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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA- UNLIMITED JURISDICTION

YES IN MY BACK YARD; CHUNHUA TANG; and CALIFORNIA HOUSING DEFENSE FUND,

Petitioners/Plaintiffs,

v.

CITY OF CUPERTINO; COMMUNITY DEVELOPMENT DEPARTMENT OF THE CITY OF CUPERTINO; and DOES 1 through 25 inclusive,

Respondents/Defendants.

Case No.: 25CV462924

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 and CHUNHUA TANG, by and through their attorneys, Patterson & O'Neill, PC; and CALIFORNIA HOUSING DEFENSE FUND, by and through its attorneys Dylan Casey and Nicholas Eckenwiler (collectively "Petitioners"), file this petition for writ of mandate and complaint for declaratory relief against respondents and defendants City of Cupertino ("City"), City Council of the City of Cupertino ("City Council"), and Does 1 through 25 (collectively, "Respondents"), to compel Respondents to comply with their duties under the state Housing Accountability Act ("HAA") (Gov. Code § 65589.5), state Housing Crisis Act (Gov. Code § 65941.1), and state Permit Streamlining Act ("PSA") (Gov. Code § 65943), as further set forth below. Petitioners allege as follows:

INTRODUCTION

1. This case demonstrates why California continues to suffer from a housing crisis of epic proportions. Respondents failed to carry out their responsibility to adequately plan to accommodate their fair share of the region's housing need, and because of that failure lost discretion to disapprove certain affordable housing projects. Rather than accept the consequences of their own making, Respondents abused procedural mechanisms in bad faith to prevent a housing development project applicant from exercising his rights under state law. The City wrongly claimed that Petitioner Tang's vested rights relating to this project expired and invited Tang to appeal the decision, only to refuse to process the appeal after Tang filed it in good faith and paid the appeal fee.

2. In recent years, the California Legislature has sought to address what it has described as a "housing supply and affordability crisis of historic proportions" that is "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." (Gov. Code § 65589.5(a)(2).)

3. As a result of the housing crisis, younger Californians are being denied the opportunities for housing security and homeownership that were afforded to previous generations. Families across economic strata are being forced to rent rather than experience the wealth-

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building benefits of homeownership.[1] 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, healthcare and other necessities.[2] Families are also at risk of losing housing in the event of a financial setback, and housing insecurity has led to a mounting homelessness crisis.[3]

4. At the core of California's affordable housing crisis is a failure to build enough housing to meet demand. California's Legislative Analyst's Office estimates the state needed to build approximately 210,000 units a year in major metropolitan areas from 1980 to 2010 to meet housing demand but only built approximately 120,000 units per year.[4] California ranks 49th out of the 50 states in existing housing units per capita.[5]

5. The Legislature has recognized that the crisis is driven, in part, "by activities and policies of many local governments that limit the approval of housing . . ." (Gov. Code § 65589.5(a)(1)(B).)

6. Cupertino added just 546 new units to its housing stock between 2015–2023, roughly half of the projected housing need during that timeframe.[6] Meanwhile, housing costs continue to skyrocket. 83% of homes in Cupertino are valued over $1 million, with the average market value at $2.25 million – a number that the City itself recognized is "significantly above" the cost of housing in the Santa Clara County and Bay Area markets.[7]

7. Renters, who make up 40% of all households in the City, are facing the same cost pressures as owners. 87% of rental units in the City are rented for more than $2,000 per month, and 52% renting for $3,000 and more.[8] Santa Clara County has almost *three times* the proportion

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[1] California Department of Housing and Community Development, California's Housing Future: Challenges and Opportunities: Final Statewide Housing Assessment 2025 (2018), available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf, at 18-19.
[2] *Id*. at 27.
[3] *Id*. at 3, 48-50.
[4] Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences (2015), available at https://lao.ca.gov/publications/detail/3214, at 21.
[5] McKinsey & Company, A Tool Kit to Close California's Housing Gap: 3.5 Million Homes By 2025 (2016), available at https://www.mckinsey.com/featured-insights/urbanization/closing-californias-housing-gap, at document page 6.
[6] City of Cupertino, *Sixth Cycle Housing Element*, (May 14, 2024), p. H-4.
[7] City of Cupertino, *Sixth Cycle Housing Element*, (May 14, 2024), p. H-6.
[8] *Id*.

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of rentals priced under $2,000 than the City.[9]

8. Cupertino's jobs-to-household ratio, a measure that estimates housing supply by dividing the number of jobs by the number of housing units in a specified area, is 2.60 – significantly higher than Santa Clara County (1.71) and the Bay Area (1.47).

9. Despite astronomical housing costs caused by limited supply, Cupertino continues to subvert state housing laws that were designed to speed the pace of new housing construction.

10. As illustrated in this case, Respondents' pattern of conduct includes, but is not limited to: (i) affirmatively subverting the Permit Streamlining Act and the Housing Crisis Act through arbitrary and bad-faith application procedures and policies; (ii) ignoring state housing laws that expressly permit low-income housing development projects, regardless of zoning or land use designation, when a city does not have a compliant housing element; and (iii) denying housing applicants vesting rights after the submittal of complete preliminary applications.

11. These illegal policies and practices have been repeatedly applied by Respondents to avoid their obligations to approve housing projects, and to subvert the ability of applicants to benefit from the legal protections established for housing development projects under state law. Respondents routinely disapprove housing development projects administratively, under the guise of "incomplete application" determinations, to evade state law and judicial review. These policies and practices must stop.

PARTIES TO THE ACTION

12. Petitioner and Plaintiff Yes In My Back Yard ("YIMBY") is a § 501(c)(3) nonprofit corporation and 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 litigates for housing projects through its project YIMBY Law, whose mission is to end the housing shortage and achieve affordable, sustainable, and equitable housing for all. YIMBY's mission is to increase the accessibility and affordability of housing in California by enforcing state housing

[9] *Id*.

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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 Cupertino. 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.

13. Petitioner and Plaintiff Chunhua Tang ("Tang") is a natural person and a resident of the State of California. Tang is the owner of the real property commonly known as, and situated at, 20739 Scofield Drive, Cupertino, California (the "Project Site").

14. Petitioner and Plaintiff California Housing Defense Fund ("CalHDF") is a California nonprofit public benefit corporation. CalHDF's mission is to advocate for the construction of housing at all income levels throughout the state, including in Cupertino, to meet the needs of California residents. This advocacy includes, but is not limited to, litigation under state laws (including the HAA and the Housing Element Law) that limit local governments' discretion to disapprove housing development projects and to impose strict land use policies. CalHDF brings this Petition on its own behalf and on behalf of others affected by Respondents' failure to comply with state law.

15. Respondent and Defendant City of Cupertino (the "City") is, and at all relevant times was, an incorporated city in Santa Clara County, duly organized and existing under and pursuant to the laws of the State of California.

16. Respondent and Defendant Community Development Department of the City of Cupertino is the administrative agency within the City that is responsible for the review of development projects, permitting, inspection services, and administering the City's building and zoning codes.

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17. 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.

18. Petitioners are informed and believe that at all times mentioned in this Petition and Complaint, all respondents/defendants were the agents or employees of their co-respondent/defendant, 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

19. Santa Clara County Superior Court has initial jurisdiction of the matters alleged herein pursuant to Code of Civil Procedure §§ 1094.5 and 1085, which authorize the Court to issue a writ of mandate.

20. Venue is proper in the Superior Court for the County of Santa Clara in accordance with Code of Civil Procedure §§ 394 and 395 because the entire controversy occurred in Santa Clara County and because Respondents are situated in Santa Clara County.

21. 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).)

22. 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

Housing Accountability Act and Builder's Remedy Legislative Background

23. A significant factor that has contributed to the housing crisis is the failure of local governments to adequately plan to provide housing for all income levels. To ensure that a local government's zoning capacity is sufficient to accommodate the housing needs of everyone in the community, the Housing Element Law requires each local government to adopt a housing element as part of its general plan. (Gov. Code § 65580, et. seq.) A housing element must include, among other things, an assessment of the jurisdiction's housing needs, an inventory of sites that

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can be developed as residential housing and development constraints, and a rezoning program to meet housing needs. (*Id.*)

24. In enacting the Housing Element Law, the Legislature found and declared that local governments "have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community" and that "[d]esignating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality's housing need for all income levels is essential to achieving the state's housing goals." (Gov. Code § 65580.)

25. Once a jurisdictions' housing element update is complete, it must be submitted to the state Department of Housing and Community Development ("HCD") for review. HCD then makes a determination of whether the housing element is "substantially compliant" with the requirements of state housing law. (Gov. Code § 65585.03).

26. Because planning to provide adequate housing is the fundamental first step in solving the housing crisis, the Legislature has enacted a series of legal consequences for local governments that fail to carry out this basic requirement. To that end, the Housing Accountability Act ("HAA") provides an avenue for developers to provide desperately needed housing for very low, low-, or moderate-income households when a local government fails to carry out its responsibility to timely adopt a substantially compliant housing element.

27. Known as the "Builder's Remedy," a local government is required to approve a housing development project, or not otherwise condition approval in a manner that renders a qualifying project infeasible unless the local government can make certain written findings based upon a preponderance of the evidence. To qualify for the Builder's Remedy, a project must reserve at least 13% of the homes for low-income households.[10]

28. The required findings for disapproving qualifying projects include: 1) the local agency has a compliant housing element and its jurisdiction has met or exceeded its regional

[10] Low-income households are defined as households earning 60% of the area median income or below. (Health & Saf. Code § 50053.)

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housing needs allocation; 2) the proposed project would have an unmitigable "specific, adverse impact upon the public health or safety"; 3) denial is required to comply with "specific state or federal law"; and 4) the proposed project site is on land zoned for agricultural or resource preservation, or does not have adequate water or wastewater facilities. (Gov. Code § 65589.5(d)(1)-(5).)

29. Most pertinent here, the Builder's Remedy provision states that an agency is only permitted to disapprove a qualifying project if "the jurisdiction had adopted a revised housing element that was in substantial compliance with this article, *and* the housing development project or emergency shelter was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan." (Gov. Code § 65589.5(d)(5).)

30. Thus, under the Builder's Remedy, a local government cannot deny a qualifying housing development project, *even if* the project is inconsistent with the jurisdiction's zoning and inconsistent with the general plan land use designation, if the local government has not adopted a housing element in substantial compliance with the Housing Element Law. The only exception is if the local government makes written findings that one of the above-described circumstances exists. Otherwise, a local government must make written findings that one of the other above-described sets of circumstances exist.

31. The HAA defines "disapprove" to include, *inter alia*, any instance in which an agency: (1) "[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;" (2) makes a written determination that a preliminary application expired or that an applicant has otherwise lost its vested rights except for the specifically enumerated reasons; (3) makes an improper incompleteness determination; and (4) engages in a course of conduct intended to harass or delay that effectively disapproves the proposed housing development without taking final administrative action. (Gov. Code § 65589.5(h)(6).)

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32. Applicants and qualified housing organizations may bring suit under the HAA to challenge a disapproval that is made without the proper findings. (Gov. Code § 65589.5(k)(1)(A)(i).)

33. 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.)

The City Committed to Process Builder's Remedy Projects In a Stipulated Judgment

34. For jurisdictions within the Association of Bay Area Governments, which includes the City, the sixth housing element cycle began on January 31, 2023. The City, however, failed to adopt a revised housing element in substantial compliance with the Housing Element Law by its January 31, 2023 statutory deadline.

35. The California Housing Defense Fund ("CalHDF") and Yes In My Back Yard ("YIMBY") sued the City on February 3, 2023 (Case No. 23CV410817) for to its failure to timely adopt the sixth cycle housing element.

36. The parties entered into a Stipulated Judgment, which was filed with the Court on January 8, 2024. (Attached as **Exhibit A**.) As part of the Stipulated Judgment, the parties agreed that "[u]ntil the date that the City adopts a Housing Element Revision that is in substantial compliance with Housing Element Law, the City shall not use the provisions in subdivision (d)(1) or (d)(5) of Government Code Section 65589.5 to disapprove a housing development project for very low, low-, or moderate impact households, as defined in Government Code Section 65589.5(h)(3)[.]" In other words, the City agreed to abide by the requirements of the Builder's Remedy.

37. The City eventually submitted a first draft of its housing element to HCD on February 3, 2023. On May 4, 2023, HCD informed the City that revisions to its housing element were necessary to comply with the Housing Element Law. The City submitted a second draft on November 30, 2023, which was again found noncompliant by HCD on December 15, 2023. The City submitted a third draft on February 27, 2024, but because the City was over a year late, HCD informed the City it still could not be found in substantial compliance until it completed its

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required rezoning to accommodate the regional housing needs allocation. (Gov. Code § 65583(c)(1)(A)(i).)

38. HCD did not certify the City's housing element as in substantial compliance with Housing Element Law until September 4, 2024. Per the stipulated judgment, the City had agreed to process all qualifying projects pursuant to the Builder's Remedy that were submitted prior to that date.

Permit Streamlining Act and Housing Crisis Act Legislative Background

39. The Permit Streamlining Act ("PSA"), 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: 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 an applicant to appeal a completeness determination wherein an agency must make a final determination on the appeal within 60 days (Gov. Code § 65943).

40. The PSA provides an iterative process to ensure that local agencies have sufficient information to process applications while also ensuring timely processing of proposed projects. Once a development application is submitted, the local government has 30 days to make a determination as to whether the application is complete. (Gov. Code § 65943.) If the local government determines that the application is incomplete, it must list with particularity what items are missing. Any incompleteness determination "shall be limited to those items actually required on the lead agency's submittal requirement checklist." (Gov. Code § 65943.) Upon a resubmittal of the application in response to an incompleteness determination, "a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." (*Id.*)

41. The PSA is simply designed to provide local governments with sufficient information to begin processing an application. The HAA provides a separate 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 fewer than 150 units, the HAA states

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that written compliance documentation shall be provided "[w]ithin 30 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).)

42. HCD has issued guidance letters that explain finding an application incomplete based on purported code-noncompliance violates both the PSA and the HAA. 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." (HCD Notice of Violation issued to City of La Cañada Flintridge on June 8, 2023 and attached as **Exhibit B**; HCD Letter of Technical Assistance issued to City of Fillmore on August 24, 2022 and attached as **Exhibit C**.)

43. The Housing Crisis Act ("HCA"), also referred to as SB 330, added a new section to the PSA that allows a housing development applicant to submit a "preliminary application." (Gov. Code § 65941.1(a).) The purpose of the preliminary application is to "vest" the zoning and general plan standards that are in effect at the time a complete preliminary application is submitted. In other words, housing development projects are *only* subject to the ordinances, policies, and standards that were adopted and in effect at the time a complete preliminary application is submitted. (Gov. Code § 65589.5(o)(1).)

44. If the preliminary application submittal occurs at a time when a jurisdiction does not have a compliant housing element, any benefits afforded to the applicant as a result of the jurisdiction's noncompliant status, including the Builder's Remedy, remain throughout the entitlement process. HCD has confirmed that the benefits afforded to an applicant as a result of the jurisdiction's noncompliance vest upon the submittal of a preliminary application. (See, HCD Letter of Technical Assistance issued to the City of Santa Monica, dated October 5, 2022, attached as **Exhibit D**.)

45. In addition, the Legislature confirmed in AB 1886, effective January 1, 2025, that a local agency may not disapprove a housing development project proposed under the Builder's Remedy if the applicant submitted a preliminary application when the jurisdiction did not have a

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substantially compliant housing element and specified that this was declaratory of existing law. (Gov. Code. § 65589.55.)

46. The HCA enumerates very limited circumstances that would invalidate a preliminary application and eliminate an applicant's vesting rights. For example, a preliminary application is no longer considered valid if the number of units or square footage of construction is revised by 20% or more. (Gov. Code § 65941.1(d).)

47. In addition, a preliminary application is considered expired if the applicant does not submit a complete development application within 180 days of the preliminary application submittal. (Gov. Code § 65941.1(e)(1).) However, if the applicant submits a development application within 180 days of the preliminary application that the local government judges to be incomplete, the law provides additional time for the applicant to achieve a complete application by referencing the PSA's iterative completeness determination process. The HCA provides that "[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. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect." (Gov. Code § 65941.1(e)(2).)

48. On February 12, 2025, HCD issued a letter to the Town of Los Gatos, advising Los Gatos that "under the PSA, the 90-day period for a developer to resubmit an application after an incompleteness determination resets with each incompleteness determination." (Attached as **Exhibit E**.) In other words, HCD confirmed that the HCA refers to, and incorporates, the PSA's iterative process whereby each time an applicant resubmits an application and receives an incompleteness determination, the applicant receives another 90 days to respond before the preliminary application expires.

49. HCD similarly acknowledged this iterative process in an August 22, 2024 Notice of Violation to the City of Beverly Hills, wherein HCD informed Beverly Hills "that the 90-day

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deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have multiple 90-day periods." (Attached as **Exhibit F**.)

50. This iterative process was adopted in a recent Los Angeles Superior Court ruling, which concluded "that when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond." (*Janet Jha v. City of Los Angeles, et al*. (Los Angeles Sup. Ct., Case No. 23STCP03499).) (Attached as **Exhibit G**.)

51. Because the submittal of a preliminary application vests a project in the Builder's Remedy, as part of the terms of the Stipulated Judgment referenced above (¶¶ 34-38), the City agreed that if a housing development project "has filed a preliminary application under Government Code Section 65941.l between February 1, 2023, and the date the City adopts a substantially compliant Housing Element Revision, the City agrees to comply with all of the provisions of Government Code Sections 65589.5(o) and 65941.1 in reviewing the housing development project[.]"

