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ELECTRONIC SUBMISSION

Housing Accountability Unit
California Department of Housing & Community Development
651 Bannon Street
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RE: Technical Assistance Request - Permit Streamlining Act

To Whom It May Concern:

Our office represents several applicants for housing development projects within the County of Santa Barbara ("County") that have submitted preliminary applications pursuant to Government Code section 65941.1 and are now working through the process to have their housing development project applications be determined to be complete by the County. During this process, the County has taken the position that the preliminary application will expire unless the County determines an applicant's housing development project application complete within two submittals. As such, this technical assistance request that the Department of Housing and Community Development ("HCD") provide technical assistance to the County about the processing of preliminary applications and subsequent development applications under Government Code section 65943 as well as the scope of its review to determine an application to be complete. Specifically, this request asks:

Does a preliminary application automatically expire under Government Code section 65941.1(d)(2) if the applicant timely submits a housing development project application, but the local agency does not determine the application to be complete within two 90-day application submittals deadlines, or are multiple resubmittals allowed, consistent with Government Code section 65943, as long as the applicant responds within 90 days of the local agency's incompleteness determination?

Relatedly, this request also asks for clarifications about the scope of application completeness review under Government Code section 65943 and recent amendments to the Housing Accountability Act (Gov. Code, § 65589.5) by Assembly Bill 1893.

I. BACKGROUND

A. General Timeline

The following provides a general timeline for the County's processing of our clients' applications:

1. Our clients submitted preliminary applications in late 2023 or early 2024. Several applications were submitted prior to the date that HCD certified that the County's 2023-2031 Housing Element ("Housing Element") substantially complied with Housing Element Law (Gov. Code, § 65580 et seq.) and thus asserted a right to processing under the so-called "Builder's Remedy" under Government Code section 65589.5(d)(5). However, some preliminary applications were submitted after HCD certified the County's Housing Element or do not otherwise seek to process under the Builder's Remedy at this time.
2. Our clients' timely submitted housing development project applications within 180 days of the date the preliminary applications were submitted (generally late Spring and early Summer) in accordance with Government Code section 65941.1(d)(1).
3. County staff issued incompleteness determinations within 30 days (generally Summer) under the timeline specified in Government Code section 65943(a). The County's responses generally included items that (1) do not appear on lists developed under Government Code section 65940, including requests for information from other departments;¹ (2) indicate the County may treat consistency items provided under Government Code section 65941 as required for a completeness determination; and/or (3) seek to apply inapplicable General Plan land use designations, zoning code, and/or subjective development standards to the applications. In addition, as described further below in Section I.B, the County incomplete letters included the interpretation that our clients' preliminary applications would expire if the County had not determined the applications incomplete within two housing development project application submittals. (Gov. Code, § 65941.1(d)(2).)
4. Our clients recently resubmitted or are in the process of resubmitting housing development project applications within 90 days of the County's first incomplete letter. Our clients that have resubmitted are awaiting a response from the County.

¹ See also Gov. Code, § 65943(f).)

B. County Responses

As noted above, the County's responses to our clients' incomplete applications contain various warnings related to its interpretation of Government Code section 65941.1(d)(2).² The most concerning state as follows:

Pursuant to Government Code Section 65941.1(d)(2), the development proponent (applicant) has 90 days to correct the deficiencies and submit the material identified in this Incomplete Letter needed to complete the application. If the applicant does not submit all information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information, then the preliminary application vesting Builder's Remedy and/or SB 330 protections shall expire and have no further force or effect. Upon resubmittal of application materials in response to this Incomplete Letter, P&D has 30 days to determine your application completeness. If the application is not still complete, P&D will provide a list and thorough description of the information needed to complete the application. **The applicant will have a final 90 days to correct deficiencies. If the applicant does not submit all information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information, then the preliminary application vesting Builder's Remedy and/or SB 330 protections shall expire and have no further force or effect.**³

And:

The applicant has a **final** 90 days to correct deficiencies and subject the materials/additional information needed to complete the application. **If the applicant does not submit the required materials/additional information listed below within 90 days, then the preliminary application will expire and have no further force or effect, and the applicant would lose the right to a Builder's Remedy project (Gov. Code section 65941.1(d)(2)).**⁴

² Note that some of these provisos are consistent with our understanding of Government Code section 65941.1(d)(2) and others are not.

