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 5, 2022

Dave Rand
Rand Paster & Nelson LLP
633 W. Fifth Street, 64th floor
Los Angeles, CA 90071

Dear Dave Rand:

RE: 3030 Nebraska Avenue, Santa Monica – Letter of Technical Assistance

This letter is in response to your September 16, 2022, request for technical assistance regarding the implementation of the Housing Accountability Act (HAA), particularly those provisions that require housing element compliance, in the context of the proposed multi-family residential development in Santa Monica at the address noted above. The inquiry pertains to the relationship of preliminary applications to projects that invoke the provisions of subdivision (d)(5) of Government Code section 65589.5 once a housing element has been found in substantial compliance with State Housing Element Law.

Background

A housing development project with housing for very low-, low-, or moderate-income households[1] cannot be denied (or approved in a way such that conditions render the inclusion of affordable housing infeasible) unless one of five potential written findings, based upon a preponderance of the evidence in the record, can be made. (Gov. Code, § 65589.5, subd. (d).) Under subdivision (d)(5), a jurisdiction can only deny a qualifying project if both of the following criteria are satisfied: (1) The project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation and (2) the jurisdiction has a housing element in substantial compliance with State Housing Element Law. Therefore, the status of a jurisdiction's housing element is of critical importance when determining the applicability of the provisions of subdivision (d)(5).

[1] "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).)

Analysis

The question posed in your September 16, 2022; request is as follows:

> If a preliminary application is submitted to a jurisdiction without a compliant Housing Element, and the jurisdiction subsequently achieves Housing Element compliance during the project's entitlement process, do the rights vested by the preliminary application continue to apply?

The answer is "yes." The submittal of a complete preliminary application pursuant to Government Code section 65941.1 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 submittal occurs at a time when the jurisdiction does not have a compliant housing element, any potential benefits afforded to the applicant as a result of the jurisdiction's noncompliant status would remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance during the entitlement process.

If you have questions or need additional information, please contact Brian Heaton at Brian.Heaton@hcd.ca.gov.

Sincerely,



Melinda Coy
Proactive Housing Accountability Unit Chief