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

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December 22, 2020

Carl P. Holm, Director
Resource Management Agency (RMA)
County of Monterey
1441 Schilling Place
Salinas, CA 93901

RE: Leonard McIntosh Housing Project – Letter of Technical Assistance

Dear Carl P. Holm:

The California Department Housing and Community Development (HCD) understands that on January 12, 2021, the Monterey County Board of Supervisors will be hearing an appeal related to Leonard McIntosh's application for 15 apartment units in the Laguna Seca Office Park. The purpose of this letter is to express HCD's concern related to the ad hoc application of a 35-percent inclusionary requirement that was not analyzed as a potential governmental constraint in Monterey County's housing element of the general plan.

The applicant is proposing a 15-unit apartment project, which includes the current county-wide 20-percent inclusionary requirement. (Mont. County Code, § 18.40.070.) As proposed for this 15-unit project, the requirement is satisfied with one unit that will be affordable to very low-income households and one unit to moderate-income households. On September 30, 2020, the Planning Commission approved the project with an ad hoc condition that it provide 35-percent inclusionary units on the site. HCD understands the reasoning for this increased inclusionary requirement is because the project is in the Laguna Seca Office Park, which is outside the County's Community Areas, Rural Centers, and Affordable Housing Overlay districts. General Plan Land Use Element Policy LU-1.19, adopted October 26, 2010, required the County to the establish a Development Evaluation System (DES) for areas not covered by Community Areas, Rural Centers and Affordable Housing Overlay districts. In addition to other requirements, the DES system would require a 35-percent inclusionary provision for projects of five or more units. HCD understands that while Monterey County has considered drafts of the DES system over the past decade, it has never finalized or adopted the final system or the municipal code provisions that would authorize it. As recently as August 2020, in fact, the County declined to adopt an ordinance that would have added Chapter 21.92 to implement a DES system. The applicant is appealing the Planning Commission's decision to apply the yet-to-be-adopted standards on an ad hoc basis.

While Program LU-1.19 was included as part of the land use element since 2010, the 35-percent inclusionary requirement or the DES were neither analyzed nor mentioned in the housing element adopted by the County four years later on January 26, 2016, and subsequently reviewed by HCD for substantial compliance with State Housing Element Law pursuant to Government Code section 65585, subdivision (b). Further, the County is obligated to provide an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels. (Gov. Code, § 65583, subd. (a)(5).) Where such constraints are identified, the County must further address, and where legally possible, remove governmental constraints affecting the maintenance, improvement and development of housing. (Gov. Code, § 65583, subd. (c)(3).) As the DES would impose a 35-percent inclusionary requirement, or perhaps even higher percentage depending on the County's final action, the DES clearly creates a constraint that must be analyzed under these provisions. Should the County adopt such a 35-percent inclusionary requirement and/or adopt the DES, the County must revise the current 5th cycle housing element to include a description and analysis of the 35-percent inclusionary requirement and DES framework, the constraints that this requirement will impose, the mechanisms and policies that will be utilized to address the constraint, all of which must be submitted to HCD for review prior to its adoption. (Gov. Code, § 65585, subd. (b).)

In addition, the proposed DES policy and implementing ordinance must be analyzed for consistency with Housing Element Goal H-4 prior to its adoption and implementation. (Housing Element, p. 139.) Goal H-4 commits the County to reducing and removing government constraints to housing production and opportunity when feasible and legally permissible. (Housing Element, p. 139.) The County must ensure that DES system and ordinance, including the 35-percent inclusionary process, is evaluated for consistency with Goal H-4 and will not constrain housing projects outside the Community Areas, Rural Centers, and Affordable Housing Overlay districts. According to the applicant for the 15-unit project at the Laguna Seca Office Park, and its banker, applying the 35-percent requirement to the 15-unit project may render the project financially infeasible. (See Lombardo Letter to County of Monterey, dated September 25, 2020 and attached email of same date from Pinnacle Bank.)

In sum, if the County intends to implement Program LU-1.19, the County will need to analyze DES system, including the 35-percent inclusionary mandate, as potential constraints on the development of housing for all income levels, specifically on housing supply and affordability, prior to its adoption. However, if the Program LU-1.19 is not implemented prior to revision of the County's 6th cycle housing element, which is due on or about December 15, 2023, at a minimum the policy must be included and analyzed at that time for potential constraints to the development of housing.

