

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

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May 10, 2024

Chair Margaret Gossett
Vice Chair Hazel Joanes
Planning Commissioners David Gorn, Rick Hernandez, Steve Ruddock
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

Dear Chair Margaret Gossett, Vice Chair Hazel Joanes, and Planning Commissioners David Gorn, Rick Hernandez, and Steve Ruddock:

RE: City of Half Moon Bay, 555 Kelly Avenue Project – Letter of Support and Technical Assistance

The California Department of Housing and Community Development (HCD) understands the City of Half Moon Bay (City) Planning Commission will hold its third public hearing for the proposed 100-percent affordable housing project to be located at 555 Kelly Avenue (Project). The purpose of this letter is to express HCD's support of the Project and to provide notice to the City that delaying action or denying the Project may result in the violation of one or more state housing laws as described below.

Background

HCD understands Mercy Housing (Applicant) is seeking approval of a Coastal Development Permit and Architectural Review with a density bonus under the State Density Bonus Law (SDBL) to construct 40 residential units for senior farmworkers that are affordable to extremely low- and very low-income households, and that on May 14, 2024, the Planning Commission will consider the Project for a third time.

In 2021, affordable housing was a multi-year City Council priority and the City Council authorized staff to pursue affordable housing development opportunities on City-owned properties. At its November 9, 2021 housing work session, the City Council determined the property at 555 Kelly Avenue, which is owned by the City, should be utilized to address the affordable housing crisis and directed staff to initiate a process for development on the property. On February 15, 2022, the Community Development Department released a Request for Qualifications to solicit interested affordable housing developers, and the City subsequently selected Mercy Housing to construct and manage the residential component of the Project and Ayudando Latinos A Soñar to manage the on-site services for residents.

HCD understands the City has made several commitments to the Project, such as authorizing an Exclusive Negotiations Agreement and Pre-Development Loan Agreement between the City and Mercy Housing to provide funding for the Project; declaring the City-owned property as exempt surplus land and authorizing the Applicant to proceed with the application for the Project; authorizing \$1 million from the City's Affordable Housing Fund; and authorizing an agreement with the County of San Mateo to grant American Rescue Plan Act funds to support the Project.

Additionally, the City has made commitments in its 6th cycle draft housing element (draft housing element) and identifies this property and Project as significant for meeting the City's regional housing needs allocation (RHNA).

Housing Element Commitments

HCD received the City's draft housing element on May 31, 2023, and issued a response letter on August 30, 2023, identifying revisions that will be necessary to comply with Housing Element Law. The City's draft housing element shows the property at 555 Kelly Avenue listed in the Sites Inventory,¹ which identifies this site as available and suitable for residential development from 2023 – 2031 to accommodate the City's RHNA of 480 units, of which 285 are for lower-income households. The Project is also listed as a Pipeline Project under Table C-4 of the draft housing element as a project "between formal proposal and receiving a certificate of occupancy,"² to be counted toward meeting RHNA obligations. This Project alone represents 14 percent of the City's total lower-income RHNA.

Furthermore, the Project is consistent with several Housing Element Programs, including:

- Program 1-8 Diverse and Healthy Neighborhoods: This program states the City shall prioritize developments with 100 percent affordable units on infill sites. The proposed Project is 100 percent affordable to extremely low- and very low-income households and is located on an infill site.
- Program 3-1 Senior and Disabled Housing: The City is required to encourage development of housing for seniors and provide priority processing of applications for residential units affordable for seniors, which the Project meets. This program explicitly references this Project at 555 Kelly Avenue as a Pipeline Project to meet the goal of this program and states that the City will prioritize permitting the Project.

¹ Pg. C-69 Table A: Housing Element Sites Inventory, City of Half Moon Bay 6th Cycle Draft Housing Element

² Pg. C-4 of City of Half Moon Bay 6th Cycle Draft Housing Element

- Program 3-4 Housing for Essential Workers: The City aims to provide affordable housing for essential workforce populations, including farmworkers, by implementing the Workforce Housing Overlay. The Project provides housing to farmworkers and is being processed under the Workforce Housing Overlay.
- Program 4-7 Affordable Housing Fund Management Use: The City will work with the development community to bring forward affordable housing development, including housing affordable to extremely low- and very low-income households, and other housing-related supportive services. The Project proposes that 100 percent of the units will be affordable to extremely low- and very low-income households and provides on-site services to its residents.

The inclusion of this site and Project in the City's draft housing element, and its consistency with applicable planning documents such as the Local Coastal Land Use Plan, suggest that the City has committed to permitting the Project at the density proposed. HCD commends the City's stated commitment to facilitate housing with these programs. However, the fact that the Planning Commission has scheduled a third meeting on the Project, as well as statements made by one or more Planning Commissioners at recent hearings, are cause for some concern. As the City is aware, the state remains in a housing crisis and the provision of housing, especially affordable housing, continues to be a priority of the highest order. Approval of this Project will help meet the housing challenge as well as directly fulfill several of the City's stated housing goals, policies, and implementation programs listed above.

It is important to note that the draft housing element is still under review by HCD for substantial compliance with Housing Element Law, and HCD will continue to monitor the City's progress toward meeting all statutory requirements and ensuring the City meets its RHNA obligations. If the Project is denied, the City must make additional revisions to the draft housing element and identify additional site capacity elsewhere in the City to accommodate the remaining RHNA, further delaying the City's compliance with Housing Element Law, which was due on January 31, 2023.

Housing Accountability Act

In addition, the City should be aware that the Project meets the definition of a "housing development project" under the Housing Accountability Act (HAA).³ Therefore, the City must consider its obligations under the HAA, including approving housing development projects that are affordable to lower-income households unless the City makes a written finding listed in Government Code section 65589.5, subdivisions (d)(1)-(5). The HAA limits a local government's ability to deny, reduce the density of, or make infeasible housing development projects that are consistent with objective local development

³ Gov. Code, § 65589.5, subd. (h).

standards. Subjective standards, such as how the project contributes to the “character” of the neighborhood or city, cannot be the basis for disapproving, reducing density, or rendering infeasible a housing development project under the HAA. A housing development project that meets all objective standards, except those lawfully modified by an SDBL concession and/or waiver, may only be denied or approved at a lower density if the City makes written findings supported by a preponderance of evidence on the record that there is a specific, adverse impact upon public health or safety, and mitigation of the adverse impact is not possible.⁴

Further, the HAA prohibits the City from disapproving a qualified affordable housing development on the basis that the project does not comply with the local zoning and general plan if the developer submits all statutorily required application materials, or has a complete development application, while the City’s housing element is out of substantial compliance with Housing Element Law. This provision of the HAA is colloquially known as the “Builder’s Remedy.”⁵ As noted above, the City does not yet have a compliant housing element, making the City subject to the Builder’s Remedy.

State Density Bonus Law

A project that meets the eligibility requirements of the SDBL is entitled to a density bonus, concessions, development standard waivers, and reduced parking ratios.⁶ The City must grant the specific concessions requested by an applicant unless the City makes written findings, based on substantial evidence, that the concession would (1) not result in a cost reduction, (2) have a specific adverse impact on health or safety, or (3) be contrary to state or federal law.⁷ The City bears the burden of proof for the denial of a requested concession.⁸

It is important to note, because the Project proposes 100 percent of the units to be affordable to lower-income households, the Project is entitled to a height increase of up to three additional stories, or 33 feet, if the project is located within one-half mile of a major transit stop or in a very low vehicle travel area.⁹ In addition, the City may not impose parking requirements if the Project is (1) located within one-half mile of a major transit stop, (2) is for-rent housing for individuals 55 years of age or older and is within one-half mile of a fixed bus route service that operates at least eight times per day, or (3) the development is a special needs or supportive housing development within one-half mile of a fixed bus route.¹⁰

⁴ Gov. Code, § 65589.5, subd. (j).

⁵ Gov. Code, § 65589.5, subd. (d)(5).

⁶ Gov. Code, § 65915, subd. (b).

⁷ Gov. Code, § 65915, subd. (d).

⁸ Gov. Code, § 65915, subd. (d)(4).

⁹ Gov. Code, § 65915, subd. (d)(2)(D).

¹⁰ Gov. Code, § 65915, subd. (p)(3).

Five Hearing Rule

If a housing development project complies with all objective standards in effect at the time the project is deemed complete, after the application is deemed complete, a city shall not conduct more than five hearings before approving or denying the application. If a city continues a hearing to another date, the continued hearing shall count as one of the five hearings allowed.¹¹ A hearing includes any public hearings, workshops, meetings that involve architectural review, or meetings to consider an appeal. HCD understands that the Project has already been heard at two hearings: (1) the Planning Commission public hearing on April 23, 2024, and (2) the Planning Commission public hearing on April 30, 2024. The Planning Commission hearing scheduled for May 14, 2024 will be the third.

Conclusion

HCD urges the Planning Commission to approve the Project and warns the City to be mindful of its obligations under Housing Element Law, the HAA, SDBL, the Five Hearing Rule, and other housing laws as it considers the Project. HCD also reminds the City that HCD has enforcement authority over Housing Element Law, the HAA, SDBL, the Five Hearing Rule, and other housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city'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.¹²

In sum, HCD strongly supports the approval of the Project during this critical housing crisis and appreciates the opportunity to assist the City in meeting its statutory obligations in the decision-making process. If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Jessica Evans at jessica.evans@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief

¹¹ Gov. Code, § 65905.5, subd. (a).

¹² Gov. Code, § 65585, subd. (j).