low income persons and families and one-half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low-income persons and families. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Paragraph (3) of subdivision (c) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(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 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 4100 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) (1) 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.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(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) This section shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (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).

**SEC. 2.** Section 65915.5 of the Government Code is amended to read:

**65915.5.** (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of

apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

(g) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed condominium project replaces those units, as defined in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, and either of the following applies:

(1) The proposed condominium project, inclusive of the units replaced pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, contains affordable units at the percentages set forth in subdivision (a).

(2) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(h) Subdivision (g) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.



**AB-2222 Housing density bonus.** (2013-2014)

**SECTION 1.** Section 65915 of the Government Code is amended to read:

**65915.** (a) ~~(1)~~ -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 comply with this section. ~~A city, county, or city and county 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.~~

~~(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).~~

~~(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:~~

~~(A) Adopt procedures and timelines for processing a density bonus application.~~

~~(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.~~

~~(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with Section 65943.~~

(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, if requested by the applicant and consistent with the applicable requirements of this section, and incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p),~~ 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 a 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, development~~ as defined in Section 4100 of the Civil Code, ~~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.

~~(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.~~

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), ~~an~~ *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), ~~(D)~~, or ~~(E)~~ (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, ~~the~~ continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 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.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, 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.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size *or type, or both*, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. ~~If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.~~ For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size *or type, or both*, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category ~~as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the~~ *in the* same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. ~~affordability as the occupied units.~~ All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size *or type, or both*, as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. ~~If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low income and very low income renter households occupied these units in the same proportion of low income and~~ *then one-half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by,* very low income renter households ~~to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.~~ *persons and families and one-half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low-income persons and families.* All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

~~(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:~~

~~(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).~~

~~(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.~~

~~(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.~~

~~(C) (E) Paragraph (3) Subparagraph (A) of subdivision (c) does not apply to an applicant seeking a density bonus for a proposed housing development if his or her their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.~~

(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 ~~does is~~ not result in identifiable and actual cost reductions, consistent with ~~subdivision (k),~~ 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,~~ 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,~~ specific adverse impact without rendering the development unaffordable to ~~low-income~~ 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.

~~(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.~~

(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 ~~gross~~ residential density as of the date of application by the applicant to the city, county, or city and county, ~~or, if elected by the applicant, county. The applicant may elect to accept~~ a lesser percentage of density increase, including, but not limited to, ~~no increase in density.~~ *bonus*. The amount of density ~~increase~~ *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) ~~(A)~~ 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.

~~(B)~~ For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(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
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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 ~~require, or~~ 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 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, ~~including mixed-use developments-~~ units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and 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) (1) The granting of a concession or incentive shall not ~~require or~~ be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, ~~study,~~ or other discretionary approval. ~~For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k).~~ This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not ~~require or~~ be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(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~~ *identifiable, financially sufficient,* and actual cost reductions, ~~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 (e).~~ *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~~ *identifiable, financially sufficient,* and actual cost reductions ~~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).~~ *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) This section ~~does not~~ *shall not be construed to* supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (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,~~ *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) ~~Except as provided in paragraphs (2) and (3), upon~~ *Upon* the request of the developer, a ~~no~~ city, county, or city and county shall ~~not~~ require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of ~~subdivisions (b) and (c),~~ *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) ~~Notwithstanding paragraph (1), if a development includes the maximum percentage of low income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest~~

parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

~~(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:~~

~~(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.~~

~~(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.~~

~~(C) If the development is a special-needs housing development, as defined in Section 51312 of the Health and Safety Code, the ratio shall not exceed 0.3 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.~~

~~(4) (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 "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.~~

~~(5) (3) This subdivision shall apply to a development that meets the requirements of subdivisions subdivision (b) and (c), 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).~~

~~(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.~~

~~(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low-income individuals, including seniors and special-needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.~~

~~(8) A request 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).~~

~~(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.~~

~~(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.~~

**SEC. 2.** Section 65915.5 of the Government Code is amended to read:

**65915.5.** (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units

of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

(g) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed condominium project replaces those units, as defined in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, and either of the following applies:

(1) The proposed condominium project, inclusive of the units replaced pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, contains affordable units at the percentages set forth in subdivision (a).

(2) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(h) Subdivision (g) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

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**AB-2222 Housing density bonus. (2013-2014)**

Senate: \_\_\_\_\_ 1st Cmt 2nd 3rd 2nd 3rd Pass Chp  
 Assembly: 1st Cmt 2nd Cmt 2nd 3rd Pass Pass

Bill Status	
Measure:	AB-2222
Lead Authors:	Nazarian (A)
Principal Coauthors:	-
Coauthors:	-
Topic:	Housing density bonus.
31st Day in Print:	03/23/14
Title:	An act to amend Sections 65915 and 65915.5 of the Government Code, relating to housing.
House Location:	Secretary of State
Chaptered Date:	09/27/14
Last Amended Date:	08/22/14

Type of Measure
Inactive Bill - Chaptered
Majority Vote Required
Non-Appropriation
Non-Fiscal Committee
Non-State-Mandated Local Program
Non-Urgency
Non-Tax levy

Last 5 History Actions	
Date	Action
09/27/14	Chaptered by Secretary of State - Chapter 682, Statutes of 2014.
09/27/14	Approved by the Governor.
09/08/14	Enrolled and presented to the Governor at 3:30 p.m.
08/27/14	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 78. Noes 0. Page 6570.)
08/27/14	Assembly Rule 77 suspended. (Page 6550.)

