DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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July 16, 2025

Luke Connolly, Assistant Director of Community Development
City of Cupertino
Community Development Department, Planning Division
10300 Torre Avenue
Cupertino, CA 95014

Dear Luke Connolly:

RE: City of Cupertino – Permit Streamlining Act 90-Day Review – Notice of Violation

On March 20, 2025, the California Department of Housing and Community Development (HCD) sent an email to the City of Cupertino (City) regarding compliance with the Permit Streamlining Act (PSA) (Gov. Code, §§ 65920). In the email, HCD advised the City that, under the PSA, the 90-day period for a developer to resubmit an application after an incompleteness determination resets with each incompleteness determination (i.e., a new 90-day period begins). On March 24, 2025, HCD was made aware of two additional projects where the City had interpreted the PSA to provide a single 90-day period to achieve completeness. On April 18, 2025, the City responded in writing to HCD's email, informing HCD that it maintains its position that a preliminary application – and its vesting – expires when the full application is not determined to be complete within the initial 90-day period. As a result, and consistent with HCD's March 20, 2025 email to the City and prior technical assistance to other cities on the same subject, HCD hereby notifies the City that its failure to reset the 90-day period after each incompleteness determination is in violation of state housing law.

Background

HCD understands that two residential development projects with a combined 50 units, including 10 deed-restricted affordable units, submitted preliminary applications on February 20 and 21, 2024. Because the City did not have a substantially compliant housing element at the time, the projects invoked the so-called "Builder's Remedy" in the Housing Accountability Act (HAA).[1] to develop the site at densities above those allowed by the City's general plan and zoning. The projects submitted full development applications on August 16 and 19, 2024, respectively, within the six-month statutory

[1] At the time, the Builder's Remedy was found in Gov. Code, § 65589.5, subd. (d)(5). As a result of recent revisions, the Builder's Remedy is now found in Gov. Code, § 65589.5, subds. (d)(6), (f)(6), and (h)(11).

time period required by Government Code section 65941.1, subdivision (e) to maintain the vested rights conferred by the preliminary application. The City found the development applications incomplete on September 13 and 16, 2024, respectively. Neither application was deemed complete within 90 days of the City's determinations, and subsequently the City informed the applicants on January 9 and 10, 2025 that it interpreted the PSA to restrict applicants to a single 90-day period to achieve completeness. Therefore, according to the City, the applications, along with the vesting rights, had expired.

Analysis

Under the PSA, if an agency determines that the application for a development project that is vested via a preliminary application is not complete pursuant to Government Code section 65943, the development proponent is required to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information in order to maintain vested status.[2] However, the 90-day deadline resets after each incompleteness determination made by the City. A project with multiple incompleteness determination letters and responses may have multiple 90-day periods.

Imposing a single 90-day resubmittal period makes the process more difficult for diligent applicants to benefit from the protections of the PSA's preliminary application process. The City's incorrect interpretation of the PSA, namely that it allows an applicant only a single 90-day resubmittal period, is inconsistent with the intent of the PSA. The City's interpretation was also expressly rejected in a Los Angeles Superior Court ruling which concluded "that when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond."[3] The court observed that:

> Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. This statute supports [the developer's] reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.[4]

[2] Gov. Code, § 65941.1, subd. (e)(2).
[3] *Jha v. City of Los Angeles*, Decision on Petition for Writ of Mandate (July 24, 2024, Los Angeles Superior Court Case No. 23STCP03499), p. 24.
[4] Id., p. 23.

The court went on to conclude that the PSA should not be interpreted in a vacuum, but rather in its relation to the HAA, and the Legislature has mandated that the HAA must be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing."[5] The court rejected the City's interpretation again in in the case of *Yes in My Backyard, Trauss, et al. v. City of Los Angeles*.[6]

Conclusion

Failure by the City to allow for an additional 90-day resubmittal period after each of its incompleteness determinations is a violation of the PSA. The City must allow the applicants to resubmit the application within 90 days of any incompleteness determination. The City must also uphold its PSA obligations under Government Code section 65941.1 by honoring the Projects' vested rights, namely that the City did not have a substantially compliant housing element and was therefore subject to the Builder's Remedy.

Under Government Code section 65585, HCD must notify a local government when that local government takes actions that violate the HAA and the PSA and may notify the California Office of the Attorney General of those violations.[7]

The City has until August 15, 2025, to provide a written response to this letter. HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

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

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosure: HAU 1585 Cupertino PSA 90-Day Technical Assistance Email (March 20, 2025)

[5] Id. (quoting *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 855).
[6] See *Yes in My Backyard, Trauss, et al. v. City of Los Angeles* (September 26, 2024, Case No. 24STCP00070, Decision on Petition for Mandamus: Granted), pp. 19-21.
[7] Gov. Code, § 65585, subds. (i)(1), (j).

Outlook

Re: HAU 1585 Cupertino PSA 90-Day Discussion

From Ying, David@HCD <David.Ying@hcd.ca.gov>
Date Thu 2025-03-20 1:45 PM
To Luke Connolly <lukec@cupertino.org>
Cc Heaton, Brian@HCD <Brian.Heaton@hcd.ca.gov>; Piu Ghosh (she/her) <PiuG@cupertino.gov>

Hello Luke and Piu,

Once again, thank you for meeting with us on March 3 to discuss Cupertino's application of the Permit Streamlining Act (PSA) as it relates to the 90-day period following the determination of an application's inconsistency. HCD understands that it is the City's position that the 90-day period does not renew following the resubmittal of an application.

HCD has recently provided the City with multiple written examples of technical assistance that were previously sent to other jurisdictions. These include: a Letter of Technical Assistance, a Notice of Potential Violation, and Notices of Violation. In the interest of providing quick technical assistance to the City (and to avoid draft nearly identical technical assistance materials), HCD has chosen to provide the City with previously issued technical assistance letters. Each of these letters reiterates that the 90-day period restarts after the resubmittal of an application. This is further affirmed by the Los Angeles County Superior Court's decision in *Janet Jha v. City of Los Angeles, et al.*, which stated that "when an applicant receives an incompleteness determination pursuant to [Government Code] section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond."

HCD requests a written response to this letter by April 20, 2025. HCD reminds the City of its commitments to the housing element, including to the development of parcels identified in its site inventory. HCD also reminds the City that HCD has statutory authority to enforce the PSA, 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 local government'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)). HCD remains committed to supporting the City of Cupertino in facilitating housing at all income levels and hopes the Town finds this clarification helpful. If you have questions or need additional information, please let me know.

Thank you,

David Ying 應嘉惟 (any pronouns)
Housing Policy Specialist, Housing Accountability Unit
Housing Policy Development Division
651 Bannon Street, Suite 400 | Sacramento, CA 95811
916-907-3743

From: Ying, David@HCD <David.Ying@hcd.ca.gov>
Sent: Monday, March 3, 2025 2:38 PM
To: Luke Connolly <lukec@cupertino.org>
Cc: Heaton, Brian@HCD <Brian.Heaton@hcd.ca.gov>; Piu Ghosh (she/her) <PiuG@cupertino.gov>
Subject: Re: HAU 1585 Cupertino PSA 90-Day Discussion

Hello Luke and Piu,

Thanks for the meeting. As promised, here are the four letters we've written about the PSA 90-day issue.

David

From: Ying, David@HCD <David.Ying@hcd.ca.gov>
Sent: Thursday, February 27, 2025 9:26 AM
To: Luke Connolly <lukec@cupertino.org>
Cc: Heaton, Brian@HCD <Brian.Heaton@hcd.ca.gov>; Piu Ghosh (she/her) <PiuG@cupertino.gov>
Subject: Re: HAU 1585 Cupertino PSA 90-Day Discussion