Petitioner Tang Submitted a Preliminary Application for the Project When the City Did Not Have a Compliant Housing Element

52. On February 21, 2024, Petitioner Tang submitted a preliminary application for a 20-unit project, with 20% of the units set aside as affordable to lower-income households on a parcel located at 20739 Scofield Drive, in the City of Cupertino ("Project"). This application set forth all the information required by the HCA, Gov. Code § 65941.1, including, but not limited to, the Project location, a site plan and elevations, the existing uses on the Project Site, the proposed land use by number of units, the square footage of residential development, and the proposed number of parking spaces.

53. Petitioner Tang received an automated email from the City stating that his SB 330 preliminary application had been received. It was not until March 26, 2024 that he received confirmation from the City that the preliminary application for the Project was complete. Thus, Tang had vested the development rights in effect as of the date of the complete preliminary application submittal.

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54. At the time of Petitioner Tang's February 21, 2024 preliminary application submittal, the City did not have an adopted and substantially compliant housing element under state law, which did not occur until September 4, 2024.

55. Petitioner Tang proposed an affordable housing project that reserved 20% of the units for low-income households, and thus the Project qualifies for the protections of the Builder's Remedy.

56. On August 19, 2024, Petitioner Tang timely submitted a formal development application for the Project. The development application was submitted within the required 180-day period following the submission of the Preliminary Application. Thus, the preliminary application remained valid, and the Project retained vested rights in the Builder's Remedy through the preliminary application. (Gov. Code § 65941.1(e)(1).)

The City's Incompleteness Determination and Project Resubmittal

57. On September 16, 2024, the City found the application to be incomplete. The City issued an incompleteness letter ("Incompleteness Letter"), which required the applicant to update the application form to reflect all legal property owner names, add a title report, prepare a Phase 1 Environmental Site Assessment, and noted other miscellaneous issues with the application.

58. The City's letter included an attachment that "outlines the objective zoning, subdivision, tree removal, and design review standards identified by the City" and demanded that Tang "clearly outline how each of these standards are met by the proposed project."

59. The City's letter also noted that any revisions to the plan sheets or the provision of additional information "required for application completeness ***will result in additional compliance notes*** in the next round of review since most standards cannot be adequately evaluated without the required additional information." (Emphasis added.)

60. On December 12, 2024, Petitioner Tang resubmitted the application in response to the City's September 16, 2024 Incompleteness Letter. This submittal was within the 90-day timeline (i.e., by December 15, 2024) to respond to an incompleteness determination to maintain vesting rights. (Gov. Code § 65941.1(e)(2).)

61. On January 9, 2025, City provided Petitioner Tang with another "incompleteness"

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determination letter. The letter claimed some of the issues identified in the first letter were not adequately addressed in the resubmission.

62. Specifically, the City's letter again demanded that the Project demonstrate compliance with City code standards. The City's letter acknowledged Tang's response and explanation that the City's code standards could not be applied to the Project due to the Builder's Remedy. The letter stated, "However, Planning staff in its Incomplete Letter dated September 13, 2024 attached an Objective Standards Matrix which lists *applicable* zoning, general plan, and municipal code objective standards *that would apply to the project*."

63. The letter made clear that despite the protections of the Builder's Remedy that prevents the City from disapproving Tang's Project regardless of any general plan or zoning inconsistency, the City would refuse to accept the application as complete or process the application until the Project was modified to achieve code-compliance.

64. The City's letter also claimed that because the City still considered the application incomplete, "the preliminary application pursuant to Govt. Code Section 65941.1 has expired and has no further force or effect" – despite the fact that the resubmission occurred within 90 days of the City's first incompleteness determination.

65. The letter also stated that under Gov. Code § 65943 and the City's Municipal Code, Petitioner Tang "may appeal this decision in writing to the Planning Commission," and the City would make a final written determination on the appeal within 60 days.

66. The City's January 9, 2025 Application Incomplete Letter made clear that the City was not going to process the development application pursuant to the Builder's Remedy.

67. Left with no other recourse, on January 22, 2025 Petitioner Tang appealed the City's incompleteness letter, accompanied by a $505 appeal fee. Petitioner Tang's appeal set forth a detailed explanation of why the City's refusal to recognize the Project's vesting rights was a plainly erroneous action that conflicts with the plain language and intent of state housing law.

68. The City did not respond to Petitioner Tang's appeal until nearly two months later. In a letter dated March 17, 2025 ("Loss of Vesting Rights Letter"), attached as **Exhibit H**, the City stated that would decline to hold a public hearing on Tang's appeal and in fact would refuse

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to process the appeal that the City had previously invited Tang to submit.

69. The City's letter bizarrely stated that the appeal was invalid because it addressed interpretation of state law and that "[n]either the Director nor the Planning Commission has jurisdiction to rewrite state law." This of course ignores the fact that the City's letter that Tang appealed included an erroneous interpretation of state law, that the City now stated it was powerless to reverse.

70. The City's letter argues that if an agency determines the application is incomplete, the applicant has 90 days – and 90 days only – to complete the application to the agency's satisfaction or else the preliminary application expires. Under the City's interpretation, an applicant would essentially receive one opportunity to respond to an incompleteness determination before losing vesting rights. The City's position ignores the iterative process outlined in the PSA, and explicitly referenced in the preliminary application provision, regarding an agency's completeness determination. (Gov. Code § 65943.)

71. The City's interpretation of the HCA contradicts HCD's multiple guidance letters on this issue (¶¶ 48-49), as well as a recent superior court decision (¶ 50), all of which were referenced in Tang's appeal. The City ignored this clear precedent, and the language and intent of the HCA, without even providing Tang with a public hearing. CalHDF and YIMBY intended to participate in Petitioner Tang's appeal of the City's erroneous finding that Petitioner Tang's vested Preliminary Application had expired but were denied the opportunity to participate in such appeal when the City declined to hold a public hearing on this matter.

72. The City's motivation behind its bad-faith denial of the appeal and attempt to extinguish the applicant's vesting rights is clear – prevent the Project from benefiting from the protections of the Builder's Remedy. Not only does this action violate the law, but it also violates the Stipulated Judgment wherein the City committed to processing Builder's Remedy projects due to its own failure to timely adopt a substantially compliant Housing Element.

73. In short, the City is unlawfully disapproving a Builder's Remedy project without making written findings based on a preponderance of the evidence of one of the criteria contained within Gov. Code § 65589.5(d).

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FIRST CAUSE OF ACTION

Writ of Mandate - CCP § 1094.5 and/or § 1085; Violation of Permit Streamlining Act ("PSA"), Gov. Code § 65920; Violation of Housing Crisis Act ("HCA"), Gov. Code § 65941.1

(Against All Respondents)

74. Petitioners incorporate herein by reference the allegations contained in Paragraphs 1 through 73 of this Petition and Complaint.

75. Petitioners Tang, CalHDF, YIMBY, 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 is allowed to be enforced against Petitioners. Petitioners' interests include: (1) ensuring that Respondents comply with state laws requiring that they expedite decisions on development projects, particularly housing development projects to address the housing needs of California residents; (2) ensuring that Respondents' actions are in conformity with the requirements of state law; and (3) 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, which Respondents have failed to perform.

76. The PSA's process is limited to gathering information about the proposal, not a substantive review of projects for code consistency. Both of the City's incompleteness determinations included code consistency comments inaccurately identified as "incomplete" items, in conflict with the above PSA provision. When a local jurisdiction improperly characterizes a determination of project consistency as incomplete items, as the City did here, the jurisdiction impermissibly demands more information than necessary to achieve a complete application in violation of the PSA.

77. The HCA's preliminary application process confirms that a preliminary application remains valid so long as an applicant responds to an incompleteness determination within 90 days after receiving the determination. Respondents unlawfully determined that Petitioner Tang's preliminary application expired, despite the fact that Petitioner Tang responded

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to Respondents' incompleteness determinations within 90 days to ensure that the preliminary application remained valid.

78. The City's erroneous interpretation of the HCA will encourage cities to unlawfully raise the bar to achieve complete development applications in attempting to prematurely cut off vesting rights, in contravention of the PSA's goal of expediting the completeness of applications.

79. 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 and HCA, including with respect to the preliminary application vesting rights and development application for the proposed Project.

SECOND CAUSE OF ACTION

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

(Against All Respondents)

80. Petitioners incorporate herein by reference the allegations contained in Paragraphs 1 through 79 of this Petition and Complaint.

81. Petitioners assert that Respondents' actions constitute an unlawful disapproval of the Project 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.

82. Petitioners Tang, CalHDF, YIMBY, 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 is allowed to be enforced against Petitioners. Petitioners' interests include, inter alia, (1) ensuring that Respondents comply with state laws requiring that they approve housing

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development projects expeditiously in order to address the housing needs of California residents; (2) ensuring that Respondents' actions are in conformity with the requirements of state law; and (3) 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, all of which Respondents have failed to perform.

83. The HAA limits the ability of local governments to disapprove or conditionally approve housing development projects for very low, low-, or moderate-income households (defined as projects with at least 13% of the units reserved for low-income households), even when such projects are inconsistent with zoning and general plan standards, when a jurisdiction is not in substantial compliance with the Housing Element Law.

