Exhibit C

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May 6, 2024

Our File No: 5344.000

Martha Diehl, Chair
Monterey County Planning Commission
1441 Schilling Place
Salinas, CA 93901

RE: Gard/PLN210223

Dear Chair Diehl and Members of the Commission:

We represent Mr. Damian Nava the applicant for the Gard subdivision. Your Commission is scheduled to hear this application on May 8th.

The applicant is in general agreement with the conditions recommended by the staff. The Commission will see in this letter that there are some discrepancies between the project described and analyzed by the staff in their report and as we describe in this letter. The discrepancies lie largely in the administration of the inclusionary housing requirements. These are similar to the issues raised and discussed for the River View project.

PROJECT DESCRIPTION

The applicant proposes to divide the property (4.00 acres, gross) to create 16 single family residential lots and a 0.59-acre remainder parcel. The remainder parcel is the Gard homesite and will be retained by the Gards. The State Map Act is clear that a designated remainder parcel is not considered to be part of the subdivision. Three of the sixteen lots will be for moderate income homes. The net developable area is 3.41 acres including future dedication for Boronda Road, the private subdivision road, and the stormwater basin. The net density of the subdivision is 4.7 units per acre. The subdivision will include a private road, all required improvements to retain storm water and other runoff on site, soundwalls along Boronda Road and a play area for the subdivision residents.

The property is zoned "MDR/4-A-UR (Medium Density Residential, 4 units per acre)". The property is within the Boronda Community Plan area.

REQUIRED INCLUSIONARY CONTRIBUTION

The staff is basing their calculation of the inclusionary requirement based on 25% of 17 lots, which would include the remainder parcel. The project which requires the inclusionary contribution is 16 lots.

Monterey County Code Section 18.40.060 A requires that: "All *residential development* consisting of five (5) or more units or lots…shall *provide inclusionary units* on-site or off-site", Monterey County Code Section 18.40.040 defines residential development to mean "any project requiring any subdivision of land [that will] *create three or more new or additional dwelling units and/or lots."* The County Code is clear. The Inclusionary Housing Ordinance defines residential development to be "new or additional dwelling units and/or lots." This project creates 16, not 17, new lots.

The applicant proposes 13 market rate units, 3 moderate income units, and payment of an in-lieu fee for any fractional unit requirement. The affordable housing requirements for this project should be calculated, per the County Inclusionary Housing Ordinance and Administrative Manual, at 20% of the market rate units.

We continue to disagree that the 2020 General Plan Policy LU-2.13[1] is applicable to this project. Policy LU-2.13 clearly anticipates there will be an implementing amendment to the Inclusionary Housing Ordinance. That has not happened.

The County cannot, at this time, impose a 25% requirement. The County was advised of this fact in State HCD's letter of December 12, 2020[2] (Exhibit A):

> "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),"

The analysis which, which according to State law and State HCD[3], the County is "obligated" to perform, has not been done, considered by the Planning Commission, approved by the Board of Supervisors, or certified by State HCD.

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[1] "The County shall assure consistent application of an Affordable Housing Ordinance that requires 25% of new housing units be affordable to very low, low, moderate, and workforce income households…"

[2] The State HCD letter was in response to a question of the applicability of the 35% requirement in the General Plan's Development Evaluation System. The circumstances are the same for the 25% requirement. If the State required analysis has not been done, the rate cannot be increased.

[3] We have asked State HCD to review these questions. While State HCD has expressed some "substantial reservations" about the County's methodology, they have not yet provided a written response. County HDC, as we understand it, has also reached out to Stahr HCD.

The applicants propose a project of 13 market rate and 3 moderate income units. The 3 planned moderate-income units should not be included for the purpose of calculating the number of affordable units required. To count them would be to impose inclusionary requirements on inclusionary units. In essence, the applicants would pay a tax on the tax they are already paying.

The base for calculation should then be 20% of 13 lots (the net increase in market rate lots). This would result, based on the current Inclusionary Housing Ordinance and Administrative Guidelines, in a 2.6-unit obligation. As previously stated, the applicants intend to build 3 moderate-income units.

We met with the Housing Advisory Committee (HAC) on April 10th to discuss the proposal. At the conclusion of the meeting, the HAC unanimously voted to recommend that the 20% contribution rate be utilized given the County had not amended the Inclusionary Housing Ordinance to require a 25% contribution. The HAC also supported pricing the inclusionary units at the moderate-income level.

The applicant proposes to construct three moderate income units. The sales price limitation for very low or low income units would result in a loss per unit of $154,200 to $166,100 on each of those units. This is small project that does not have the ability to add that loss to the price to the 13 market rated units while the moderate homes would sell at a price which would allow a small profit to the applicant.

THE PROJECT IS ENTITLED TO TWO DEVELOPMENT INCENTIVES

County zoning ordinance Section 21.65.060 C states: "A housing development *qualifying* for a density bonus is entitled to *at least* one incentive in addition to the density bonus." As written, a project only has to qualify for a density bonus. It does not have to implement a density bonus. A project which provides a 20% contribution at the moderate-income level qualifies for a density bonus and, in turn, is entitled to two incentives (Monterey County Code 21.65.070 A).

The applicants request two incentives:

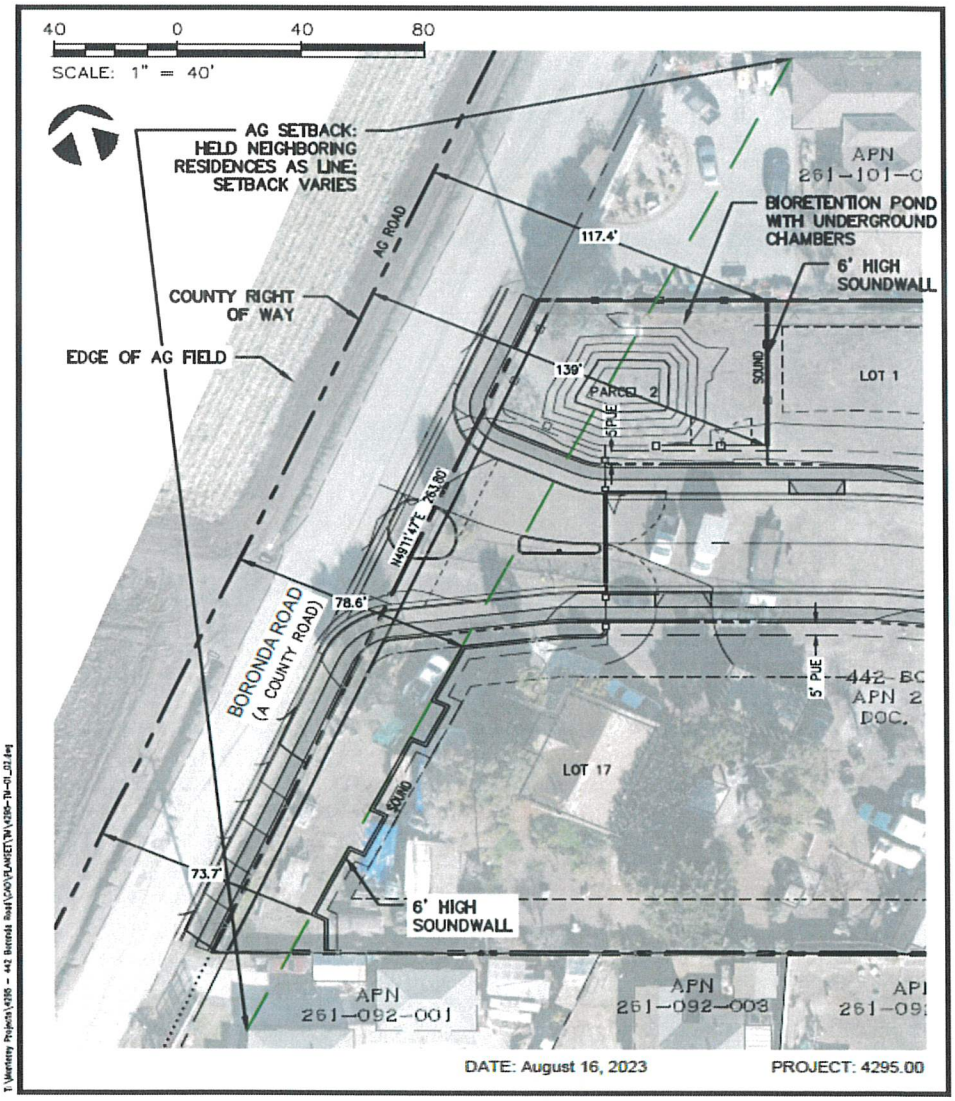
Expedited processing of the final map and related documents: It is not unusual for the processing of a final map to take up to one year. This is due in part to staffing levels, multiple projects, and competing priorities. An incentive of expedited processing will substantially shorten the processing time, reduce holding costs, and allow construction to begin more quickly than under normal processing.

Waiver of County fees for the final map and inclusionary units. In conjunction with the expedited processing, the reduced fees will help the project's financial viability.

AGRICULTURAL BUFFER

The property across Boronda Road is zoned Farmlands, 40 acre minimum. The applicant proposes a buffer of 117 feet from the zoning boundary to the nearest proposed property line. The buffer affects one lot only. That lot will have a greater setback than most residences along Boronda Road and more than the residences on the adjoining properties. The specific lot will be separated by a heavily landscaped area and 6-foot wall. The balance of the subdivision meets the 200-foot requirement.

Proposed Agricultural Buffer



CONCLUSION

Providing a low-income unit will result in a loss of $154,200 to $166,100 to the applicant or add about $37,000 to each market rate unit. The project is a small subdivision with limited ability to spread that loss across the 13 market rate homes. The applicants are local residents. They are not large developers with corporate income to support those losses. The County HAC recognized the potential adverse financial impact and recommended that the inclusionary units be allowed as moderate income. The HAC also supported the use of the 20% contribution as set forth in the current Inclusionary Housing Ordinance.

By approving three moderate units and the two requested incentives, the project viability increases, the timeline for building the units can be accelerated, and the homes can be available sooner. Therefore, we respectfully request that the Planning Commission:

1. Determine that the appropriate Inclusionary Housing requirement is 20% of 16 lots/units.
2. Direct the staff to edit the Findings, Evidence, and Conditions to reflect that determination.
3. Approve the Gard (Nava) Subdivision as submitted with the edits noted above.

Respectfully submitted,

Anthony L. Lombardo
Enclosure

cc: Client
Darby Marshal
Mary Israel

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

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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.

EXHIBIT A

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,

Shannan West
Land Use and Planning Unit Chief

cc: Anthony L. Lombardo
Cody Phillips