

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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July 28, 2023

Anish Saraiya, Planning and Public Works Deputy and Senior Advisor
5th District, County of Los Angeles Board of Supervisors
500 West Temple Street, Room 869
Los Angeles, CA 90012

RE: 740 E. Foothill Boulevard – Letter of Technical Assistance

Dear Anish Saraiya:

The California Department of Housing and Community Development (HCD) received a request from National Core (Applicant) for technical assistance regarding the project proposed at 740 E. Foothill Boulevard (Project). The purpose of this letter is to assist the County of Los Angeles Board of Supervisors (Supervisors) with its decision-making by providing technical assistance related to the By-Right Supportive Housing Law (Gov. Code, §§ 65650-65656), State Housing Element Law (Gov. Code, § 65580-65589.11), and its duty to Affirmatively Further Fair Housing (AFFH) (Gov. Code, § 8899.50) in relation to the Project.

Background

HCD is aware that the Applicant initially proposed to develop a five-story, 54-unit permanent supportive housing development project for individuals experiencing homelessness and submitted its project application to the County of Los Angeles Department of Regional Planning (DRP) on December 12, 2022. A revised project application was submitted to DRP on June 12, 2023, and the Project has now been revised to a four-story 43-unit permanent supportive housing development serving seniors experiencing homelessness. In the revised project, 39 units will be for very low-income households while 3 units will be for extremely low-income (ELI) households. The manager's unit will be market rate. HCD understands that the Applicant has requested the by-right streamlined review process for qualifying supportive housing projects pursuant to Government Code sections 65650-65656 as well as a density bonus and waivers pursuant to State Density Bonus Law (SDBL).

The Applicant has applied for NOFA28 funding through the Los Angeles Development Authority (LACDA). According to the technical scores and funding recommendations document released by LACDA on March 1, 2023, LACDA has recommended approval of the funding to the Supervisors. The document lists all of the applications received

during the NOFA28 cycle and highlights projects being recommend for funding, which include the Project at 740 E. Foothill Boulevard.¹ It is HCD's understanding that the Supervisors must ultimately take an action at a public hearing to approve the NOFA28 funding for the Project.

The Project's NOFA28 funding application was initially placed on the April 18, 2023, Supervisor's agenda.² It appears the item was postponed to allow for more community outreach to address concerns from residents in the neighboring cities of San Dimas and La Verne.³ HCD understands the Applicant has since conducted several community outreach meetings and revised the Project design, including reducing the unit count from 54 to 43 units. It is HCD's understanding that the review of the NOFA28 funding for the Project has not yet been placed back on the Supervisors' agenda.

By-Right Supportive Housing Provisions (Gov. Code, §§ 65650-65656)

In 2018, Assembly Bill (AB) 2162 (Chapter 753, Statutes of 2018) was signed into law to reduce barriers that inhibit the development of permanent supportive housing throughout the state. The bill, effective January 1, 2019, is codified in Article 11 of the California Government Code beginning with section 65650. In sum, the statute requires all local jurisdictions to approve, within statutory timeframes, proposed permanent supportive housing developments that comply with the specified criteria listed in Government Code section 65661, subdivision (a). It is HCD's understanding that both the original Project application and revised Project application meet the requirements to qualify for by-right review under AB 2162.

HCD is aware that the County of Los Angeles will review the Project. Specifically, DRP will review the Project entitlements and the County of Los Angeles Board of Supervisors will review the Project's NOFA28 application. Accordingly, the main provisions of the statute are summarized below to assist with the County's review and decision making.

Supportive Housing as a Use by Right

Supportive housing shall be a use by right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the

¹ NOFA28 Technical Scores and Funding Recommendations, Los Angeles County Development Authority, March 1, 2023, https://www.lacda.org/docs/librariesprovider25/affordable-housing-programs/multifamily-rental-housing---nofa/nofa-28/nofa-28-technical-scores-and-funding-recommendations-3.21.2023.pdf?sfvrsn=c4192493_1.

² Agenda for the Regular Meeting of the Board of Supervisors, County of Los Angeles, California, April 18, 2023, Item 1-D.