84. The HAA defines "disapprove" to include any instance in which an agency erroneously determines a preliminary application has expired, makes an improper incompleteness determination, or engages in a course of conduct that effectively disapproves a project without taking a final action. (Gov. Code § 65589.5(h)(6).)

85. Conditional approval is defined as "imposing on the housing development project, *or attempting to subject it to*, development standards, conditions, or policies." (Gov. Code 65589.5(h)(12) (emph. added).)

86. Moreover, the HAA states that an applicant 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).)

87. The HAA therefore makes clear that not only final actions on projects constitute violations of the law, but any attempt to ignore the requirements of the HAA at any point in the application is a judicially reviewable violation of the law. (Gov. Code § 65589.5(k)(1)(A)(i).)

88. Respondents have not proceeded in a manner required by law in disapproving the Project for very low, low-, or moderate-income households without making one of the required findings in Gov. Code § 65589.5(d)(1) – (5), nor did the City support such findings by a preponderance of the evidence in the record.

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89. Specifically, Petitioner Tang submitted a preliminary application before the City had a substantially compliant housing element that allowed the applicant to pursue a Builder's Remedy project. The City unlawfully disapproved the project by erroneously determining the preliminary application expired, and by attempting to apply standards that were not in effect when the preliminary application for this Project was submitted. The City further disapproved the Project by making an improper incompleteness determination that demanded code compliance, and by effectively disapproving a Builder's Remedy project by refusing to process the application unless the Project was modified to achieve code compliance.

90. The City's erroneous determination is a bad-faith course of conduct designed to defeat the Builder's Remedy through a procedural gimmick that the Legislature clearly did not intend, as it created the HAA to facilitate the production of housing.

91. The City further acted in bad faith by inviting Petitioner Tang to appeal its erroneous decision and pay a $505 appeal fee, then waiting nearly 60 days before informing him that the City believed it did not have jurisdiction to reverse its own determination. This course of conduct was designed to harass Petitioner Tang and cause unnecessary delays in the processing of this desperately needed housing project.

92. 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)

93. Petitioners incorporate herein by reference the allegations contained in Paragraphs 1 through 92 of this Petition and Complaint.

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94. 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, patterns, and practices which operate to avoid obligations established by state law, such as: (1) refusing to process housing development projects that qualify under the "Builder's Remedy" provision of the HAA; (2) 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 (3) 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), SB 330/Housing Crisis Act (Gov. Code § 65941.1), and the Permit Streamlining Act (Gov. Code § 65943).

95. Petitioners further contends that Respondents' actions are intended to evade their legal duties and deny Petitioners 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 housing development project applications, including Tang's development application, pursuant to the state Permit Streamlining Act's provisions;

2. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to review and process housing development projects, including Tang's development application, pursuant to the provisions of HCA, including refraining from denying vesting rights to Tang's Project and other similarly situated housing projects;

3. For writ of mandate or other appropriate relief, including an injunction,

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declaration, and/or order under Code of Civil Procedure sections 1094.5 and/or 1085: (1) commanding Respondents to fulfill their mandatory duty to accept and process the development application pursuant to Government Code § 65589.5(d); (2) commanding Respondents to promptly render all appropriate and lawful approvals, entitlements and actions necessary to allow Tang to construct the Project within 60 days, consistent with Tang's rights under state and local law, including the HAA; (3) for an order declaring that the City's actions constituted bad faith as defined by Government Code § 65589.5(l); and (4) for the Court to retain continuing jurisdiction 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 comply with the HAA with respect to the proposed Project, including, but not limited to, an order that the Project is eligible for the Builder's Remedy, and directing Respondents to approve the housing development project within 60 days due to Respondents' bad-faith actions pursuant to Gov. Code § 65589.5;

5. For costs of suit herein;

6. For attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and Gov. Code § 65589.5;

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

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

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Dated: April 8, 2025

Respectfully Submitted,

PATTERSON & O'NEILL, PC



Ryan Patterson
Brian O'Neill
Attorneys for Petitioners and Plaintiffs,
CHUNHUA TANG;
YES IN MY BACK YARD

Dated: April 8, 2025

CALIFORNIA HOUSING DEFENSE FUND



Dylan Casey
Nicholas Eckenwiler
Attorneys for Petitioner and Plaintiff,
California Housing Defense Fund

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VERIFICATION

I, Chunhua Tang, declare as follows:

1. I am a natural person and a resident of the State of California. I am a petitioner and plaintiff in this action and I am authorized to verify this VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF; COMPLAINT FOR DECLARATORY RELIEF.

