Katherine Douglas Public Comment #2

LATE DIST

From: Matt Gelfand <admin@caforhomes.org> on behalf of matt@caforhomes.org
Sent: Friday, April 4, 2025 11:57 AM
To: sbcob
Cc: Plowman, Lisa; Seawards, Travis
Subject: Correspondence from Californians for Homeownership
Attachments: 2025-4-4 - Californians Letter to Board of Supervisors.pdf

Hello,

Please provide the attached comments to the Board of Supervisors in connection with Public Hearing Item 2 at its upcoming meeting.

All the best,

Matthew Gelfand

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Californians for Homeownership is a 501(c)(3) non-profit organization that works to address California's housing crisis through impact litigation and other legal tools.

CALIFORNIANS FOR HOMEOWNERSHIP

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April 4, 2025

VIA EMAIL AND PRIORITY MAIL

Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101
Email: sbcob@countyofsb.org

RE: Agenda Item 2: Richards Ranch Project
Case Nos. 25APL-00009, 24DVP-00018, 24CUP-00033, 24TRM-00003

To the Board of Supervisors:

Californians for Homeownership is a 501(c)(3) organization devoted to using legal tools to address California's housing crisis. We are writing regarding the Richards Ranch project. The County's approval of this project is governed by the Housing Accountability Act, Government Code Section 65589.5. For the purposes of Government Code Section 65589.5(k)(2), this letter constitutes our written comments on the project.

The Richards Ranch project is before you on a transparently pretextual incompleteness determination based on quibbles over the format of site plans and completeness items that were never part of the County's established completeness list *prior to the receipt of the application*, to which the City is strictly limited under the Permit Streamlining Act. The legal flaws in the County's determination are explained in detail in the applicant's appeal letter, which is attached here and incorporated by reference in its entirety.

You are required to grant this appeal because the incompleteness determination is legally baseless. If you do not, your decision to deny the appeal will constitute a denial of the project, and we intend to initiate litigation against the County under the Housing Accountability Act.

Sincerely,

Matthew Gelfand

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March 31, 2025

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County of Santa Barbara
Clerk of the Board of Supervisors
105 E Anapamu Street, Fourth Floor, Room 407
Santa Barbara, CA 93101

RE: Appeal of PC Denial of Appeal 25APL-0007
Richards Ranch, LLC Mixed-Use Project at Key Site 26
County Case Nos. 24TRM-00003, 24DVP-00018, and 24CUP-00033
APNs 107-250-019, -020, -021, and -022

Honorable Board of Supervisors:

As you know, we represent Richards Ranch, LLC on its mixed-use, affordable housing project proposed in Santa Barbara County on property identified in the County's Housing Element at Key Site 26 ("Project"). This letter appeals the Planning Commission's March 19, 2025 denial of our client's appeal (25APL-0007) and determination that our client's second application resubmittal, dated January 20, 2024 ("Resubmittal Application") for the Project, is incomplete and lost legal rights under California housing law. Pursuant to County Land Use and Development Code ("LUDC") Chapter 35.102 (Appeals) and Government Code section 65943(c), the Board of Supervisors must consider this appeal of the Santa Barbara County Planning Commission's March 19, 2025 determinations.

As communicated in our original appeal of the County Planning and Development Director's decision dated February 28, 2025 ("PC Appeal Letter") and our associated letter dated March 17, 2025 ("March PC Letter"), the County's actions which are detailed in its February 20, 2025 Incomplete Letter ("February 2025 Incomplete Letter") and email of February 27, 2025 ("Email Determinations") violate California housing law,[1] including, but not limited to, the Housing Accountability Act (Gov. Code, § 65589.5) and Permit Streamlining Act (Gov. Code, § 65920 et seq.). Specifically, this appeal challenges the following Director Determinations by the County:

[1] Each of the letters and communications are enclosed with this appeal and incorporated herein by reference. See Exhibits 1-2 for copies of the PC Appeal Letter and March PC Letter. The PC Appeal Letter includes the February 2025 Incomplete Letter and Email Determinations as Exhibits thereto.

1) Failure to find the Project application complete as a matter of law because the County failed to respond in writing to our January 20, 2025 resubmittal within the 30-day statutory deadline. (Gov. Code, § 65943(a) & (b));
2) Improper determination that the Project lost its SB 330 vesting (and therefore the Builder's Remedy and other protections under state housing law) because the County improperly determined that the Project has a limited number of submittals (only two 90-day cycles) within which to be deemed complete contrary to Department of Housing and Community Development ("HCD") guidance (Gov. Code, § 65941.1);
3) Improper determination that Project lost its SB 330 vesting (and therefore the Builder's Remedy and other protections under state housing law) because the County improperly determined that the Project changed the construction square footage by 20 percent or more in violation of Government Code section 65941.1(d); and
4) Improper determination that the Resubmittal Application is incomplete in violation of the Permit Streamlining Act by improperly relying on items such as non-checklist items, items that were not listed in the first incomplete letter, inconsistency items, and items that actually were provided by the applicant to the County, and for the existence of minor errors that are routinely allowed to be clarified or corrected after the application is determined complete (Gov. Code, § 65944(a)).

Each of the above determinations constitutes an independent violation of California law. In sum, the Director's decisions to take away this Project's SB 330 vesting constitutes a denial of an affordable housing project under the Housing Accountability Act.[2] If we are forced to bring this matter to a Court and the Court agrees, the County will be liable for our attorneys' fees.[3] Additionally, Courts can assess additional damages against agencies that act in bad faith. For reasons detailed further in this letter, the conduct thus far by the County puts the County at significant risk of a judicial finding of bad faith.

With this appeal, we hope that the County Board of Supervisors rights this ship and upholds the appeal on all issues, in accordance with California law.

I. APPEAL SUMMARY

LUDC section 35.102.020.C.1 requires the appeal to be filed within 10 calendar days of the decision, and that the appeal provide information in response to the following four points.[4] As detailed in the March 19, 2025 Action Letter for the Planning Commission's appeal hearing, the deadline to appeal is March 31 by 5:00 pm. The applicant has met that deadline.

Additionally, below is a list of the appeal criteria, with a brief response to each.

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[2] Gov. Code, §65589.5 (h)(6).
[3] Gov. Code, § 65589.5(k)(1)(A)(ii).
[4] Countywide LUDC §§ 35.102.020.C.1.a–35.102.020.C.1.a

a. The identity of the appellant and their interest in the decision;

Richards Ranch, LLC is the Property Owner and Applicant of the subject case numbers for the Project.

b. The identity of the decision or determination appealed which may include the conditions of that decision or determination;

This is an appeal of the Planning Commission's actions on March 19, 2025 regarding 25APL-0007. Specifically, this is an appeal of the Planning Commission's actions 1 and 2 in the Final Action Letter: (1) denial of the appeal; (2) finding the Project application (Case Nos. 24DVP-00018, 24CUP-00033, and 24TRM-00003) is incomplete.

The appeal pertains to four determinations by the County Planning and Development Director or her designee, which were affirmed by the Planning Commission on March 19, 2025:

1) Failure to find the Project application complete as a matter of law because the County failed to respond in writing to our January 20, 2025 resubmittal within the 30-day statutory deadline. (Gov. Code, § 65943(a) & (b));
2) Improper determination that Project lost its SB 330 vesting (and therefore the Builder's Remedy and other protections under state housing law) because the County improperly determined that the Project has a limited number of submittals (only two 90-day cycles) within which to be deemed complete contrary to HCD guidance (Gov. Code, § 65941.1);[5]
3) Improper determination that the Project lost its SB 330 vesting (and therefore the Builder's Remedy and other protections under state housing law) because the County improperly determined that the Project changed the project construction square footage by 20 percent or more in violation of Government Code section 65941.1(d);[6] and
4) Improper determination that the Resubmittal Application is incomplete in violation of Permit Streamlining Act by improperly relying on items such as non-checklist items, items that were not listed in the first incomplete letter, inconsistency items, and items that actually were provided by the applicant to the County, and pointing to minor errors that the County routinely allows to be clarified or corrected after a project is deemed complete.

[5] The February 2025 Incomplete Letter was silent as to whether the County had made such a determination; however, the County sent additional Email Determinations after the February 2025 Incomplete Letter which make it clear that the County has made a determination that it is purporting to revoke the Project's SB 330 protections.
[6] *Id*. See also Exhibit 5 depicting identical site plans.

c. *A clear, complete, and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of this Development Code or other applicable law;*

The Planning Commission's March 19, 2025 decisions are being appealed because they uphold the Director's incorrect determinations regarding application completeness and the application's vesting.

As explained in Section II of this letter, the Planning Commission's denial of the appeal and determination that the Resubmittal Application is incomplete is incorrect in a number of ways, including but not limited to: (1) the County's February 2025 Incomplete Letter was not sent within 30 days of the January 20, 2025 submittal, and therefore the Resubmittal Application was deemed complete as a matter of law under Government Code section 65943; (2) the County's review and processing of the Resubmittal Application violates the Permit Streamlining Act and state housing law; (3) notwithstanding the County's decision otherwise, the Resubmittal Application contains sufficient information to be found complete; and (4) the County's determinations contravene SB 330 and the Permit Streamlining Act. In light of these determinations, the County's determinations regarding the Resubmittal Application and processing of the Project constitute a violation of the Housing Accountability Act, likely in bad faith.

d. *If it is claimed that there was an error or abuse of discretion on the part of the review authority, or other officer or authorized employee, or that there was a lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration leading to the making of the decision or determination that is being appealed, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made, then these grounds shall be specifically stated.*

As explained further below, the above criteria are satisfied: (1) the decision to issue the February 2025 Incomplete Letter constitutes an error or abuse of discretion under state law; (2) the Project has been treated in an unfair and partial manner by the County's processing of the application differently from other housing projects, including other Builder's Remedy projects, processed under the same State laws; and (3) the decision to find the Resubmittal Application incomplete is not supported by the evidence because items identified as incomplete for this Project were previously identified by the County as complete for other projects with similar responses.

We also reserve the right to supplement this appeal and the record attached hereto, in particular with additional information from HCD on our pending technical assistance request related to the County's actions on this Project. Additionally, further processing of this appeal may be unnecessary if the County confirms both (a) that the application is determined to be complete as a matter of law under Government Code section 65943(a) as of February 19, 2025, and (b) that the Project continues to have

vested rights under its SB 330 Preliminary Application, including rights to develop the Project pursuant to the Builder's Remedy.

A. All the Planning and Development Director's Determinations Regarding Completeness of the Project's Application and its SB 330 Vesting Are Director Determinations and Therefore Are Appealable to the Planning Commission and the Board of Supervisors

The staff report for the Planning Commission's March 19, 2025 hearing incorrectly asserted that two of our appeal issues (issues 2 and 3 in Section I above) are not Director Determinations and therefore are not subjects of this appeal. As explained in the March PC Letter, summarized below, those assertions are incorrect.

Specifically, the Director has determined on two independent grounds (issues 2 and 3 in Section I above) that our client's Project has lost its vesting under its SB 330 Preliminary Application. Since the property's current General Plan designation and zoning do not allow the residential density of the Project, the Planning Director's determination taking the Project's SB 330 Preliminary Application vesting results in the Project losing all its protections under the Housing Accountability Act—because the Housing Accountability Act does not apply to housing projects that require a legislative act (such as a General Plan Amendment or a rezone).

These determinations by the Director fall squarely within the County Code's definition of a Director Determination, and more importantly, as detailed further below, constitute a denial of a housing project under the Housing Accountability Act. Specifically, the LUDC details the Director Determinations appealable to the Commission to include:

- "Any determination that a discretionary permit application or information submitted with the application is incomplete as provided by Government Code section 65943." [This applies to appeal issues 1 and 4 in Section I above.]

- Any decision of the Director to approve, conditionally approve, or deny an application for a Development Plan. [This applies to appeal issues 2 and 3 in Section I above because as described in more detail below, the Director's Determination results in a denial of the Project, and thus a denial of an application for a Development Plan.]

- "**Any other action, decision, or determination made by the Director as authorized by this Development Code** where the Director is the review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal." [This applies to appeal issues

2 and 3 in Section I above because nothing in the Development Code provides that the determinations are final and not subject to appeal.]

The Director's action also is a denial of a housing project under the Housing Accountability Act. As detailed in Section III below, AB 1893 amended the Housing Accountability Act clarifying the scope and breadth of actions by local agencies that constitute a disapproval of a housing development project. The definition makes clear that "any instance in which a local agency does any of the following" is a disapproval of a housing development project:

> (A) Votes or **takes final administrative action on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit** ...
>
> (H) Makes a written determination that a preliminary application described in subdivision (a) of Section 65941.1 **has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1**.[7]

The County's actions to date violate these provisions. As detailed in Section I.C, this exposes the County to significant risk under the Housing Accountability Act not only of potential attorney's fees, but penalties.

B. The County's Determination Contravenes SB 330 and the Permit Streamlining Act

For ease of reference, the discussion from our PC Appeal Letter and March PC Letters are repeated and augmented below. The sections (1) through (4) correspond to our four appeal issues.

1. Failure to find the Project application complete as a matter of law because the County failed to respond in writing to our January 20, 2025 resubmittal within the 30-day statutory deadline. (Gov. Code, § 65943(a) & (b))

The Permit Streamlining Act imposes deadlines on all public agencies to review and act on applications for development projects because the Legislature found "a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects."[8]

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[7] Gov. Code, § 65589.5 (h)(6).
[8] Gov. Code, § 65921.

To provide clear rules for expedited review of applications, Government Code section 65943(a) provides that "[n]ot later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project."[9] If this determination is not made "within 30 days" after receipt of the application, "the application shall be deemed complete..."[10]

The Resubmittal Application was filed on January 20, 2025. Under Government Code section 65943(a), the County must provide its written determination "[n]ot later than 30 calendar days" otherwise the application is "deemed complete" by operation of law, meaning the deadline to respond was February 19, 2025.[11] The February 2025 Incomplete Letter, however, was not provided until February 20, 2025; thus, the County missed the deadline to respond, and the application is automatically deemed complete by operation of law.[12]

In its Email Determinations on February 27, 2025, the County asserted that the Resubmittal Application was not received on January 20, 2025 due to the Martin Luther King holiday being a federal holiday pursuant to California Rule of Court, rule 1.10. However, rule 1.10 and other applicable provisions about counting days do not support the County's position. State law provides a consistent definition regarding computation of days:

> The time in which any act provided by law is to be done is computed by **excluding the first day**, and including the last, **unless the last day is a holiday, and then it is also excluded**.[13]

State law plainly excludes the first day (i.e., the Martin Luther King holiday) from the computation. It also only extends the deadline only if it is the "last day" is a holiday—not the first.[14]

The County's position is inconsistent and contrary to law. First, in the County's explanation it admits that every other weekend and holiday (i.e., Presidents' Day) that occurred between January 20, 2025 and February 20, 2025 count as a "calendar day." But at the same time, the County asserts that it can completely ignore the first day (the Martin Luther King holiday) as a holiday and not count it at all, while making the following day (Tuesday) the "first day" and exclude that Tuesday from the counting as well (despite the County being open that day and having access to the application materials that entire day).

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[9] Gov. Code, § 65943(a) (Emphasis added).
[10] Gov. Code, § 65943(a), (b) (Emphasis added).

[11] February 19, 2025 is 30 calendar days after January 20, 2025.
[12] See also Gov. Code, § 65589.5(j)(2).
[13] See Code Civ. Proc., § 12; Civ. Code, § 10; Gov. Code, § 6800; Cal. R. Ct., R. 1.10 (emphasis added).
[14] *Id.*

Thus, under the County's theory, even though the County accepted the materials on Monday, January 20, 2025, the County's deadline under the Permit Streamlining Act did not start until Wednesday, making its 30 calendar day deadline February 20. That simply is not the law.

Importantly, the California Department of Housing and Community Development ("HCD") has issued guidance on the interpretation of the Permit Streamlining Act with respect to holidays. In response to an argument that the City of Berkeley could rely on its code to calculate days under the Permit Streamlining Act, HCD stated:

> Based on this [Berkeley] municipal code provision, it appears that the City excludes the day the application was submitted and excludes weekends, holidays, and days that City Hall is closed to the public. **The practice of reviewing housing applications based on business days adds to constraints contributing to the housing crisis and is inconsistent with the provisions and intent of the PSA. The PSA explicitly states that local jurisdictions are required to determine whether an application is complete within 30 calendar days, and not business days.**[15]

Accordingly, the County's interpretation that the Resubmittal Application was not received on January 20, 2025 due to the Martin Luther King holiday is legally meritless.

Importantly, the County's Accela submittal system accepts applicant materials on weekends and holidays—including on January 20, 2025. (See PC Appeal Letter, Exhibit 3.) The County, however, does have the ability to block people from submitting things to Accela when they do not want to or cannot process those items. For example, between December 2024 through the New Year the County shut down application submittals due to office closures (See PC Appeal Letter, Exhibit 4). The County's acceptance of materials when their physical offices are closed shows it can and does accept application submittals over certain holidays, as the County is able to block submittals when it is not staffed to process them. Given that the County's Accela system accepted the application on January 20, 2025, the County must treat the Resubmittal Application as submitted on this date, consistent the applicable law and HCD guidance. The Martin Luther King holiday does not extend the County's deadline to provide a written response to the Resubmittal Application, and by missing the February 19, 2025 deadline, the Resubmittal Application was deemed complete as a matter of law.

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[15] HCD, City's Application Intake and Processing – Letter of Technical Assistance (Dec. 7, 2023) available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/berkeley-ta-hau331-120723.pdf (Emphasis added).

Therefore, the County must rescind its untimely February 2025 Incomplete Letter and determine the Resubmittal Application complete as a matter of law without the need for an appeal.[16]

2. Improper determination that Project lost its SB 330 vesting (and therefore the Builder's Remedy and other protections under state housing law) because the County improperly determined that the Project has a limited number of submittals (only two 90-day cycles) within which to be deemed complete contrary to HCD guidance (Gov. Code, § 65941.1)

In an email dated February 21, 2025 (Exhibit 7 of the PC Appeal Letter), we requested clarification of the County's position regarding the Project's vesting under the SB 330 Preliminary Application. The February 2025 Incomplete Letter **does not** include any language regarding a limit to the number of submittals available, nor does it assert the County's prior position that a SB 330 Preliminary Application must be determined to be complete within two submittal periods. However, the County's Email Determinations on February 27, 2025 state that the Project had lost its vested rights associated with its SB 330 Preliminary Application. This position contravenes state law and thus constitutes an abuse of the County's Planning Director's discretion. As explained in the March Letter, this County Planning Director's decisions raise an appealable issue under LUDC section 35.1102.040.A.3.

The Housing Crisis Act of 2019 (SB 330) enacted Government Code section 65941.1 because "[l]engthy permitting processes and approval times, fees and costs for parking, and other requirements further exacerbate cost of residential construction," and also out of a desire to "to expedite the permitting of housing in regions suffering the work housing shortages and highest rates of displacement."[17] SB 330 further includes amendments to the Housing Accountability Act that add protections for preliminary applications, which must be construed broadly and given the **"fullest possible weight to the interest of, and the approval and provision of, housing."**[18]

Government Code section 65941.1 creates a preliminary application process where, upon submission of seventeen items and payment of a permit processing fee, an applicant locks in the then-applicable ordinances, policies, and standards.[19] Upon locking in the applicable standards, the applicant has 180 days to prepare a housing development project application "that includes all the information required to process the development application consistent with Sections 65940, 65941, and 65941.5."[20] If the

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[16] This finding alone would moot our appeal issue 2 (i.e., the 90-day application completeness issue) because the Project application would be deemed complete as a matter of law within the County's illegally imposed timeline and therefore the Project would not have lost its SB 330 Preliminary Application vesting, or Housing Accountability Act protections.
[17] Stat. 2019, Chap. 654 (SB 330), § 2(a)(10), (c)(2).
[18] Gov. Code, § 65589.5(a)(2)(L), (o).
[19] Gov. Code, §§ 65941.1(a), 65589.5(o).)
[20] Gov. Code, § 65941.1(d)(1).

local agency determines that the application is incomplete pursuant to Government Code section 65943, the applicant "shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information."[21] If the applicant "does not submit this information within the 90-day period, then the application shall expire and have no further force or effect."[22]

Government Code section 65943(a) requires a public agency to submit a written determination as to whether an application is complete to an applicant within thirty days of the submittal. As noted above, if the application is determined to be incomplete, the agency shall provide the applicant with "an exhaustive list" of incomplete items based on the agency's submittal checklist required under Government Code Section 65940.[23] "Upon receipt of **any** resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application."[24] Government Code section 65943(b) clarifies that this 30 calendar day period applies to each supplemented or amended application. If, as is the case here, the agency and applicant reach an impasse about the completeness of an application following one or more resubmittals, the applicant must be able to appeal that determination to the governing body or planning commission for a hearing within 60 days.[25]

Reading Government Code sections 65941.1 and 65943 together, HCD has previously determined multiple times that:

> The **90-day deadline restarts with each subsequent resubmittal by the applicant.** Subdivision (d) of Government Code section 65941.1 references section 65943, which provides for an iterative process in which deadlines reset upon resubmittal. Because of that reference, it is reasonable to conclude that the subdivision envisions a similar back-and-forth process. **Nothing in the subdivision explicitly precludes this. . . . An interpretation that there is a single finite 90-day review period is inconsistent with both the intent of the PSA and the Legislature when it introduced this system in Senate Bill 330** (Chapter 654, Statutes of 2019).[26]

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[21] Gov. Code, § 65941.1(d)(2).
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.* (Emphasis added.)
[25] *Id.* subd. (c).
[26] Los Gatos Letter, pp. 2-3 (emphasis added); Beverly Hills Letter, p. 3 ("A project with multiple incompleteness letters and responses may have multiple 90-day periods."); HCD, Beverly Hills Builder's Remedy Applications – Notice of Violation

This letter also references *Janet Jha v. City of Los Angeles, et al.*, (Super. Ct. L.A. County, 2024, No. 23STCP03499) in which the trial court accepted HCD's prior guidance on this topic. On February 12, 2025, HCD again reiterated to the Town of Los Gatos:

> Failure by the Town to allow for an additional 90-day resubmittal period after each of its incompleteness determinations **would be a violation of the PSA. The Town must allow the applicant to resubmit the application within 90 days of any incompleteness determination.** The Town should also uphold its PSA obligations under Government Code section 65941.1 by honoring the Project's vested rights.[27]

HCD's guidance aligns with the principle that statutory language must be interpreted to effectuate the Legislature's intent and harmonized with provisions related to the same subject matter.[28] Statutes are not construed in isolation and must be harmonized within the statutory scheme.[29] **Given the relationship between the Housing Accountability Act and Permit Streamlining Act, the two statutes must be interpreted together to promote the development of housing**.[30]

Here, the Legislature plainly intended to promote the development of housing by allowing an applicant to lock in applicable standards prior to expending resources on a housing development application, while ensuring the applicant timely pushed the application forward during a housing crisis. The deadlines set forth in Government Code section 65941.1 are designed to ensure that an applicant continues to process an application by requiring (1) submission of a housing development project application within 180 days of preliminary application submittal; and (2) an applicant to respond to any incomplete determination within 90 days.

Nothing in the Permit Streamlining Act or Housing Accountability Act suggests that the applicant's preliminary application rights are contingent on a determination about application completeness, as County staff asserted, and the Planning Commission affirmed. Based on the foregoing, the County's determination that the Project lost it rights under state housing law plainly violates SB 330, the Permit Streamlining Act, and other applicable state housing law.

(Dec. 2, 2024) https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-nov-120224.pdf (issuing a notice of violation to the City of Beverly Hills for its continued noncompliance).

[27] HCD, Town of Los Gatos – 980 University Avenue Project – Notice of Potential Violation (Feb. 12, 2025) https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/losgatos-hau-1398-nopv-02122025.pdf (Emphasis added.)

[28] *Orange County Employees Assn. v. County of Orange* (1991) 234 Cal.App.3d 833, 841.

[29] *People v. Ledesma* (1997) 16 Cal.4th 90, 95.

[30] *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 856.

3. Improper determination that the Project lost its SB 330 vesting (and therefore the Builder's Remedy and other protections under state housing law) because the County improperly determined that the Project changed the project construction square footage by 20 percent or more in violation of Government Code section 65941.1(d).

The County's Email Determinations on February 27, 2025 state:

- "Separately, after further evaluation of the residential square footage proposed, P&D has concluded that the Builder's Remedy application has been forfeited. This conclusion is based on the amount of construction square footage identified in your SB 330 preliminary application as compared to the square footage provided on your full application."
    - "The Cover Letter for your SB 330 preliminary application states that the project has a total construction square footage of 761,365 square feet (604,080 sq. ft. residential and 157,285 sq. ft. nonresidential). However, the full application shows a total construction square footage of 1,191,596 square feet (1,030,823 sq. ft. residential and 160,773 sq. ft. nonresidential). This results in an increase of over 70% in the residential construction square footage and 56% in the total construction square footage."
    - "Pursuant to Government Code § 65941.1(d), if after submittal of the preliminary application, the applicant revises the project such that the 'square footage of construction changes by 20 percent or more' the applicant shall not be deemed to have submitted a preliminary application until it resubmits the required information so that it reflects the revisions.
    - You may submit a new preliminary application that reflects the revisions to the square footage of construction; however, the new preliminary application will vest to the standards that apply when it is submitted. Because the County has a compliant Housing Element at this time, we have concluded this Builder's Remedy application has been forfeited. This information was not included in the February 20, 2025, incomplete letter because staff was verifying the information provided on the architectural plan set."
- "Pursuant to LUDC Section 35.102.040.A.3 Director Decisions, incompleteness determinations can be appealed. However, because of the increased square footage, the applicant has forfeited the Builder's Remedy application. We believe this renders appeal of the incompleteness determination moot because even if the Planning Commission or Board determined the application to be complete, development under this application cannot proceed."[31]

The County's Email Determination that the Project lost its SB 330 vesting and therefore its protections under the Housing Accountability Act, including the Builder's Remedy is incorrect for many reasons.

[31] PC Appeal Letter, Ex. 2 (Email Determinations.)

First, as depicted in Exhibit 6 of the PC Appeal Letter, **the Project has proposed the exact same site plan**—inclusive of number and size of all buildings—since the SB 330 Preliminary Application was submitted. The Project plans have been consistent throughout the SB 330 Preliminary Application, the May 2024 application submittal, the September 2024 submittal, and the January 2025 resubmittal (i.e., the Resubmittal Application). To the extent the sum of the square footage may appear to have changed, this is a clerical error. It is obvious that a reasonable person would find the Project's construction square footage has not changed since the SB 330 Preliminary Application submittal.

As plainly evident from Exhibit 6 of the PC Appeal Letter, there has been no "revision" to the application that would change the construction square footage by more than 20 percent from the SB 330 Preliminary Application in violation of Government Code Section 65491.1(d). Any inadvertent difference between a value for the cumulative square footage in the SB 330 Preliminary Application is irrelevant given that the planned square footage has been consistent in each application submittal.

Staff's belated Emailed Determination alleges a calculation of construction square footage—for the first time after three application submittals—that differs from a value included in the SB Preliminary Application, despite all the application plans remaining nearly identical. Notwithstanding that the square footage did not change, the County cannot belated identify—after its deadline to respond—a basis to divest the Project of rights, especially on a topic that they did not raise in any prior application submittal and which the County could have identified and understood based on prior application materials.

Second, Government Code section 65941.1(d) states that the change is "exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision[.]" This Project is entitled to a density bonus that could be applied to reduce or eliminate the County's alleged discrepancy. The County has not demonstrated that, even if the construction square footage change—which it did not, that such a change would not be allowed under Density Bonus Law.

Third, Assembly Bill 1893 states "[n]otwithstanding subdivision (c) of Section 65941.1, for a housing development project deemed complete before January 1, 2025, the development proponent may choose to revise their application so that the project is a builder's remedy project, without being required to resubmit a preliminary application, **even if the revision results in the number of residential units or square footage of construction changing by 20 percent or more**."[32] Given that the Project has asserted rights to pivot to a "builder's remedy project" under the Housing Accountability Act, as recently amended, the County cannot unilaterally find that the Project has lost rights under SB 330 when the Project can lawfully make such changes.

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[32] Gov. Code, § 65589.5(f)(7)(B) (emphasis added).

Finally, Government Code section 65941.1(d) does not identify when the County can make the determination about whether a project has been "revised." The County's late-hit email without consulting the applicant to ask about whether the square footage of the project or the units actually changed by 20 percent is a clear attempt to usurp the intent of the Housing Accountability Act.

The County's belated attempt to divest the Project of rights without timely notice to the applicant team, based on an improper and unreasonable interpretation of the SB 330 Preliminary Application and submitted materials, evidences the County's desire to disapprove this affordable housing project in bad faith.

4. Improper determination that the Resubmittal Application is incomplete in violation of Permit Streamlining Act by improperly relying on items such as non-checklist items, items that were not listed in the first incomplete letter, inconsistency items, and items that actually were provided by the applicant to the County, and minor errors that are regularly and routinely allowed to be corrected and clarified through the County's process after being deemed complete.

Table 1 contains a summary of items County staff identified in the February 2025 Incomplete Letter and our responses to each alleged incomplete item. Each response in Table 1 demonstrates that the Resubmittal Application must be found complete based on the information provided consistent with the Permit Streamlining Act and applicable law.

In addition, the following items, raised during the Planning Commission appeal hearing further show that the County must find the Resubmittal Application complete.

County Transportation does not have an applicable submittal checklist therefore none of the Public Works Transportation items can be held as incompleteness items. For example, at the hearing Will Robertson, a staff member representing the County Transportation Department admitted that the incomplete letter includes items which are needed for consistency analysis (not completeness) and that the last incomplete letter added a request for information about the Caltrans right of way in red – a request that had not been included in the two previous incomplete letters. Staff said this added language was intended to "clarify" the previously provided statements.

The County has templates for various letters, including one for a determination of application completeness. There is a standard statement in the template which states:

> "Please review this description carefully. If you believe the project description is incorrect or does not include components that you intend to include as part of the project, please contact us immediately. Further review of the project will be limited to this project description unless you

> provide us with corrections within five (5) days of receipt of this letter. We reserve the right to request additional information to clarify any changes or additions that are made to the project description in response to this letter, as our completeness determination is based upon the material provided with your application."[33]

The County has included this statement on three other Builder's Remedy letters determining those applications complete.

The language above clearly shows that the County allows for clarifications and corrections as a matter of completeness determination, including the ability to change the project description after a project is deemed complete. The County is plainly treating this application differently.

C. The County's Determinations Violate the Housing Accountability Act in Bad Faith

For ease of reference, the discussion from our PC Appeal Letter and March Letters are repeated and augmented below.

The February 2025 Incomplete Letter and the Email Determinations constitute an action to disapprove a housing development project in violation of the Housing Accountability Act.[34] Recent additions to Government Code section 65589.5(h)(6) clarify that disapproval of a housing development project includes, but is not limited to, instances in which the County:

> (A) Votes or **takes final administrative action** on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit...
>
> (D) **Fails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project**, that effectively disapproves the proposed housing development without taking final administrative action [under certain conditions]...

[33] In the three specific example County letters reviewed for this analysis, the only deviation from language is whether or not the timeline of five days is included. In two examples it is included, in one it is not. This identical language also appears in determination of completeness letters for projects that are not Builder's Remedy, including those in the Coastal Zone.
[34] Gov. Code, § 65589.5.

> (F) (i) Determines that an application for a housing development project is **incomplete pursuant to subdivision (a) or (b) of Section 65943** and **includes in the determination an item that is not required on the local agency's submittal requirement checklist. The local agency shall bear the burden of proof that the required item is listed on the submittal requirement checklist**...
>
> (iii) **Determines that an application for a housing development project is incomplete pursuant to subdivision (a) or (b) of Section 65943, a reasonable person would conclude that the applicant has submitted all of the items required on the local agency's submittal requirement checklist**, and the local agency upholds this determination in the final written determination on an appeal filed pursuant to subdivision (c) of Section 65943.
>
> (H) **Makes a written determination that a preliminary application** described in subdivision (a) of Section 65941.1 **has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1.**[35]

The County's determinations related to this Project constitute "final administrative" action to divest a housing development project of rights contrary to state law and HCD guidance.[36] The County continues to take this position despite clear state law and explicit guidance from HCD that the County's position is not supported by law. It further continues to find this Project application incomplete—inconsistent with how the County has treated other similarly situated housing and Builder's Remedy projects.

The County's February 2025 Incomplete Letter also continues to assert that the Resubmittal Application fails to include materials that are not identified on the County's submittal requirements checklist. The County bears the burden of proof that the required item was on the checklist at the time that the SB 330 Preliminary Application was submitted, or that it identified the missing item in the initial incomplete letter.[37] During its consideration of this appeal, the County must consider whether a "reasonable person would conclude that the applicant has submitted all the items by the [County's] submittal requirements checklist..."[38] For the reasons above, a reasonable person cannot conclude, and the County cannot carry, the burden to prove that its decision is properly based on information in a County checklist, and that the information provided is materially deficient to find the Resubmittal Application incomplete.

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[35] Gov. Code, § 65589.5(h)(6).
[36] Gov. Code, §§ 65589.5(h)(6)(A) & (H).
[37] Gov. Code, §§ 65589.5(h)(6)(F)(i) & (ii), (o), 65589.6.
[38] Gov. Code, § 65589.5(h)(6)(F)(iii).

Finally, as you know, the applicant, this site, and this Project have a significant history with both the County and the City of Santa Maria. The history of this Project is critical to understanding the larger context of this appeal. Although residential development cannot occur in some areas of the site due to the nearby Santa Maria Airport's safety zones, the County has repeatedly identified it as appropriate for housing. Most recently, this Project, which is located on Key Site 26, was designated as a Housing Opportunity Site in the County's Housing Element and was evaluated for proposed housing in the County's Housing Element Programmatic Environmental Impact Report. Ultimately, despite the applicant's request to be rezoned, this Board of Supervisors chose not to rezone the property from its current commercial zoning and instead selected other sites for rezoning despite identified site constraints. Additionally, since development of this property must be mixed use (due to the airport safety zones) and since the County has not been able to access water for the commercial portions of the Project for many years, the applicant has been seeking annexation of the property into the City of Santa Maria. For more background, see letter dated November 15, 2024 to the City of Santa Maria, which is attached to the March PC Letter. In short, based on the history of this Project and alternate projects on the same site, it appears that politics is intervening and causing the County to illegally deny this affordable housing project important protections under state law.

That conclusion is underscored by the fact that it is our understanding that this Project is the only housing project application that the County Planning Director has decided to find incomplete and revoke its SB 330 Preliminary Application vesting and therefore the Project's protections under the Housing Accountability Act, including the Builder's Remedy. Thus, this Project is being treated differently from all other housing projects in the County.

Furthermore, despite multiple citations to clear HCD guidance and other statutory authority, the Planning Commission unanimously denied our appeal. One Commissioner even noted that the County's February 2025 Incomplete Letter relies on "nitpicking" to find the Project application incomplete, in contravention of the Housing Accountability Act.[39] But he still voted to deny the appeal.

The Commission's comments during deliberation also suggest that the Planning Commission improperly abdicated its responsibility to hold a *de novo* hearing on the appeal and deferred the decision to the Board of Supervisors. LUDC section 35.102.040.C requires that the Planning Commission hold a *de novo* hearing on all appeals of Planning Director decisions. For example, one Planning Commissioner

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[39] County, Planning Commission Meeting (Mar. 19, 2025) 1:12:00-1:14:00 https://www.youtube.com/watch?v=5n748UpCbZw&list=PL8SyQGix1i-X3uejlPma0wl5NDdJSUiTW&index=2 (describing the incomplete letter as "nitpicking on what's complete and what's not complete" and stating "that's really not the intent of the law here. The intent of the law here is served by making sure that a 750 unit project with 150 low-income housing units is not thwarted by concerns over the design of the car wash; and that's kind of what we're seeing here – items that a Court is unlikely to agree with and which contravene the intent of the Housing Accountability Act.")

specifically stated that since he believed that "the county has a very strong likelihood of facing some liability here, paradoxically that tells me that I want to also vote to deny the appeal and I'll tell you why ... this Planning Commission should never be the court of last resort in the county system for hearings that that in large part rest on legal issues where the liability of the county is involved. ... I think ultimately this matter should be decided by the Board of Supervisors so that they can weigh the risks of liability for the County in saying no to this applicant and the only way to get it to the Board of Supervisors is for us including me to vote for denial."[40]

The Planning Commission's failure to consider meaningfully the substance of the appeal due to perceived legal risks constitutes an error and abuse of discretion. Plus, the argument is nonsensical, and a pretext for pushing the decision to the Board of Supervisors. There is no scenario where the Planning Commission's decision would create any liability for the County. If the Planning Commission granted our appeal, we would not be aggrieved and therefore could not file litigation against the County. And, if someone that participated in the hearing was unhappy about our appeal being granted, they could appeal it up to the Board of Supervisors. Instead, since the County Code does not allow the Board of Supervisors to appeal a Planning Commission decision to itself, it appears that the Planning Commission received pressure to push the item to the Board of Supervisors by denying the appeal and forcing the applicant to go through the time and expense of another appeal and another hearing.[41] The Commission's decision to relinquish its responsibility to provide a fair hearing, creating unnecessary delay and adding substantial costs to the processing of this Project application is just the type of conduct that state housing law has been enacted to avoid.

The County must be careful not to allow politics and personal animus to interfere with the fair and legal processing of this affordable housing project, as in addition to due process protections, there are numerous state laws that have been enacted to protect the Project against such interference. For example, under the Housing Accountability Act, an applicant, person eligible for residency in the housing project, or a housing organization may bring an action to enforce its provisions.[42] Prevailing petitioners are entitled to recover attorneys' fees from the County for violations.[43] Plus, notable here, when a court finds that an agency acted in "bad faith"—defined as including but not being limited to actions or inactions that are "frivolous, pretextual, intended to cause unnecessary delay, or entirely without merit"—it can impose penalties of over $50,000 per housing unit.[44]

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[40] County, Planning Commission Meeting (Mar. 19, 2025) 1:14:00.
[41] See LUDC, §§ 35.102.020 (stating only an aggrieved party can file an appeal) 35.102.050 (describing the appeal process to the Board of Supervisors from the Planning Commission).
[42] Gov. Code, § 65589.5(k)(1)(A)(i).
[43] Gov. Code, § 65589.5(k)(1)(A)(ii).
[44] Gov. Code, § 65589.5(k)(1)(B), (l).

The County's frivolous and meritless decision to ignore SB 330, the Permit Streamlining Act, and the Housing Accountability Act, along with HCD's guidance, show bad faith. The staff Email Determinations purporting to revoke state law protections—after being silent on the topic in the February 2025 Incomplete Letter—contravenes the entire intent of the SB 330 and the Permit Streamlining Act, which were enacted to create certainty, prevent late hits, and prohibit agencies from hiding the ball or divesting a housing project of rights without notice. Further, the Planning Commission's abdication of its responsibilities under the LUDC to consider the County's determinations *de novo* suggests bad faith inaction to further delay and increase the costs of an affordable housing project, and the apparent political targeting of this Project and applicant raises further significant concerns. The County Board of Supervisors must overturn these determinations or face liability for disapproval of a housing project under the Housing Accountability Act, likely in bad faith.

In short, our client may pursue any applicable legal remedy, including potential claims under the Housing Accountability Act on the basis that the decision constitutes a decision to "disapprove a housing development project."[45] Importantly, in the event of litigation, the County bears the burden to prove that its decision conformed with all the conditions of the Housing Accountability Act.[46] And, a successful petitioner may recover their legal fees.[47] As a result, the County's continued insistence to flout California housing law creates significant legal and financial risks to the County and its taxpayers.

II. CONCLUSION

In summary, we respectfully request that the Board of Supervisors approve this appeal as follows.

First, we ask the Board to find that the Resubmittal Application is complete by operation of law as of February 19, 2025 because the County staff did not send its incomplete letter within the 30 days required under Government Code section 65943(a) and (b).

Second, we ask the Board to overturn the Planning Director's improper determination that Project lost its SB 330 Preliminary Application vesting (and therefore the Builder's Remedy and other protections under state housing law) because the County improperly determined that the Project has a limited number of submittals (only two 90-day cycles) within which to be deemed complete contrary to clear HCD Guidance. (Gov. Code, § 65941.1.)

Third, we ask the Board to overturn the Planning Director's improper determination that Project lost its SB 330 Preliminary Application vesting (and therefore the Builder's Remedy and other protections under

[45] Gov. Code, § 65589.5 (h)(6).
[46] Gov. Code, § 65589.6.
[47] Gov. Code, § 65589.5(k)(1)(A)(ii).

state housing law) because the County improperly determined that the Project changed the construction square footage by 20 percent or more in violation of Government Code section 65941.1(d). Fourth, we ask the Board to overturn the Planning Director's improper determination that the Resubmittal Application is incomplete in violation of Permit Streamlining Act by improperly relying on items such as non-checklist items, items that were not listed in the first incomplete letter, inconsistency items, and items that actually were provided by the applicant to the County.

Thank you for your thoughtful consideration of this important matter.

Sincerely,

Beth A. Collins

Enclosures

- Table 1: February 20, 2025 Incomplete Letter Items and Applicant Responses
- Exhibit 1: PC Appeal Letter
- Exhibit 2: March PC Letter

Attachment 1: Completed and signed appeal form
Attachment 2: Check 7522 in the amount of $793.06 payable to the County of Santa Barbara

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