

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

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December 11, 2025

Board Chair Bonnie Gore; Vice Chair Shanti Landon; and
Board Members Anthony DeMattei, Suzanne Jones, and Cindy Gustafson
Placer County Clerk's Office
175 Fulweiler Avenue
Auburn, CA 95603

Dear Placer County Board of Supervisors:

RE: Placer County – Notice of Potential Violation and Corrective Action Letter

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding compliance with the Housing Accountability Act (HAA), State Density Bonus Law (SDBL), and Housing Element Law for a proposed project (Project) at 3130 Penryn Road within unincorporated Placer County (County) from the Project applicant.

On October 16, 2025, the County Planning Commission voted to deny a development standard waiver and the Design Review Agreement for the Project, constituting a denial of the Project. Following that hearing, HCD is aware that additional appeals have been filed in relationship to approved aspects of the Project. Ahead of the scheduled Board of Supervisors appeals hearing for the Project, HCD is writing to support the approval of the Project, including approval of all incentives or concessions (henceforth referred to simply as "concessions") and development standard waivers (henceforth "waivers") under the SDBL. HCD also hereby notifies the County that denial of the Project – including denial of any concession or waiver – without making proper findings would be a violation of state housing law.¹

In addition, HCD hereby issues its written findings that the County has taken actions inconsistent with the County's adopted Housing Element. HCD must review any action or failure to act by a local government that it determines to be inconsistent with an adopted housing element or Government Code section 65583 generally, and it must issue written findings to the local government accordingly.² If the County fails to demonstrate that it has implemented the programs set forth in its Housing Element, then

¹ Gov. Code, §§ 65915, 65589.5.

² Gov. Code, § 65585, subd. (i)(1).

HCD may revoke its finding that the County's Housing Element substantially complies with Housing Element Law.³

Background

HCD understands that the Project, located on an 11.43-acre site at 3130 Penryn Road, consists of 240 units across 12 apartment buildings. Except for two on-site managers' units, all units in the Project would be affordable to lower-income households, ranging from extremely low- to low-income households.⁴

Because the Project is on housing element sites, rezoned to accommodate the County's share of its lower-income Regional Housing Needs Allocation (RHNA), the Project is subject to the "use by-right" provisions pursuant to Housing Element Law. This means that the County's consideration of the Project cannot involve discretionary review.⁵ Additionally, the Project uses two concessions and seven waivers pursuant to the SDBL.⁶

Planning Commission Hearing and Appeal

On October 16, 2025, the Project came before the County Planning Commission for approval. The Planning Commission was tasked with approving (1) a Design Review Agreement and the Project, and confirming that the Project complied with applicable objective standards; (2) two concessions and seven waivers pursuant to the SDBL; and (3) a determination that the Project is consistent with the Housing Element Rezone Program Environmental Impact Report (EIR)⁷ — although the Project is exempt from the requirements of the California Environmental Quality Act (CEQA) since it is a use by-right pursuant to Housing Element Law.⁸

The Planning Commission hearing resulted in the Commission voting to (1) deny the Design Review Agreement, (2) deny one waiver for a development standard applicable to the project contained within the County's Circulation Element (LOS Policy), and (3) uphold the determination that the Project is consistent with the Housing Element

³ Gov. Code, § 65585, subd. (i)(1)(C).

⁴ The Project includes 11 percent extremely low-, 20 percent very low-, and 69 percent low-income units. Units also range from one to four bedrooms.

⁵ Gov. Code, § 65583.2, subds. (h), (i). Among other things, 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.

⁶ Placer County October 16, 2025, Planning Commission Staff Report, Table 2: Summary of State Density Bonus Law Concessions and Waivers on page 5.

⁷ Despite the fact that the Project is not subject to the California Environmental Quality Act (CEQA), County staff conducted further environmental analysis "in an abundance of caution" (Staff Report page 9).

⁸ Gov. Code, § 65583.2, subds. (h), (i).

Rezone EIR (although, again, the CEQA determination was unnecessary). During the Planning Commission meeting, concerns were raised regarding the Project's potential impact on emergency response and traffic congestion at nearby intersections. Ultimately, the Commission effectively denied the Project by voting against two necessary approvals. The applicant subsequently appealed the decision to the Board of Supervisors, with a meeting scheduled for December 16, 2025.

