

M. Rodriguez Consent Calendar # 13

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE



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November 16, 2022

Via Electronic Mail and US Mail

Ms. Gabrielle B. Janssens
Goldfarb and Lipman, LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
gjanssens@goldfarbblipman.com

RE: Tahoe Coalition for the Homeless
Breach of Agreement with Department of Housing and Community Development
(Agreement Number 20-HK-00122)

Dear Ms. Janssens:

I write concerning your client Tahoe Coalition for the Homeless' (hereafter, "TCH") ongoing, material breach of the above-described contract and to respond to information concerning TCH's financial status you shared with me via e-mail on October 20 and 28, 2022 and on November 11, 2022. As I have repeatedly communicated to you, most recently in my letter of October 10, 2022, TCH's efforts to remedy its breach thus far have been woefully inadequate. The Department's concerns about TCH's performance have only grown since reviewing the financial information you provided: TCH is in a precarious financial state that raises serious doubts about its ability to continue to operate Bear's Den.

As a consequence, the Department can no longer tolerate the status quo and will require judicially-approved action to ensure the continued use of Bear's Den for affordable housing and a means of operating it should TCH cease to function. Recognizing TCH's desire to avoid the Department's unilateral initiation of litigation, the Department hereby makes this final proposal for the execution of a stipulated judgment that would satisfy its concerns.

The Department is prepared to draft, execute, and file a stipulated judgment that contains the following terms:

1. TCH shall admit that it is in breach of the above-described agreement;
2. TCH shall consent to an amendment to the deed of trust recorded against Bear's Den that would eliminate the requirement that the Department offer a ninety-day cure period in the event of TCH's default and further consent to the immediate recordation of this amendment;

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3. TCH shall consent to the immediate recordation of a lien against Bear's Den for the full amount of Project Homekey funds it received to purchase the property, \$2,800,000; and
4. TCH shall stipulate that, should the Department in its sole discretion determine that TCH is no longer capable of operating Bear's Den as set forth in the above-described agreement, the Department may by ex parte application secure the appointment of a receiver to assume full control and operation of Bear's Den.

These terms are not subject to negotiation and TCH must communicate its acceptance of them no later than 5:00 PM Pacific Standard Time on Wednesday, November 23, 2022. Should it fail to do so, the Department will initiate litigation against TCH for breach of contract and any other appropriate causes of action.

This represents TCH's final opportunity to resolve this situation without the Department's unilateral initiation of litigation. I look forward to your timely response.

Sincerely,



CARLOS A. MEJIA
Deputy Attorney General

For ROB BONTA
Attorney General

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Re: Response to Carlos Mejia Letter Dated 11/16/2022

Dear Mr. Mejia:

We are in receipt of your letter dated November 16, 2022 (attached) and have had an opportunity to discuss with our client, Tahoe Coalition for the Homeless ("TCH"). This letter serves as our response.

Stipulated Judgment

TCH is in agreement with the concept of a stipulated judgment, but cannot agree to the terms identified in your letter without having had the opportunity to review the details of those terms or the stipulated judgment language. The terms that you deem as "not subject to negotiation" require clarification. For example,

- What specific provision of the agreement with the Department of Housing and Community Development ("HCD") (Agreement Number 20-HK-00122) (the "Agreement") would TCH be admitting it is in breach of?
- The Agreement provided a grant amount not to exceed \$2,600,000. TCH would like a better understanding of why the lien would be for \$2,800,000, \$200,000 more than the amount of grant funds provided for under the Agreement.
- What would the duration of the lien be? The Agreement expires five years after its effective date. What would be the conditions for release of the lien?
- Exactly how would the Department make the determination that TCH is no longer capable of operating Bear's Den? What criteria would it employ?

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Compliance with HCD Requests

Given the tenor of your November 16 letter, TCH wishes to describe the efforts it has undertaken regarding Agreement Number 20-HK-00122. TCH has worked towards meeting HCD requirements for the Bear's Den property and desires to work collaboratively with HCD. As you know, TCH has encountered significant challenges since the contract was executed. However, you and the other recipients of this letter should be aware that it is TCH's intent to be in compliance with the terms of the Agreement and, more importantly, it is TCH's utmost priority to continue to provide housing services to the homeless population in South Lake Tahoe and El Dorado County, regardless of threatened litigation.

On March 8, 2022 HCD provided TCH a letter in response to TCH's Grantee Expenditure and Program Report for Bear's Den and the 2021 Fiscal Year. The letter stated that "The Department has determined that the Bear's Den is considered temporarily compliant as offsite substantial occupancy has been achieved." TCH has continued to strive to comply with HCD requests in the management and operation of Bear's Den.

TCH met with you and HCD on October 7, 2022 to discuss the terms of an amendment to the Agreement. You followed up with a letter dated October 10, 2022 in which you requested the following:

- Ensure all revenue generated from TCH's lease with Jade Garden at the Bear's Den is used for improvement or operation of the Bear's Den. General ledgers to be provided on or before November 10, 2022;
- Provide the Department with a satisfactory relocation plan developed with participation of TCH's relocation consultant on or before October 31, 2022;
- Accommodate a site visit from HCD's representatives on or before December 1, 2022. TCH staff and board member to be present for inspection of property on November 17, 2022;
- Achieve fifty percent (50%) occupancy of units at the Bear's Den no later than December 31, 2022 and provide a rent roll on or before January 6, 2023.

TCH has complied with all requests made in this letter and is in process of complying with the milestones that are set at future dates. In particular, financial documents for TCH were provided on October 20 and 28, 2022 and November 11, 2022. A revised relocation plan was submitted on October 26, 2022, which is currently under HCD review. TCH staff and board members were prepared for a site inspection on November 17, 2022, which you unilaterally cancelled on November 16, 2022. TCH is working towards, and planning to achieve fifty percent (50%) occupancy by the end of the year and intends to provide a rent roll by January 6, 2023.

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Rehabilitation Work at Bear's Den

When TCH purchased the Bear's Den, Vail Corporation ("Vail") was occupying the motel room units. With HCD's approval, TCH housed homeless individuals in other properties in South Lake Tahoe and was able to achieve the equivalent of fifty percent (50%) occupancy at these off-site locations. After Vail vacated the Bear's Den on April 26, 2022, TCH conducted life safety inspections and discovered that many units were not safe to inhabit in their present condition. There were concerns with the electrical wiring and panel and significant termite damage was discovered in one of the units. Qualifying individuals were placed in the units that did not have life safety concerns, reaching the current thirty percent (30%) occupancy rate.

TCH obtained a CDBG grant to help support the rehabilitation work to make the remaining units safe to occupy. However, TCH has encountered challenges in obtaining labor for the required rehabilitation work due to South Lake Tahoe's remote mountain location, lack of local labor availability, and high cost of gas to bring in labor from elsewhere. Despite this, TCH has phased the rehabilitation work in such a way that it should be able to achieve fifty percent (50%) occupancy by the end of the year and one hundred percent (100%) occupancy, excluding one unit located above the Jade Garden restaurant, by spring 2023.

TCH Efforts to Raise Funds and Operation of Bear's Den

You mention in your letter TCH's "precarious financial state." TCH is well-aware of its financial circumstances and again, is focused on its utmost priority of providing housing to persons in need and serving the South Lake Tahoe community. TCH is in the midst of a major fundraising campaign aimed at raising \$250,000 and have already obtained a \$100,000 donation. These funds are being raised for the ongoing operation of the properties and services provided to the homeless individuals TCH serves, and must be used for that purpose. If TCH were to no longer operate, it would have a tremendous impact on the South Lake Tahoe community. TCH is the lead homeless provider in South Lake Tahoe and El Dorado County and provides the only option for sheltering unhoused adults in the City of South Lake Tahoe. Additionally, TCH provides respite rooms for homeless patients treated at Barton Hospital who need a safe sheltered location to recover after being discharged. TCH currently oversees the Coordinated Entry System and provides the main entry point and intake of homeless individuals. Further, TCH hosted the most recent South Lake Tahoe Point in Time Count and provided their expertise for the Point in Time Count on the western slopes. Lastly, TCH currently provides the only emergency shelter in South Lake Tahoe for major weather events, such as storms and blizzards. This is not a service that was provided before TCH started providing this service and it is unclear who would be able to step in and provide this service should TCH no longer operate.

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TCH is additionally pursuing a line of credit, which will not be secured by any of the HomeKey properties, to help cash flow related to the Bear's Den construction and are near obtaining approval.

Further, TCH is in discussion with the County about obtaining additional vouchers. However, with the County's staffing shortage and competition for vouchers, it is difficult to predict the timing of their release and how many vouchers TCH might receive.

Lastly, TCH is working with Enterprise to identify other organizations that might be interested in helping to operate the Bear's Den, or that would take over operations at Bear's Den. Again, TCH's primary goal is to house the South Lake Tahoe homeless population, even if it means they are no longer the ones owning or operating the Bear's Den property.

Conclusion

In closing, TCH has tried to work collaboratively with HCD while encountering many unforeseen obstacles in the implementation of the HomeKey program at Bear's Den. TCH has sought HCD's partnership in addressing the many obstacles, with little success. TCH will continue to focus on every effort possible to reach its goal of housing the homeless population in the South Lake Tahoe community.

Sincerely,



GABRIELLE B. JANSSENS

CC: Ryan Seeley, General Counsel & Deputy Director, HCD
Shaleen Schmutzer-Smith, Deputy General Counsel, HCD
Cari Scott, Branch Chief, HCD
Joseph Irvin, City Manager, City of South Lake Tahoe
Hilary Roverud, Director of Development Services, City of South Lake Tahoe
Patricia Moley, Assistant Director of Human Services, El Dorado County
Timalynn Jaynes, Deputy Director of Community Services, El Dorado County
Karen Fink, Housing Program Manager, Tahoe Regional Planning Agency
Tom Makris, Board President, Tahoe Coalition for the Homeless