³ City of La Verne and City of San Dimas, Joint Statement on Proposed Affordable Housing Project at 740 East Foothill Boulevard, April 20, 2023.

proposed supportive housing project meets specified eligibility criteria. (Gov. Code § 65651, subd. (a).) “Use by right” has the same meaning as it does in Government Code section 65583.2, subdivision (i)(2), pertaining to State Housing Element Law. This definition provides, in relevant part:

For purposes of this section and Section 65583, the phrase “use by right” shall mean that the local government’s review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

Housing Element Law

The State of California remains in a housing crisis and the provision of much-needed housing, especially affordable housing, continues to be a priority of the highest order. Every jurisdiction’s Housing Element is required to include an inventory of adequate sites with sufficient capacity to accommodate its regional housing needs allocation (RHNA) by income category. (Gov. Code, § 65583, subd. (a)(3).) Though the site for the Project has not been identified in the 6th Cycle Housing Element, Los Angeles County has a 6th cycle RHNA of 90,052 units, of which 25,648 units are for very low-income residents. Approval of this Project will help meet these RHNA obligations.

The County of Los Angeles helps to advance these goals through specific housing programs in its adopted housing element. The County’s programs in its adopted 6th Cycle (2021-2029) Housing Element, in part, commit to facilitate the development of housing for lower-income special needs households in unincorporated Los Angeles County. For example (with emphasis added):

Program 34 Countywide Affordable Rental Housing Development

This program “...provides financial and technical assistance to acquire sites, develop affordable rental housing, and acquire and rehabilitate affordable rental housing within specific geographic areas...*Funds for the program are administered through a Notice of Funding Availability (NOFA) issued by LACDA.*” The program’s objective is to “...assist in the development of 350 acutely low, *extremely low and very low-income rental housing units in unincorporated Los Angeles County*” by October 2029. Program 34 is also intended to implement Policy 3.1: “Promote *mixed-income neighborhoods* and a diversity of housing types throughout *unincorporated Los Angeles County to increase housing choices for all economic segments of the population.*”⁴

⁴ Revised County of Los Angeles Housing Element, pg. 60

Program 50 Affordable Housing Programs Budgets

This program "...allocates \$100 million annually in local funding annually to producing new, or preserving existing, *affordable housing for very and extremely low-income or homeless households*, including workforce housing *and permanent supportive housing*. This program implements Policy 3.1: "Promote mixed-income neighborhoods and *a diversity of housing types throughout unincorporated Los Angeles County*" and Policy 4.1, "Provide support to individuals and *households at risk of becoming homeless*, including acutely low, extremely low, very low and low income households."⁵

As the County is aware, the State of California remains in a housing crisis and the provision of much-needed housing, especially affordable housing, continues to be a priority of the highest order. Approval of the funding for this Project will help meet this housing challenge as well as directly fulfill several of the County's stated housing goals, policies, and implementation programs such as those noted above. Further, denying the funding for this Project would be in conflict of the County's programmatic commitments.

Anti-Discrimination in Land Use Law (Gov. Code § 65008)

To inform the Supervisors' decision making in its review of the funding application for the Project, HCD reminds the Supervisors of the parameters set forth under Government Code section 65008, known as Anti-Discrimination in Land Use Law. Specifically, Government Code section 65008, subdivision (a), deems any action taken by a city, county, or other local governmental agency to be null and void if such action denies to an individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in the State due to discrimination. This law prohibits discrimination based on a protected class such as race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information. The law further prohibits discrimination based on the method of financing of any residential development or the intended occupancy of any residential development by persons of very low, low, moderate, or middle income. (Gov. Code, § 65008, subd. (a)(1)-(3).) These provisions are pertinent to the Project as the units will be reserved for very low-income and extremely low-income senior tenants experiencing homelessness.

HCD understands there has been some public opposition to the Project and that some concerns have been expressed regarding the protected characteristics of potential tenants.⁶ Please be advised that the County and Board of Supervisors should guard

⁵ Revised County of Los Angeles Housing Element, pg. 77.

⁶ City of San Dimas, Proposed Affordable and Permanent Supportive Housing Project at 740 East Foothill Boulevard, San Dimas, CA for Persons Experiencing Homelessness Notice of Opposition, May 9, 2023.

against being inappropriately influenced by potentially discriminatory statements. Federal guidance on the Fair Housing Act notes, “a land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias.”⁷

HCD understands that the LACDA does not require community engagement as part of the NOFA28 funding application.⁸ HCD also understands the Supervisors’ business processes consist of the review of NOFA funding applications on a regular basis. It appears the Supervisors have postponed the hearing of the NOFA28 application for the Project until additional community outreach has been conducted in response to opposition by the adjoining cities of San Dimas and La Verne.⁹ HCD understands the Applicant, at the request of the County, organized and facilitated community meetings, including presentations to the San Gabriel Valley Consortium on Homelessness and the Bonita Democratic Committee on May 9, 2023; May 10, 2023; May 11, 2023; May 25, 2023; and June 15, 2023.¹⁰ Additionally, the Applicant participated in a joint City Council meeting on July 6, 2023 organized by the Cities of San Dimas and La Verne. The joint meeting was attended by 5th District Supervisor Kathryn Barger and representatives of the DRP.¹¹ The Los Angeles County Code does not appear to include provisions related to community engagement as part of the review of affordable housing funding applications.¹² Please note that the Anti-Discrimination in Land Use Law further states the imposition of different requirements on a residential use by a protected class or by persons of very low, low moderate, or middle income, other than those generally imposed upon other residential uses is discriminatory. (Gov. Code, § 65008, subd. (d)(2)(A).)

⁷ Joint Statement of the Department of Housing and Urban Development and the Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, published November 10, 2016, <https://www.justice.gov/opa/file/912366/download>.

⁸ Los Angeles County Development Authority, Affordable and Permanent Supportive Housing Development at 740 E. Foothill, May 8, 2023.

⁹ Board of Supervisors County of Los Angeles, Kathryn Barger, Supervisor 5th District, An Open Letter To My San Dimas Constituents About The 740 E. Foothill Blvd. Housing Project, May 2, 2023

¹⁰ National Core, Letter to Supervisor Kathryn Barger, 5th District Supervisor of County of Los Angeles, May 31, 2023.

¹¹ City Councils of San Dimas and La Verne Joint Special Meeting Agenda on 740 E. Foothill Development Proposal, July 6, 2023.

¹² Los Angeles County Code, Article III General Powers of the Board of Supervisors. Los Angeles County Code, Title 2, Division 3, Chapter 2.36 Board of Supervisors and Chapter 2.58 Community Development Commission.

State and Local Land Use Laws and Practices and the Application of the Federal Fair Housing Act

The Federal Departments of Justice and of Housing and Urban Development have detailed guidance on the Application of the Federal Fair Housing Act within State and Local Land Use Laws and Practices.¹³ The guidance covers a variety of practices that may run afoul of the Fair Housing Act, including restricting development based on the belief that the residents will be members of a particular class, imposing restrictions or additional conditions on housing for persons in protected classes, and enforcing otherwise neutral laws or policies differently.

The guidance notes that seemingly neutral laws, policies, and practices may violate fair housing laws. It encourages jurisdictions to consider the variety of factors involved with implementing neutral practices. This could include the NOFA process, the process to place items on an agenda, and the process to make final award determinations. Please review the guidance¹⁴ and consider the impact of the practice (pulling items from the agenda and making funding determinations), the historical background of the action, the specific sequence of events, departures from the “normal procedural sequence” such as whether a jurisdiction deviated from normal application or zoning requirements, substantive departures, and legislative and administrative history.

Obligation to Affirmatively Further Fair Housing (AFFH)

AB 686 (Chapter 958, Statutes of 2018) amended Government Code section 8899.50 to strengthen California’s commitment to fair housing and access to opportunity by mandating that all public agencies must AFFH through their housing and community development programs. Government Code section 8899.50, subdivision (a)(1), defines “affirmatively furthering fair housing” as taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. The duty to AFFH extends to all of a public agency’s activities and programs relating to housing and community development. Public agencies are required to take meaningful actions to AFFH and take no action that is materially inconsistent with its obligation to AFFH. (Gov. Code, § 8899.50, subd. (b).) The Project’s site, 740 E. Foothill Boulevard, is located within a High Resource Opportunity Area according to the California Tax Credit Allocation Committee and HCD’s opportunity maps.¹⁵

¹³ Joint Statement of the Department of Housing and Urban Development and the Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, published November 10, 2016, <https://www.justice.gov/opa/file/912366/download>.

¹⁴ <https://www.justice.gov/opa/file/912366/download>

¹⁵ Affirmatively Furthering Fair Housing Data and Mapping Resources, <https://affh-data-and-mapping-resources-v-2-0-cahcd.hub.arcgis.com/>.

These maps identify neighborhoods with characteristics shown by research to support positive economic, educational, and health outcomes for low-income families. Funding this proposal and approving the Project would be meaningful steps in AFFH.

Conclusion

HCD looks forward to assisting the Board of Supervisors in its compliance with state housing laws and reminds the County that HCD has enforcement authority over the By-Right Supportive Housing law, Housing Element Law, and the AFFH, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a local government's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. (Gov. Code, § 65585, subd. (j).) HCD recognizes the challenge of interpreting ever-changing housing and land use laws and appreciates the opportunity to provide technical assistance. If you have questions or need information, please contact Deepeeka Dhaliwal of our staff at Deepeeka.Dhaliwal@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief

cc: Lynn Katano, Director, Los Angeles County Development Authority
Zoe Axelrod, Senior Planner, County of Los Angeles Department of Regional
Planning