## Joel Paulson

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**From:** kevin lynch <kevinlynch624@icloud.com>  
**Sent:** Saturday, July 29, 2017 12:12 PM  
**To:** Joel Paulson  
**Subject:** Fwd: North 40

>  
> Dear Sirs,  
>  
> I admit that I should understand more about the specifics of the proposed North 40 development. I understand that the developers claim that their \$5million investment will actually ease traffic congestion. Have to say that I'm more than a little bit skeptical. I travel from my home on Azalea Way from Los Gatos Blvd down Lark to Winchester every day and I can't imagine how this development will be anything but a disaster given the already clogged streets in our town!  
>  
> I'd encourage you to push back vigorously unless we are convinced that our roads can handle this project. As much as I love Los Gatos, I believe that if it gets much worse, it may be time to find a more livable town in the Bay Area.  
>  
> Sincerely,  
>  
> Kevin Lynch  
> 16201 Azalea Way  
>  
> Sent from my iPhone

## Joel Paulson

---

**From:** John Eichinger <John@Eichinger.com>  
**Sent:** Saturday, July 29, 2017 6:51 PM  
**To:** Joel Paulson; B Spector; Marico Sayoc; Marcia Jensen; Steven Leonardis; Rob Rennie; Noth40Comment@losgatosca.gov  
**Cc:** teaguelg@gmail.com; rmoses@cbnorcal.com; jpeterson@bayareanewsgroup.com  
**Subject:** "Objective" reasons why the North 40 does not meet the Specific or General Plans as to Affordability  
**Attachments:** Income\_Requirements\_for\_North\_40\_Purchase.pdf

Council Members,

Thank you for your service to our great town. I do not envy you the task you have regarding the North 40.

Please take a few minutes to read this email and the attachment.

My email from August 10th, 2016 to the Council is threaded below. Please also see my revised estimates of the "affordability (not)" of the proposed North 40 project.

The North 40 project proposed by the developers does not meet the objectives of the Specific Plan for many objective reasons. One of the main objectives is AFFORDABILITY!  
Since I was not able to attend the judicial hearings I will assume that affordability was not discussed or presented to the Judge.

Here is a link to the North Forty Specific Plan  
<http://www.losgatosca.gov/DocumentCenter/View/15472>

On Page 26 (1-26) of the North Forty Specific Plan it specifically states:

The North Forty Specific Plan will be based on the following general guidelines:

- Provide for a variety of residential housing types, both rental- and owner-occupied. A minimum of 20 % of the units shall be affordable to households at the moderate income level or below

On Page 29 (1-9) of the North Forty Specific Plan it specifically states:

#### 1.5.4 Affordable Housing Overlay Zone and Design Guidelines

The Affordable Housing Overlay Zone (AHOZ) accommodates for affordable housing for owner occupied and/or rental for low, very low, and extremely low income households.

While these guidelines do not currently apply to the Specific Plan Area, relevant guidelines have been carried forward and are contained within this Specific Plan. The adoption of the Specific Plan does not preclude future possibilities of the Town identifying portions of the site as an Affordable Housing Overlay Zone.

On Page 45 (2-11) of the North Forty Specific Plan it specifically states:

#### Section 2.5.2.b

The maximum height is 45 feet for a hotel and/or a mixed-use and/or mixed-income development including a minimum of 40% extremely low, very low, or low income affordable housing units.

On Page 60 (2-26) of the North Forty Specific Plan it specifically states:

Section 2.7.3.b&c

- b. There shall be a maximum of 270 residential units. This is a maximum, not a goal, and includes the affordable housing units required and the existing units.
- c. Affordable housing (Below Market Price housing) requirements shall be met pursuant to Town Code.

On Page 291 of the North Forty Specific Plan it specifically states:

The General Plan EIR provides general guidelines for the current North 40 Specific Plan Process:

Provide at least **150** units of housing affordable to households at the moderate income level or below.

Appendix C of the North Forty Specific Plan offers a summary of unmet needs of the Town of Los Gatos that include residential product types that respond to emerging needs of the senior, empty nester, and young adult population. The word "Affordable" is repeated several times.

In my email of August 10, 2016 (following) I repeated the developer's statements that the units they are proposing will be offered for sale in price ranges from \$900,000 to \$1,500,000.

As a mortgage broker here in town I am very well qualified to provide an analysis of the affordability of homes.

In my email, I stated the income levels needed to purchase units priced at \$900,000 to \$1,500,000 as follows:

A \$900,000 purchase price requires a typical annual income of **\$141,600**.

A \$1,500,000 purchase price requires a typical annual income of **\$222,000**.

In my analysis last August I utilized a mortgage interest rate of 3.75%. Typical rates for jumbo loans are currently 4.25%. I also underestimated the HOA fees that the developer will be charging. I had assumed \$200 per month and a more realistic figure based upon their other projects would be at least \$600 per month for HOA fees. When making this adjustment the revised income levels needed to purchase units priced at \$900,000 to \$1,500,000 as follows:

A \$900,000 purchase price will require a typical annual income of **\$158,640**.

**\$5,179.47** per month.

A \$1,500,000 purchase price will require a typical annual income of **\$224,400**.

**\$7,419.89** per month.

These are **after** cash downpayments of **\$180,000** and **\$300,000** respectively!

The above economic facts are OBJECTIVE facts that can be presented to the Judge as to why the proposed North 40 project does NOT meet the affordability requirements of both the Specific and the General plans of Los Gatos.

In addition, all but the 49 rental units within the North 40 project do not meet the State of California definition of affordable housing. Please refer to the links in the threaded email below that I recommend staff research and report on.

Santa Clara County	Extremely Low	23450	26800	30150	33500	36200	38900	41550	44250
4-Person	Very Low Income	39100	44650	50250	55800	60300	64750	69200	73700
Area Median Income:	Low Income	59400	67900	76400	84900	91650	98450	105250	112050
<b>\$107,100</b>	Median Income	74950	85700	96400	<b>107100</b>	115650	124250	132800	141350
	Moderate Income	89950	102800	115650	128500	138800	149050	159350	169600

As a Realtor and a mortgage broker in town I certainly would enjoy more "inventory", but not at the degradation of life as we know it, the exasperation of an already horrible traffic situation, etc, etc, etc. This afternoon at 2pm on a Saturday it took me 40 minutes to get from my office on Los Gatos Blvd near Van Meter School to my home near the DMV.

The speakers from various organizations who spoke at the council meeting last Monday in favor of affordable housing in Los Gatos have been conned by the developers whose only interest is profit.

Thank you for the opportunity to present this analysis.

Please present it to the Judge.

John

John Eichinger, CEO / Broker

Victoria Capital Mortgage Company  
Victoria Properties  
455 Los Gatos, Blvd., Suite 100  
Los Gatos, CA 95032  
408-391-6550  
[www.VictoriaCapitalMortgage.com](http://www.VictoriaCapitalMortgage.com)  
BRE: 01360756 NMLS: 364036



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**From:** John Eichinger [mailto:John@Eichinger.com]  
**Sent:** Wednesday, August 10, 2016 10:25 AM  
**To:** 'bspector@losgatosca.gov'; 'msayoc@losgatosca.gov'; 'mjensen@losgatosca.gov'; 'sleonardis@losgatosca.gov'; 'rrennie@losgatosca.gov'; 'Noth40Comment@losgatosca.gov'  
**Cc:** 'teaguelg@gmail.com'; 'rmoses@cbnorcal.com'; 'lokrij@comcast.net'  
**Subject:** "Affordability" of the proposed North 40 Townhouses - NOT !!!

