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December 5, 2018

**Via Email and Hand Delivery**

**Agenda Item VII(1)**

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**Re: Disposition and Development Agreement Between the City of Concord and AvalonBay Communities, Inc. regarding the Avalon Town Center II (PL18242-GP)**

Dear Planning Commission Members:

We are writing on behalf of **Concord Residents for Responsible Development** (“Concord Residents”) to provide comments on Planning Commission Agenda Item VII(1), the proposed Disposition and Development Agreement (“DDA”) between the City of Concord (“City”) and AvalonBay Communities, Inc. (“Developer”) regarding the Avalon Town Center II. The DDA contemplates the sale and future development of the subject property with up to 310 market rate apartments and approximately 6,500 square feet of ground-floor retail. The property is an approximately 3.1 acre lot located at 1765 Galindo Street in downtown Concord.

Concord Residents urges the Commission to reject the proposed DDA because it is inconsistent with the Concord 2030 General Plan, the Development Code, and Downtown Concord Specific Plan. First, the DDA would allow future development on the site to include just 6,500 square feet of commercial space, resulting in approximate Floor Area Ratio of 0.05 for non-residential uses. Such limited

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commercial usage of the site fails to comply with the development standards for the Downtown Mixed Use district set forth in the General Plan and Development Code, which require a *minimum* FAR of 1.0 for non-residential uses. Second, the DDA fails to implement General Plan Policy E.2.1.7, which articulates the City's policy to support the creation of jobs and contracting opportunities for Concord residents and businesses engaged in the building trades. Situations such as this one in which the City is entering a Disposition and Development Agreement is the most relevant and significant opportunity for the City to implement Policy E.2.1.7.

For each of the above reasons, as explained more fully below, we urge the Planning Commission to recommend the City Council reject the DDA as currently proposed, and to direct staff to renegotiate an agreement providing for the maximum possible community benefit from the sale of this property, including greater commercial uses and a binding commitment to the hiring of local workers in project construction.

## **I. Statement of Interest**

Concord Residents is an unincorporated association of individuals and labor organizations that seeks to ensure that development in the City is sustainable, environmentally friendly, and provides maximum economic and employment benefits to the City's residents. Concord Residents includes the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and families; and other individuals that live and/or work in the City of Concord and Contra Costa County.

Individual members of Concord Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Concord and Contra Costa County. Individual members may also work on the Project itself. Accordingly, they will be directly affected by both the environmental and economic impacts of a projects such as this.

## II. The Proposed DDA is Inconsistent with the General Plan, Development Code, and Specific Plan Requirements for Downtown Mixed Use Developments

The General Plan land use designation and zoning for the property at 1765 Galindo Street is Downtown Mixed Use. For the Downtown Mixed Use district, the General Plan states:

**Downtown Mixed Use (DTMU)** This designation is intended for a **high density and intensity mix of residential, commercial and office development** in Central Concord. It allows for a mix of uses that balances jobs and housing opportunities, including offices, commercial development, hotels, public/quasi public, and residential uses. Residential densities range from a minimum of 33 units per acre to a maximum of 100 units per net acre. **The FAR ranges from a minimum of 1.0 to a maximum of 6.0.**<sup>1</sup>

The Concord Development Code includes similar language regarding the Downtown Mixed Use zone. Section 18.45.010 states:

B. DMX – Downtown Mixed-Use. The DMX district is applied to downtown areas appropriate for a cohesive **mix of high density residential, commercial and office, and mixed-uses, including hotels with a minimum FAR of 1.0 up to 6.0 FAR**, and residential densities of 33 to 100 units per net acre. Well-designed vertical mixed-use within a single building is encouraged with retail at ground level and office and multifamily residential on upper floors. Single uses and horizontal mixed-use with retail, office, and residential uses located in separate buildings but within a single development may also occur. The DMX district is consistent with and implements the downtown mixed-use (DTMU) land use designation of the general plan.<sup>2</sup>

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<sup>1</sup> Concord 2030 General Plan, Ch. 3 Land Use, p. 3-13 (emphasis added).

<sup>2</sup> Concord Municipal Code § 18.45.010.

As both the General Plan and Development Code provide, the allowable Floor Area Ratio for commercial projects in the Downtown Mixed Use district is 1.0 to 6.0. In this case, “[t]he Proposed Project involves the construction of approximately 310 multi-family residential units (totaling approximately 510,000 square feet [sf]). At this square footage, the non-residential components of the Proposed Project would have an approximate FAR of 0.05.”<sup>3</sup> Thus, while the proposed development is at the near maximum allowable residential density for the site, the FAR for the non-residential component – 0.05 – is a mere fraction of the *minimum* required for the Downtown Mixed Use district.

Floor Area Ratio, which is the ratio of floor area to total lot area, is the primary standard used in the Development Code to achieve the desired density of commercial uses in development projects in this area. In adopting the General Plan, Development Code, and Downtown Specific Plan, the City established building density and intensity standards to implement its objectives for the Downtown Districts. The requirements for high density, mixed-use development is intended to reduce reliance on motor vehicles, minimize traffic congestion and vehicle related emissions of harmful pollutants and greenhouse gases, and spur economic growth by creating job opportunities in new commercial space and by bringing retail and other commercial uses closer to residents. None of these goals can be met where the minimum commercial development goals are replaced with residential development.

References to these goals appear throughout City planning documents. For example:

- “Focusing new development in and around the BART station and downtown core with a diversity of uses in close proximity reduces the reliance on private motor vehicles, helping to minimize traffic congestion, the amount of land dedicated to parking and greenhouse gas emissions.” (Downtown Concord Specific Plan p. 25)

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<sup>3</sup> Infill Initial Study Town Center II Infill Project, City of Concord, at p. 3-7 (Nov. 2018).

- “Key approaches to reducing GHG emissions from transportation include enabling residents, employees, and visitors to Concord to travel via transit, walking, and biking, to take shorter trips, and to use vehicles that emit fewer GHGs when they drive.” (Citywide Climate Action Plan, p. 46.)
- “Land use and design regulations are key tools for ensuring that non-motorized transportation modes become viable options for more trips taken in Concord.” (Citywide Climate Action Plan, p. 47.)
- “The [Downtown Concord] Specific Plan recognizes that the higher allowable densities and FAR (ranging between 1.0 and 6.0) in the current code are sufficient to achieve the goals of the Specific Plan.” (Downtown Concord Specific Plan, p. 58)
- “[The Transit Station Overlay] district is intended to create, preserve, and enhance the areas around the BART station by encouraging a concentrated mixture of increased residential density and commercial uses in a pedestrian oriented environment.” (Downtown Concord Specific Plan, p. 58)
- City owned development sites near BART “provide major opportunities for both commercial and housing development.” (Downtown Concord Specific Plan, p. 24.)

Rather than requiring a balance of commercial and residential uses at the site, the City is proposing to allow the near maximum allowable residential development of site, while including a commercial component that is some 95 percent below the minimum FAR requirement. While minimizing the less-lucrative commercial component of this development may be good policy for the developer’s pocketbook, it is bad policy for the public and for the continued economic vitalization of this area. The Commission should require that development of the property conform to all applicable commercial intensity standards for new development in this area, consistent with the goals and objectives the City previously established for the property.

### **III. The Proposed DDA Fails to Implement General Plan Policies for Local Hire and Apprenticeship**

In addition to failing to satisfy the minimum commercial density requirements for the Downtown Mixed Use zone, the DDA fails to implement applicable policies in the Concord 2030 General Plan for economic vitalization. Chapter 2 of the Concord 2030 General Plan sets forth a number of goals, principles, and policies intend to promote economic vitality through the planning process. As relevant here, Policy E.2.1.7 states:

Support the creation of job and contracting opportunities for Concord residents and businesses through the establishment of local hire preference, apprenticeships, internships, and other programs which support local hiring, training, and skill enhancement. Within the Concord Reuse Project Area, a good faith goal of 40% of project labor—first from Concord, and then from Contra Costa County—will be set on a project by project basis for public and private construction.

