



Santa Barbara County Planning and Development Department

Appeal Application

County Use Only

Appeal Case No.:

STEP 1: SUBJECT PROPERTY

107-250-019, 107-250-020, 107-250-021, 107-250-022

ASSESSOR'S PARCEL NUMBER(S)

PROPERTY ADDRESS (IF APPLICABLE)

BUSINESS/ESTABLISHMENT NAME (IF APPLICABLE)

STEP 2: PROJECT DETAILS

Richards Ranch aka Orcutt Commons

PROJECT TITLE

24TRM-3, 24DVP-18, 24CUP-33

CASE NO(S).

Director

February 20, 2025

DECISION MAKER

DATE OF ACTION

Is the appeal related to cannabis activities?

☐ Yes ☒ No

STEP 3: APPEAL CONTACTS

APPELLANT

Richards Ranch LLC Michael Stoltey

NAME (if LLC or other legal entity, must provide documentation)

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STREET ADDRESS

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CITY, STATE ZIP

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PHONE EMAIL

AGENT

Ginger Andersen, Brownstein

NAME (if LLC or other legal entity, must provide documentation)

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PHONE EMAIL

ATTORNEY

Beth A Collins, Brownstein

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1021 Anacapa St Second Floor

STREET ADDRESS

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PHONE EMAIL

STEP 4: APPEAL DETAILS

Is the Appellant the project Applicant? ☒ Yes ☐ No

If not, please provide an explanation of how you are an "aggrieved party", as defined in Step 5 on page 2 of this application form:

Please provide a clear, complete, and concise statement of the reasons or ground for appeal:

- Why the decision or determination is consistent/inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law;
- There was error or abuse of discretion;
- The decision is not supported by the evidence presented for consideration;
- There was a lack of a fair and impartial hearing; or
- There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- Coastal Zone – Accessory Dwelling Unit appeals: Appellant must demonstrate that the project is inconsistent with the applicable provisions and policies of the certified Local Coastal Program or that the development does not conform to the public access policies set forth in the Coastal Act.

See attached

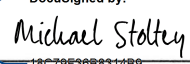
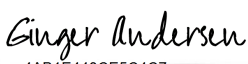
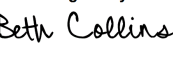
STEP 5: APPELLANT, AGENT, AND ATTORNEY ACKNOWLEDGEMENTS

I hereby certify under penalty of perjury that I have read the information below and that:

1. I have carefully reviewed and prepared the appeal application in accordance with the instructions; and
2. I provided information in this appeal application, including all attachments, which are accurate and correct; and
3. I understand that the submittal of inaccurate or incomplete information or plans, or failure to comply with the instructions may result in processing delays and/or denial of my application; and
4. I understand that it is the responsibility of the applicant/appellant to substantiate the request through the requirements of the appeal application; and
5. I understand that upon further evaluation, additional information/documents/reports/entitlements may be required; and
6. I understand that all materials submitted in connection with this appeal application shall become public record subject to inspection by the public. I acknowledge and understand that the public may inspect these materials and that some or all of the materials may be posted on the Department's website; and
7. I understand that denials will result in no refunds; and
8. I understand that Department staff is not permitted to assist the applicant, appellant, or proponents and opponents of a project in preparing arguments for or against the project; and
9. I understand that there is no guarantee – expressed or implied – that an approval will be granted. I understand that such application must be carefully evaluated and after the evaluation has been conducted, that staff's recommendation or decision may change during the course of the review based on the information presented; and
10. I understand an aggrieved party is defined as any person who in person, or through a representative, appears at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either; and
11. Pursuant to California Civil Code Section 1633.5(b), the parties hereby agree that where this Agreement requires a party signature, an electronic signature, as that term is defined at California Civil Code Section 1633.2(h), shall have the full force and effect of an original ("wet") signature. A responsible officer of each party has read and understands the contents of this Agreement and is empowered and duly authorized on behalf of that party to execute it; and
12. I understand that applicants, appellants, contractors, agents or any financially interested participant who actively oppose this project who have made campaign contributions totaling more than \$250 to a member of the Planning Commission or Board of Supervisors since January 1, 2023, are required to disclose that fact for the official record of the subject proceeding. Disclosures must include the amount and date of the campaign contribution and identify the recipient Board member and may be made either in writing as part of this appeal, in writing to the Clerk of the legislative body before the hearing, or by verbal disclosure at the time of the hearing; and
13. If the approval of a Land Use Permit required by a previously approved discretionary permit is appealed, the applicant shall identify:
 - How the Land Use Permit is inconsistent with the previously approved discretionary permit;
 - How the discretionary permit's conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed;
 - How the approval is inconsistent with Section 35.106 (Noticing).

REQUIRED SIGNATURES: All aggrieved parties must sign the appeal application prior to the appeal deadline in order to be considered an aggrieved party. Please attach additional signature pages, as needed.

I have read and understand the above acknowledgements and consent to the submittal of this application.

DocuSigned by:  13C79F36B8314B9... SIGNATURE – APPELLANT	Michael Stoltey PRINT NAME	2/28/2025 3:44 PM PST DATE
Signed by:  4AB1E448CE5C4C7... SIGNATURE – AGENT	Ginger Andersen PRINT NAME	2/28/2025 3:44 PM PST DATE
DocuSigned by:  F7F8809C8970485... SIGNATURE – ATTORNEY	Beth Collins PRINT NAME	2/28/2025 5:48 PM CST DATE

Appeals to the Planning Commission. Appeals to the Planning Commission must be filed with Planning and Development no later than 10 days following the date of the decision, along with the appropriate fees. Please contact P&D staff below for submittal instructions and to determine the appropriate fee.

South County projects: front@countyofsb.org or (805) 568-2090

North County projects: nczoning@countyofsb.org or (805) 934-6251

Appeals to the Board of Supervisors. Appeals to the Board of Supervisors must be filed with the Clerk of the Board and must be filed no later than 10 days following the date of the decision, along with the appropriate fees. Appeal instructions are located online at the Clerk of the Board website: <https://www.countyofsb.org/2837/Filing-Land-Use-Appeals-Claims>

February 28, 2025

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Alia Vosburg, Planner
County of Santa Barbara
Development Review Division
624 W. Foster Road
Santa Maria, CA 93455

**RE: 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**

Dear Ms. Vosburg:

We are in receipt of your February 20, 2025 Determination of Application Incompleteness letter ("February 2025 Incomplete Letter")¹ in response to our client's second application resubmittal, dated January 20, 2024 ("Resubmittal Application") for the subject project ("Project"). On February 27, 2025, County Planning and Development staff also emailed our office with additional determinations that impact the Project ("Email Determinations").²

Pursuant to County Land Use and Development Code ("LUDC") Chapter 35.102 (Appeals) and Government Code section 65943(c), we submit this letter to appeal the Santa Barbara County ("County") Director of Planning and Development's, or designee's, decisions in the February 2025 Incomplete Letter and the additional Email Determinations.³

I. Appeal Summary Information

County Land Use & Development Code ("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 Below is a list of these criteria, with a brief response to each. A more in-depth response to items c and d is contained in the body of this letter.

¹ Attached hereto as Exhibit 1.

² The email correspondence is attached hereto at Exhibit 2 and incorporated herein by reference.

³ The letter incorporates by reference all prior application submittals, County responsive letters, and electronic correspondence related to this Project as well as the Exhibits attached hereto.

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, Property Owner and Applicant of the subject case numbers.

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

The appeal pertains to three core issues related to the following determinations by the County Planning and Development Director or her designee: (1) the computation of the County's deadline to respond to the Resubmittal Application; (2) that the Resubmittal Application is incomplete; and (3) that the Project has lost rights under its SB 330 Preliminary Application submitted in December 2023, including the Project's eligibility under the Builder's Remedy.⁵

- 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;*

As explained further below in Section II, the determination that the Resubmittal Application is incomplete is inconsistent with the Permit Streamlining Act (Gov. Code, § 65920 et seq.) 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 under Government Code section 65943; (2) the County's review and processing of the Resubmittal Application violates the Permit Streamlining Act and Housing Accountability Act (Gov. Code, § 65589.5); (3) notwithstanding the County's decision otherwise, the Resubmittal Application contains sufficient information to be found complete; and (4) the County's determination contravenes SB 330 and the Permit Streamlining Act. In light of these determinations, the County's decisions on 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*

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.

have been presented at the time the decision was made, then these grounds shall be specifically stated.

As explained below, this appeal asserts that 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.

II. Grounds for Appeal

The below provides additional detail to support the above summaries.

1. The County Did Not Adhere to the Permit Streamlining Act's Deadline and Accordingly, the Application is Deemed Complete by Operation of Law.

The Permit Streamlining Act imposes deadlines on all public agencies to review and act on applications for development projects based on "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."⁶ 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."⁷ If this determination is not made "within 30 days" after receipt of the application, "the application shall be deemed complete..."⁸

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, 2025.⁹ This 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.¹⁰

⁶ Gov. Code, § 65921.

⁷ Gov. Code, § 65943(a) (Emphasis added).

⁸ *Id.* (Emphasis added).

⁹ February 19, 2025 is 30 calendar days after January 20, 2025.

¹⁰ See also Gov. Code, § 65589.5(j)(2).

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.**¹¹

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.¹²

The County's position is totally inconsistent and contrary to law. First, in the County's explanation it admits that every other weekend and holiday 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). Thus, under the County's theory, despite the fact that 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**

¹¹ See Code Civ. Proc., § 12; Civ. Code, § 10; Gov. Code, § 6800; Cal. R. Ct., R. 1.10 (emphasis added).

¹² *Id.*

jurisdictions are required to determine whether an application is complete within 30 calendar days, and not business days.¹³

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 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 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.

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.

2. The County's Processing of the Application Violated State Law

Even if the County refuses to acknowledge that the Resubmittal Application is complete by operation of law under Government Code section 65943(a), under this appeal, County decision-makers must find the Resubmittal Application complete based on the Permit Streamlining Act and Housing Accountability Act.

The Permit Streamlining Act and Housing Accountability Act establish certain procedural requirements and restrictions on how the County reviews proposed project applications to determine their completeness.¹⁴ Pursuant to its authority under state law, the HCD further has provided guidance to local agencies, including the County, with respect to processing of housing development projects. In particular, four letters,¹⁵ attached hereto as Exhibit 5, clearly show that the County's February 2025

¹³ 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).

¹⁴ See, e.g., Gov. Code §§ 65920 et seq., 65589.5(o).

¹⁵ HCD, Fillmore Terrace Project – Letter of Technical Assistance (Aug. 24, 2022) available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/fillmore-attachments-ta-082422.pdf>

Incomplete Letter constitutes an error or abuse of discretion or is not supported by the evidence. The following violations of the Permit Streamlining Act and Housing Accountability Act require County decision-makers accept this appeal and find the Resubmittal Application complete.

1) The County's Completeness Review is Limited to Items on a Public Checklist

An agency's review for completeness under the Permit Streamlining Act "shall be limited to those items actually required on the lead agency's submittal requirement checklist."¹⁶ A city or county also must make copies of the list of "information required from an applicant for a housing development project . . . publicly available on the internet website of the city or county." HCD has further clearly stated that an agency's "determination is focused solely on an assessment of whether the applicant has satisfied "those items actually required on the lead agency's submittal requirement checklist." (Gov. Code, § 65943, subd. (a).)"¹⁷

None of the County's Departments outside of Planning and Development had submittal or application completeness checklists for Tentative Maps, Development Plans, or Conditional Use Permits ("CUPs") at the time that the Project's SB 330 Preliminary Application was submitted and froze the applicable application requirements.¹⁸ To the best of our knowledge, the County had not prepared application completeness checklists for other departments until January or February 2025, well after the SB 330 Preliminary Application froze the County's application requirements. The County therefore cannot find the application incomplete based on items from any other department that were not included on a submittal requirements checklist that was publicly available on the County's website when the SB 330 Preliminary Application was submitted.¹⁹

To this point, we audited both the Transportation Division and the Flood Control Division's websites again on January 16, 2025 and did not find any application checklist, nor were any referenced in their prior incomplete letters. The allegedly incomplete items specified by these Departments (discussed further in Section II.3 below) thus cannot be a valid basis to find the Resubmittal Application

("Fillmore Letter"); HCD, Gilroy 315 Las Animas Ave. Project – Letter of Technical Assistance (July 23, 2024) available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/gilroy-ta-hau856-072324.pdf> ("Gilroy Letter"); HCD, Beverly Hills Builder's Remedy Applications – Notice of Violation (Aug. 22, 2024) available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-hau-1071-nov-082224.pdf> ("Beverly Hills Letter"); HCD, Town of Los Gatos – 980 University Avenue Project – Notice of Potential Violation (Feb. 12, 2024) available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/losgatos-hau-1398-nopv-02122025.pdf> ("Los Gatos Letter")

¹⁶ Gov. Code, §§ 65940, 65943(a).

¹⁷ Fillmore Letter, pp. 3, 9-23.)

¹⁸ Gov. Code, § 65589.5(o)(4) (SB 330 Preliminary Application freezes "any other rules, regulations, requirements, and policies of a local agency....")

¹⁹ See Gilroy Letter, pp. 2-3, 10

incomplete under the Permit Streamlining Act. Notwithstanding, the applicant voluntarily addressed items requested by these Departments through additions to the plans, and through revisions in the prior application resubmittal and the Resubmittal Application.

In addition, to the extent Public Works now has a checklist, it is not applicable to this application, and it is furthermore problematic in its inclusion of consistency requirements as completeness items. Thus, again, the items Public Works identified as purported incomplete items cannot be used to find the Resubmittal Application incomplete.

Therefore, the County's determination that the Resubmittal Application is incomplete violates the Permit Streamlining Act, constitutes an abuse of discretion, and is not supported by the evidence.

2) Subsequent Incomplete Letters Cannot Identify New Incomplete Items

Under the Permit Streamlining Act, the County cannot "request the applicant to provide any new information that was not stated in the initial list of items that were not complete."²⁰ Government Code section 65943(a) states that "the lead agency shall provide the applicant with an exhaustive list of items that were not complete." If the application is incomplete, then the County shall "specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application."²¹ Any item that is not identified in the initial incomplete letter cannot be requested in a subsequent incomplete letter.²²

Public Works' memo dated February 20, 2025 and incorporated as part of the February 2025 Incomplete Letter includes new comments related to the submitted items and new requests for information for consistency and environmental review, not completeness items.²³ In addition, as discussed further below, the Email Determinations asserting that the Project has lost rights under the SB 330 Preliminary Application for an alleged inconsistency related to the construction square footage has not been raised in response to any prior application submittal and is not factually supported by the applications, and therefore cannot be raised at this time (after the County's deadline to respond to the Resubmittal Application has passed). As such, it is inappropriate for the County to find the Resubmittal Application incomplete based on any new item not included in the County's initial incomplete letter.

²⁰ Gov. Code, § 65943(a).

²¹ *Ibid.*

²² *Ibid.*

²³ Gov. Code, § 65941(b); see Gilroy Letter, pp. 3, 9-17.

The County, inclusive of its Departments, cannot move the goal post by adding new incomplete items to subsequent submittals—doing so is a violation of the requirements of the Permit Streamlining Act and Housing Accountability Act.²⁴

3) Consistency Items Cannot be Held as Completeness Items Since Consistency Review Occurs After Application Completeness Review.

The Permit Streamlining Act and Housing Accountability Act establish two separate levels of review for housing development projects. The local agency first reviews an application for completeness under the Permit Streamlining Act, and then it reviews the complete application for consistency with objective policies under the Housing Accountability Act. The Beverly Hills Letter from HCD states “the [Housing Accountability Act] suggests that a determination of consistency may not be permitted during the application completeness determination phase, but must instead occur after the application completeness determination.”²⁵

The Gilroy Letter puts a finer point on it. In the letter, HCD provides an example of a violation:

One example of an inconsistency determination comes from the City’s first incompleteness letter on January 11, 2024, which states “[p]roposed utility locations are not consistent with City Standards.” It appears that the City has conflated this [Housing Accountability Act] consistency review item and others with the [Permit Streamlining Act] completeness review. **When a local jurisdiction improperly characterizes comments as incomplete items, the jurisdiction impermissibly raises the bar to achieving a complete application, in violation of the [Permit Streamlining Act].**²⁶

Similarly, in the Fillmore Letter, HCD states “when a local jurisdiction improperly characterizes comments as incomplete items, the jurisdiction **impermissibly raises the bar to achieving a complete application, in violation of the PSA. That violation also becomes an undue constraint on the Project.**”²⁷

Here, as shown below, Public Works’ purported incompleteness items are not required to determine whether the Resubmittal Application is complete. Some of the identified items raise concerns with

²⁴ Gov. Code, §§ 65943, 65589.5(h)(6)(F).

²⁵ Beverly Hills Letter, p. 3. (“However, the HAA suggests that a determination of *consistency* may not be permitted during the application *completeness* determination phase but must instead occur after the application completeness determination. (Gov. Code, § 65589.5, subds. (j)(2)(A), (h)(10).)”)

²⁶ Gilroy Letter, p. 2.

²⁷ See Fillmore Letter, p. 2.

ways the Project may be inconsistent with applicable policies or requirements for technical reports, not whether those reports and studies exist. Public Works' ability to review certain items for consistency with applicable County policies and report requirements necessarily indicates that it has sufficient information to consider these items "complete." By treating consistency items as incomplete items for the purposes of processing the Resubmittal Application, the County violates the Permit Streamlining Act.

4) County Departments' Requests for a Traffic Study is a California Environmental Quality Act ("CEQA") Environmental Review Item, Not a Completeness Item.

Government Code section 65944(b) clarifies that an application submittal "**shall not be construed as requiring an applicant to submit with an initial application the entirety of the information which a public agency may require in order to take final action on the application.**"²⁸ Although Government Code section 65941(a) allows the County to require enough information to determine whether an environmental impact report ("EIR") or other document may be required, it clearly states that a public agency cannot require the applicant "to submit the informational equivalent of an environmental impact report as part of a complete application..."²⁹ Recognizing this, Government Code section 65944(c) discusses processing after an application is deemed complete, indicating that the public agency continues to have the ability to "request and obtain information which may be needed in order to comply with the provisions of [CEQA]."

An analysis of traffic impacts is frequently, routinely, and appropriately prepared as part of a CEQA document, which again happens after an application being deemed complete.³⁰ Importantly, and as discussed above, no specific technical studies are listed in the County's applicable checklists for a CUP, Development Plan ("DP"), Tentative Tract Map ("TTM"), or the applicable Site Plan & Topographic requirements.

Notwithstanding, Traffic and Circulation Impacts from full development of the site with commercial and residential uses is fully analyzed in a number of Traffic and Circulation Studies contained within the EIR Appendices associated with a pending annexation application of a similar scale.³¹ These include an Updated Traffic & Circulation Study by ATE dated October 7, 2022, along with subsequent memoranda in response to comments received throughout the EIR's consideration by the public and the City of Santa Maria. Importantly, we note these studies include discussion of Santa Barbara County

²⁸ Emphasis added.

²⁹ *Id.* at (b).