Council Members,

Thank you for the opportunity to speak last night, and thank you for your service to our great town.

I would like to offer the following as a clarification of the numbers that I quoted in my comments and to repeat my statement that the proposed project will **NOT** be offering "affordable" housing.

The developer has stated that the units they are proposing will be offered for sale in price ranges from \$900,000 to \$1,500,000.

Following are the financial requirements to purchase homes in those price ranges:

**\$900,000 purchase price**

20% down payment = \$180,000  
Loan principal and interest at 3.75% = \$3,334.43 per month  
Taxes (at 1.25% of purchase price): \$11,250 annually \$937.50 per month  
Insurance (estimate): \$100 per month  
HOA fees (estimate): \$200 per month  
Total PITI = **\$4,571.93**

In order to obtain this jumbo loan with a 43% DTI (debt to income ratio mandated to lenders by the CFPB (Consumer Finance Protection Bureau)) and assuming the borrower(s) has NO OTHER Monthly obligations, the borrower(s) would need a monthly income of \$10,700 which equates to an annual income of **\$128,000**.

If we were to assume a typical \$300 monthly car payment and about \$200 monthly credit card debt the borrower(s) would need a monthly income of \$11,800 which equates to an annual income of **\$141,600**

**\$1,500,000 purchase price**

20% down payment = \$300,000  
Loan principal and interest at 3.75% = \$5,557.39 per month  
Taxes (at 1.25% of purchase price): \$18,750 annually \$1,562.50 per month  
Insurance (estimate): \$100 per month  
HOA fees (estimate): \$200 per month

Total PITI = **\$7,419.89**

In order to obtain this jumbo loan with a 43% DTI (debt to income ratio mandated to lenders by the CFPB (Consumer Finance Protection Bureau)) and assuming the borrower(s) has NO OTHER Monthly obligations, the borrower(s) would need a monthly income of \$17,300 which equates to an annual income of **\$207,600**.

If we were to assume a typical \$300 monthly car payment and about \$200 monthly credit card debt the borrower(s) would need a monthly income of \$18,500 which equates to an annual income of **\$222,000**

As I stated last night, this is **NOT** affordable housing.

If the town/developer is thinking that this project will satisfy any California mandated requirement for affordable housing, then I feel that it will significantly fall short of any standard necessary.

Some links for Staff to report on:

<http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/reports/state/incnote.html>

<http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/reports/state/inc2k16.pdf>

[http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/ca\\_plan\\_law\\_affd\\_hsg0506.pdf](http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/ca_plan_law_affd_hsg0506.pdf)

County	Income Category	Number of Persons in Household							
		1	2	3	4	5	6	7	8
Santa Clara County	Extremely Low	23450	25800	30150	33500	36200	38900	41550	44250
4-Person	Very Low Income	39100	44650	50250	55800	60300	64750	69200	73700
Area Median Income:	Low Income	59400	67900	76400	84900	91650	98450	105250	112050
<b>\$107,100</b>	Median Income	74950	85700	96400	<b>107100</b>	115650	124250	132800	141350
	Moderate Income	89950	102800	115650	128500	138800	149050	159350	169600

As I stated last night, despite whatever deal the developer has made with LGUSD, there is NO other land in Los Gatos available for a suitable school, and busing children to Lexington from the North 40 is somewhat unconscionable. This development should have a mandatory set-aside of 6 acres for a future school as Roy Moses suggested in his comments.

I missed saying last night that it is a huge oversight to approve any "Phase 1" without first seeing what the developer will propose for "Phase 2". These 40 acres should be considered as a whole, not piecemealed which will only help the developer to maximize profits at the expense of the town. As I have stated before, a boxer needs to not only analyze the left jab coming at him, but needs to also be defensively aware of the right hook that is on its way. Let's have the town see the full plans, not only half of it. We all would like to see what is behind the curtain. The Specific Plan was developed for the whole site, not phases.

This project, as proposed, will add to the profitability of a multi-national corporation, pad the pocket of the 66th richest man on the planet, and negatively impact our town forever. While the owners of the property certainly have the right to develop it, they cannot be allowed to negatively impact all the citizens in Los Gatos.

Please let me know if I can be of any assistance to answer any questions.

Thank you again for your service!

John

John Eichinger, CEO / Broker  
Victoria Capital Mortgage Company  
Victoria Properties  
455 Los Gatos, Blvd., Suite 100  
Los Gatos, CA 95032  
408-391-6550  
[www.VictoriaCapitalMortgage.com](http://www.VictoriaCapitalMortgage.com)  
BRE: 01360756 NMLS: 364036



VICTORIA CAPITAL MORTGAGE CO.

## Income Requirement for purchasing a North 40 Townhome

The developer has stated that the units they are proposing will be offered for sale in price ranges from \$900,000 to \$1,500,000.

Following are revised financial requirements to purchase homes in those price ranges:

### **\$900,000 purchase price**

20% down payment = **\$180,000**

Loan principal and interest at 4.25% = \$3,541.97 per month

Taxes (at 1.25% of purchase price): \$11,250 annually \$937.50 per month

Insurance (estimate): \$100 per month

HOA fees (estimate): \$600 per month

Total PITIH = **\$5,179.47 per month**

In order to obtain this jumbo loan with a 43% DTI (debt to income ratio mandated to lenders by the CFPB (Consumer Finance Protection Bureau)) and assuming the borrower(s) has **NO OTHER monthly obligations**, the borrower(s) would need a monthly income of \$12,050 which equates to an annual income of **\$144,600**.