As a reminder, HCD is required 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 or

Government Code section 65583, including any failure to implement any program actions included in the housing element. (Gov. Code, § 65585, subds. (i) and (j).) If HCD finds that the action or failure to act does not substantially comply with applicable law, HCD may revoke its May 10, 2016 finding that the County'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.

HCD supports the County's approval of the housing during this critical housing crisis, including the Leonard McIntosh project, and hopes for a speedy resolution of this matter. HCD remains committed to supporting the County in achieving its housing objectives across all income categories. Please feel free to contact Fidel Herrera, of our staff, at fidel.herrera@hcd.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Land Use and Planning Unit Chief

cc: Anthony L. Lombardo
Cody Phillips

ANTHONY LOMBARDO & ASSOCIATES

A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO
KELLY MCCARTHY SUTHERLAND
JOSEPH M. FENECH
CODY J. PHILLIPS

144 W. GABILAN STREET
SALINAS, CA 93901
(831) 751-2330
FAX (831) 751-2331

December 16, 2020

File No. 5080.001

Ms. Jaime Scott Guthrie, AICP
Housing and Community Development
1441 Schilling Place
Salinas, CA 93901

RE: McIntosh/Laguna Seca Office Park

Dear Ms. Guthrie:

It is my understanding that you have asked if a single notice which includes separate legal descriptions and assessor's parcel numbers for multiple parcels is recorded if that recording should then appear on title for each parcel. The short answer is "yes."

When people purchase a property, they will generally also purchase title insurance for that property. Title companies offer title insurance policies to buyers. Title insurance insures that the seller has clear title to the property. Title companies also identify exceptions to that clear title. Exceptions such as a neighbor's easement across the property or tax liens on the property will be listed in the title report as exceptions to the title insurance to be offered.

Title companies use a number of methods to locate, on a parcel by parcel basis, judgements, maps, liens, easements and other recorded documents that impact the title for each parcel. The work is intricate and sometimes tedious. Their findings are then consolidated into a title report.

If a document includes the assessor's parcel numbers and legal descriptions for multiple properties, most title companies will find it and include it as an exception to the title insurance for each of the properties listed in the document. Having both the assessor's parcel number and the legal description in the document make it more likely that a title company will find the document and know to include it as an exception on title for each parcel. In my experience over many years with many title officers, I have not seen it ever matter whether a notice is recorded separately for each property or whether a notice includes multiple properties.

Ms. Jaime Scott Guthrie

December 16, 2020

Page | 2

As with any system, it is not full-proof. If a title company misses a document that it should have found and included as an exception, the buyer can make a claim against the title company for missing that exception. In order to avoid getting sued for missing exceptions, title companies tend to be very careful in their review. Their business model requires them not to miss many such documents.

I hope this addresses your concern. If you have any questions, please feel free to call me.

Sincerely,

Kelly McCarthy Sutherland
Kelly McCarthy Sutherland
KMS/DE 

MONTEREY COUNTY

HOUSING AND COMMUNITY DEVELOPMENT

Carl P. Holm, AICP, Director



HOUSING | PLANNING | BUILDING | ENGINEERING | ENVIRONMENTAL SERVICES
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Salinas, California 93901-4527 www.co.monterey.ca.us

20 January 2021

SENT VIA EMAIL

Fidel Herrera
State of California Dept. of Housing & Community Development
Division of Housing Policy Development
2020 W. El Camino Ave., Ste. 500
Sacramento, CA 95833

Subject: Leonard McIntosh Housing Project

Dear Mr. Herrera,

Thank you to you and to Ms. Coy for your time on the phone call on January 14, 2021 to discuss the December 22, 2020 letter from HCD whose subject was stated as “Leonard McIntosh Housing Project – Letter of Technical Assistance.” The letter states concern with “*ad hoc*” application of a 35% inclusionary requirement to the McIntosh project that had not been analyzed as a governmental constraint in the County’s certified 2015-2023 Housing Element. As explained during our discussion, the Development Evaluation System (DES) is established by the County’s 2010 *General Plan* (Policy LU-1.19), and the County has been applying the DES criteria set forth in the *General Plan* while County staff is developing implementation procedures. As further explained, with respect to the McIntosh project, the Monterey County Planning Commission applies the DES to the project in conjunction with an incentive under Density Bonus law, resulting in an effective 28.57% requirement for affordable housing, not a 35% affordability requirement. The 28.57% requirement consists of units affordable to households with incomes of (1) Very Low, (2) Moderate, and (1) Workforce II (the latter is defined as affordable to households earning 150-180% of area median income).

