

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

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June 10, 2024

Mayor Edi Birsan
Vice Mayor Carlyn Obringer
Councilmembers Dominic Aliano, Laura Hoffmeister, Laura Nakamura
City of Concord
1950 Parkside Drive
Concord, CA 94519

Dear Mayor Edi Birsan, Vice Mayor Carlyn Obringer, and Councilmembers
Dominic Aliano, Laura Hoffmeister, and Laura Nakamura:

RE: City of Concord, The Ashbury – Letter of Support and Technical Assistance

The purpose of this letter is for the Department of Housing & Community Development (HCD) to express support for the approved apartment project The Ashbury (Project) and to remind the City of Concord (City) of its continuing obligations under state housing law.

Background

HCD understands Pacific West Communities, Inc. (Developer), through its affiliate TPC QOZB-Concord, LP, owns 1650 Ashbury Drive, the site of the Project, which will generate 183 new housing units, including 181 units affordable to low-income households (with a range of 30-70 percent of area median income) and two on-site manager's units. The Project received its entitlements on February 6, 2024, through the streamlined ministerial approval process outlined in Government Code section 65913.4, commonly known as SB 35.

On May 28, 2024, the Concord City Council conducted a Tax Equity and Fiscal Responsibility Act of 1986 (TEFRA) public hearing on a resolution to approve the issuance of up to \$90,000,000 in California State tax exempt bonds. The bond financing would allow for the acquisition, construction, improvement, and equipping of the Project. Bond repayment is the sole responsibility of the Developer and the California Municipal Finance Authority (CMFA); the City is not responsible for the debts, liabilities, and obligations incurred through this bond financing. HCD understands that, at the hearing, the City Council voted to deny approval of the TEFRA resolution.

HCD applauds the City on its prior approval of the Project. Now, HCD understands the Concord City Council may hold a second TEFRA public hearing for the Project. As the

City performs these remaining responsibilities, HCD urges the City to continue to take actions consistent with state law, including its housing element commitments and its duty to affirmatively further fair housing (AFFH), to ensure the continued viability of the Project.

Housing Element Commitments and RHNA Credit

Housing Element Commitments

As the City is aware, through Housing Element Law, the Legislature has established that “the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).) The City contributes to this statewide effort through its adopted housing programs in its 6th Cycle Housing Element (2023-2031).

In addition, under Government Code section 65585, subdivision (i), HCD “shall review any action or failure to act by [the City] that it determines is inconsistent with an adopted housing element..., including any failure to implement any program actions included in the housing element...” Moreover, if HCD “finds that the action or failure to act by [the City] does not substantially comply with this article,” HCD may revoke its findings that the City’s housing element is in compliance with Housing Element Law until it determines that the City has come into compliance with state law.

The City’s failure to approve the TEFRA resolution for the Project may be inconsistent with several of the City’s housing element programs, including but not limited to the following:

Program 3: Affordable Housing Development Toolkit: “The City will actively work with the development community to assist in the development of affordable housing, especially housing for extremely low-income households and households with special housing needs.”

- The Project will provide 181 units of affordable housing, including 19 units of housing for extremely low-income households.

Program 8: Fair Housing: “The City seeks to expand the range of housing opportunities, including for residents with low and moderate incomes, older adults, people with disabilities, large families, female-headed households with children, and people experiencing homelessness.”

- The Project will provide 181 units of affordable housing for residents with low incomes.

Program 8: Fair Housing: “Analysis of Impediments to Fair Housing Choice – As part of the Contra Costa County Consortium, the City participates in the regional Analysis of Impediments to Fair Housing Choice. The City will continue to collaborate in the Analysis

of Impediments to Fair Housing Choice for the Contra Costa County Consortium and continue to work with the Contra Costa CDBG/HOME Consortium to reduce impediments to fair housing choice.” Recommendation #2 in the regional Analysis of Impediments to Fair Housing Choice is “Improve Financial Assistance for Housing.”

- Approving the TEFRA resolution for the Project would improve financial assistance for housing.

Program 11: Incentives to Assist in Development: “The City will continue to provide financial and regulatory incentives to proactively encourage and facilitate the development of affordable housing for lower-income households, particularly those with extremely low incomes and special housing needs including large households, older adults, and persons with physical or developmental disabilities.”

- Approving the TEFRA resolution for the Project would provide meaningful financial incentives for the development of affordable housing for lower-income households, including those with extremely low incomes.

Regional Housing Needs Allocation (RHNA) Credit

The City’s RHNA for the 6th cycle housing element planning period includes 744 low-income units and 1,292 very low-income units (inclusive of extremely low-income units). The Project would provide 44 low-income units and 46 very low-income units (inclusive of extremely low-income units) to count towards the City’s unmet RHNA. As a reminder, approved entitlements do not count towards RHNA credit – only building permits issued do.

Affirmatively Furthering Fair Housing

Under Government Code section 8899.50, all public agencies must affirmatively further fair housing through their housing and community development programs. Government Code section 8899.50, subdivision (a)(1), defines “affirmatively furthering fair housing” as taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

Protected groups, for purposes of California’s fair housing laws (including Government Code section 8899.50), encompass persons or families of very low or low income (Gov. Code, § 65008, subdivisions (a)(1)(B)(3), (b)(1)(C) and (D), (b)(2)(B)). The Project would provide affordable housing for low-income persons and families who fall within the protections of California’s fair housing laws. Furthermore, the Project is located within a half mile of a BART station, grocery stores, restaurants, and shops, thereby providing access to needed resources and amenities.

The duty to AFFH extends to all of a public agency’s activities and programs relating to housing and community development. Public agencies are required to take meaningful actions to AFFH and take no action that is materially inconsistent with its obligation to

AFFH. (Gov. Code, § 8899.50, subd. (b).) A City decision not to certify the TEFRA resolution may make this project infeasible. If that were to happen here, the benefits of those affordable homes will not accrue to low-income individuals and families. Given that the TEFRA approval creates no risk, obligation, or liability for the City, a denial of the resolution raises concerns about whether that denial is “materially inconsistent” with the City’s obligation to AFFH.

The City has noted, including in its housing element (see Program 8: Fair Housing), that one key action to AFFH is to provide more opportunities for affordable housing in higher resource areas and areas of affluence. HCD applauds the City’s efforts to increase geographic equity and opportunities for residents by identifying and rezoning areas appropriate for medium and high residential densities, specifically in moderate- and high-resource areas with majority white population.

However, during the May 28, 2024, TEFRA hearing, several Councilmembers expressed concern that approving more affordable housing in the downtown area would go against the City’s obligations to AFFH. The goal of AFFH is to provide *more* affordable housing opportunities in *more* locations, not *fewer* affordable housing opportunities. The obligation under AFFH to increase affordable housing opportunities in one place does not permit the City to block affordable housing in another. AFFH is focused on ensuring households with protected characteristics have equal access to opportunity. In addition to approving affordable housing throughout the community, the City must also implement place-based strategies to encourage community conservation and revitalization in lower-resource areas. HCD applauds the City’s place-based strategies found in Housing Element Program 26.

Conclusion

In sum, HCD commends the City on its approval of the Project and urges the City Council to approve the TEFRA resolution. HCD will continue to monitor the Project and reminds the City that, pursuant to Gov. Code section 65585, subdivision (j), HCD has authority to enforce Housing Element Law and AFFH, among other state housing laws.

Thank you for your attention to this matter. If you have any questions regarding the content of this letter or need additional technical assistance, please contact Stephanie Reyes at Stephanie.Reyes@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability