

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

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December 16, 2019

Brian P. Gabler, Interim City Manager
City of Simi Valley
2929 Tapo Canyon Road
Simi Valley, CA 93063

RE: Approval of the Tapo-Alamo Project and Notice of Potential Housing Law Violations

Dear Brian Gabler:

The California Department of Housing and Community Development (HCD) is aware of the Planning Commission's December 4, 2019 recommendation to the City Council to deny the Tapo-Alamo project (PD-S-1045/TP-S-685/AHA-R-061), located at 2804 Tapo Street and 4415, 4487 and 4473 Alamo Street. The purpose of this letter is to inform the City of Simi Valley (City) that if the City Council denies the project, it risks violating provisions of Housing Element Law (Gov. Code Sec. 65580), No Net Loss Law (Gov. Code Sec. 65863), Density Bonus Law (Gov. Code Secs. 65915-65918), the Housing Accountability Act (Gov. Code Sec. 65589.5), and Housing Discrimination Law (Gov. Code Sec. 65008), with resulting consequence.

State Housing Law and the City's Housing Element Commitments

On February 3, 2014, HCD found the City's Housing Element in compliance with state Housing Element law (Article 10.6 of the Government Code). This finding, among other things was premised on the identification of adequately zoned sites to accommodate the regional housing need for lower-income households. The finding was also based on identified goals, policies and programs to provide incentives, including density bonuses consistent with state law, while monitoring potential constraints such as building height and parking requirements (e.g., Programs 3, 7, 8, 9, 10, 12, and 13; Policies HE-1.1, HE-1.3, HE-1.4, HE-3.2, HE-3.6). After losing all the affordable housing units at-risk for market rate conversion during the 4th Cycle Housing Element, the City committed to "replenish the affordable housing inventory by offering regulatory incentives" (5th Cycle Housing Element, pg. H1-2).

Failure to approve could result in lack of substantial compliance

The 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 Sect. 65583 (a)(3).)

The City has a total 5th cycle RHNA of 1,256 units, 518 of which are for housing affordable to lower-income households. The City identified sites within the Mixed-Use Overlay District and committed to monitor implementation of the overlay district “to ensure the adopted standards facilitate residential and mixed-use developments at the maximum allowable density” (5th Cycle Housing Element, Table H1-1, pg. H1-7). Additionally, in anticipation of the 5th Cycle, the City increased allowable residential densities in several zones in order to maintain consistency with state Density Bonus law.

According to the City’s Annual Progress Report (APR), the City has permitted 530 units, of which 38 are affordable to lower-income households. Implementation of the City’s Housing Element programs, as well as approval of projects such as the Tapo-Alamo Project, are necessary to maintain Housing Element compliance.

The Tapo-Alamo Project would contribute to unmet RHNA

The Tapo-Alamo project consists of 278 units of multi-family rental housing on 5.88 acres (142 two-bedroom units, 89 three-bedroom units, and 47 four-bedroom units), including 30% of the units (84 units) to be designated as affordable to low-income households. On a 1.01-acre parcel separate from the residential portion, the project includes 8,200 square feet of commercial, encompassing existing businesses. According to the City’s APR, and the Staff Report prepared for the December 4, 2019 Planning Commission public hearing (Planning Commission Agenda Packet, Staff Report, pg. 22), the City has not yet met its RHNA for the 2014-2021 planning period.

APR	Very Low	Low	Moderate	Above Moderate
Permits to date	35	3	54	438
RHNA	310	208	229	509
Remaining	275	205	175	71

The Tapo-Alamo site is identified in the Housing Element inventory to accommodate RHNA for lower-income households

The Tapo-Alamo project is proposed on parcels located within the City’s Mixed-Use Overlay District, recognized in the Housing Element as an “opportunity to increase a variety of housing types and to revitalize deteriorating commercial areas by integrating infill residential uses” (5th Cycle Housing Element, pg. 4-51), with “additional capacity to accommodate its lower-income RHNA in areas zoned Mixed Use Overlay” (pg. 4-88), where the entirety of lower-income RHNA categories is to be met by sites zoned 35 dwelling units per acre (pg. 4-89). The project site is set forth as an “Opportunity Area”

located within the Tapo Street Corridor “Subarea A” (pgs. 4-81; 4-86), allowing for three stories of either: mixed-use, office, or multifamily residential up to 35 dwelling units per acre; however the City notes that the “expectation is that affordable housing projects over three stories or 40 feet in height can request a concession from the Development Code requirement to exceed to the height limit of three stories or 40 feet” (Ibid., 4-53). The itemized inventory shown in Table H3-1 specifically identifies the APNs included in the Tapo Street Corridor A as those of the proposed project (H3-4, H3-5).

Density Bonus Law

State Density Bonus Law, found in Gov. Code Secs. 65915-65918, requires jurisdictions to provide density bonuses and development incentives to all developers who propose to construct affordable housing on a sliding scale, where the amount of density bonus and number of incentives vary according to the amount of affordable housing units provided.

The City has required the Tapo-Alamo Project to identify three concessions for: building height, a 25% commercial component, and interior side yard setbacks. Simi Valley Municipal Code Section 9-31.020.B.2.b is inconsistent with state Density Bonus Law. The City’s code limits building height concessions, which is prohibited by state law. The City is mandated to grant each concession or incentive proposed by the developer unless it can prove based on statutorily prescribed reasons that the proposed concession or incentive does not result in identifiable and actual cost reductions; would cause an adverse impact on public health or safety; would cause an environmental problem; would harm historical resources, or would be contrary to state or federal law. The City bears the burden of proof in the event it declines to grant a requested incentive or concession, however, note that the granting of a density bonus, concession, incentive, or waiver is not subject to discretionary approval.

Housing Accountability Act

In enacting 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)). Approval of projects such as the Tapo-Alamo project fulfills this legislative intent.

The Housing Accountability Act requires written findings for the disapproval of a housing development project for very low, low or moderate-income households 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." (Gov. Code Sec. 65589.5(j)(1)). The local agency must base its decision on written findings supported by a preponderance of the evidence 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)).

Project Disapproval

The pre-application for the project was submitted April 29, 2016, and after three modifications requested by city staff, the application was deemed complete on March 31, 2017. On January 16, 2018, the City hosted an Open House EIR Scoping Meeting. In September 2018, the City informed the developer that they must revise and resubmit the project to include 25% commercial floor area, stating that the "project is required to be processed as a 'mixed-use' development (as opposed to a 'single-use development') pursuant to the Simi Valley Municipal Code."

After extensive delay, the Planning Commission hearing was held on December 4, 2019. Despite a staff recommendation to approve, the Commission voted unanimously to recommend denial of the project to the City Council. Disapproval of the project by the City Council without requisite findings supported by a preponderance of the evidence risks violating the Housing Accountability Act.

Housing Discrimination Law

Government Code section 65008 prohibits actions by a local government that deny residence, tenancy or ownership based on familial status, method of financing for proposed developments or intended occupancy of developments by persons of very low, low, moderate- or middle-income.

Simi Valley's census data juxtaposed with its current provision of housing throughout all income categories is cause for pause and fair housing concern. Census data reflects that the City's affordable housing portfolio is restricted disproportionately to senior citizens. While this is an important demographic to accommodate, it does not mitigate the need for affordable housing among the City's other citizenry, most notably multifamily households with children. Data indicates that 25% of households in the City, comprising approximately 31,500 people, include children under 18. Surprisingly, the entire City provides only 304 affordable units containing 2 or more bedrooms. This indicates a dearth of affordable housing options for a large segment of the City's population, likely causing a disparate impact to families. The appropriate stock of affordable housing is necessary not only for the current inhabitants of the City, but also to provide opportunity to all persons who consider moving or have recently moved to the City.

In addition, there has been a notable decrease in development permits issued between 2000 and 2018, with a corresponding 124% increase in the median home sales price. Consequently, the City has failed to accommodate its RHNA for very low and low-income. The inclusion of this category is necessary not only to achieve the City's RHNA, but also to ensure compliance with state law, including the Housing Accountability Act, Housing Element compliance, Density Bonus, No Net Loss and Fair Housing.

HCD's Enforcement Authority

Pursuant to Government Code section 65585(i), HCD is mandated to review local government actions and inactions, including Housing Element program implementation. If HCD finds that a city's act or omission does not substantially comply with state law, Housing Element compliance may be revoked, and HCD may notify the Attorney General's Office that the City is in violation of state law.

HCD supports the City's approval of the Tapo-Alamo project to ensure compliance with state law. HCD encourages the City to achieve its housing objectives. Please contact Cynthia Marsh, of our staff, at 916-263-7421 with any questions.

Sincerely,



Zachary Olmstead
Deputy Director

cc: Keith L. Mashburn, Mayor
City of Simi Valley

Lonnie J. Eldridge, City Attorney
City of Simi Valley