

The Land Donation Option

Overview

The California Density Bonus law is a state housing development mandate that supersedes local land use requirements and encourages the development of affordable and seniors' housing. The Density Bonus Law (found in California Government Code Sections 65915 - 65918) provides developers with powerful tools to encourage the development of affordable and senior housing, including up to a 35% increase in project densities, depending on the amount of affordable housing provided. Cities and counties are required to grant a density bonus and other incentives or concessions to both senior housing projects and to market-rate housing which contains a specified percentage of on-site set aside units (percentage varies by income level).

In 2005, the Density Bonus Law was amended by SB1818, which gave market-rate developers the option to fulfill their affordable housing requirement through donating land, in lieu of providing set aside units on-site. The applicant developer is required to donate/transfer the land directly to the local agency or to a housing developer approved by the local agency, that meets the following general donated land criteria:

- **Size:**
 - The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units.
 - The developable acreage and zoning of the land being transferred are sufficient to permit construction of at least 10% of the number of residential units in the proposed principal market-rate development. For each additional 1% land donated, the applicant may obtain an additional 1% density bonus up to a maximum of 35%. Also, an applicant may receive a density bonus for setting aside affordable units within the development project with the total bonus not to exceed 35%. See page 11 for the corresponding table.
- **Location:** The transferred land is within the boundary of the proposed development, or with the City's agreement, within ¼ mile of the development.
- **Zoning:** The transferred land is fully entitled to permit the number of required affordable units. The land is subject to a recorded affordability restriction of 55 years.
- **Timing:** 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. The applicant may request and exercise a land donation up until the issuance of the final building permits for their proposed project.

Potential Benefits

The land donation option has many potential benefits for the primary stakeholders involved in housing production:

- i. It benefits the City in helping meet affordable housing goals and creating more mixed income neighborhoods where full-service affordable housing projects benefit from the same access to transit, jobs, schools, and other neighborhood amenities that new market-rate projects enjoy.
- ii. It benefits affordable housing developers by creating more sizable development sites in up-and-coming neighborhoods, along with accelerating the development schedule and reducing overall development costs, thus saving taxpayer dollars.
- iii. It benefits the market-rate developer with additional flexibility in their business plan by weighing the costs of the additional expense of buying and donating land for affordable housing against the benefits of a 100% market rate project (higher overall value, higher return on cost, streamlined affordability compliance).

BENEFITS

The City

Turnkey Solution	The land donation facilitates more affordable housing production in mixed income neighborhoods by creating new affordable housing development sites of at least 40 units in size with a qualified affordable housing developer ready to go upon closing.
Sizable Affordable Housing Projects in New Areas	Because the price of land is covered by the market-rate developer, sizable (40+ units) affordable housing projects can be built on more expensive land in up-and-coming, high opportunity neighborhoods. For example, it is not feasible for an affordable housing developers to buy land for more than a certain price per entitled unit (for example, ~\$70,000/entitled unit), resulting in many of the new affordable developments being located in lower income neighborhood or less desirable locations where land is cheap but far from jobs and/or transit.
Mixed Income Communities	Requiring the donated land for affordable housing developments to be within 2-3 blocks of the associated market-rate project ensures the up-and-coming neighborhood maintains its mixed income characteristic (rather than becoming predominantly ~92% market-rate projects with a ~6-8% affordable component on-site). Full-service affordable housing projects will benefit from the same access to transit, jobs, schools, and other neighborhood amenities that new market-rate projects enjoy.
Affordable Housing Multiplier Effect	Due to the required minimum size of land sites, there is an opportunity to multiply the number of affordable units in the area by turning 7-10 set aside units within a market-rate project into 40 or 50 affordable units within a high-quality, 100% affordable development next door. While it is certainly desirable to get 5-10 units at a time within a market-rate project (as part of the set-aside units under the housing density provision), it is important to also build larger 100% affordable developments that can offer full on-site supportive services (social, employment, and health services).
Similar Monetary Contribution	The market-rate developers' monetary 'contribution' towards affordable housing is similar in either option (on-site build or land donation).
Unlocking More Under-Utilized Land	Because there is an increase in the value of the applicant's market-rate project going from 85-95% market-rate to 100% market-rate, the market-rate developer may be able to afford buying a parcel of land off-market for an above market price, helping turn more reluctant property owners of parking lots or other under-utilized land throughout the City into potential sellers.

BENEFITS

Affordable Housing Developer

Sizable Affordable Housing Projects in New Areas

Affordable and PSH developers receive a sizable development site (minimum of 40-units and upwards of 100+ units depending on size of the associated market-rate project) within 0.25 miles (about 2-3 blocks) of a market-rate project at no cost (the market-rate developer is buying and donating the parcel). The affordable housing developer is required to complete their own full due diligence on any donated parcel to ensure any donated site will work for a near-term development.

Faster Development Timeline

Receiving 20-25% of the capital needed for development upfront accelerates the affordable development timeline as affordable developers can bypass the more infrequent grant and loan fund applications (many funding sources are only open for funding rounds once per year).

Lower Development Cost

Free land drives down the overall cost of the affordable development (could be upwards of \$100k/unit or 20-25% of the total budget), in addition to avoiding pre-development/acquisition loan interest. Related to time, the faster the affordable housing developer can get through the pre-development process, the less carry costs (property taxes, insurance, on-site maintenance costs, etc.) and interest the developer must pay, saving significant amounts of money. For example, affordable housing developers that purchase property using pre-development land acquisition loans can pay upwards of 6% interest on almost 100% of the purchase price; on a \$6 million loan, that is \$360,000 per year in interest - equivalent to the cost of about one new unit of housing each year the project is in pre-development. In addition, the more applications the affordable housing developer must file, the more internal and external consulting fees they must accumulate, which can add up to a significant amount of money over time.

Financing Benefits (For Competitive Tax Credits)

Because many of the proposed market-rate projects are in SDDAs (difficult to develop, amenity rich zip codes), the affordable developer building a project on a donated parcel nearby could get up to a 30% basis boost in their TCAC application (so qualify for more tax credit dollars).

In addition, if an affordable housing developer receives free land or is reimbursed on their land acquisition cost during the pre-development process (as proposed in the land donation guidelines), the donated land value boosts their 9% TCAC application's tiebreaker score (and competitiveness winning those 9% credits) by increasing the most heavily weighted metric: the leveraged soft financing ratio.

BENEFITS

Market-Rate Housing Developer

Additional Business Plan Flexibility

The land donation option gives the applicant developer another way to fulfill their affordable housing requirement other than on-site set aside units. Depending on the project's location, size, requested density, and projected rents, the developer may find it more accretive to increase their cost basis by the cost of the donated land in exchange for a 100% market-rate project.

No Entitlement Risk

Submitting a Land Donation Option Approval Notification and/or a Land Donation Option Approval Request does not cancel or invalidate the original Letter of Determination or other subsequent approvals issued by the City. Likewise, if the Applicant fails to find a qualified property for the land transfer or fails to get the Land Donation Option approved after submitting the Land Donation Option Approval Request Form, the contents, conditions, and dates of the in-place Letter of Determination and any subsequent approvals and agreements are still valid. If the City does grant approval for a land donation, approval is granted as a substantial conformance letter, which is not subject to an appeals process.