³⁰ Pub. Res. Code, § 21080.2; see also CEQA Guidelines, §§ 15102, 15107, 15108.

³¹ References to the EIR are to the City of Santa Maria's Annexation EIR supplied with the January 20, 2025 submittal and available on the City of Santa Maria website <https://www.cityofsantamaria.org/services/departments/community-development/planning-division/planning-policies-and-regulations/environmental-impact-reports>

Standards, such as Orcutt Community Plan policy CIRC-O-3. The available analyses are included in the accompanying EIR documents, and also were compiled and organized into a discrete package on this topic and provided with the January 20, 2025 submittal.

The studies analyze the existing conditions, existing plus the Project, and cumulative conditions, along with traffic volumes, signal warrant analysis, vehicle miles travelled (“VMT”), accident and queuing, roadway segment operations, and the like. In sum, the analysis provided with the application is thorough and will serve as a comprehensive package from which the County can tier additional analysis and consider mitigation measures and VMT reduction strategies, such as those contained in the CAPCOA³² guidelines.

Insofar as the proposed project differs from the precise mix of residential and commercial analyzed in the Santa Maria EIR and County’s Housing Element Programmatic EIR, a new Trip Generation Comparison, Site Access, and VMT Analysis for the Richards Ranch Project by ATE was submitted with the January 2025 submittal that compares a number of key data points from the proposed project to the scenarios already analyzed.

Therefore, the County abused its discretion by reviewing the Resubmittal Application for consistency with applicable policies and environmental review criteria instead of limiting its review whether the application is complete under the Permit Streamlining Act.

3. Notwithstanding the Above, the Resubmittal Application was Responsive

The following table identifies each alleged item identified as deficient in the February 2025 Incomplete Letter and provides an explanation as to why that item is not supported by the evidence or is legally deficient.

Planning	
Incomplete Item	Response
1. Floor Plans. The previous Incompleteness Letters dated June 28, 2024, and October 23, 2024, requested floor plans for the proposed convenience store, car washes (2), and drive through restaurant as indicated on the Plan Set Checklist. The applicant’s January 21, 2025, resubmittal did not provide floor plans that correspond to the convenience store, carwashes	Our prior submittal letter dated September 23, 2024 communicated that since the timing for completion of the Orcutt Commons project is uncertain, the property owner is effectively being blocked from identifying or formally engaging with the ultimate tenants for the convenience store, car washes, and drive-through. It continues to be true that the tenant’s needs will determine certain aspects of the business such as the final internal floor

³² California Air Pollution Control Officers Association

<p>(2), and drive through restaurant that are proposed under the scope of the current County application.</p> <p>The current application includes a proposed 4,512 sq. ft. (48 ft. x 94 ft.) convenience store with an attached 848 sq. ft. (16 ft. x 53 ft.) carwash. The floor plan depicted on Sheet A7 is for a 3,854 sq. ft. convenience store (47 ft. x 82 ft.) with no attached carwash shown. No floor plan for the proposed 848 sq. ft. attached carwash has been provided.</p> <p>Additionally, the current application includes a proposed 3,596 sq. ft. freestanding carwash. The floor plan depicted on Sheet A8 is for an approximately 3,800 sq. ft. freestanding carwash, the footprint and orientation of which does not correspond with the proposed 3,596 sq. ft. freestanding carwash.</p> <p>Lastly, the current application includes a proposed 3,419 sq. ft. (34 ft.-10 in. x 98 ft.) drive through restaurant. The floor plan depicted on sheet A9 is for an approximately 4,045 sq. ft. (42 ft.-7 in. x 95 ft.) drive through restaurant.</p>	<p>plan. Further, any final tenant specifications would be approved through a building permit, not the pending entitlements associated with the Resubmittal Application..</p> <p>Notwithstanding, the application checklist asks for “preliminary” floor plans of structures. Preliminary floor plans were provided.³³ It is normal and typical for preliminary plans to have minor inconsistencies, and for those to be clarified through the process.</p> <p>Moreover, after Project approval, changes to the exact footprint and size are regularly allowed—often at the staff-level, if not through Substantial Conformity—since changes very typically occur in final design. Here, the difference in square footage across the cited structures in this incompleteness item is 1,488 sq. ft.³⁴ which amounts to less than 0.4% of the project total.³⁵ In these terms, holding an application incomplete on this basis is objectively unreasonable. As discussed below, the County regularly provides applicants with the opportunity to clarify the project description in its completeness determinations.</p> <p>Regarding the carwashes, County P&D does not have any development standards related to the insides of a carwash. The County cannot withhold a completeness determination based on the internal configuration of a potential tenant improvement when it has not identified any applicable land use standards related to the contents of these structures associated with these entitlements. Requesting the floor plan for the machinery inside of a carwash is therefore unnecessary for any County purpose related to the Resubmittal Application and Project entitlements, and is akin to requiring a floor plan of the inside of a dishwasher when permitting a single family dwelling.</p>
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³³ See further discussion of carwashes below.

³⁴ Convenience store: 4,512 sf minus 3,854 sf = 658 SF. The 848 SF attached carwash is depicted on sheet A7, despite County’s insistence it is not. Freestanding carwash: 3800-3596 = 204; Drive-thru 4,045-3,419 = 626 SF. This yields a total apparent discrepancy of 658 + 204 + 626 = 1,488

³⁵ 1,488 sf/432,163 sf = .003443 or 0.3%

	<p>As the County lacks any standard for the machinery in a carwash, such as the layout of the hoses, rollers, or dryers inside, it is irrelevant to processing and the decision-making process. Moreover, different carwash providers use different mechanisms in different locations and orientations, thus the carwashes should instead be treated as a shell building with future tenant improvements to be determined and approved by the County through a separate entitlement.</p> <p>To the extent the mechanics of a carwash might be needed to analyze noise impacts, for instance, the consultant hired to conduct environmental review would, in the absence of specifics, make assumptions around a worst-case scenario of technology available at that time. Finally, the Project can be conditioned to ensure that the final design complies with adopted County noise standards, or any other applicable standard.</p> <p>Regarding the free-standing carwash, in the September 2024 submittal, the carwash plan (sheet A6) shows the carwash footprint, circulation, and parking area. In the January 2025 submittal, the plan sheet for this car wash (now sheet A8) is revised to show a floor plan for a car wash, as requested. To the extent the drawing also depicts the carwash set in a different drive aisle layout, that is a minor error which again can be clarified during the review process. In any case, the floor plan of the car wash is conceptual, as the exact layout is unknown at this time, and will not be determined until the project is entitled and a tenant or carwash operator is selected. As stated above, the layout inside the carwash is irrelevant to any development standard, finding for approval or environmental review.</p> <p>The exterior footprint of the smaller carwash attached to the convenience store is in fact depicted on sheet A-7 of the January 2025 dated plans. It could reasonably be expected to have a similar interior layout to that provided for the free-standing, albeit at a smaller scale. Again, absent any development standard or criteria by which the County would review such a floor plan of a mechanized</p>
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	<p>carwash, its absence in the plan set is irrelevant to the completeness of the Resubmittal Application. Or, to the extent the County insists on seeing a typical interior layout, one could be provided as a clarification after being deemed complete, or an assumption as to its interior could be made by the EIR consultant.</p> <p>As you know, minor adjustments to the project description are routinely made through the review and approval process, and thereafter in final design. To the extent there are internal inconsistencies, these are items that can easily be, and routinely are, clarified after the application is deemed complete.</p> <p>More specifically, and as referenced above, when the County sends a determination of application completeness—as a matter of standard practice—the County asks the applicant to confirm the project description. This allows the applicant an opportunity to confirm the specifics of the project for use going forward in the consistency and environmental review phases. This ability to clarify is therefore a regularly-exercised and normal part of the County’s review process—which is not being afforded to this applicant.</p>
Public Works	
Incomplete Item	Response
	<p>General Note: Please see the discussion in Section II which outlines the legal constraints on the County’s ability to require certain items as completeness items. Notwithstanding, in the January 20, 2025 submittal package, additional details were added to the plans, and an additional Trip Generation Comparison, Site Access and VMT Analysis was prepared by ATE and submitted. Also enclosed with the Resubmittal Application are a Drainage Study, and Stormwater Control Plan by Bethel Engineering. See more below.</p>
a) Prior to completeness, full width of County Right of Way shall be shown on the plans with all	As communicated in our prior letters and this appeal, Public Works does not have an applicable published

<p>encroachments (poles, signs, fire hydrants, driveways, etc.) Missing full width Caltrans ROW. No dimensioned roadway plans are provided for both State and County roadways. There is not sufficient information to review the project against adopted standards.</p>	<p>online checklist or submittal requirements for application completeness.</p> <p>The black text at left is the language that was repeated in the June 2024 and October 2024 incomplete letters. The red text is new to the February 20, 2025 letter. The County’s incomplete letters asked for the full width of County Right of Way until this latest round. Since the County cannot ask for new items in subsequent rounds, the Caltrans request—in the newly added red text—is not a valid basis to find the Resubmittal Application.</p> <p>Notwithstanding, it remains unclear what Public Works is reviewing when making this statement.</p> <p>The full width of Right of Way of Union Valley Parkway (“UVP”) and Orcutt Road is shown on Sheet C-1 and C-2. Light poles, sidewalks, stormdrains, traffic signals, hydrants, utility boxes are shown, as are the proposed turnouts, turn lanes, and striping.</p> <p>Moreover, as previously communicated in prior letters, and on the plans submitted, the entirety of the approved buildout for Orcutt Road and Union Valley Parkway are shown on the as-built plans by MNS which were included in the January 2025 submittal. The full buildout of UVP and Orcutt were previously reviewed and approved as a joint project between the County, the City of Santa Maria, and Caltrans. Further information can be found attached to the Board of Supervisors Agenda packet for the October 27, 2009 hearing, which is available online³⁶ and to which County Public Works was clearly a participant as evidenced by the Public Works Director being the author of the Board Letter.³⁷</p> <p>These improvements to UVP and Orcutt Road were partially completed as evidenced by the existence of</p>
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³⁶ <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=520611&GUID=ABE3D54F-7FF7-46AC-B168-5861657A8E71&Options=&Search=>

³⁷ Board of Supervisors Agenda Letter dated for the Agenda of October 13, 2009, and on the October 27, 2009 Agenda entitled “Union Valley Parkway Extension/Interchange Project, Fourth Supervisorial District, County Project No. 863.011 and 864010”

	these roads. As these improvements were substantially completed, they are arguably vested.
b) Prior to completeness, a full drainage study shall be done for all roadways that demonstrate post development flows are less than or equal to pre-development flows. The study shall show how much roadway is open for travel in each flow event. No information is provided for the public ROW as requested. Please provide calculations for the Public Roads and show how much travel lane is open for use under each identified flow event.	<p>Please see the comments above regarding Union Valley Parkway and Orcutt Road, as they respond to the need for analysis of drainage on these public roads, which have been designed, approved, and substantially constructed. This analysis would have been completed as part of the City/County/Caltrans efforts to construct the streets as they exist today and at their full buildout.</p> <p>Specific to the proposed development, a drainage study was prepared to analyze the proposed development and its compliance with County standards. This study was prepared and supplied to the County with the January 20, 2025 submittal.</p>
<p>“c) Prior to completeness, a traffic study shall be provided, to County Traffic Study Guidelines. The study shall include a VMT analysis, to CAPCOA guidelines, that clearly documents all reduction strategies with formulas. Other items to include shall be: queueing analysis for all driveways and drive-thru’s, sight distance analysis for all driveways, all County stop and signal warrant nomographs plotted with values, collision analysis for all roadways and mixed-use reduction worksheets to NCHRP 684 guidelines. As stated in many previous comments, the department does not agree with the determination that this project is mixed use as per the definition of NCHRP 684. Once a vehicle uses a public road, per NCHRP 684, the project ceases to be a mixed-use project. Each quadrant of this development would qualify as a separate mixed-use zone but for roadway purposes and reductions, the project does not qualify. With that said, the applicant has provided a robust analysis that does not prevent them from being deemed incomplete on this item but it is inconsistent with County Traffic Study Guidelines. There are still numerous items identified above that have not been provide thus</p>	<p>Again, the black text of this item was repeated in the prior incomplete letters, and the red text is new to the February 20, 2025 incomplete letter. Here, we note that until the February 20, 2025 letter, the request from Public Works was to include “and mixed use reduction worksheets to NCHRP 684 guidelines.” By incorporating this statement, it was clear to the applicant that this was being considered as a mixed use project.</p> <p>Our Resubmittal Application accompanies this appeal, and its discussion regarding the robust analyses performed for development of this site is incorporated by reference.</p> <p>As stated in the comment itself, Public Works is citing a purported inconsistency, and improperly holding it as a completeness item, which is not allowed for the reasons stated above.</p> <p>Notwithstanding, traffic impacts are a matter for environmental review, and the potential traffic impacts of an even more impactful project have been conducted and supplied to the County.</p> <p>To the extent additional or different analysis (i.e. under a lens other than mixed use) might be needed, this is an</p>

<p>this is not a study the department will support at the current time.” [Emphasis added]</p>	<p>exercise that would occur during preparation of an environmental document after the Project is complete, consistent with applicable law.</p>
<p>d) Prior to completeness, full roadway PIP’s shall be provided that clearly show full right of way width, all encroachments, curbs, gutter, sidewalk, parkway, islands, signing, striping and centerline radii with all items dimensioned. No dimensioned roadway plans were provided in the project folder. At a minimum a sheet shall be provided with all of the above information if full PIP’s are provided at a later time. There is not sufficient information to review the project against adopted standards.</p>	<p>See responses above with a) and b) regarding the plans showing a full buildout of UVP and Orcutt Road. The as-built drawings by MNS were referenced in earlier submittals, and provided with the January 20, 2025 submittal. The project grading and drainage plans include numerous County standard plates. Sheet C7 also includes a statement of intent that the Project intends to comply with county road standards, and where in final design exceptions are identified, those will be requested.</p> <p>As stated in our prior response letters to the County, it is unreasonable to require final design and/or full roadway public improvement plans (“PIPs”) as a matter of application completeness. As noted above, an applicant need not provide the level of detail required to approve or construct the Project at the time of application submittal. Given the great expense and significant effort, this level of detail is better suited for final design, after the applicant has obtained discretionary approval and gained a level of certainty for the Project’s implementation. The County staff have accepted other housing development applications, including Builder’s Remedy applications, with this acknowledgement.</p>
<p>e) Prior to completeness, all driveway profiles shall be provided in conformance with the Santa Barbara County Engineering Design Standards, Plate 4-060. Individual driveway profiles are not provided as requested but a standard detail has been. There is not sufficient information to review the project against adopted standards.</p>	<p>The project plans provided depict driveway locations and include the County’s driveway standard details on sheet C7 and include a statement that the design intent is to comply with County standards.</p>
<p>Planning and Development February 27, 2025 Email</p>	
<p>Item</p>	<p>Response</p>
<ul style="list-style-type: none"> Regarding the 30-day review timeline, P&D met the deadline in issuing the Incompleteness Determination. P&D did not 	<p>Addressed above in Section II.1.</p>

<p>receive the application on 1/20/25, because P&D was closed for a federal holiday; therefore the application was received on 1/21/25. Pursuant to Gov. Code Section 65943(a) Not 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. The Permit Streamlining Act does not specifically set out how days are counted. However, California Rule of Court 1.10, which is relied on in other contexts to count days, excludes holidays and provides that the days are calculated by excluding the first day and including the last. Because 1/20/25 was a holiday, we do not count that as the “first day,” rather 1/21/25 is the “first day”. 1/22/25 would be day 1, which results in day 30 being 2/20/25.</p>	
<ul style="list-style-type: none">• The Incompleteness Letter dated February 20, 2025, did not include information on the number of opportunities to be deemed complete because, as relayed to you in previous Incomplete Letters, you were advised that if the applicant team 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)).”	Addressed below in Section II.4.
<ul style="list-style-type: none">• 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.<ul style="list-style-type: none">o The Cover Letter for your SB 330 preliminary application states that the project has a total construction square footage of 761,365	As depicted in Exhibit 6, 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. To the extent the written sum of the square footage may appear to have changed, this is a clerical error. It is very obvious that the same square footage of construction is proposed.

<p>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.</p> <ul style="list-style-type: none"> o 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. o 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. <p>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</p>	<p>As plainly evident from Exhibit 6, there has been no “revision” to the application that would change the construction square footage by more than 20% 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.³⁸</p> <p>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. As noted above in Section II.2, 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.</p> <p>The County also fails to acknowledge or consider two critical criteria related to this application. First, 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.</p> <p>Second, 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</p>
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³⁸ See HCD, Beverly Hills Builder’s Remedy Applications – Notice of Violation (Dec. 2, 2024) <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-nov-120224.pdf> (finding the city “improperly deemed preliminary applications void and of no effect due to changes that neither materially altered the project described in the full application from that contemplated in the preliminary application” especially given that the plans have never changed).

to be complete, development under this application cannot proceed.	<p>preliminary application, even if the revision results in the number of residential units or square footage of construction changing by 20 percent or more.” (Gov. Code, § 65589.5(f)(7)(B) [emphasis added].) 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 lawfully make such changes.</p> <p>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 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.</p>
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4. The County’s Determination Contravenes SB 330 and the Permit Streamlining Act

In an email dated February 21, 2025 (Exhibit 7), 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 period. However, the County’s Email Determinations on February 27, 2025 state that the SB 330 Preliminary Application had lost its vested rights. This position contravenes state law and thus constitutes an abuse of the County’s Planning Director’s discretion.

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.” **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.”**³⁹

³⁹ 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.⁴⁰ 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.”⁴¹ 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.”⁴² 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.”⁴³

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 65940.⁴⁴ “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.”⁴⁵ 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.⁴⁶

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**

⁴⁰ Gov. Code, §§ 65941.1(a), 65589.5(o).)

⁴¹ Gov. Code, § 65941.1(d)(1).

⁴² Gov. Code, § 65941.1(d)(2).

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* (Emphasis added.)

⁴⁶ *Id.* subd. (c).

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).⁴⁷

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.⁴⁸

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.⁴⁹ Statutes are not construed in isolation and must be harmonized within the statutory scheme.⁵⁰ **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.**⁵¹

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.

⁴⁷ 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 (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).

⁴⁸ 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.)

⁴⁹ *Orange County Employees Assn. v. County of Orange* (1991) 234 Cal.App.3d 833, 841.

⁵⁰ *People v. Ledesma* (1997) 16 Cal.4th 90, 95.

⁵¹ *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 856.

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 assert. Based on the foregoing, the County's determination that the Project lost its rights under state housing law plainly violates SB 330, the Permit Streamlining Act, and other applicable state housing law.

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

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.⁵² 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]...

(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...**

(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.**⁵³

As discussed above, 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

⁵² Gov. Code, § 65589.5.

⁵³ Gov. Code, § 65589.5(h)(6).

guidance.⁵⁴ The County continues to take this position for an improper purpose 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.⁵⁵ 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..."⁵⁶ 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.

