

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

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March 4, 2021

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

**RE: City of Calabasas, West Village Project – Letter of Technical Assistance**

Dear Maureen Tamuri:

The California Department Housing and Community Development (HCD) understands that the City of Calabasas Planning Commission will be considering the West Village Project (File No. 160003152; APNs: 2069-078-009 and 2069-078-011) at the April 15 and 21, 2021 public hearing. The purpose of this letter is to express HCD's continued support of the project while also providing technical support regarding the City's responsibilities under State Housing Element Law (Article 10.6 of the Gov. Code) as related to the City's upcoming decision to approve or deny this project.

HCD understands the New Home Company is seeking approval for the West Village Project, which, among other nonresidential components, includes 180 multi-family condominiums including 18 affordable units (10%) reserved for very low-income. According to the Draft Environmental Impact Report, the West Village Project represents the fifth attempt to develop housing on the subject property. According to the City's adopted housing element, the site is zoned Planned Development and Residential Multi-Family and is designated to accommodate 20 units per acre. This site represents one of only a few vacant sites with the capacity to meet a significant portion of the City's Regional Housing Needs Allocation (RHNA) of 330 units. According to the City's submitted Housing Element Annual Progress Report, the City has only permitted 13.6% percent of its 5<sup>th</sup> cycle RHNA with less than a year left in the planning cycle.

HCD also understands that there are some concerns relating to the feasibility of providing housing on this site due to required landslide mitigation. While HCD can appreciate that there may be impediments to development at the site, the State of California is in a housing crisis, and the provision of housing is a priority in the highest order. The proposed project would significantly contribute to the City's stated housing goals.

### 5th Cycle (2013-2021) Housing Element and No Net Loss Law

Housing Element Law requires the City to identify sites that are suitable and available for the development of housing within the 8-year planning period. In the City's adopted 5<sup>th</sup> cycle (2013-2021) housing element, the site on which the West Village Project is proposed was identified to accommodate 180 units of new housing. Under No Net Loss Law, the City is responsible to ensure that its housing element sites inventory can accommodate, at all times throughout the planning period, its remaining unmet share of RHNA. (Gov. Code, § 65863 [No Net Loss]; see also *id.*, § 65584 [RHNA].) Further, the City may not permit or cause, at any time, its inventory of sites to be insufficient to meet its remaining unmet share of RHNA for lower and moderate-income households. (Gov. Code, § 65863, subd. (a).) For this reason, if the City denies the West Village Project based on factors related to the suitability of this site to accommodate the 180 units of housing, the City must take immediate steps to identify adequate<sup>1</sup> alternative site(s) that can accommodate the City's remaining RHNA. For more information about No Net Loss Law, please see HCD's memo, which you can find here:

<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-166-final.pdf>.

### RHNA "Credit" for the 6<sup>th</sup> Cycle (2021-2029) Housing Element

In addition to fulfilling the City's 5<sup>th</sup> cycle housing element obligations, approval of the West Village Project at this time would have an impact on the 6<sup>th</sup> cycle (2021-2029) housing element. Pursuant to Government Code section 65583.1, subdivision (d), the City can reduce its share of the RHNA by the number of units built since the beginning of the projection period (which starts June 30, 2021 in the Southern California Association of Governments (SCAG) region). If approved, construction of the project will most likely not be completed until after the start of the 6<sup>th</sup> cycle projection period date, thus allowing the City to credit these units towards the 6<sup>th</sup> cycle RHNA.

### Environmental Constraint(s) and Site Suitability for the 6<sup>th</sup> Cycle Housing Element

Should the City deny the West Village Project for environmental reasons or physical constraints but desire to retain the site in the sites inventory for the 6<sup>th</sup> cycle housing element, the City's housing element would have to analyze and demonstrate the suitability of this site to accommodate housing within the planning period given the identified constraints.

Further, as this site has been included in the past two housing elements already, if it is retained to accommodate the City's RHNA for lower-income households in the 6<sup>th</sup> cycle, the site would be subject to Government Code section 65583.2, subdivision (c). Under that provision, the site must be zoned to allow a housing project "by right" for housing

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<sup>1</sup> Adequate sites mean that the identified housing sites meet the requirements of Government Code section 65583.2. (Gov. Code, § 65863, subd. (c).)

developments in which at least 20 percent of the housing units are affordable to lower-income households. (Gov. Code, § 65583.2, subd. (c).)

“Use by right” means:

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. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that “use by right” does not exempt the use from design review. However, that design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5. (Gov. Code, § 65583.2, subd. (i).)

#### HCD’s Enforcement Authority

As a reminder, HCD has authority to review any action or failure to act by a city, county, or city and county that it determines is inconsistent with an adopted housing element, including any failure to implement any program actions included in the housing element, or with Government Code section 65583 generally. (Gov. Code, §§ 65583, 65585, subs. (i) and (j).) If HCD finds that the City’s action or failure to act does not substantially comply with applicable law, HCD may revoke its May 10, 2016 finding that the City’s Housing Element complies with State Housing Element Law. Furthermore, HCD may notify the Office of the Attorney General if HCD finds that any local government has taken an action in violation of Housing Element Law, Housing Accountability Act, No Net Loss Law, Density Bonus Law, and Fair Housing Law. (Gov. Code, § 65585, subs. (i) and (j).)

HCD supports the development of housing in the City, including the City’s approval of the West Village Project. HCD remains committed to supporting the City in achieving its housing objectives across all income categories. Please feel free to contact Divya Ram, of our staff, at [Divya.Ram@hcd.ca.gov](mailto:Divya.Ram@hcd.ca.gov) with any questions.

Sincerely,



Shannan West  
Land Use and Planning Unit Chief

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September 18, 2019

CORRECTED

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 recompaction 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)).

The 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)).

Maureen Tamuri, Community Development Director  
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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 the first name "Zachary" being more prominent than the last name "Olmstead".

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