³ Emphasis added. The incomplete letter containing this language does not involve a Builder's Remedy application.

⁴ Emphasis added.

Our office also contacted the County Planning and Development Director on or about October 18, 2024 requesting clarifications about the County’s interpretation of Government Code section 65941.1(d)(2) and its intended approach to process the applications. As part of our inquiry, we provided the County with copies of a few HCD letters on this topic.⁵ We again followed up on October 31, 2024 requesting a response by November 8, 2024 given the importance of these issues to our clients’ applications. We did not receive a response and thus file this technical assistance request to clarify this important issue.

II. PERMIT STREAMLINING ACT INTERPRETATION

The Housing Crisis Act of 2019 (Senate Bill (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 a desire to “to expedite the permitting of housing in regions suffering the work housing shortages and highest rates of displacement.”⁶ 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.”⁷ (Gov. Code, § 65589.5(a)(2)(L), (o).)

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. (Gov. Code, §§ 65941.1(a), 65589.5(o).) 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.”⁸ (Gov. Code, § 65941.1(d)(1).) If the 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.” (Gov. Code, §

⁵ HCD, Town of Los Gatos, Saratoga Road Project – Letter of Technical Assistance (Aug. 30, 2024) (finding that the 90 day deadline restarts with each subsequent application submittal); HCD, 125-129 Linden Drive, Beverly Hills – Notice of Violation (Aug. 22, 2024) (“HCD reminds the City, however, that the 90-day deadline resets after each incompleteness determination.”); HCD, Gilroy 315 Las Animas Ave. Project – Letter of Technical Assistance (Jul. 23, 2024) (describing difference between a completeness determination and consistency review).

⁶ SB 330, Stat. 2019, Ch. 654, § 2(a)(10), (c)(2).

⁷ See also Gov. Code, § 65589.5(a)(2)(K) (The Legislative intended in adopting and subsequently expanding the HAA “to significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects.”)

⁸ The housing development project application also must be for a project that generally aligns with the preliminary application. (See Gov. Code, § 65941.1(c) (allowing for the project to change by unit count or construction square footage by up to 20 percent exclusive of any density bonus while preserving its preliminary application status).)

65941.1(d)(2).) 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.” (*Ibid.* [Emphasis added].)

Government Code section 65943(a) requires a public agency to submit a written determination whether an application is complete to an applicant within thirty days of the submittal. 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. (*Ibid.*) “**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.” (*Ibid.* [Emphasis added].) Government Code section 65943(b) clarifies that this 30 calendar day period applies to each supplemented or amended application. (*Id.* subd. (b).) If 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. (*Id.* subd. (c).)

Reading Government Code sections 65941.1 and 65943 together, HCD has previously determined 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).⁹

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.¹⁰

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.¹¹ Statutes are

⁹ HCD, Town of Los Gatos, Saratoga Road Project – Letter of Technical Assistance, pp. 2-3 (Aug. 30, 2024) [emphasis added]; HCD, 125-129 Linden Drive, Beverly Hills – Notice of Violation, p. 3 (Aug. 22, 2024) (“A project with multiple incompleteness letters and responses may have multiple 90-day periods.”)

¹⁰ HCD, Town of Los Gatos, Saratoga Road Project – Letter of Technical Assistance, pp. 2-3 (Aug. 30, 2024).

¹¹ *Orange County Employees Assn. v. County of Orange* (1991) 234 Cal.App.3d 833, 841.

not construed in isolation and must be harmonized with the statutory scheme.¹² 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.¹³

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 should be contingent on a staff determination about application completeness. Such an interpretation would lead to absurd results.