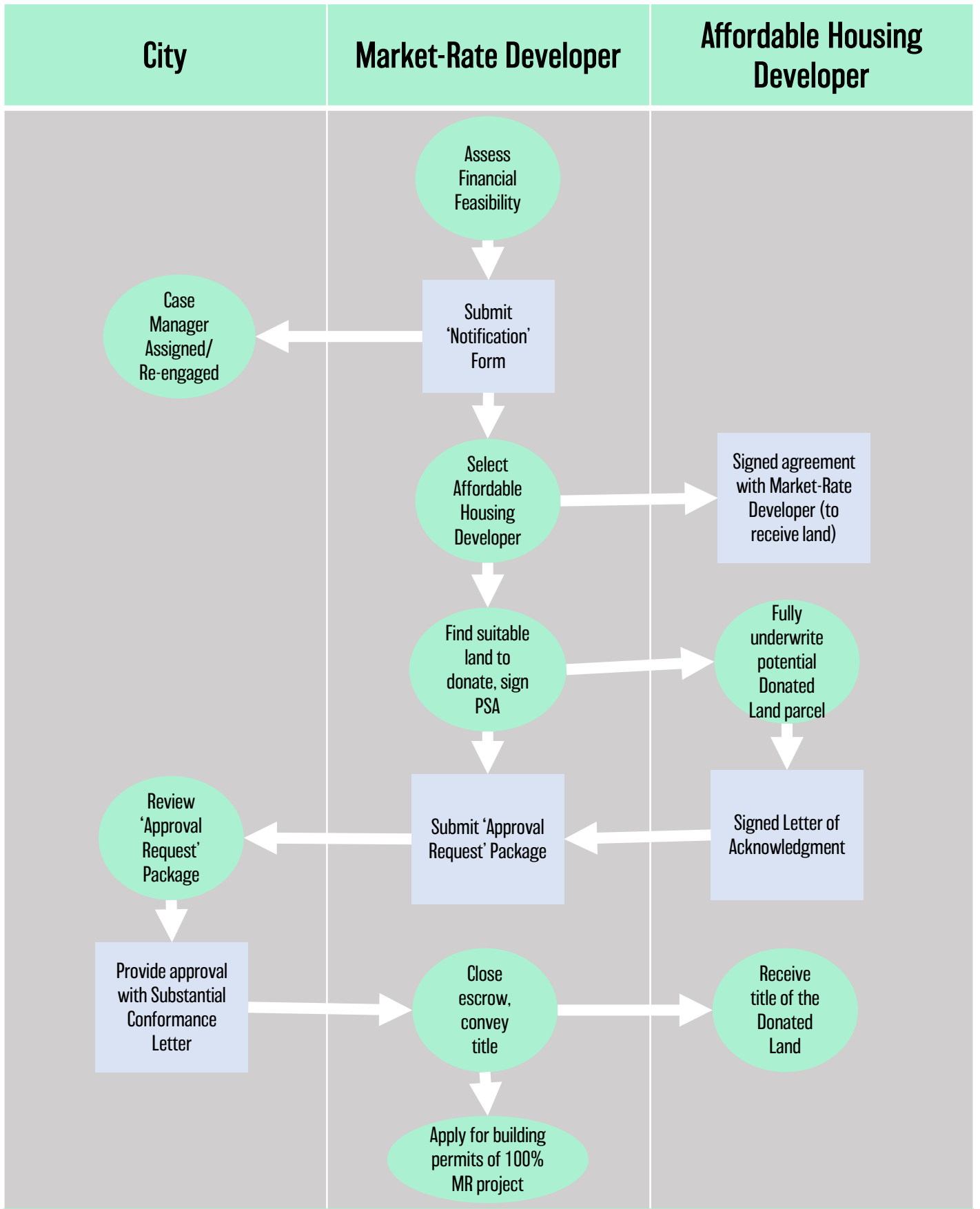
Less Compliance and Fees

On-site set asides units are subject to a recorded affordability restriction of 55 years. As part of that restriction, the developer is subject to annual compliance (conducted by HCIDLA or an outsourced party) to ensure compliance with rent, income, occupancy, and other programmatic restrictions mandated by the U.S. Department of Housing and Urban Development (HUD), federal tax laws, state and local requirements. Site visits shall include reviewing the management plan, affirmative marketing plan, tenant selection plan, wait lists, and lease information. HCIDLA is charged with certifying the incomes of all households who will occupy an affordable housing unit, prior to move-in. There are fees associated with compliance, tenant management, and inspections. Owners who fail to submit the annual monitoring documentation or submit incomplete or inaccurate information may be determined to be in non-compliance and subject to sanctions and/or action by the City Attorney.

Higher Potential Value and Return on Cost

Same, if not higher return on cost (including the additional cost of the donated land) as a result of a higher NOI from a 100% market-rate project.

THE PROCESS



COMMON CONCERNS / QUESTIONS

Overall

Why is it important for these guidelines and procedures to exist if there is already state law allowing it?

- Although the land donation has been allowed since it was enacted in 2005 as part of the amendment to the state Housing Density Bonus law with SB 1818, the land donation option has not been used by any developers in Los Angeles. The lack of usage is due to many factors, however, it is primarily rooted in the ambiguity of the state law's language regarding the exact timing of the donation, the exact type of donation allowed, and the uncertainty of incentivize for the applicant developer.

How have these guidelines and procedures deviated from the state law?

- The land donation guidelines and procedures address the three main roadblocks that have prevented market-rate and affordable housing developers to execute a land donation transaction in the past, as follows:
 - Timing - The guidelines add more flexibility in how the state law is interpreted as to when and how a land donation can be executed. The ambiguity around not being able to exercise the land donation option after receiving entitlements has been one of the largest roadblocks preventing market-rate developers to take advantage of donating nearby land to affordable housing developers.
 - Lack of Available Sites to Donate - To help find more ways for affordable housing developers to benefit from the land donation option, the reimbursement option was included in the guidelines.
 - Incentives - The guidelines make it clear that developers can benefit from the same development incentives in both the set-aside and/or land donation options, as market-rate developers would be contributing the same amount to affordable housing in either scenario.

Timing: Why is it so important to be able to execute a land donation up until the "Building Permit Issuance Date" vs. the Letter of Determination Date?

- Having to execute a land donation prior to obtaining entitlement approval would require developers to put twice as much money at risk during pre-development, making the land donation option unfeasible. They would essentially be having to price in entitlement risk on two separate parcels. For example, a developer who buys a property for \$10 million and goes through the 2-5 year entitlement process for a density bonus would then have to spend another \$5-6 million on a second parcel of qualifying land to donate without even knowing if the first parcel of land can even get the density bonus and be able to execute on their business plan. If the developer's plans for the original project change or are canceled, the developer would then have to sell two parcels of land vs. just one.
- The most feasible projects in the City that could take advantage of the land donation option have already been granted some version of entitlements and density bonuses. In the period between when the letter of determination is issued and when building permits are obtained, the developer has a good sense of the project economics and feasibility as they know generally the size of their proposed project, the construction budget, and the latest market rents and construction financing terms, making it most practical to assess the advantages of significantly adding to their construction budget to donate land in exchange for the approval to build a 100% market-rate project.

COMMON CONCERNS / QUESTIONS

Overall

Reimbursement Option: Why is it important to include the provision to allow an applicant to satisfy the “donates land” requirement through a Reimbursement Option?

- **Lack of Available, Qualifying Sites** - Especially in a supply constrained, urban infill market like Los Angeles, it can be extremely difficult to find a new parcel of land available for purchase within the restrictive radius of 0.25 miles (about a 2-3 block radius) that fits the legislation’s required size and zoning criteria and the affordable developer’s development site criteria. As such, in the event an affordable housing developer has already located and purchased a site within 0.25 miles of a market-rate site that fits all the size and zoning criteria, reimbursing the cost of their land purchase ultimately saves the Affordable Housing Developer time and money.
- **Saves Time to Deliver a New Affordable Housing Development** - In terms of saving time, it can often take an affordable housing developer 2-4 years between purchasing a parcel of land and starting construction due to the many different sources of financing and funding rounds involved in putting together an affordable housing capital stack. Some applications only take place once a year such as several of the CalHCD funding rounds including CalHome, IIG, AHSC, and TOD grants. Every additional layer of funding adds time and complexity to getting a project off the ground.
- **Saves Money for Affordable Housing Developer** - Related to time, the faster the affordable housing developer can get through the pre-development process, the less carry costs (property taxes, insurance, on-site maintenance costs, etc.) and interest the developer must pay, saving significant amounts of money. For example, affordable housing developers that purchase property using pre-development land acquisition loans can pay upwards of 6% interest on almost 100% of the purchase price; on a \$6 million loan, that is \$360,000 per year in interest - equivalent to the cost of about one new unit of housing each year the project is in pre-development. In addition, the more applications the affordable housing developer must file, the more internal and external consulting fees they must accumulate, which can add up to a significant amount of money over time.

COMMON CONCERNS / QUESTIONS

From the Community

Will the land donation further exacerbate the geographic separation and segregation of incomes classes in LA?

- The donated land site must be next door or within a 0.25 mile radius of the principal market-rate project, which is about two to four city blocks in LA, effectively considered the same neighborhood with the same access to transit, retail, employment, and school amenities and options as the market-rate project.
- There is effectively a 3-4x multiple between the number of set aside units required and the number of entitled units worth of land required - therefore if a developer is required to set aside 10 units on their project, the guidelines are written in a way that requires the market-rate developer to donate land that can accommodate 40-50 units (depending on their requested density bonus and size of the project).
- Regardless of the size and density of the market-rate project, the 100% Affordable Future Housing Project to be constructed by the Affordable Housing Developer must be at least 40-units, ensuring a sizable affordable housing project in the neighborhood (that otherwise may not ever have gotten a new 100% Affordable Project).

Is the market-rate developer is getting 'too much of a discount' or getting 'too good of a deal'?

- In order for a market-rate developer to exercise the land donation, they must build their original market-rate project in addition to paying for the cost of the donated land - they are not saving any money in this deal, rather, the developer is increasing their total cost basis. The market-rate developer is essentially buying back the 'forgone value' of the deed-restricted set aside units at the cost of buying the land parcel to be donated.
- The state law has two ways of ensuring the developer is meeting some sort of fair minimum contribution to growing the City's affordable housing stock: (i) the donated land must be entitled by-right for at least 40 units and (ii) the size of the land to be donated scales up based on the size of the market-rate project and the density bonus received - therefore, if a 250-unit project that is approved for a 30% density bonus is donating land, the minimum size of the donated land must have by-right entitlement for at least 63 units (25% from the table in the state law x 250 to-be-market-rate units). See page 11 for further explanation on the size criteria for the donated land.

Is there a risk of the 100% Affordable Project not being built?

- As with any real estate development, there is always the risk a project is not built. Risk factors include items that are both in the developer's control (capacity to build, expertise, operational financing) and out of the developer's control (lack of neighborhood support, lack of public funding, etc.).
- However, the guidelines require the Affordable Housing Developer to demonstrate pre-development progress within six months, with risk of losing the donated land (back to either the City or another approved Affordable Housing Developer).
- Prior to the City approving the land donation, the Affordable Housing Developer signs a Letter of Acknowledgment stating that they accept the land in its current condition, that it is feasible for a sizable development, and that they risk losing the land if reasonable pre-development progress is not made to the City's satisfaction.

COMMON CONCERNS / QUESTIONS

From the Community (continued)

Will the 100% Affordable Project be of inferior quality as compared to the market-rate apartment project?

- The selected Affordable Housing Developer must be on a pre-approved list by the City, must be in good standing with the state of CA, and must have the track record, capacity, and willingness to build a high quality project. The pre-approved Affordable Housing Developers are respected in their communities and have long-standing reputations for building high quality apartment projects.

Can the donated land already be occupied by low income tenants, resulting in displacement of those tenants?

- Parcels improved with apartment buildings typically cost much more than parcels improved with vacant storefronts, parking lots, and empty lots, as apartment buildings sell for a basis dependent on the potential income of those units and a low cap rate, which results in a high premium value for apartment buildings.
- It is assumed that in most cases, a property already improved with an existing apartment building would not suffice due to (i) the higher cost of acquisition (compared to an underutilized parcel, as alluded to above) and (ii) because the Affordable Housing developer may not accept the site as suitable for new development due to concerns over displacement, potential litigation, and higher relocation costs.
- As part of the Affordable Housing Developer's Letter of Acknowledgement (to be submitted as part of the Land Donation 'Approval Request' package), the Affordable Housing Developer must provide a relocation plan for current tenants and must show they have fully reviewed all in-place leases, termination rights, on-site tenant rights, RSO review, etc.