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 Planning File for ASA-2024-009 that denied the appeal and upheld the Planning Department's incompleteness determination for the proposed housing development project at 20739 Scofield Drive, Cupertino, CA, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

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

Executed on 4/8/2025.

Chunhua Tang

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VERIFICATION

I, Sonja Trauss, declare as follows:

1. I am a natural person and a resident of the State of California. I am the founder and executive director of petitioner and plaintiff 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 Planning File for ASA-2024-009 that denied the appeal and upheld the Planning Department's incompleteness determination for the proposed housing development project at 20739 Scofield Drive, Cupertino, CA, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

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

Executed on 4/8/2025.

Sonja Trauss

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VERIFICATION

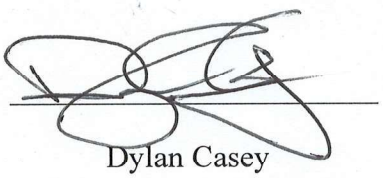
I, Dylan Casey, declare as follows:

1. I am a natural person and a resident of the State of California. I am the Executive Director of petitioner and plaintiff California Housing Defense Fund ("CalHDF"). I am authorized to verify this VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF; COMPLAINT FOR DECLARATORY RELIEF on behalf of CalHDF.

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 Planning File for ASA-2024-009 that denied the appeal and upheld the Planning Department's incompleteness determination for the proposed housing development project at 20739 Scofield Drive, Cupertino, CA, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

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

Executed on April 8, 2025.



Dylan Casey

EXHIBIT A

EFS-020

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 172981
NAME: Celia W. Lee
FIRM NAME: Goldfarb & Lipman LLP
STREET ADDRESS: 1300 Clay Street, Floor 11
CITY: Oakland STATE: CA ZIP CODE: 94612
TELEPHONE NO.: 510-836-6336 FAX NO.: 510-836-1035
E-MAIL ADDRESS: clee@goldfarblipman.com
ATTORNEY FOR (*name*): City of Cupertino

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara
STREET ADDRESS: 161 North First Street
MAILING ADDRESS: 191 N orth First Street
CITY AND ZIP CODE: San Jose 95113
BRANCH NAME: Old Courthouse

CASE NUMBER: 23CV410817

PLAINTIFF/PETITIONER: CA Housing Defense Fund, Yes In My Back Yard
DEFENDANT/RESPONDENT: City of Cupertino
OTHER:

JUDICIAL OFFICER: Hon. Mary Arand

PROPOSED ORDER (COVER SHEET)

DEPT: 18

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
   City of Cupertino, California Housing Defense Fund, Yes In My Back Yard

2. Title of the proposed order:
   [Proposed] Stipulated Judgment

3. The proceeding to which the proposed order relates is:
   a. Description of proceeding: N/A - this is for settlement of the entire action
   b. Date and time:
   c. Place:

4. The proposed order was served on the other parties in the case.



Celia W. Lee
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Form Adopted for Mandatory Use
Judicial Council of California
EFS-020 [Rev. February 1, 2017]

PROPOSED ORDER (COVER SHEET)
(Electronic Filing)

Cal. Rules of Court,
rules 2.252, 3.1312
www.courts.ca.gov

CASE NAME:	CASE NUMBER:
California Housing Defense Fund, Yes In My Backyard v. City of Cupertino	23CV410817

PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER

1. I am at least 18 years old and **not a party to this action.**

   a. My residence or business address is *(specify):*
   1300 Clay Street, Floor 11, Oakland, CA 94612

   b. My electronic service address is *(specify):* sshimizu@goldfarblipman.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

   a. On *(name of person served) (If the person served is an attorney, the party or parties represented should also be stated.):*
   Kevin E. Diggs, Yes In My Back Yard; Dylan Casey and Nicholas Eckenwiler, California Housing Defense Fund

   b. To *(electronic service address of person served):* keith@yimbylaw.org; dylan@calhdf.org, nicholas@calhdf.org

   c. On *(date):* 1/2/2024

[x] Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: 1/2/2024



Season A. Shimizu
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

Filed
January 8, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara
23CV410817
By: jsilveira

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

CALIFORNIA HOUSING DEFENSE FUND, a California nonprofit public benefit corporation; and YES IN MY BACK YARD, a California nonprofit public benefit corporation; and Petitioners, v. CITY OF CUPERTINO, Respondent.	Case No.: 23CV410817 ~~[PROPOSED]~~ **STIPULATED JUDGMENT** Assigned for all purposes to: Dept 18, