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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT - UNLIMITED JURISDICTION

YES IN MY BACK YARD, a California nonprofit corporation; SONJA TRAUSS, an individual; BEDROCK PROPERTIES GROUP, LLC, a California limited liability company; and 8217 WINNETKA, LLC, a California limited liability company;

Petitioners/Plaintiffs,

v.

CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; and DOES 1-25.

Case No.:

VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF; COMPLAINT FOR DECLARATORY RELIEF

[CCP § 1094.5; CCP § 1085; CCP § 1060 ; Gov. Code § 65589.5; Gov. Code § 65941.1; Gov. Code § 65943]

Petitioners and Plaintiffs YES IN MY BACK YARD, a California nonprofit corporation; SONJA TRAUSS, an individual; BEDROCK PROPERTIES GROUP, LLC, a California limited liability company; and 8217 WINNETKA, LLC, a California limited liability company (collectively "Petitioners") bring this action for a writ of mandate and declaratory relief against Respondents and Defendants CITY OF LOS ANGELES, THE CITY COUNCIL OF THE CITY OF LOS ANGELES, AND DOES 1-25 (collectively, "Respondents" or the "City"). Petitioners respectfully seek an order compelling Respondents to comply with California law — specifically, the Permit Streamlining Act ("PSA") (Gov. Code § 65943, *et. seq.*), the Housing Accountability Act ("HAA") (Gov. Code § 65589.5, *et seq.*) and the Housing Crisis Act ("HCA") (Gov. Code § 65941.1, *et seq.*) — as well as an order requiring the City to follow its own ordinances, regulations, executive orders, and guidelines. Petitioners also seek attorneys' fees and other relief specified below.

INTRODUCTION

The City's Politically Motivated Actions Blocking the Winnetka Project Violated State and Local Laws

1. This case demonstrates why the City of Los Angeles faces a deepening housing crisis. While the rate of those suffering from homelessness continues to rise to unprecedented levels, Respondents refuse to comply with the California Legislature's clear mandate to approve qualified affordable housing projects such as the one at issue in this case. Instead, the City continues to block needed housing projects in violation of state laws, as well as its own emergency declarations and departmental guidelines. The City's leaders have explicitly acknowledged the dire need for more housing and adopted several emergency declarations and related guidelines to facilitate the approval of housing projects. Unfortunately, however, the City's actions have not matched its rhetoric.

2. The project at issue here is precisely the type of development that citizens need to alleviate the shortage of affordable housing. Bedrock Properties Group, LLC ("Bedrock Properties") proposes to build 360 new rental units to be constructed on Winnetka Avenue in Canoga Park (the "Winnetka Project"), all of which meet the definition of "affordable housing"

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under state law. But rather than following the expedited procedure for approving affordable housing projects that the City had recently enacted, the City instead buckled to political pressure from "Not In My Back Yard" constituents and blocked the Winnetka Project. In so doing, the City abandoned its avowed commitment to housing, ignored the law, and cited demonstrably false and pretextual reasons for its decision to disapprove the project.

3. The City's actions violated state housing laws and City ordinances, executive orders and regulations in several respects. The laws at issue are somewhat technical and complex, but a review of the key facts makes it easy to see that the City broke the law and acted in bad faith.

4. After initially accepting Bedrock Properties' application and identifying it as an eligible project for expedited approval under the City's new Executive Directive 1 ("ED1," discussed below), the City later reversed course without a lawful basis for doing so.

5. The City also later erroneously claimed that the Winnetka Project was ineligible for the streamlined ED1 approval process because ED1 had been recently amended to exclude multi-family housing developments, such as the Winnetka Project, situated in single-family zones. But the law clearly provides that a developer's rights vest at the time the application for a development is submitted, meaning that the project was "locked in" to the rules in effect at the time – including ED1. The City, however, argued that its own executive orders did not qualify as an enforceable policy upon which a developer could rely and that state vesting rights did not apply to ED1, thumbing its nose at clearly established state law.

6. Based on the City's deliberate misinterpretation of state housing law, the City informed Bedrock Properties that it would be required to complete the ordinary, non-streamlined entitlement process. The City issued a new case number, and the Winnetka Project was essentially thrown to the back of the line, all while the City demanded thousands more in permit fees to process the 100 percent affordable project.

7. When apprised of the City's actions, the State of California intervened. The State issued an opinion letter stating that ED1 *did* in fact constitute an ordinance, standard, and/or policy in which a developer can obtain vesting rights. In other words, the State told the City that it

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was wrong, and that the City's decision to deprive the Winnetka Project of the benefit of the streamlined ED1 process was unlawful.

8. Notably, the City had also taken the position that ED1 rights did not vest in connection with a then-pending project on Ethel Avenue in Van Nuys. With respect to the Ethel project, the City's elected City Council conceded that ED1 rights had vested and, the City ultimately approved the Ethel project under the ED1 rules.

9. Faced with its untenable position that ED1 Rights vested in the Ethel Project but not the Winnetka Project, the City scrambled to manufacture a new rationale for blocking the Winnetka Project. At the eleventh hour, the City told Bedrock Properties that its ED1 vested rights and application had expired because *the City's own staff* had failed to sign the updated application form.

10. The City's rationale makes no sense. First, the City informed Bedrock Properties that its application had been removed from the ED1 track and issued a new case number, yet the City then attempted to deprive Bedrock Properties of its vesting rights for purportedly not completing the ED1 application that it had cancelled. Second, to preserve its rights in all respects, Bedrock Properties did indeed provide the requested information for the ED1 application, but the City used its own ministerial inaction (not signing the form) as a reason to disapprove the Winnetka Project. Third, the City had the power to accept an unsigned application as complete; it had just done so with respect to the Ethel project. Fourth, the City intentionally obfuscated the material needed to complete the applications by issuing three incomplete letters within the span of 90 days.

11. In summary, the City's actions defy the law, common sense, and basic notions of fair dealing. In appeasing the vocal NIMBY groups opposing affordable housing, the City chose political expediency over its duty to follow the law.

The City's Conduct Violates the Permit Streamlining Act, the Housing Crisis Act and the Housing Accountability Act

12. The City's actions are contrary to California's laws enacted to prevent local governments from blocking needed housing developments. One such statute is the **Permit**

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Streamlining Act (the "PSA"). The PSA establishes uniform procedural requirements for public agencies' intake of development project applications. Importantly, the PSA requires local governments to specify a "submittal requirement checklist" for prospective applicants; once the applicant submits the required information, the application is deemed complete (but not yet approved). During the substantive review of the project, the public agency may inquire about the details of the project or ask the applicant to elaborate on the information provided in the application. Such inquiries, however, do not alter the fact that the initial application is deemed complete and is ready to be processed under the applicable rules.

13. Here, Bedrock Properties provided all the required information for an Affordable Housing Referral Form ("AHRF") application in February 2023, which made the Winnetka Project eligible for expedited processing under ED1. Initially, the City determined that the Winnetka application was complete. But later, the City reversed course and claimed that the application was incomplete based on its demand for additional information and its determination that certain aspects of the development were "inconsistent" with City regulations. The City then used its erroneous determination that the Winnetka application was incomplete as the basis to halt the streamlined ED1 review of the project.

14. The PSA is clear. Once Bedrock Properties furnished the information required for the AHRF, the application was complete. The City cannot circumvent its obligation to process the application based on its finding that the project is "inconsistent" with regulations. The City's refusal to treat Bedrock Properties' AHRF application as complete — and refusal to process the Winnetka Project under the ED1 rules — is a violation of the PSA.

15. Respondents' actions are also in conflict with the **Housing Crisis Act** (the "HCA") and the **Housing Accountability Act** (the "HAA"). Under the HCA's vesting provision, a housing developer's project is "locked in" to the then-in-effect ordinances, standards and policies governing the approval of projects as soon as the preliminary application is complete. Imposing ordinances, standards and policies that were not in effect at the time a preliminary application is submitted is a violation of the HAA.

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16. When Bedrock Properties completed the preliminary application for Winnetka, it was eligible for the streamlined approval process under ED1. In fact, the City informed Bedrock Properties that Winnetka would be processed under ED1.

17. Later, however, the City amended ED1 to exclude affordable housing projects like Winnetka that are located in areas zoned for single-family housing. The City then claimed that Winnetka was no longer eligible for ED1 approval because ED1 had been amended. The City further found that ED1 did not constitute an ordinance, standard or policy that qualified for vesting under the HCA. The City then informed Bedrock Properties that it was no longer on the ED1 approval track and reassigned the Winnetka Project a new case number for ordinary, non-expedited processing.

18. This action effectively disapproved the same application that the City previously acknowledged would be processed under ED1's streamlined, expedited review procedures and blocked the applicant from advancing the Project unless it acquiesced to an entirely new discretionary application process. The City's refusal to process the application in accordance with its own rules and State law dealt Bedrock Properties a massive blow – derailing the Project from the risk-free ministerial fast track and instead subjecting it to the City's notoriously slow and uncertain public hearing, administrative appeal and California Environmental Quality Act ("CEQA") review procedures.

19. The City's attempt to deprive Bedrock Properties of the benefit of the ED1 approval process violates the HCA's vesting provision. In fact, as noted, the California Department of Housing and Community Development ("HCD") advised the City in a written letter that ED1 does indeed constitute an ordinance, standard or policy that qualifies for vesting under the HCA.

20. It is worth repeating that when faced with an identical situation in which the City's Planning Department also erroneously concluded that a different affordable housing project no longer qualified for expedited processing under the original ED1 because ED1 had been amended, the Planning and Land Use Committee of the City Council (the "PLUM Committee"),

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and ultimately the full City Council, deferred to HCD's opinion that ED1 rights had vested and rejected the Planning Department's recommendation.

21. As noted, when, few weeks later, the PLUM Committee and City Council considered Bedrock Properties' appeal of the Planning Department's determination that ED1 rights had not vested, the PLUM Committee faced a conundrum. As detailed below, rather than confront its debunked determination that ED1 rights had not vested (a mere matter of weeks after granting an appeal for a different affordable project with an identical fact pattern), the Planning Department invented a new reason to block the Winnetka Project. In direct violation of the PSA's clear timeframes, the City now claimed that Bedrock Properties' ED1 vesting rights had expired because it failed to complete the application within the 90-day window after the City (erroneously) requested more information before the Winnetka application could be deemed complete. In fact, Bedrock Properties had timely responded to the "incompleteness" letter. Again, the City claimed the response was deficient because *the City's own staff had failed to sign the application.*

22. As the record demonstrates, the City clearly denied the Winnetka appeal not because of the Applicant's lack of responsiveness, but rather because the political winds had shifted against applying ED1's ministerial expedited procedures to affordable housing projects in lower density zones. That is the only possible explanation for the City's diametrically opposed approach in approving one ED1 affordable housing appeal in an R1 zone on Ethel Avenue located in Council District 4 (represented by Councilmember Nithia Raman who supported the Ethel project and agreed with HCD's determination) while arbitrarily disapproving the Winnetka appeal with the same facts because it happened to be located in Council District 3 (represented by Councilmember Bob Blumenfield who expressed clear opposition to affordable housing projects in single family zones).

23. Regardless, the City's pretext for disapproving the Winnetka Project is entirely without merit. For one, the AHRF application was complete upon submission of the required materials in the first instance. Secondly, the City cannot be heard to complain that Bedrock Properties failed to complete the AHRF application for ED1 processing when the City had told

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Bedrock Properties that it was no longer eligible for ED1 approval. Third, Bedrock Properties *did* furnish the City with the information it (improperly) requested to complete the application; the only missing item was the City's signature.

24. In summary, the City violated the PSA by failing to acknowledge that the AHRF application was complete and then misapplied the HCA when it determined that ED1 rights had not vested. And worse, when the City realized it had no legal basis to deny the Winnetka Project the benefit of the streamlined ED1 approval process, it acted in bad faith and fabricated an erroneous reason to claim that the Winnetka application was incomplete. The City's failure to provide a lawful basis to disapprove of the Winnetka Project and its decision to impose policies that were not in effect at the time the preliminary application was submitted also constitute violations of the HAA.

PARTIES TO THE ACTION

25. Petitioner and Plaintiff Yes In My Back Yard ("YIMBY") is a § 501(c)(3) nonprofit corporation; YIMBY is the litigation affiliate of YIMBY Action, a § 501(c)(4) nonprofit corporation, whose membership cuts across socioeconomic lines, including members with very low, low, moderate, middle, and higher incomes ("YIMBY Members"). YIMBY's mission is to increase the accessibility and affordability of housing in California by enforcing state housing laws and by advocating for increased access to housing for households of all income levels, including for YIMBY Members who reside in, or wish to reside in, the City of Los Angeles. YIMBY has a direct and substantial interest in ensuring that Respondents' actions are in conformity with the requirements of law, that those requirements are properly executed, and that Respondents' duties are enforced. YIMBY Members, as well as the general public, will be adversely affected by the acts described herein and are aggrieved by the acts, decisions, and omissions of Respondents as alleged in this Petition and Complaint. YIMBY brings this Petition and Complaint on its own behalf and on behalf of others affected by Respondents' failure to comply with state law as alleged herein.

26. Petitioner and Plaintiff Sonja Trauss ("Trauss") is a natural person and a resident of the State of California, and she is the founder and director of YIMBY and a member of

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YIMBY Action. Trauss has a substantial interest in ensuring that Respondents' actions are in conformity with the requirements of law, that those requirements are properly executed, and that the public duties of Respondents are enforced.

27. Petitioner and plaintiff Bedrock Properties Group, LLC ("Bedrock Properties") is a California limited liability company with its principal place of business in Chatsworth, California. Bedrock Properties is the applicant for the housing development project at issue in this case.

28. Petitioner and plaintiff 8217 Winnetka, LLC is a California limited liability company with its principal place of business in Chatsworth, California. 8217 Winnetka, LLC owns the real property located at 8217 Winnetka Avenue in the Canoga Park area of the City of Los Angeles, which is the subject property at issue in this case.

29. Respondent and Defendant City of Los Angeles (the "City") is an incorporated municipality of the State of California.

30. Respondent and Defendant City Council of the City of Los Angeles (the "City Council") is the City's policy making, legislative, and quasi-judicial municipal body.

31. Petitioners are not aware of the identities of respondents/defendants DOES 1-25, who are responsible for the acts and omissions alleged herein and that caused damage to Petitioners; therefore, Petitioners will amend this Petition and Complaint when the true identities of DOES 1-25 are ascertained.

32. Petitioners are informed and believe that at all times mentioned in this Petition and Complaint, all respondents/defendants were the agents or employees of one of the defendants, and in doing the things alleged in this Petition and Complaint, were acting within the course and scope of that agency and employment.

JURISDICTION AND VENUE

33. Los Angeles County Superior Court has initial jurisdiction of the matters alleged herein pursuant to Code of Civil Procedure §§ 1094.5 and 1085, which authorizes the Court to issue a writ of mandate.

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34. Venue is proper in this Court because the entire controversy occurred in Los Angeles County, and Respondents are situated in Los Angeles County. (Code Civ. Proc. §§ 394 & 395.)

35. This action is timely because it is brought within 90 days of a final action on a housing development project application. (Gov. Code § 65589.5(m).)

36. Petitioners performed any and all conditions precedent to filing this action to the extent required by law and exhausted all available administrative remedies.

STATEMENT OF FACTS

California's Housing Crisis

37. In enacting the Housing Accountability Act, the Legislature found and declared that California "has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives . . . despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels." (Gov't Code § 65589.5(a)(2)(A)(J).)

38. As a result of the housing crisis, Californians are being denied the opportunities for housing security and homeownership that were afforded to previous generations. Many middle- and lower-income families devote more than half of their take-home pay to rent, leaving little money to pay for transportation, food, and healthcare.[1] Unable to set aside money for savings, these families are also at risk of losing their housing in the event of a personal financial setback, and housing insecurity in California has led to a mounting homelessness crisis.[2]

Los Angeles' Housing Emergency

[1] California Department of Housing and Community Development, *California's Housing Future: Challenges and Opportunities: Final Statewide Housing Assessment 2025* (2018), p. 27, *available at* https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf.
[2] *Id.* at pp. 3, 48-50.

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39. The adverse effects of California's housing crisis are nowhere more apparent than in the City of Los Angeles. The number of unhoused people in the City has nearly doubled in the past decade, with the number of unhoused families increasing by 238 percent since 2007. Although the City represents less than 10 percent of the population of California, 25 percent of California's unsheltered population reside in the City. The number of unsheltered people in the City of Los Angeles is approximately 18 times higher than New York City and 14 times higher than Chicago.

40. To address this crisis, on December 12, 2022, the Mayor of Los Angeles, Karen Bass, issued a Declaration of Local Emergency ("Declaration") that stated, the "impacts of a lack of housing warrant and necessitate that I declare the existence of a local emergency." (Attached hereto as **Exhibit A**.) The Declaration, amongst other things, directed all City agencies, in coordination with the City Council, to take steps to provide "[r]egulatory relief from other jurisdictions and within Los Angeles City agencies to create flexibility to address the crisis." The very next day, the City Council adopted the Declaration.

41. In response to the Declaration, on December 16, 2022, Mayor Bass issued Executive Directive No. 1, entitled "Expedition of Permits and Clearances for Temporary Shelters and Affordable Housing Types." (Attached hereto as **Exhibit B**.) ED1 directed all City departments to develop plans to provide a ministerial, streamlined review process for any application that proposes a 100 percent affordable housing development project.

42. On February 9, 2023, the General Managers of the Planning Department, Building and Safety, and Housing issued "Implementation Guidelines for Executive Directive 1: Expedition of Permits and Clearances for Temporary Shelters and Affordable Housing Types" ("Guidelines"). The Guidelines summarized the eligibility criteria and exceptions, general procedures, project review timelines, filing requirements, City Planning fees, and development standards for any project seeking approval under ED1.

43. The Guidelines excluded any 100 percent affordable housing projects with fewer than five units, any project that required a legislative action (e.g., general plan amendment or zone change), any project that required a deviation from development standards (e.g., variance or

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specific plan exception), any project that required a subdivision map or coastal development permit, and any project that proposed for-sale units. The Guidelines did not include any other eligibility requirements.

44. The Guidelines explained that "to implement ED 1, all ED 1 projects will be reviewed through the ED 1 Ministerial Approval Process. The ED 1 Ministerial Approval Process provides ED 1 projects with project review streamlining enhancements, shortened review periods at all stages of the City Planning project review process, and reduced filing fees."

45. The Guidelines also explicitly informed future applicants of their vesting rights under a state law, the Housing Crisis Act. The Guidelines explained that "housing projects qualify to submit an optional HCA Vesting Preliminary Application, which "locks in" local planning and zoning rules at the time the complete application is submitted. To initiate a request for HCA vesting rights, submit a Housing Crisis Act Vesting Preliminary Application (CP-4062) Form and the required materials through City Planning's Online Application Portal."

46. On June 12, 2023, Mayor Bass issued an amended version of ED1 ("Amended ED1"). Amended ED1 contained an entirely new eligibility requirement that was not included in ED1 or in the ED1 Implementation Guidelines. Specifically, Amended ED1 excluded any 100% affordable housing project "located in a single family or more restrictive zone."

47. In the six-month period between when ED1 and Amended ED1 had been issued, 48 affordable housing project applications had been filed with City Planning. The 48 projects proposed a total of 4,232 new affordable housing units, enough units to house roughly 10 percent of the City's unhoused population.

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The Winnetka Affordable Housing Project

48. The proposed housing development project at issue in this case includes a new seven-story multi-family residential building with 360 new rental units with associated parking, open space, and ancillary uses. The Winnetka Project proposes to restrict 100 percent of the units as affordable, including 287 units reserved as affordable for low-income households with incomes between 50 percent and 80 percent of area median income ("AMI") and 72 units that would be reserved as affordable for moderate income households with incomes between 80 percent and 120 percent of AMI (with one manager's unit that would not be income-restricted).

49. The Winnetka Project is proposed over two different parcels at 8217 Winnetka Avenue – along one of the San Fernando Valley's major corridors – in the Canoga Park area of the City of Los Angeles ("Project Site"). Both parcels are designated "Low Medium II Residential" in the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan. Although both sites are designated Low Medium II Residential in the Community Plan, the site is split zoned, with one parcel zoned RA-1 for single-family and the other RD2-1 for multi-family.

50. The Project Site is just under one and a half acres in size and is developed with several vacant buildings that were formerly used as a private elementary school and day care center. The Project Site is located within a designated "Transit Priority Area" due to its location within one-half mile of a major transit stop. The parcels to the north of the site are developed with commercial uses including a bank, gas station, convenience store, and hotel. To the east is a public elementary school, Winnetka Avenue Elementary School. The parcel is surrounded on the south and west sides by multi-family residential uses.

The Permit Streamlining Act

51. The state Permit Streamlining Act, codified at Gov. Code § 65920, et seq., is intended to expedite decisions on development projects. The PSA requires public agencies to compile lists that specify the information that will be required from an applicant for a Formal Application for a development project (Gov. Code § 65940); includes strict timelines for agencies to determine whether an application is complete (Gov. Code § 65943); and provides a process for

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an applicant to appeal a completeness determination wherein an agency must make a final determination on the appeal within 60 days (Gov. Code § 65943).

52. Any incompleteness determination "shall be limited to those items actually required on the lead agency's submittal requirement checklist." (Gov. Code § 65943.)

53. Upon a resubmittal of the application made in response to a written incompleteness determination, "a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." (*Id.*) However, an agency "shall not subsequently request of an applicant any new or additional information" that was not specified in the initial "exhaustive list" of incomplete items. The PSA also confirms that it "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." (*Id.*)

54. Critically, only *after* a public agency accepts an application as complete, the agency "may, in the course of *processing* the application, *request* the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application." (Gov. Code § 65944.)

55. The PSA does not require that an application establish that the project is consistent with a jurisdiction's zoning code and general plan. Rather, the PSA merely requires an applicant to submit materials that are actually required on an agency's submittal list. Although an agency may "*request* the applicant to clarify, amplify, correct, or otherwise supplement the information," any such "corrections" are not mandatory. Significantly, such requests for "corrections" may only be made "*[a]fter* a public agency accepts an application as complete." (Gov. Code § 65944.)

56. In summary, the PSA prescribes a process by which local governments collect information to *begin* processing an application. The PSA ensures that a local government's process is transparent and prevents the local government from "moving the goal posts." And importantly for this case, the PSA makes clear that the applicant need only provide the information necessary to start the application process and not all the information necessary to act on the project, and certainly not information necessary to *approve* a project.

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The Housing Crisis Act (SB 330)

57. In 2019, the Legislature enacted the Housing Crisis Act, also known as SB 330. According to the Senate Floor Analyses for the Housing Crisis Act, the purpose of the bill was to prohibit "the most egregious practices" by local governments that prevent the development of new housing. The HCA added a new "preliminary application" process to the PSA designed to "stop[] them from changing the rules on builders who are in the midst of going through the approval process."

58. Gov. Code § 65941.1(a) allows a housing development applicant to submit a preliminary application that "vests" the development standards that are in effect at the time a complete preliminary application is submitted. Housing development projects are *only* subject to the "ordinances, policies, and standards adopted and in effect when a preliminary application . . . was submitted." (Gov. Code § 65589.5(o)(1).) Consequently, the HCA's vesting provision prevents local governments from changing the rules after the housing development application has been submitted.

59. The HCA defines "ordinances, policies, and standards" broadly to include "general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and *any other rules, regulations, requirements, and policies of a local agency* . . . ." (Gov Code § 65589.5(o)(4).)

60. To maintain vesting rights, an applicant must submit a formal application "that includes all of the information required to process the development application" within 180 calendar days after submitting a preliminary application. (Gov. Code § 65941.1(d)(1).)

61. However, the HCA also recognizes that the PSA is an iterative process, often with multiple rounds of formal application submittals until an application is deemed complete. The HCA therefore goes on to state that if a local government determines that the formal application "is not complete pursuant to Section 65943," the applicant must "submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information." (Gov. Code § 65941.1(d)(2).) If the applicant "does not submit this

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information within the 90-day period, then the preliminary application shall expire and have no further force or effect." (*Id.*)

The Housing Accountability Act

62. The HAA provides a process for local governments to determine whether a project is inconsistent with applicable code standards, which occurs *after* an application is complete. For projects with more than 150 units, such as the one at issue here, the HAA states that a written compliance documentation shall be provided "[w]ithin 60 days of the date that the application for the housing development project is determined to be complete" pursuant to the PSA. (Gov. Code § 65589.5(j)(2).)

63. Although inconsistency with local development standards may be a reason to disapprove an application in some circumstances, inconsistency is not a valid basis for deeming an application incomplete or refusing to process an application.

64. In response to local governments' attempts to circumvent the requirements of state law and deny housing projects by refusing to process applications, the California Department of Housing and Community Development ("HCD") has issued letters to cities to explain that finding an application incomplete based on a purported code inconsistency violates both the PSA and the HAA.

65. HCD has explained that a code-compliance comment "cannot be used as a basis for determining the completeness of the application" and that 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." (*See, e.g.,* HCD Notice of Violation issued to City of La Cañada Flintridge, CA on June 8, 2023, and attached as **Exhibit C**; HCD Letter of Technical Assistance issued to Fillmore, CA on August 24, 2023, and attached as **Exhibit D**.) HCD notes that local governments must "properly differentiate[ ] between these separate components of the review process" to ensure that "consistency review does not become a barrier to achieving an otherwise complete application." (*Id.*)

66. The HAA also limits the ability of local governments to disapprove affordable housing development projects that comply with applicable, objective general plan, zoning, and

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subdivision standards and criteria; impose conditions that a project be developed at a lower density; or impose conditions that would have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households. (Gov. Code 65589.5(d); (i); (j).)

67. The term "disapprove" is defined as any instance in which an agency "[v]otes 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." (Gov. Code 65589.5(h)(6).)

68. In addition, any instance wherein a local government "required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted" constitutes an HAA violation. (Gov. Code 65589.5(k)(1)(A)(i)(III).)

69. As a further means to achieve the twin goals of encouraging the development of needed housing and discouraging local governments from unlawfully disapproving applications to build needed housing, the HAA imposes the burden of proof on the local government, rather than the applicant, to demonstrate that its action complied with the HAA. The HAA emphatically states that a City "shall bear the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5." (Gov. Code § 65589.6.)

70. The Legislature has also made clear that any ambiguities must be resolved in favor of a housing project, stating that the policy of California is that its housing laws "should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Gov. Code § 65589.5(a)(2)(L).)

Submission of the Winnetka Project Preliminary Application

71. Less than three weeks after Mayor Bass issued ED1, which directed all City agencies to provide a streamlined ministerial review process for 100 percent affordable projects, Bedrock Properties met with the Planning Department to discuss a proposed affordable housing project at 8217 N. Winnetka Avenue. Because the Department's ED1 Implementation Guidelines had not yet been issued, the Department instructed Bedrock Properties to work with the

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Department's Affordable Housing Services Section ("AHSS") to determine the eligibility requirements.

72. Bedrock Properties submitted an Affordable Housing Referral Form ("AHRF") electronically to AHSS on February 7, 2023, and fees were paid on February 27 after an invoice was sent. According to the City and as described in the Department's Appeal Recommendation Report, the purpose of AHSS's review of the AHRF "is to confirm the Project's consistency with regulations related to issues including but not limited to: the overall unit count, needed affordable unit amounts, any applicable transit qualifiers, and requested development incentives or waivers, such as those related to the State Density Bonus Law (Gov. Code Sec. 65915)."

73. One month after the AHRF was submitted, Bedrock Properties submitted a preliminary application for the 100 percent affordable 360 unit housing development project 8217 N. Winnetka Avenue pursuant to state law. Bedrock Properties paid the invoice for the preliminary application on March 15, 2023.

74. On March 22, 2023, the City determined the preliminary application was complete, confirming that under the HCA the project could only be subjected to the ordinances, policies, and standards adopted and in effect as of the date it was submitted and the appropriate fees were paid.

75. On June 12, 2023, nearly three months *after* Bedrock Properties obtained vesting rights for the Project, Mayor Bass issued Amended ED1 that prohibited streamlined ministerial processing for any project located in a single-family zone.

76. On June 15, 2023, nearly four months after Bedrock Properties submitted the AHRF, AHSS finally completed its review and signed the AHRF for the project. The AHRF had checked the box identifying the project as eligible for ED1 processing and AHSS staff signed off on the form.

The Project Formal Application Submittal

77. A week after finally receiving the signed AHRF, on June 23, 2023, Bedrock Properties submitted a formal application under the PSA for the Project. The Planning Department created an "administrative review" application case number for the submittal,

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confirming the applicability of the ED1 expedited ministerial review process (Case No. ADM-2023-4274-DB-VHCA-ED1).

78. On June 30, 2023, the Planning Department sent a letter entitled "Status of Project Review - Application Incomplete and Case Processing on Hold." The letter stated that the submitted formal application was incomplete, largely because there were slight discrepancies between the project details described in Bedrock Properties' February 23 AHRF submittal and the June 23 formal application submittal. For example, the AHRF proposed a building height of 79 feet, while the formal application proposed a building height of 80 feet. The letter demanded that the AHRF and formal application be made consistent, suggesting that the applicant submit a new AHRF to AHSS for review (a process that previously took four months).

79. A little over a week later, the Planning Department sent Bedrock Properties a new letter (the "Denial Letter"). The Denial Letter completely changed the City's course, and now stated that the proposed Project was no longer eligible for ED1 processing at all "[p]er the revised Executive Directive 1 (ED1) issued by Mayor Karen Bass on June 12, 2023." The Denial Letter stated that the Project would be subject to the eligibility requirements of Amended ED1 even though the Project had obtained vesting rights nearly three months before Amended ED1 was issued. The Denial Letter instructed Bedrock Properties to again contact AHSS to "discuss other project review options or to revise the Affordable Housing Referral Form for the project."

80. On August 4, 2023, the Planning Department issued a third letter entitled "Second Status of Project Review: Application Incomplete and Case Processing on Hold." This new incompleteness letter was not in response to an application resubmittal, but rather appeared to be in response to the City's unilateral and forced conversion of the Project from an administrative review process to a discretionary review process.

