

From: [Yibin Shen](#)
To: [CityCouncil-List](#)
Cc: [Michael Roush](#); [Celena Chen](#); [Eric Levitt](#); [Andrew Thomas](#); [Lara Weisiger](#)
Subject: FW: [EXTERNAL] North Housing development plan questions
Date: Tuesday, September 15, 2020 11:46:24 AM

Dear Mayor and Council,

Below is communication from Assistant City Attorney Celena Chen in response to questions from Mr. Bangert relating to item 5H tonight.

Many Thanks

Y

Yibin Shen
City Attorney
City of Alameda
2263 Santa Clara Avenue, Room #280
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(510)747-4750

From: Celena Chen
Sent: Monday, September 14, 2020 4:36 PM
To: Yibin Shen <yshen@alamedacityattorney.org>; rb94501@gmail.com
Cc: 'Michael Roush' <mhrlegal@comcast.net>; Andrew Thomas <athomas@alamedaca.gov>
Subject: RE: [EXTERNAL] North Housing development plan questions

Good afternoon Mr. Bangert,

I'm writing to respond to the questions you raised regarding the Alameda Housing Authority's affordable housing project at 501 Mosley Avenue, commonly known as the North Housing project.

City staff determined that the project is eligible for review under SB 35 because it meets all of the criteria to be eligible for streamlined review pursuant to Government Code section 65913.4, and recommended approval of the project to the Planning Board. As City Attorney Shen stated below, any legal advice our office provides to City Departments, Boards/Commissions, and the Council, including advice regarding the applicability of SB 35 to any particular project, is subject to attorney client privilege.

The Local Redevelopment Authority's (LRA) role with regard to AHA's North Housing project is complete. Nothing in the Community Reuse Plan requires final approval of the project by the LRA.

- The federal regulations define a LRA as "the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan." (24 CFR Part 586.5 [Definitions], 586.20(c) [Responsibilities of the LRA].) In 1996, the LRA (Alameda Reuse and Redevelopment Authority, a joint powers authority formed

between the County and City of Alameda) adopted the NAS Alameda Community Reuse Plan, which is a legal document necessary to meet federal requirements for base reuse and transfer of NAS property. The Community Reuse Plan, as amended, is a roadmap for the conversion of NAS Alameda from military to civilian use. It is not a General Plan, rather, it provides a framework for proposed reuse and serves as a guide for changes to the City's General Plan and land use regulations. (CRP pp. 1-5, 2-13.)

- The federal regulations also require the LRA to “be responsible for the implementation of and compliance with legally binding agreements under the application.” (24 CFR Part 586.45(d) [LRA's responsibility].) Pursuant to those regulations, the LRA entered into a Legally Binding Agreement with the Housing Authority for the North Housing project. The LBA as amended describes the project as consisting of “no fewer than ninety (90) units of permanent, supportive multifamily rental housing....”

Land use regulatory authority for the North Housing project rests with the City of Alameda pursuant to the City General Plan and Zoning Ordinance, which are the legal documents that establish allowable uses and development intensities for the North Housing project. After a lengthy public process over a two year period, which included five community meetings, a study session, and a public hearing, the Planning Board adopted Resolution No. PB-20-16 approving the Development Plan and Density Bonus Application for the project, and Resolution No. PB-20-17 recommending City Council approval of the Tentative Map for the project. As required by Alameda Municipal Code section 30-78.5, the City Council will consider the Tentative Map at its regularly scheduled meeting on September 15.

Please let me know if you have any questions or need additional information. Thanks very much.

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From: Yibin Shen

Sent: Tuesday, September 8, 2020 12:09 PM

To: rb94501@gmail.com

Cc: 'Michael Roush' <mhrlegal@comcast.net>; Celena Chen <cchen@alamedacityattorney.org>; Andrew Thomas <athomas@alamedaca.gov>

Subject: RE: [EXTERNAL] North Housing development plan questions

Dear Mr. Bangert,

Assistant City Attorney Celena Chen works on this project w/ Planning Director Andrew Thomas. She is out of the office this week, and maybe able to provide more specific answers to your questions upon her return.

