



**California Rural
Legal Assistance
Foundation**



**WESTERN CENTER
ON LAW & POVERTY**

July 17, 2020

The Honorable Lorena Gonzalez
California State Assembly
State Capitol, Room 2114
Sacramento, CA 95814

Re: AB 2345 (Gonzalez)—Oppose unless Amended

Dear Assemblymember Gonzalez,

On behalf of our low-income clients, we write to express our concerns with your AB 2345, which proposes to amend State Density Bonus Law. Your bill would amend the law to give developers greater density increases and more incentives in exchange for including more affordable units. While we are very supportive of the concept, as drafted the bill does not adequately capture the value that it creates for developers, meaning that it will result in less affordable housing than otherwise could be achieved and potentially undermine existing local programs.

Density Bonus Law (DBL) is an important tool that allows for the inclusion of badly needed low- and very low-income rental units in predominantly market-rate housing developments without the need for direct financial subsidy. The law enables developers to access various benefits—including increased density, relief from various development restrictions, and reduced parking requirements—that enable them to reduce costs, use land more efficiently, and include more units than would otherwise be allowed. These benefits create value that allows for the inclusion of units affordable to lower-income households. The law also expressly prohibits local governments from giving developers similar benefits without requiring the inclusion of affordable units.

Current law employs a sliding scale formula to allow increased density bonuses with a corresponding increase in affordable housing set-asides. For every 1% increase in very low-income (VLI) units, a project receives a 2.5% increase in density, and for every 1% increase in low-income (LI) units, a project receives a 1.5% increase in density. Under current law, this formula sliding scale extends up to a 35% density increase.

AB 2345 increases the available density bonus up to 50% for low- and very low-income units, but uses a different sliding scale formula for density increases between 36% and 50%. For example, under the current draft of AB 2345 a 1% increase in VLI units over 11% would come with a 3.75% increase in density. This would result in more density for less affordability compared to the existing statutory formula.

Changing the formula in this way is problematic because it effectively weakens the impact of the larger density increases proposed under the bill. Additionally, we have significant concerns about the addition of more incentives and concessions, especially given that developers have to add very few additional affordable units in order access them. Your bill proposes increasing from 2 to 5 the number of incentives

or concessions a developer of a mixed-income project can access by including just 4% more VLI or LI units. This is not a sufficient increase in affordability compared to the value that is being offered.

We understand that AB 2345's provisions mirror those in San Diego's density bonus ordinance, which has had early success in increasing utilization of DBL in San Diego. However, San Diego is not the only jurisdiction that offers developers "super density bonuses" that exceed those offered under state law, which has been done successfully in a manner that replicates the existing ratios in DBL. For example, under Los Angeles' highly successful Transit-Oriented Communities (TOC) program a project receives a 50% density increase for providing 11% VLI units, as a percent of the total project unit count. When converted to be a percent of the base units (as DBL is calculated), this amounts to a 17% VLI set-aside to qualify for a 50% density increase.

Effectively, the TOC scales up the density for affordability ratio following the same pattern as in the existing DBL. In addition, the TOC limits developers to three concessions or incentives at the highest affordability set-aside (more incentives are available if a developer commits to local hire requirements and other community benefits, but not for more affordable units). We believe the success of this program provides strong evidence that replicating the ratios in current law is workable. As we take the concept of "super density bonuses" statewide, it is critical that we do so in a way that does not undermine the production of VLI units. The experience of Los Angeles shows that maintaining the current ratios is an approach that is attractive to developers and should be the model that is replicated in state law.

If AB 2345 is amended to remain consistent with the existing DBL sliding scale formula, limit developers of mixed-income projects to three concessions or incentives for mixed-income projects but ensure that the third concessions is accessible for these projects, which it is currently not, then it would address our concerns with the bill as it applies statewide as well as avoid undermining the TOC. We believe this approach would maximize the production of VLI units while also leaving room for locals to choose to offer even greater benefits to developers in exchange for higher levels of affordability.

We look forward to working with you to address these concerns.

Sincerely,



Brian Augusta
California Rural Legal Assistance Foundation



Anya Lawler
Western Center on Law & Poverty