*Certified training and apprenticeship programs with proven performance can create stable employment opportunities and create jobs for returning veterans and others in the community. The Concord Reuse Project will create thousands of jobs in the construction sector for an extended period of years, creating unique opportunities for apprenticeships in the building trades.*

As the current owner of the property, the City's objective in entering a DDA should be to ensure that the sale and development of the property yields the maximum benefit to the people of Concord in accordance with General Plan Policy E.2.1.7.<sup>4</sup> The City of Concord has a finite amount of land available that it can transfer for private development. The people of Concord deserve assurances that, when public land is transferred for private development, the development will provide maximum economic and job benefits to the community.

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<sup>4</sup> While this provision cites the Concord Reuse Project as an example of how this policy will be implemented, it is a general policy that applies to all development projects supported by the City.

The City has limited opportunities to implement the goals of General Plan Policy E.2.1.7. These policy goals may not be imposed as conditions to land use entitlements. Disposition and Development Agreements thus provide one of the few tools available to the City for implementing this policy. In exchange for the benefits being provided to the Developer through this agreement, the City should require a binding commitment to use local workers and apprentices engaged in the building trades. Such a requirement ensures that the economic and employment benefits from the purchase and development of City-owned land stays in the community.

Local hire and apprenticeship requirements will help provide job and career opportunities for disadvantaged workers in the City. Registered apprenticeship programs help to diversify the construction industry by bringing more underrepresented minorities and women into the trades. Each apprentice is a full-time worker who is receiving on-the-job training as an employee of a contractor on a jobsite. Increasing the number of apprenticeship opportunities through application of General Plan Policy E.2.1.7 to this project, will enable more of the City's disadvantaged workers to enter the pathway to a long-term, family-supporting career in construction. In addition, apprenticeship programs have been found to "reduce wage differentials and occupational segregation in the workplace itself, as well as help offset the negative career effects of unequal access to good schools and job-hiring networks."<sup>5</sup>

We urge the City to send the DDA back to staff with directions to revise the agreement consistent with the local hire and apprenticeship goals of General Plan Policy E.2.1.7.

#### **IV. Further Environmental Review May be Required**

Concord Residents is concerned that this project may result in project-specific environmental impacts that are not fully disclosed or evaluated in the City's program-level environmental review documents. We are currently in the process of reviewing the infill initial study prepared by the City which was recently released with the staff report with the assistance of subject matter experts. We reserve the

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<sup>5</sup> Thomason & Bernhardt, UC Berkeley Center for Labor Research and Education, *The Union Effect in California #2: Gains for Women, Workers of Color, and Immigrants* (June 2018) at p. 1.

right to provide comments on the environmental impacts of the project prior to the City Council hearing.

## **V. Conclusion**

The Concord Development Code requires that after a public hearing, the members of the Commission shall make a recommendation to the City Council based on whether the development agreement:

1. Is inconsistent with the objectives, policies, general land uses, and program specified in the general plan and any applicable specific plan;
2. Substantially complies with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is located; and
3. Will not be detrimental to the health, safety, and general welfare of the residents of the City.<sup>6</sup>

As explained above, the DDA entitles future development that fails to comply with regulations applicable to the Downtown Mixed Use zoning district. As a result, the DDA is also inconsistent with the City's objectives for the DMX district articulated in the Downtown Specific Plan, which include the establishment of a diversity of uses in close proximity to reduce reliance on motor vehicles, enhance walkability, and spur job creation. Furthermore, the DDA fails to implement applicable General Plan policies to support local skilled and trained workers in the building trades through job creation and contracting opportunities.

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<sup>6</sup> Concord Municipal Code § 18.460.050(B).



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For each of these reasons, Concord Residents requests that the Commission recommend that the City Council reject the proposed DDA and direct staff to negotiate an agreement that will ensure future development on this City-owned property conform to all applicable regulations and provide the maximum benefit for Concord residents and workers.

Sincerely,



Collin S. McCarthy

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