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 County must be very 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.⁵⁷ Prevailing petitioners are entitled to recover attorneys' fees from the County for violations.⁵⁸ 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.⁵⁹

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, indicate bad faith. In addition, the recent Email Determinations purporting to revoke state law protections—after being silent on the topic in the February 2025 Incomplete Letter—shows concerning potential as an attempt to hide the ball to

⁵⁴ Gov. Code, §§ 65589.5(h)(6)(A) & (H).

⁵⁵ Gov. Code, §§ 65589.5(h)(6)(F)(i) & (ii), (o), 65589.6.

⁵⁶ Gov. Code, § 65589.5(h)(6)(F)(iii).

⁵⁷ Gov. Code, § 65589.5(k)(1)(A)(i).

⁵⁸ Gov. Code, § 65589.5(k)(1)(A)(ii).

⁵⁹ Gov. Code, § 65589.5(k)(1)(B), (I).

divest the Project of rights without notice. The County must overturn these determinations or face liability for disapproval of a housing project under the Housing Accountability Act.

IV. Conclusion

In summary, the Resubmittal Application is complete by operation of law as of February 19, 2025. We are appealing the determination that the application is incomplete based on the County's failure to meet its response deadline under the Permit Streamlining Act, and for violations of the Permit Streamlining Act related to its February 2025 Incomplete Letter, for the reasons stated herein. Separately, we also are appealing the County's determination that the Project is no longer eligible for the Builder's Remedy due to the number of resubmittals and the County's other allegations.

The Director's determination is appealable to the Planning Commission and Board of Supervisors in accordance with Government Code section 65943(c). We reserve the right to supplement this appeal and the record attached hereto, in particular to supplement the record with additional information from HCD on our pending technical assistance request related to the County's actions on this Project. Our client also may pursue any other legal remedies, including potential claims under the Housing Accountability Act on the basis that the decision constitutes a decision to "disapprove a housing development project."

As noted above, processing of this appeal may be unnecessary if the County confirms both (1) 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 (2) 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.

We remain hopeful that we can work with the County to process this important affordable housing project efficiently, as required by law, so that it can be constructed as soon as possible and help alleviate our County's and our State's significant housing crisis.

Sincerely,



Beth A. Collins

Enclosures

- Exhibit 1: County Determination of Application Incompleteness dated February 20, 2025

- Exhibit 2: February 27, 2025 County Staff Email Correspondence
- Exhibit 3: Copy of email verification of submittal dated January 20, 2025
- Exhibit 4: Copy of an email dated November 22, 2024 with image of P&D notice regarding Accela closure over the Winter Holidays.
- Exhibit 5: HCD Letters
- Exhibit 6: Site Plan from each Applicant Submittal

Attachment 1: Completed and signed appeal form

Attachment 2: Check 7522 in the amount of \$793.06 payable to the County of Santa Barbara



Planning and Development

Lisa Plowman, Director

Jeff Wilson, Assistant Director

Elise Dale, Assistant Director

February 20, 2025

Ginger Andersen

Brownstein Hyatt Farber Schreck, LLP

1021 Anacapa Street, 2nd Floor

Santa Barbara, CA 93101

Via email at: gandersen@bhfs.com

RE: Determination of Application Incompleteness

Richards Ranch, LLC - Multifamily Housing, Commercial Development, and Tentative Tract Map Project

Case Nos. 24TRM-00003, 24DVP-00018, and 24CUP-00033

APNs 107-250-019, -020, -021, and -022

Dear Ms. Andersen:

Thank you for the application resubmitted on January 21, 2025, in an attempt to correct deficiencies identified in Planning and Development Department's Determination of Application Incompleteness Letter dated October 23, 2024. The resubmittal was timely and was provided within 90 calendar days of the October 23, 2024, Incompleteness Letter.

Staff reviewed your resubmittal for a Tentative Tract Map, Final Development Plan, and Conditional Use Permit for the Richards Ranch, LLC Multifamily Housing, Commercial Development, and Tentative Tract Map Project and found it to be incomplete. Additional information is necessary to accurately understand the scope and details of the proposed project. This information will also support evaluation of the proposed project's environmental impacts and consistency with applicable State and County regulations.

Additional Information Required

- 1. Floor Plans.** The previous Incompleteness Letters dated June 28, 2024, and October 23, 2024, requested floor plans for the proposed convenience store, car washes (2), and drive through restaurant as indicated on the Plan Set Checklist. The applicant's January 21, 2025, resubmittal did not provide floor plans that correspond to the convenience store, car washes (2), and drive through restaurant that are proposed under the scope of the current County application.

123 E. Anapamu Street, Santa Barbara, CA 93101 • (805) 568-2000 • Fax (805) 568-2030

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The current application includes a proposed 4,512 sq. ft. (48 ft. x 94 ft.) convenience store with an attached 848 sq. ft. (16 ft. x 53 ft.) carwash. The floor plan depicted on Sheet A7 is for a 3,854 sq. ft. convenience store (47 ft. x 82 ft.) with no attached carwash shown. No floor plan for the proposed 848 sq. ft. attached carwash has been provided. Additionally, the current application includes a proposed 3,596 sq. ft. freestanding carwash. The floor plan depicted on Sheet A8 is for an approximately 3,800 sq. ft. freestanding carwash, the footprint and orientation of which does not correspond with the proposed 3,596 sq. ft. freestanding carwash. Lastly, the current application includes a proposed 3,419 sq. ft. (34 ft.-10 in. x 98 ft.) drive through restaurant. The floor plan depicted on sheet A9 is for an approximately 4,045 sq. ft. (42 ft.-7 in. x 95 ft.) drive through restaurant.

- 2. Transportation Division Incompleteness Items.** The Public Works Department Transportation Division provided a list of additional application materials and details that are required for application completeness in letters dated October 23, 2024 and June 28, 2024. The applicant's January 21, 2025, resubmittal did not provide/address all incompleteness items previously identified by the Transportation Division.

The Transportation Division provided an updated letter dated February 20, 2025, attached, in response to the resubmittal, which identifies the previously-requested incompleteness items that have not been addressed.

Please feel free to contact me if you have any questions.

Sincerely,



Alia Vosburg, Planner
Development Review Division
624 W. Foster Road, Suite C
Santa Maria, CA 93455

encl.: Public Works Transportation Letter dated February 20, 2025

cc: Case File (to planner w/enclosures)

COUNTY OF SANTA BARBARA
PUBLIC WORKS DEPARTMENT
123 East Anapamu Street
Santa Barbara, California 93101
805/568-3000 FAX 805/568-3222



Memorandum

February 20, 2025

TO: Alia Vosburg, Project Planner

FROM: William Robertson, AICP, PTP
Transportation Planning Supervisor
Transportation Division
Traffic Section

SUBJECT: Richard's Ranch 3rd Submittal

Attached you will find Public Works, Transportation's draft comments and conditions for the above-mentioned project. All comments are draft in nature and may change based on further staff review, outside agency comments and/or a change to the project plans/description. Please note that this is not a departmental condition letter. A formal condition letter will be generated for the project prior to submittal of the staff report for docketing.

Currently this project is deemed to be both incomplete and inconsistent with the Santa Barbara County Engineering Design Standards as determined by Public Works, Transportation staff.

If you have any questions, please contact me at 805-803-8785.

Sincerely,

William T. Robertson

02/20/2025

Date

cc:

Gary Smart, T.E., Traffic Section Manager, County of Santa Barbara, Public Works Department

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C:\Box\Traffic\Transportation Planning\Development Review\Digital File Cabinet\107-250-019\24TRM-00003

Public Works Transportation

Comment and Conditions

1. Richards Ranch

24TRM-00003, 24DVP-00018

107-250-019, 107-250-220, 107-250-021, 107-250-022

- a) **Prior to completeness**, full width of County Right of Way shall be shown on the plans with all encroachments (poles, signs, fire hydrants, driveways, etc.) **Missing full width Caltrans ROW. No dimensioned roadway plans are provided for both State and County roadways. There is not sufficient information to review the project against adopted standards.**
- b) **Prior to completeness**, a full drainage study shall be done for all roadways that demonstrate post development flows are less than or equal to pre-development flows. The study shall show how much roadway is open for travel in each flow event. **No information is provided for the public ROW as requested. Please provide calculations for the Public Roads and show how much travel lane is open for use under each identified flow event.**
- c) **Prior to completeness**, a traffic study shall be provided, to County Traffic Study Guidelines. The study shall include a VMT analysis, to CAPCOA guidelines, that clearly documents all reduction strategies with formulas. Other items to include shall be: queueing analysis for all driveways and drive-thru's, sight distance analysis for all driveways, all County stop and signal warrant nomographs plotted with values, collision analysis for all roadways and mixed-use reduction worksheets to NCHRP 684 guidelines. **As stated in many previous comments, the department does not agree with the determination that this project is mixed use as per the definition of NCHRP 684. Once a vehicle uses a public road, per NCHRP 684, the project ceases to be a mixed-use project. Each quadrant of this development would qualify as a separate mixed-use zone but for roadway purposes and reductions, the project does not qualify. With that said, the applicant has provided a robust analysis that does not prevent them from being deemed incomplete on this item but it is inconsistent with County Traffic Study Guidelines. There are still numerous items identified above that have not been provide thus this is not a study the department will support at the current time.**
- d) **Prior to completeness**, full roadway PIP's shall be provided that clearly show full right of way width, all encroachments, curbs, gutter, sidewalk, parkway, islands, signing, striping and centerline radii with all items dimensioned. **No dimensioned roadway plans were provided in the project folder. At a minimum a sheet shall be provided with all of the above information if full PIP's are provided at a later time. There is not sufficient information to review the project against adopted standards.**
- e) **Prior to completeness**, all driveway profiles shall be provided in conformance with the Santa Barbara County Engineering Design Standards, Plate 4-060. **Individual driveway profiles are not provided as requested but a standard detail has been. There is not sufficient information to review the project against adopted standards.**
- f) Prior to hearing, the driveways, per parcel, shall be a minimum of 25 feet in width and no greater than 40 feet in combined width in conformance with the Santa Barbara County Engineering Design Standards, Plate 4-040
- g) Prior to hearing, the driveway spacing shall be designed in conformance with the Santa Barbara County Engineering Design Standards, Plate 4-050, case #2.
- h) Prior to hearing, all sidewalk shall be designed in conformance with the Santa Barbara County Engineering Design Standards, Plate 5-040.

- i) Prior to hearing, all drive aisles shall meet a minimum width of 24 feet and be in conformance with the LUDC for parking dimensions.
- j) Prior to zoning clearance, sight distance shall meet AASHTO requirements at all driveways for the appropriately posted roadway speed and shall be plotted on the site landscape plan.
- k) Prior to hearing, all site water being discharged to the Right of Way shall be bioswale treated in accordance with the Santa Barbara County Engineering Design Standards.
- l) Prior to occupancy clearance, traffic mitigation fees will be required based on the most current adopted fee schedule.
- m) Prior to zoning clearance, the applicant shall receive an approved encroachment permit for all work within the County Right of Way.
- n) Prior to hearing, the applicant shall show an on-site turnaround's for an SU-30, single unit truck, vehicle. Backing maneuvers are not allowed on county roads for this type of project.
- o) Prior to hearing, all roadway frontage and on-site utilities shall be undergrounded per County Resolution.
- p) Prior to hearing roadway lighting shall be provided to IES RP-08 standards for all roadways, both public and private, per County Resolution.
- q) Prior to hearing, all roadway trees shall be shown and labeled on the landscape plans. These trees shall only be from the approved street tree list and shall not be within sight distance triangles.
- r) Prior to hearing, all landscaping within a sight distance triangle shall be no greater than 36 inches at maturity. Mature heights shall be clearly labeled on the landscape plan.
- s) Prior to hearing, all drainage discharge to the County Right of Way shall be shown to first pass through 25 feet of bioswale per County Engineering Design Standards. No bioswale shall be approved within the Right of Way.

Andersen, Ginger C.

From: Vosburg, Alia <avosburg@countyofsb.org>
Sent: Thursday, February 27, 2025 3:36 PM
To: Andersen, Ginger C.; Beyeler, Gwen
Cc: Seawards, Travis; Collins, Beth A.; Carlson, Mack
Subject: RE: Third Incomplete Letter Richards Ranch (24TRM-00003, 24DVP-00018, and 24CUP-00033)

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Ginger,

Thanks for your email. We have some follow up information to share:

- Regarding the 30-day review timeline, P&D met the deadline in issuing the Incompleteness Determination. P&D did not receive the application on 1/20/25, because P&D was closed for a federal holiday; therefore the application was received on 1/21/25. Pursuant to Gov. Code Section 65943(a) *Not 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.* The Permit Streamlining Act does not specifically set out how days are counted. However, California Rule of Court 1.10, which is relied on in other contexts to count days, excludes holidays and provides that the days are calculated by excluding the first day and including the last. Because 1/20/25 was a holiday, we do not count that as the “first day,” rather 1/21/25 is the “first day”. 1/22/25 would be day 1, which results in day 30 being 2/20/25.
- The Incompleteness Letter dated February 20, 2025, did not include information on the number of opportunities to be deemed complete because, as relayed to you in previous Incomplete Letters, you were advised that if the applicant team 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)).”*
- 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.

Thank you,



Alia Vosburg

Planner

Development Review Division
Planning & Development Department
County of Santa Barbara
624 W. Foster Rd., Suite C
Santa Maria, CA 93455

805-934-6259

avosburg@countyofsb.org

<https://www.countyofsb.org/160/Planning-Development>

From: Andersen, Ginger C. <gandersen@bhfs.com>

Sent: Friday, February 21, 2025 1:02 PM

To: Vosburg, Alia <avosburg@countyofsb.org>; Beyeler, Gwen <gvonklan@countyofsb.org>

Cc: Seawards, Travis <tseawards@countyofsb.org>; Collins, Beth A. <bcollins@bhfs.com>; Carlson, Mack <mcarlson@bhfs.com>

Subject: RE: Third Incomplete Letter Richards Ranch (24TRM-00003, 24DVP-00018, and 24CUP-00033)

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Good Afternoon All,

We have a couple of responses to the incomplete letter:

- 1) The County failed to respond in the required timeline, therefore the application is automatically deemed complete.

The submittal was made on January 20, 2025. Under Government Code section 65943(a), the County has "30 calendar days" to provide a written response otherwise the application "shall be deemed complete", meaning the deadline to respond was February 19, 2025. This letter 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.

Andersen, Ginger C.

From: Andersen, Ginger C.
Sent: Monday, January 20, 2025 6:29 PM
To: Vosburg, Alia
Cc: Beyeler, Gwen; Collins, Beth A.; Michael Stoltey
Subject: Richards Ranch Resubmittal
Attachments: 2025.01.20. Cover Letter_Submittal 3.pdf

Good Evening Alia and Gwen,

The 3rd submittal for the subject project, responsive to the October 23, 2024 incomplete letter, has been uploaded to Accela under the attached cover letter.

Please confirm receipt of this email, and that you can see and download the attachments via Accella. They've been loaded to the DVP case.

Sincerely,

Ginger C. Andersen

Senior Land Use Project Manager
Brownstein Hyatt Farber Schreck, LLP
1021 Anacapa Street, 2nd Floor
Santa Barbara, CA 93101
805.882.1460 tel
805.260.8392 cell
gandersen@bhfs.com

Brownstein - we're all in.

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Andersen, Ginger C.

Subject: FW: Public Agencies - End of Year Closures

Ginger C. Andersen

Senior Land Use Project Manager

Brownstein Hyatt Farber Schreck, LLP

1021 Anacapa Street, 2nd Floor

Santa Barbara, CA 93101

805.882.1460 tel

805.260.8392 cell

gandersen@bhfs.com

Brownstein - we're all in.

From: Andersen, Ginger C.

Sent: Friday, November 22, 2024 12:52 PM

Subject: RE: Public Agencies - End of Year Closures

FYI Santa Barbara County updated their closure statement to say they will not be accepting applications after 5pm Dec 23.

The County's Planning & Development Department offices will be closed on Nov. 28th and 29th in observance of Thanksgiving. Building and Planning Counters will be closed at noon on Wednesday, Nov. 27 and all day Tuesday, Dec. 24th. Offices will be closed from Wednesday, Dec. 25, 2024 through Wednesday, Jan. 1, 2025 in observance of the County's holiday closure. Note: Accela permit applications will not be accepted during the holiday closure. Please submit applications through Accela no later than 5 p.m. on Monday, Dec. 23, 2024. Accela will resume accepting applications on Jan. 2, 2025 at 8 a.m.

Ginger C. Andersen

Senior Land Use Project Manager

Brownstein Hyatt Farber Schreck, LLP

1021 Anacapa Street, 2nd Floor

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

651 Bannan Street
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



August 22, 2024

Michael Forbes
Director of Community Development
City of Beverly Hills
Via: mforbes@beverlyhills.org
455 N Rexford Drive
Beverly Hills, CA 90210

Dear Michael Forbes:

RE: 125-129 Linden Drive, Beverly Hills – Notice of Violation

On June 26, 2024, the California Department of Housing and Community Development (HCD) issued a Letter of Support and Technical Assistance (incorporated by reference) to the City of Beverly Hills (City) regarding compliance with Government Code section 65589.5, subdivision (d)(5), also known colloquially as the “Builder’s Remedy.” In the June 26, 2024 letter, HCD instructed the City that it may not require applicants of projects protected by the Builder’s Remedy to seek amendments to the City’s general plan or zoning code as a condition for processing a Builder’s Remedy application. However, on June 27, 2024, the Beverly Hills City Council denied an applicant’s appeal of the City’s incompleteness finding regarding the proposed development at 125-129 Linden Drive (Project), based on the finding that a General Plan Amendment and Zoning Change (GPA/ZC) are required for the submittal. As a result, and consistent with HCD’s June 26, 2024 letter to the City, HCD hereby notifies the City that its failure to accept the application for processing is in violation of state housing law.

Background

HCD understands that the Project proposes to construct 165 units on the site, of which 33 units (20 percent of the overall unit count) will be restricted to low-income households. HCD also understands the applicant submitted a preliminary application for the Project pursuant to Government Code section 65941.1 on October 24, 2022. HCD did not certify that the City’s housing element was substantially compliant with state law until May 1, 2024. Therefore, at the time the Project’s preliminary application was filed, the City would not have been able to make the finding in Government Code section 65589.5, subdivision (d)(5), to deny the Project. The preliminary application vested the City’s noncompliant status at the time of submittal in October 2022.

HCD understands the applicant then filed a full Development Plan Review application for the Project on April 14, 2023, which was within the six-month statutory time period required by Government Code section 65941.1, subdivision (d), to maintain the vested rights conferred by the preliminary application. The City issued an incomplete letter on May 12, 2023, instructing the applicant to pursue a GPA/ZC. On August 9, 2023, the applicant submitted a response to comments contained in the incomplete letter, and on October 13, 2023, the City restated that the Project must submit for a GPA/ZC.¹ The applicant provided a second response letter on January 10, 2024, before eventually requesting an appeal of the City's incompleteness letter on January 11, 2024. An incomplete letter for the January response letter was provided on February 9, 2024. A third resubmittal was received on May 9, 2024, with the incompleteness letter sent on June 7, 2024. On June 27, 2024, the appeal was heard and denied by the City Council, stating that a GPA/GZ would be required.

General Plan Amendment and/or Zone Change Requirements and the Housing Accountability Act's Builder's Remedy

As outlined in the June 26 letter to the City, the HAA is clear that a project protected by the Builder's Remedy may not be disapproved for inconsistency with a jurisdiction's general plan land use designation and zoning ordinance.² Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA/ZC (requested or required by the jurisdiction to resolve such an inconsistency) violates the HAA.

Determining Application Completeness under the Permit Streamlining Act

Additionally, under the Permit Streamlining Act (PSA)³ the City cannot determine that an application is incomplete on the basis that it does not include a request for a GPA/ZC unless the submittal requirement checklist included a requirement for the applicant to submit a GPA/ZC.

In determining what constitutes a complete application, the City is subject to the limitations imposed by the PSA. When the City receives an application for a discretionary housing development project, it is required to process the application in compliance with the procedures and timelines stated in the PSA. The PSA states that "[e]ach public agency shall compile one or more lists that shall specify in detail the

¹ Note: The Applicant submitted the materials via email to the City on August 9, 2023, but the City later claimed that it never received the August 9, 2023 submittal because it had been blocked by its email security system. At the request of the City, the Applicant then provided another electronic submission on September 18, 2023, which the City received. The City started the 30-day review clock from this date.

² Gov. Code, § 65589.5, subd. (d)(5).

³ Gov. Code, § 65920 et seq.

information that will be required from any applicant for a development project,”⁴ and furthermore, that “[t]he information compiled pursuant to [Government Code] Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.”⁵ For a completeness determination, the City shall provide a list of items that were not complete and “[t]hat list shall be limited to those items actually required on the lead agency's submittal requirement checklist.”⁶

In this case, the City’s submittal checklist did not include a requirement for a GPA/ZC at the time of submittal, and therefore, the City cannot require it as part of the application.⁷

Vesting under Government Code Section 65941.1

HCD would also like to inform the City of other obligations under Government Code section 65941.1 that were discussed at the June 27, 2024 hearing:

1. If the City determines that the application for the development project is not complete pursuant to Government Code section 65943, the development proponent is required to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information.⁸ HCD reminds the City, however, that the 90-day deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have multiple 90-day periods.
2. The preliminary application shall remain vested unless the number of residential units or square footage of construction changes by 20 percent or more (subject to certain conditions as listed in the statute).⁹ Other changes to the application falling outside these circumstances do not void vested rights under the preliminary application.

⁴ Gov. Code, § 65940, subd. (a)(1).

⁵ Gov. Code, § 65941, subd. (a).

⁶ Gov. Code, § 65943, subd. (a).

⁷ Requiring a GPA/ZC as part of the project application inherently requires a determination of whether the project is consistent with the general plan and zoning code. However, the HAA suggests that a determination of *consistency* may not be permitted during the application *completeness* determination phase but must instead occur *after* the application completeness determination. (Gov. Code, § 65589.5, subds. (j)(2)(A), (h)(10).) Therefore, it may be inappropriate to require a GPA/ZC as part of a determination of application completeness. Please note this is applicable to any project application, and not just those subject to the Builder’s Remedy.

⁸ Gov. Code, § 65941.1, subd. (d)(2).

⁹ Gov. Code, § 65941.1, subd. (c).

Conclusion

The City's failure to accept the application for processing due to the lack of a GPA/ZC is in violation of the HAA and PSA. The City Council should reverse its decision and direct City staff to process the Project without further delay and without imposing a requirement for a GPA/ZC. The City should also consider its obligations under Government Code section 65941.1 that retain the Project's vested rights.

Under Government Code section 65585, HCD must notify a local government when that local government takes actions that violate the HAA and the PSA and may notify the California Office of the Attorney General.¹⁰

The City has until September 20, 2024, to provide a written response to this letter. HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Bentley Regehr at bentley.regehr@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosure: 125-129 Linden Drive, Beverly Hills – Letter of Support and Technical Assistance (June 26, 2024)

¹⁰ Gov. Code, § 65585, subds. (i)(1), (j).

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



June 26, 2024

Michael Forbes
Director of Community Development
City of Beverly Hills
Via: mforbes@beverlyhills.org
455 N Rexford Drive
Beverly Hills, CA 90210

Dear Michael Forbes:

RE: 125-129 Linden Drive, Beverly Hills – Letter of Support and Technical Assistance

This letter provides technical assistance to the City of Beverly Hills (City) regarding the proposed development at 125-129 Linden Drive (Project). This assistance is based upon an inquiry submitted through the California Department of Housing and Community Development's (HCD) Housing Accountability Unit (HAU) online portal by the Project applicant regarding the ability of the City to require a general plan amendment for the Project. The Project has vested the protections of Government Code section 65589.5, subdivision (d)(5), also known colloquially as the "Builder's Remedy" under the Housing Accountability Act (HAA).

Background

HCD understands that the Project proposes to construct 165 units on the site, of which 33 units (20 percent of the overall unit count) will be restricted to low-income households. HCD also understands the applicant submitted a preliminary application for the Project pursuant to Government Code section 65941.1 on October 24, 2022. HCD did not certify that the City's housing element was substantially compliant with state law until May 1, 2024. Therefore, at the time the Project's preliminary application was filed, the City would not have been able to make the finding in Government Code section 65589.5, subdivision (d)(5), to deny the Project. The Project vested the noncompliant status of the housing element at the time of submittal in October 2022.¹

¹ This assumes that the preliminary application has not expired and that the Project has not been changed beyond what is permitted in Government Code section 65941.1, subdivision (c).

HCD understands the applicant then filed a full Development Plan Review application for the Project on April 14, 2023, which was within the six-month statutory time period required by Government Code section 65941.1, subdivision (d), to maintain the vested rights conferred by the preliminary application. The City issued an incomplete letter on May 12, 2023, instructing the applicant to pursue a general plan amendment and zone change (GPA/ZC). On August 9, 2023, the applicant submitted a response to comments contained in the incomplete letter, and on October 13, 2023, the City restated that the Project must submit for a GPA/ZC.² The applicant provided a second response letter on January 10, 2024, before eventually requesting an appeal of the City's incompleteness letter on January 11, 2024. An incomplete letter for the January response letter was provided on February 9, 2024. A third resubmittal was received on May 9, 2024, with the incompleteness letter sent on June 7, 2024. The appeal is scheduled to be heard by the City Council on June 27, 2024.

General Plan Amendment and/or Zone Change Requirements and the Housing Accountability Act's Builder's Remedy

HCD issued a related letter to the City of Compton on March 28, 2024 that answered the question: Does the HAA prevent a city from requiring that a project application include a request to amend the general plan/zoning code in order to avoid a legal non-conformity if/when the project is approved? In short, HCD answered that no provision in the HAA prevents a local government from requesting a general plan/zoning code amendment to avoid a legal non-conformity, and the letter went on to warn that such a requirement may lead to a violation of the HAA.

While it remains true that the statutory language in the HAA does not *expressly prevent* the City from requesting or requiring legislative actions (e.g., a GPA/ZC) that would be required for similar projects where the Builder's Remedy does not apply, requiring such action where the Builder's Remedy *does* apply leads to an absurd outcome. As a result, HCD wishes to provide clarification on this topic.

The HAA is clear that a project protected by the Builder's Remedy may not be disapproved for inconsistency with a jurisdiction's general plan and zoning ordinance.³ Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA/ZC requested or required by the jurisdiction to resolve such an inconsistency violates the intent of the HAA.

² Note: The Applicant submitted the materials via email to the City on August 9, 2023, but the City later responded claiming they never received the August 9, 2023 submittal because it had been blocked by its email security system. At the request of the City, the Applicant then provided another electronic submission on September 18, 2023, which the City received. The City started the 30-day review clock from this date.

³ Gov. Code, § 65589.5, subd. (d)(5).

Indeed, where a jurisdiction cannot lawfully disapprove a project for inconsistency with the general plan or zoning ordinance, it would be illogical if the jurisdiction could lawfully disapprove a project for failing to resolve that very inconsistency. In other words, the requirement for a GPA/ZC is essentially a requirement for consistency, and disapproving the project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. The HAA prohibits such a disapproval.⁴

Determining Application Completeness under the Permit Streamlining Act

Even if a GPA/ZC were permitted under the HAA, the Permit Streamlining Act (PSA)⁵ prohibits the City from using the absence of the GPA/ZC application as a reason to determine a project application is incomplete, if the requirement was not on the submittal requirement checklist. The City cannot determine that an application is incomplete on the basis that it does not include a request for a GPA/ZC unless the submittal requirement checklist included a requirement for the applicant to submit a GPA/ZC.

In determining what constitutes a complete application, the City is subject to the limitations imposed by the PSA. When the City receives an application for a discretionary housing development project, it is required to process the application in compliance with the procedures and timelines stated in the PSA. The PSA states that “[e]ach public agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project,”⁶ and furthermore, that “[t]he information compiled pursuant to Government Code section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.”⁷ For a completeness determination, the City shall provide a list of items that were not complete and “[t]hat list shall be limited to those items actually required on the lead agency's submittal requirement checklist.”⁸

⁴ HCD understands the desire to have development consistent with general plans and zoning, and to that end, jurisdictions may undertake a GPA/ZC independently from a development application. Jurisdictions should be advised that it may not be possible to process a project-specific GPA/ZC concurrently with project review, even when a jurisdiction is initiating the GPA/ZC itself. For a jurisdiction in which there may be multiple applications for projects subject to the Builder's Remedy, and the jurisdiction wishes to achieve general plan and/or zoning consistency, it may choose to “batch” amendments after project development applications are approved to ensure housing development projects are not unduly delayed or otherwise impacted.

⁵ Gov. Code, § 65920 et seq.

⁶ Gov. Code, § 65940, subd. (a)(1).

⁷ Gov. Code, § 65941, subd. (a).

⁸ Gov. Code, § 65943, subd. (a).

In this case, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal, and therefore, the City cannot require either as part of the application.⁹

Conclusion

Under the HAA, the City should not require applicants of projects protected by the Builder's Remedy to seek amendments to the City's general plan or zoning code. Even if such amendments could somehow be required without violating the intent of the HAA, the PSA prohibits the City from using the absence of the GPA/ZC application as a reason to determine a project application is incomplete, if the requirement was not on the submittal requirement checklist.

For the proposed Project on Linden Drive, the City Council should grant the appeal and direct City staff to process the Project without further delay and without imposing a requirement for a GPA/ZC.

If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Bentley Regehr at bentley.regehr@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief

⁹ Requiring a GPA/ZC as part of the project application inherently requires a determination of whether the project is consistent with the general plan and zoning code. However, the HAA suggests that a determination of consistency may not be permitted during the application completeness determination phase but must instead occur *after* the application completeness determination. (Gov. Code, § 65589.5, subds. (j)(2)(A), (h)(10).) Therefore, it may be inappropriate to require a GPA/ZC as part of a determination of application completeness.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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December 2, 2024

Michael Forbes
Director of Community Development
City of Beverly Hills
Via: mforbes@beverlyhills.org
455 N Rexford Drive
Beverly Hills, CA 90210

Dear Michael Forbes:

RE: Beverly Hills Builder's Remedy Applications – Notice of Violation

On June 26, 2024, the California Department of Housing and Community Development (HCD) issued a Letter of Support and Technical Assistance to the City of Beverly Hills (City) regarding compliance with Government Code section 65589.5, subdivision (d)(5), known colloquially as the "Builder's Remedy," pertaining to the proposed development at 125-129 Linden Drive (Linden Project). On August 22, 2024, HCD issued a Notice of Violation (NOV) to the City pertaining to the City Council's denial of the applicant's appeal of the City's incompleteness finding regarding the Linden Project, based on the finding that a General Plan Amendment and Zoning Change (GPA/ZC) are required for the submittal.

In addition to the Linden Project, HCD is aware of nine additional "Builder's Remedy" applications where the City has issued incompleteness determinations on the basis that a GPA/ZC is required. The ten projects in question represent a total of 981 units, including 198 units affordable to low-income households. Along with reiterating HCD's position that a GPA/ZC is not required for "Builder's Remedy" projects, HCD would like to expand further on two positions outlined in the August NOV:

(1) the iterative nature of the 90-day deadline described in Government Code section 65941.1, subdivision (d)(2), (i.e., the deadline resets each time the City makes an incompleteness determination);¹ and

(2) that an SB 330 preliminary application remains vested unless the number of residential units or square footage of construction changes by 20 percent or more.²

¹ Gov. Code, § 65941.1, subd. (d)(2).

² Gov. Code, § 65941.1, subd. (c).

Background and Summary

Following the issuance of the August NOV regarding the Linden Project, HCD received requests for technical assistance for nine other Builder's Remedy projects in Beverly Hills. HCD has reviewed the projects and has determined that each qualifies for the benefits described in Government Code section 65589.5, subdivision (d)(5). In each case, HCD understands that the applicant submitted a preliminary application pursuant to Government Code section 65941.1 prior to May 1, 2024, when HCD certified that the City's housing element was substantially compliant with state law.

HCD understands that the City rejects each application's vesting and status as a Builder's Remedy project. The consistent issue across all projects appears to be the City's requirement for a GPA/ZC. As stated in the previous NOV to the City and reiterated below, the Housing Accountability Act (HAA) and the Permit Streamlining Act (PSA) prohibit the City from requiring a GPA/ZC for projects qualifying under Government Code section 65589.5, subdivision (d)(5).

In addition to the requirement for a GPA/ZC, HCD also finds the City's liberal interpretation of what may disqualify a project from the vested rights protected under Government Code section 65941.1 to be problematic. Finally, HCD rejects the City's claim that the PSA only provides one 90-day period for a developer to submit all of the information necessary for its full application to be deemed complete. The remainder of this letter outlines these thematic issues and provides a summary of the projects in question.

General Plan Amendment and the Housing Accountability Act's Builder's Remedy

The HAA is clear that a project protected by the Builder's Remedy may not be disapproved for inconsistency with a jurisdiction's general plan land use designation and zoning ordinance.³ Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA/ZC (requested or required by the jurisdiction to resolve such an inconsistency) violates the HAA.

Indeed, where a jurisdiction cannot lawfully disapprove a project for inconsistency with the general plan land use designation or zoning ordinance, it would be illogical if the jurisdiction could lawfully disapprove a project for failing to resolve that very inconsistency. In other words, the City's requirement for a GPA/ZC is essentially a requirement for consistency, and disapproving the Project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. The HAA prohibits such a disapproval.

³ Gov. Code, § 65589.5, subd. (d)(5).

Determining Application Completeness under the Permit Streamlining Act

Even if the City were permitted to require a GPA/ZC under the HAA, the PSA⁴ prohibits the City from using the absence of the GPA/ZC application as a reason to determine that a project application is incomplete, if the item is not explicitly required on the submittal requirement checklist. The City cannot determine that an application is incomplete on the basis that it does not include a request for a GPA/ZC unless the City's submittal requirement checklist requires the applicant to submit such a request. When issuing an incompleteness determination, the City must provide a list of items that were not complete and "[t]hat list shall be limited to those items actually required on the lead agency's submittal requirement checklist."⁵

Here, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal, and therefore, the City cannot deem these applications incomplete for failing to include a GPA/ZC.

Vesting under Government Code Section 65941.1

HCD would also like to inform the City of other obligations under Government Code section 65941.1 that protect the vested rights of a project.

If the City determines that the application for a development project is not complete pursuant to Government Code section 65943, the development proponent is required to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information.⁶ If the applicant does not submit the information within the 90-day period, the preliminary application expires.⁷ However, this 90-day deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have multiple 90-day periods.

In the recent case of *Jha v. City of Los Angeles*, the Superior Court held that multiple 90-day submission periods are permitted under the PSA:

Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. This statute supports [the developer's] reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.⁸

⁴ Gov. Code, § 65920 et seq.

⁵ Gov. Code, § 65943, subd. (a).

⁶ Gov. Code, § 65941.1, subd. (d)(2).

⁷ *Ibid.*

⁸ *Jha v. City of Los Angeles*, Decision on Petition for Writ of Mandate (July 24, 2024, Los Angeles Superior Court Case No. 23STCP03499), p. 23.

The court went on to conclude that the PSA should not be interpreted in a vacuum, but rather in its relation to the HAA, and the Legislature has mandated that the HAA must be interpreted to “afford the fullest possible weight to the interest of, and the approval and provision of, housing.”⁹

In addition, as explained in our June 26, 2024 letter, the preliminary application remains vested unless the number of residential units or square footage of construction proposed in the full application changes from the preliminary application by 20 percent or more (subject to certain conditions as listed in the statute).¹⁰

In HCD’s review of the “Builder’s Remedy” projects listed in the “Summary of Projects” section below, HCD found that the City improperly deemed preliminary applications void and of no effect due to changes that neither materially altered the project described in the full application from that contemplated in the preliminary application nor fell outside of the 20 percent provision of the PSA. These modifications include, but are not limited to, adding State Density Bonus Law (SDBL) concessions and waivers that did not change the unit count or square footage by more than 20 percent, requesting approval under the Subdivision Map Act because the project changed from apartments to condominiums, text contained in a submitted Zoning Change application that should not be considered in a completeness determination for a Builder’s Remedy project anyway, and the addition of a commercial use that did not change the unit count or square footage by more than 20 percent. These modifications do not justify disturbing the vesting of the preliminary applications.

A full summary and explanation of the projects and HCD’s understanding of the City’s reasons for lost vesting under Government Code section 65941.1 are found below.

Summary of Projects

- **125 Linden Drive**
 - 165 units (33 affordable)
 - Preliminary application submitted: October 24, 2022
 - Application status: Appeal denied
 - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, preliminary application divests because of addition of commercial use
- **346 Maple Drive**
 - 65 units (13 affordable)
 - Preliminary application submitted: October 6, 2023
 - Application status: Second Incomplete Letter issued
 - Issues raised by City Incomplete Letter(s): GPA/ZC,¹¹ 90-day expiration¹²

⁹ *Ibid.* (quoting *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 855).

¹⁰ Gov. Code, § 65941.1, subd. (c).

¹¹ Refers to the City’s requirement for a GPA/ZC application as part of the submittal.

¹² Refers to the project losing vesting rights due to expiration of a single 90-day period.

- **401 Oakhurst Drive**
 - 25 units (5 affordable)
 - Preliminary application submitted: October 30, 2023
 - Application status: Second Incomplete Letter issued
 - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration
- **232 South Tower Drive**
 - 55 units (11 affordable)
 - Preliminary application submitted: October 5, 2023
 - Application status: Second Incomplete Letter issued
 - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration
- **9229 Wilshire Boulevard**
 - 116 units (24 affordable), Mixed Use project
 - Preliminary application submitted: December 13, 2023
 - Application status: Developer filed appeal to Beverly Hills City Council regarding second Incomplete Letter issued
 - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions¹³
- **145 South Rodeo Drive**
 - 30 units (6 affordable), Mixed Use project
 - Preliminary application submitted: February 23, 2024
 - Application status: First Incomplete Letter issued
 - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions and submission of request under Subdivision Map Act¹⁴
- **140 South Camden Avenue**
 - 27 units (6 affordable)
 - Preliminary application submitted: March 15, 2024
 - Application status: First Incomplete Letter issued
 - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions and submission of request under Subdivision Map Act
- **214 Hamilton Drive**
 - 90 units (18 affordable)
 - Preliminary application submitted: October 30, 2023
 - Application status: Second Incomplete Letter received
 - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, compliance with City development standards¹⁵

¹³ The City claims the project lost vesting due to adding concessions and waivers that were not included in the preliminary application.

¹⁴ The City claims the project lost vesting due to adding a subdivision map request that was not included in the preliminary application.

¹⁵ Compliance with development standards is not an application checklist item under Government Code section 65941.1, subdivision (a).

- **8844 Burton Way**
 - 200 units (40 affordable); Mixed-Use project
 - Preliminary application submitted: December 15, 2023
 - Application status: Second Incomplete Letter received
 - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, compliance with City development standards
- **211 Hamilton Drive**
 - 210 units (42 affordable)
 - Preliminary application submitted: October 31, 2023
 - Application status: Second Incomplete Letter received
 - Issues raised by City Incomplete Letter(s): Preliminary application vesting lost because the change in the theoretical maximum density of the parcel indicated in the ZC application exceeded 20 percent¹⁶

Conclusion

The City's failure to accept the applications for processing due to the lack of a GPA/ZC is in violation of the HAA and PSA. Furthermore, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal and the PSA prohibits the City from deeming an application incomplete for items not on the checklist. City staff must process all projects contained in this letter without further delay and without imposing a requirement for a GPA/ZC.

The City must also consider its obligations under Government Code section 65941.1 that retain each project's vested rights. First, the 90-day period to submit information to complete a full application reset after each incompleteness determination, and the preliminary application remains vested during these 90-day periods. Second, the modifications mentioned in the project summaries above do not void the vesting created by the preliminary application submittal.

Under Government Code section 65585, HCD must notify a local government when that local government takes actions that violate the HAA and the PSA and may notify the California Office of the Attorney General.¹⁷

¹⁶ The unit count of the project did not change between the preliminary application and full submittal. The theoretical maximum density proposed in a ZC application does not fall under the 20 percent change provision under Government Code section 65941.1, subdivision (c). Moreover, any information contained in a GPA or ZC application does not void vesting because those applications should not have been required for a Builder's Remedy project.

¹⁷ Gov. Code, § 65585, subs. (i)(1), (j).

The City has until December 20, 2024, to provide a written response to this letter. HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Bentley Regehr at bentley.regehr@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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August 24, 2022

Kevin McSweeney
Planning and Community Development Director
City of Fillmore
250 Central Avenue
Fillmore, CA 93015

Dear Kevin McSweeney:

RE: Fillmore Terrace Project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) is aware that the City of Fillmore (City) is reviewing an application for a 50-unit affordable housing project (including 13 supportive housing units) located at Palm Street and Santa Clara Avenue (Project). The application was submitted by People's Self-Help Housing (Applicant).

The purpose of this letter is to provide technical assistance to the City regarding implementation of the Permit Streamlining Act (PSA) (Chapter 4.5, Gov. Code, §§ 65920-65964.5), Housing Accountability Act (HAA) (Gov. Code, § 65589.5), and By-Right Supportive Housing Law (Gov. Code, §§ 65650-65656, commonly known as AB 2162, Chapter 753, Statutes of 2018) in relation to the Project.

Background

The Project site consists of 18 existing lots over roughly 1.44 acres. The Applicant proposes to construct 50 affordable units with community space across six buildings. Thirteen of the units would be permanent supportive housing units. The units would be deed-restricted for lower-income households making between 30 to 60 percent of area median income. Additionally, HCD understands that the Applicant has requested the by-right streamlined review process for qualifying supportive housing projects pursuant to AB 2162, and a request for various waivers and incentives/concessions pursuant to State Density Bonus Law (SDBL). The site is partially zoned Commercial Business District (CBD) and Commercial Highway (CH). To date, the City has issued two incomplete letters (December 30, 2021, and June 9, 2022) in response to the Applicant's first and second submittals.

Intent of the Permit Streamlining Act (PSA)

In passing the 1977 PSA, the Legislature found and declared that “there is 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” (Gov. Code, § 65921). Accordingly, the PSA mandates transparency in the local review process by, for example, requiring publicly available planning entitlement application checklists and prompt determination regarding the completeness of a development project application.

PSA Completeness Review

As noted, the PSA provides local agencies must begin their review of proposed development projects¹ with a determination regarding the completeness of the submitted application for continued processing. In making that determination, local agencies may only consider those submittal items that have been identified in the applicable publicly available application checklists. Specifically, the PSA provides the following:

Not 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. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. *That list shall be limited to those items actually required on the lead agency’s submittal requirement checklist.* (Gov. Code, § 65943, subd. (a). Emphasis added.)

To date, the City has issued two incomplete letters for the Project. Both letters include comments that are inaccurately categorized as incomplete items, in conflict with the above PSA provision. When a local jurisdiction improperly characterizes comments as incomplete items, the jurisdiction impermissibly raises the bar to achieving a complete application, in violation of the PSA. That violation also becomes an undue constraint on the Project.

For illustrative purposes, a copy of the City’s second incomplete letter (dated June 7, 2022) is enclosed, with highlights (beginning on page 4) identifying comments that appear to conflict with the PSA completeness review. These comments were identified because the referenced item does not appear to be listed on the City’s planning permit application (and therefore cannot be considered a completeness item under the PSA).

¹ Pursuant to Gov. Code, § 65940(d), “development project” includes a housing development project as defined in paragraph (3) of subdivision (b) of section 65905.5, which includes both ministerial and discretionary project applications.

To remedy this issue, the City must ensure that, in its next (third) PSA application completeness review, its determination is focused solely on an assessment of whether the applicant has satisfied “those items actually required on the lead agency’s submittal requirement checklist.” (Gov. Code, § 65943, subd. (a).) Any other comments on or questions about the Project cannot be used as a basis for determining the completeness of the application and must be addressed as a separate matter, further discussed below.

Housing Accountability Act (HAA) Written Notification of Inconsistency

In addition to the PSA application completeness review, the HAA requires local agencies to make early determinations regarding a proposed housing development project’s consistency with any applicable plan, program, policy, ordinance, standard, requirement, or other similar provision within specified timeframes following a complete application. Specifically, the HAA provides the following:

If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units. (Gov. Code, § 65589.5, subds. (j)(2)(A)(i) and (ii).)

Certain comments that were outside the scope of the PSA completeness determination appear to focus on the Project’s consistency with various standards, akin to the analysis described in the HAA provision cited above. It appears that the City has conflated aspects of the PSA completeness review with the HAA consistency review. If the City wishes to conduct the PSA completeness review and HAA consistency review concurrently (rather than doing so in sequence as the HAA allows for in the provisions cited above), it must ensure that its subsequent letter properly differentiates between these separate components of the review process, and that the HAA consistency review does not become a barrier to achieving an otherwise complete application.

Objective Standards under AB 2162 By-Right Supportive Housing Law, and HAA

AB 2162 By-Right Supportive Housing (Gov. Code, §§ 65650-65656)

In 2018, the Governor signed AB 2162 to reduce zoning barriers that inhibit the development of supportive housing projects throughout the state. In sum, the statute requires all local jurisdictions to review supportive housing projects through a by-right ministerial process, within specific timeframes, if the proposed supportive housing project complies with specified criteria and meets applicable objective standards (notwithstanding eligible requests for waivers or incentives/concessions pursuant to SDBL). In relevant part, the statute provides the following:

The local government may require a supportive housing development subject to this article to comply with *written, objective development standards and policies*. However, the local government shall only require the development to comply with the objective development standards and policies that apply to other multifamily development within the same zone.

The local government's review of a supportive housing development to determine whether the development complies with objective development standards, including objective design review standards, pursuant to this subdivision shall be conducted consistent with the requirements of subdivision (f) of Section 65589.5, and shall not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. (Gov. Code, § 65651, subds. (b)(1) and (2). Emphasis added.)

Objective Standards and the HAA

In addition, the HAA establishes legal protections for all qualifying housing development projects (as defined in Gov. Code, § 65589.5, subd. (h)), as well as additional protections for projects, such as the Project at issue here, that meet the definition of "Housing for very low-, low-, or moderate-income households" (Gov. Code, § 65589.5, subd.(h)(3)). Specifically, the HAA establishes limitations on a local government's ability to deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with *objective local development standards* and contribute to meeting housing need. Pursuant to Government Code section 65589.5, subdivision (h)(8), until January 1, 2030, unless otherwise extended, "*objective*" means *involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official*.

The City's incomplete letters contain numerous comments that (1) were not explicitly connected to an objective standard applicable to the Project or (2) contained subjective language. These comments are included among those highlighted in the attachment. As such, it appears that the City is attempting to impose subjective criteria. HCD reminds the City of its limited purview for review pursuant to AB 2162 and the HAA – both of which are applicable to the Project. In sum, the City cannot require the Project to comply with any standards or requirements that are not consistent with the definition set

forth by the HAA. To that end, HCD suggests that the City clearly cite its authority in connection with any subsequent comments it identifies regarding the Project's compliance with applicable objective standards, and to ensure that any such standards are, in fact, objective.

Further, in light of the Applicant's request to utilize AB 2162, HCD reminds the City that it must assess the Project's compliance with the criteria set forth in Government Code sections 65651 and 65652 and notify the applicant accordingly. For purposes of AB 2162 eligibility, the City cannot seek compliance with anything beyond the criteria set forth in statute. More broadly, moving forward, the City may consider creating a separate application form specifically for applicants seeking to utilize by-right, ministerial review processes such as those filed pursuant to AB 2162 or SB 35 (Gov. Code, § 65913.4).

Conclusion

HCD looks forward to assisting the City in its compliance with state housing laws and reminds the City that HCD has enforcement authority over the HAA, PSA, and By-Right Supportive Housing law, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. (Gov. Code, § 65585, subd. (j).) Additionally, please be reminded that the City's 6th cycle housing element was due on October 15, 2021. As of the date of this letter, HCD has not received a draft housing element submittal from the City, and; therefore, the City no longer complies with State Housing Element Law (Article 10.6, commencing with section 65580, of Chapter 3 of the Government Code). If you have questions or need additional information, please contact Lisa Frank, of our staff, at lisa.frank@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West", written in a cursive style.

Shannan West
Housing Accountability Unit Chief

Enclosure: City of Fillmore Application Incompleteness and Design Review Committee Comments dated June 9, 2022, with HCD highlights (in yellow) and comments (in red)

cc: Brian McCarthy, Senior Planner



CITY OF FILLMORE
CENTRAL PARK PLAZA
250 Central Avenue
Fillmore, California 93015-1907
(805) 524-3701 • FAX (805) 524-7058

June 9, 2022

Kenneth Trigueiro
People Self-Help Housing
1060 Kendall Road
San Luis Obispo, CA 93401

RE: Application Incompleteness and Design Review Committee Comments
Fillmore Terrace Project; Development Permit No. 19-02
North Ventura Road, Suite 265, Oxnard, CA 93036

Dear Mr. Trigueiro:

The City of Fillmore's ("City") Design Review Committee ("DRC") has reviewed the resubmitted Fillmore Terrace project revised application and project plans for Development Permit No. 19-02 ("Project"), which was submitted on May 10, 2022, by People Self-Help Housing's ("PSHH") representative, Design & Survey, Inc., and determined that it is incomplete. The current iteration of the Project represents a re-design of the Project and supersedes designs previously submitted to the City on December 1, 2021. This DRC application completeness review consists of comments from the City Manager's office, Fire Department, Building Department, Planning Department, Police Department, Engineering Department and Public Works Department.

In summary, the revised Fillmore Terrace project would merge 18 separate lots and construct 50 affordable dwelling units (including 13 supportive housing units) in six buildings over an approximately 1.44-acre project site. The Project also includes 4,757 sq. ft. of community space (play area for children, kitchen, manager's office, etc.). The Project site is partially within the CH (Commercial Highway) zone and partially within the CBD (Central Business District) zone. Two concessions and four waivers are requested through the State Density Bonus law to reduce or eliminate the Fillmore Municipal Code development standards and design criteria for development in these zones.

As previously noted, in the City's letters to you dated November 24, 2021 and December 30, 2021, please be reminded that the Trust Accounts for this project will be reconciled monthly and if a Trust Account is in a deficit, an invoice will be provided to PSHH stating the fees necessary to replenish the account. City staff may stop review work until the account is brought current and sufficient new deposits are made to cover the costs for any on-going processing work.

The DRC's comments are listed below in two sections: Section I lists application incompleteness items; and Section II lists apparent inconsistencies with General Plan, Specific Plan, and zoning requirements. Section II also contains new comments based on the new plans submitted May 10, 2022.

Section I- Application Incomplete Items and Comments

A. Application and Title Sheet (A-0)

- 1. Jensen Design & Survey, Inc. is administering the Project but is not identified on the Title Sheet. Is Jensen Design & Survey, Inc. preparing the civil plans?**

Completed.

- 2. Provide the CEO's signature on the certifications/ agreements in application. The City does not know if Veronica Garcia has the authority to bind PSHH. Alternatively, provide proof that Veronica Garcia has the authority to bind PSHH.**

Completed.

- 3. Provide the CEO's signature on the Reimbursement Agreement. The Agreement requires that the signature be from the property owner or corporate principal.**

Not Completed. The Reimbursement Agreement is not complete as it is still missing the permit number and the deposit amount.

- 4. Revise the Project Description on Sheet A-0 to include merging 18 lots into one parcel.**

Not Completed. The Project Description refers to the merger of five parcels, but parcels are not necessarily legal lots and mergers pertain to lots. The merger exhibit shows 18 lots.

- 5. Revise the table entitled Unit Mix on Sheet A-0 to include the residential unit size requirement of the Zoning Ordinance Section 6.04.0415.2.K.**

Completed. Information added below the table.

- 6. Submit a current Preliminary Title Report that is no more than one year old.**

Completed.

- 7. Provide the employee hours and hours of operation for the supportive services to be provided on site, as applicable per page 3, #7 of the application.**

Completed. However, this was not provided in the application form where requested. Also, no verifiable reference was provided to demonstrate that hours from 3:30 PM to 6:00 PM M-F, 12.5 hours in total, is sufficient to meet the needs of the supportive housing residents or how many additional City resources would be required to assist.

- 8. Reflect accurately on Sheet A-0 the existing uses on the property.**

Completed.

- 9. Amend the vicinity map to comply with the City's application site plan vicinity map requirements. (Scale and Arrow must be provided.)**

Completed.

- 10. Identify the gross and net lot area on Sheet A-0.**

Completed.

- 11. Provide existing and proposed percentage of building coverage, lot area, percentage of building coverage, and percentage of landscaped area. Gross and net unit density calculations must be provided on Sheet A-0.**

Completed.

- 12. On Sheet A-0, provide the existing number of public parking spaces along the perimeter of the property.**

Not Completed. Please provide the locations of the parking spaces the project will remove, e.g. Palm Street, Santa Clara Street, etc.). Also, the curb cuts that contain no active driveways that are currently used as public parking must be included in the existing to-be-removed calculation.

- 13. Identify on Sheet A-0 the gas, electric, and water utility companies and points of contact.**

Not Completed. Information on the gas company was not provided. Existing gas to the property must be properly addressed.

- 14. Sheet A-0 provides that the "Total Moderate Income Inclusionary Units" is "TBD". You must provide the number of moderate-income level units with this application at this time.**

Not Completed. A breakdown of the "brackets" of income level housing has not been provided on the plans.

- 15. Identify on Sheet A-0 the requested concessions/ waivers.**

Completed.

- 16. The architect and land surveyor are required to sign the plans.**

Not Completed. The Civil and Landscape Plans have not been signed by the respective professionals.

- 17. Revise the parking calculation on sheet A-0 to indicate that 25 diagonal spaces are not included as part of the parking calculation.**

Completed.

- 18. A tabulation of on-site amenities and other features must be provided. The plans do not clearly show floor spaces for the community rooms, lobby's, learning areas, kitchen, laundry facilities, mailbox area, storage and maintenance facilities, etc.**

Completed.

19. Provide a breakdown of air-conditioned and non-airconditioned spaces.

Completed.

20. The application form fails to identify the existing residential unit(s) on the project site and whether they will be demolished as a part of the Project. (Item 5 of the form).

Not Completed. The application form remains incomplete where referenced.

21. Provide a relocation plan for any existing residents on the property that will become displaced because of the Project. You must provide this information in conformance with California Relocation Assistance Law and Relocation Assistance and Real Property Acquisition Guidelines. If you are obtaining federal funds, such as HOME funds, you must provide relocation benefits in accordance with HUD Handbook 1378. The City must also receive copies of these plans to assess the net added housing numbers and ensure displaced Fillmore citizens are properly accounted for and compensated.

HCD Note: This appears to be related to project consistency determination, not application completeness.

Not Completed. The Relocation Plan does not provide state the actual compensation amount the existing residents will be entitled to. This should be calculated based on actual quantified figures that are verifiable, such as the differential between the existing rent and the replacement housing, timeframes, terms of the rent assistance or whether the payment will be used for purchase of a replacement home. Rather, the submitted document provides general legal requirements provided in State law and hypothetical-type scenarios. This lack of substance provides no opportunity or the City to evaluate whether the displaced residents will be adequately compensated.

B. Site Plan (A-1)

22. Correct the north arrow on sheet A-1 per the application checklist requirement.

Completed.

23. Provide a sheet that illustrates with color shading on a map to differentiate between the Commercial Highway and Central Business District areas on the project site, and provide the calculated area for each.

Not Completed. Compliance with zoning standards for each respective zone at the project site cannot be determined without these details. Provide development standard compliance data for each zone.

24. Accurately plot the Central Business District zone and the Commercial Highway zone on Sheet A-1.

Not Completed. Zones must be clearly shown on the Site Plans(s) and appropriate

standards followed per zone.

- 25. Locate the adjacent structures on adjacent properties on Sheet A-1 to help determine if there are conflicts.**

HCD Note: This item does not appear to be listed on City's application submittal requirements.

- 26. Provide Property line dimensions on Sheet A-1.**

Completed.

- 27. Identify any existing and required number of loading zones, if any.**

The City notes that this Project does not provide sufficient parking to accommodate the residents of the facility and is also refusing to provide loading areas for passenger vans or other ride share-type services. This is especially concerning given that the Project includes 13 supportive housing units with 26 residents. It is highly recommended that loading areas be provided. The bus service on Santa Clara Street has infrequent stops and is quite limited in geographic range for passenger travel.

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, this comment appears to use subjective language.

- 28. Identify all existing trees on the property and within the right-of-way adjacent to the property on Sheet L1.1. Identify and label (by name and trunk diameter) all protected and/or Southern California native tree species.**

Not Completed. Landscape plans are incomplete and appear to be missing sheets. See Section F of the Application form and FMC Section 6.04-2855

- 29. Illustrate the setback requirement with a dashed line on sheet A-1. Currently, the setback is not identified along the alley or along the full length of Palm St. or Santa Clara Ave.**

Completed. However, it is noted that the Project does not comply with all setback standards. FMC Section 6.04.0615.A. requires 10-foot front and side setbacks in the CH zone. Pursuant to FMC Section 6.04.9610, Definitions, parking is not allowed within the required setbacks. The violations of setbacks is noted as an incompleteness issue under other items in this letter.

- 30. Plot all existing easements on Sheet A-1. Sheet A1.1 states that Sespe Land and Water Company is the only easement.**

Completed.

- 31. Identify on Sheet A-1 the existing adjacent structure located to the northwest corner of the block.**

Completed.

32. **Provide a detail of the trash enclosure.** Accurately identify the size of all required containers including the new food waste container requirement. (Need dimensions of internal and external trash storage per FMC 6.04.1805(23).)

HCD Note: This item does not appear to be listed on City's application submittal requirements and should be separated from completeness review.

Not Completed. The configuration of the enclosure and waste storage bins within the enclosure area does not provide access to each of the bins. Several of the bins would be blocked from use by the residents, especially any with physical disabilities.

33. **Identify a method of screening of refuse and recycling enclosure areas. Trash enclosures need to be architecturally screened. Provide the location and size of all exterior lighting standard and devices on the property.**

Not Completed. Light style shown on Sheet A-15 is not consistent with the craftsman theme architecture selected. The lights shown are contemporary which is inconsistent with the standards of the Fillmore Downtown Specific Plan and Ventura Street Design Guidelines.

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, the specific reference for this requirement is not cited and comment appears to use subjective language.

34. **Provide the gross floor area for each building. Currently, gross floor space is provided per unit but it is also needed for each building.**

Completed.

35. **Provide occupancy load factors and loads.**

Completed.

36. **Sheet A-1 indicates the diagonal parking on Palm Street will intrude into what is currently private property. Plans must include a land dedication of this area making it part of the Palm Street right-of-way (if this parking design is feasible, as determined through a traffic study discussed in more detail below).**

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, the specific reference for this requirement is not cited and comment appears to use subjective language.

Plans must indicate these areas are to be privately maintained. Land dedicated will require the Project owner/applicant to enter into a Landscape Maintenance Agreement with the City. This requirement is identified in the application checklist Section E5. Private maintenance areas are also required to be identified in accordance with FMC Section 6.04.2845(2.).

37. **On Sheet A-1, number the parking spaces and assign a space to each unit.**

HCD Note: This item does not appear to be listed on City's application submittal requirements and should be separated from completeness review.

City acknowledges that this standard has not yet been added to the FMC and application form; however, please note that we anticipate this Project will have parking problems without adequate and assigned parking. Residents may have guests that take up parking stalls that should be dedicated for use by other residents and some residents may have multiple cars that occupy multiple parking stalls, further limiting the availability of parking. The current plans provide no standards to address these parking issues. Hence, a parking plan with assigned stalls should be provided for City review and approval.

38. The Community Room to Building A extends into the side-yard setback. Replot the building so that it is not extending into the setback.

HCD Note: This item appears to be related to project consistency determination, not application completeness.

Not Completed. Building A still violates the 10-foot side setback standard for the CH zone [FMC Section 6.04.0615(A.)].

39. The trash enclosure along the alley is within the setback and needs to be moved out of the setback.

HCD Note: This item appears to be related to project consistency determination, not application completeness.

Completed.

40. Plot the Air Conditioning units on Sheet A-1.

HCD Note: This item does not appear to be listed on City's application submittal requirements

41. Plot the location of the water softener on Sheet A-1.

HCD Note: This item does not appear to be listed on City's application submittal requirements

Completed.

41. Heating Ventilation and Air Conditioning (HVAC) equipment areas must be shown for all buildings. It appears to be shown on Building E only (on Sheet A-1) but is missing from Buildings A, B, C, and D.

Completed.

42. Plot the location of the water softener.

Completed.

HCD Note: This item does not appear to be listed on City's application submittal requirements.

45. Provide for repaving the Alley to support the Project traffic.

Completed.

46. Show notes for sidewalk and curb and gutter repair and replacement along State Route 126 for the length of the Project frontage.

Completed.

47. Clearly indicate what you are proposing as front, sides, and rear of the Project and the respective setback requirements as it pertains to each zone designation, CH and CBD. City staff will take this into consideration in determining which side should be treated as the true front.

Completed.

48. Show exterior utility closets or “doghouses” housing electrical panels, fire riders, and alarms, for each building where needed.

Completed.

49. The sidewalk along the Santa Clara Street portion of the Project’s frontage shall provide for 5 feet of sidewalk (designed with 2.5 feet X 2.5 feet score lines) plus 5 feet of parkway.

HCD Note: This item appears to be related to project consistency determination, not application completeness.

Completed.

C. Floor Plans

50. Provide the square footage for every bedroom and bathroom on Sheet A-7 per Zoning Ordinance Section 6.04.0415.2.L.

HCD Note: This item does not appear to be listed on City’s application submittal requirements.

Not Completed. Plan provides the total size of the units, but still does not provide the sizes of the bedrooms and bathrooms.

Also, the unit sizes are below the minimum unit sizes allowed under FMC Section 6.04.0415.2.K. Sheet A-0.0 states that this deviation from the City standard was moved from a “concession” to a “waiver” because “this frees up two (2) concessions in case we

need them for something else and waivers are unlimited. This does not meet the intent of concessions or waivers. Concessions allow for reduced standards allowed as a density bonus. Waivers, however, are more fatal issues that would render the project infeasible. Requests for the reduction in the City's minimum unit size requirements must remain concessions and cannot be considered waivers.

51. The Architectural study sheets A-2 and A-2.1 need to be labels for each image.

Completed.

52. Provide a sheet for each floor of each building.

Completed.

53. Identify specifically what is contained in and the functions of the Children Space.

Completed.

D. Elevations

54. Identify the building elevations measured from the top curb as the starting point for Sheets A-8, A-9, A-10, A-11.

Completed.

55. Identify on the building elevation sheets the proposed roof pitches to all elevations.

Completed.

56. Identify on the building elevation sheets by a dashed line the maximum height limit per the Zoning Ordinance.

Completed.

57. Identify the garden wall height and type of wall (i.e., concrete, block) on Sheet A-3.

Completed.

58. Identify on Sheet A-8, A-9, A-10, A-11, A12, A-13, all wall mounted equipment, gutters, downspouts, and address labels.

These items must be shown as part of any construction plans submitted.

59. On building lighting must be shown, including fixture details and level of illumination, on sheets A-8, A-9, A-10, A-11, A-12 and A-13.

Not Completed. The lighting details provided are inconsistent with the craftsman architectural theme (see item 34 above), which is inconsistent with FMC Section 6.04.1805 (3.)(H.)

HCD Note: This item appears to be related to project consistency determination, not application completeness.

60. A photometric plan must be provided showing any light spillage onto adjacent residential uses from the building, alley, and parking areas.

HCD Note: This item does not appear to be listed on City's application submittal

requirements.

Not Complete. The photometric plan shows light spillage onto adjacent properties, including residential properties to the west and adjacent public right-of-way. This is inconsistent with FMC Section 6.04.1805 (3.)(D.) and General Plan EIR Mitigation Measure MND-1, which is a previously established measure applied as conditions of approval for all new developments.

- 61. Identify on sheet A-3 the size of the offices and meeting room in Building A.**

Completed.

- 62. Provide interior room dimensions for Building A on Sheet A-4.**

HCD Note: This item does not appear to be listed on City's application submittal requirements.

Completed.

- 63. Identify the dimension between Building F and the existing adjacent building to the west.**

Completed.

- 64. Provide dimensions to the unit entrance landings for all buildings.**

Completed.

- 65. Identify the HVAC on Sheet A-5.**

Completed.

- 66. Each unit needs to be labeled by a number or and alphabet letter so that a specific unit can be referred to if there is a question.**

HCD Note: This item does not appear to be listed on City's application submittal requirements and should be included as a separate comment.

Completed.

- 67. Provide dimensions to the children's play area on sheet A-5.**

Not Completed.

- 68. Provide a detail for the children's play equipment on Sheet A-5 and Sheet L1-1.**

HCD Note: This item does not appear to be listed on City's application submittal requirements.

Not Completed. Sheet L1-1a has not been not provided to the City.

- 69. Provide dimensions for the covered parking spaces on Sheet A-3 and A-5.**

Completed.

- 70. Identify the HVAC on Sheet A-5. It appears that the HVAC is to be adjacent to Building D.**

Completed.

71. Identify the existing grade elevation at the top of the curb.

Completed.

72. Plot the set-back line to the second floor of Building A on Sheet A-4. It appears that the second floor extends over the setback.

Not Completed. Building A second floor setback is not described.

73. Consistent with Item 48 above, show exterior utility closets or “doghouses” housing electrical panels, fire riders, and alarms, for each building where needed.

Completed.

E. Civil Plans

74. Identify all setbacks from all existing and proposed buildings to the property line on Sheet C1.

Not Completed. Building side setbacks violate the requirements for the CH zone. FMC Section 6.04.0615(1.)(A.) requires a minimum 6 feet of setbacks in the CH zone.

HCD Note: This item appears to be related to project consistency determination, not application completeness.

75. Preliminary Civil/Grading Plans are incomplete lacking many of the minimum requirements listed in the Application Form Part E2. Please add all required design information, dimensions, easements, rights of way (existing and proposed), topography, drainage structures (on-site and off-site), etc. as identified in the checklist.

Not Completed. Civil plans must provide for the undergrounding of overhead utilities in the alley and Santa Clara Street in addition to the undergrounding proposed on Santa Clara Street. (Planning Permit Application, A.18.)

76. There is a significant disconnect between the Hydrology Report/Preliminary Grading and Drainage Plan and the Post Construction Stormwater Mitigation Plan (PCSMP). The PCSMP indicates that all site runoff (1.44 Acres) will be captured and treated in BIO-2 Planter Boxes. However, the Hydrology Report and the Preliminary Grading and Drainage Plan show that all site runoff either runs off directly to public streets or is collected into an onsite storm drain system and discharged directly to State Route 126 (Ventura Street), untreated. Implement the required post-construction stormwater mitigation in the drainage design.

HCD Note: This item appears to be related to project consistency determination, not application completeness.

Completed.

77. The soils report is dated in 2018, and was prepared for the previous design that included a structure over the entire property with a parking garage. The soils engineer indicated that although there is available percolation and the groundwater is adequately deep, infiltration BMPs are not recommended on this site due to general concerns regarding hydro-consolidation, etc. The revised site plan includes an at-grade parking lot that provides a good opportunity for implementation of infiltration

BMPs. Submit an updated letter from the soils engineer of record that evaluates the feasibility of using the required LID measures for the current site layout. A finding of infeasibility must comply with the technical feasibility screening as set forth in Chapter 3.2 of the Ventura County Technical Guidance Manual (TGM) available on the Ventura Countywide Stormwater Quality Program website at: <https://www.vcstormwater.org/index.php/publications/manuals/tech-guide-manual>

HCD Note: This item appears to be related to project consistency determination, not application completeness.

Completed.

78. Provide preliminary civil improvement plans for public street improvements on Palm Street and Santa Clara Street that include complete dimensioning, boundaries, right of way, right of way dedications, easements, utility relocations, traffic calming, transitions in alignment or striping etc.

Not Completed. Public street improvements are only shown on the Preliminary Grading Plan with added information and cross-sections. Final design submittal requires all public street improvements on separate public street improvement plan and profile sheets. See Application Section E2.(5).

79. The angled parking on Palm Street is incomplete and no dimensions are provided. Provide dimensions for traffic engineering review to determine the feasibility of this layout.

Completed.

80. The project shall dedicate 14' along the State Route 126 frontage (Ventura Street) to the City of Fillmore for future road purposes, in support of the future widening of the highway to accommodate 7-lanes. Show and label this dedication on the Project plans.

Not Completed. Site Plans must include all call-outs for the 14' Caltrans ROW dedication (as currently shown) to be 14' Dedication to City of Fillmore for Future Road Purposes (typical).

81. Provide existing and proposed easements of record on-site and within 100 feet of the Project's boundaries.

Completed.

82. Identify and remove the blanket water rights over the entire site to Fillmore Irrigation. Locate the existing Fillmore Irrigation facilities on the site and state the proposed disposition, including any required easements to replace the blanket water rights.

Completed.

83. Submit a preliminary water assessment report from a registered civil engineer to confirm city has adequate fire flow and water capacity to handle the proposed new development.

HCD Note: This item does not appear to be listed on City's application submittal requirements and appears to be related to project consistency determination, not

application completeness.

Not Completed. See Section A.12., p. 6 of City's Planning Permit Application. Note that the language quoted from previously prepared Draft Mitigated Negative Declaration does not address fire flow or water capacity.

- 84. Submit a preliminary sewer study report from a registered civil engineer to confirm the City has adequate sewer pipe capacity to handle this new development. The previous sewer report needs to be updated to reflect the current site design.**

Completed.

- 85. Provide sewer size and type.**

Completed.

- 86. Submit a preliminary soils report (current to within 1 year) and preliminary grading plan.**

Completed.

- 87. Submit an updated fire flow calculation for the revised site design.**

Not Completed. Report has not been submitted. See Section A.12., p. 6 of City's Planning Permit Application. However, fire flow calculations will be required as part of any conditions of approval for any construction plans.

- 88. Update design for ADA compliance, including using current Caltrans standards for all improvements on State Route 126.**

Not Completed. Accessible routes must be shown per "redline" comments on Preliminary Grading and Drainage Plan (attached).

F. Development Impact Fees:

The Project is required to pay all development impact fees.

Development Impact Fees cannot be estimated at this time because the table labeled as Unit Mix on Sheet A-0 is not consistent with Sheets A-6, A-7, A-8, A-9. Information on the Plan Sheets must be made consistent.

Please acknowledge in writing that the Project will pay all development impact fees prior to issuance of any building permit.

HCD Note: This item does not appear to be listed on City's application submittal requirements.

Development Impact Fees for the Water Impact Fee cannot be calculated. The water meter size and the number of water meters need to be identified. The landscape water meter's size needs to be identified.

Please acknowledge in writing that the Project will pay all development impact fees prior to issuance of any building permit.

HCD Note: This item does not appear to be listed on City's application submittal

requirements.

G. Landscaping

Provide the size of all proposed landscape areas.

Not Completed. See Section E3 of the application form.

Provide the size of shrubs and groundcover as a percentage of total landscaped area.

Not Completed. Sizes of plantings are not provided. See Section E3 of the application form.

Identify on Sheet L1.1 that the landscape plan complies with State water efficient landscape ordinance (WELO) as implemented by the City.

Not Completed.

On Sheet L1.1, provide decorative pavers or decorative concrete in the courtyards and pathways.

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, the specific reference for this requirement is not cited.

Not Completed. Landscape/Hardscape plan do not indicate decorative paving or permeable pavers.

Site Plan keynote 18 identifies permeable paving. The permeable paving areas must also be indicated on the plans corresponding to the keynote. Permeable pavers may be required for surface water runoff control.

On sheet L1.1, provide pedestrian path lighting.

Completed.

H. Parking

Zoning Ordinance Section 6.04.3425 requires one designated parking area for a motorcycle. Identify the location of the motorcycle space.

Completed.

Dimensions for all parking stalls must be provided on the plans consistent with Zoning Ordinance Section 6.04.3435.2, Table III-1, which requires they be 9' wide by 20' long for a 90 degree angled parking space. Revise the plans to include this dimension.

Not Completed. Some dimensions are not provided (e.g. along Palm Street). Also parking lot stalls are indicated as 18 feet in length; however, they are required to be 20 feet in length.

H. Density Bonus

Utility undergrounding is not eligible for a density bonus concession. The undergrounding requirement does not qualify as a "development standard" under state density bonus law and the City's municipal code, and is therefore not eligible for a density bonus concession.

“Development standard” is defined to mean “a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.” (GC section 65915(o)(1).) The Fillmore Municipal Code defines a site or construction condition as “a development condition or law that provides a specification for the physical development of a site and buildings on the site in a housing development.” (FMC section 6.04.0417(B).) Utility undergrounding does not meet the definition of a “development standard” or a “site or construction condition” because it is an off-site improvement in the public right of way, not a specification for the physical development of a site and buildings on the site. Additionally, the City’s Fire Chief had previously identified fire safety concerns with utilities not being undergrounded at this site. The failure to relocate all overhead utilities underground along the alley, Palm Street, and Santa Clara Street would be considered a health and safety hazard.

Resolved as the waiver of utility undergrounding requirement is no longer being requested. The Plans must be revised to show that the overhead utilities along the alley and Santa Clara Street (in addition to Palm Street) will be relocated to underground.

Window inset requirements are not eligible for a density bonus waiver, as there is no indication provided as to how this would physically preclude construction of the proposed project at the desired density.

Completed.

I. Supportive Housing

Indicate percentage of floor area provided for onsite supportive services.

Not Completed. Supportive Services floor area is not indicated in the proposed Plans.

Indicate or explain how the project complies with Government Code (“GC”) section 65651(a)(6).

See response to item #21.

Plans must indicate that units include all of the items listed in GC section 65651(a)(7).

Completed.

The document submitted intended to serve as the Applicant’s supportive housing plan does not provide a “plan for supportive services, with documentation demonstrative that supportive services will be provided onsite to residents in the project” as required by GC section 65652. Specifically, the plan does not provide sufficient information on funding sources or the adequacy of the staffing levels referenced.

The Plan, which consists of a total of 2 pages, only commits to 15 years of services. However, the Plan does not include cessation of supportive housing after 15 years. Also, the Plan refers to 0.1 FTE of a “Service Coordinator” and 0.20 FTE of “Other Service Specialist”. It is not clear what these titles represent in terms of a uniformly verifiable reference or criteria. The Plan goes on to describe that the program has ten master’s level clinicians providing services to 52 properties along the California Central coast and

5,000 residents in total. There is no measurable benchmark demonstrating that PSHH has the capacity to provide the support that may be needed for this Project's 26 proposed residents requiring supportive services.

The proposed total number of supportive housing residents must be provided. It is understood that thirteen units does not represent the number of residents.

HCD Note: These comments appear to exceed the City's authority pursuant to AB 2162. If City seeks additional clarification, these must be separate from eligibility determination and completeness review.

Completed. However, with this new information, Plans must demonstrate the on-site services are provided to adequate to provide care for these 26 residents and respond to any needs on a 24-hour basis.

J. Street Width

Per City of Fillmore General Plan Circulation Element (adopted May 2003), Santa Clara Street is a minor thoroughfare. The applicable standards for Santa Clara Street is 2 lanes, 52' curb-to-curb with a 76' right of way. The existing right of way is 50 feet in this section of Santa Clara Street, which is deficient by 26'. Therefore, the Applicant is required to provide 13 feet of additional right of way on the south side of Santa Clara Street (along the Project frontage) and to widen the street to provide 26' south of centerline (full standard half-width) as a part of the offsite improvements to be included in the project. All public improvements for the widening must be shown on the plans.

Completed.

K. Circulation

Dedicate 4' feet of property along the alley to increase the alley width from 16' to 20' in width. This will allow for improved safety access.

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, the specific reference for this requirement is not cited and it is unclear if this is an objective standard.

Not Completed. Please refer to redline of Civil Plan Sheet C1, provide requested Alley right of way dedication. A road easement will suffice in lieu of fee title dedication of right of way (from a strictly engineering standpoint), however the proposed "fire access easement" is not acceptable. Provision of appropriate road width for circulation and safety access is an objective standard that must be met. A fee title dedication is required to ensure the appropriate level of safety is achieved from setbacks of the new property line to be established after the land dedication is completed. A 10-foot setback is required from the property line in the CH zone (FMC Section 6.040615.A.)

The Fire Department requires the intersection of the alley and Santa Clara Street and the intersection of the alley and State Route 126 to be widened to accommodate a fire engine turn radius.

Not Completed. While the curb returns have been widened, for health and safety

purposes, please provide the turning radius and diagram showing a fire truck (and trash truck) making the turn movements required. This is a standard program on architectural software.

Plans must show the resurfacing the entire width of Palm Street, the width of the alley, and Santa Clara Street to address Project traffic additions to the immediate roadway.

Not Completed. Resurfacing must be provided for the entire width of the Project affected roadway surrounding the Project site on Palm, Santa Clara, and the Olive Alley. Civil plans indicate only small segments of the roadways along the immediate perimeter of the property.

The Project will require signage to deter traffic away from Hwy 126 and the alley and direct traffic to Palm Street.

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, the specific reference for this requirement is not cited and it is unclear if this is an objective standard.

Not Completed. A Sign Plan must be provided with the project.

A licensed traffic engineer needs to determine if 25' length red curbs are needed along Santa Clara Street and the alley and at Santa Clara Street and Palm Street.

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, the specific reference for this requirement is not cited and it is unclear if this is an objective standard.

Not Completed. Red curb/no parking is also necessary at the west corner of the alley and Santa Clara Street to allow for visibility of drivers approaching Santa Clara Street northbound from the alley. This will likely require the removal of an existing public parking space that must be included in the parking analysis on Sheet A-0.0.

Provide a note on the plans that a California Department of Transportation (Caltrans) Encroachment Permit will be required. Indicate location(s) of work in the Caltrans right-of-way that require an Encroachment Permit.

Completed.

L. Fire Department

Identify fire backflow location on sheet C-1.

Not Completed. Please include for each building.

Identify the fire department connection on C-1.

Not Completed. Please include for each building, connections within 100 feet of a fire hydrant.

Fire Department truck access for serving the Project and neighboring properties would be improved if the Project provides a parking lot and alley connection. Amend plans accordingly.

Not Completed. The through connection proposed near the south perimeter does not allow for sufficient access to the entire length of buildings on the west/alley side of the property.

The Plans must reflect the overhead utility relocation underground along the alley and Santa Clara Street (in addition to Palm Street) as this is required to minimize the health and safety hazard.

For health and safety purposes, a 10-foot setback is required between the Project's Building F and the and the adjacent structure on the neighboring property (APN 053-0-093-160).

For health and safety purpose, a 10-foot setback is also required between the Project Building B or parking carport structure on the west side and the and the adjacent structure on the neighboring property (APN 053-0-093-160).

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, the specific reference for this requirement is not cited and it is unclear if this is an objective standard.

Provide a detail of the address labels to each building for Fire Department evaluation for visibility. The addresses must be internally illuminated and be at least 6" in height.

HCD Note: This item does not appear to be listed on City's application submittal requirements.

Not Completed. The illuminated light detail for the address does not appear on the detail sheets submitted.

Also, please note that the Fire Department will require 12-inch high building numbers for each building (not illuminated) separate from the individual unit 6-inch unit numbers.

Relocate the existing hydrants, shown on sheet C-1, located near the intersections of Santa Clara Street and the alley and Highway 126 and the alley to a sufficient distant from the intersection corners to prevent the hydrants from being struck by automobiles. The minimum distance from the roadway must be determined in consultation with the City Fire Chief and project traffic and circulation study.

Completed.

The stairways and second floor landings do not appear to accommodate large gurneys for patient transport. Provide a detail of stairwells and landing with dimensions and enlarge these areas if needed to accept a large gurney.

HCD Note: This item appears to be related to project consistency determination, not application completeness. Additionally, the specific reference for this requirement is not cited and it is unclear if this is an objective standard.

Not Completed. Second floor landings appear to be acceptable. However, a detail with dimensions of the staircases was not provided.

M. Gas

Identify on Sheet C3 the location of all gas lines.

Not Completed. All existing gas lines must be shown and the construction notes provide regarding the disposition of the gas lines, providing for proper capping/sealing and/or removal. This applies even if the proposed project is 100% electric.

Identify on sheet C3 the location of gas meters. Note that all utility meters shall be housed within a structure to provide screening and protection from the environment.

Not Completed. All existing gas meters must be shown and construction notes provided for the proper removal. This applies even if the proposed project is 100% electric.

N. Street Lights

Provide Street light location on Sheet C-1. Include light specification details.

Not Completed.

O. Electrical

Identify on sheet C3 the location of the Southern California Edison Power line to the buildings.

Completed.

Identify on Sheet C3 the location of Southern California Edison meters.

Completed.

P. Water

Identify on Sheet C3 the location of the water laterals from the main line (existing and proposed).

Not Completed. Existing water laterals are not shown.

Identify on sheet C3 the location and size of water meters (existing and proposed) for both domestic water and landscaping irrigation water.

Completed.

The potable water main in the alley on the west side of the Project is 6-inch PVC. The potable water main in Palm Street is a 4-inch CIP. The Utility Plan and water assessment report must assess and calculate the adequacy of these facilities, and include any improvements required to upgrade the infrastructure to serve the Project.

Q. Sewer

The Sewer line in Palm St. is a 6" main constructed in 1955. Provide calculations to determine if this is accurate and sufficient for the Project.

Completed.

R. Undergrounding

Underground all existing overhead utilities on Santa Clara Street and remove the existing power poles per Fillmore Municipal Code Section 5.12.020(a) in support of the street widening.

Utility undergrounding is also required pursuant to Downtown Specific Plan, p. 3:7. Any failure to relocate underground overhead utilities along the alley, Palm Street, and Santa Clara Street would be considered a health and safety hazard.

Not Completed. Site Plans must be updated to consistently show the utility underground work on Santa Clara Street, Palm Street, and the Alley.

S. Other Studies required for Health and Safety or Environmental Information (including Application Section F)

Please note that studies or additional information is required for site-specific health and safety concerns. Studies that are required are not limited to those listed as examples in Section F of the application.

HCD Note: The specific reference for this requirement is not cited and appears to include subjective language and unclear and/or vague requirement. Additionally, the Project is subject to AB 2162 by-right ministerial review.

Provide a deposit for a (City commissioned) traffic study to show that traffic circulation within and around the Project site will be sufficient and incorporate any recommended design changes. The Study must address, at minimum: feasibility of diagonal parking spaces on Palm, adequacy of carport spaces and access along the Alley are to support the Project traffic and turning movements in the alley; removal of any obstructions to turning caused existing features such as hydrants or poles; requirements for red curb painting for visibility; net addition or loss of public parking spaces; signage; direction of traffic flow (e.g., one way or two-way); turning radii for large vehicles such fire ladder trucks, moving trucks, or garbage trucks; pedestrian circulation and safety, etc. The full scope of the study and fees would be provided upon consultation with a qualified traffic engineering consultant.

HCD Note: The specific reference for this requirement is not cited and appears to include subjective language and unclear and/or vague requirement. Additionally, the Project is subject to AB 2162 by-right ministerial review.

Not Completed. Section F, page 35 of the City's Planning Permit Application requires the completion of a traffic study, independent of environmental review/ CEQA. The traffic study is of particular importance given that the Project sits along State Route 126.

Provide a Cultural Resources study.

Completed.

Provide a deposit for a (City commissioned) Noise study. Noise reduction features will be required if ambient exterior noise is at or above 65 DBA. 6.04.1805(14). The noise study must also consider construction noise impacts to adjacent residents or other sensitive receptors. The full scope of the study and fees would be provided upon consultation with a qualified traffic engineering consultant.

Not Completed. FMC Section 6.04.1805(14.)(B.) provides noise standards. Section F, page 35 of the City's Planning Permit Application provides for the completion of a noise study, independent of environmental review/ CEQA. The Project as proposed has not demonstrated it will comply with these noise standards, particularly during

construction. Adjacent residents, which may be sensitive to loud and long-duration noise, would be affected (from a health and safety standpoint) by non-compliance with these City noise standards.

Provide a mature/ protect tree report, which complies with FMC 6.04.2855.

Not Completed. Section F, page 35 of the City's Planning Permit Application provides for the completion of a mature/ protected trees report, independent of environmental review/ CEQA. FMC Section 6.04-2855 provides specific standards for assessing existing trees and any protected trees must be replaced or protected and provided for in the landscaping.

Due to health and safety concerns related to the adjacent residents, provide a deposit for a (City-commissioned) Air Quality and Greenhouse Gas study and emissions estimates, including construction and operation impacts. The full scope of the study and fees would be provided upon consultation with a qualified air quality consultant and may require traffic generation estimates.

HCD Note: The specific reference for this requirement is not cited and appears to include subjective language and unclear and/or vague requirement. Additionally, the Project is subject to AB 2162 by-right ministerial review.

Not Completed.

Submit a Resource Recovery Plan indicating where demolition material such as concrete and wood is to be recycled.

HCD Note: This item does not appear to be listed on City's application submittal requirements.

Completed. Please submit this Resource Recovery Plan as part of the construction plans.

Provide a Sign Plan for review if the project will include any signage.

Not Completed. A single monument sign illustration concept was included, but no dimensions were provided to confirm compliance with sign the City's sign standards outlined in FMC Section 6.04.38. Also, the Application notes that Section E6 -Sign program is not applicable so it is anticipated the Project must not include any elements listed in FMC Section 6.04.3825(1).

You did not complete the Certification Statement of Hazardous Waste or Substance Site. Provide completed Certificate of Hazardous Waste or Substance Site Form.

Not Completed. The form is signed; however, it does not reference the Permit number as required and does not indicate whether or not the site is within a hazardous waste site. Please note that the Phase I and II Environmental Site Assessment reports identified hazardous waste concentrations exceeding human health thresholds.

The Project site is known to contain hazardous substances requiring soils excavation and removals, and vapor barriers along with other measures to protect the health and safety of construction workers, adjacent residents, and future residents of the Project. Provide updated Phase I and II Environmental Site Assessment reports and a Remediation Plan for excavation,

demolition, disposal, vapor control and barriers or other measures that may be recommended in any Phase I and Phase II Assessments. Measures must be incorporated into the Project Plans (including but not limited to a grading plans and demolition plan).

Not Completed. In addition to vapor barriers for tetrachloroethene (PCE) contamination, a Soil Management Plan must be submitted. The Phase II Assessment also identified lead contamination exceeding human health screening levels and above soluble threshold limit concentrations and toxicity characteristic leaching procedure. Additional soil testing was recommended in the Assessment. The testing and Soil Management Plan must be included in the Project application.

For reasons similar to those mentioned in Item 136 above, provide a lead and asbestos survey of the existing structures and any remediation and specific demolition requirements. Measures for the safe demolition and removal must be included in a demolition plan to ensure the safety of construction workers, neighbors, and future residents of the Property.

HCD Note: This item does not appear to be listed on City's application submittal requirements

The asbestos and lead remediation plan for structure demolition must be included with any construction plans submitted for review and approval.

Section II- Apparent Inconsistencies Identified with General Plan, Specific Plan, and Zoning Requirements

Each element of the City of Fillmore's General Plan has Goals that provide direction and Policies that establish mandatory criteria. Hence, the Project must conform to the General Plan Goals and Policies unless they are superseded by State law.

A. General Plan/ Land Use Element

1. Goals, Policies, Implementation

Listed below are the Fillmore General Plan's Land Use Element's applicable Goals and Policies:

Goal#1

Maintain the City's small-town, rural character in order to enhance the physical, emotional and mental well-being of the City's residents.

Goal#2

Preserve Fillmore unique Physical and Social character by requiring high quality urban design within development to promote architectural integrity and enhance the overall appearance of the community.

Goal#3

Ensure that proposed land uses are consistent with the desires of the community.

Goal#5

Apply the traditional style and character of the City's older commercial and

residential areas to new development, where appropriate.

Policies LU-2

Provide incentives for development that will:

- *Provide distinctive architectural design and site planning*
- *Incorporate Streetscape and other public urban design amenities that contribute to a high-quality image and benefit the community.*

Policy LU-5

Infill development shall be with design features that complement surrounding structures.

Policy LU-7

Encourage neighborhood designs whose appearance is not dominated by the automobile, where front porches, homes fronting parks and parkways are encouraged and garage dominated streets and public streets

The General Plan Land Use Element also describes State Route 126 as the heart of regionally-oriented commercial development in the City. Community level shopping centers and highway-oriented uses are concentrated along this corridor. The Project as currently designed does not meet this intended function and the City would appreciate the incorporation of a commercial component into the Project.

HCD Note: This includes subjective language.

Please refer to comments below for new Plans submitted May 10, 2022.

2. Addressing Goals/Policies

Provide a significantly pronounced entrance feature for each unit along Santa Clara that is identifiable.

HCD Note: This comment includes subjective language.

Please refer to comments below for new Plans submitted May 10, 2022.

Each unit is to have its own architectural style similar to a row house to break up the appearance of a one block apartment complex. For instance, the three (3) units along Santa Clara Street appear as a single structure instead of three separate and distinct units, each with its own identity.

HCD Note: This comment includes subjective language.

Please refer to comments below for new Plans submitted May 10, 2022.

The Project site provides four (4) spaces that are labeled as courtyards but are children's play area, a teen patio, and BBQ areas. These areas are to be re-designed as authentic landscape

courtyards in an architectural historic sense where apartment residents can enjoy a park-like setting outside their unit.

HCD Note: This comment includes subjective language.

Please refer to comments below for new Plans submitted May 10, 2022.

B. General Plan/ Circulation Element

1. Goals and Policies

Listed below are some of the applicable Goals and Policies of the Fillmore General Plan's Circulation Element that have been identified as applicable to the Project at this time. Applicable Goals and Policies are not limited to those identified below as other may be identified in subsequent reviews.

HCD Note: This comment references General Plan goals that use subjective language.

Goal #28

Encourage urban development that incorporates elements of traditional town design, emphasizing alternative transportation modes, including walking, bicycling and transit use.

Goal #29

Ensure that the City's commercial area are convenient for pedestrian and vehicular access.

Policies C-2

The Condition and use of existing alleys shall support neighborhood security, safety and appearance.

Policies C-3

Street lighting standards shall ensure traffic safety as well as provide night time security for pedestrians, residents and local businesses.

Policies C-14

New commercial and industrial developments shall provide well designed, convenient pedestrian and bicycle parking facilities

Policies C-18

Development proposals shall include sidewalks pathways or other appropriate features to encourage walking and provide design at a “human scale.”

Policies C-19

Design sidewalks and pedestrian was in new development to remain clear of obstructions, have appropriate grades and be accessible in order to encourage pedestrian use.

Implementation Measure 16

Site Plans for new commercial and industrial developments should include pedestrian and bicycle facilities. Examples include:

- *Formal sidewalks with buffering systems from automobile spaces;*
- *Connections to the public sidewalk system:*
- *Seating areas and Bicycle parking facilities*

Alternative Transportation Facilities

Pedestrian Facilities. The majority of the City’s streets include sidewalks for pedestrian use. Pedestrian crosswalks are also present at many of the City’s major road intersections. Within the Central Business District, walking is considered the preferred mode of transportation. As such, the CBD includes an extensive network of sidewalks, with well-marked intersections designed to promote pedestrian safety through the use of bulb outs, textured paving, and pedestrian scale lighting

Please refer to comments below for new Plans submitted May 10, 2022.

2. Addressing Goals/Policies/implementations

Consider widening sidewalks to 10’ in width to encourage walking, particularly to the bus shelter and to downtown businesses.

The City reiterates the comment above.

Provide bicycle racks within the development. Bicycle racks are not required by the Zoning Ordinance for residential uses. However, it is City staff experience that operations of apartment complexes improve when bicycle racks are provided. Typical bicycle parking would provide one secured space for every four apartment units.

HCD Note: If this is not an objective City requirement applicable to the Project, it can be suggested but not required.

Completed.

Provide street lights along Santa Clara Street and Palm Street using the City’s nostalgic street light standard.

The City reiterates the comment above.

HCD Note: The specific reference for this requirement is not cited and it is unclear if this is connected to an applicable objective standard.

Provide decorative street benches along the sidewalk.

HCD Note: The specific reference for this requirement is not cited and it is unclear if this is connected to an applicable objective standard.

The City reiterates the comment above.

Provide decorative crosswalks at Palm Street and Santa Clara Street.

HCD Note: The specific reference for this requirement is not cited and it is unclear if this is connected to an applicable objective standard.

The City reiterates the comment above. Civil plans show a crosswalk delineated north-south crossing Santa Clara Street, but do not demonstrate how this alignment will connect at the midblock to the north.

Also, the ADA ramp and truncated dome improvements must be shown at the connection to the east corner of Palm Street and Santa Clara Street.

C. Downtown Specific Plan

Approximately 17,333 square feet of the Project site is located within the Downtown Specific Plan and that portion of the Project is required to comply with the Specific Plan. The appropriate goals of the Specific Plan that are the following:

- *Protect and enhance the existing small-town character of the Central Business District.*
- *Guide new development and renovation to assure a relatedness between individual building both new and old.*
- *Provide a yardstick against which future renovations and new development proposals can be measures.*
- *Provide Housing Opportunities in the downtown.*
- *Provide a transition from the downtown core to the surrounding neighborhoods along Main St. and Santa Clara Ave. that is compatible with the tourist commercial uses on the railroad property. (Page 3:4)*

Per chapter 5 (public improvement element) of the City of Fillmore Downtown Specific Plan (dated March 1994), the sidewalk along the Santa Clara Street portion of the Project's frontage shall provide for 5 feet of sidewalk (designed with 2.5 feet X 2.5 feet score lines) plus 5 feet of parkway. The Downtown Specific Plan has designated this portion Santa Clara Street as part of the Core Business District secondary pedestrian zone.

The City notes this comment has been incorporated into the Project.

D. Fillmore Zoning Ordinance/ Misc.

Please be prepared to install 3 pane windows within the Project and show this detail on the plans.

HCD Note: The specific reference for this requirement is not cited and it is unclear if this is connected to an applicable objective standard.

Completed. Please note that the acoustical study must be provided along with all related construction details with the construction plans plan check.

Provide note on Plans that fire sprinklers are required throughout and a fire sprinkler and fire alarm plan will be submitted at time of construction drawing plan check. It should be expected that the buildings are to have fire sprinklers.

The City notes this comment has been incorporated into the Project.

The CH zone “is intended to provide for professional office, retail, service- and tourist-oriented business activities located on/adjacent to State Highway 126, serving a community-wide/regional need under development standards which ensure compatibility and harmony with adjoining neighborhoods.” (FMC §6.04.0601(2)(D).) The Project as proposed is not consistent with the City’s CH zone’s intent for a mixed-use project. The Project could meet this intent by including at least a small commercial retail component that oriented toward State Route 126.