The Planning Commission Voted to Deny a Development Standard Waiver for the LOS Policy

The County's LOS Policy, contained within the Circulation Element of the General Plan, requires that "land development projects shall be approved only if LOS 'C' can be sustained on the Community Plan roadways."⁹ LOS is a metric that describes the average delay time, measured in seconds, at road intersections, with categories ranging from "A" (free-flow conditions with no congestion) to LOS "F" (severe congestion and delay under stop-and-go conditions).¹⁰ LOS "C" is defined to mean that a signalized intersection has an average vehicle travel delay of 20 to 35 seconds.¹¹ Put differently, the LOS Policy requires that development projects cannot result in average vehicle delay times of 36 seconds or longer (LOS "D" or worse) at nearby intersections.

The Project applicant conducted a Traffic Analysis to assess the Project's compliance with the LOS Policy. The analysis looked at existing conditions and at anticipated traffic resulting from the Project. Notably, the Traffic Analysis found that under current conditions, the intersection at Penryn Road/I-80 Westbound Ramps/Boyington Road operates at LOS "D" at morning peak hours and would remain at LOS "D" with the Project built and occupied.¹² This means that the LOS Policy, as confirmed by County staff, would only allow the Project to be built if it *reduces* traffic congestion to *below what currently exists* without the Project. As a result, the LOS Policy "would physically preclude the project as proposed," as stated by the County.¹³

The Project utilized a waiver pursuant to the SDBL to ensure the LOS Policy would not preclude the Project.¹⁴ However, the Planning Commission denied the waiver for the LOS Policy by a tie vote of 3-3.¹⁵ The Planning Commission cited concerns that the

⁹ SB 743 (Chapter 386, Statutes of 2013) required lead agencies analyzing transportation impacts of projects under CEQA to transition from Level of Service (LOS) to Vehicle Miles Travelled (VMT). However, the Horseshow Bar/Penryn Community Plan, updated in 2005, imposes a LOS requirement on new development.

¹⁰ Placer County October 16, 2025, Planning Commission Staff Report, page 12.

¹¹ Placer County October 16, 2025, Planning Commission Staff Report page 1,199.

¹² Placer County October 16, 2025, Planning Commission Staff Report pages 14, 1,211.

¹³ Placer County October 16, 2025, Planning Commission Staff Report page 1,199.

¹⁴ Gov. Code, § 65915, subd. (e)(1).

¹⁵ Placer County Code § 17.60.050. "Tie votes (i.e., 3-3 or 2-2) shall result in a denial of the motion under consideration. Where the commission or the board is the original hearing body, a failure to approve or deny a project which is before them for consideration shall constitute a denial of the application for said project."

Project would “increase emergency response times, result in traffic safety issues due to queuing and increased traffic, and inhibit the ability to evacuate safely.”¹⁶ However, HCD understands that the Planning Commission did not make findings of denial pursuant to the requirements of the SDBL.

The Planning Commission Voted to Deny the Project Design Review Agreement

Because the Project is entitled to processing as a “use by-right” without discretionary review, the Planning Commission’s October 16, 2025 hearing was conducted to narrowly assess the Project’s compliance with objective, quantifiable, written development standards, conditions, and policies contained within the Multifamily and Mixed-Use Design Manual (Design Manual), the County’s Zoning Ordinance (Placer County Code, Chapter 17), the Horseshoe Bar/Penryn Community Plan (HB/PCP), and the Placer County General Plan.¹⁷ To confirm compliance with applicable objective standards and approve the Project, the Planning Commission was tasked with approving the Design Review Agreement.

HCD understands that the Design Review Agreement was denied by a vote of 2-3-1 (one abstention) on the basis that the Project does not comply with the LOS Policy.¹⁸ Because the Commission voted to deny the waiver for the LOS Policy, it did not make findings required for the Design Review Agreement that the Project complies with all applicable objective criteria.¹⁹

Analysis

HCD understands that written findings have not been made for the denial of the Project pursuant to the HAA or for the denial of the waiver pursuant to the SDBL following the October 16, 2025, Planning Commission hearing. County staff indicated to HCD that such potential findings may be made by the County Board of Supervisors for the appeal hearing, should the Board decide to make written findings of denial. In considering the Project appeal, HCD reminds the Board of Supervisors that it must follow state housing laws and consider the potential consequences of noncompliance or improper findings of denial.