81. The second incompleteness letter stated that the prior application "will be considered converted as of July 6, 2023, to a regular entitlement process" and the Planning Department gave the Project a new application case number (Case No. CPC-2023-4274-DB-PHP-VHCA). The second incompleteness letter confirmed the City's position that "the project does not qualify for ED1 processing as stated in our letter dated July 6, 2023."

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82. The second incompleteness letter further stated that, because the City would no longer ministerially process the application, the project would require Planning Commission review and environmental review. The letter demanded the submittal of new discretionary application materials that were not identified in the first incompleteness letter, and also demanded payment of $35,000 in additional permit fees.

83. Far from a mere technical about face, the forced conversion of the Project application from a no-risk, ministerial, expedited ED1 process to a discretionary case involving public hearing(s), administrative appeals and California Environmental Quality Act ("CEQA") review had massive timing and risk implications for the Applicant.

84. Bedrock Properties immediately inquired how to appeal the Planning Department's forced conversion to a discretionary entitlement process and refusal to process the ministerial application submittal.

The PSA Appeal

85. On August 23, 2023, Bedrock Properties submitted the appropriate appeal documents to appeal the Planning Department's incompleteness determination to the City Council pursuant to the PSA's appeal procedures in Gov. Code § 65943(c). The appeal specifically requested that the City rescind its Denial Letter and second incompleteness letter, reinstate the original ED1 application, and process the ED1 application according to the ED1 provisions that were in effect at the time the preliminary application for project was submitted as required by the HCA and HAA.

86. Bedrock Properties' appeal explained how the applicant had spent over six months working with the City to develop a project that was consistent with ED1, and that the Planning Department's decision to change the rules in the middle of the approval process was antithetical to the HCA's preliminary application process.

87. The Appeal letter explained that "as a matter of State law the HCA Preliminary Application filed for the Project grants vesting protections that require the City's continued ED 1 processing of the Case Filing, as the Project became vested prior to the issuance of the Revised ED 1." Further, the letter stated that "the discontinuation of ministerial case processing efforts by

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DCP, and the forced conversion of the case to a discretionary City Planning Commission case, the City has effectively denied this 100% affordable housing Project's ministerial Case Filing."

88. In September 2023, the Planning Department issued a report and recommendation in response to the appeal. The report explained that the Department was not disputing that vesting rights under the HCA were obtained *before* Amended ED1 was issued – but argued that ED1 "is not the equivalent of an ordinance, policy, standard, planning rule, or zoning rule," and there is no ability to "vest" ED1's ministerial processing provisions. The report stated the Department's position is that vesting ED1 "is beyond the authorization of the HAA or Government Code Section 65941.1."

89. As a matter of law, the Planning Department's report is simply wrong. As a letter from HCD explains (discussed below), ED1 constitutes an "ordinance, policy or standard" that vests upon the submission of a preliminary application. In other words, when Bedrock Properties submitted its AHRF for the Winnetka Project, its ED1 rights vested.

90. Although the City's Denial Letter and second incompleteness letter stated that the ED1 application no longer existed and was forcibly converted to a discretionary application on July 6, and even though an appeal of those decisions was still pending, Bedrock Properties wanted to ensure that the project's Preliminary Application did not expire. As a precautionary measure, on September 28, 2023, Bedrock Properties responded to the City's incompleteness letter within 90 days – even though the City insisted that the ED1 application that was the subject of the first incompleteness letter no longer existed. The resubmittal addressed the minor inconsistencies between the AHRF and formal application that the City had identified.

The Ethel Project is Granted Vesting Rights

91. The Project at issue in this case was not the only 100 percent affordable project that the City forced into a discretionary approval process due to Amended ED1. For example, another project at 5501 North Ethel Avenue was also deemed incomplete under the PSA and deemed ineligible to vest ED1's provisions. That incompleteness determination and forcible conversion was also appealed pursuant to the PSA.

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92. Prior to the City's action on the Ethel Avenue appeal, HCD sent the City a letter of technical assistance addressing the ability to vest ED1 ministerial processing. (Attached hereto as **Exhibit E**.) HCD's letter stated that: "The central question between the City and the Applicant is as follows: Is an executive directive one of the rules, regulations, requirements, and policies that vest upon submission of a complete Preliminary Application? The answer is 'yes.'"

93. HCD's letter further clarified that "ED1 is not excluded from the expansive HAA definition of 'ordinances, policies, and standards'" and is therefore eligible for vesting under the HCA. Thus, HCD confirmed that "an applicant that submitted a complete preliminary application at a time when ED1 did not exclude single-family or more restrictive zones may proceed under the previous ED1 regulations throughout the entitlement process."

94. On September 19, 2023, the Planning and Land Use Management Committee (PLUM) of the City Council held a hearing on the PSA appeal for the Ethel Avenue project. Planning Department staff repeated its position that ED1 policies and procedures were not eligible for vesting under the HCA and HAA. Despite the Department's report and recommendation, PLUM granted the appeal and determined that the Ethel Avenue Project *could* be processed under the ED1 ministerial approval process. The City Council later upheld PLUM's decision.

95. On December 18, 2023, the City issued a letter stating that the Ethel Avenue Project was consistent with ED1 and issued an approval of the Project. (Attached hereto as **Exhibit F**.)

96. The City is now defending its decision to grant the Ethel Avenue Project its rights to ED1 processing and the City's approval of the project in a related case, *New School for Child Development, et. al. v. City of Los Angeles, et al.*, LA Sup. Court Case No. 23STCP04109.

The Project PLUM Hearing

97. A few weeks later, PLUM held a hearing on the Project at issue in this case, which raised identical issues to the Ethel Avenue project. PLUM members asked whether HCD's letter of technical assistance was limited only to the Ethel Avenue project. City staff responded that

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HCD's letter was issued specifically for the Ethel Avenue project, but HCD's letter "does depict and describe basically the situation the Project is in that's before you today."

98. City staff apparently forgot that just hours before the PLUM hearing, HCD had emailed City staff and PLUM members stating that this project and the Ethel Avenue Project "address the same question" and specifically referenced HCD's earlier letter to confirm that a project *can* vest ED1 processing under state law. HCD explicitly told the City that "HCD urges the City to apply the law evenly across all ED1 projects and allow projects vested by the preliminary applications to be processed under the "ordinances, policies, and standards" in effect when the complete preliminary application was submitted."

99. PLUM members also asked whether the applicant had addressed any of the incomplete items that had been identified. Department staff wanted to "clarify for the record with regard to the status of the incomplete application. The applicant has not submitted the required materials for this Project to be processed *as a discretionary application*, which would include the environmental analyses. And so *those are the components that continue to be missing* from the file." (Emphasis added.) These purported "missing" components, of course, would not be required at all if the Project were processed ministerially pursuant to ED1.

100. At the conclusion of the hearing, despite *granting* a nearly identical appeal just a few weeks earlier and despite HCD's plea to treat all projects equally, PLUM voted to deny the appeal and deny the Project vesting rights to ED1 processing.

101. On October 12, 2023, HCD wrote a *new* letter of technical assistance specific to this Project. (Attached hereto as **Exhibit G**.) Just as staff had acknowledged during the PLUM hearing, the letter explained HCD "has already issued technical assistance on this matter" and that the City "has not presented any new information that would change HCD's guidance." HCD stated that to "the extent that the appeals for the Winnetka Project, Wilbur Project, or any other ED1 projects address the same question raised by the project located at 5501-5511 N. Ethel Avenue, the technical assistance provided in HCD's September 14, 2023, letter applies."

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The Council Hearing and New Department Rationale

102. The day after HCD issued its new letter, the full City Council held a hearing on the appeal.

103. Petitioners YIMBY and Trauss participated in the appeal, including by providing written comments prior to the hearing urging the City to grant the appeal, recognize the project's vesting rights, and approve the project ministerially as required by law.

104. Faced with HCD's clear directive that the Project *could* vest ED1 processing under the HCA, in addition to the City's granting of a nearly identical appeal for the North Ethel Avenue project, the Planning Department needed to invent a new rationale to support PLUM's recommendation to deny the appeal – especially given the City Council's incompatible decision in the Ethel case.

105. While giving its oral presentation to City Council, Department staff for the first time argued that the Project's vesting rights (which the Department previously refused to even acknowledge existed) had now instead expired because the applicant did not submit all of the information identified in the City's first incompleteness letter that was sent on June 30, 2023 within 90 days as required by the HCA.

106. The Department invented this new rationale despite the fact that the City's second incompleteness letter sent on August 4 stated that the ED1 application no longer existed, that the ED 1 application "will be considered converted as of July 6, 2023, to a regular entitlement process," and that the application was being given a new application case number "as of July 6."

107. Perhaps just by pure coincidence, the City's August 4 incompleteness letter, which identified new "missing" discretionary application materials, was sent just within the PSA's 30-day incompleteness determination deadline counting from the City's July 6 forced conversion date.

108. The Department had repeatedly made clear its position that the ED1 application, which was the subject of the June 30 first incompleteness letter, was no longer active. Yet now, for the first time during its presentation to the City Council, the Planning Department took the

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position that the application *was* active, and the *applicant* had failed to timely respond to their June 30 first incompleteness letter.

109. Although the Department apparently believed that the Project's vesting rights had been expired since September 29, Department staff decided to keep this information a secret during the October 3 PLUM hearing, and neglected to mention this analysis in its staff report. Instead, Department staff thought the proper venue to spring this news on the applicant was during their oral presentation at the October 13 City Council hearing.

110. Department staff made this assertion even though the applicant ***did*** submit the requested information on September 28, within 90 days of the June 30 first incompleteness letter. Department staff had just acknowledged at the PLUM hearing that the application was only missing "materials for this Project to be processed as a *discretionary* application" (such as CEQA materials which are not applicable to a ministerial ED1 application). Yet now, for the first time during the hearing, Department staff changed course.

111. Department staff now asserted that, although the applicant had submitted an updated AHRF as requested in the June 30 incompleteness letter, the AHRF was not signed by the Department's AHSS staff. Thus, because *the City's own staff* did not sign the AHRF to confirm whether the Project complied with the Code, the *applicant* lost its rights under state housing law.

112. Incredibly, the Department stated that the applicant has 90 days – and 90 days only – to complete the application to the agency's satisfaction, or else the preliminary application expires. The Department acted as if its hands were tied, stating that "if we had received these documents even one or two days in advance of the September 28th deadline, we could have expedited the review."

113. As result of the City's own staff not signing the AHRF, the Department's new position was that the Project's vesting rights – which until that day the Department refused to acknowledge at all – expired. This is despite the fact that City staff *did* accept an unsigned AHRF for the Ethel Avenue Project as sufficient to complete that application.

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114. The Department's position also fails to acknowledge that once an applicant resubmits an application in response to an agency's incompleteness determination, a "new 30-day period shall begin" wherein the agency must make another completeness determination. (Gov. Code § 65943.) The preliminary application provision specifically references this iterative process and states "[i]f the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information." (Gov. Code § 65941.1(d)(2).) In other words, each time a new written completeness determination is made, the HCA provides an applicant with a *new* 90-day period to respond before vesting rights expire.

115. Regardless, based on the Planning Department's newly invented rationale, the City Council ultimately voted to unanimously deny the appeal, deny the Project's vesting rights to ED1 ministerial processing, and effectively disapprove the project by cancelling the ministerial application and imposing a time intensive, risky and costly discretionary approval process and increased fees that has a substantial adverse effect on the viability and feasibility of this one hundred percent affordable housing development project.

FIRST CAUSE OF ACTION

Writ of Mandate - CCP § 1094.5 and/or § 1085; Violation of Permit Streamlining Act ("PSA")

Gov. Code § 65920

(Against All Respondents)

116. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 115 of this Petition and Complaint.

117. Petitioners, YIMBY Members, and the public each have beneficial interests that have been, and will further be, severely injured and adversely affected if Respondents' actions are not set aside and invalidated, and if Respondents' interpretation of the requirements of the PSA are allowed to be enforced against Petitioners, YIMBY Members, and others similarly situated. Petitioners' interests include ensuring that Respondents comply with state laws requiring that they timely process decisions on development projects, particularly housing development projects to

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address the housing needs of California residents; ensuring that Respondents' actions are in conformity with the requirements of state law; and having those requirements properly executed and their public duties enforced. Petitioners have a clear, present, and legal right to Respondents' performance of their legal duties as described herein. Respondents have failed to perform their duties.

118. The PSA requires public agencies to compile lists that specify the information that will be required from an applicant for a development project, and it includes strict timelines for agencies to provide an "exhaustive list" of items that were not complete and prohibits an agency from requesting new information that was not on the initial list. (Gov. Code § 65943(a).)

119. The PSA's process is strictly informational and is distinct from a substantive review of the project for consistency with code requirements. The City's Second Status of Project Review violated the PSA in two ways. First, the "incompleteness" letter included comments related to inconsistency with ED1 that were inaccurately identified as "incomplete" items. Moreover, the City continued to refuse to accept the application as complete based on a missing signature from AHSS staff on the AHRF. By the City's own admission, AHSS staff reviews the AHRF to "*confirm the Project's consistency with regulations* related to issues including but not limited to: the overall unit count, needed affordable unit amounts, any applicable transit qualifiers, and requested development incentives or waivers, such as those related to the State Density Bonus Law (Gov. Code Sec. 65915)."

120. The applicant submitted a complete AHRF, and all that was "missing" was the City's determination regarding project consistency, which is outside the scope of the PSA's provisions. As confirmed by HCD, when an agency improperly characterizes a determination of project consistency as an "incomplete item," the jurisdiction impermissibly demands more information than necessary to achieve a complete application, in violation of the PSA. Second, the City's Second Status of Project Review letter impermissibly demanded the submittal of new information and new fees that were not identified in the "exhaustive list" of incomplete items in the First Status of Project Review letter, in violation of the PSA.

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121. The City refused to process an application based on a substantive decision regarding project compliance with ED1 and attempted to unilaterally cancel the ED1 application and force the Project into a discretionary approval process. This PSA violation is an undue constraint on the Project, and respondents failed to carry out a ministerial duty to accept and process a complete development application.

122. The HCA added a preliminary application process to the PSA specifically for housing development projects, and it states that a Preliminary Application shall be deemed complete upon providing certain specific information. A preliminary application remains valid so long as an applicant responds to a development application incompleteness determination within 90 days after receiving the determination.

123. Respondents have refused to recognize the project's vesting rights for months and stated for the first time during the hearing on the PSA appeal that the project's vesting rights had expired, despite the fact that Bedrock Properties had responded to Respondents' incompleteness determinations within 90 days to ensure that the preliminary application remained valid.

124. Respondents' refusal to accept a development application based on purported noncompliance with ED1, respondents' forced conversion of the ED1 application to a discretionary application, and Respondents' repeated statements that ED1's ministerial processing policies cannot be vested all demonstrate a clear effort by Respondents to avoid providing Petitioners, YIMBY Members, and others similarly situated the protections of the HCA's state-mandated vesting rights.

125. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law to challenge the Respondents' actions, and a writ of mandate under Code of Civil Procedure § 1094.5 and/or § 1085 is the prescribed remedy for violations of this type. Petitioners have performed all conditions precedent to the issuance of a writ of mandate. Petitioners seek an immediate stay or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to perform their legal duties under the PSA, including with respect to the preliminary application and development application for the proposed Project.

SECOND CAUSE OF ACTION

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Writ of Mandate - CCP § 1094.5 and/or § 1085; Violation of Housing Accountability Act (HAA) Gov. Code § 65589.5

(Against All Respondents)

126. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 125 f this Petition and Complaint.

127. Petitioners assert that the disapproval of the Project is invalid because Respondents abused their discretion by not proceeding in the manner required by law, issuing a decision unsupported by the findings, and issuing findings that are unsupported by the evidence.

128. Petitioners, YIMBY Members, and the public each have beneficial interests that have been, and will further be, severely injured and adversely affected if Respondents' actions are not set aside and invalidated, and if Respondents' interpretation of the requirements of the HAA are allowed to be enforced against Petitioners, YIMBY Members, and others similarly situated. Petitioners' interests include ensuring that Respondents comply with state laws requiring that they approve housing development projects expeditiously and at the density proposed by the developer, in order to address the housing needs of California residents; ensuring that Respondents' actions are in conformity with the requirements of state law; and having those requirements properly executed and their public duties enforced. Petitioners have a clear, present, and legal right to Respondents' performance of their legal duties as described herein. Respondents have failed to perform their duties.

129. The HAA limits the ability of local governments to disapprove housing development projects for very low, low-, or moderate-income households or imposing any conditions that have a substantial adverse effect on the viability and feasibility of the Project to provide affordable housing. The HAA defines "disapprove" as any instance in which an agency "[v]otes 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."

130. Respondents have not proceeded in a manner required by law in disapproving the Project for very low, low-, or moderate-income households without making the one of the

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required findings in Gov. Code § 65589.5, subd. (d)(1) – (5), nor did the City support such findings by a preponderance of the evidence in the record.

131. Moreover, the HAA states that an applicant or a housing advocacy group may bring an action to enforce the HAA if "the local agency, in violation of subdivision (o), required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted." (Gov. Code § 65589.5(k)(1)(A)(i)(III).) Bedrock Properties submitted a preliminary application while ED1 was in effect, which allows for ministerial processing of 100 percent affordable housing projects regardless of whether the project is proposed within a single-family zone. In violation of HAA subdivision (o), the City has attempted to deny the Project vesting rights under ED1 and instead applied the standards of Amended ED1 that were not in effect when the preliminary application for this Project was submitted.

132. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law to challenge the Respondents' actions, and a writ of mandate under Code of Civil Procedure § 1094.5 and/or § 1085 is the prescribed remedy for violations of this type. Petitioners have performed all conditions precedent to the issuance of a writ of mandate. Petitioners seek an immediate stay or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to perform their legal duties and obligations under the HAA, including with respect to the proposed Project.

THIRD CAUSE OF ACTION

Declaratory Relief - Code Civ. Proc. § 1060

(Against All Respondents)

133. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 132 of this Petition and Complaint.

134. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their obligations and duties under California statutory law, including but not limited to Respondents' policies and practices which operate to avoid obligations established by state law, such as: (i) refusing to process housing development projects that qualify for

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ministerial processing under ED1; (ii) refusing to consider a housing development project application as being "complete" for the purposes of the PSA until after Respondents have determined a project is consistent with zoning and general plan standards; and, (iii) disregarding the vesting rights of preliminary applications and associated housing development project applications under state law. As set forth herein, Petitioners contend that Respondents' actions are prohibited by the state Housing Accountability Act (Gov. Code § 65589.5), state Permit Streamlining Act (Gov. Code § 65943), and the preliminary application provisions of the HCA (Gov. Code § 65941.1).

135. Petitioners further contend that Respondents' actions are intended to evade their legal duties and deny Petitioners, YIMBY Members, and others similarly situated their rights under these state laws. Petitioners are informed and believe, and on that basis allege, that Respondents contend in all respects to the contrary. A judicial determination and declaration as to the applicability of state law to Respondents' actions, and of the resulting legal obligations of Respondents, is therefore necessary and appropriate.

WHEREFORE, Petitioners demand judgment against Respondents for the following:

1. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to review and process development applications, including the Winnetka Project application, pursuant to the state Permit Streamlining Act's provisions, including refraining from refusing to accept development applications based on "inconsistent" applications;

2. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to review and process housing development project preliminary applications pursuant to the provisions of the HCA, including refraining from denying vesting rights based on a refusal to properly process "inconsistent" formal applications;

3. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order declaring the City Council's October 13, 2023 denial of the Permit Streamlining Act appeal void for violating Government Code section 65589.5 subdivision (d) and

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(o); issuance of a writ of mandate ordering the City Planning Department to accept and process the development application and for the City, the City Council, and the City Planning Department to take any and all necessary steps to immediately process the application and approve the Project as submitted, and issue all related, necessary project approvals within 60 days; and for the court to retain continuing jurisdiction over this matter to ensure compliance with this court's decision and applicable law;

4. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to review and process housing projects according to state Housing Accountability Act standards, including refraining from using "inconsistent" application determinations to evade processing applications and making the required findings under the Housing Accountability Act;

5. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to comply with the Housing Accountability Act with respect to the proposed Project at 8217 Winnetka Avenue, including, but not limited to, an order that the Project is deemed compliant and directing Respondents to approve the housing development project within 60 days due to Respondents' bad faith actions pursuant to Gov. Code § 65589.5;

6. A declaration that: (a) the City violated Government Code 65589.5 subdivision (d) by failing to process and accept the formal application and approve the Project consistent with Government Code section 65589.5 subdivision (d); (b) the City Council violated Government Code section 65589.5 subdivision (d) by failing to grant the appeal and direct staff to process the application and approve the Project; (c) that the City's rejection of the application and denial of vesting rights to the 8217 Winnetka Avenue project while granting such rights to similarly situated projects was arbitrary, capricious, and devoid of merit or evidentiary support; and (d) for an order declaring that the City's actions, including inventing a new justification for the City's denial at the hearing without notice to Petitioners, constituted bad faith as defined by Government Code section 65589.5 subdivision (l).

7. For costs of suit herein;

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8. For reasonable attorneys' fees under Code of Civil Procedure § 1021.5 and Gov. Code § 65589.5;

9. For fines and penalties to be assessed pursuant to Gov. Code § 65589.5; and

10. For any other relief that the Court deems just and proper.

Dated: January 9, 2023

Respectfully Submitted,

PATTERSON & O'NEILL, PC

Ryan Patterson
Brian O'Neill
Attorneys for Petitioners and Plaintiffs,
YES IN MY BACK YARD
SONJA TRAUSS

AXS LAW GROUP LA, LLP

/cs

Geoff Stover
Attorneys for Petitioners and Plaintiffs,
BEDROCK PROPERTIES GROUP, LLC,
8217 WINNETKA, LLC

PATTERSON & O'NEILL, PC
235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

VERIFICATION

I, Sonja Trauss, declare as follows:

1. I am a natural person and a resident of the State of California. I am a petitioner in this action and the founder of petitioner Yes in MY Back Yard ("YIMBY"). I am authorized to verify this VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF; COMPLAINT FOR DECLARATORY RELIEF on behalf of YIMBY.

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF; COMPLAINT FOR DECLARATORY RELIEF and know its contents. The matters stated in the VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF; COMPLAINT FOR DECLARATORY RELIEF are true of my own knowledge from having reviewed the City Council's File No. 23-0908 that denied the Permit Streamlining Act appeal of an incompleteness determination for the housing development project at 8217 Winnetka Avenue, Los Angeles, CA.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 5, 2023.



Sonja Trauss

PATTERSON & O'NEILL, PC
235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

Exhibit A

DECLARATION OF LOCAL EMERGENCY

WHEREAS, Section 231(i) of the Los Angeles City Charter and Ch. 3, Section 8.27 of the Los Angeles Administrative Code provide that the Mayor of the City of Los Angeles has the authority to declare the existence of a local emergency as a result of any occurrence which, by reason of its magnitude, is or is likely to become beyond the control of the normal services, personnel, equipment, and facilities of the regularly constituted branches and departments of City government; and

WHEREAS, the City of Los Angeles has at any given time approximately 41,980 people experiencing homelessness Citywide; and

WHEREAS, the number of unhoused people in the City of Los Angeles has increased dramatically in recent years, nearly doubling in the past decade, with the number of unhoused families increasing by 238 percent since 2007; and

WHEREAS, the City of Los Angeles represents 9.6 percent of the State of California's population but 25 percent of the State's unsheltered population, and the City represents only 1.2 percent of the total United States population but 7.2 percent of the United States population of people experiencing homelessness; and

WHEREAS, as a percentage of its population, the number of unsheltered people in the City of Los Angeles is approximately 18 times higher than the number in New York City and 14 times higher than the number in Chicago; and

WHEREAS, there are more people currently experiencing homelessness in the City of Los Angeles than were displaced by Hurricane Harvey in Houston (30,000) or the 1994 Northridge Earthquake (20,000); and

WHEREAS, homelessness has disproportionately impacted Black, Indigenous and Immigrant Angelenos. Black people comprise only 8 percent of the population of the City of Los Angeles but, in the most recent homelessness count, accounted for 33 percent or more of people experiencing homelessness; and

WHEREAS, homelessness has increased dramatically and disproportionately among Hispanic and Latino Angelenos during the COVID-19 pandemic. The share of the population of people experiencing homelessness who are Hispanic or Latino increased by 30 percent between 2020 and 2022 and now constitute 42 percent of unhoused individuals. Black and Brown Angelenos comprise 75 percent of people experiencing homelessness; and

WHEREAS, the homelessness crisis has had unacceptable consequences for Angelenos, including a significant death toll that has rapidly increased since the start of the COVID-19 pandemic. The Los Angeles County Department of Public Health has reported an average of over 5 deaths per day of unhoused persons as of March 2021, a 200 percent increase in the death rate of persons experiencing homelessness over the past decade and a 56 percent increase over just one year prior; and

WHEREAS, women now comprise about a third of people experiencing homelessness and at least 60 percent of those women have experienced violence, and more than a third of LGBTQ+ women experiencing homelessness have experienced sexual assault; and

WHEREAS, a disproportionate share of youth experiencing homeless identify as LGBTQ+ and lack adequate access to resources; and

WHEREAS, the murder rate for people experiencing homeless is at the highest recorded levels, and increased by 47 percent in 2021 alone; and

WHEREAS, severe overcrowding in Los Angeles has also led to increased deaths from COVID-19. In neighborhoods with 40 percent overcrowding as compared to a national average of 3 percent, residents are 11 times more likely to die because of COVID-19; and

WHEREAS, shelter and housing is particularly important during these coming winter months when people experiencing homelessness in the City are likely to face heightened exposure and dangers from living outdoors, and heightened dangers from the combination of COVID-19, flu outbreak and respiratory syncytial virus (RSV). It is projected that the City will face an acute shortage of winter homeless shelters through March 2023, with fewer than half the number of shelter sites available as in the winter of 2021-2022 and nearly two-thirds fewer shelter beds; and

WHEREAS, the City's eviction moratorium, which has protected many Angelenos from falling into homelessness, ends concurrently with the end of the City's State of Local Emergency regarding the COVID-19 pandemic on February 1, 2023; and

WHEREAS, the State of California's COVID-19 State of Emergency, which has provided resources to keep many Angelenos from falling into homelessness, ends in February of 2023, thus requiring immediate action in order to create replacement and additional housing and shelter, and in order to support the necessary infrastructure and laws required to protect and provide that shelter and housing; and

WHEREAS, people experiencing homelessness suffer disproportionately from mental and physical health ailments, the treatment of which has strained the City's ability to provide appropriate shelter and housing and which require assistance from the County

Health Department to provide the necessary public services. Specifically, it is estimated that 47 percent of unsheltered people in the City of Los Angeles are affected by a health condition, 46 percent are affected by substance abuse, 34 percent are affected by a serious mental illness, 29 percent are affected by physical disabilities, 17 percent are affected by post-traumatic stress disorder, 7 percent are affected by developmental disabilities, and 6 percent are affected by traumatic brain injuries. Recent studies differ on the exact percentages but dramatic increases over time are prevalent in all of the data. The prevalence of extreme need significantly stress the City's public services; and

WHEREAS, notwithstanding that the State of California has enacted a CARE Court to address the crisis of untreated mental illness, the beds and necessary access to acute and subacute care is in development and steps must be taken in the interim to provide increased access to care; and

WHEREAS, the homelessness crisis has strained the City's public safety resources. Among other things, occurrences of fires related to homelessness have nearly tripled between 2018 and 2021, averaging 24 fires a day in the first quarter of 2021, and now constitute a majority of all fires to which the Los Angeles Fire Department responds; and

WHEREAS, paramedic calls to address the crisis on our streets and in our other public spaces are increasing at alarming rates and unhoused residents are 19 times more likely to require an emergency room transport by paramedics than housed residents; and

WHEREAS, the homelessness crisis confronting Los Angeles has grown both incrementally and exponentially, leading to death, illness, and deplorable living conditions even worse than those that created emergencies due to persistent and worsening conditions from prison overcrowding, deterioration in water quality, or fire risk due to climate change; and

WHEREAS, the conditions in December 2022 are even more dire than when Mayor Bradley declared a local emergency due to the upcoming winter weather and its effects on the people experiencing homelessness in 1987; and

WHEREAS, the displacement of the number of people living on the streets of the City of Los Angeles today is a daily recurring emergency, empowering the Mayor to declare a state of emergency, no less than if the emergency was caused by an earthquake, fire, or flood; and

WHEREAS, the City's ability to mobilize local resources, coordinate interagency response, accelerate procurement of housing units, use mutual aid, and seek assistance and potential reimbursement by the State and Federal governments will be critical to successfully responding to this homelessness crisis; and

WHEREAS, during the pendency of the existence of a local emergency, the Los Angeles City Council shall retain its full authority to consider a variety of City ordinances to codify the measures necessary to address this homelessness crisis; and

WHEREAS, during the COVID-19 pandemic the City Council created the COVID-19 Homelessness Roadmap and committed the funding and resources needed to produce 6700 housing options in 18 months; and

WHEREAS, the City currently has 14,475 interim housing beds and the City Council continues to prioritize the building of interim and permanent supporting housing and yet need outpaces demand; and

WHEREAS, the City projects it will soon have a total of 12,908 supportive and affordable units, of which 3,861 have been completed already, 5,171 are currently under construction, and 3,876 are in pre-development; and

WHEREAS, notwithstanding that Council has been and is acting with urgency, including implementing a roadmap to house thousands of Angelenos and building an unprecedented number of supportive housing units and shelters, an emergency declaration is necessary to mobilize resources, save lives, and provide for the public health, welfare, and safety of all; and

WHEREAS, the City of Los Angeles has responded to the rapid increase in its homeless population with unprecedented investments into homelessness solutions, including a nearly $1.2 billion commitment in the 2022-2023 City budget for the construction of thousands of units of supportive housing, the expansion of bridge housing, and the hiring of professionals to address the homelessness crisis and, notwithstanding these efforts, the number of those experiencing homelessness in the City continues to increase and outstrip the resources and services that the City has provided; and

WHEREAS, the magnitude of loss of life, the persistent and disproportionate impact of the COVID-19 pandemic, and the persistent discriminatory impacts of a lack of housing warrant and necessitate that I declare the existence of a local emergency; and

WHEREAS, the benefits of this emergency declaration, coupled with past and future actions by the Los Angeles City Council to address the homelessness crisis, will help ensure that this local emergency will be of a temporary nature;

NOW, THEREFORE, I thereby declare the existence of a local emergency and direct all Divisions of the Emergency Operations Organization (EOO) and all other City Departments to take necessary steps for the protection of life, health and safety in the City of Los Angeles.

I REQUEST, that the City Council adopt resolutions pursuant to the Los Angeles Administrative Code Sections 10.1.1, 10.2.1, 10.5(a)(8), and 10.5.5 to expedite the procurement and contracting process for materials, equipment, and services necessary to respond rapidly to the homelessness crisis.

I DIRECT that, as Director of the EOO, I shall coordinate Citywide planning and response with respect to unsheltered individuals in conjunction with the City Administrative Officer, Los Angeles Homeless Services Authority, Los Angeles City Housing Department, Los Angeles City Planning Department and any and all necessary departments and agencies.

I FURTHER DIRECT that the City coordinate its efforts to address this declared emergency with the County of Los Angeles, the State of California, and the federal government.

I FURTHER DIRECT, that the continuing state of emergency shall be regularly evaluated, in coordination with City Council, by reference to key performance indicators of progress in addressing the emergency, including, but not limited to:

- Decrease in the number and size of encampments;
- Regulatory relief from other jurisdictions and within Los Angeles City agencies to create flexibility to address the crisis;
- Relaxation in the restraints that limit the ability of the City's proprietary departments to create flexibility to address the crisis;
- Increased housing placements;
- Increased starts on new affordable housing options;
- An increase in temporary and permanent housing units;
- Increased outside aid through access to mental health and substance use beds;
- A decrease in the number of persons being evicted from existing housing units;
- A decrease in the number of persons falling into homelessness.

I FURTHER DIRECT that this Emergency Declaration sunset in six months subject to being renewed. The setting of a specific time frame allows for actions to be taken to make permanent, necessary structural changes.

I FURTHER DIRECT that all relevant City departments and agencies compile and deliver to the Mayor information about the specific and necessary resources and support that the

City should request from Los Angeles County, the State of California and the Federal government to address this crisis.

I THEREFORE DIRECT that the Declaration of Local Emergency shall take effect immediately and that notice shall be given of said Declaration through the most feasible means.



Karen Bass, MAYOR

Dated: December 12, 2022
at Los Angeles, California
Time: 9:00 a.m.

Filed with the City Clerk
Date: December 12, 2022
Time: 9:05 a.m.
By: _____

Exhibit B

KAREN BASS
MAYOR

EXECUTIVE DIRECTIVE NO. 1

Issue Date: December 16, 2022

Subject: Expedition of Permits and Clearances for Temporary Shelters and Affordable Housing Types

INTRODUCTION

To aid in swiftly sheltering people who are unhoused in the City of Los Angeles, and by virtue of the authority vested in me as Mayor of the City of Los Angeles under Section 231(i) of the Los Angeles City Charter and the provisions of Section 8.29 of the Los Angeles Administrative Code, I hereby declare the following order to be necessary for the protection of life and property and I hereby order, effective immediately, that:

1. Applications for 100% affordable housing projects, or for Shelter as defined in Section 12.03 of the Los Angeles Municipal Code (LAMC) (hereinafter referred to as Shelter), shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4, as long as such plans do not require any zoning change, variance, or General Plan amendment. All City departments are directed to process all plans for such 100 percent affordable housing projects or Shelter using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4, State Density Bonus law.

2. An application for the development of a 100 percent affordable housing project or Shelter may use the density permitted for that site either by the applicable zoning or the General Plan Land Use Designation, consistent with state law. In addition, a project may utilize the State Density Bonus and LAMC bonuses,

incentives, waivers and concessions if such are in compliance with the applicable requirements.

3. I further direct all applicable City Departments to process clearances and utility releases related to building permit applications, certificates of occupancy, or temporary certificates of occupancy within 5 business days for 100 percent affordable housing projects and within 2 business days for Shelters.

4. I further direct all applicable City Departments to conduct and conclude all reviews and inspections required for 100 percent affordable housing projects or Shelters and to issue all appropriate approvals for such projects or Shelters within 60 days following the submission of the completed application. City Departments shall provide the applicant with all required changes or amendments on or before the 30th day following the submission of a completed application for such projects. To the extent practicable, all required reviews and approvals shall be conducted simultaneously, not sequentially, by all City departments so as to meet the 30 day and 60 day periods specified for such projects in this paragraph.

5. I hereby direct the Los Angeles Housing Department (LAHD) to coordinate with the Los Angeles City Controller to track and process all affordable housing projects and expedite payments thereon. LAHD shall track each pending pay application, initial submittal date, approval date, reasons for rejection or modification of submitted payment applications, and issuance of payment, and shall provide reports to the Mayor on all such payments at least monthly with the goal of expediting payments due for affordable housing projects.

6. I hereby direct that all protocols set by the Los Angeles County Coordinated Entry System as they apply within the City of Los Angeles be expanded, changed, or suspended, as allowed by federal law. Rules, guidelines and regulations will be developed to expedite the placement of unhoused neighbors into housing in the City of Los Angeles.

7. I hereby direct all City departments to prioritize and streamline compliance with the provisions of the Building Homes and Jobs Act – Government Code section 27388.1 in order to maximize the City's eligibility for state and federal funds to support the development of emergency shelters, transitional housing, and supportive housing. The City shall seek to comply with or otherwise meet all criteria specified under all applicable state and federal laws that provide for increased resources, funding, access or allowance for temporary or affordable housing.

8. Effective February 28, 2023, in accordance with the end of the State of California COVID-19 emergency, I hereby rescind the Public Order Under City of Los Angeles Emergency Authority issued on January 28, 2022 (January 28, 2022 Order). Notwithstanding this action, all entitlements already approved and still

valid as of this date, or approved during the effective period of the January 28, 2022 Order, shall remain valid for the extended time period(s) as if such January 28, 2022 Order were still in effect with respect to such entitlements. Furthermore, local decision-makers, including the Director of Planning and the Chief Zoning Administrator, are authorized to continue to hold all required public hearings under the Los Angeles Municipal Code in a manner consistent with the Governor's Executive Order N-29-20, and any subsequent orders or published guidance pertaining to local legislative bodies.

9. The City Planning and Housing Departments shall issue guidelines as necessary to implement the provisions of this Executive Directive.

Executed this 16th day of December, 2022.



KAREN BASS
Mayor

Exhibit C

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 8, 2023

Mark R. Alexander, City Manager
City of La Cañada Flintridge
One Civic Center Drive
La Cañada Flintridge, CA 91011

Dear Mark R. Alexander:

RE: City of La Cañada Flintridge Denial of 600 Foothill Boulevard Housing Project – Notice of Violation

The California Department of Housing and Community Development (HCD) writes to notify the City of La Cañada Flintridge (City), and its City Council, that it is in violation of State Housing Element Law and the Housing Accountability Act (HAA) (Gov. Code, § 65589.5). This violation occurred when the City, despite technical assistance from HCD, denied an appeal related to the application of the housing project at 600 Foothill Boulevard (Project). The City did so by adopting Resolution 23-14, which purports to uphold the Planning Division's incompleteness determination for the Project application, issued on March 1, 2023.

The basis for the City's denial includes, among other findings:

1. that Government Code section 65589.5, subdivision (d)(5), colloquially referred to as the Builder's Remedy, does not apply and is not available for the Project; and
2. that the Project did not "vest" as a Builder's Remedy project as alleged in the Project's preliminary application because the City's housing element, adopted on October 4, 2022 (October 4, 2022, Adopted Housing Element), was in compliance with State Housing Element Law (Gov. Code, § 65580 et seq.).

Based on HCD's review of pertinent information in the City's own staff report, these findings are flawed. The City cannot "backdate" its housing element compliance date to an earlier date so as to avoid approving a Builder's Remedy application. In short, the October 4, 2022 Adopted Housing Element did not substantially comply with State Housing Element Law, regardless of any declaration by the City. Therefore, the Builder's Remedy applies, and the City's denial of the Project application based on inconsistency with zoning and land use designation is a violation of the HAA.

HCD further reminds the City that, as of the date of this letter, the City remains out of compliance with Housing Element Law unless and until it completes statutorily required rezoning.

Background

The Project is proposed as an 80-unit mixed-use project where 20 percent of the units (16 units) will be affordable to lower-income households. The residential portion equates to approximately 89 percent of the Project; therefore, the Project qualifies as a "housing development project" under the HAA (Gov. Code, § 65589.5, subd. (h)(2)(B)). The base density proposed for this Project is approximately 40.5 units per acre before the application of density bonus under State Density Bonus Law (Gov. Code, §§ 65915-65918). HCD understands the timeline for the Project as follows:

- On November 11, 2022, pursuant to Government Code section 65941.1, the Project applicant submitted a preliminary application that was vested on November 14, 2023, after payment of application fees.
- A full application was submitted to the City for the Project on January 13, 2023, and fees were paid on the invoice on January 31, 2023. By submitting this full application within the 180-day period prescribed by Government Code section 65941.1, subdivision (d)(1), the applicant established November 14, 2023 (the date it submitted the preliminary application) as the vesting date of the application.
- On February 10, 2023, the City's planning division issued the first incompleteness letter on this application, which cited information required for the site plan, floor plan, elevation, landscape plans, grading plans, and the density bonus application, among other things. The letter did not comment on density or development standards relating to the Mixed-Use 2 designation.
- On March 1, 2023, the City's planning division issued a second incompleteness letter that further found that the Builder's Remedy would not apply to the Project, that the Project was therefore inconsistent with the Mixed-Use 2 designation, and that the applicant must submit revised plans and materials based on a density of 12-15 units per acre.
- On March 9, 2023, the applicant appealed this incompleteness letter to the City Council.
- On March 22, 2023, HCD provided a Letter of Technical Assistance to the City to help with decision-making related to this appeal.
- On May 1, 2023, the City Council heard and denied the appeal by adopting Resolution 23-14. The Resolution found the following:
    - the Builder's Remedy under the HAA did not apply and is not available for the Project; and
    - the Project did not "vest" as a Builder's Remedy project as alleged in the Project's SB 330 Preliminary Application (submitted November 14, 2022) because the City's October 4, 2022 Adopted Housing Element was in substantial compliance with State Housing Element Law, regardless of HCD's finding to the contrary.

Housing Element Compliance

The City's determination that the October 4, 2022 Adopted Housing Element was in substantial compliance with State Housing Element Law is incorrect and unsupported by law. Pursuant to Government Code section 65585, a local jurisdiction must first submit a draft housing element to HCD and receive HCD's findings before formally adopting a revised housing element. If HCD finds the draft element is not substantially compliant, the local jurisdiction must revise the draft to address any findings by HCD (Gov. Code, § 65585, subd. (f)(1)) or adopt the housing element without changes and include written findings explaining why the local jurisdiction believes that the draft substantially complies (Gov. Code, § 65585, subd. (f)(2)). Promptly following adoption, the local jurisdiction must submit the adopted housing element to HCD (Gov. Code, § 65585, subd. (g)) and receive findings on the adopted element from HCD (Gov. Code, § 65585, subd. (h)). The following represents the record of housing element submittals to HCD and HCD's formal responses.

- October 6, 2021 – The City submitted the initial draft housing element to HCD.
- October 15, 2021 – Due date of 6th cycle housing element per State Housing Element Law.
- December 3, 2021 – Pursuant to Government Code section 65585, subdivision (b), HCD found the draft housing element required significant revisions to substantially comply with State Housing Element Law.
- October 4, 2022 – The City adopted a housing element that failed to address adequately the findings in HCD's letter of December 3, 2021. The resolution adopting the housing element made none of the findings required by Government Code section 65585, subdivision (f)(2).
- October 7, 2022 – The City submitted the October 4, 2022 Adopted Housing Element for HCD's review.
- December 6, 2022 – HCD found the October 4, 2022 Adopted Housing Element required critical revisions to comply with state law, including additional analysis to demonstrate the adequacy of the sites included in its site inventory and policy and programmatic changes pursuant to Government Code section 65585, subdivision (h).
- February 21, 2023 – The City adopted a housing element which addressed adequately the findings in HCD's December 6, 2022 letter. As part of this adoption, the City further stated that the City's housing element was in substantial compliance with State Housing Element law as of the October 4, 2022 Adopted Housing Element.
- February 23, 2023 – The City submitted the revised, adopted housing element for HCD's review.
- April 24, 2023 – HCD found the revised adopted housing element was not in substantial compliance pursuant to Government Code section 65585, subdivision (b). HCD made this finding because the City adopted the element on February 21, 2023, more than one year past the statutory due date of October 15, 2021. As a result, and pursuant to Government Code section

> 65588, subdivision (e)(4)(C)(iii), the City must complete required rezones in Program 1 (Adequate Residential Sites to Accommodate the Regional Housing Needs Allocation (RHNA), Program 4 (Downtown Village Specific Plan), Program 5 (Religious Institution Housing Overlay), and Program 6 (By Right Approval for Projects with 20 percent Affordable Units) prior to being found in substantial compliance.

A local jurisdiction has no authority to determine that its adopted element is in substantial compliance with State Housing Element Law.[1] It may, however, provide reasoning why HCD should make a finding of substantial compliance (Gov. Code, § 65585, subd. (f)(2)). As stated in HCD's letter dated March 22, 2023, a local jurisdiction is "in compliance" as of the date of HCD's letter finding the adopted element in substantial compliance. A local jurisdiction cannot "backdate" compliance to the date of its adoption of a housing element.[2] Moreover, by revising its October 4, 2022 Adopted Housing Element (in response to HCD's findings made on December 6, 2022), the City directly contradicted its declaration that that Adopted Housing Element substantially complied with State Housing Element Law. In short, the October 4, 2022 Adopted Housing Element did not substantially comply with State Housing Element Law, regardless of any declaration by the City.

Housing Accountability Act (HAA)

Resolution 23-14 improperly blocks the Project applicant from utilizing protections provided in the HAA. Pursuant to Government Code section 65589.5, subdivision (d), a jurisdiction shall not disapprove a housing development project for very low-, low-, or moderate-income households[3] or condition approval in a manner that renders the housing development project infeasible unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of five findings in subdivision (d).

If HCD does not find a local jurisdiction's adopted housing element in substantial compliance by the statutory deadline, the jurisdiction cannot use subdivision (d)(5) of Government Code section 65589.5 (inconsistency with zoning and general plan standards) as a basis to deny a qualifying affordable housing project.

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[1] See "Housing Compliance Memo," State Department of Housing and Community Development, March 16, 2023. https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/memos/HousingElementComplianceMemo03162023.pdf.
[2] Ibid.
[3] "Housing for very low-, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code (Gov. Code, § 65589.5, subd. (h)(3)).

Government Code section 65589.5, subdivision (d)(5), allows a local agency to disapprove an affordable housing project that "is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan" *if* "the jurisdiction has adopted a revised housing element … that is in substantial compliance…." Here, because the City does not have a substantially compliant housing element, it may not disapprove an affordable housing project for inconsistency with the zoning and land use designation.

Pursuant to Government Code section 65941.1, subdivision (a), the submittal of a complete preliminary application vests the right to develop a housing development project in accordance with the ordinances, policies, and standards in effect when a preliminary application is submitted (Gov. Code, § 65589.5, subd. (o)(1)). Therefore, if the preliminary application submittal occurs at a time when the jurisdiction does not have a compliant housing element, and the development submittal occurs within the 180-day required period thereafter (Gov. Code, § 65941.1, subd. (d)(1)), the jurisdiction cannot rely upon zoning and land use standards to deny an affordable housing project because the jurisdiction's noncompliant status was vested, and shall remain, throughout the entitlement process. This rule applies even if the jurisdiction subsequently achieves compliance.

As the adopted housing element was not in substantial compliance as of November 14, 2022 (the date of preliminary application submittal), the City cannot use Government Code section 65589.5, subdivision (d)(5), to deny the project.

Yet on March 1, 2023, the City issued an incompleteness letter that found that the Builder's Remedy would not apply to the Project, that the Project was therefore inconsistent with the land use designation, and that as a result, the applicant must submit revised plans.[4] On May 1, 2023, the City Council denied the applicant's appeal by adopting Resolution 23-14, which found that the Builder's Remedy did not apply. Although the City Council did not directly vote on or deny a proposed housing development on the site, Resolution 23-14 upheld the planning division's March 1, 2023 letter, which denied the 80-unit Project as submitted and directed the applicant to submit new site plans and a new project consistent with the Mixed-Use 2 zone density of 12-15 units per acre.

The City's adoption of Resolution 23-14 therefore effectively denied the Project as proposed in violation of the HAA (Gov. Code, § 65589.5, subds. (d) and (h)(6)(A)).

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[4] The City's March 1, 2023, letter appears to incorrectly determine the Project application was incomplete because the Project was inconsistent with zoning standards. Inconsistency with local zoning standards is a reason to *deny* an application in some circumstances, but it is not a basis for deeming an application incomplete. The City's finding therefore conflicts with the Permit Streamlining Act (Gov. Code, § 65943, subd. (a)) and the HAA (Gov. Code, § 65941.1, subd. (d)(1)).

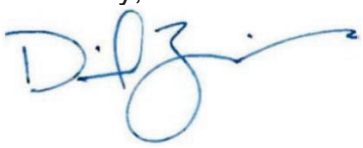
Conclusion

The City violated state law by claiming, without any factual or legal justification, that the Builder's Remedy did not apply to the Project application (Gov. Code, § 65589.5, subd. (d)(5)). In addition, pursuant to HCD's housing element findings letter dated April 24, 2023, the City remains out of compliance with State Housing Element Law. Please note HCD's review of the May 1, 2023, action to deny the appeal of the March 1, 2023 letter was made in furtherance of, and limited to, a determination of the City's compliance with State Housing Element Law and the HAA. Accordingly, HCD expresses no opinion as to whether the City has complied with, or is excused from, any other provisions of the Government Code governing review and approval of development applications.

Under Government Code section 65585, HCD must review any action or failure to act that it determines to be inconsistent with either an adopted housing element or Government Code section 65583. HCD must then issue written findings to the local government (Gov. Code, § 65585, subd. (i)). Additionally, HCD must notify a local government when that local government takes actions that violate Government Code sections 65589.5 and 65583 and may notify the California Office of the Attorney General (Gov. Code, § 65585, subds. (i)(1) and (j)). By this letter, HCD has done so.

The City has until June 22, 2023, to provide a written response to this Notice. 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 or need additional information, please contact melinda.coy@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability



Melinda Coy
Proactive Housing Accountability Chief

cc: David Pai, Supervising Deputy Attorney General, California Department of Justice (via email)
Susan Koleda, AICP, Community Development Director (via email)

Exhibit D

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

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 projects[1] 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,



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

Exhibit E

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

September 14, 2023

City Council Planning and Land Use Management Committee
City of Los Angeles
200 North Spring Street, 395 Floor
Los Angeles, CA 90012

Dear City Councilmembers Marqueece Harris-Dawson, John S. Lee, Katy Yaroslavsky, Imelda Padilla, and Heather Hutt:

RE: 5501-5511 N. Ethel Avenue – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands that on September 19, 2023, the City of Los Angeles (City) City Council's Planning and Land Use Management Committee (PLUM) will consider an appeal of the City's determination that the project located at 5501-5511 N. Ethel Avenue (Project) is ineligible for ministerial processing under Executive Directive No. 1 (ED1).

The purpose of this letter is to assist the PLUM with its decision making by providing technical assistance related to the Preliminary Application as described in the Housing Accountability Act (Gov. Code, § 65589.5) and Permit Streamlining Act (Gov. Code, § 65941.1). HCD urges the City to expeditiously process all ED1 projects in accordance with the rules and regulations that were in effect at the time the preliminary applications were complete. HCD recognizes the challenge of interpreting housing and land use laws and appreciates the opportunity to provide technical assistance.

Background

ED1

Mayor Karen Bass issued ED1 on December 16, 2022, creating a streamlined ministerial approval process for 100 percent affordable and shelter projects. The original ED1 regulations specified that the density permitted for a project site could be based on either the zoning or the general plan land use designation and that projects could utilize State Density Bonus Law (SDBL). The City revised ED1 on June 12, 2023, and explicitly prohibited ED1 ministerial processing on sites located in single-family or more restrictive zones.[1]

[1] Executive Directive No. 1, Page 1, Revised June 12, 2023.

Project History

The proposed Project is a 100 percent affordable residential development that would result in a total of 200 affordable dwelling units, inclusive of one manager's unit. The Project site is zoned R1-1, One-Family Zone (single-family zone), with a General Plan land use designation of Low Residential. The Project includes a State Density Bonus Law (SDBL) request for additional density with incentives, concessions, and waivers of development standards. The City deemed the Project's preliminary application complete on March 23, 2023. The City's signed preliminary application review form indicated that the Project was eligible for ED1 and had until September 19, 2023 to file the City Planning application.[2] The applicant submitted the full development application on June 6, 2023. Then, on July 6, 2023, the City issued a Notice of Ineligibility (NOI) that indicated, "[p]er the revised Executive Directive 1 (ED1) issued by Mayor Karen Bass on June 12, 2023, projects located in single-family or more restrictive zones cannot use the ED1 Ministerial Approval Process."[3] The NOI explicitly stated that the Project is not eligible for ED1 processing because it is in the R1-1 zone, but noted that there are other entitlement options available for the Project which do not require a legislative act (e.g. General Plan Amendment or Zone Change).

Preliminary Application Vesting Rights and the City's Executive Directive-1

The central question between the City and the Applicant is as follows:
Is an executive directive one of the rules, regulations, requirements, and policies that vest upon submission of a complete Preliminary Application?

The answer is "yes." Submission of a preliminary application that meets the requirements of Government Code section 65941.1 vests the "ordinances, policies and standards" in effect when the application is submitted. (Gov. Code § 65589.5, subd. (o)(1).) The Housing Accountability Act (HAA) makes it clear that,

"[f]or purposes of this subdivision, 'ordinances, policies, and standards' includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions."[4]

The City's ED1 is not excluded from the expansive HAA definition of "ordinances, policies, and standards." The Mayor issued the executive directive under the provisions of Los Angeles City Charter section 231(i) and section 8.29 of the Los Angeles Administrative Code, which, during a period of local emergency, deem the Mayor the

[2] City of Los Angeles Housing Crisis Act Vesting Preliminary Application, Page 1, Signed March 31, 2023.
[3] City of Los Angeles Notice of Ineligibility dated July 6, 2023.
[4] Gov. Code, § 65589.5, subd. (o)(4). Emphasis added.

Director of the Emergency Operations Organization and authorize the Director to "promulgate, issue and enforce rules, regulations, orders and directives which the Director considers necessary for the protection of life and property." Charter section 231(j), meanwhile, authorizes the Mayor to "establish procedures and implement policies" to manage the Mayor's responsibilities "through the issuance of executive directives, which, in the absence of conflicting provisions in the Charter or ordinance, and until revised or rescinded by the Mayor, shall be binding on all departments, commissions, appointed officers and employees of the City" (emphasis added). There is no doubt, then, that an Executive Directive is a "rule[]," "requirement[]," or "polic[y]" under Government Code section 65589.5, subdivision (o)(4).

Therefore, an applicant that submitted a complete preliminary application at a time when ED1 did not exclude single-family or more restrictive zones may proceed under the previous ED1 regulations throughout the entitlement process. The preliminary application vesting status remains in effect as long as the development application submittal occurs within the 180-day required period[5] and any revisions to the development application do not exceed a change of 20 percent of the number of residential units or square footage of construction, exclusive of any increase resulting from the density bonus, incentive, concession, waiver or similar provision.[6] However, HCD emphasizes that any incomplete preliminary applications submitted prior to the June 12, 2023 revised ED1, and any preliminary applications submitted after June 12, 2023, would not be entitled to ED1 ministerial processing in single-family or more restrictive zones, as any such applications would not have secured vesting rights under the original ED1 policy.

Conclusion

In sum, HCD finds that the preliminary application vesting rights conferred by Government Code section 65941.1 include ED1. HCD remains committed to supporting the City of Los Angeles in achieving housing objectives across all income categories and hopes the City finds this clarification helpful. If you have any questions or need additional information, please contact Gabriel A. Pena-Lora, of our staff, at gabriel.pena-lora@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief

cc: Lisa M. Webber, AICP Deputy Director Los Angeles City Planning
Blake Lamb, Principal City Planner Los Angeles City Planning

[5] Gov. Code, § 65941.1, subd. (d)(1).
[6] Gov. Code, § 65941.1, subd. (c).

Exhibit F

DEPARTMENT OF
CITY PLANNING

COMMISSION OFFICE
(213) 978-1300

CITY PLANNING COMMISSION

SAMANTHA MILLMAN
PRESIDENT

MONIQUE LAWSHE
VICE-PRESIDENT

MARIA CABILDO
CAROLINE CHOE
ILISSA GOLD
HELEN LEUNG
KAREN MACK
JACOB NOONAN
ELIZABETH ZAMORA

CITY OF LOS ANGELES
CALIFORNIA



KAREN BASS
MAYOR

EXECUTIVE OFFICES
200 N. SPRING STREET, ROOM 525
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(213) 978-1271

VINCENT P. BERTONI, AICP
DIRECTOR

SHANA M.M. BONSTIN
DEPUTY DIRECTOR

ARTHI L. VARMA, AICP
DEPUTY DIRECTOR

LISA M. WEBBER, AICP
DEPUTY DIRECTOR

December 18, 2023

Applicant
Leon Benrimon
Bedrock Properties Group, LLC
9220 Winnetka Ave
Chatsworth, CA 91311

Owner
5511 Ethel LLC
9220 Winnetka Ave
Chatsworth, CA 91311

Representative
Dave Rand and Oliva Joncich
Rand Paster & Nelson LLP
633 W. Fifth Street
Los Angeles, 90071

Case No.	ADM-2023-3809-DB-VHCA-ED1
Related Case:	PAR-2023-1972-AHRF-ED1, PAR-2023-2017-VHCA-ED1,
CEQA:	N/A
Location:	5511, 5501 N Ethel Ave
Council District:	6 - Raman
Neighborhood Council:	Sherman Oaks
Community Plan Area:	Van Nuys – North Sherman Oaks
Specific Plan:	N/A
Overlays:	N/A
Land Use Designation:	Low Residential
Zone:	R1-1
Legal Description:	Arb 19, Lot PT 88, Tract TR 1000

LETTER OF COMPLIANCE – Ministerial Density Bonus Affordable Housing Incentive Program

Pursuant to the Los Angeles Municipal Code ("LAMC") Section 12.22 A.25 (AB2334), I have reviewed the proposed project and as the designee of the Director of Planning, I hereby:

DETERMINE, based on the whole of the administrative record, that the Project is statutorily exempt from the California Environmental Quality Act (CEQA) as a ministerial project, pursuant to Government Code Section 65915(f)(5) and (j)(1) and California Public Resources Code Section 21080(b)(1); and

DETERMINE, that the project qualifies as a ministerial review, pursuant to Resolution (CF 22-1545) relative to the Declaration of Local Emergency by the Mayor, dated December 12, 2022, concerning homelessness in the City of Los Angeles, pursuant to the provisions of the Los Angeles Administrative Code (LAAC) Section 8.27, adopted by the City Council on December 13, 2022 and Executive Directive 1 dated December 16, 2022.

APPROVE, a ministerial review of Density Bonus Compliance, pursuant to LAMC, Section 12.22 A.25, for a 2,122% density bonus, with 100 percent of the units set aside for affordable housing for a project totaling 200 dwelling units, reserving one (1) unit for Very-Low Income households (HCD), 158 units for Low-income households (HUD), 40 units for

Moderate Income households (HCD) for an occupancy for a period of 55 years, and one (1) Manager's unit at Market rate, along with the following two (2) On-Menu incentives and two (2) Off-Menu Incentives, and one (1) Waiver of Development Standards for a qualifying 100 percent affordable housing project:

On-Menu Incentives

a. **Yards.** An up to 20% reduction in the required northern side yard setback, for a minimum side yard of 8 feet in lieu of 10 feet otherwise required by the R1 Zone.

b. **Yards.** An up to 20% reduction in the required southern side yard setback, for a minimum side yard of 8 feet in lieu of 10 feet otherwise required by the R1 Zone.

Off-Menu Incentives

a. **Bicycle Parking.** An up to 33 percent reduction in the required bicycle parking to allow 84 long term parking spaces in lieu of the 125 required.

b. **Floor Area Ratio (FAR).** An up to 771 percent increase in FAR for a total Floor Area of 144,993 square feet in lieu of the maximum 18,814 square feet.

a. **Open Space.** An up to 75% decrease in the required open space, allowing a minimum of 5,459 square feet of open space in lieu of the required 21,500 square feet of open space, otherwise required by LAMC Section 12.21-G.

Waiver of Development Standards

a. **Height.** Waiver of the 28-foot height limit in the R1-1 Zone to allow a height of 80 feet 4 inches.

b. **Encroachment Plane**. Waiver of the R1 Encroachment plane requirement.

c. Parking. Allow up to 65% of the residential parking stalls to be provided as compact stalls.

CONDITIONS OF APPROVAL

1. **On Site Restricted Affordable Units.** The project shall provide a minimum of 199 On-Site Restricted Affordable units, consisting of one (1) unit for Very Low-Income Households, 158 units for Low Income Households, and 40 units for Moderate Income Households, as defined in the California Health and Safety Code to the satisfaction of the Los Angeles Housing Department (LAHD). In the event the SB 8 Replacement Unit condition requires additional affordable units or more restrictive affordability levels, the most restrictive requirements shall prevail.

2. **Housing Requirements.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of the Los Angeles Housing Department ("LAHD"). The covenant shall bind the owner to reserve one (1) unit to Very Low-Income Households (HCD/State), 158 units available to Low-Income Households (HUD/TCAC) and 40 units available to Moderate Income Households (HCD/State) for sale or rental as determined to be affordable to such households by LAHD for a period of 55 years. In the event the applicant reduces the proposed density of the project, the number of required reserved on-site Restricted Units may be adjusted, consistent with LAMC Section 12.22 A.31, to the satisfaction of LAHD, and in consideration of the project's Replacement Unit Determination.

   Unless otherwise required by state or federal law, the project shall provide an onsite building manager's unit, which the owner shall designate in the covenant. The Owner may not use an affordable restricted unit for the manager's unit.

5. **SB 8 Replacement Units (Government Code Section 66300).** The project shall be required to comply with the Replacement Unit Determination (RUD) letter, dated May 2, 2023, to the satisfaction of LAHD. The most restrictive affordability levels shall be followed in the covenant. In the event the On-site Restricted Affordable Units condition requires additional affordable units or more restrictive affordability levels, the most restrictive requirements shall prevail.

6. **Rent Stabilization Ordinance (RSO).** Prior to the issuance of a Certificate of Occupancy, the owner shall obtain approval from LAHD regarding replacement of affordable units, provision of RSO Units, and qualification for the Exemption from the Rent Stabilization Ordinance with Replacement Affordable Units in compliance with Ordinance No. 184,873. In order for all the new units to be exempt from the Rent Stabilization Ordinance, the applicant will need to either replace all withdrawn RSO units with affordable units on a one-for-one basis or provide at least 20 percent of the total number of newly constructed rental units as affordable, whichever results in the greater number. The executed and recorded covenant and agreement submitted and approved by LAHD shall be provided.

7. **Parking.**

   a. **Parking Per AB 2097.** The project shall be permitted to provide a minimum of zero parking space pursuant to California Government Code Section 65863.2 (AB 2097). 134 parking spaces are provided. Up to 65% of the residential parking stalls may be provided as compact stalls.

a. **Bicycle Parking**. 125 long term bicycle parking spaces are required pursuant to LAMC Section 12.21 A.16. The applicant is requesting an off-menu incentive to reduce the required long term bicycle parking up to 26 percent to allow 84 long term bicycle parking spaces. 13 short term spaces will be provided as required per LAMC Section 12.21 A.16.

b. **Adjustment of Parking**. In the event that the number of Restricted Affordable Units should increase, or the composition of such units should change (i.e. the number of bedrooms, or the number of units made available to Senior Citizens and/or Disabled Persons), or the applicant selects another Parking Option (including Bicycle Parking Ordinance) and no other Condition of Approval or incentive is affected, then no modification of this determination shall be necessary, and the number of parking spaces shall be recalculated by the Department of Building and Safety, based upon the ratios set forth ratios set forth in the Density Bonus Affordable Housing Incentive Program Guidelines.

8. **Site Development**. Except as modified herein, the project shall be in substantial conformance with the plans and materials submitted by the Applicant, stamped "Exhibit A," with a date of November 22, 2023, and attached to the subject case file. No change to the plans will be made without prior review by the Department of City Planning, Valley Project Planning Division, and written approval by the Director of Planning. Each change shall be identified and justified in writing. Minor deviations may be allowed in order to comply with the provisions of the Los Angeles Municipal Code or the project conditions.

9. **100% Affordable Housing Project (ED1).** If a project changes at any time in the review and construction process such that it no longer meets ED 1 eligibility criteria, the project becomes disqualified from ED1 streamlining and all prior determinations on the project become inapplicable. For projects requiring a City Planning application, if a project changes at any point during the City Planning review or post-approval process such that the project would no longer qualify for ED 1, a new application for the revised project shall be required.

10. **Residential Density**. The project shall be limited to a maximum density of 200 multi-family residential dwelling units, including On-Site Restricted Affordable Units.

11. **Floor Area**. The project total Floor Area shall be limited to 144,993 square feet and a 3.47:1 FAR.

12. **Height.** The project shall be limited to a maximum height of 80 feet and 4 inches.

13. **Setbacks.** The project shall have a minimum 8-foot northern and southern side yard setback.

14. **Open Space.** A minimum of 5,375 square feet of open space shall be permitted in lieu of the minimum 21,500 square feet otherwise required.

15. **Publicly Accessible Open Space.** The applicant will provide 2,100 square feet of PAOS according to Sheet L3.12 of "Exhibit A." Such PAOS shall be:

a. contiguous, remaining unfenced and ungated; therefore, it shall not be enclosed or bordered by a fence of any type, size, or shape, including temporary fencing or a temporary gate(s); planter/garden walls enclosing planted areas shall not be more than 2 feet in height unless they are LID required planters;

b. open to the public, at minimum, from 6:00 a.m. to 10:00 p.m., seven days a week. There shall be at least two signs stating the hours of operation of the PAOS, including in the focal point unobstructed from public view. PAOS identification signage shall indicate that the PAOS is available for use by the public from, at minimum, 6 a.m. to 10 p.m., seven days a week. Supporting documentation of signage and placement shall be submitted to the subject case file prior to final signoff and be kept with the file for this case.

16. **Landscape Plan.** Revised landscape plans shall be submitted to show the size and location of all plants. The landscape plan shall indicate landscape points for the project equivalent to 10% more than otherwise required by LAMC 12.40 and Landscape Ordinance "Guidelines O". All open areas not used for buildings, driveways, parking areas, recreational facilities or walks shall be landscaped, including an automatic irrigation system, and maintained in accordance with a final landscape plan prepared by a licensed landscape architect or licensed architect, and submitted for approval to the Department of City Planning. The final landscape plan shall be in substantial conformance with the submitted Landscape Plan, Exhibit "A," and shall incorporate any modifications required as a result of this grant.

17. **Street Trees.** Street trees shall be provided to the satisfaction of the Urban Forestry Division. Street trees may be used to satisfy on-site tree requirements pursuant to LAMC Section 12.21 G.3 (Chapter 1, Open Space Requirement for Six or More Residential Units).

18. **Required Trees per 12.21 G.2.** As conditioned herein, a final submitted landscape plan shall be reviewed to be in substantial conformance with Exhibit "A". Any required trees pursuant to LAMC Section 12.21 G.2 shown in the public-right-of-way in Exhibit "A" shall be preliminarily reviewed and approved by the Urban Forestry Division prior to building permit issuance. In-lieu fees pursuant to LAMC Section 62.177 shall be paid if placement of required trees in the public-right-of-way is proven to be infeasible due to City determined physical constraints. There is no proposal to remove any trees.

Administrative Conditions

19. **Final Plans.** Prior to the issuance of any building permits for the project by the Department of Building and Safety, the applicant shall submit all final construction plans that are awaiting issuance of a building permit by the Department of Building and Safety for final review and approval by the Department of City Planning. All plans that are awaiting issuance of a building permit by the Department of Building and Safety shall be stamped by Department of City Planning staff "Plans Approved". A copy of the Plans Approved, supplied by the applicant, shall be retained in the subject case file.

20. **Notations on Plans.** Plans submitted to the Department of Building and Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet and shall include any modifications or notations required herein.

21. **Approval.** Verification and Submittals. Copies of any approvals guarantees or verification of consultations, review of approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning prior to clearance of any building permits, for placement in the subject file.

22. **Code Compliance.** Use, area, height, and yard regulations of the zone classification of the subject property shall be complied with, except where granted conditions differ herein.

23. **Department of Building and Safety.** The granting of this determination by the Director of Planning does not in any way indicate full compliance with applicable provisions of the Los Angeles Municipal Code Chapter IX (Building Code). Any corrections and/or modifications to plans made subsequent to this determination by a Department of Building and Safety Plan Check Engineer that affect any part of the exterior design or appearance of the project as approved by the Director, and which are deemed necessary by the Department of Building and Safety for Building Code compliance, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.

24. **Recording Covenant.** Prior to the issuance of any permits relative to this matter, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Development Services Center for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Development Services Center at the time of Condition Clearance for attachment to the subject case file.

25. **Indemnification and Reimbursement of Litigation Costs.**

    Applicant shall do all of the following:

    a. Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
    b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out of the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
    c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than $50,000. The City's failure to notice or collect the deposit does

not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).

D. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).

e. If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.

PROJECT BACKGROUND

Subject Property

The subject site is a rectangular shaped corner lot that has a frontage of approximately 165 feet along the west side of Ethel Avenue with a lot depth of 251 feet and a frontage on Albers Street with a total area of approximately 41,810 square feet. The site is zoned R1-1 and is in the Van Nuys – North Sherman Oaks Community Plan Area with a General Plan Land Use Designation of Low Residential, which has corresponding zones of RE9, RS, R1, RU, RD6, and RD5.

The project site is located within an AB 2097 reduced parking area, AB 2334 Very Low VMT, an Urban Agriculture Incentive Zone, a Liquefaction Zone, and is within 5.32 kilometers of the nearest known fault (Hollywood Fault). The site is not located within a Designated Hillside Area, Very High Fire Hazard Severity Zone, Flood Zone, Landslide, or Tsunami Inundation Zone.

The project site is currently developed with a one-story single-family dwelling. The site is not designated as a historic resource.

Project Description

The project is the construction of a new seven-story, 80-foot four-inch in height development to be restricted as affordable housing for mixed income households, totaling 200 residential dwelling units (including one (1) unit for Very-Low Income Households, 158 units for Low-Income Households, 40 units for Moderate Income Households, and one unit at Market rate for the manager's unit). The project will have a proposed Floor Area Ratio ("FAR") of approximately 3.47:1 with approximately 144,993 square feet of floor area and 5,375 square feet of open space. As a 100% affordable housing project for households of mixed income with either paratransit service or unobstructed access, within one-half mile to a fixed bus route that operates at least eight times per day, there is no minimum parking requirement Pursuant to AB 2097. The project will provide 134 stalls with up to 65% being compact stalls. The project will also provide 84 long term bicycle stalls, and 13 short term bicycle stalls.

Per AB 2334, the project may utilize the highest corresponding zone to the land use designation. In this case, RD5 allows one unit per 5,000 square feet of lot area. At 41,810 square feet, the lot has a by-right density of eight units, allowing it to access density bonus provisions of the LAMC. Additionally, per AB 2345, the proximity to transit allows one hundred percent affordable projects unlimited density.

Per LAMC Section 12.21.G(a)(3) 24-inch box tree for every four dwelling units required onsite. The project will be providing a total of 54 trees on site.

Ministerial Review

Executive Directive 1 (ED-1) went into effect on December 16, 2022, to facilitate the expeditious processing of shelters and 100 percent affordable housing projects to address the homelessness crisis in the City of Los Angeles. A 100 percent Affordable Housing Project is defined as "A project with at least 5 units that has at least two-thirds residential square footage, with all units affordable at 80% of Area Median Income (HUD) levels, OR affordable at mixed income with up to 20% of units at 120% AMI (HCD rents) and the balance at 80% AMI or lower (HUD rents) as technically described here: A housing development project defined in Government Code Section 65589.5 that includes 100% restricted affordable units (excluding any manager's units) for which rental or

mortgage amounts are limited so as to be affordable to and occupied by Lower Income households, as defined by CA Health and Safety Code 50079.5, or that meets the definition of a 100% affordable housing development in CA Gov. Code 65925(b)(1)(G)2, as determined by the Los Angeles Housing Department (LAHD)". For 100 percent affordable housing projects and shelters, the review shall be complete within 60 days after the application is complete.

Density Bonus Incentives or Concessions

State Density Bonus Law (Government Code Section 65915), adopted on January 1, 2017, outlines the types of relief that minimize restrictions on the size of the project. The requested incentives allow the developer to expand the building envelope so the additional and affordable units can be constructed, provide for design efficiencies, and allow the overall space dedicated to residential uses to be increased. These incentives support the Applicant's decision to set aside the specified number of dwelling units for Affordable Income Households for 55 years.

The Applicant proposes to utilize Los Angeles Municipal Code ("LAMC") Section 12.22 A.25 (Affordable Housing Incentives Density Bonus), which implements Government Code Section 65915, to set aside 23 dwelling units for Low-Income household (HUD/TCAC) occupancy and six (6) dwelling units for Moderate Income household (HCD/State) occupancy for a period of 55 years. Per AB 2345, up to 20% of the units may be moderate at HCD rent schedules. In exchange for providing affordable units, the Density Bonus Ordinance grants various incentives/concessions to deviate from development standards in order to facilitate the provision of affordable housing at the site. Because the Applicant is providing 100% of the dwelling units (exclusive of the manager's unit) as affordable for individuals of mixed income, the project is eligible for a Density Bonus Incentive for two On-Menu incentives, three Off-Menu incentives, and three Waivers of Development Standards.

The subject property is located in a Very Low Vehicle Travel Area per AB 2334. Eligible housing developments in these areas are permitted unlimited density and are granted an additional three stories, or 33 feet in height, as well as four incentives/concessions. The allowable density of the project site is eight units, based on the highest density corresponding zone according to the Low Residential land use designation, and the project proposed 192 density bonus units for a total of 200 units. The maximum allowable height is 28 feet, and the proposed project has a building height of 80 feet four inches.

Pursuant to AB 2097, there is no minimum parking requirement for 100% affordable housing developments for individuals of mixed incomes with either paratransit service or unobstructed access, within one-half mile to a fixed bus route that operates at least eight times per day. The subject property is located less than one-half mile from the Valley College Transit Station, which is served by Metro Busway G Line which operates less than or equal to every fifteen minutes per day. As such, the project has no minimum parking requirement. The project is eligible for Density Bonus Base and Additional Incentives, as indicated on the Affordable Housing Referral Form dated September 19, 2023.

The project is eligible for the following Density Bonus and parking options, which are granted by-right for eligible Density Bonus projects:

a. **Density.** An unlimited increase in permitted density.

The site is zoned R1-1 which allows for a base residential density of one dwelling unit per lot. Per AB 2334, the project may utilize the highest corresponding zone to the land use designation. In this case, RD5 allows one unit per 5,000 square feet of lot area. At 41,810 square feet, the lot has a by right density of eight units. Site Plan Review is not required for projects with a base density of 50 units or less per ED1. Pursuant to AB 2345, the maximum permitted density for a 100% affordable project in a Very Low Vehicle Travel Area is unlimited. The project is proposing 200 units for a 2,122 percent density bonus, which is consistent with the allowable density under the Density Bonus regulations.

b. **Parking.** Pursuant to AB 2097**,** Eligible Housing Developments consisting of 100% On-site restricted Affordable Units, exclusive of a manager's unit and is located within one-half mile to a major transit stop, are not subject to minimum parking requirements.

   The project is located within one-half mile of the Valley College Transit Station which is served by Metro G Line. The project is proposing 134 parking spaces with up to 65% designated for compact vehicles. As such, the proposed parking in consistent with allowable parking under the Density Bonus regulations.

c. **Height.** Pursuant to AB 2345, Eligible Housing Developments consisting of 100% On-site restricted Affordable Units, exclusive of a manager's unit, that are located in a Very Low Vehicle Travel Area are granted an additional three stories, up to an additional 33 feet in height.

   The proposed project is in the R1-1 Zone which allows for a maximum building height of 28 feet. The project is requesting a Density Bonus Waiver of Development Standards to allow a building height of 80 feet 4 inches. As such, the proposed project is consistent with the allowable height under the Density Bonus regulations.

Pursuant to LAMC 12.22 A.25, the project is eligible for, and has been granted, the following Density Bonus On-Menu Incentives, Off-Menu Incentives, and Waivers of Development Standards:

On-Menu Incentives

c. **Northern Side Yard Setback.** An up to 20% reduction in the required northern side yard setback, for a minimum side yard of 8 feet in lieu of 10 feet.

d. **Southern Side Yard Setback.** An up to 20% reduction in the required southern side yard setback, for a minimum side yard of 8 feet in lieu of 10 feet.

Off-Menu Incentives

c. **Bicycle Parking.** An up to 33 percent reduction in the required bicycle parking to allow 84 long term parking spaces in lieu of the 125 required.

d. **Floor Area Ratio (FAR).** An up to 771 percent increase in FAR for a total Floor Area of 144,993 square feet in lieu of the maximum 18,814 square feet.

b. **Open Space.** An up to 75% decrease in the required open space, allowing a minimum of 5,459 square feet of open space in lieu of the required 21,500 square feet of open space.

Waiver of Development Standards

d. **Height.** Waiver of the 28-foot height limit in the R1-1 Zone to allow a height of 80 feet four inches.

e. **Encroachment Plane**. Waiver of the R1 Encroachment plane requirement.

f. Parking. Allow up to 65% of the residential parking stalls to be provided as compact stalls.

Housing Replacement (SB 8 Determination)

On October 9, 2019, the Governor signed into law the Housing Crisis Act of 2019 (SB 330). SB 330 creates a new state law regarding the production, preservation, and planning for housing, and establishes a statewide housing emergency until January 1, 2025. This was subsequently amended by SB 8 on September 16, 2021. During the duration of the statewide housing emergency, SB 330, among other things, create new housing replacement requirements for Housing Development Projects by prohibiting the approval of any proposed housing development project on a site that will require the demolition of existing residential dwelling units or occupied or vacant "Protected Units" unless the proposed housing development project replaces those units. The Los Angeles Housing Department (LAHD) has determined, per the Housing Crisis Act of 2019 (SB 8) Replacement Unit Determination, dated May 2, 2023, that a residential unit existed at the property within the last five years. Pursuant to CHAS, one (1) unit need to be replaced with equivalent type units. The replacement requirement will consist of one (1) unit restricted to Very Low-Income Households.

CONCLUSION

As a Density Bonus Project that satisfies all the objective planning standards of Density Bonus consistent with LAMC 12.22 A.25 and a 100% affordable housing project consistent with ED1 streamlined approval, the project qualifies as a ministerial project.

OBSERVANCE OF CONDITIONS - TIME LIMIT - LAPSE OF PRIVILEGES

All terms and conditions of the Director's Letter of Compliance shall be fulfilled before the use may be established. The instant authorization is further conditioned upon the privileges being utilized within three years after the effective date of this determination and, if such privileges are not utilized, building permits are not issued, or substantial physical construction work is not begun within said time and carried on diligently so that building permits do not lapse, the authorization shall terminate and become void.

TRANSFERABILITY

This determination runs with the land. In the event the property is to be sold, leased, rented or occupied by any person or corporation other than yourself, it is incumbent that you advise them regarding the conditions of this grant. If any portion of this approval is utilized, then all other conditions and requirements set forth herein become immediately operative and must be strictly observed.

VIOLATIONS OF THESE CONDITIONS, A MISDEMEANOR

The Applicant's attention is called to the fact that this grant is not a permit or license and that any permits and licenses required by law must be obtained from the proper public agency. Furthermore, if any condition of this grant is violated or not complied with, then the Applicant or his successor in interest may be prosecuted for violating these conditions the same as for any violation of the requirements contained in the Municipal Code, or the approval may be revoked.

Section 11.00 of the LAMC states in part (m): “It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code shall be guilty of a misdemeanor unless that violation or failure is declared in that section to be an infraction. An infraction shall be tried and be punishable as provided in Section 19.6 of the Penal Code and the provisions of this section. Any violation of this Code that is designated as a misdemeanor may be charged by the City Attorney as either a misdemeanor or an infraction.

Every violation of this determination is punishable as a misdemeanor unless provision is otherwise made and shall be punishable by a fine of not more than $1,000 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment.”

Verification of condition compliance with building plans and/or building permit applications are done at the Development Services Center of the Department of City Planning at either Figueroa Plaza in Downtown Los Angeles or the Marvin Braude Building in the Valley. In order to assure that you receive service with a minimum amount of waiting, applicants are encouraged to schedule an appointment with the Development Services Center either through the Department of City Planning website at http://planning.lacity.org or by calling (213) 482-7052 or (818) 374-5050. The applicant is further advised to notify any consultant representing you of this requirement as well.

The time in which a party may seek judicial review of this determination is governed by California Code of Civil Procedures Section 1094.6. Under that provision, a petitioner may seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, only if the petition for writ of mandate pursuant to that section is filed no later than the 90th day following the date on which the City's decision becomes final.

Effective Date/Appeals: The decision of this Letter of Compliance is final and effective upon the mailing of this letter and is not appealable.

VINCENT P. BERTONI, AICP
Director of Planning

Approved by:

JoJo Pewsawang
Senior City Planner

Prepared by:

Maren Gamboa
City Planner

Exhibit G

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

October 12, 2023

Los Angeles City Council
City of Los Angeles
200 North Spring Street, 395 Floor
Los Angeles, CA 90012

Dear City Councilmembers Eunisses Hernandez, Paul Krekorian, Bob Blumenfield, Nithya Raman, Katy Yaroslavsky, Imelda Padilla, Monica Rodriguez, Marqueece Harris-Dawson, Curren D. Price, Jr., Heather Hutt, Traci Park, John S. Lee, Hugo Soto-Martinez, Kevin de León, and Tim McOsker:

RE: Preliminary Application Vesting of ED1 Projects – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands that the City of Los Angeles (City) City Council will consider the Planning and Land Use Management (PLUM) Committee recommendation for denial of the appeal for the project located at 8217 North Winnetka Avenue (Winnetka Project). Additionally, HCD is aware that the PLUM Committee will consider an upcoming appeal for another project located at 7745-7751 N. Wilbur Avenue (Wilbur Project).

The purpose of this letter is to further assist the City with its decision making by providing technical assistance related to the preliminary applications as described in the Housing Accountability Act (HAA) (Gov. Code, § 65589.5) and Permit Streamlining Act (PSA) (Gov. Code, § 65941.1). HCD urges the City to apply the law consistently and to allow projects vested by the preliminary applications to be processed under the "ordinances, policies, and standards" in effect, including Executive Directive No. 1 (ED1), when the complete preliminary application was submitted.

HCD's Prior Technical Assistance on this Matter

HCD has already issued technical assistance on this matter. The City has not presented any new information that would change HCD's guidance. Enclosed here for the City's convenience is a copy of HCD's Letter of Technical Assistance dated September 14, 2023, regarding the ED1 project located at 5501-5511 N. Ethel Avenue. To reiterate, under the HAA, submission of a preliminary application that meets the requirements of the PSA at Government Code section 65941.1 vests the "ordinances, policies, and standards" in effect when the application is submitted.

(Gov. Code, § 65589.5, subd. (o)(1).) Such "ordinances, policies, and standards" include "rules, regulations, requirements, and policies of a local agency." (Gov. Code, § 65859.5, subd. (o)(4).) HCD's September 14, 2023, letter explains that an executive directive such as ED1 is one of the "rules, regulations, requirements, and policies" that vest upon submission of a complete preliminary application and is not excluded from the expansive HAA definition of "ordinances, policies, and standards."

To the extent that the appeals for the Winnetka Project, Wilbur Project, or any other ED1 projects address the same question raised by the project located at 5501-5511 N. Ethel Avenue, the technical assistance provided in HCD's September 14, 2023, letter applies. An applicant that submitted a complete preliminary application may proceed under the ED1 regulations that were in effect at the time the preliminary application was complete. The preliminary application vesting status remains in effect as long as the development application submittal occurs within the 180-day required period[1] and any revisions to the development application do not exceed a change of 20 percent of the number of residential units or square footage of construction, exclusive of any increase resulting from the density bonus, incentive, concession, waiver or similar provision.[2]

Conclusion

HCD found on September 14, 2023, that the preliminary application vesting rights conferred by Government Code section 65941.1 include ED1. HCD remains committed to supporting the City of Los Angeles in achieving housing objectives across all income levels and hopes the City finds this clarification helpful. HCD also reminds the City that HCD has enforcement authority over the HAA, among other state housing laws. If HCD finds that a city's act or failure to act does not substantially comply with state law, HCD may notify the California Office of the Attorney General. (Gov. Code, § 65585, subd. (j).) If you have any questions or need additional information, please contact Gabriel A. Pena-Lora, of our staff, at gabriel.pena-lora@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief

cc: Lisa M. Webber, AICP Deputy Director Los Angeles City Planning
Blake Lamb, Principal City Planner Los Angeles City Planning

Enclosure: September 14, 2023, HCD Letter of Technical Assistance

[1] Gov. Code, § 65941.1, subd. (d)(1).
[2] Gov. Code, § 65941.1, subd. (c).

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

September 14, 2023

City Council Planning and Land Use Management Committee
City of Los Angeles
200 North Spring Street, 395 Floor
Los Angeles, CA 90012

Dear City Councilmembers Marqueece Harris-Dawson, John S. Lee, Katy Yaroslavsky, Imelda Padilla, and Heather Hutt:

RE: 5501-5511 N. Ethel Avenue – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands that on September 19, 2023, the City of Los Angeles (City) City Council's Planning and Land Use Management Committee (PLUM) will consider an appeal of the City's determination that the project located at 5501-5511 N. Ethel Avenue (Project) is ineligible for ministerial processing under Executive Directive No. 1 (ED1).

The purpose of this letter is to assist the PLUM with its decision making by providing technical assistance related to the Preliminary Application as described in the Housing Accountability Act (Gov. Code, § 65589.5) and Permit Streamlining Act (Gov. Code, § 65941.1). HCD urges the City to expeditiously process all ED1 projects in accordance with the rules and regulations that were in effect at the time the preliminary applications were complete. HCD recognizes the challenge of interpreting housing and land use laws and appreciates the opportunity to provide technical assistance.

Background

ED1

Mayor Karen Bass issued ED1 on December 16, 2022, creating a streamlined ministerial approval process for 100 percent affordable and shelter projects. The original ED1 regulations specified that the density permitted for a project site could be based on either the zoning or the general plan land use designation and that projects could utilize State Density Bonus Law (SDBL). The City revised ED1 on June 12, 2023, and explicitly prohibited ED1 ministerial processing on sites located in single-family or more restrictive zones.[1]

[1] Executive Directive No. 1, Page 1, Revised June 12, 2023.

Project History

The proposed Project is a 100 percent affordable residential development that would result in a total of 200 affordable dwelling units, inclusive of one manager's unit. The Project site is zoned R1-1, One-Family Zone (single-family zone), with a General Plan land use designation of Low Residential. The Project includes a State Density Bonus Law (SDBL) request for additional density with incentives, concessions, and waivers of development standards. The City deemed the Project's preliminary application complete on March 23, 2023. The City's signed preliminary application review form indicated that the Project was eligible for ED1 and had until September 19, 2023 to file the City Planning application.[2] The applicant submitted the full development application on June 6, 2023. Then, on July 6, 2023, the City issued a Notice of Ineligibility (NOI) that indicated, "[p]er the revised Executive Directive 1 (ED1) issued by Mayor Karen Bass on June 12, 2023, projects located in single-family or more restrictive zones cannot use the ED1 Ministerial Approval Process."[3] The NOI explicitly stated that the Project is not eligible for ED1 processing because it is in the R1-1 zone, but noted that there are other entitlement options available for the Project which do not require a legislative act (e.g. General Plan Amendment or Zone Change).

Preliminary Application Vesting Rights and the City's Executive Directive-1

The central question between the City and the Applicant is as follows:
Is an executive directive one of the rules, regulations, requirements, and policies that vest upon submission of a complete Preliminary Application?

The answer is "yes." Submission of a preliminary application that meets the requirements of Government Code section 65941.1 vests the "ordinances, policies and standards" in effect when the application is submitted. (Gov. Code § 65589.5, subd. (o)(1).) The Housing Accountability Act (HAA) makes it clear that,

"[f]or purposes of this subdivision, 'ordinances, policies, and standards' includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions."[4]

The City's ED1 is not excluded from the expansive HAA definition of "ordinances, policies, and standards." The Mayor issued the executive directive under the provisions of Los Angeles City Charter section 231(i) and section 8.29 of the Los Angeles Administrative Code, which, during a period of local emergency, deem the Mayor the

[2] City of Los Angeles Housing Crisis Act Vesting Preliminary Application, Page 1, Signed March 31, 2023.
[3] City of Los Angeles Notice of Ineligibility dated July 6, 2023.
[4] Gov. Code, § 65589.5, subd. (o)(4). Emphasis added.

Director of the Emergency Operations Organization and authorize the Director to "promulgate, issue and enforce rules, regulations, orders and directives which the Director considers necessary for the protection of life and property." Charter section 231(j), meanwhile, authorizes the Mayor to "establish procedures and implement policies" to manage the Mayor's responsibilities "through the issuance of executive directives, which, in the absence of conflicting provisions in the Charter or ordinance, and until revised or rescinded by the Mayor, shall be binding on all departments, commissions, appointed officers and employees of the City" (emphasis added). There is no doubt, then, that an Executive Directive is a "rule[]," "requirement[]," or "polic[y]" under Government Code section 65589.5, subdivision (o)(4).

Therefore, an applicant that submitted a complete preliminary application at a time when ED1 did not exclude single-family or more restrictive zones may proceed under the previous ED1 regulations throughout the entitlement process. The preliminary application vesting status remains in effect as long as the development application submittal occurs within the 180-day required period[5] and any revisions to the development application do not exceed a change of 20 percent of the number of residential units or square footage of construction, exclusive of any increase resulting from the density bonus, incentive, concession, waiver or similar provision.[6] However, HCD emphasizes that any incomplete preliminary applications submitted prior to the June 12, 2023 revised ED1, and any preliminary applications submitted after June 12, 2023, would not be entitled to ED1 ministerial processing in single-family or more restrictive zones, as any such applications would not have secured vesting rights under the original ED1 policy.

Conclusion

In sum, HCD finds that the preliminary application vesting rights conferred by Government Code section 65941.1 include ED1. HCD remains committed to supporting the City of Los Angeles in achieving housing objectives across all income categories and hopes the City finds this clarification helpful. If you have any questions or need additional information, please contact Gabriel A. Pena-Lora, of our staff, at gabriel.pena-lora@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief

cc: Lisa M. Webber, AICP Deputy Director Los Angeles City Planning
Blake Lamb, Principal City Planner Los Angeles City Planning

[5] Gov. Code, § 65941.1, subd. (d)(1).
[6] Gov. Code, § 65941.1, subd. (c).