Can the donated land be used to develop permanent supportive housing developments, rather than only affordable housing?

- Yes, an Affordable Housing Developer can choose to build housing units affordable to "very low income households" including units that serve lower income ranges such as Extremely Low Income.

COMMON CONCERNS / QUESTIONS

From Market-Rate Developers

Linkage Fee: Would submitting a request for the land donation option constitute a new planning 'entitlement application', and therefore result in linkage fees (by triggering a new date of complete entitlement submission)?

- For projects that have received entitlements (“approved” or “approved with conditions”), requesting and exercising a land donation does not change the original entitlement application date because the land donation approval is given as a substantial conformance letter, not an entirely new entitlement approval. Therefore, exemption from fees is based on the City’s latest “Fee Phase-In Timeline” based on the earlier date between (i) a building permit application is submitted or (ii) a complete planning entitlement application is submitted
- For projects that have not yet received entitlements, Fee Phase-In Timeline applies.
- The value of land dedication for the purpose of affordable housing, as approved by HCIDLA, may be deducted from or credited towards any linkage fee owed.

Incentives: Why should the market-rate developers who exercise the land donation option have access to the same incentives offered under “The Menu of Incentives” (per LAMC 12.22.A.25(f)) for projects building the affordable set aside units on-site?

- Market-rate developers who donate land for affordable housing (in lieu of building on-site affordable units) are able to access the same “Menu of Incentives” (per LAMC 12.22.A.25(f)) because their contribution to affordable housing is similar to the developers who build their set aside units on-site. By design, the land donation option is set up require a market-rate developer to spend an equivalent amount of money donating land as building the on-site units.
- For example, a market-rate developer that has the option to get a 35% density bonus by either building 10 set aside units within the development at a cost of ~\$350,000/unit (or \$3.5 million) or donating a 40-unit parcel of nearby land at a cost of \$87,500/entitled unit (or \$3.5 million), would be contributing the same amount of funds towards affordable housing in each scenario. The menu of incentives such as setback reduction, FAR increases, and height increases help offset the additional cost of donating land.

COMMON CONCERNS / QUESTIONS

From Market-Rate Developers

Donated Land Size: How is the minimum required land size calculated?

- The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units.
- The developable acreage and zoning of the land being transferred are sufficient to permit construction of at least 10% of the number of residential units in the proposed principal market-rate development. For each additional 1% land donated, the applicant may obtain an additional 1% density bonus up to a maximum of 35%. Also, an applicant may receive a density bonus for setting aside affordable units within the development project with the total bonus not to exceed 35%.
- See table below for determining land size based on the percentage density bonus (approved or requested for the principal project over base density allowance) and the corresponding required percentage of the principal project's market rate units must be reflected in the donated land basis.

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

Two examples to illustrate how the table works:

1. An applicant developer proposes building on a site with a 80 unit base density and requests a 35% density bonus to build 108 units ($108/80 = 1.35$). If the applicant chooses to donate land, the calculation would be $108 \times 30\%$ (35% density bonus translates to 30% percentage very low income on the table), equaling 33 units. Therefore, the 40-unit minimum would require the donated parcel must be sufficient to build at least a **40-unit** affordable housing project (overriding the 33 unit minimum per the table's calculation).
2. An applicant developer proposes building on a site with a 200 unit base density and requests a 30% density bonus to build 260 units ($260/200 = 1.30$). If the applicant chooses to donate land, the calculation would be $260 \times 25\%$ (30% density bonus translates to 25% percentage very low income on the table), equaling 78 units. Therefore, the donated parcel must be sufficient to build at least a **78-unit** affordable housing project (as it is greater than the 40-unit minimum).