State Density Bonus Law (SDBL)

¹⁶ October 16, 2025, Placer County Planning Commission Meeting, timestamp 9:07:40. The meeting recording is available at: <https://www.youtube.com/watch?v=Jf32SEkaFkl&t=24641s>.

¹⁷ Placer County October 16, 2025, Planning Commission Staff Report, page 2.

¹⁸ October 16, 2025, Placer County Planning Commission Meeting, timestamp 9:08:40. The meeting recording is available at: <https://www.youtube.com/watch?v=Jf32SEkaFkl&t=24641s>.

¹⁹ Placer County October 16, 2025, Planning Commission Staff Report, page 2. Findings for the Planning Commission to approve the Design Review Agreement state, “The proposed Hope Way Apartments project is consistent with all objective, quantifiable, written development standards, conditions and policies.”

Because all the units except for managers' units in the Project are affordable to lower-income households, the Project is entitled to a density bonus of up to 80 percent,²⁰ five concessions,²¹ and an unlimited number of waivers for any development standard that will have the effect of physically precluding the construction of the Project.²² Although the Project is not seeking to utilize a density bonus to exceed the maximum allowable density for the site for which it is entitled,²³ the Project is using two concessions (well below the maximum of five) and seven waivers. The County can only deny the concessions and waivers if it makes narrowly defined findings.

SDBL Development Standard Waivers

The Planning Commission did not make written findings supporting its denial of the waiver for the LOS Policy. The County should be aware of the high threshold necessary to deny a proposal for a waiver. The obligation to grant the waiver is mandatory, as Government Code section 65915, subdivision (e)(1) states that “*(i)n no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development... at the densities or with the concessions or incentives permitted by this section*” (emphasis added). As previously established, the LOS Policy has the effect of physically precluding the construction of the Project, placing a clear mandate on the County to grant the development standard waiver.

The only exception relevant to the mandate to grant the development standard waiver is that the County is not required “to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.”²⁴

“Specific, adverse impact” is in turn defined in the HAA as follows:

“(S)pecific, adverse impact’ means 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. The following shall not constitute a specific, adverse impact upon the public’s health or safety:

²⁰ Gov. Code, § 65915, subd. (f)(3)(D)(i).

²¹ Gov. Code, § 65915, subd. (d)(2)(D).

²² Gov. Code, § 65915, subd. (e)(1).

²³ See HCD’s May 20, 2022 technical assistance letter to the City of San Jose (“The SDBL provides that an applicant need not request an increase in density for a project to enjoy the benefits and protections provided by the SDBL if the project meets the eligibility requirements described in subdivision (b) of Government Code section 65915.”), available at:

<https://www.hcd.ca.gov/community-development/housing-element/docs/sclsanjose-ta-052022.pdf>.

²⁴ Gov. Code, § 65915, subd. (e)(1).

(A) Inconsistency with the zoning ordinance or general plan land use designation.”²⁵

To deny the waiver for the LOS Policy, the County must demonstrate that the waiver of the LOS Policy would have 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, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

HCD understands that the Planning Commission has not established that the waiver would result in a “specific, adverse impact” as is required by statute, as the final administrative decision is being undertaken by the Board of Supervisors. HCD notes that the Project would maintain the same LOS of “D” during morning peak hours as currently exist – meaning that the Project would not comply with the LOS Policy unless it reduces traffic congestion levels below existing conditions. Additionally, Penryn Fire Protection District Chief Ian Gow, speaking before the Planning Commission, stated that the “worst case scenario” of increased emergency response calls resulting from the Project would be “manageable.”²⁶

By-Right Processing on Sites Rezoned to Accommodate Lower-Income RHNA

The County rezoned the 11.43-acre site at 3130 Penryn Road to satisfy the County’s lower-income RHNA.²⁷ To meet the requirement for rezone sites that accommodate the lower-income RHNA, the Residential Multifamily (RM30) zoning district permits owner-occupied and rental multifamily residential use by-right for developments in which at least 20 percent of the units are affordable to lower-income households.²⁸

Because it is entirely affordable to lower-income households (except for two managers’ units), the Project qualifies as a “use by-right,” which is defined to mean 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” (CEQA).²⁹ In other words, the County’s review of the Project may not require any discretionary review and the Project is statutorily exempt from CEQA.³⁰

²⁵ Gov. Code, § 65589.5, subd. (d)(2).

