

The Density Bonus Law and Housing Accountability Act

April 9, 2019

Meeting of the Los Altos City Council

Density Bonus Law: Background

- California state law (Gov. Code §65915-65918)
- Enacted 1979 to incentivize production of affordable housing
- Amended over 20 times since adoption

How it works

- Developers agree to produce qualifying project in exchange for up to 4 things:
 1. Density bonus
 2. Concessions/incentives
 3. Waivers of development standards
 4. Parking reductions
- In exchange, City gets affordable housing (or another qualifying project) that is guaranteed to remain so for specified durations

Los Altos Density Bonus Ordinance

- Los Altos Municipal Code Section 14.28.040
- Assists City in carrying out Housing Element Programs 2.3.1 (“Implement density bonuses”) and 6.2.1 (“Provide senior housing density bonuses and development incentives”)
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How It Works

- Qualifying development entitled “of right” to density bonus
- City ordinance specifies how to implement compliance with the statute
- State law authorizes cities to grant bonuses greater than State mandates
- Los Altos Ordinance provides discretion to grant bonus in excess of statutory minimums

How to qualify

Affordable Housing

Very Low (to 50% AMI)	Low (to 80% AMI)	Moderate (80-120% AMI)
<ul style="list-style-type: none"> • Minimum 5% of units • Starts at 20% bonus + 2.5% per 1% increase in units • Rental/ownership 	<ul style="list-style-type: none"> • Minimum 10% of units • Starts at 20% bonus + 1.5% per 1% increase in units • Rental/ownership 	<ul style="list-style-type: none"> • Minimum 10% of units • Starts at 5% bonus + 1% per 1% increase in units • Ownership only

Housing for seniors

- 100% restricted to seniors
- No affordability required
- Flat 20% density increase

Housing for foster youth, disabled veterans, homeless

- Minimum 10% of units
- Meet very low income affordability levels

Land donation to develop affordable housing

- Minimum 10% very low income (15% bonus)

Eligibility by Land Donation

- Land donated must be large enough to accommodate at least 10% of the market-rate units at densities suitable for very-low income housing (Gov Code §65915(g))
- Strict criteria for land donations, including:
 - At least one acre in size or large enough to accommodate 40 units
 - Be located within the boundary or within ¼ mile the development
 - Have appropriate general plan designation

Child Care Facilities Eligibility

Child Care Facilities

- Must remain in operation for duration of affordable housing covenants
- Must ensure that children attending come from very-low, low or moderate income households in same or greater proportion as the housing development

Density Bonus Notes

- Developer chooses from ONE category
- All density calculations must be rounded up (base density, bonus units, affordable units)
- Inclusionary units (per local ordinance requirements) qualify a project for density bonus (also true for incentives/concessions and waivers)

Duration of affordability

- Rental projects
 - Very low and low income units
 - 55 years (or longer if required by construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program)
- For-sale projects
 - Very low, low, and moderate income units
 - Initial occupant must qualify on basis of income
 - Equity Sharing Agreement-Seller gets investment and proportionate share of appreciation; City recaptures initial subsidy (City must enforce unless in conflict with the requirements of another public funding source or law)
 - Los Altos—City requires affordable housing agreement with deed restriction as condition of approval.

Concessions / Incentives

- Reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed minimum building standards that would otherwise be required that result in identifiable and actual cost reductions, to provide for affordable housing costs or for rents for the targeted units to be affordable.
- Approval of mixed-use zoning for a 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 vicinity of the project.
- Other regulatory incentives or concessions proposed by the developer or the city that result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units to be affordable.

Calculating Concessions/Incentives

None	One	Two	Three
<ul style="list-style-type: none"> • Senior housing • Land donation • Housing for transitional foster youth, disabled veterans, or homeless 	<ul style="list-style-type: none"> • 5% very low • 10% low • 10% moderate • Condo conversion: 15% low or 33% moderate¹ • Childcare facility¹ 	<ul style="list-style-type: none"> • 10% very low • 20% low • 20% moderate 	<ul style="list-style-type: none"> • 15% very low • 30% low • 30% moderate

All percentages listed are minimum required to qualify.

¹ These categories may receive either one concession or a 25% density bonus (condo conversion)/bonus=facility space (child care) but not both

Concession/Incentive denial

Requested concession or incentive must be granted unless it would:

1. not result in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the targeted units to be set as required; or

2. have a 'specific, adverse impact' on public health and safety or the physical environment or on any real property that is listed in the CA 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-income and moderate-income households; or

3. be contrary to state or federal law.

Los Altos Density Bonus Ordinance

- Ordinance has designated “On-Menu” Incentives
- City Council has determined would not have “specific adverse impact”
- Includes up to 20% lot coverage increase, up to 20% decrease in lot width, up to 11’ allowable height increase; 20% setback decrease; 20% open space requirement decrease

Challenges to denials of incentives

- City denial of a requested incentive may be challenged in court
- If court finds against city, challenging party may be entitled to
 - requested incentive
 - and
 - reasonable attorney's fees and costs

Waivers/reductions of development standards

When available	Number that may be requested	Must be given unless it would
<p>When a given development standard would have the effect of physically precluding the construction of a development qualifying for a density bonus at the densities or with the concessions/incentives permitted</p>	<p>No limit (unlike concessions and incentives)</p>	<ul style="list-style-type: none"> • Not be necessary to avoid physically precluding construction • Have specific, adverse impact for which no feasible means to satisfactorily mitigate or avoid adverse impact on real property on Register of Historical Resources • Be contrary to state or federal law

Challenges to denials of waivers

- City denial of a requested waiver may be challenged in court
- If court finds against city, challenging party may be entitled to
 - Requested waiver and
 - reasonable attorney's fees and costs

Reduced Parking Standards

- State law mandates reduced parking requirements for density bonus projects even if developer does not request density bonus, incentives or waivers
- Reduced parking under statute does not count as an incentive/concession
- But, developer can request even lower parking ratios as concession or waiver
- Reduced ratios apply to the market rate units as well as the density bonus units

Parking requirements

* Unless a city-wide parking study supports a greater requirement

Housing Accountability Act

Gov Code 65589.5

- Restricts cities' ability to deny, reduce density of, or make infeasible, housing developments and requires cities to justify these actions
- Applies to *all* housing development projects (affordable and market-rate) and emergency shelters
- Applies to mixed-use projects with at least 2/3 square footage designated for residential use

The Housing Accountability Act

In a nutshell:

- If a housing development complies with “objective” general plan, zoning and subdivision standards, the City can only reduce density or deny if can identify a “specific adverse impact” to public health & safety that cannot be mitigated.
- “Lower density” includes imposing conditions that “have the same effect or impact on the ability of the project to provide housing” (i.e., *de facto* density reduction).

Housing Accountability Act (65589.5)

Cut to the chase – If desire to deny or reduce density, must:

- Identify **objective** standards with which project does not comply.
- If project complies with all, must find “specific adverse effect” on public health & safety.

The Housing Accountability Act

What are “**objective**” standards?

- HAA does not define, but Gov Code elsewhere defines as one that involves “no personal or subjective judgment by a public official and uniformly verifiable by reference to an external benchmark”
- Provisions such a permitted use, density, height, setbacks, FAR or design requirements regarding specific materials should be OK
- Receipt of density bonus is **not** basis for finding project inconsistent with development standards

The Housing Accountability Act

What is a “*specific adverse effect*?”

- If project complies with all “*objective standards*”, can only deny or reduce density if find “*specific adverse effect*” on public health.
- “*Specific adverse effect*” must be significant, quantifiable, direct, and unavoidable based on written health & safety standards on date project deemed complete, and no feasible way to mitigate.

The Housing Accountability Act

- Additional protections for affordable projects (Gov't Code § 65589.5(d)):
 - Emergency shelters;
 - 20% low income (up to 80% of median); or
 - 100% moderate (up to 120% of median) or middle income (up to 150% of median).
- Must make specific findings of specific, unmitigable adverse health or safety impact to deny or add condition making project **financially infeasible for affordable housing/emergency shelter – even if project does not comply with all “objective” standards.**

The Housing Accountability Act

Processing housing applications:

- If a project does not comply with “objective standards,” City must provide list of any inconsistencies within 30 days of application being deemed complete for project of 150 or fewer units (60 days for projects of 150 or more units)
- Explain why the project inconsistent; or
- “Deemed consistent”

HAA Processing Requirements

- Also “***deemed consistent***” if “substantial evidence that would allow a reasonable person to conclude” project is consistent
- Developer may submit own evidence re: consistency

The Housing Accountability Act

Judicial Review:

- Requires the findings to be supported by a “preponderance of evidence.” If not supported by preponderance of evidence, court must issue order compelling compliance within 60 days. If project denied in “bad faith” court may order project approval.
- Imposes mandatory fines (\$10K/unit) on cities that fail to comply with court order within 60 days.
- Mandates enhanced fines (x5) court finds city acts in “bad faith.”
- Attorney’s fees for both market rate and affordable.

The Housing Accountability Act

Compliance Strategies:

- Identify our “objective” criteria
- Identify any subjective criteria that might be better converted to objective criteria
- Review applications to ensure all relevant information is being sought from applicants

Questions?

Los Altos City Council

CT District - El Camino Real Corridor City Council Study Session

Tuesday, April 9, 2019

Los Altos Community Development Department



CT District - El Camino Real Corridor



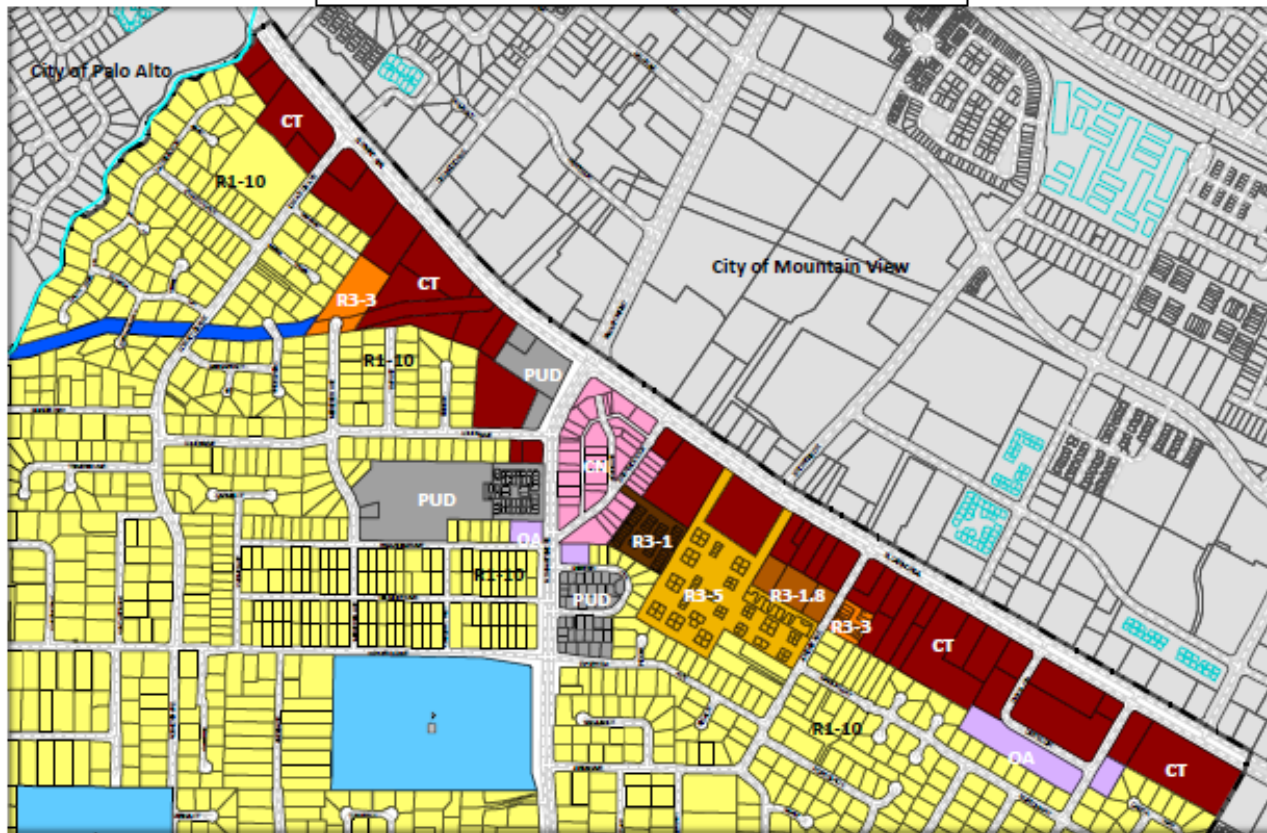
POLICIES AND REGULATIONS -

- General Plan – Land Use and Housing Element
- Zoning Regulations
- Density Bonus Regulations
- Inclusionary Housing Regulations

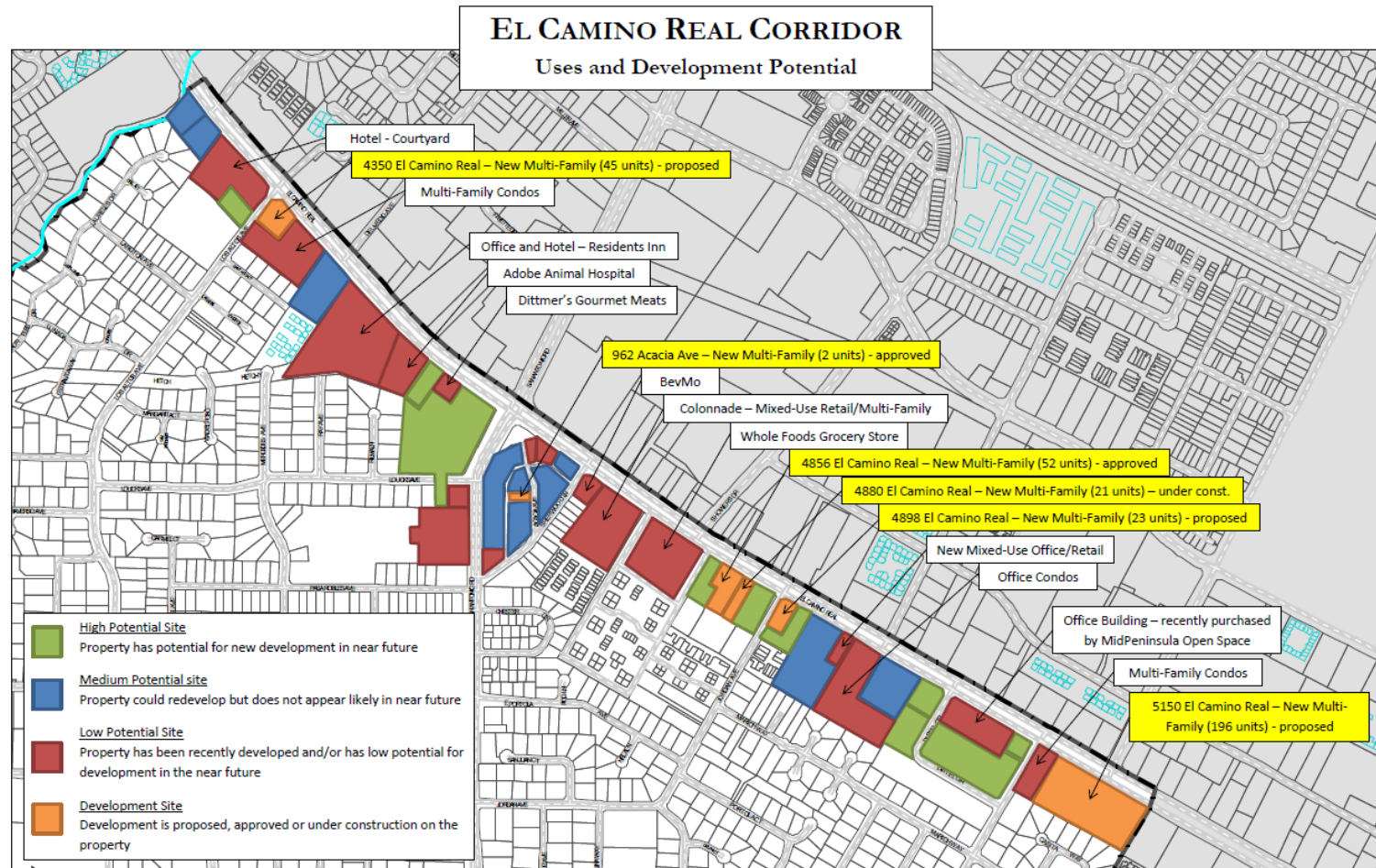
CT District - El Camino Real Corridor



EL CAMINO REAL CORRIDOR Zoning Designations



CT District - El Camino Real Corridor



CT District - El Camino Real Corridor



DEVELOPMENT STANDARD	PRIOR REGULATIONS	ADOPTED REGULATIONS 2017
14.50.020 – Specific Purposes	-	Added – residential, including affordable housing development, in list of Specific Purposes
14.50.060 C. 2. - Refuse collection	No requirement for refuse collection on site.	Amended to require refuse services, including pick-up, be located on site and this standard is applicable to all projects
14.50.100 - Side yards	None required – except for those properties abutting an ‘R’ District	Side Yard Setbacks Introduced for abutting CT properties.
14.50.150 – Open Space	No Standards	Common and Private Open Space Standards Introduced
14.50.160 - Rooftop Uses	No Standards	Standards for Rooftop Uses Introduces
14.50.180 Loading Space Requirements	No Standards	Standards for Loading Spaces Introduced

CT District - El Camino Real Corridor



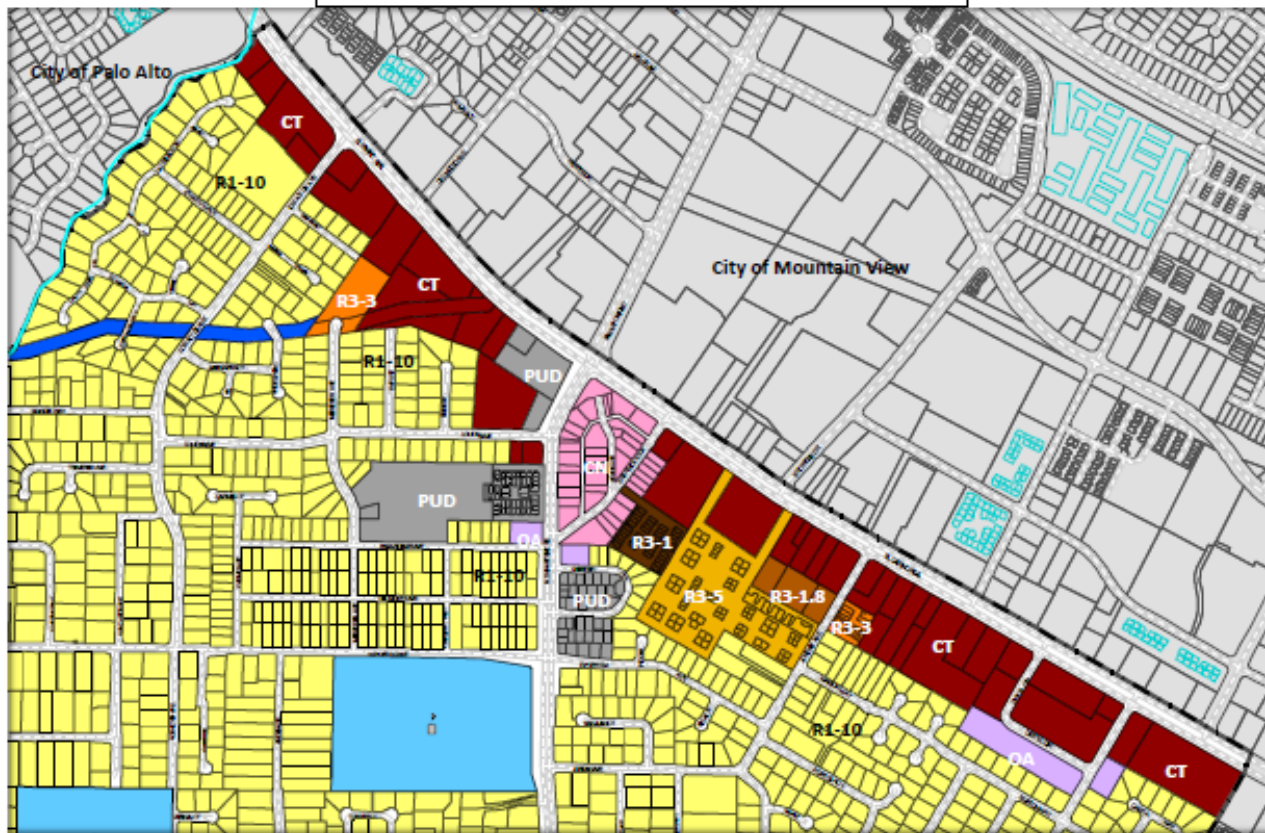
POLICY QUESTION -

What constitutes appropriate development for the CT District (Commercial Thoroughfare) and the El Camino Real Corridor – both from a land use and site development standards perspective?

CT District - El Camino Real Corridor



EL CAMINO REAL CORRIDOR Zoning Designations



CT Zone Discussion Options

City Council Meeting

April 9, 2019



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Resident Concerns

Stop the development

“Crisis mode”

Buildings are too tall

No privacy

Losing commercial uses

No green space



Options

- Moratorium
- Specific Plan/Change Planning
- Conditions of Approval



Moratorium

- Government Code Section 65858
 - Stops or prohibits any uses in conflict with a General Plan/Zoning proposal
 - Limited duration
 - Requires four-fifths vote
- BUT ...
 - Inconsistent with Housing Element
 - HCD 2017 Letter; new enforcement authority
 - SB 330 (Skinner): prohibits moratorium



Specific Plan/Change Planning Process

- Specific Plans
 - Planning tool
 - Must be consistent with General Plan (including Housing Element). Gov. Code 65454
- Change Zoning Code or CT Standards
 - To do so would require change to:
 - *General Plan*
 - *Housing Element (would require HCD recertification)*



Conditions of Approval

- Focused on immediate issues (privacy, green space).
- Nexus and Rough Proportionality. *Nollan v California Coastal Comm'n* (1987) 483 US 825; *Dolan v City of Tigard* (1994) 512 US 374
- Condition cannot make project infeasible if it contains affordable housing. Gov. Code 65598.5(d).
- Examples: taller trees for privacy, imposing standard Quimby park requirement.