The applicant, Leonard McIntosh, appealed the Planning Commission’s decision to the Board of Supervisors, which is scheduled for a *de novo* hearing on the February 2, 2021 agenda. Based on State HCD’s expressed concerns, County staff will present the 28.57% proposal approved by the Planning Commission, and will also present an alternative option for a 21% affordability requirement, as further described below. County staff would appreciate clarification from CA HCD’s staff prior to February 2 (and ideally, prior to the staff report deadline of January 22) as to whether CA HCD has any objection to either the 28.57% or 21% affordable housing proposals.

County staff understanding is that the main purpose of the CA HCD letter is not to comment on the McIntosh project *per se*, however, rather to call attention to the absence of specific governmental constraints analysis of the DES (Policy LU-1.19) within the Monterey County’s certified 2015-2023 Housing Element. County staff further understands that State HCD staff is willing to work with the County to include such an analysis through either a focused amendment to the certified Housing Element or the next Housing Element cycle.

In so far as the HCD letter relates to the McIntosh project, County staff would like to clarify application of the affordable housing requirements:

- 1) The McIntosh project site is not included in the 2015-2023 Housing Element's identification of sites for meeting the County's Regional Housing Needs Allocation (RHNA) because the site is not zoned residential; the site is zoned for commercial use with limited residential use, and is outside of the County's priority growth areas. However, to facilitate the development of housing, the County proposes to eliminate zoning barriers to the residential 15-unit apartment building on the commercially-zoned lot. The lot is part of the Laguna Seca Office Park (LSOP). Commercial zoning of the LSOP allows residential use that does not exceed commercial development on any one lot in the LSOP. To enable the project proponent's request for 100% residential use on one lot, staff proposes and the Planning Commission approve a General Development Plan (GDP) that covers several lots in the LSOP, thereby achieving the residential/commercial balance by consolidating residential use on the proposed lot in exchange for other lots in the LSOP that already have commercial development foregoing their rights to residential use.
- 2) The Airport Land Use Commission (ALUC) had "no decision" on this project because of a dispute as to which airport compatibility plan applies, either the former Comprehensive Land Use Plan (CLUP) or the Airport Land Use Compatibility Plan (ALUCP) adopted in 2019 for the Monterey Regional Airport. The project is on a lot within airport safety hazard Zone 4 of the 2019 ALUCP, under which the proposed level of residential density would not be allowed to exceed 2 acres per residential unit, a far lower density than the apartment complex proposal. The ALUC decision effectively eliminates a maximum density barrier to facilitate development of housing at the proposed location.
- 3) The County applies a financial incentive to the project pursuant to state Density Bonus law in the form of waiving a portion of the in-lieu fee for affordable housing. Per the County's Inclusionary Housing Ordinance (Monterey County Code Chapter 18.40), the proposed 15-unit apartment building gets an automatic residential credit of one unit (one residential unit could be allowed by-right). Affordable housing calculations are then based on 14 added units (15 minus 1). If 35% is multiplied by 14 units under the DES, *General Plan* Policy LU-1.19, the result is an obligation of 4.9 units affordable to household income levels as follows:
 - (1) Low;
 - (1) Moderate;
 - (1) Workforce I; and
 - (1.9) Workforce II units.

[Note: If General Plan policy LU-1.19 did not apply, the separate *General Plan* Policy LU-2.13, requires affordable housing in new residential development at 25% (6% very low, 6% low, 8% moderate, and 5% Workforce I (up to 150% of median)). Application of the 25% requirement without any bonuses or incentives would result in a requirement of 3.5 affordable units.]

In the case of the McIntosh project, the County Planning Commission applies a financial incentive under Density Bonus law triggered by provision of one unit affordable at very low-income level (VL). Recommendation by the County's Housing Advisory Committee (HAC) and decision by the Planning Commission results in a mix of inclusionary housing built units affordable to household income levels as follows:

- (1) Very Low;
- (2) Moderate;
- (1) Workforce II; plus
Waiver of in-lieu fee for 0.9 fractional unit.


As a financial incentive, the Planning Commission decision provides for waiver of the 0.9 fractional unit in-lieu fee (incentive for VL unit). With that waiver, the total affordability requirement equals 28.57% (4 out of 14). Note: Workforce II is defined as affordable to households with income of 150% to 180% of median income; if only the inclusionary units (defined as very low-, low-, or moderate-income) are counted as “affordable,” the requirement equals 3 units out of 14, which is a 21% requirement.

County staff believes the approach to housing is reasonable under the circumstances of this case because the County is in dire need of affordable housing. This option provides affordable housing in an area of the County where it is needed, and the County effectively reduces the 35% requirement by waiving a portion of the in-lieu fee. County staff is also considering providing an alternative option for the Board of Supervisors’ consideration. This option would consist of eliminating the Workforce II unit and increasing the waiver of the inclusionary housing in-lieu fee to equal 1.9 units. This option would reduce the inclusionary requirement to only 3 units out of 14, which equals 21%. Under this option, the affordability requirement is near equal to the County’s Inclusionary Housing Ordinance requirement that 20% of new residential development be affordable to very low-, low-, and moderate-income households. The County’s Inclusionary Housing Ordinance was addressed in the County’s most recent 2015-2023 Housing Element (see p. 68), and therefore, should not raise State HCD’s concern with a governmental constraint that was not analyzed in the Housing Element.

County staff would appreciate clarification that State HCD staff does not object to the 28.57% or 21% affordability requirement for the McIntosh project. County staff also reiterates commitment to working with State HCD staff to address concern with including analysis of Policy LU-1.19 (the DES) as a governmental constraint as an amendment to the current Housing Element or in the next cycle of the Housing Element, moving forward.

Please feel free to contact Jaime Scott Guthrie, project planner, with any questions at 831.796.6414 or email guthriejs@co.monterey.ca.us

Sincerely,



for

Craig Spencer, HCD-Planning Services Manager
Housing and Community Development – Planning

cc: File PLN170765
Wendy S. Strimling, Assistant County Counsel

RE: Leonard McIntosh Housing Project Letter

Herrera, Fidel@HCD <Fidel.Herrera@hcd.ca.gov>

Tue 2/2/2021 4:28 PM

To: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Dear Jaime,

This email is in response to the letter sent by the County of Monterey to HCD dated January 20, 2021. As the County is aware, the State of California is in a housing crisis, and the provision of housing is a priority in the highest order. HCD appreciates the County's communications and willingness to dialogue with the applicant. Further, HCD encourages both the County and the applicant to continue working together to reach an agreement that results in a project that is feasible to build and yields new housing units in the County.

In addition, please be mindful of the County's housing element obligation to address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for both the 5th and 6th cycles.

Please feel free to contact me at fidel.herrera@hcd.ca.gov if you have questions.

Sincerely,

**Fidel Herrera**

Senior Housing Policy Specialist
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833



From: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>
Sent: Wednesday, January 20, 2021 8:48 AM
To: Herrera, Fidel@HCD <Fidel.Herrera@hcd.ca.gov>
Cc: Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>
Subject: Re: Leonard McIntosh Housing Project Letter

Dear Fidel,

Please find attached a response letter from the phone conversation between State HCD staff and Monterey County staff on 1/14/21. With the appeal of this project on 2/2/21, we are hopeful and would be grateful for a response by this Friday 1/22, if at all possible.

Kind regards,

*Jaime Scott Guthrie, AICP***Associate Planner**831.796.6414 | GuthrieJS@co.monterey.ca.us

County of Monterey Housing & Community Development

1441 Schilling Place South, 2nd Floor, Salinas, CA 93901Code of Ordinances (library.municode.com), + Accela Citizens Access ([ACA](http://aca.accela.com)) (aca.accela.com)

From: Herrera, Fidel@HCD <Fidel.Herrera@hcd.ca.gov>
Sent: Tuesday, December 22, 2020 5:14 PM
To: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>
Subject: Leonard McIntosh Housing Project Letter

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Hi Jaime,

Attached is a letter to the County regarding the Leonard McIntosh Housing Project. Please include the letter for the appeal scheduled on January 12, 2021.

Please confirm receipt of the letter. Let me know if you have questions.

Thank you,

**Fidel Herrera**

Senior Housing Policy Specialist
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833

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