²⁶ October 16, 2025, Placer County Planning Commission Meeting, timestamp 7:23:00.

²⁷ Placer County October 16, 2025, Planning Commission Staff Report, page 18. “In May 2024, the Board of Supervisors rezoned the proposed project site along with 13 other properties to RM30-Dc. This rezoning aligns with Housing Element Program HE-1: Rezone to Meet the Regional Housing Needs Allocation (RHNA). Development of the proposed project will assist the County in fulfilling state-mandated requirements for affordable housing.”

²⁸ Gov. Code, § 65583.2, subd. (h)(1).

²⁹ Gov. Code, § 65583.2, subd. (i).

³⁰ Placer County October 16, 2025, Planning Commission Staff Report, page 9.

Additionally, the Project's use of waivers and concessions under the SDBL in no way disqualifies the Project from by-right approval. As HCD has previously established, the definition of "use by-right" in Housing Element Law applies to approval or authorizations necessary for the application, including a density bonus, waivers, and concessions.³¹ In other words, a project submitted as a "use by-right" cannot be subjected to any discretionary review, including any discretionary review resulting from a density bonus, waivers, or concessions pursuant to the SDBL.

Because public hearings, by their very nature, invite prohibited discretionary review, HCD generally discourages local governments from processing housing development projects that utilize the SDBL and that are a use by-right via public hearings.³² Nonetheless, the Board of Supervisors is set to hear the appeal during a public hearing. The County must avoid engaging in prohibited discretionary action.

Housing Accountability Act (HAA) Findings of Denial

The HAA (Government Code section 65589.5) requires local government to make written findings to disapprove a housing development project. Given the denial of the Project by the Planning Commission, the relevant question for the Project is: **What findings are necessary to justify denying the Project?**

Because the Project constitutes "housing for lower-income households,"³³ it is subject to subdivision (d) of the HAA, which states:

"(A) local agency shall not disapprove the housing development project or emergency shelter, or condition approval in a manner that renders the housing development project or emergency shelter infeasible... unless it makes written findings, based upon a preponderance of the evidence in the record."

To deny the Project — or condition approval in a manner that renders the Project infeasible — the County must make one of six findings. Most of these findings are clearly not applicable to this Project, and it is doubtful that the County can reasonably make any of the required findings.³⁴ Should the County deny the Project based on

³¹ See HCD's October 1, 2025 letter of technical assistance to the City of Newport Beach, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/newport-beach-hau-2344-ta-100125.pdf>.

³² Ibid. Additionally, see the February 5, 2025, Technical Assistance Letter to the City of Glendale, page 2: "Public hearings may create the perception of discretionary power where none exists." The letter is available at: <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/glendale-hau-346-ta-02052024.pdf>.

³³ Gov. Code, § 65589.5, subds. (h)(3).

³⁴ These findings must be based upon a "preponderance of evidence in the record." See page 13 of HCD's September 15, 2020 HAA Technical Assistance Advisory for an explanation of the "preponderance of evidence" standard, available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf>.

health and safety impacts, the County must make findings that there is 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” and “there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low- and moderate-income households.”³⁵ (Emphasis added.) The Legislature has clarified that these impacts are intended to arise “infrequently.”³⁶

In contrast to the HAA’s requirement that impacts be based on identified written public health or safety standards, policies, or conditions, LOS does not appear to be a health and safety standard and is defined in the Planning Commission staff report as “a qualitative measure of traffic operating conditions from a driver’s perspective.”³⁷ Moreover, impacts to traffic congestion as measured by LOS may be mitigatable, as the Project already includes numerous roadway improvements in its conditions of approval.³⁸

Additionally, the County is unable to use the finding set out in subdivision (d)(5) of the HAA to justify denial of the Project because the Project is proposed on a site identified as suitable or available for very low-, low-, or moderate-income households in the County’s Housing Element and the housing development project is consistent with the density specified in the Housing Element.³⁹

Housing Element Law

The following analysis explains provisions of Housing Element Law implicated in the Board of Supervisors’ consideration of the Project appeal.

1. Failure to Implement Housing Element Goals, Policies, and Programs

Housing Element Law prohibits the County from taking an action or failing to take an action that is “inconsistent with an adopted housing element or [Government Code] Section 65583, including any failure to implement any program included in [its] housing element.”⁴⁰ The County should consider its treatment of the Project appeal in light of its Housing Element’s goals, policies, and programs. In particular, the denial of the Project by the Planning Commission may be inconsistent with the following programs contained in the County’s adopted Housing Element:

³⁵ Gov. Code, § 65589.5, subd. (d)(2).

³⁶ Gov. Code, § 65589.5, subd. (a)(3).

³⁷ Placer County October 16, 2025, Planning Commission Staff Report, page 12:

“LOS is a qualitative measure of traffic operating conditions from a driver’s perspective and is an indication of comfort and convenience associated with driving.”

³⁸ The Placer County October 16, 2025 staff report notes that all of the recommended feasible mitigation measures previously adopted for the Housing Element Sites Rezone EIR have been incorporated as conditions of approval for the Project, including offsite roadway improvements.

³⁹ Gov. Code, § 65589.5, subd. (d)(5)(A).

⁴⁰ Gov. Code, § 65585, subd. (i)(1)(A).

- HE-1 Rezone to meet the RHNA. “The County shall establish and implement a Housing Opportunity Overlay Zone to accommodate the remaining RHNA of 1,107 lower-income units for the 2021-2029 RHNA projection period.”
- HE-2 Housing Opportunity Sites. “The County shall maintain an inventory of potential sites for mixed-use and multifamily residential development in commercial and multifamily zones.”
- HE-15 Support Affordable Housing Development. “The County shall work with housing developers to expand opportunities for affordable lower-income and workforce housing by creating partnerships, providing incentives, and pursuing funding opportunities.”

2. Inventory of Residential Capacity

Housing Element Law requires local governments to maintain an inventory of land “suitable and available for residential development.”⁴¹ Where that inventory of sites does not identify adequate sites to accommodate the RHNA, the local government must rezone sites within specified timeframes.⁴² Sites rezoned to accommodate the lower-income RHNA “shall be zoned to permit owner-occupied and rental multifamily residential use by-right for developments in which at least 20 percent of the units are affordable to lower-income households during the planning period.”⁴³

The Project site is included in the County’s inventory of sites and was rezoned, along with 13 other properties,⁴⁴ to accommodate a portion of the County’s lower-income RHNA. The Project site parcels are credited for 240 units in the sites inventory, and the Project has been proposed as an entirely lower-income development with exactly 240 units.⁴⁵ Now that the site has been rezoned and the Project application has been submitted, the County must process the Project as a use by-right.⁴⁶

The Project’s preliminary application was also used to justify the projected number of units for the site in the County’s adopted Housing Element.⁴⁷ The Planning Commission’s denial of the Project potentially (1) undermines the methodology that the County used to credit the projected number of units for the site and (2) demonstrates that the site is not, in fact, “suitable and available for residential development” as required by Housing Element Law. Specifically, as noted above, the site, without any development, already triggers an LOS standard below LOS C. The ability to process a

⁴¹ Gov. Code, § 65583, subd. (a)(3).

⁴² Gov. Code, § 65583, subd. (c)(1).

⁴³ Gov. Code, § 65583.2, subd. (h).

⁴⁴ Planning Commission Staff Report page 18.

⁴⁵ Placer County Adopted Housing Element, Table 9, page F-30.

⁴⁶ Gov. Code, §§ 65583.2, subds. (h), (i).

⁴⁷ Placer County Adopted Housing Element, Table 9, page F-30. “Capacity is based on a preapplication submitted in August 2023 that includes 240 units.”

project by-right under the existing standards should have been evaluated as part of the County's rezoning process. HCD understands that the County currently has a buffer of just 221 units identified in excess of its lower-income RHNA – less than the number of units credited for the Project site.⁴⁸ Therefore, if the County cannot approve a project by-right because the LOS standard would automatically render a project inconsistent without a feasible way to achieve consistency with the General Plan, the County's Housing Element does not identify adequate sites to accommodate the RHNA as required by Housing Element Law.⁴⁹

3. Governmental Constraints under Housing Element Law

Housing elements are required to contain an analysis of potential and actual governmental constraints on the development of housing for all income levels.⁵⁰ This includes, but is not limited to, analysis of land use controls, building codes and their enforcement, and locally adopted ordinances that directly impact the cost and supply of residential development. After identifying governmental constraints to the development of housing, the County must implement programs to remove those constraints where legally possible.⁵¹

As demonstrated by the Planning Commission's action on the Project, the LOS Policy – if applied – is a significant constraint as it would require the Project to result in traffic congestion levels below what currently exist near the site. Additionally, the County's adopted Housing Element does not discuss or analyze the LOS Policy. If the LOS Policy proves to be a constraint on the development of the Project, the County may be required to revise the Housing Element⁵² to sufficiently analyze and address the constraint.