Not completed. The proposed property management and community room services for internal residential operations do not meet the City standard for the CH zone, which, as provided above, must “provide for professional office, retail, service- and tourist-oriented business activities located on/adjacent to State Highway 126, serving a community-wide/regional need”. The community center and managerial offices for Project residents only are not a small commercial retail component.

The City’s CBD zone implements the downtown specific plan which interprets the general plan for this area of the city. The downtown specific plan has been adopted to support and augment the standards for this zoning district. This zoning district is intended to be used primarily as a retail business center with a special emphasis on tourism, due to the unique qualities present in the CBD, that set it apart from all other commercial areas in the city. In this zone, commercial establishments are to be located to serve the residents of the city, as well as visitors to the area. The priority of this zone is the establishment and support of street-level retail commercial uses that will help ensure a lively pedestrian-oriented commercial district.” (FMC §6.04.0601(2)(B).) The Project as proposed is not consist with the intent of the City’s CBD zone, but the Project could meet this intent by including at least a small commercial component oriented toward State Route 126 to create a mixed-use project.

Not Completed. The proposed property management and community room services for internal residential operations do not meet the cited City standard for the CBD zone, which, as provided above, must include “commercial establishments are to be located to serve the residents of the city, as well as visitors to the area. The priority of this zone is the establishment and support of street-level retail commercial uses that will help ensure a lively pedestrian-oriented commercial district.” The community center and

managerial offices for Project residents only are not a small commercial retail component.

E. Architecture:

The Project includes soft stories with parking under the units. It is City staff's preference to not have soft stories because they do not perform well in earthquakes (e.g. 1994 Northridge earthquake). Redesign this component to remove the "soft stories". To properly consider this design as proposed a seismic study must be provided.

HCD Note: The specific reference for this requirement is not cited and it is unclear if this is connected to an applicable objective standard.

Seismic safety studies will be required and recommendations incorporated into any construction plans.

F. Floor Plan

Identify on Sheet A-3, that the laundry room will not be coin operated but a slide card and will be limited for use by residents only.

HCD Note: The specific reference for this requirement is not cited and it is unclear if this is connected to an applicable objective standard.

The City reiterates the comment above.

Building F on Sheet A-5 has some type of outdoor closet to a 2-bedroom unit. Explain this the proposed use of this closet.

The City notes this comment has been incorporated into the Project.

Comments Based on the New Plans Submitted May 10, 2022

Building Plans

Building Elevations Sheets A-8.1 through A-8.6 must label the Buildings to correspond to the Site Plan labels. References to "North," "South," "Middle" are difficult to follow as it relates to the overall site plan.

Elevations Sheet A-8.4 does not appear to match the Site Plan. Site Plan shows two parking stalls are located north of the trash enclosure, while the elevation shows other features.

Asphalt shingle roof materials are inconsistent with the objective standards of Chapter 4 of the Downtown Specific Plan. Specifically, asphalt shingle roofing is inconsistent with Building Design Criteria 6 (Section B, Chapter 4). Asphalt is not an allowed material in the CBD zone; and furthermore, does not meet the multi-dimensional criteria. The Project is therefore inconsistent with this objective standard.

The Architectural Design is not consistent with the Downtown Specific Plan, Chapter 4, Section B, 2, which specifically requires design features for a "Townhouse" style project to include front

entry stoops to first floor living space approximately 2-3 feet above street level. The Project is lacking these features and is therefore inconsistent with this objective standard.

The density proposed for each zoning area must be included on the Plans. The written Project Description includes a blended density for the entire project site. However, since no zone change is requested, the density must be calculated (and comply with the zoning standard) based on the area within each of the two zones separately.

The Project does not meet the setbacks requirements for the CH zone as provided in FMC Section 6.04.0615(A.), which requires a 10-foot setback in the front and 10-foot setbacks on the sides.

Project Plans violate these standards by including parking within the front setback (up to the property line) and structures within both of the side setbacks. The Project proposes 9 feet only on the west side and 5 feet 1.5" on the east side.

With dedications now shown, the plans must indicate the area that are to be privately maintained. This is required as part of the application checklist Section E5. Private maintenance areas are also required to be identified in accordance with FMC Section 6.04.2845(2.).

Concessions and Waivers

Sheet A-0.0 lists requested concessions, waivers, and parking concessions. The list is inconsistent with the Project Description narrative submitted with the application and must be reconciled.

Per Sheet A-0.0, the Project requests to reduce parking standards below the minimum parking ratios established under California Government Code Section 65915(P)(1). It is understood the Application includes a request for concession to further reduce the parking below the State minimum under California Government Code Section 65915(P)(1). However, the City notes that this Project proposed parking will create a shortfall of parking available to the residents of the development and to the surrounding community as Project residents will have to use existing street public parking, which is already significantly limited under existing conditions. Any conditions of approval for the Project will require a parking plan that requires the Project property manager to address all parking complaints generated as a result of the Project's underserved parking demands.

Should you have any questions please feel free to contact Brian McCarthy at (805) 946-1846 or via email at bmccarthy@fillmoreca.gov. You can also reach me at (805) 834-1084 or via email at kmcsweeney@fillmoeca.gov.

Sincerely,



FOR

Kevin McSweeney
Planning and Community Development Director

Attachments

City Engineer's redlined Preliminary Grading and Drainage Plan
Community Development Director redlined Architectural Plans

cc: David Rowlands, City Manager
Brian McCarthy, Senior Planner
David Smallwood, City Public Works Supervisor
Gar0 Kuredjian, City Police Chief

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

651 Bannon Street, Suite 400, Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
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July 23, 2024

Sharon Goei, Community Development Director
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Dear Sharon Goei:

RE: Gilroy 315 Las Animas Ave. Project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) previously provided a Letter of Technical Assistance relating to the housing development project proposed at 315 Las Animas Avenue (Project) on July 2, 2024 (enclosed). The purpose of this letter is to expand upon the technical assistance provided in the previous letter.

Permit Streamlining Act Completeness and Housing Accountability Act Consistency

As you are aware, the Permit Streamlining Act (PSA) provides that a local government must begin its review of a proposed development project with a written determination regarding the completeness of the submitted application for continued processing. This determination must be made within 30 calendar days of receiving the application, and the determination must be immediately transmitted in writing. In making that determination, a local government “shall be limited to those items actually required on the lead agency’s submittal requirement checklist.”¹

As you are also aware, in addition to the PSA application completeness review, the Housing Accountability Act (HAA) requires local governments to make determinations regarding a proposed housing development project’s consistency with any development standards. Specifically, if a local government considers a proposed housing development to be inconsistent, not in compliance, or not in conformity with an applicable development standard, it must provide the applicant with an explanation of the reason(s) for its determination within either 30 or 60 days (depending on project size) “of the date the application for the housing development project is determined to be complete.”²

¹ Gov. Code, § 65943, subd. (a).

² Gov. Code, § 65589.5, subd. (j)(2)(A)(i)-(ii).

The HAA defines “determined to be complete” as “the applicant has submitted a complete application pursuant to Section 65943,”³ (i.e., the PSA). In other words, the HAA distinguishes between the initial determination of whether an application is complete (and the associated timelines) under the PSA versus the subsequent determination of whether the project is consistent with applicable standards (and the associated timelines) under the HAA.

To date, the City has issued two incomplete letters for the Project. Certain comments in those letters that were outside the scope of the PSA completeness determination appear to focus on the Project’s consistency with various standards, akin to the analysis described in the HAA provision cited above. One example of an inconsistency determination comes from the City’s first incompleteness letter on January 11, 2024, which states that “[p]roposed utility locations are not consistent with City Standards.” It appears that the City has conflated this HAA consistency review item and others with the PSA completeness review. When a local jurisdiction improperly characterizes comments as incomplete items, the jurisdiction impermissibly raises the bar to achieving a complete application, in violation of the PSA.

To remedy this issue and avoid a violation of the PSA, the City must ensure that, in its next (third) application completeness review, its determination is focused solely on an assessment of whether the applicant has satisfied those items actually required on the lead agency’s submittal requirement checklist. Further, any item that is not identified in the initial incomplete letter cannot be requested in a subsequent incomplete letter.⁴ Any comments or questions about the Project’s consistency with development standards cannot be used as a basis for determining the completeness of the application and must be addressed as a subsequent matter.

Housing Accountability Act Disapproval

As the Project is a housing development project for very low-, low-, or moderate-income households per the HAA,⁵ the City is limited to the written findings described in Government Code section 65589.5, subdivision (d), in disapproving the project. Moreover, because the City did not have a substantially compliant housing element at the time of the Project’s preliminary application submittal per the previous letter, the Project is subject to the “Builder’s Remedy,” meaning the City may not disapprove the project for inconsistency with the City’s “zoning ordinance and general plan land use designation” pursuant to subdivision (d)(5).

³ Gov. Code, § 65589.5, subd. (h)(10).

⁴ Gov. Code, § 65943, subd. (a).

⁵ Gov. Code, § 65589.5, subd. (h)(3).

HCD understands that on May 20, 2024, the City Council voted to uphold the determination that the project application was incomplete. During that City Council meeting, there was some discussion about how to implement subdivision (d)(5). As a result, HCD wishes to clarify that under subdivision (d)(5), the City may not disapprove the project for inconsistency with either 1) the general plan land use designation or 2) the zoning ordinance. Therefore, should the City determine that the application is incomplete based on an inconsistency with either the general plan land use designation or zoning ordinance, this would constitute an effective disapproval of the project in violation of the HAA.

Conclusion

HCD remains committed to supporting the City of Gilroy in implementing state law and hopes the City finds this clarification helpful. HCD also reminds the City that HCD has enforcement authority over the PSA and HAA, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.⁶ If you have questions or need additional information, please contact David Ying at david.ying@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West", written in a cursive style.

Shannan West
Housing Accountability Unit Chief

Enclosure: Letter of Technical Assistance re: Gilroy 315 Las Animas Ave.
Project, July 2, 2024

⁶ Gov. Code, § 65585, subd. (j).

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



February 12, 2025

Sean Mullin, Planning Manager
Town of Los Gatos
Community Planning Department, Planning Division
110 E. Main Street
Los Gatos, CA 95030

Dear Sean Mullin:

RE: Town of Los Gatos – 980 University Avenue Project – Notice of Potential Violation

On August 30, 2024, the California Department of Housing and Community Development (HCD) issued a Letter of Technical Assistance (letter) (enclosed) to the Town of Los Gatos (Town) regarding compliance with the Permit Streamlining Act (PSA) (Gov. Code, §§ 65941.1, 65943) and the State Density Bonus Law (SDBL) (Gov. Code, § 65915). In the August 30, 2024 letter, HCD advised the Town that, under the PSA, the 90-day period for a developer to resubmit an application after an incompleteness determination resets with each incompleteness determination. However, on October 23, 2024, the Town informed an applicant for a development at 980 University Avenue (Project) that it interprets the PSA to provide a single 90-day period to achieve completeness and will treat applications not meeting this deadline as expired. As a result, and consistent with HCD's August 30, 2024 letter, HCD hereby notifies the Town that its failure to not reset the 90-day period after each incompleteness determination would be in potential violation of state housing law.

Background

HCD understands that the Project proposes to construct 68 townhouse units on the site, of which at least seven units (ten percent of the overall unit count) will be affordable to lower-income households. HCD also understands the applicant submitted a preliminary application for the Project pursuant to Government Code section 65941.1 on March 27, 2024, before resubmitting the preliminary application on April 5, 2024. HCD did not certify that the City's housing element was substantially compliant with state law until July 10, 2024. The applicant intends to make use of the provisions of the Housing Accountability Act (HAA) as amended by Assembly Bill 1893 (Chapter 268, Statutes of 2024) that went into effect on January 1, 2025.

HCD understands the applicant then filed a full development application for the Project on September 24, 2024, which was within the six-month statutory time period required by Government Code section 65941.1, subdivision (e), to maintain the vested rights conferred by the preliminary application. The Town determined the application to be incomplete on October 22, 2024, and informed the applicant the following day that it would continue to interpret the PSA to restrict applicants to a single 90-day period to achieve completeness. The Town further informed the applicant that it would treat applications not meeting this deadline as expired. Applicant would, therefore; have to achieve completeness by January 20, 2025. Although the Town and the applicant have mutually agreed to extend the time period, the Town maintains the position that there is only one 90-day review period.

90-Day Incompleteness Period under the Permit Streamlining Act (PSA)

Under the PSA, if an agency determines that the application for the development project is not complete pursuant to Government Code section 65943, the development proponent is required to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information.¹ HCD reminds the Town; however, that the 90-day deadline resets after each incompleteness determination made by the Town. A project with multiple incompleteness letters and responses may have multiple 90-day periods.

Imposing a single 90-day resubmittal period limits the completeness determination process to only one or two resubmittals, making the process more difficult for diligent applicants to benefit from the protections of the PSA's preliminary application process. The Town's incorrect interpretation of the PSA, namely that it allows an applicant only a single 90-day resubmittal period, is inconsistent with the intent of the PSA. The Town's interpretation was also expressly rejected in a recent Los Angeles Superior Court ruling which concluded "that when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond." (*Janet Jha v. City of Los Angeles, et al.* (Super. Ct. L.A. County, July 24, 2024, No. 23STCP03499), p. 24.)

Conclusion

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.

¹ Gov. Code, § 65941.1, subd. (e)(2).

Under Government Code section 65585, HCD must notify a local government when that local government takes actions that violate the HAA and the PSA and may notify the California Office of the Attorney General of those violations.

The City has until February 26, 2025, to provide a written response to this letter. HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

If you have any questions regarding the content of this letter or would like additional technical assistance, please contact David Ying at david.ying@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief

Enclosure: Town of Los Gatos – Saratoga Road Project – Letter of Technical Assistance (August 30, 2024)

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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August 30, 2024

Jennifer Armer, Planning Manager
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Dear Jennifer Armer:

RE: Town of Los Gatos – Saratoga Road Project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from Arielle Harris of Cox Castle (CC) on behalf of SummerHill Homes (SHH) on April 17, 2024 regarding the application of the Permit Streamlining Act (PSA) (Gov. Code, §§ 65941.1, 65943) and the State Density Bonus Law (SDBL) (Gov. Code, § 65915). The PSA governs the timing of development applications, while the SDBL allows certain housing developments to obtain incentives/concessions in development standards by providing affordable housing, among other provisions. The purpose of this letter is to provide technical assistance for the benefit of the Town of Los Gatos (Town), CC, and SHH regarding eligibility under the law.

Project Description and Background

HCD understands that the proposed project involves the construction of 155 units, of which 18 percent are affordable (28 units) to lower-income households, on an 8.82-acre site. On June 30, 2023, SHH submitted a preliminary application to vest rights for the project under the HAA, followed by a full application on December 15, 2023. The Town issued an invoice for the full application on December 19, which SHH paid the following day. CC has posed the following questions:

Question #1: When is an “application for a development project” deemed “submitted” under Government Code section 65941.1, subdivision (d)(1), where the local agency intake process does not offer a means of concurrent fee payment?

HCD understands that when development project applications are submitted to the Town, a Town staff person first checks to verify the appropriate type of permit being sought, then generates the invoice accordingly. Because this process requires action on the part of the staff person, it is not procedurally possible for an applicant to submit an application and associated fee at the same time. While in most instances this practice creates an insignificant delay, it is a matter of great concern to an applicant that is

attempting to submit a full application with the 180-day submittal window to maintain vesting under a Preliminary Application.¹ For the purposes of meeting PSA review deadlines for the full application², the Town considers the 30-day application completeness clock to have started when the invoice is paid, not when the application is submitted.

While it is reasonable for the Town to start its review of the project – and with it the application completeness clock – after its fees are paid, the inconsistent lag time between application submittal and invoice payment is concerning. The Legislature found and declared with the passing of the PSA that “there is 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”.³ The intent of the PSA is to ensure that applicants are provided clear instructions and that local jurisdictions are consistently processing projects in accordance with the specific timelines outlined in the statute to streamline development. Considering the current housing crisis in California, delays in permitting processes and approval times add constraints to the cost of residential construction. Therefore, compliance with the PSA is even more pertinent today to meet the urgent housing needs across California.

As mentioned above, it is critically important for an applicant to be able to submit a full application within the 180-day submittal window to maintain vesting under a Preliminary Application. The Town should explore modifying its intake procedures for development applications of this type to provide an option for the applicant to pay the fee associated with the type of application being sought. If the applicant has misidentified the type of application, the Town can subsequently charge or refund the applicant the difference between the fees. Alternatively, the Town might consider amending its municipal code or other adopted procedures to address the circumstance encountered by the subject project (i.e., establish that procedural delays for which the Town is responsible are not a basis to lose Preliminary Application vesting status).

Question #2: Does the 90-day deadline provided in Government Code section 65941.1, subdivision (d)(2), of the Permit Streamlining Act require the housing development project applicant to achieve “application completeness” within 90 days of the agency’s first incompleteness determination to avoid expiration of the preliminary application, or does it allow for multiple rounds of completeness review and resubmittals as long as the applicant responds within 90 days of each incompleteness determination, consistent with Government Code section 65943?

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-

¹ Gov. Code, § 65941.1, subd. (d)(1).

² Gov. Code, § 65943, subd. (a).

³ Gov. Code, § 65921.

and-forth process. Nothing in the subdivision explicitly precludes this. Furthermore, requiring a single 90-day review period would limit the completeness determination process to only one or two resubmittals, making the process more difficult for diligent applicants seeking to use the protections of the preliminary application system. 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). This interpretation is also inconsistent with a recent Los Angeles Superior Court ruling which concluded “that when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond.” (*Janet Jha v. City of Los Angeles, et al.*, (Super. Ct. L.A. County, 2024, No. 23STCP03499).)

Question #3: Can a housing development project applicant and a city or county mutually agree to an extension of the 90-day time limit provided in Government Code section 65941.1, subdivision (d)(2)?

Yes. As mentioned above, subdivision (d)(1) links its process to that of section 65943, which provides in its subdivision (d) that the timelines for submittal do not preclude “an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.” It logically follows that if a project is in a situation where section 65943 is applicable because the application is not complete, then the local government and the applicant should be able to extend the submittal timelines by mutual agreement. HCD encourages local governments and applicants to work together to successfully realize residential development projects.

Conclusion

In conclusion, while applications under Government Code section 65941.1, subdivision (d)(1), are deemed “submitted” upon submission of required materials and payment of applicable fees, cities should make it possible for applicants to submit all materials and payments concurrently to maximize efficiency. The 90-day review period for completeness determination under the PSA is not finite and, rather, resets for subsequent resubmittals, and when mutually agreed upon by both applicants and local governments, the 90-day time limit may be extended. HCD remains committed to supporting the Town of Los Gatos in facilitating housing at all income levels and hopes the Town finds this clarification helpful. If you have questions or need additional information, please contact David Ying at David.Ying@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief

Site Plan Comparison



SB 330 December 2023



May 2024



September 2024



January 2025

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