To generally answer your question, we (the City Attorney's Office) provide legal advice to City Departments, Boards and Commissions, and the Council, including legal advice regarding the applicability of SB35 on specific projects. Such advice are, of course, subject to attorney client privilege. The AHA is a project applicant in this case and we would treat them like any other project applicant.

Many Thanks

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From: City Attorney
Sent: Tuesday, September 8, 2020 8:59 AM
To: Yibin Shen <yshen@alamedacityattorney.org>; 'Michael Roush' <mhrlegal@comcast.net>
Subject: FW: [EXTERNAL] North Housing development plan questions

From: Richard Bangert [<mailto:rb94501@gmail.com>]
Sent: Tuesday, September 8, 2020 8:39 AM
To: City Attorney <cityattorney@alamedacityattorney.org>
Subject: [EXTERNAL] North Housing development plan questions

Hello Mr. Shen,

I'm preparing a story for the Alameda Sun and also my blog that will update the community on what's happening with the North Housing parcel. I'm aware of the recent approval by the Planning Board of the development plan. I've written a number of stories in the past. One of them was in 2013 after the City finally received the HUD letter needed to move forward <https://alamedapointenviro.com/2013/10/10/parkland-and-housing-land-coming-soon-from-the-navy/> Obviously "coming soon" came to be a relative term. Nevertheless, the land

now belongs to the City.

I'm trying to fill in some information gaps regarding two issues. One issue has to do with role of SB 35 in the process. In the June 24, 2020, Housing Authority Board of Commissioners meeting minutes, it says that AHA was in conversation with your office for over a year regarding the SB 35 issue and that your office was "not comfortable moving forward."

The exact text of the minutes says, "Ms. Danielle Thoe, Management Analyst, provided an update and explained that AHA has been in conversation with the City for over a year regarding how the SB35 process would be handled. The City Attorney's Office took a deeper look into SB35 and decided they were not comfortable moving forward. Ms. Thoe explained the way the zoning code was made, the process, and the views of the City Planning Board. Ms. Thoe continued that AHA has responded with why AHA believes in SB35 applies."

My questions (on the SB 35 issue) to you are, what is it that Ms. Thoe was referring to, and why was the issue resolved in favor of AHA's interpretation believing SB 35 applies?

The other information I am seeking has to do with the role of the City Council vs AHA in development plans going forward.

This property was conveyed to the City as Local Reuse Authority under the military surplus land disposal process. While the LRA can implement the agreed upon use for which land was conveyed in the manner in which it sees fits, such as having a City department be the lead, the LRA is still the ultimate decider. It's not unlike the Estuary Park component of the North Housing Amendment to the Reuse Plan, whereby the City as LRA received the park parcel, and ARPD was the lead in crafting a new use plan with sports fields. But the City Council still had the final decision and approved the final design, the two phases, and the various grant applications.

The federal CFR 586 under which HUD approved the reuse plan amendment states that it is the LRA that is responsible for implementation. That would suggest to me that the City Council has the responsibility to approve the development plan.

It would also suggest to me that a state law, SB 35, cannot eliminate the public hearing process that is the essence of why Congress created the Base Realignment and Closure Act.

One could argue that if the current development plan is to simply build the 90 units of supportive housing for the homeless, which is the sole reason for carving out this parcel in the disposal of North Housing, then AHA would simply be the project manager. But the development plan has now gone substantially beyond the original purpose of the land conveyance. Therefore, it would seem to me that it is the LRA's responsibility and duty to decide the details of the development plan, much like the City Council, as LRA for Alameda Point, decides the details of various land use plans like Site A. A state law such as SB 35 cannot, in my lay opinion, override the intent of Congress.

I would appreciate hearing your comments.

Thank you,
Richard Bangert

Photo site: <https://www.flickr.com/photos/63740093@N03/>

Blog: <https://alamedapointenviro.com/>