Affirmatively Furthering Fair Housing (AFFH) (Government Code sections 8899.50 and 65583)

Government Code section 8899.50 requires the County to “tak[e] meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”⁵³ Housing Element Law, specifically, Government Code section 65583, includes more specific obligations that require the County, for example, to affirmatively protect, promote, and remove constraints on housing for persons with low, very low, and extremely low incomes.⁵⁴ Section 65583 also requires the County to promote and affirmatively further fair housing to promote housing throughout the

⁴⁸ Placer County Adopted Housing Element, Table 59, page 109.

⁴⁹ Gov. Code, § 65583, subd. (a)(3).

⁵⁰ Gov. Code, § 65583, subd. (a)(5).

⁵¹ Gov. Code, § 65583, subd. (c)(3).

⁵² Gov. Code, § 65585, subd. (b).

⁵³ Gov. Code, § 8899.50, subds. (a)(1), (a)(2)(B).

⁵⁴ Gov. Code, § 65583, subd. (c)(2)(A).

community or communities, and to use data, quantifiable analysis, metrics, and milestones to implement its AFFH duties.⁵⁵

HCD's AFFH guidance memo lists "New Housing Choices and Affordability in Areas of Opportunity" as a strategy that affirmatively furthers fair housing.⁵⁶ The County's Housing Element illustrates that the Project site is located within the "highest resource" Census tract⁵⁷ and is surrounded by either "high resource" or "highest resource" Census tracts.⁵⁸ The County should ensure that its treatment of this Project is consistent with its AFFH obligations.

Anti-Discrimination in Land Use Law (Government Code section 65008)

Government Code section 65008, known as the Anti-Discrimination in Land Use (ALU) Law, prohibits discrimination in land use and planning policies and practices. Specifically, Government Code section 65008, subdivision (b), states that a local government shall not, in the enactment or administration of ordinances pursuant to any law, prohibit or discriminate against any residential development because of, among other things, discrimination based on protected class or the fact that the project is intended to be occupied by very low-, low-, moderate-, or middle-income persons or families.⁵⁹

In addition, Government Code section 65008, subdivision (a), deems any action taken pursuant to Title 7 of the California Government Code null and void if it denies to any individual or group the enjoyment of residence, landownership, tenancy, or land use because of the protected characteristics of the intended occupants or the fact that a residential development is intended to be occupied by very low-, low-, moderate-, or middle-income persons or families.⁶⁰

Government Code section 65008 and its protections apply to the Project because it is intended for occupancy by persons with low, very low, and extremely low incomes. The County should ensure that its treatment of the Project is consistent with its duties under section 65008. This includes considering whether denying the Project would have discriminatory effects, either by creating disparate impacts on persons with protected characteristics or by perpetuating segregated housing patterns. This also includes ensuring that the County's treatment of the Project is not influenced in any manner by intentional discrimination.

⁵⁵ Gov. Code, § 65583, subds. (c)(5), (c)(10)(A).

⁵⁶ HCD AFFH Guidance for All Public Entities and for Housing Elements (April 2021 Update), https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf, page 74.

⁵⁷ Adopted Housing Element, Appendix F, Table 9: Fair Housing Factors Associated with Rezone Sites, page F-81.

⁵⁸ Adopted Housing Element, Figure E-1. Tax Credit Allocation Committee/HCD Opportunity Areas.

⁵⁹ Gov. Code, § 65008, subd. (b)(1)(A)-(C).

⁶⁰ Gov. Code, § 65008, subd. (a)(1)-(3).

Prohousing Designation

The County received a Prohousing Designation on January 23, 2023. HCD appreciates the County's efforts to become a Prohousing jurisdiction and maintain Prohousing policies. A Prohousing Designation confers multiple benefits to local governments, including eligibility for the Prohousing Incentive Program and additional points or preference in various state funding programs.

However, HCD may review and revoke a Prohousing Designation if a jurisdiction has, among other things, failed to comply with state housing laws, including the HAA, the SDBL, Housing Element Law, and ALU Law⁶¹ or has failed to take action or has taken action inconsistent with its Housing Element.⁶²

In addition, the County includes a program in Category 4A of its Prohousing Designation application to provide "collaboration with and funding of Local Housing Trust Fund (Housing Trust Placer)" and a program in Category 1C to maintain "sufficient sites to accommodate 131 percent of the current RHNA with rezoning by total or income category."

Failure by the County to remedy conflicts with state housing laws, to implement proposed Prohousing Policies, or to implement Housing Element program actions may result in HCD commencing a review of the County's Prohousing Designation.⁶³

Conclusion

Corrective Action Requested for Housing Element Compliance

Findings

On August 7, 2025, HCD found the County's revised Housing Element, including the adopted rezones, to be in substantial compliance with Housing Element Law. As you are aware, HCD must review any action or failure to act by a local government that it determines to be inconsistent with an adopted housing element or Government Code section 65583 generally, and it must issue written findings to the local government accordingly.⁶⁴

HCD finds that the actions taken on the Project during the October 16, 2025, Planning Commission hearing are inconsistent with the County's adopted Housing Element and fail to implement multiple programs included in that Housing Element. Accordingly, by this letter, HCD is issuing the County written findings pursuant to Government Code section 65585, subdivision (i)(1)(A). The County must consider the Project appeal in a

⁶¹ CCR, § 6607, subd. (a)(1)(E).

⁶² CCR, § 6607, subd. (a)(1)(F).

⁶³ See CCR, § 6607, subd. (a)(2)-(8).

⁶⁴ Gov. Code, §§ 65585, subd. (j)

manner consistent with the adopted Housing Element. Failure to do so may result in the revocation of the County's housing element compliance.⁶⁵

Various consequences may apply if the County does not have a housing element in compliance with Housing Element Law, including ineligibility or delay in receiving certain state funds, referral to the California Office of the Attorney General, court-imposed financial penalties, the loss of local land use authority to a court-appointed agent, and the immediate application of the "builder's remedy."⁶⁶

Notice of Potential Violation for the County's Processing of the Project

HCD finds that the County has not yet made the requisite findings (1) required by the HAA in denying the Project and (2) required to deny the waiver for the LOS Policy pursuant to the SDBL. HCD reminds the County that, to deny the Project or associated waivers or concessions, the County must make the necessary findings of denial as explained in this letter. Denying the Project or any associated waivers or concessions with insufficient findings of denial would be a violation of the HAA and/or SDBL. Such a violation also risks contravening numerous other state housing laws, as explained in this letter. Importantly, the County must avoid engaging in any prohibited discretionary action in its review of the Project, as the Project is a "use by-right" pursuant to Housing Element Law.

Under Government Code section 65585, subdivision (j), HCD must notify local government when that local government takes actions that violate the HAA, SDBL, Housing Element Law, and other laws that HCD enforces, and may notify the California Office of the Attorney General of these and other violations of state housing laws. HCD will monitor the Board of Supervisors appeal hearing scheduled for December 16, 2025, to assess actions responsive to the findings of this letter.

Additionally, HCD informs the County that AB 712 (Chapter 496, Statutes of 2025) will go into effect on January 1, 2026. Among other things, the new law will increase penalties that a court may impose on a local government if the local government was advised in writing prior to the commencement of a lawsuit brought by the Attorney General or HCD that the local government's decision, action, or inaction would represent a violation of specified state housing laws. This letter serves to inform the County that improper denial or processing of the Project would violate state housing laws, as specified above.

⁶⁵ Gov. Code, § 65585, subd. (a)(1)(C).

⁶⁶ Gov. Code, §§ 65585, subds. (j), (l)(1), (i); 65589.5, subds. (d)(6), (h)(11).

HCD requests that the County review this correspondence and provide a written response to these findings within 30 days and no later than January 9, 2026. HCD will review and consider the County's written response before taking any action authorized by Government Code section 65585, subdivisions (i) and (j). As noted above, such action could include revoking HCD's finding that the County's Housing Element is in substantial compliance with Housing Element Law and/or referral to the Office of the Attorney General. If you have questions or need additional information, please contact Brandon Yung at Brandon.Yung@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long, sweeping horizontal stroke extending to the right.

Melinda Coy
Housing Accountability Unit Chief