

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

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November 9, 2021

Lee Butler, Planning Director  
City of Santa Cruz  
809 Center Street, Room 107 and 101  
Santa Cruz, CA 95060

**RE: 831 Water Street Housing Project – Letter of Support & Technical Assistance**

Dear Lee Butler:

The California Department Housing and Community Development (HCD) received a request for technical assistance regarding the 831 Water Street Housing Project (Project). HCD is aware of a recent denial of this Project by the City Council. The purpose of this letter is to provide support for the Project as well as technical assistance related to the Streamlined Ministerial Approval Process (SB 35; Chapter 366, Statutes of 2017) and application of Assembly Bill (AB) 491 (Chapter 345, Statutes of 2021). HCD recognizes the challenge of interpreting ever-changing housing and land-use laws and appreciates the opportunity to provide technical assistance.

HCD understands the Project is proposed as a mixed-use development consisting of two separate multi-story buildings constructed over a shared underground parking garage. Building A is proposed at five stories in height, with 69 market rate units, consisting of a mix of studio, one-bedroom, two-bedroom, and three-bedroom units. Building B is proposed at four stories in height, with 71 units affordable to low-income households, consisting of studio, one-bedroom, and two-bedroom units. In addition, Building B would include a community room, office, laundry, and lobby on the first floor.

First, HCD would like to express support for this Project, which would provide 140 much needed housing units, over half of which would be affordable to lower-income households, during this critical housing crisis. Second, it appears the City denied the Project in significant part due to provisions of AB 491. HCD believes the City has misconstrued that law. As HCD understands it, AB 491 will not go into effect until January 1, 2022.<sup>1</sup> Further, even if AB 491 were current law, it would not present an impediment to the Project. AB 491 precludes a development from isolating affordable units *to a specific floor or an*

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<sup>1</sup> HCD recognizes that AB 491 itself states that it is declaratory of existing law, and on this ground the City applied the law to the Project before the statute's effective date. HCD will not quibble with the Legislature on this point here. HCD does note that the courts frequently do quibble with the Legislature on such declarations, looking behind the statement to see if the new statute actually changes legal relationships. (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471–472.) If so, they are not declaratory of existing law and do not apply until their effective date. In this instance, because AB 491 does not apply under the facts, even assuming it does apply retroactively, the legislative declaration need not be tested.

*area on a specific floor* from other market rate units. There is nothing in AB 491 that specifically precludes consolidating the units in a single building or buildings so long as the affordable units are distributed amongst other units in the structure, and not consolidated on one floor or area on a specific floor. (AB 491, sec. 1, adding Health & Saf. Code, § 17929, subd. (a)(2).) Further, it is unclear if the structure itself is covered by AB 491, which only applies on its face to a “mixed-income multifamily structure.” (AB 491, sec. 1, adding Health & Saf. Code, § 17929, subd. (a)(4).)

HCD’s SB 35 Guidelines do apply here, however, and would not prohibit the Project as proposed. The Guidelines state that “affordable units shall be distributed throughout the development, *unless otherwise necessary for state or local funding programs*, and have access to the same common areas and amenities as the market rate units.” (Updated Streamlined Ministerial Approval Process Guidelines, March 30, 2021, § 402(f), emphasis added.) As it appears that the Project will receive State Tax Credit Allocation funds for Building B and the affordable units have access to the same common areas and amenities in the development as market rate units, the Project is consistent with section 402(f).

As a reminder, the City has up to 90 days to determine if an application for Streamlined Ministerial Approval Process complies with the requirements and approve or deny the application. Per Section 301(a)(2)(B) of the SB 35 Guidelines, if the application can be brought into compliance with minor changes to the proposal, the local government may allow the development proponent to correct any deficiencies. HCD understands that the 90-day period ends November 12, 2021. HCD views this Project as an SB 35 project and recommends approval.

To reiterate, HCD supports the City’s approval of housing during this critical housing crisis, including the 831 Water Street Housing Project, and hopes for a speedy resolution of this matter. Please feel free to contact Fidel Herrera, of our staff, at [fidel.herrera@hcd.ca.gov](mailto:fidel.herrera@hcd.ca.gov) with any questions.

Sincerely,



Shannan West  
Housing Accountability Unit Chief