If we were to assume a typical \$300 monthly car payment and about \$200 monthly credit card debt the borrower(s) would need a monthly income of \$13,220 which equates to an **annual income of \$158,640**

### **\$1,500,000 purchase price**

20% down payment = **\$300,000**

Loan principal and interest at 4.25% = \$5,903.28 per month

Taxes (at 1.25% of purchase price): \$18,750 annually \$1,562.50 per month

Insurance (estimate): \$100 per month

HOA fees (estimate): \$200 per month

Total PITIH = **\$7,419.89per month**

In order to obtain this jumbo loan with a 43% DTI (debt to income ratio mandated to lenders by the CFPB (Consumer Finance Protection Bureau)) and assuming the borrower(s) has **NO OTHER Monthly obligations**, the borrower(s) would need a monthly income of \$17,550 which equates to an annual income of **\$210,600**.

If we were to assume a typical \$300 monthly car payment and about \$200 monthly credit card debt the borrower(s) would need a monthly income of \$18,700 which equates to an **annual income of \$224,400**.

# \$900,000 Purchase

## PITIH Only

**Loan Summary**

Loan Program:   
 CC Scenario: \$900,000 North 40 Purchase  
 Originator:   
 Processor:

Purchase  
 No Cash-Out Refi  
 Cash-Out Refi  
 Construction  
 Construction-Perm  
 Other:

Note Rate: 4.250 %    Term/Due: 360 / 360 mths

Appr Value: 900,000    LTV: 80.000 %  
 Sales Price: 900,000    CLTV: 90.000 %  
 Down Pmt: 20.000 %    180,000.00    Top: 42.983 %  
 Loan Amt: 720,000    Bottom: 42.983 %  
 w/ MIP, FF: 720,000  
 FHA Max Loan:

Conventional  
 FHA  
 VA  
 USDA/RHS  
 Other

Primary  
 Secondary  
 Investment

Gross Rent:   
 Occ Rate:  %

First Mtg  
 Second Mtg  
 HELOC

QM Finding:   
 QM Date and Time:

---

**Income Details**

	Borrower	Co-Borrower	Total
Base Inc	12,050.00		12,050.00
Overtime			
Bonuses			
Commission			
Dividend			
Net Rent			
Other			
Other			
<b>Total</b>	<b>12,050.00</b>		<b>12,050.00</b>

**Expenses**

First Mtg	3,541.97
Other Fin	
HOA	937.50
Taxes	100.00
Mtg Ins	
H/O Assoc	600.00
Other	
<b>Total</b>	<b>5,179.47</b>

**Other Obligations**

	\$
	\$
	\$
	\$
	\$
Other from Liab	
Neg Cash Flow	
Subj Prop	
Other Prop	
<b>Total Other Pmt</b>	

## PITIH and typical other monthly debts

**Loan Summary**

Loan Program:   
 CC Scenario: \$900,000 North 40 Purchase  
 Originator:   
 Processor:

Purchase  
 No Cash-Out Refi  
 Cash-Out Refi  
 Construction  
 Construction-Perm  
 Other:

Note Rate: 4.250 %    Term/Due: 360 / 360 mths

Appr Value: 900,000    LTV: 80.000 %  
 Sales Price: 900,000    CLTV: 80.000 %  
 Down Pmt: 20.000 %    180,000.00    Top: 39.179 %  
 Loan Amt: 720,000    Bottom: 42.961 %  
 w/ MIP, FF: 720,000  
 FHA Max Loan:

Conventional  
 FHA  
 VA  
 USDA/RHS  
 Other

Primary  
 Secondary  
 Investment

Gross Rent:   
 Occ Rate:  %

First Mtg  
 Second Mtg  
 HELOC

QM Finding:   
 QM Date and Time:

---

**Income Details**

	Borrower	Co-Borrower	Total
Base Inc	13,220.00		13,220.00
Overtime			
Bonuses			
Commission			
Dividend			
Net Rent			
Other			
Other			
<b>Total</b>	<b>13,220.00</b>		<b>13,220.00</b>

**Expenses**

First Mtg	3,541.97
Other Fin	
HOA	937.50
Taxes	100.00
Mtg Ins	
H/O Assoc	600.00
Other	
<b>Total</b>	<b>5,179.47</b>

**Other Obligations**

Car Payment	\$	300.00
Credit Cards	\$	200.00
	\$	
	\$	
	\$	
	\$	
Other from Liab		
Neg Cash Flow		
Subj Prop		
Other Prop		
<b>Total Other Pmt</b>		<b>500.00</b>

# \$1,500,000 Purchase

## PITIH Only

**Loan Summary**

Loan Program: [ ]  
 CC Scenario: \$1,500,000 North 40 Purchase  
 Originator: [ ]  
 Processor: [ ]

Conventional  
 FHA  
 VA  
 USDA/RHS  
 Other

Primary  
 Secondary  
 Investment  
 Gross Rent: [ ]  
 Occ Rate: [ ] %

Purchase  
 No Cash-Out Refi  
 Cash-Out Refi  
 Construction  
 Construction-Perm  
 Other: [ ]

First Mtg  
 Second Mtg  
 HELOC

GM Finding: [ ]  
 GM Date and Time: [ ]

Note Rate: 4.250 %    Term/Due: 360 / 360 mths

Appr Value: 1,500,000    LTV: 80.000 %  
 Sales Price: 1,500,000    CLTV: 80.000 %  
 Down Pmt: 20.000 %    300,000.00    Top: 42.967 %  
 Loan Amt: 1,200,000    Bottom: 42.967 %  
 w/ MIP, FF: 1,200,000  
 FHA Max Loan: [ ]

**Income Details**

	Borrower	Co-Borrower	Total
Base Inc	17,550.00		17,550.00
Overtime			
Bonuses			
Commission			
Dividend			
Net Rent			
Other			
Other			
Total	17,550.00		17,550.00

**Expenses**

First Mtg	5,903.28
Other Fin	
Health	937.50
Taxes	100.00
Mtg Ins	
H/O Assoc	600.00
Other	
Total	7,540.78

**Other Obligations**

	\$
	\$
	\$
	\$
	\$
	\$
Other from Liab	
Neg Cash Flow	
Subj Prop	
Other Prop	
Total Other Pmt	

## PITIH and typical other monthly debts

**Loan Summary**

Loan Program: [ ]  
 CC Scenario: \$1,500,000 North 40 Purchase  
 Originator: [ ]  
 Processor: [ ]

Conventional  
 FHA  
 VA  
 USDA/RHS  
 Other

Primary  
 Secondary  
 Investment  
 Gross Rent: [ ]  
 Occ Rate: [ ] %

Purchase  
 No Cash-Out Refi  
 Cash-Out Refi  
 Construction  
 Construction-Perm  
 Other: [ ]

First Mtg  
 Second Mtg  
 HELOC

GM Finding: [ ]  
 GM Date and Time: [ ]

Note Rate: 4.250 %    Term/Due: 360 / 360 mths

Appr Value: 1,500,000    LTV: 80.000 %  
 Sales Price: 1,500,000    CLTV: 80.000 %  
 Down Pmt: 20.000 %    300,000.00    Top: 40.325 %  
 Loan Amt: 1,200,000    Bottom: 42.999 %  
 w/ MIP, FF: 1,200,000  
 FHA Max Loan: [ ]

**Income Details**

	Borrower	Co-Borrower	Total
Base Inc	18,700.00		18,700.00
Overtime			
Bonuses			
Commission			
Dividend			
Net Rent			
Other			
Other			
Total	18,700.00		18,700.00

**Expenses**

First Mtg	5,903.28
Other Fin	
Health	937.50
Taxes	100.00
Mtg Ins	
H/O Assoc	600.00
Other	
Total	7,540.78

**Other Obligations**

Car Payment	\$ 300.00
Credit Cards	\$ 200.00
	\$
	\$
	\$
	\$
Other from Liab	
Neg Cash Flow	
Subj Prop	
Other Prop	
Total Other Pmt	500.00

**From:** John Shepardson <[shepardsonlaw@me.com](mailto:shepardsonlaw@me.com)>

**Date:** July 29, 2017 at 10:00:25 PM PDT

**To:** [council@losgatosca.gov](mailto:council@losgatosca.gov), Robert Schultz <[RSchultz@losgatosca.gov](mailto:RSchultz@losgatosca.gov)>, [LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)

**Subject:** N. 40 (AB 2222)

**It appears BY LAW that the developer must provide equivalent size or type affordable housing.**

**MUST BE EQUIVALENT IN SIZE, TYPE, OR BOTH.**

**Are existing units low income? Does the developer have a duty to determine? Town? Can that information be obtained now if presently unknown?**

**If low income, proceed, if not end of discussion.**

**Is project subject to the law? Application received after law went into effect? If yes, proceed. If not, end of discussion.**

**Are the proposed individual units equivalent in size? If yes, satisfied condition. If not, equivalent in type? If yes, satisfied. If not, law applies, and the consequences of noncompliance apply.**

**Does Town waive possible noncompliance?**

**From City of LA:**

**The replacement units must be equivalent in size, type, or both and be made available at affordable rent/cost to, and occupied by, households of the same or lower income category as those meeting the occupancy criteria. Prior to the issuance of any Director's Determination for Density Bonus and Affordable Housing Incentives, the Housing and Community Investment Department (HCIDLA) is responsible for providing the Department of City Planning, along with the applicant, a determination letter addressing replacement unit requirements for individual projects.**

Sent from my iPhone

16090 Shannon Road  
Los Gatos, CA 95032  
July 27, 2017

Los Gatos Town Council:

Many studies have revealed the health hazards created by building housing close to freeways. The location of the North 40 project concerns us a great deal. The environmental impact studies (financed by the developer) were conducted during a low-traffic time of day (low traffic will probably never exist at this location due to proximity of medical centers and freeways, along with the infamous highway 17 and its beach traffic). They were also conducted at a different location.

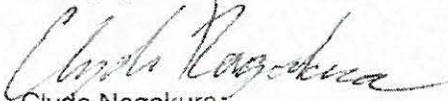
We feel that the site is not appropriate for housing and ask that you deny the request.

At the very least, please insist that environmental studies be conducted on the site at peak traffic hours in order to better assess the impact on the health of the residents.

Thank you for your consideration.



Audrey Adams MD



Clyde Nagakura

We the undersigned are concerned health professionals and Los Gatos residents. We request that the Los Gatos Town Council vote to deny the "North 40" project as it is currently proposed. We ask that the Town obtain and submit updated objective data on the project's impact on the health of the Community and its impact on the current intolerable traffic situation.

Name

Signature

Address

1. Frederick Halley MD      Frederick Halley MD      15298 Kentucky Rd, Los Gatos

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

9. \_\_\_\_\_

10. \_\_\_\_\_

11. \_\_\_\_\_

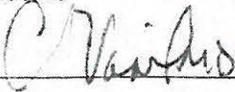
12. \_\_\_\_\_

13. \_\_\_\_\_

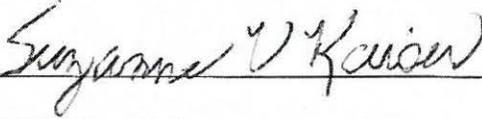
14. \_\_\_\_\_

15. \_\_\_\_\_

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Name	Signature	Address
1. Christopher Vasil MD		17500 Shannon Hts, Los Gatos
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We the undersigned are concerned health professionals and Los Gatos residents. We request that the Los Gatos Town Council vote to deny the "North 40" project as it is currently proposed. We ask that the Town obtain and submit updated objective data on the project's impact on the health of the Community and its impact on the current intolerable traffic situation.

Name	Address	Signature
1.	Albert F. Kaiser 15660 Shannon Heights Rd. Los Gatos, CA. 95032	
2.	Suzanne Kaiser 15660 Shannon Heights Rd. Los Gatos, CA. 95032	
3.		
4.		
5.		
6.		
7.		

We the undersigned are concerned health professionals and Los Gatos residents. We request that the Los Gatos Town Council vote to deny the "North 40" project as it is currently proposed. We ask that the Town obtain and submit updated objective data on the project's impact on the health of the Community and its impact on the current intolerable traffic situation.

Name	Signature	Address	
1.	Rosaline Vasquez M.D.		15500 Shannan Heights Los Gatos
2.			
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15.			

From: Mike O'Neil [<mailto:mikeoneil@me.com>]  
Sent: Sunday, July 30, 2017 8:48 AM  
To: Council  
Subject: Concerns

Council,

With the current debate over the N40 continuing, I like to express my deepest concern over the congestion. I am a life long resident and have never seen such traffic related issues.

Blocking the N Santa Cruz ramp may have decreased traffic going downtown it has certainly made everything else worse surrounding the downtown core area. I am almost forced to stay at home rather than sit in an hour long line to take my kids to the park. Things have to change.

