

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

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May 24, 2022

Amy Gedney, City Manager  
City of Sutter Creek  
18 Main Street  
Sutter Creek, CA 95685

Dear Amy Gedney:

**RE: Sutter Creek/Amador County Permanent Supportive Housing Project – Letter of Technical Assistance, By-Right Permanent Supportive Housing**

The purpose of this letter is to provide technical assistance to the City of Sutter Creek (City) regarding By-Right Permanent Supportive Housing provisions (Article 11, Gov. Code § 65650-65656) in relation to an application for a 46-unit permanent supportive housing project (Project) that was filed with the City. This letter results from a request for technical assistance from Danco Communities (Applicant) and serves as a follow up to the initial phone conversation between HCD and City staff that occurred on March 24, 2022.

**Background**

The project site is located at the northeast corner of Valley View Way and Bowers Road, APN 044-020-057. The Applicant proposes to construct a new, 46-unit multifamily residential development on the approximately 2.06-acre site. HCD understands that 100 percent of the units, excluding a managers' unit, would be permanent supportive housing units for lower-income households.<sup>1</sup> The site for the proposed project has a general plan land use designation of Residential High Density and a zoning designation of R-4, Multiple Family Dwellings.

**By-Right Supportive Housing Provisions (Article 11, Gov. Code, § 65650-65656)**

In 2018, the Governor signed AB 2162 to reduce zoning 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

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<sup>1</sup> For purposes of Article 11 compliance, "lower income households" has the same meaning as defined in Section 50079.5 of the Health and Safety Code (Gov. Code § 65651, subd.(a)(2)).

with section 65650. In sum, the statute requires all local jurisdictions to approve, within statutory timeframes, proposed permanent supportive housing developments that comply with specified criteria. The main provisions of the statute are summarized below.

### *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 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),<sup>2</sup> pertaining to State Housing Element Law. This definition provides the following 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 (CUP), 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.

### *Review and approval timeframes*

Following a determination of application completeness, local governments must complete their review of by-right supportive housing project applications within specified timeframes. Specifically, the review must be completed within 60 days after the application is complete for a project with 50 or fewer units, and within 120 days after the application is complete for a project with more than 50 units. (Gov. Code § 65653 subd.(b).) In addition, Government Code section 65653, subdivision (a), requires approval of permanent supportive housing projects found in compliance with Article 11.

### *Objective standards*

Local agencies can require supportive housing projects to comply with applicable written, *objective* development standards and policies – consistent with the standard of review set forth under the Housing Accountability Act (HAA), Government Code section 65589.5, subdivision (f) – but shall only require such projects to comply with objective standards and policies that apply to other multifamily projects in the same zone (Gov. Code § 65651, subd.(b)(1).)

### *Parking exemptions for proximity to public transit*

If the supportive housing development is located within one-half mile of a public transit stop, the local government shall not impose any minimum parking requirements for the units occupied by supportive housing residents. (Gov. Code § 65654).

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<sup>2</sup> See Article 11 definition of “use by right” in Government Code section 65650, subdivision (d).

## **Eligibility Criteria Permanent Supportive Housing By-Right Review**

The statute establishes a “checklist-style” approach to determine a project’s eligibility to receive by-right streamlined review. To qualify, an applicant for a permanent supportive housing project must demonstrate consistency with each of the following items:

1. The site has a zoning designation that allows multifamily or mixed uses, including nonresidential zones permitting multifamily uses. (Gov. Code, § 65651 subd.(a).)
2. 100 percent of the units in the project, exclusive of a manager’s unit, are set aside for lower-income households subject to a recorded affordability covenant for a minimum of 55 years, and are or will be receiving public funding to ensure affordability (Gov. Code, § 65651 subd.(a)(1) and (2).)
3. At least 25 percent of the units, or 12 units, whichever is greater, will be permanent supportive housing units for the target population<sup>3</sup>; or 100 percent of the units (exclusive of a manager’s unit) within a project with fewer than 12 units. (Gov. Code, § 65651 subd.(a)(3).)
4. The applicant has submitted a supportive housing plan to the local agency that meets the criteria described in Government Code section 65652.
5. The nonresidential floor area within the project meets the minimum square footage requirements for the provision of on-site supportive services, as described in Government Code section 65651, subdivision (a)(5).
6. The units within the project, excluding managers’ units, include at least one bathroom and a kitchen or other cooking facilities, as described in Government Code section 65651, subdivision (a)(7).
7. When applicable, the developer will replace any dwelling units on the site of the permanent supportive housing development in the manner provided in paragraph (3) of subdivision (c) of State Density Bonus Law, Section 65915. (Gov. Code, § 65651 subd.(a)(6).)

## **HCD’s Understanding of the Project’s Eligibility for By-Right Review**

*The Site for the Proposed Project is Consistent with Article 11*

As noted, HCD understands that the site has a zoning designation of R-4, Multiple Family Dwellings. The R-4 zone allows residential uses including group dwellings, multiple-family dwellings, apartment houses, condominiums, and townhouses.<sup>4</sup> The zone sets a maximum development intensity of one dwelling unit per 1,000 square feet of lot area,<sup>5</sup> which equates to a residential density of approximately 43 dwelling units per acre. For the 2.06-acre project site, this density would allow for a maximum of 88 units (if rounded down). In sum, the site for the proposed project is consistent with Government Code section 65651, subdivision (a), in that the zone permits multifamily uses.

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<sup>3</sup> “Target population” is defined in Section 50675.14 of the Health and Safety Code.

<sup>4</sup> Sutter Creek Municipal Code section 18.28.020.

<sup>5</sup> Sutter Creek Municipal Code section 18.28.070.

*The Project's Proposed Affordability and Supportive Housing Component is Consistent with Article 11*

Through communication with the Applicant, HCD understands that 100 percent of the units within the project, exclusive of the manager's unit, are proposed to be permanent supportive housing units. The units would be set aside for lower-income households making between 30 to 50 percent of area median income (AMI). Accordingly, the project as proposed would be consistent with the above-noted affordability and percentage supportive housing unit provisions.

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

As the City continues its review of the project, HCD also reminds the City of the parameters set forth under Government Code section 65008, known as Anti-Discrimination in Land Use Law. This statute provides that no city shall enact or administer its laws so as to "prohibit or discriminate against any residential development ... because the development ... is intended for occupancy by persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income." (Gov. Code, § 65008, subd. (b).) Likewise, no jurisdiction may impose requirements on a residential use by persons in a protected class, including persons with disabilities and persons of very low, low, moderate, or middle income, other than those generally imposed upon other residential uses. (Gov. Code, § subd. (d)(2)(A).) These provisions are pertinent to the project as the units will be reserved for lower-income individuals and families.

**Conclusion**

HCD appreciates this opportunity to provide information to assist the City in its review of the project. If you have questions or need additional information, please contact Lisa Frank, of our staff, at [lisa.frank@hcd.ca.gov](mailto:lisa.frank@hcd.ca.gov).

Sincerely,



Shannan West  
Housing Accountability Unit Chief