

# Zoning for Affordability Working with State Policies

August 25, 2023



COMMUNITY  
PLANNING  
COLLABORATIVE



Association of  
Bay Area Governments



METROPOLITAN  
TRANSPORTATION  
COMMISSION



Image: Siteline Institute

# Agenda

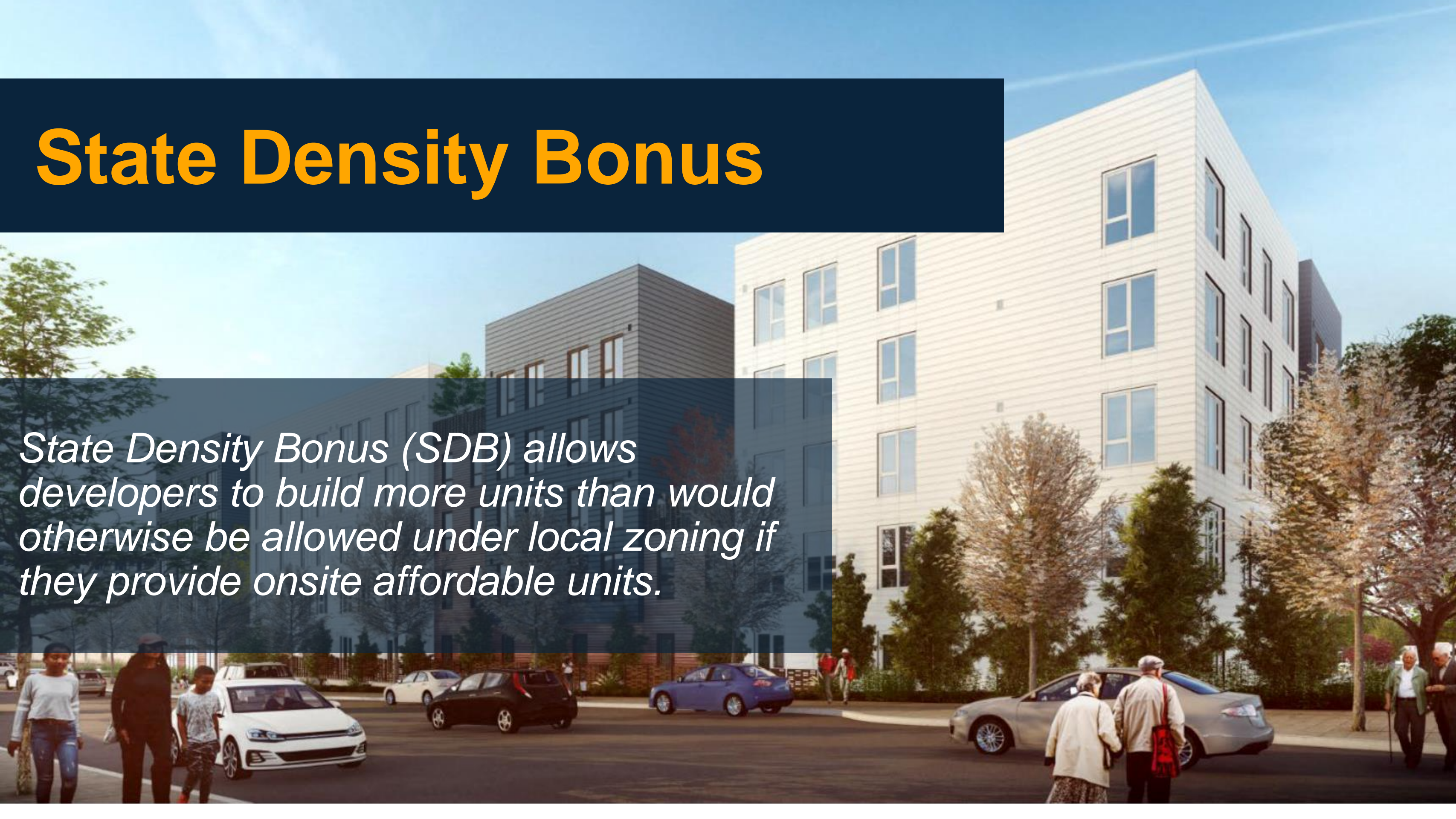
*Goal: To understand how state laws including State Density Bonus and SB 35 impact local IZ programs and how we can use these tools to build more affordable housing.*

- Introductions
- State Density Bonus
- SB 35
- How these programs are implemented
- Maximizing Affordable Production
- Closing

*Please introduce yourself by typing your name and jurisdiction into the chat*

# State Density Bonus

*State Density Bonus (SDB) allows developers to build more units than would otherwise be allowed under local zoning if they provide onsite affordable units.*



## Affordable Units for Increased Density

### # of Very Low Income Units Produced

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
...	...
15	50

### # of Low Income Units Produced

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
...	...
24	50

# Waivers and Concessions

## Waivers

Reduction or modification of development standards necessary to physically accommodate the proposed building at the level of density providing the bonus.

**An unlimited number of waivers are available**

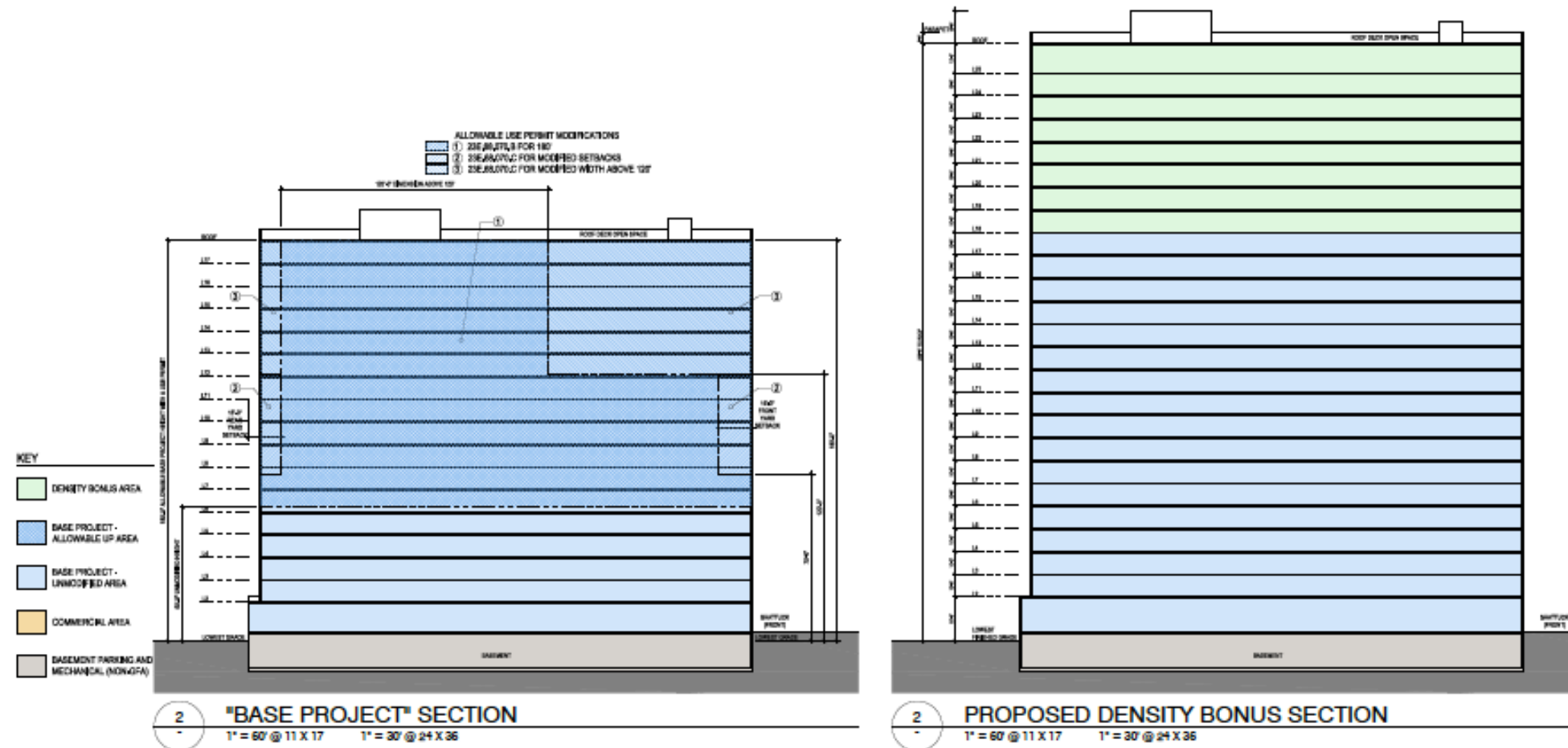
## Concessions

Removal of development standards or regulations that it would be physically possible to accommodate but that would make the affordable housing financially infeasible.

**# of Units Produced per # of Concessions**

Concessions	Very-low income	Lower-income
1	5%	10%
2	10%	17%
3	15%	24%
4		100%

## Example: 2190 Shattuck Ave, Berkeley



Including 32 Very Low Income units allowed the project to increase in size to add an additional 103 units

### Waivers

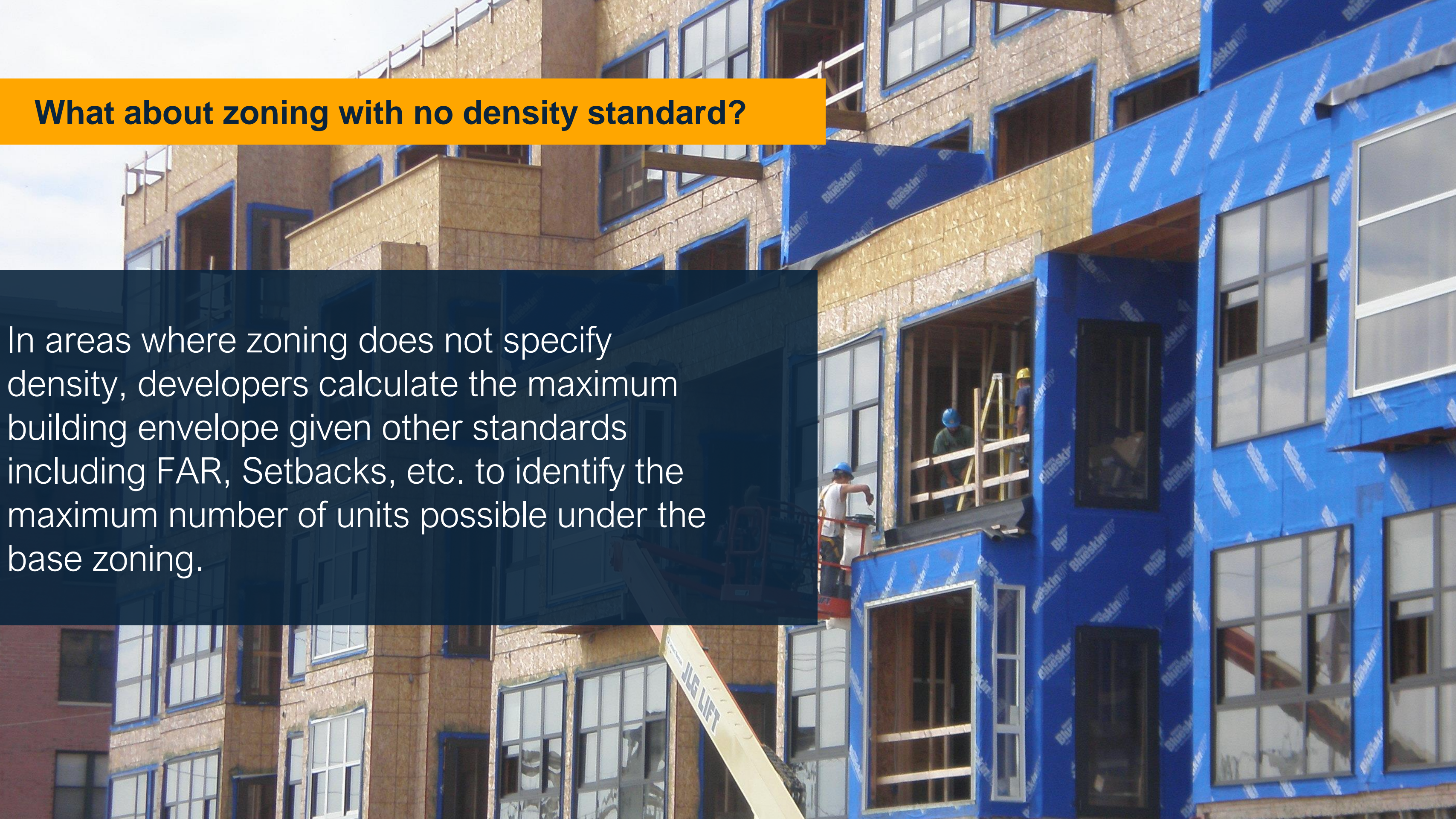
Height limit, setbacks on all sides of the building, diagonal width of the building, and private and public open space requirements

### Concessions

Required Commercial Unit Parking, Car share requirement

## What about zoning with no density standard?

In areas where zoning does not specify density, developers calculate the maximum building envelope given other standards including FAR, Setbacks, etc. to identify the maximum number of units possible under the base zoning.



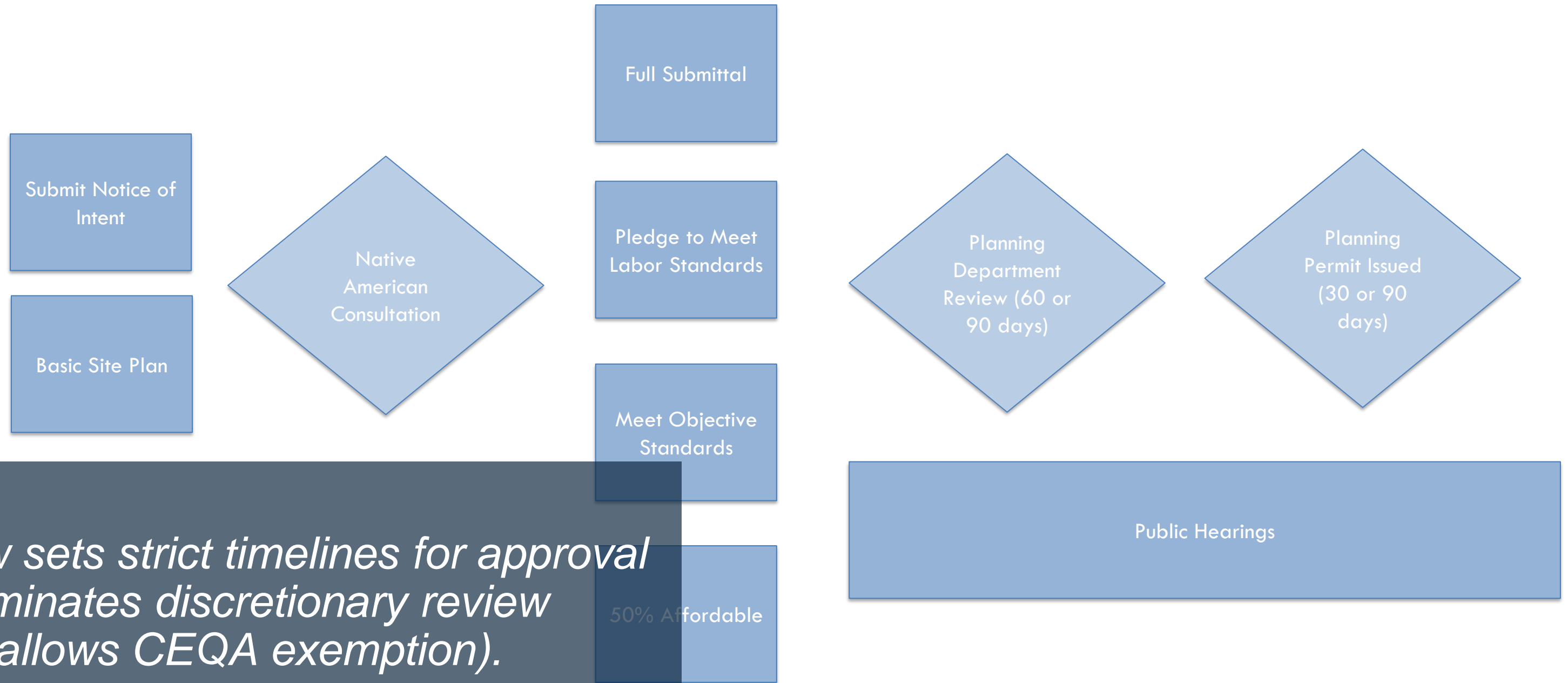
# SB 35

*SB 35 provides for a streamlined approval process for projects that meet affordable housing and labor standards*

Image: Woodmark Apartments, Sebastopol



# SB 35 Process



*The law sets strict timelines for approval and eliminates discretionary review (which allows CEQA exemption).*

# Objective Standards

## Examples of Guidelines and Standards

### Design Guidelines

Provide articulation to reduce the apparent mass and scale of the building and to be sensitive to the neighborhood.

Rooftop mechanical equipment *should be* screened from public view by a parapet wall, decorative equipment screen, or other architectural treatment.

Provide ample width and design for universal access along pathways and walks.

### Design Standards

At intervals of at least 100 feet of building length, there shall be a plane break along the facade composed of an offset of at least 5 feet in depth by 25 feet in length. The offset shall extend from grade to the highest story.

Rooftop mechanical equipment *shall be* screened from public view by a parapet wall, decorative equipment screen, or other architectural treatment.

The paved section of sidewalks shall be at least 8 feet in width.

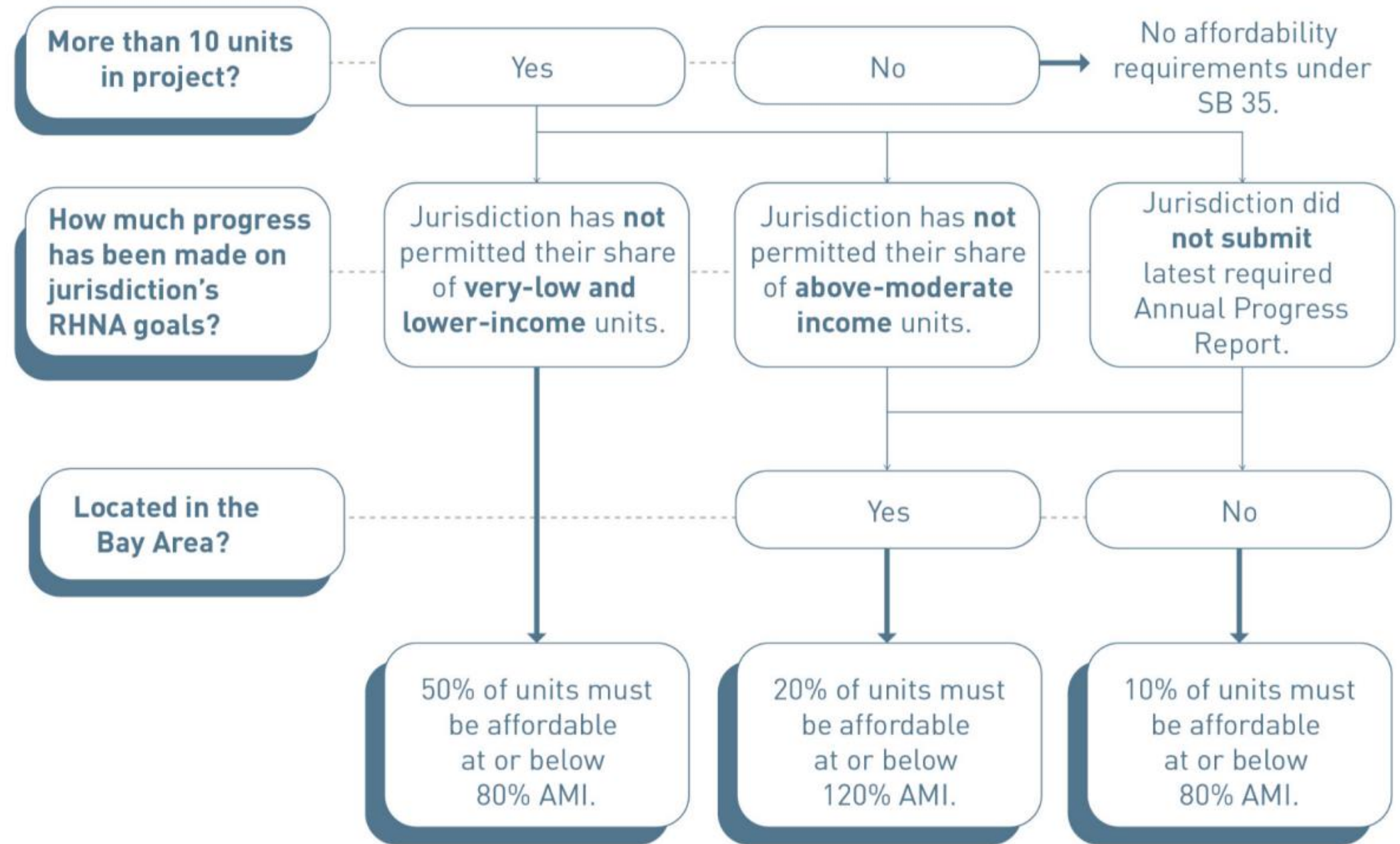
## Wage Requirements

*SB 35 requires payment of Prevailing Wage for 10+ unit buildings and, in some cases use of “Skilled and Trained Workforce” both of which can increase project costs.*



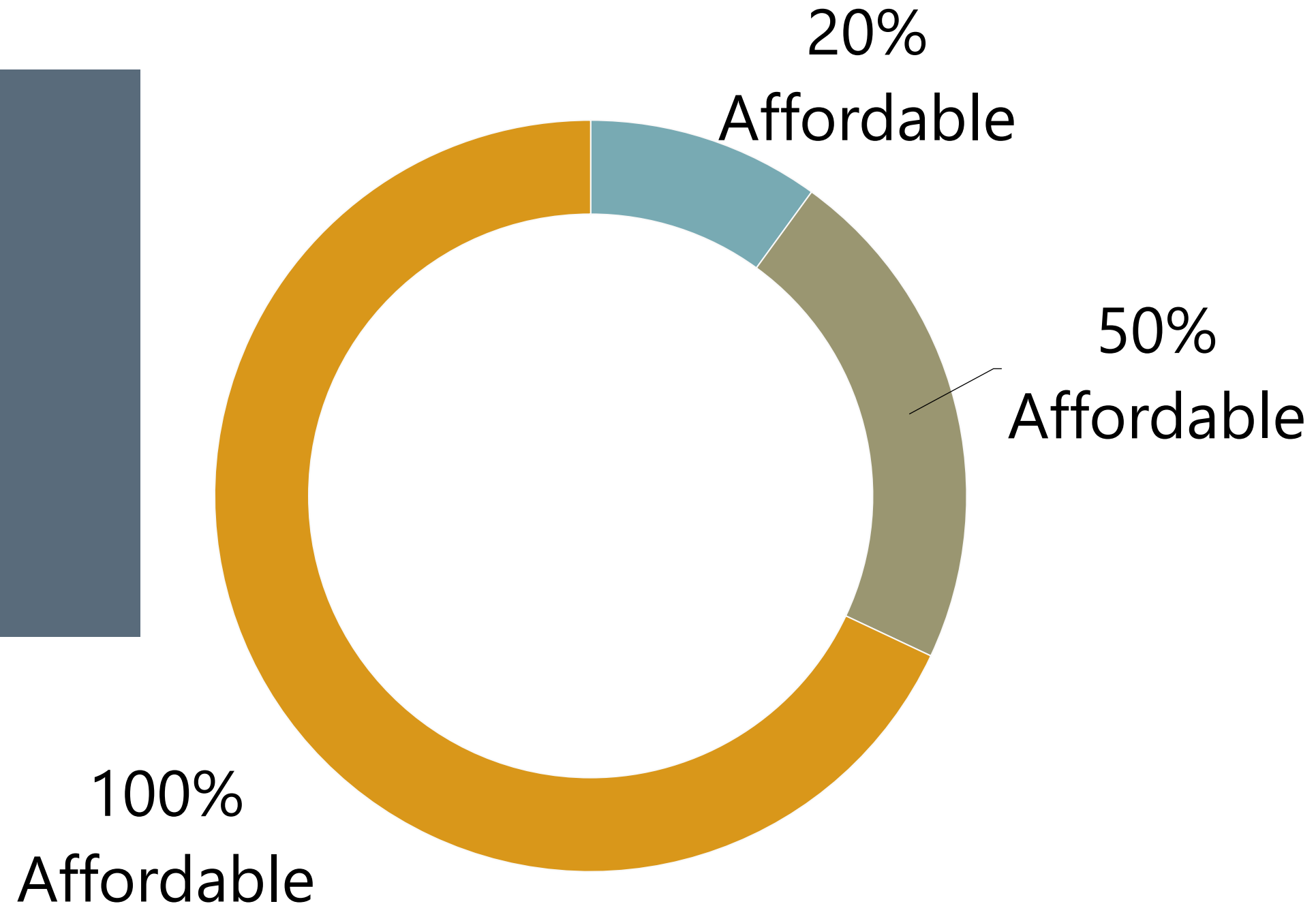
# How Much Affordable Housing?

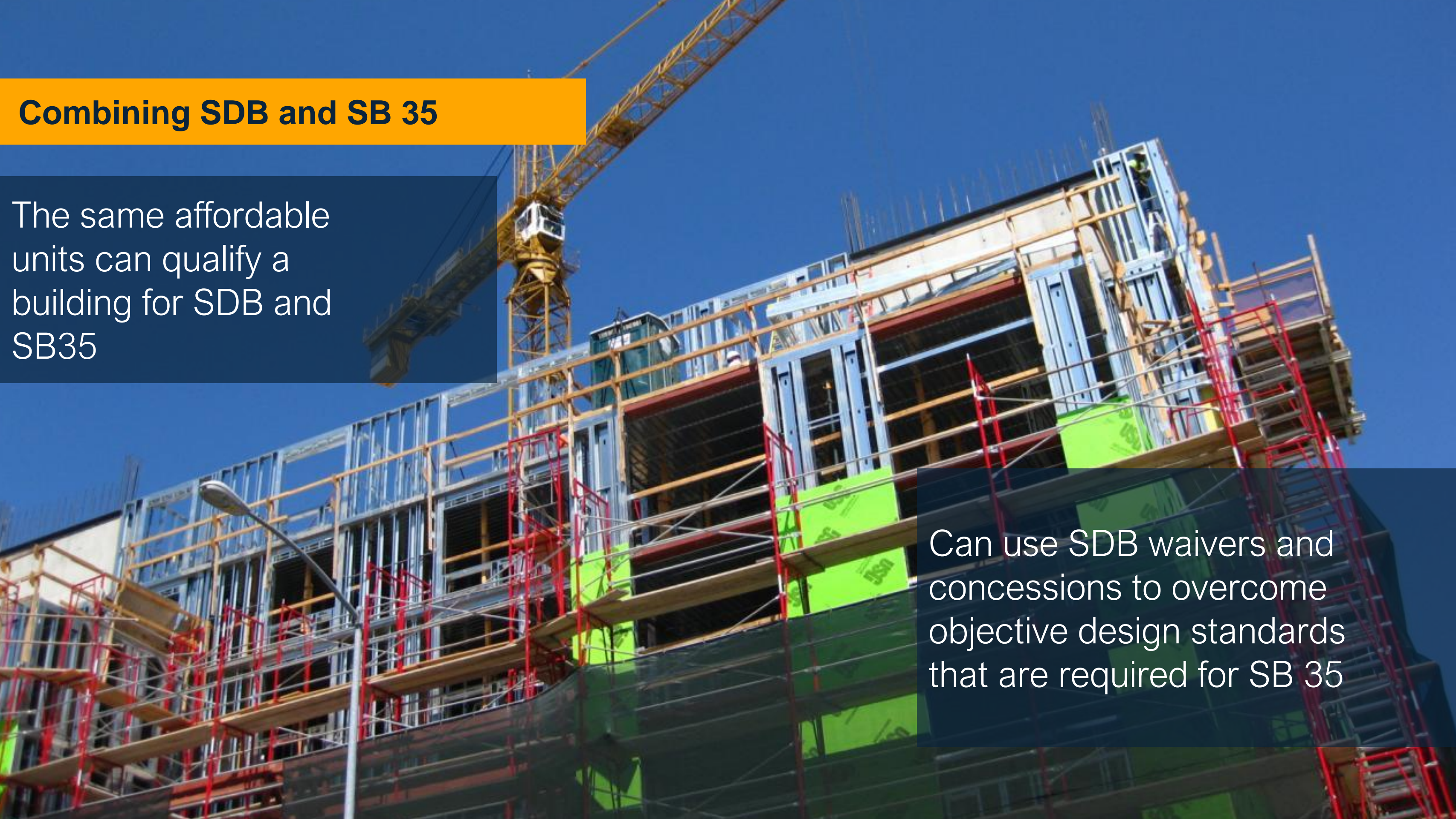
SB 35 is only available in jurisdictions that are not meeting RHNA goals.



## Bay Area SB 35 Projects

Most SB 35 projects are 100% affordable projects that would face labor standards in any event.





## Combining SDB and SB 35

The same affordable units can qualify a building for SDB and SB35

Can use SDB waivers and concessions to overcome objective design standards that are required for SB 35

## Example: 3600 San Pablo Ave. Emeryville

SB 35 enabled approval in 4 months with no CUP and no CEQA.

SDB allowed 90 units where zoning would have limited to 37.

Waivers: building height, bedroom mix, minimum ground floor retail area, max FAR, and open space requirements



# State Law and Local Programs





## Base vs. Total

If your local inclusionary policy requires 15% affordable, what happens when a project takes a density bonus?





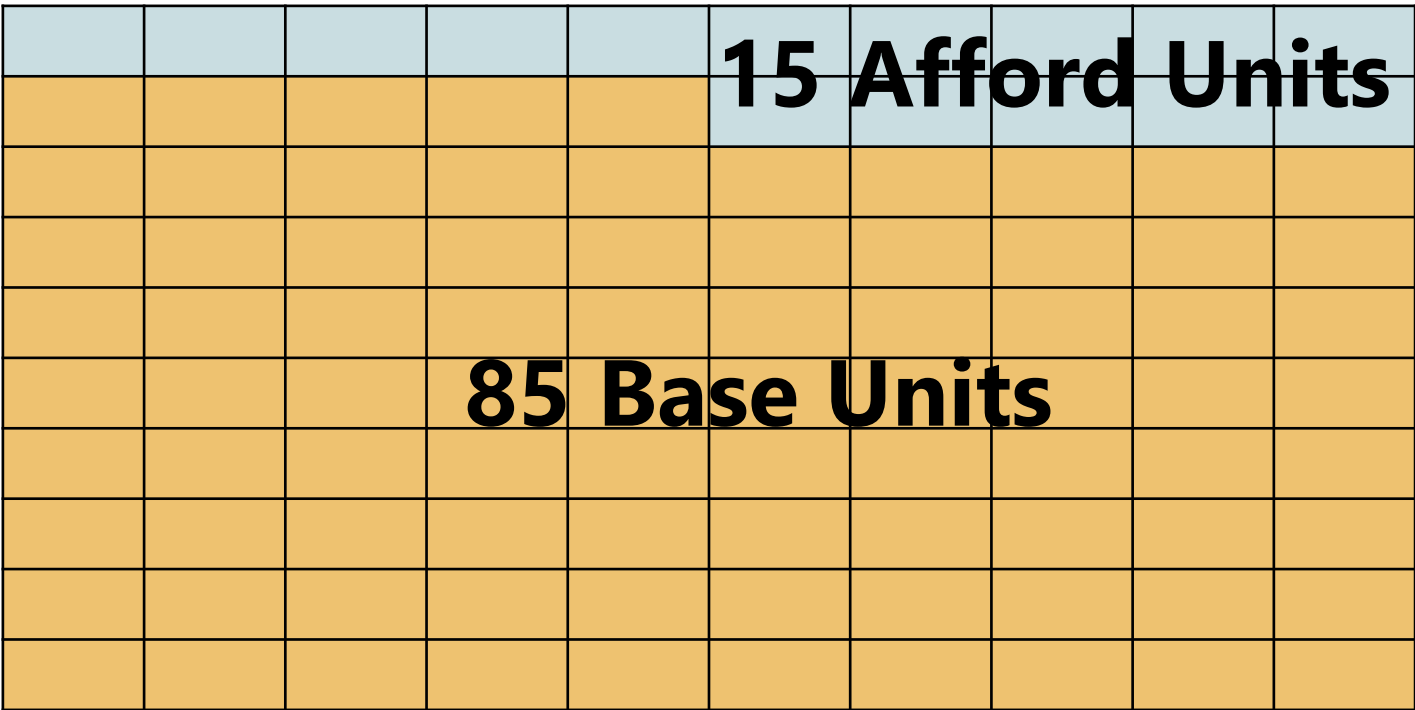


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- 100 unit development
- 15% affordable (at VLI)
- 50% density bonus

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15	50

**Base vs. Total**

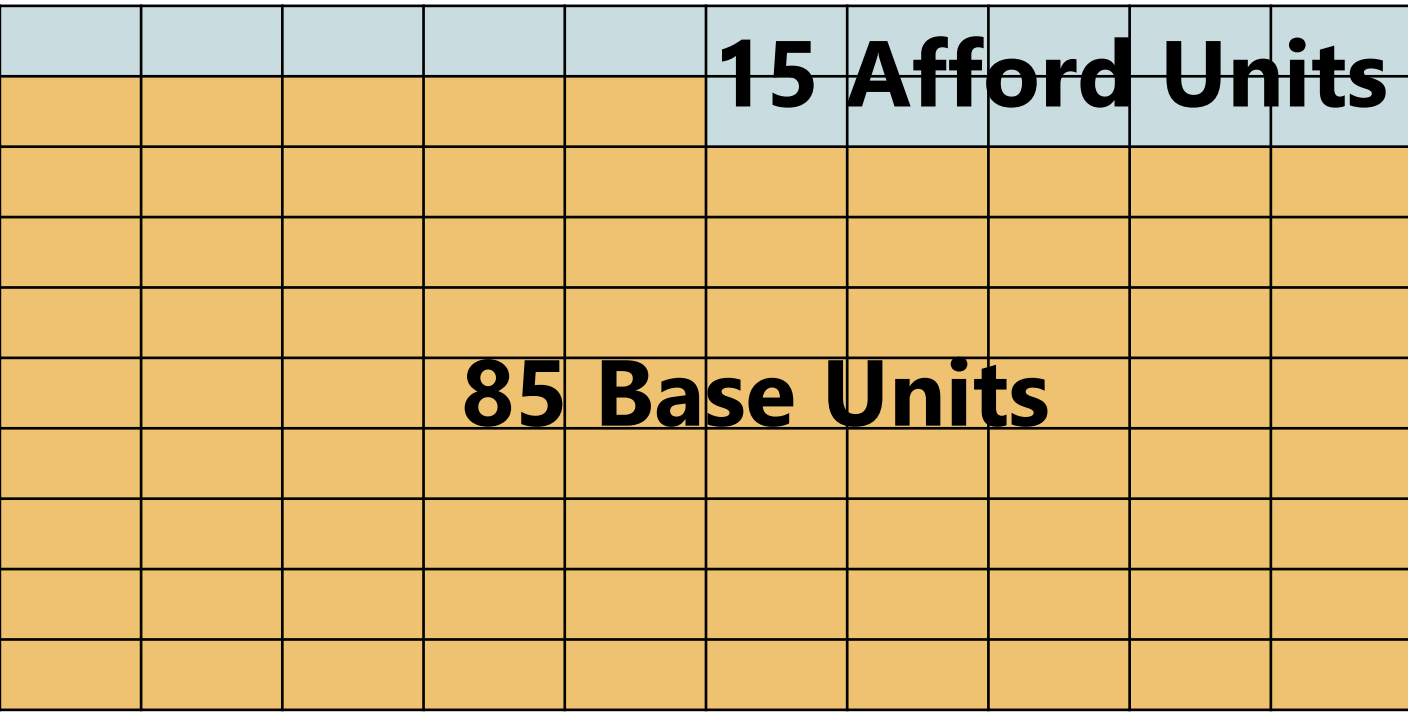
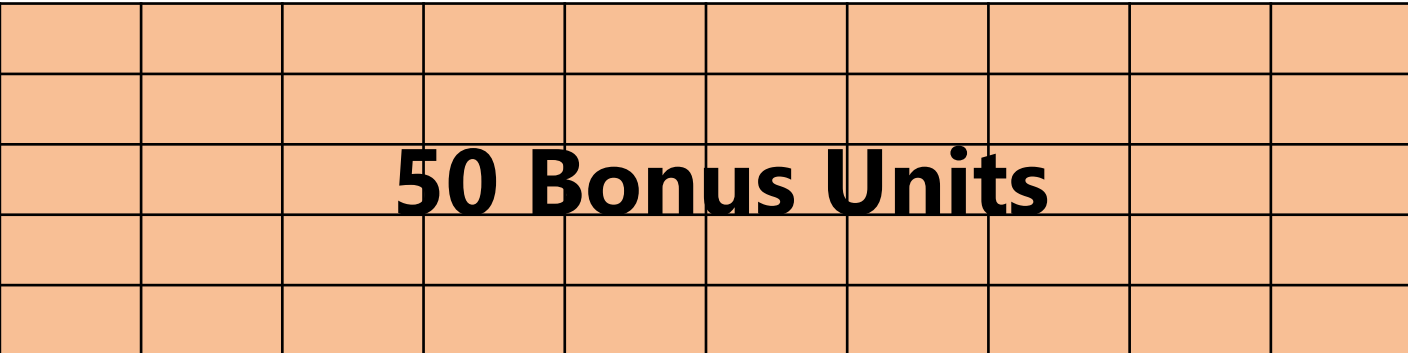


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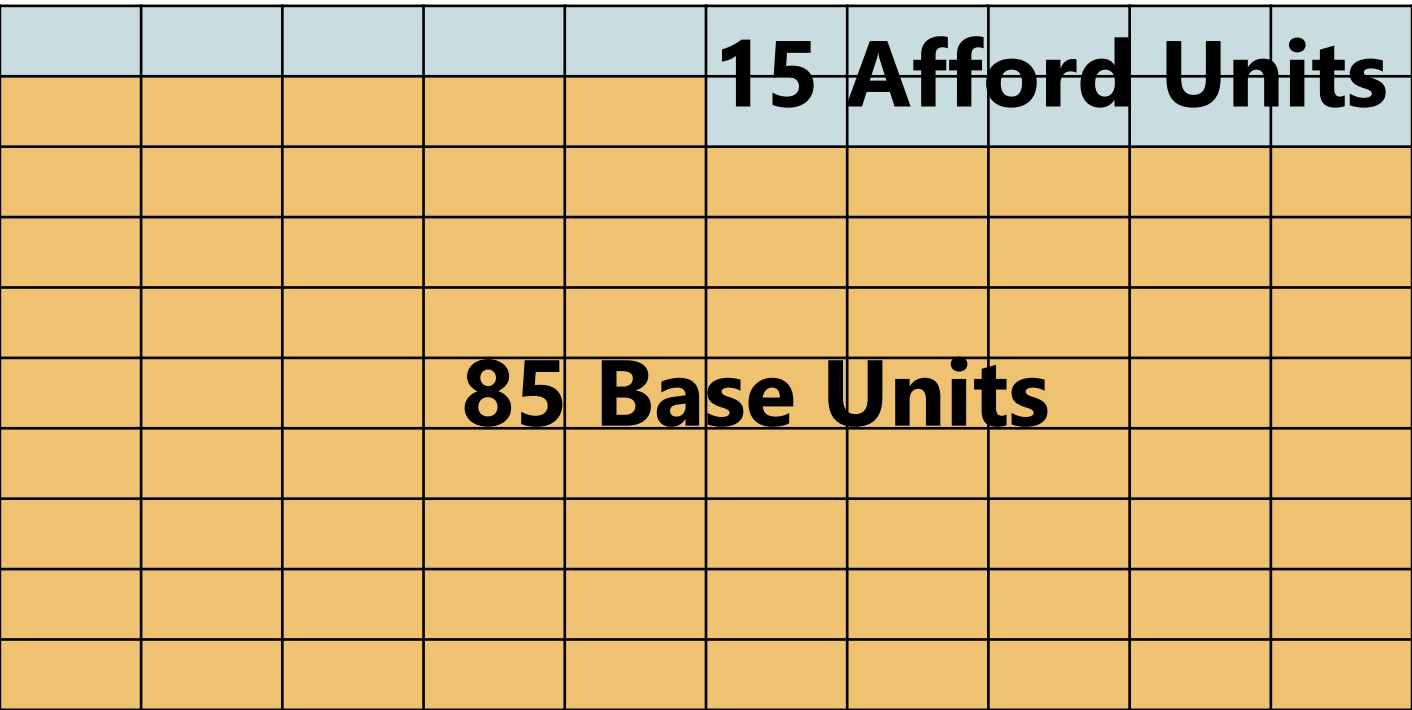
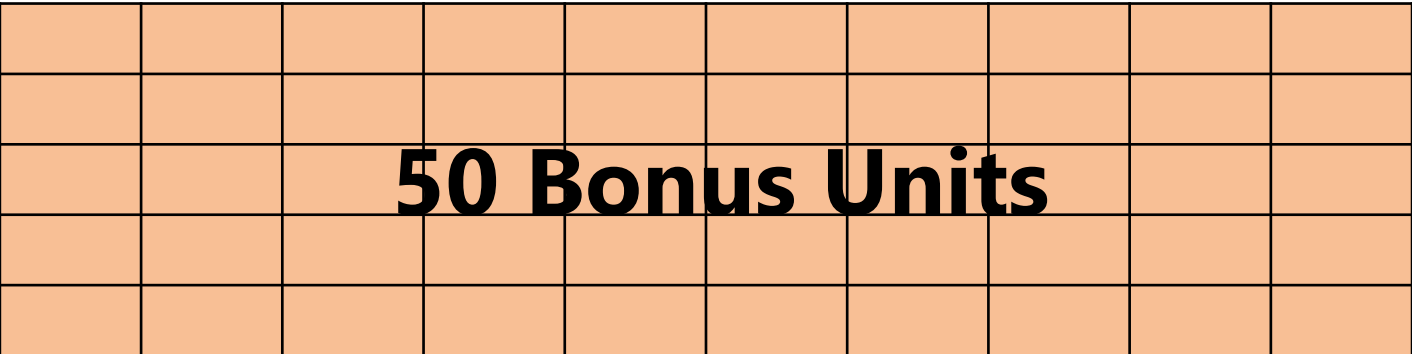


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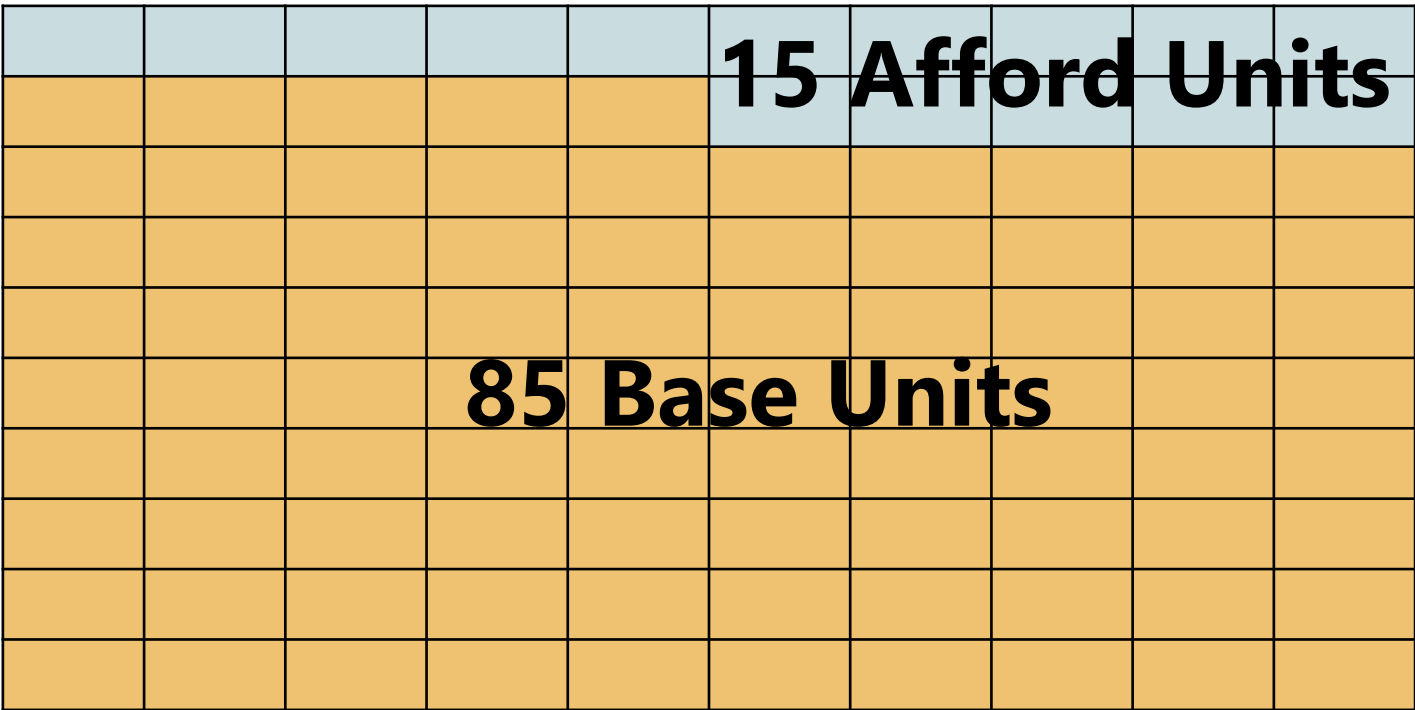
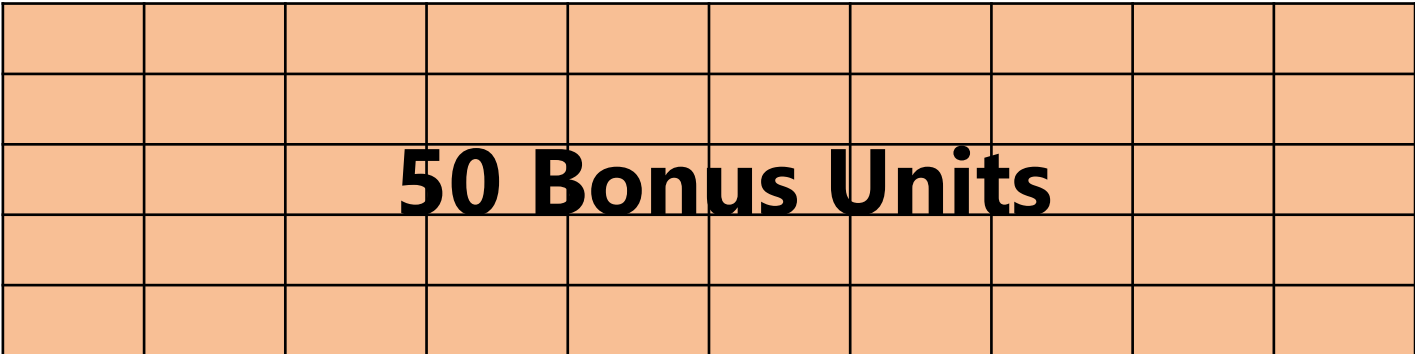


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 % of units afford for density bonus  
 $15/100 = 15\%$   
 % of units affordable in real life  
 $15/150 = 10\%$

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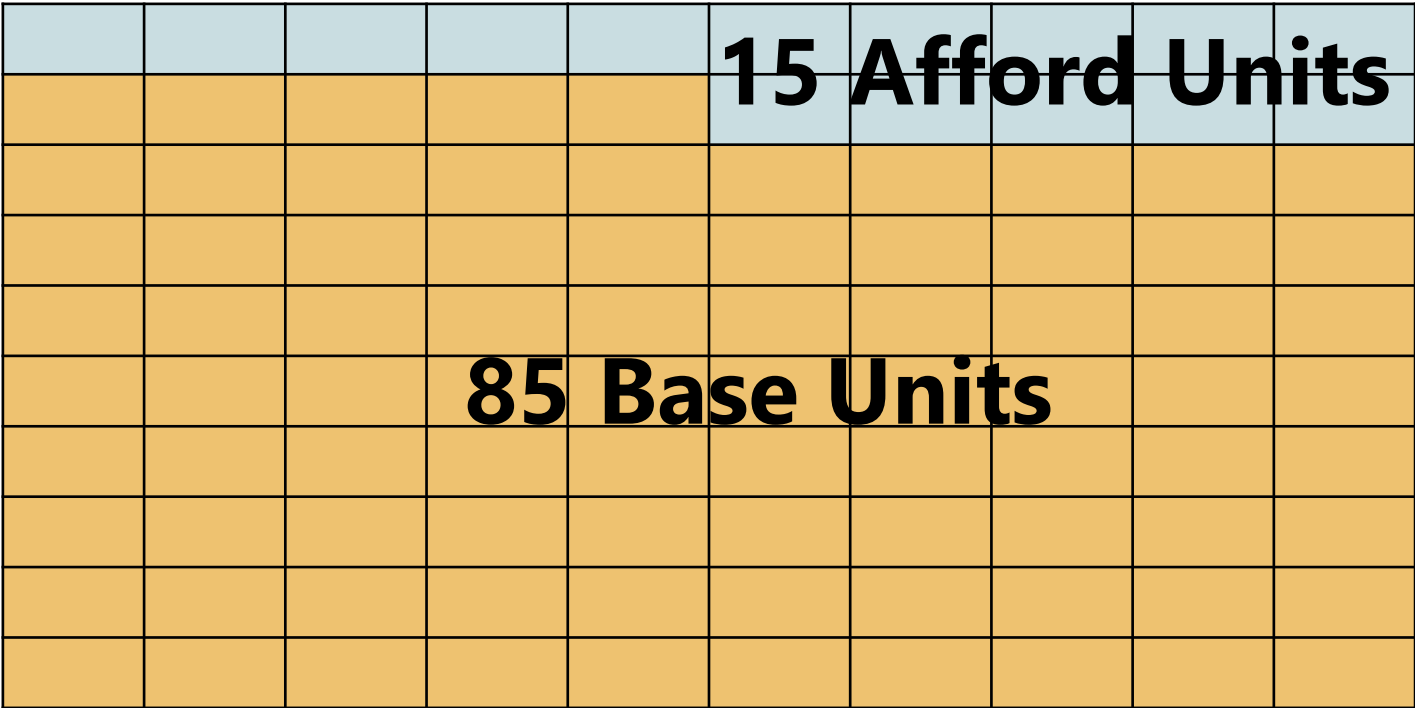
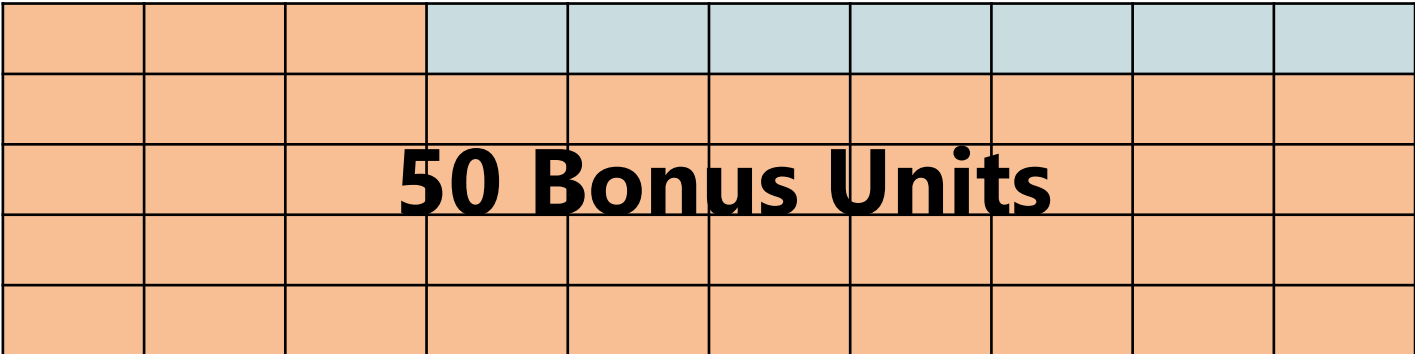


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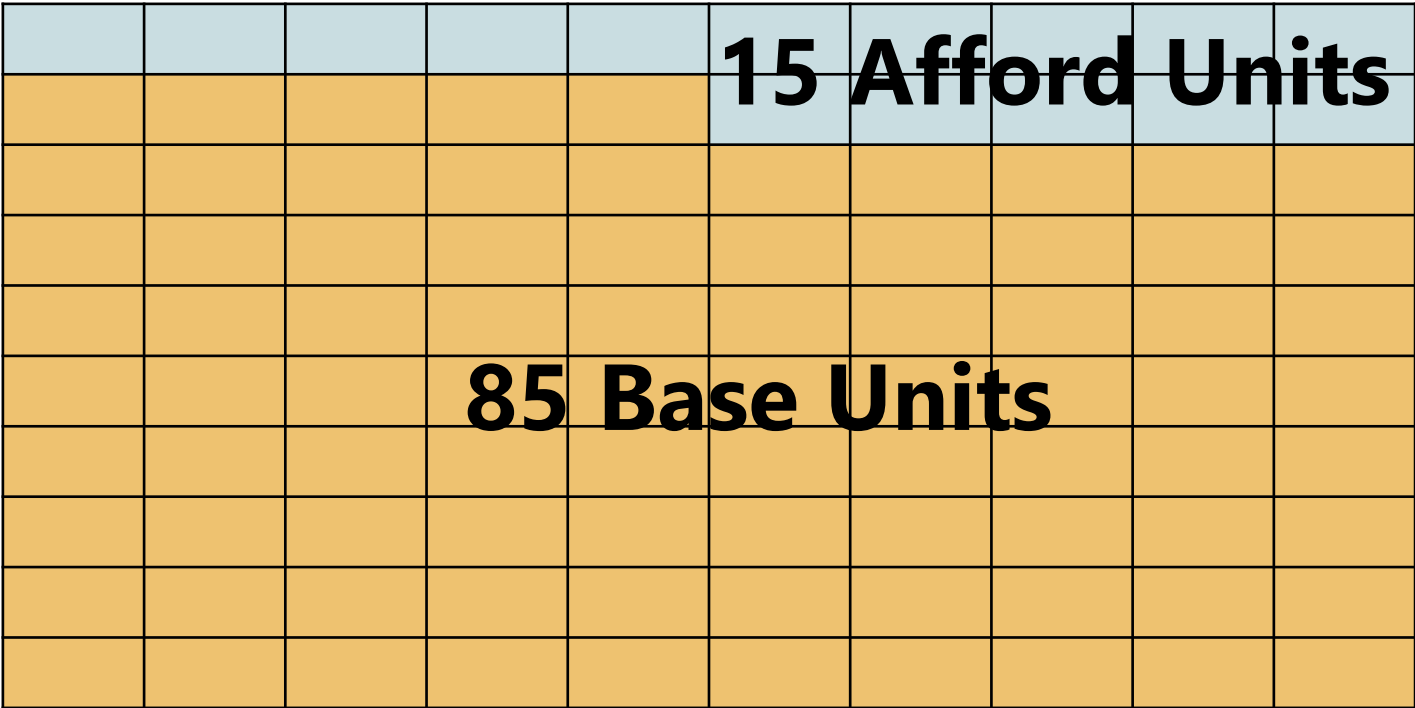
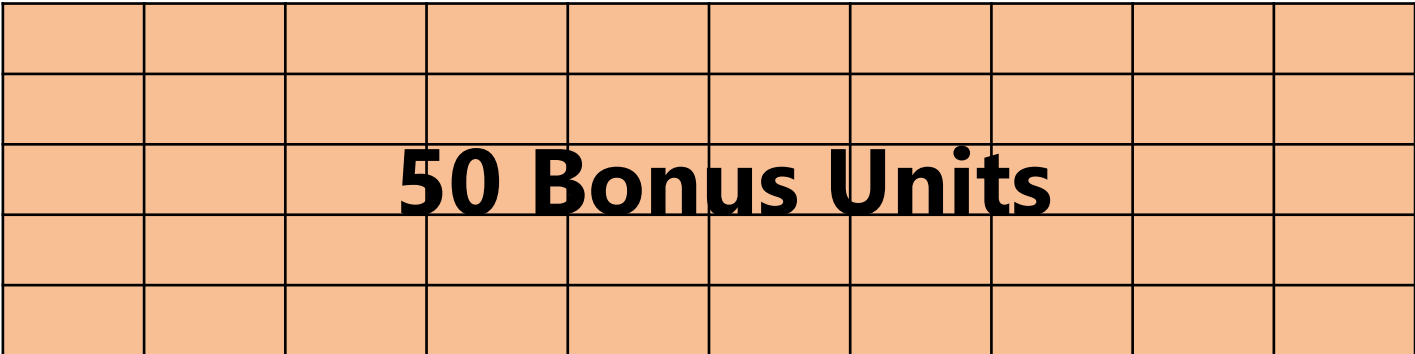


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**Base vs. Total**





## Double Counting

A 2013 Court case\* found that units required under an IZ ordinance could be used to qualify for SDB. A jurisdiction could not require that they not be double counted.

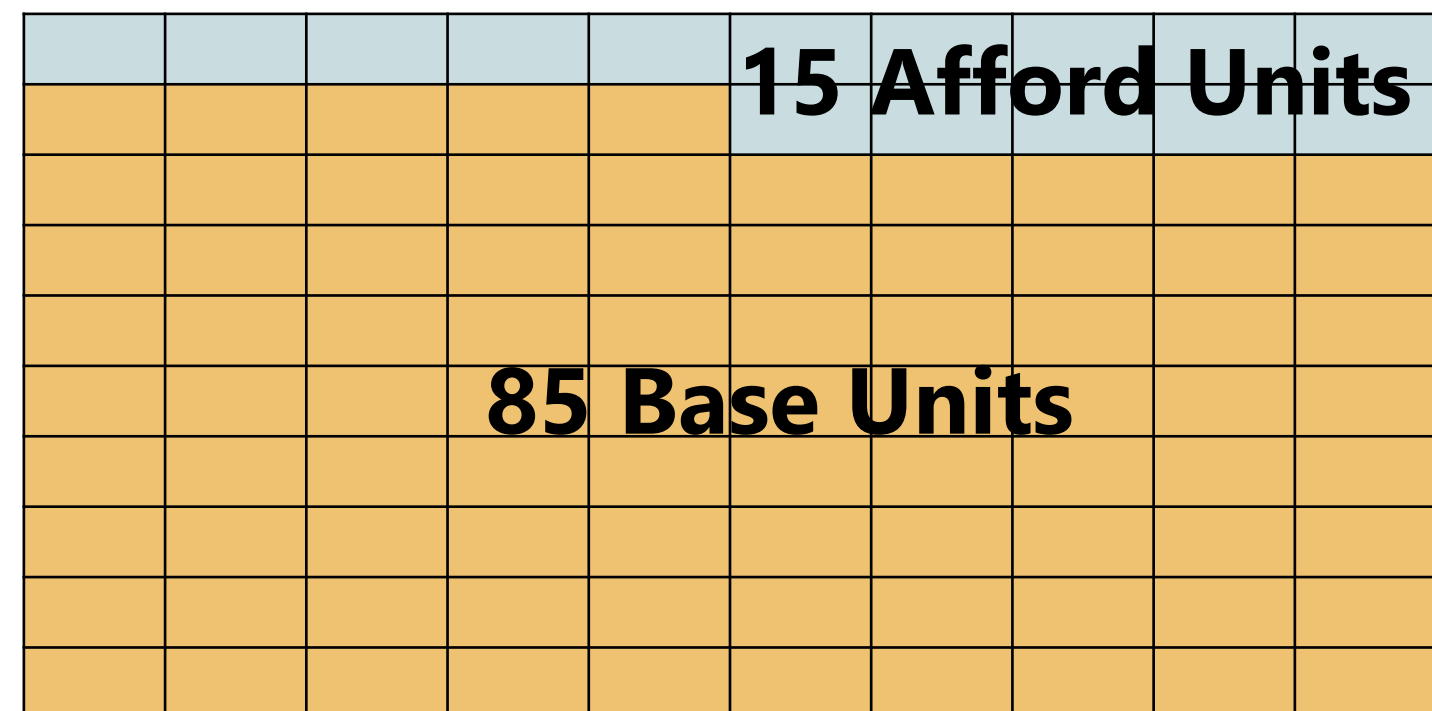
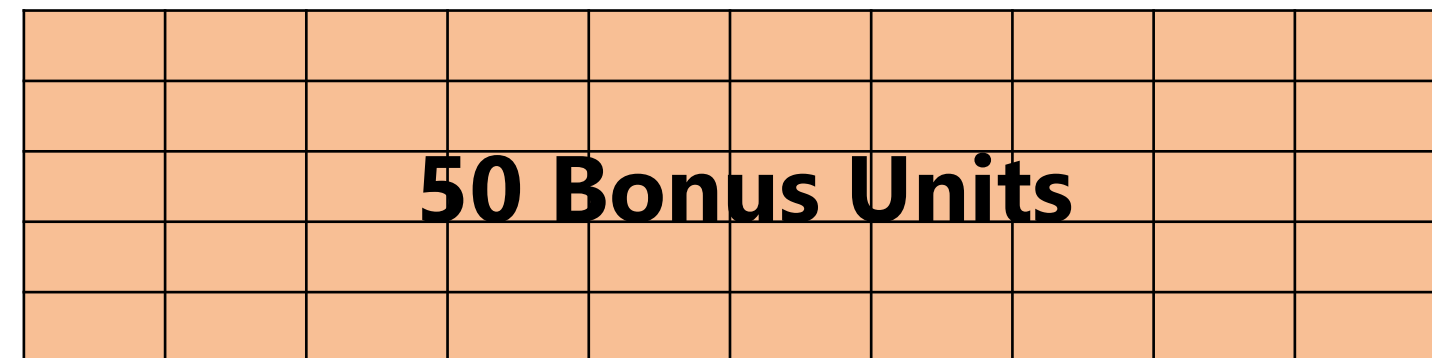
*\*Latinos Unidos del Valle de Napa y Solano v. County of Napa*

Can a city charge in lieu fees based on the 'bonus' units?

# Can a city charge in lieu fees based on the 'bonus' units?

- 100 Unit development
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- 50% density bonus
- Percent of units affordable for density bonus - 15%
- Percent of units affordable in real life – 10%

Percentage Very Low Income Units	Percentage Density Bonus
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All SDB units have to be the same income category (VLI, etc.). What happens when an IZ ordinance requires multiple categories?









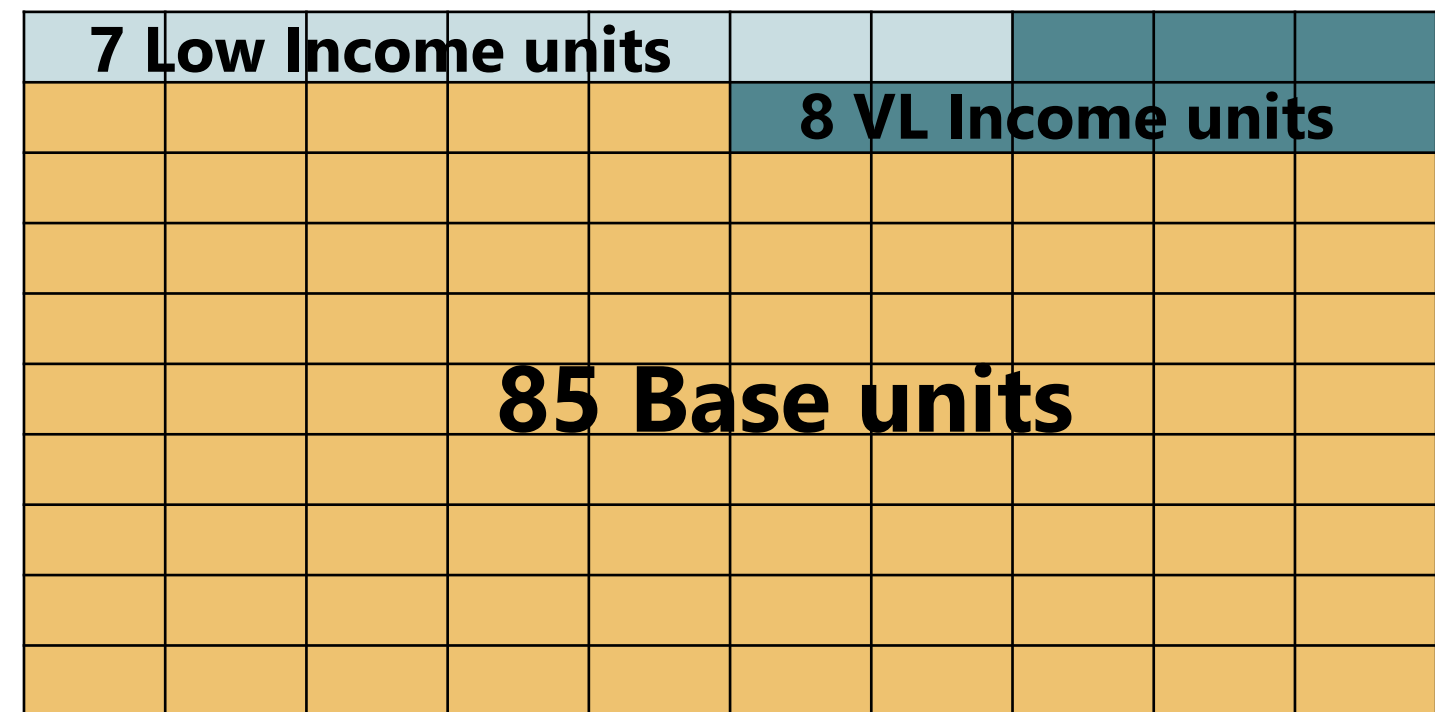


All SDB units have to be the same income category (VLI, etc.). What happens when an IZ ordinance requires multiple categories?

- 100 Unit development
- 15% affordable
  - 7.5% Very Low Income
  - 7.5 % Low Income

Percent <b>Very Low</b>	Bonus
5	20
6	22.5
7	25
8	27.5
...	...
15	50

Percent <b>Low</b>	Bonus
Under 10	Not eligible
10	20
11	21.5
12	23
...	
15	27.5

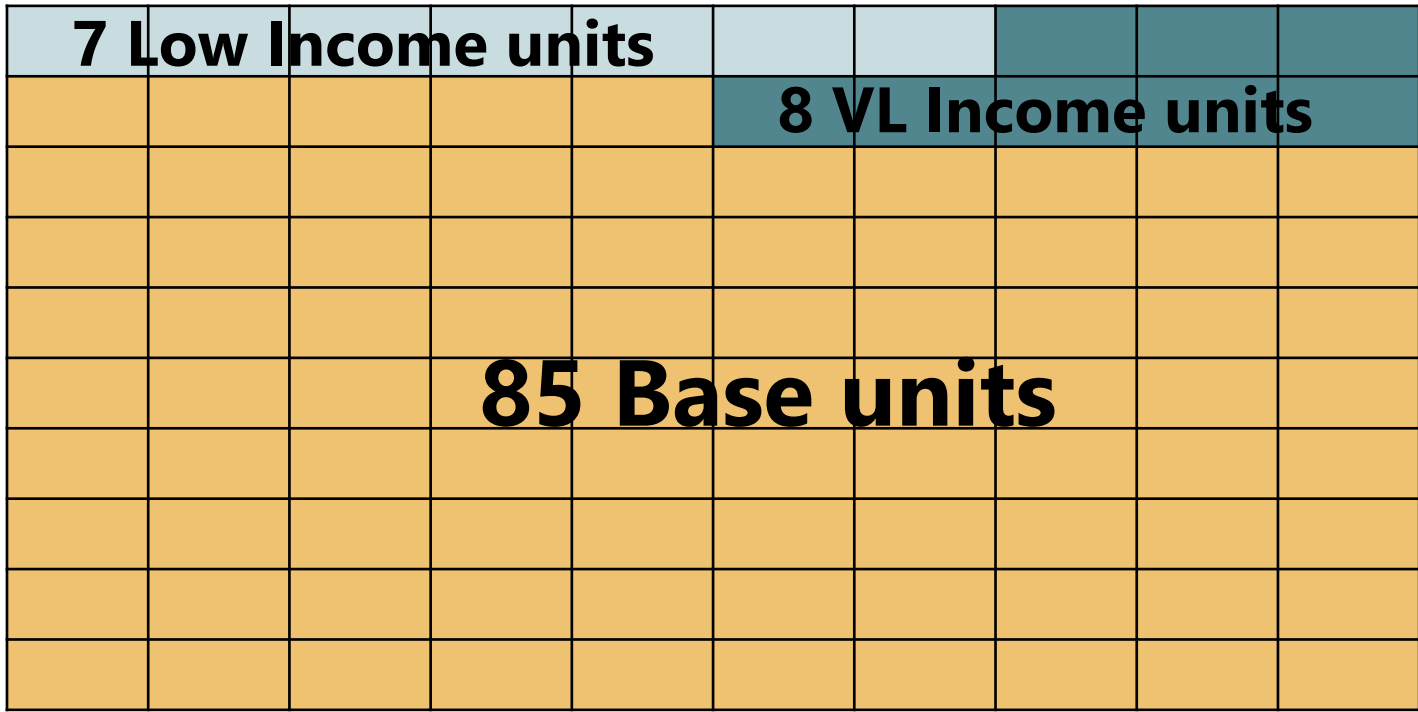
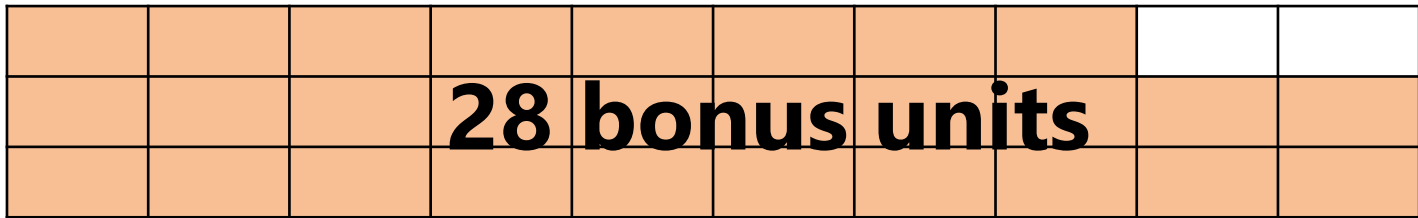


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Percent <b>Low</b>	Bonus
Under 10	Not eligible
10	20
11	21.5
12	23
...	...
<b>15</b>	<b>27.5</b>



## Setting Rents

What if your IZ ordinance sets rents based on different assumptions than SDB?

## Setting Rents (2)

What if your IZ ordinance sets rents based on different assumptions than SDB?

Where do you  
set the rent?  
Based on \$80

Median income,  
\$100 a year

Lower income (max)  
\$80



## Setting Rents (3)

What if your IZ ordinance sets rents based on different assumptions than SDB?

Where do you  
set the rent?

Median  
income, \$100

Lower income (max)  
\$80

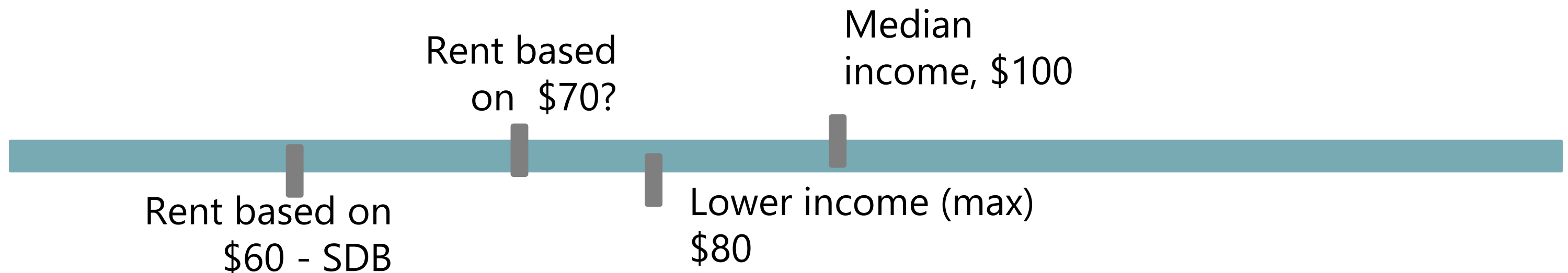


## Setting Rents (4)

Imagine a scenario where a developer provides extra affordable units to get a better density bonus.

What would happen if your IZ rents were set at 70% of AMI

What if your IZ ordinance sets rents based on different assumptions than SDB?





# Monitoring

Can you monitor SDB units just like local BMR units?

Can you impose the same rules for marketing, preferences, period of affordability, Monitoring fee, design quality/quality of finishes. Etc.?

## Small Projects

What if your IZ policy requires small buildings to pay fees instead of providing onsite units?

## Encourage/Discourage

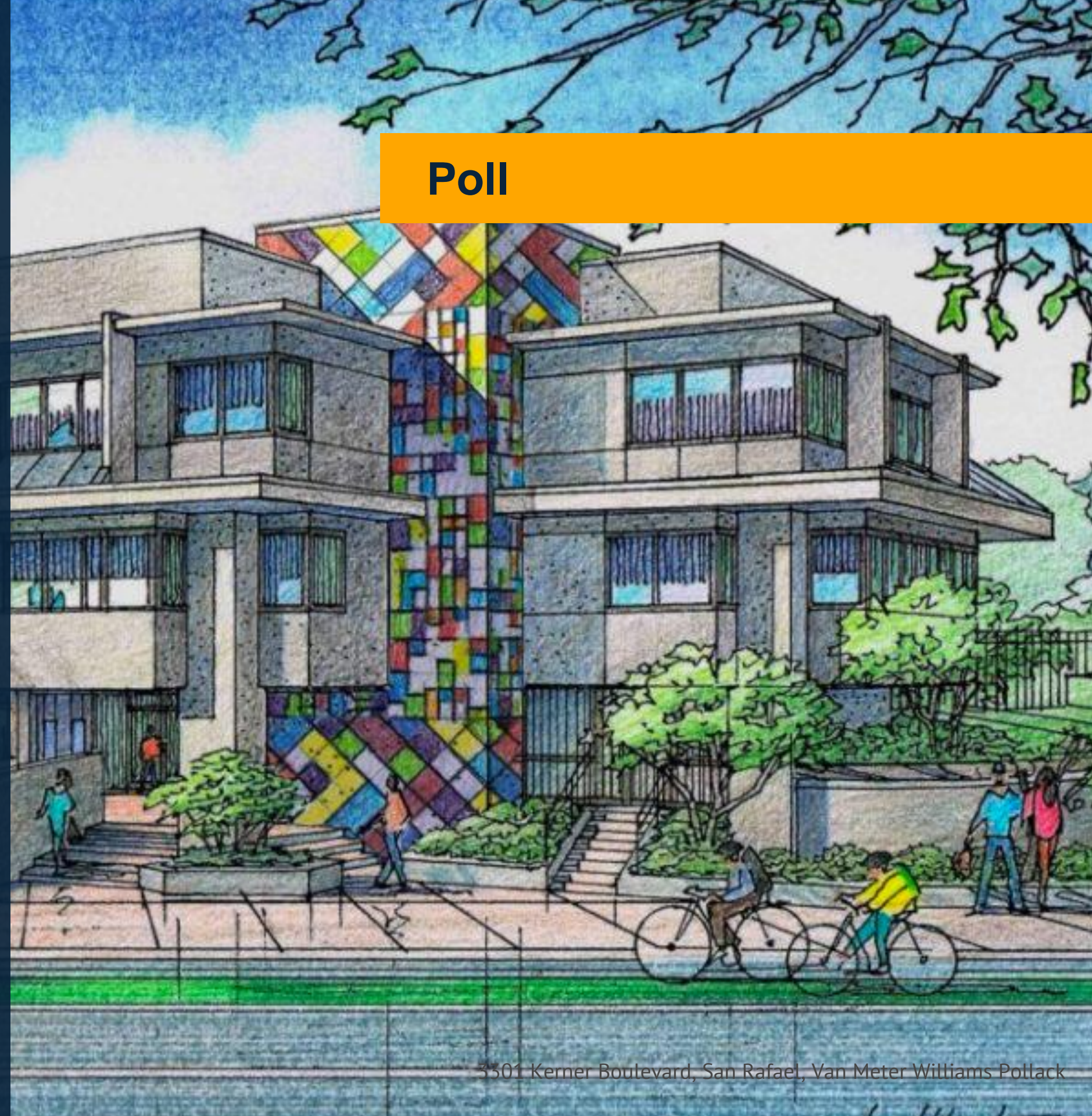
### Policy Choices to Encourage or Discourage Density Bonus

Encourage Density Bonus	Discourage Density Bonus
Require all one income level	Distribute between income levels
Provide options (particularly a VLI option)	Require low or moderate income units (no credit for reaching deeper)
Allow compliance through flexible combination of units and fees	Require choice between fees or units
Set rent requirements to match SDB (ie. 60% for LI units)	Set rents some other way

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1. Have you made any changes to your IZ policy because of the state density bonus or SB 35?
2. Do you try to encourage or discourage the use of Density Bonus in your IZ Program?
3. Does your jurisdiction monitor SDB units?
4. Does your IZ policy allow projects to combine fees and units (ie. Build some units and pay a fee for the rest)?

## Poll



# Questions/Discussion



Image: Wilton Court, Alta Housing

# Maximizing the Impact



## Local Density Bonuses

Can a local bonus program get more affordable units by offering more valuable incentives?

# San Rafael Downtown Plan

San Rafael adopted a local policy to offer increased height in exchange for affordable housing.

Developers have been using the SDB instead because it includes waivers and concessions.





375 NAPLES ST

(E) 379 NAPLES ST

## Smaller Projects

(N) 379 NAPLES ST

387 NAPLES ST

SDB is limited to projects with more than 5 units. What about smaller projects?

## Case Study: San Diego's ADU Density Bonus

*San Diego's ADU Bonus program allows owners to build more ADUs than would otherwise be allowed. For each deed restricted affordable ADU they can build a market rate ADU.*



Source: San Diego Housing Commission, 2022

## Case Study: San Diego's ADU Density Bonus (2)

### **Four Key Elements that make the program work:**

1. Unlimited bonus ADUs in Transit Priority areas increase project feasibility
2. By-right ministerial approvals shorten permitting timeline
3. Regulatory agreement for the deed-restricted units to be recorded junior to the primary mortgage
4. For deed-restricted units, the San Diego Housing Commission completes income certification

BUILDING B

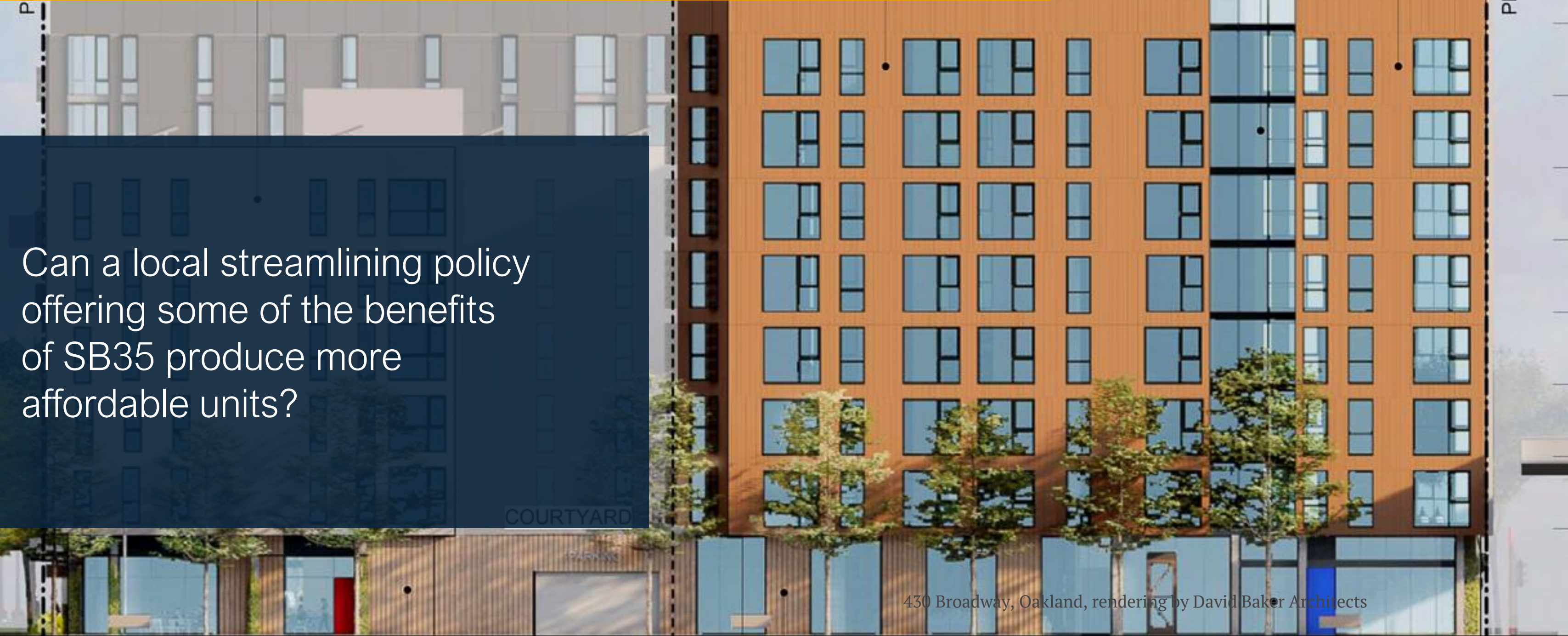
BUILDING A

TY LINE

PROPERTY LINE

# Local Streamlining Programs

Can a local streamlining policy offering some of the benefits of SB35 produce more affordable units?



F

C

COURTYARD

430 Broadway, Oakland, rendering by David Baker Architects

MARKET HALL

D

GARAGE ENTRY

D

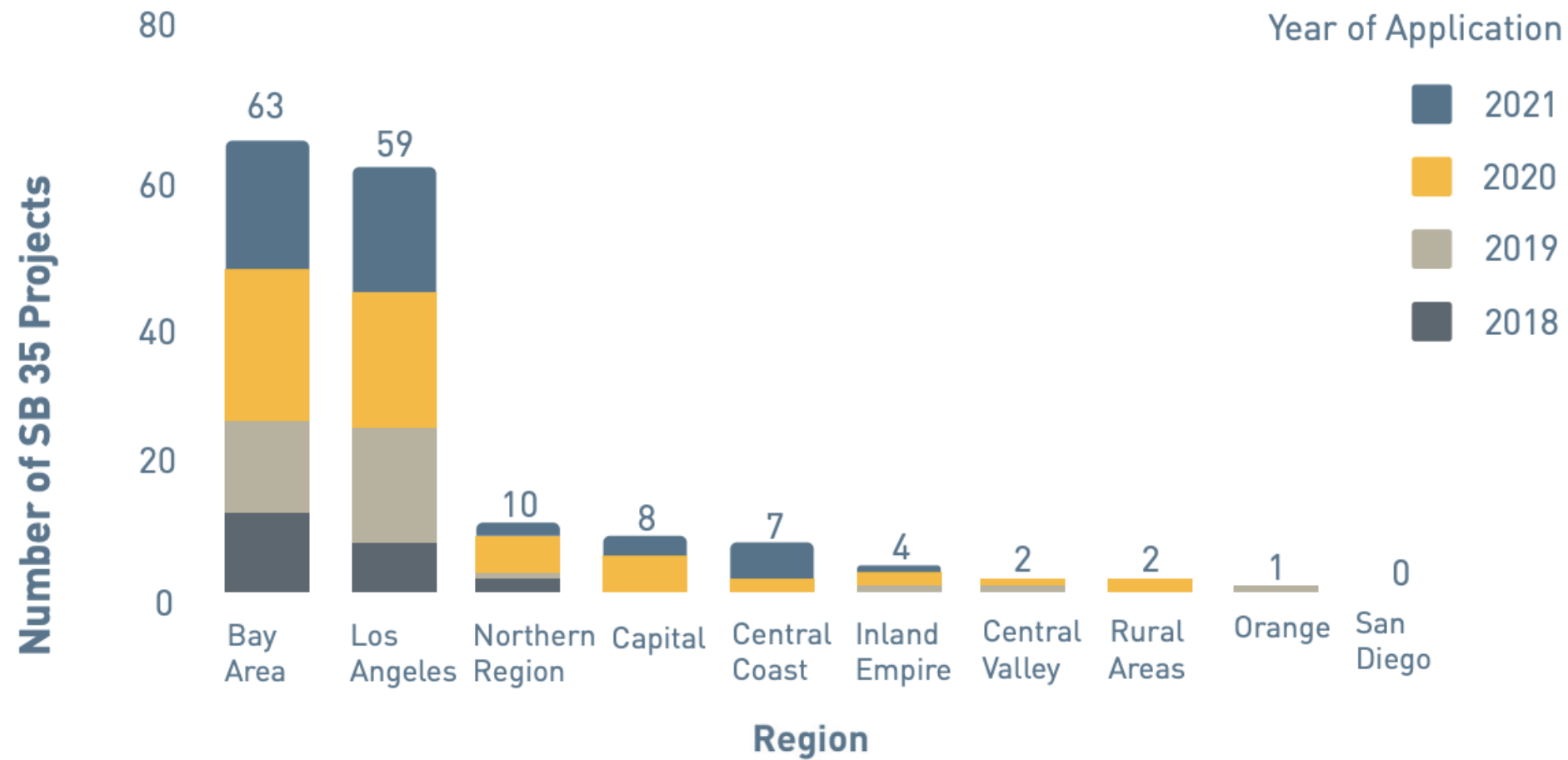
COMMON

ENTRY

F

FLEX

# San Diego



San Diego has had no SB 35 projects. The Turner Center attributes this to local programs that offer even faster approvals without other SB35 requirements.

## Sebastopol

Sebastopol is planning to allow 'by right' approval of housing projects in commercial zones if the projects have 40% affordable units.

This could encourage mixed income projects because it would offer benefits of SB35 without other state requirements.



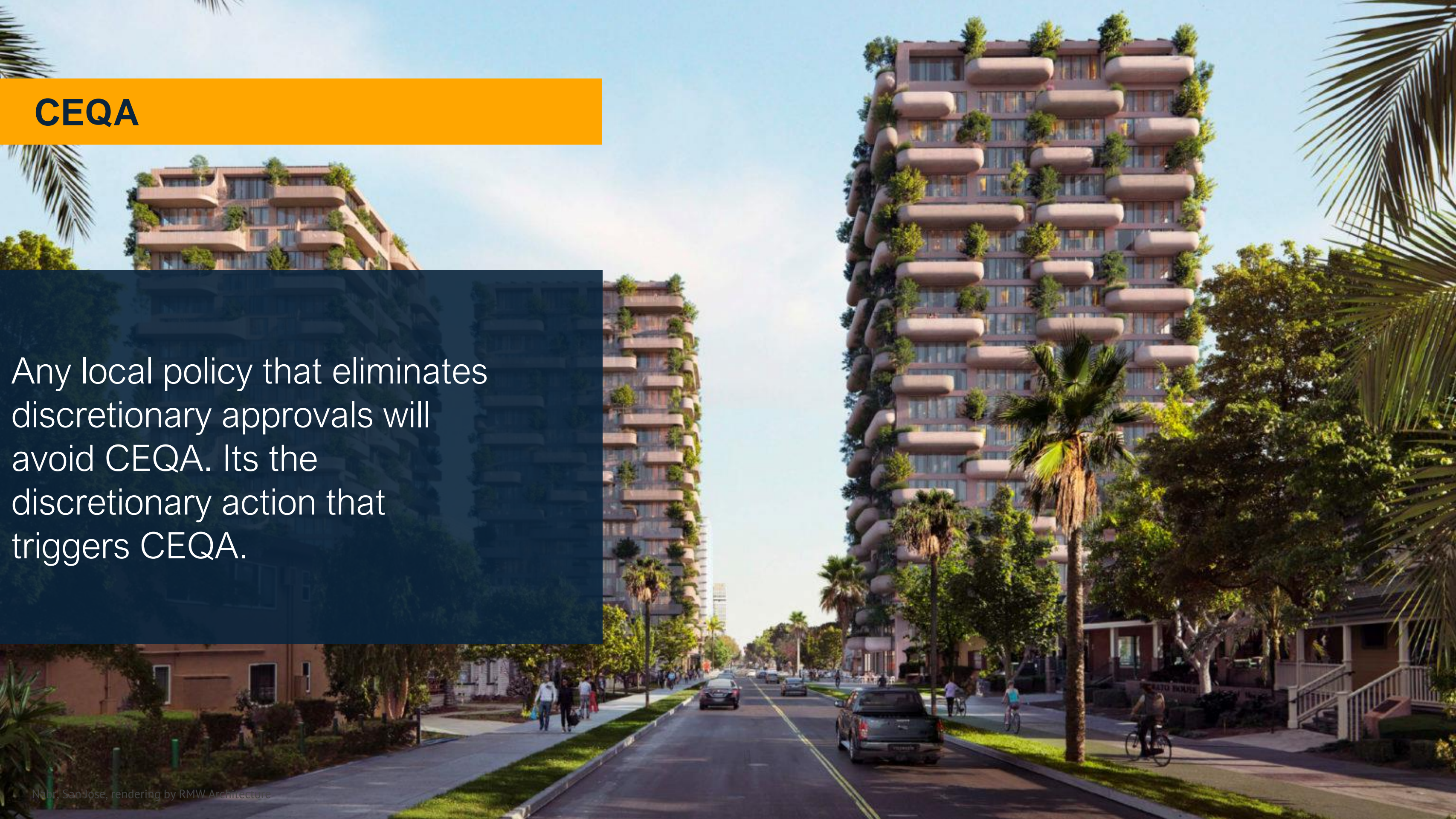
## Oakland

Oakland is developing a streamlining ordinance that will offer the benefits of SB35 to small projects when they pay an in lieu fee rather than provide onsite units.

436 Oakland Avenue, Stanley Saitowitz Natomas Architects

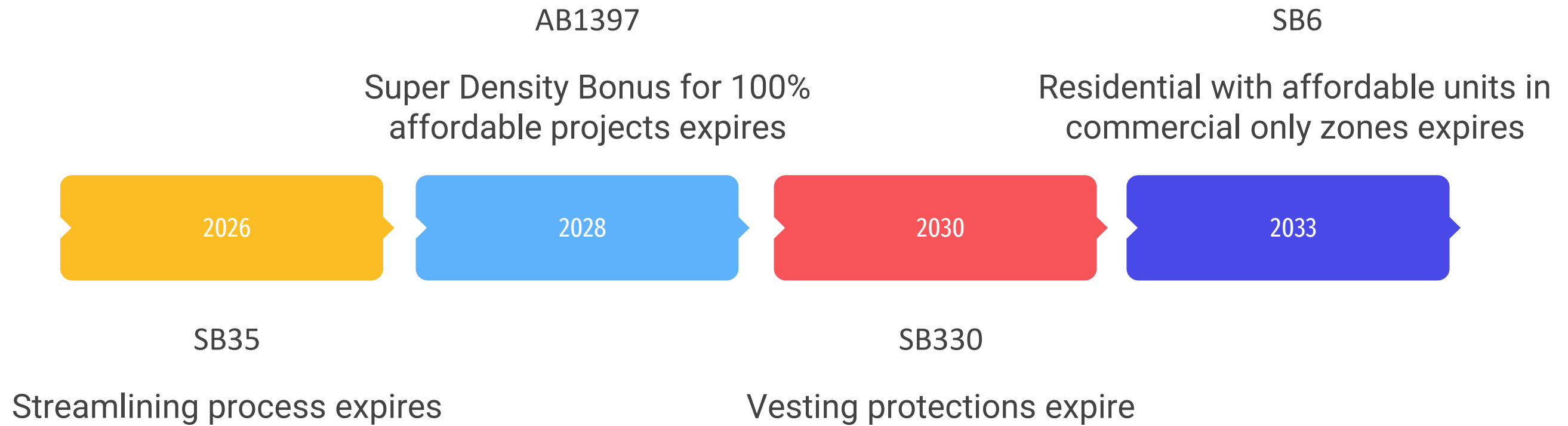
# CEQA

Any local policy that eliminates discretionary approvals will avoid CEQA. It's the discretionary action that triggers CEQA.





## Extend Timelines

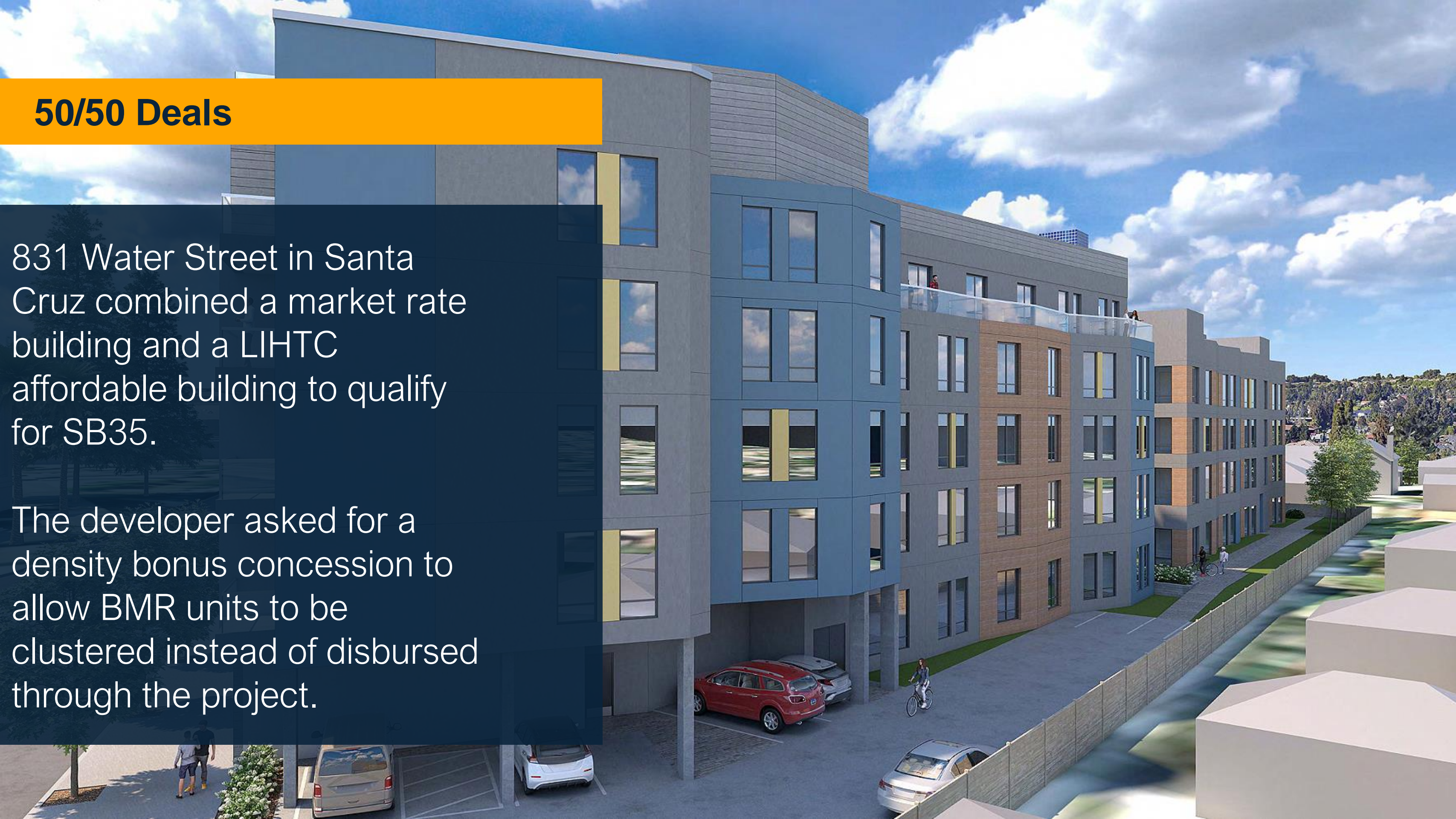


Local policies can extend the time period of current state laws to provide more certainty for development.

## 50/50 Deals

831 Water Street in Santa Cruz combined a market rate building and a LIHTC affordable building to qualify for SB35.

The developer asked for a density bonus concession to allow BMR units to be clustered instead of disbursed through the project.



## San Jose - Partnership for Clustered Units Option

- 15% affordable units - may be clustered in same building or contiguous parcel
- Affordable project developed by city approved nonprofit sponsor
- Only if clustering is required for financing
- Developer minimum contribution = 75% of In Lieu Fee
- Affordable project built first or concurrent with market buildings

## Process Improvements

- Lists of pre-approved concessions
- Index of objective standards on the books
- Training for building and public works in objective standards
- Training and proactive outreach to Tribes re SB35



Image: Cambrian Park Village, San Jose

1. Do you have a local density bonus program that goes beyond state law?

2. Do you have a local streamlining/ministerial approval program?

3. Do you allow clustering of affordable units into 100% affordable projects?

## Poll (2)



# Best/Worst Regarding State Density Bonus

## Example Best and Worst Practices

Best Practice	Worst Practice
Have internal conversations about how to handle SDB and SB35 before you get applications	Try to figure out policy on the fly while responding to project applications
Plan to monitor and regulate SDB units	Heavily monitor IZ units but pretend SDB units don't exist
Align IZ requirements with SDB as much as possible	Leave developers and tenants to struggle with conflicting requirements

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# Questions/Discussion (2)



# Survey



1. Do you understand IZ better than when you started?
2. Have you learned anything that you will be able to implement?
3. How is the working group going overall?
4. **What other help do you need?**  
Post in chat or email:  
[Harmon@PlanningCollaborative.com](mailto:Harmon@PlanningCollaborative.com)



## Office Hours

- *Use Calendly Link to reserve a time for 1-1 consultation*
- *<https://calendly.com/joshabrams/zoning-for-affordability>*

Image: Mayfair Station, El Cerrito

# Thank You



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