For example, an applicant submits a preliminary application for a housing development project prior to a local agency downzoning their property, then 180 days later the applicant submits a housing development plan application, the local agency responds 30 days later declaring the application incomplete. The applicant then responds within 90 days but omits an expensive completeness item based on a dispute with the local agency over application of the downzoning to the property. The local agency then responds 30 days later declaring the application incomplete and all rights under the preliminary application forfeited. The applicant would then need to appeal the decision for a hearing within 60 days prior to filing litigation. In total, the applicant would have expended significant resources to process a preliminary application with the local agency for over a year only to have the process stalled pending the results of the litigation—this outcome will not serve the Legislature's intent to expedite the production of housing during a housing crisis.¹⁴

Interpreting Government Code section 65941.1(d)(2) to limit a housing development application to one or two 90-day periods contravenes the clear Legislature intent to **“expedite the permitting of housing”** and desire to “significantly increase the approval and construction of new housing . . . by **meaningfully and effectively curbing the capability of local governments to deny**, reduce the density for, or render infeasible housing development projects.”¹⁵

¹² *People v. Ledesma* (1997) 16 Cal.4th 90, 95.

¹³ *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 856.

¹⁴ Specifically, the applicant would have had their application in process with the local agency for up to 330 days. Then, if the incomplete determination is appealed, that process would be resolved after up to 390 days. Based on the County's interpretation, the administrative process would unfold over 450 days with an additional 60 day appeal period.

¹⁵ SB 330, Stat. 2019, Ch. 654, § 2(a)(10) [emphasis added]; Gov. Code, § 65589.5(a)(2)(K) [emphasis added].

Accordingly, the County's interpretation that Government Code section 65941.1(d)(2) allows the County to treat an applicant's preliminary application to have expired and have no further force or effect based on a staff determination.

A. Other Completeness Determination Items

As mentioned above, the County's interpretation further generates significant concerns about its processing of the housing development applications. Specifically, our clients are concerned that the County may declare their applications incomplete on improper grounds to revoke their rights. County responses to the housing development application (1) raise items that do not appear on lists developed under Government Code section 65940, including requests for information from other departments;¹⁶ (2) indicate the County may treat consistency items provided under Government section 65941 as required for a completeness determination; and/or (3) seek to apply inapplicable General Plan land use designations, zoning code requirements, or subjective development standards to the applications. Recently, we also received feedback from individual County departments other than Planning and Development, that may determine there is insufficient information to process an application and determine it incomplete. This process does not align with Government Code sections 65940, 65941, and 65943, and injects significant uncertainty about the process for the County to determine an application to be complete. Given that we anticipate the County may rely on improper grounds to deny our clients' applications and thus revoke their preliminary applications during the next round of incomplete letters, we also ask that HCD provide technical assistance consistent with its prior guidance about the scope of application completeness review under the Permit Streamlining Act.¹⁷

B. Assembly (AB) 1893 Applicability

AB 1893, which takes effect on January 1, 2025, amends the Housing Accountability Act to clarify circumstances where a local agency disapproves a housing development project.¹⁸ Relevant here, AB 1893 defines the following as to "disapprove a housing development project":

(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. (ii) In a subsequent review of an application pursuant to Section 65943, requests the applicant provide new information that was not identified in the

¹⁶ See also Gov. Code, § 65943(f).

¹⁷ See HCD, Fillmore Terrace Project – Letter of Technical Assistance (Aug. 2024, 2022); HCD, Gilroy 315 Las Animas Ave. Project – Letter of Technical Assistance (Jul. 23, 2024).

¹⁸ AB 1893, Stat. 2024, Ch. 268.

initial determination and upholds this determination in the final written determination on an appeal filed pursuant to subdivision (c) of Section 65943. The local agency shall bear the burden of proof that the required item was identified in the initial determination.

. . .

(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 65941.1.¹⁹

Given the concerns raised above and that some of our clients will resubmit housing development project applications or the County will issue completeness determination after January 1, 2025, we ask HCD to confirm that the above provisions of AB 1893 shall apply to the County's review of our clients' projects moving forward, and whether the County's proposed course of action would "disapprove a housing development project" under the sections above.

* * *

In summary, we respectfully request that HCD provide the County with technical assistance that Government Code section 65941.1(d)(2) does not authorize the County to limit the number of resubmittals to two 90-day periods and clarifications about the proper scope of review under Government Code section 65943.

Thank you for your careful consideration of this request. We appreciate HCD's continued support in advising local agencies and applicants about its interpretations of California housing laws and its efforts to address the housing crisis. Please contact me if you have any questions about this request.

Sincerely,



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¹⁹ Gov. Code, § 65589.5(h)(6)(F)(i)-(ii), (H) (as amended by AB 1893).