With the looming N40 coming it is only going to get worse. I understand the legal issues currently being debated, but I'm at a loss as to how this could have got passed the initial planning phase.

Common sense would show that the area couldn't handle such a project. The Valley Fair Mall had to spend billions to rework the on ramps, off ramps, and surface streets which barely helped the traffic. Is this what we want in our town?

I hope that the council does everything in their power to have no intensification of use to our streets. The town does not have the infrastructure to handle it. It poses a public safety issue for police and fire response the day-to-day cost the the quality of life to the citizens is not acceptable. This project is only going to help those that line their pocket with money who could care less how this effects our town.

Please work through this project. As I see no way to fix this once it's built.

Regards

Mike O'Neil

Sent from my iPhone

To: Town Council and Staff  
From: Markene Smith  
Re: N40 Application  
Date: August 1, 2017

Please deny the N40 Phase I Application. The Application fails to comply with the goals and policies contained in the Land Use, Transportation, and Vasona Light Rail Elements of the General Plan. Unless disapproved, the project will have specific, adverse impacts on public health and safety. As promised at the July 24 Town Council meeting, I've included proposed Conditions for Approval.

### **Land Use Element**

#### **Policy**

LU-11.6 Incorporate multi-modal links from the North Forty area to the Vasona Light Rail station into the North Forty Specific Plan.

*Findings: While multi-modal paths are proposed INSIDE the N40 development, the Application and Map provide NO pedestrian connection from the N40 area to the Vasona Light Rail station.*

*The N40 area remains surrounded by pedestrian barriers—including Lark Avenue, Los Gatos Boulevard, SR-17, freeway on-off ramps, and Highway 85.*

*There is no safe pedestrian connection across SR-17 to the Los Gatos Creek trail—so no safe route to schools, parks, activities, stores, Netflix, or transit.*

### **Transportation Element**

#### **Policy**

TRA-1.1 Development shall not exceed transportation capacity.

*Findings: If approved, the N40 Phase I Application will deny Los Gatos residents use and enjoyment of our neighborhood streets.*

TRA-2.6 Street improvements such as curb cuts, sidewalks, bus stop turnouts, bus shelters, light poles, traffic signals, benches, and trash containers shall be planned as an integral part of development projects to ensure safe movement of people and vehicles and minimize disruption to the streetscape.

*Where are the above specified pedestrian street improvements?*

TRA-3.6 Pedestrian and bicycle safety shall not be compromised to improve or maintain the level of service of an intersection.

*The Application requires WIDENING Lark Avenue, from four to six lanes. But widening Lark and LG Blvd will increase capacity, demand, congestion, speed, and crashes. Big-block, multi-lane streets are harder for to cross, and easier for traffic to speed on.*

*Fact: 85% of pedestrian collisions with cars traveling 40 miles per hour result in death. (Source: Robert Noland, "Traffic Fatalities and Injuries," cited in Catherine Lutz and Anne Lutz Fernandez, "Carjacked," chapter 9, note 19.)*

TRA-3.7 All traffic reports shall include analyses of nearby uses with unusual or unique traffic generation factors or peak hours (e.g. pre-schools, faith communities, private clubs, quasi-public uses).

*N40 traffic reports failed to analyze Pedestrian Level of Service (LOS) for nearby uses with unusual or unique traffic generation factors or peak hours—including schools, faith communities, private clubs (eg. JCC and Swim & Racquet Club) and quasi-public uses (Netflix campus).*

TRA-3.8 New development shall be required to upgrade public improvements on project frontages to meet current Town standards.

*Proposed upgrades to Lark Avenue, SR-17 and freeway extensions do not provide safe, walkable, connections for pedestrians of all ages and ability levels.*

TRA-3.10 Avoid major increases in street capacity unless necessary to remedy severe traffic congestion or critical neighborhood traffic problems *and all other options*, such as demand management and alternative modes, *have been exhausted*. Where capacity is increased, improvements shall balance the needs of motor vehicles with those of pedestrians and bicyclists.

*"Walking is the most fundamental form of transportation and is a vital for transit access."—VTA Pedestrian Program*

*But the application provides no safe pedestrian connection along Lark Ave from Los Gatos Blvd to the Los Gatos Creek trail, the nexus that links pedestrians of all ages to schools, parks, stores, and downtown.*

*The Vesting Tentative Map, if approved, would prevent construction of a pedestrian bridge over SR-17. A row of condominiums blocks access. A pedestrian bridge will require a 200-foot easement setback along the project's SR-17 frontage, from Lark Avenue to proposed senior housing near the center of the N40. Map shows 50-foot SR-17 setback.*

*Yuki owns the land on both sides of the freeway north of Lark Avenue. VTA grants could help fund a pedestrian bridge.*

TRA-3.12 The maximum level of mitigation measures shall be required for transportation impacts adjacent to sensitive receptors, including residences, schools, and hospitals.

TRA-3.13 All major development proposals shall be required to include a detailed, verifiable transportation demand management (TDM) program for consideration by the Town during the review of the development application.

*TDM plans, with accompanying designs, shall be prepared and submitted concurrently with application. Map shall include detailed, verifiable TDM and pedestrian infrastructure.*

*Application includes discounted transit passes, which are useless, application area includes no walkable connection across SR-17 to VTA light rail. Seniors already receive Clipper Card Senior Discount passes, which can be used on all regional buses and trains. There is no current, or planned direct bus route between the N40 and Winchester Light Rail station.*

TRA-3.14 Minimize opportunities for regionally-generated traffic to cut through Los Gatos.

*N40 EIR improvements will INCREASE regional cut-through traffic, because algorithms direct drivers to widest available arterial streets. Once Lark Avenue and SR-17 extensions exceed capacity, the increased traffic will flow through Los Gatos streets.*

TRA-4.4 The Planning Commission and Town Council shall review all new or modified connections with Highway 17 within the Town.

*Additional SR-17 lanes will increase traffic and jeopardize pedestrian safety.*

TRA-5 To ensure the Los Gatos streets are safe for all users, including drivers, cyclists, and pedestrians.

