

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

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September 18, 2019

Maureen Tamuri, AIA, AICP
Community Development Director
City of Calabasas
100 Civic Center Way
Calabasas, CA 91302

RE: City of Calabasas, West Village Project

Dear Maureen Tamuri:

The California Department of Housing and Community Development (HCD) is aware of a recent denial the West Village project. The purpose of this letter is inform the City of Calabasas that as a result of the denial, it may risk violating the Housing Accountability Act (Gov. Code Sec. 65589.5) and to assist the city in complying with No Net Loss Law (Gov. Code Sec. 65863). HCD recognizes the challenge of interpreting ever-changing housing and land-use laws and appreciates the city's efforts to maintain compliance with all applicable laws.

HCD is aware that The New Home Company is seeking to develop the West Village project (File No. 160003152; APNs: 2069-078-009 and 2069-078-011), consisting of 180 multi-family condominiums, with 18 affordable units (10%) reserved for very low-income, including 5,867 square feet of commercial development, a 0.36 acre park, two detention basins, a public trail, and dedication of approximately 66.0 acres (86% of the site) as permanent open space.

It should be noted that city's approved Housing Element includes the West Village site in its site inventory to meet its regional housing needs assessment (RHNA). According to the Housing Element the site is zoned Planned Development and Residential Multi-Family and designated to accommodate 20 units per acre – one of few vacant sites with this capacity to meet the city's RHNA of 330 units, of which 142 units are for housing affordable to households with lower-incomes.

Through the inclusion of low-income units, the project could request density bonus as well as height and unit concessions provided by State Density Bonus Law (Gov. Code Sec. 65915), however it appears the developer did not make these locally sensitive requests due to a previous project denial on this same site which included density bonus units, where in 2016, the city's Development Review Committee caused the project to be re-designed and reduced in size to the current proposal.

According to the Planning Division staff report provided in advance of the project consideration by the Planning Commission, the revised and downsized West Village application was deemed complete on September 1, 2017, and is consistent with the city's General Plan, Development Code, Scenic Corridor Development Guidelines, and the Las Virgenes Gateway Master Plan. Additionally, the project's geotechnical consultants and City Engineer agreed that proposed removal and recommendations of existing landslide material would provide sufficient support for all of the project's proposed slopes and structures.

The project was denied by a 3-2 vote of the Planning Commission on July 18, 2019, with direction to staff to "use its best efforts to come up with a denial document" and further encourage the developer to either come back with revised alternatives, including a additional reduction in residential units, or allow the project to be voted down as-is.

As no written findings were made by the Commission, in accordance to the provisions of Housing Accountability Act, the city risks violating the Housing Accountability Act. In addition, any requests by the city to request fewer units than what was assumed in the Housing Element for that site, could violate No Net Loss Law. For your consideration, the following outlines the applicable provisions of the Housing Accountability Act and No Net Loss Law.

Housing Accountability Act

In enacting the Housing Accountability Act, the Legislature declared, "California has a housing supply and affordability crisis of historic proportions" (Gov. Code Sec 65589.5(a)(2)(A)). This housing crisis, the Legislature found, has adverse impacts on Californians and California, impacting citizens' health, safety, economic standing and the state's environment and competitiveness (Gov. Code Sec. 65589.5(a)(2)). Through the Housing Accountability Act, the Legislature intended "to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing developments" (Gov. Code Sec. 65589.5(a)(2)(K)). Furthermore, the Legislature declared, "It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing" (Gov. Code Sec. 65589.5(a)(2)(L)).

Housing Accountability Act creates substantive preconditions for the delay and disapproval of housing. If a housing project "complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete," the Housing Accountability Act requires jurisdictions to make specific

findings when “the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density” (Gov. Code Sec. 65589.5(j)(1)). In particular, the local agency must determine, in writing, that “[t]he housing development project would have a specific, adverse impact upon the public health or safety” (Gov. Code Sec. 65589.5(j)(1)(A)) and “[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact” (Gov. Code Sec. 65589.5(j)(1)(B)).

These written findings must be “supported by a preponderance of the evidence on the record” (Gov. Code Sec. 65589.5(j)(1)). Moreover, the Legislature has declared its intent “that the conditions that would have a specific adverse impact upon the public health and safety . . . arise infrequently” (Gov. Code Sec. 65889(a)(3)). “Specific adverse impact” is narrowly defined as “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete” (Gov. Code Sec. 65589.5(j)(1)(A)). Finally, the Legislature has declared that “the receipt of a density bonus . . . shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision” (Gov. Code Sec. 65589(j)(3)).

No Net Loss

The Legislature passed Housing Element law “[t]o assure that counties and cities recognize their responsibilities in contributing to the state housing goal” (Government Code section 65581(a)). As part of meeting that goal and various requirements, each jurisdiction identifies adequate sites to accommodate a regional housing need allocation by income group.

The purpose of No Net Loss Law is to ensure development opportunities remain available at all times throughout the planning period to accommodate the RHNA by income group. Specifically, the law prohibits any “city, county, or city and county . . . [to] reduce, or require or permit the reduction of, the residential density for any parcel” unless it makes written findings that such an action is consistent with the city’s General Plan, including its Housing Element, and that sites are adequate to meet the city’s RHNA exist in the sites inventory (Gov. Code. § 65863(b)). The law allows a jurisdiction to approve lesser density or different income than identified in the Housing Element on a particular parcel “if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity” and “within 180 days identify and make available additional adequate sites to accommodate the jurisdiction’s share of the regional housing need by income level (Gov. Code. § 65863(c)). The statute specifically precludes use of the law as a means “to disapprove a housing development project on the basis that approval of the housing project would require [the identification of adequate sites]” (Gov. Code. § 65863(c)(2)).

Housing Element

HCD encourages the city to take the necessary and proactive steps to ensure compliance with state law and hopes for a speedy resolution to this matter. HCD remains committed to supporting the city in achieving its housing objectives across all income categories. Please contact Cynthia Marsh, of our staff at 916-263-7421 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Olmstead". The signature is fluid and cursive, with a large initial "Z" and a long, sweeping tail.

Zachary Olmstead
Deputy Director

cc: David J. Shapiro, Mayor
City of Calabasas

Dr. Gary J. Lysik, City Manager
City of Calabasas

Glenn Michitsch, Senior Planner
City of Calabasas