

Exhibit D

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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, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West
Land Use and Planning Unit Chief

cc: Anthony L. Lombardo
Cody Phillips

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