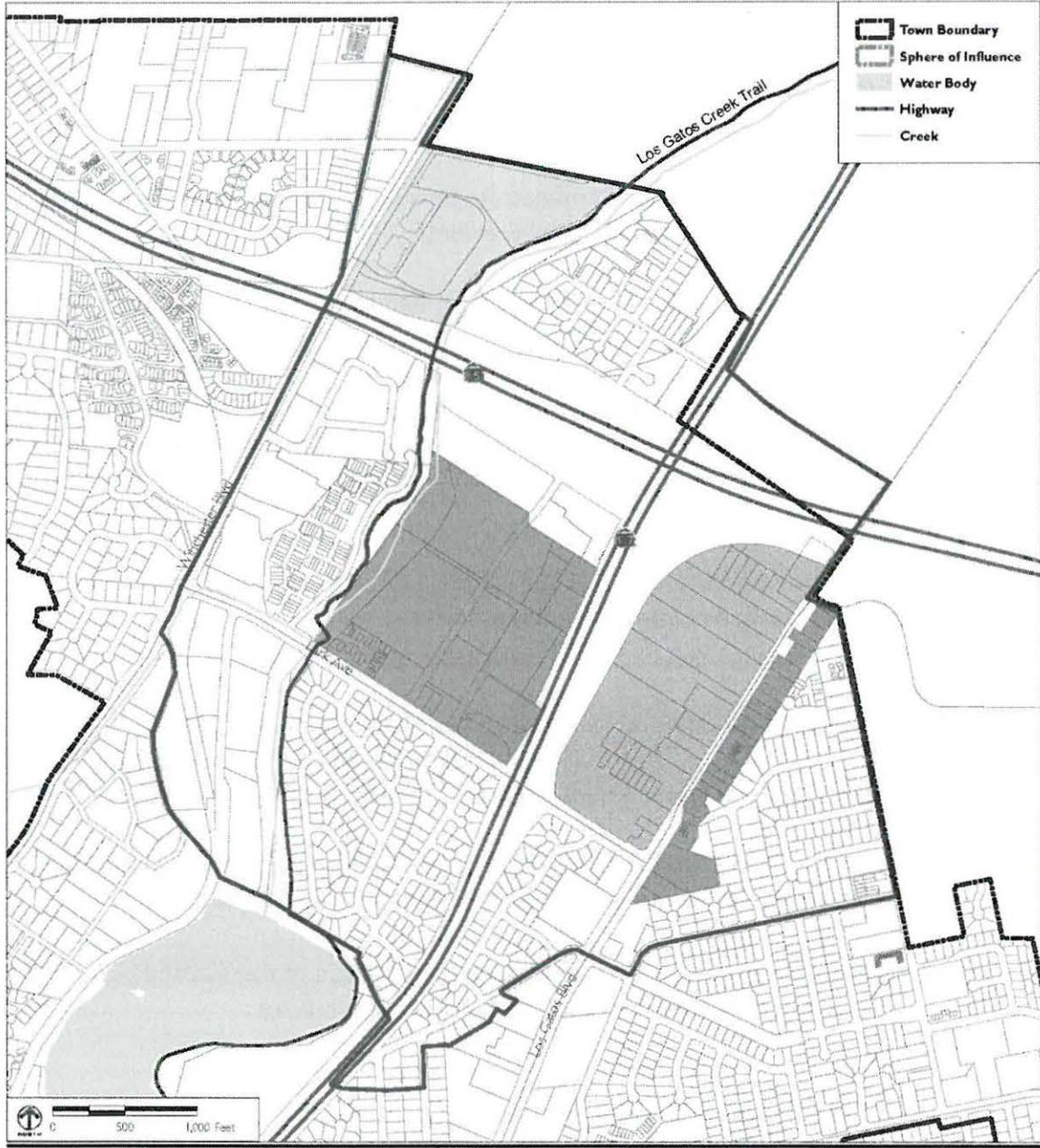
TRA-5.1 Reduce traffic speeds via design strategies rather than relying on enforcement.

*Application requires no traffic calming, pedestrian safety zones.*

TRA-8.8 Where feasible and appropriate, **all new projects that are near existing transit services and/or destinations such as shopping areas, community centers, senior housing and medical facilities shall be required to provide covered and partially enclosed shelters consistent with Santa Clara Valley Transportation Authority (VTA) Standards that are adequate to buffer wind and rain, and have at least one bench at each public transit stop.**

*Required bus shelters do not appear on the N40 Application and Vesting Tentative Map.*

- TRA-9.1      Make land use decisions that encourage walking, bicycling, and public transit use.
- How does Application connect N40 pedestrians to destinations on the other side of SR-17?*
- TRA 9.2      Encourage bicycling and walking as energy conserving, non-polluting alternatives to automobile travel.
- TRA-9.5      Alternative transportation means shall be required whenever the traffic generated by a development would result in a significant increase in air pollution, traffic congestion, or noise.
- TRA-9.6      Require development proposals to include amenities that encourage alternate forms of transportation that reduce pollution or traffic congestion as a benefit to the community (e.g. **bicycle lockers/racks, showers, dedicated van-pool or car-pool parking areas, dedicated shuttle services, innovative bus shelter designs.**)
- Where on Application Maps, are these required "street furniture" amenities?*
- TRA-12.2     Trails should be safe, continuous, interconnected and designed for pedestrians... and be compatible with regional trail plans.
- N40 Application multi-modal trails fail to provide pedestrians required "safe continuous, interconnected" passage across Lark Avenue, SR-17 on/off ramps, or across Los Gatos Boulevard.*
- TRA-12.5     During development the Town should ensure that the linkage from trails to trails, and from trails to roads is given priority.
- The application fails to provider required pedestrian linkage from trails inside the N40 to trails, roads or walkways outside the development.*



Source: Town of Los Gatos, 2010.

- Vasona Light Rail Area Boundary
- Sub Areas**
- Vasona Junction
- Oka Road
- North Forty
- East Los Gatos Boulevard

FIGURE VLR-1  
 VASONA LIGHT RAIL AREA

**Vasona Light Rail Element  
Policy**

Development should be community-, pedestrian- and transit-oriented.

**Policy**

VLR-1.3 **Future development shall contribute financially to support transit services that link the Vasona Light Rail with the rest of Los Gatos.**

VLR-1.5 Project applicants shall demonstrate how their projects meet the specific goals and policies of the Vasona Light Rail Element.

VLR-5.1 **Projects developed in the Vasona Light Rail area shall contribute to a pedestrian / bicycle bridge over Los Gatos Creek.**

VLR-5.3 Development in the Vasona Light Rail area shall be designed and oriented to take advantage of the amenities offered by Los Gatos Creek and to preserve watersheds, riparian habitats and wildlife corridors.

**Goal**

VLR-5 To provide opportunities for the Vasona Light Rail area to address the recreational and open space needs of the Town.

**Actions**

VLR-5.1 Develop a pedestrian/bicycle bridge over Los Gatos Creek through development fees, grants, and other means available to the Town. Establish in-lieu fees for new projects that will fund a pedestrian/bicycle bridge over Los Gatos Creek.

VLR-5.2 Provide a trail connection for pedestrians and bicyclists to the Los Gatos Creek Trail along the east side of Los Gatos Creek, north of Lark Avenue.

VLR-7.2 Development may be phased with the completion of the Vasona Light Rail. In no case may development exceed transportation capacity.

**Goal**

VLR-8 To limit the adverse impacts of development within the Vasona Light Rail area.

**Policy**

VLR-8.2 Development projects in the Vasona Light Rail area shall incorporate design features to buffer dwelling units from the visual and noise impacts of Highway 17 and Highway 85.

VLR-8.3 Require a noise study for all development applications within the Vasona Light Rail area, identifying degrees of impact and noise attenuation measures, if necessary, to mitigate noise impacts on residential neighborhoods.

**Action**

VLR-8.2 Explore methods of financing infrastructure improvements in the Vasona Light Rail area.

**Goal**

VLR-9 To reduce traffic impacts of residential development within the Vasona Light Rail area by taking advantage of mass transit opportunities.

**Policy**

VLR-9.1 Residential development proposals within the Vasona Light Rail area shall address how they take advantage of mass transit opportunities.

VLR-9.3 Development in the Vasona Light Rail area shall provide Transportation Alternative programs or facilities that help link development and mass transit. These programs may include providing bicycle racks, shower and locker facilities, transit passes to employees, etc. In-lieu fees or other funding mechanisms may be required to provide a shuttle for the area.

VLR-9.4 Facilities developed for the Vasona Light Rail station shall be safe, convenient, and attractive for bicycle and pedestrian use.

VLR-9.5 Promote the development of mass transit links between Los Gatos Boulevard, particularly any development on the North Forty site, and the planned Vasona Light Rail station.

Condition of Approval No. 112 (edit)

112. INTERSECTION IMPROVEMENTS (INTERSECTIONS OF LARK AVENUE AND NORTHBOUND CALIFORNIA STATE ROUTE 17 ON-RAMPS) The Applicant shall coordinate with the Town of Los Gatos and Caltrans to design and install the following improvements:

- a. ~~Modify the intersection of Lark Avenue and the northbound California State Route 17 on-ramps to add a second right turn lane feeding the northbound California State Route 17 on-ramp. The westbound approach shall consist of two (2) through lanes, two (2) 200-foot right turn lanes, and a preserved five (5) foot space for a future bike lane.~~

*It is neither reasonable nor safe to require pedestrians to walk across unprotected, multi-lane freeway on-and off-ramps in order to reach community amenities—including pre-schools (Yavneh Day School), private and quasi-public clubs (JCC, Swim & Racquet Club), walkways (Los Gatos Creek Trail), employers (Netflix), and transit (Vasona Light Rail station)—located across SR-17 from the N40, on the northwest side of Lark Avenue.*

- b. Relocate existing signal interconnection and fiber optic cables and conduits along Lark Avenue from Los Gatos Boulevard to California State Route 17 northbound ramps.
- c. Construct a pedestrian crosswalk to allow for the crossing of Lark Avenue immediately east of the northbound California State Route 17 on-and off-ramps.

*Pedestrians who cross to the south side of Lark Avenue here will find themselves on a narrow sidewalk immediately east of the SR-17 on-off ramps, between Classic Car Wash and SR-17. In order to reach schools, parks, and all downtown destinations, pedestrians must walk across the two unprotected, multi-lane freeway on/off ramps on the south side of Lark.*

- d. ~~Transition from three (3) to four (4) westbound lanes immediately west of 'A' Street.~~

~~Transition from three (3) to four (4) westbound lanes starting immediately west of 'A' Street~~

### **Proposed Conditions for Approval**

1. The first developer shall dedicate a public-access easement extending a minimum of two hundred (200) feet from the SR-17 property line, between Lark Avenue and Highway 85. No residences shall be built within this easement buffer zone.
2. To absorb air pollution, cool temperatures, and dampen sound levels, California native oak trees shall be planted in the SR-17 freeway easement.
3. The first developer shall fund a pedestrian bridge over SR 17 to provide a safe walk route to and from Addison Penzak Jewish Community Center, Los Gatos Swim and Racquet Club, Los Gatos Creek Trail, Netflix, and VTA light rail. Developer shall work with VTA Pedestrian Program, which helps plan for and fund specific pedestrian infrastructure projects, including pedestrian bridges and tunnels, and pedestrian access to transit.
4. A multi-use pedestrian path shall be constructed along the SR-17 project frontage easement. The path shall enable walkers and bicyclists to access the pedestrian bridge from Lark Avenue and from all three N40 Specific Plan Districts.
5. To provide space for the easement, while maintaining desired density, housing shall be spread throughout all three districts. Housing shall be located between the existing Los Gatos Boulevard commercial district and the SR-17 easement buffer zone, between Lark Avenue and Highway 85.
6. Buildings may be higher in the Northern District, near the SR-17/Highway 85 cloverleaf, because in this location, views may be less obstructed.
7. The first developer shall provide dedicated carpool, bicycle storage, shuttle service, and rideshare drop-off, and safe, sheltered bus stops and pick up zones within the N40 project area. Developer's Vesting Tentative Maps must show the physical size and location of these required Transportation Demand Management (TDM) structures and zones.
8. Developer fees shall help fund the VTA Light Rail extension to Vasona Station.
9. Developer contributions to pedestrian and transit infrastructure shall be in proportion to the size and impact of the project. A reasonable transit impact fee shall be agreed upon by the parties, or set at fifteen percent (15%) of the owner-investor/developer purchase price. For example, if investor/developer contracts to pay land owner \$100 million to control development rights, Town of Los Gatos shall require a \$15 million developer fee, which shall be set aside to fund required pedestrian and transit infrastructure.

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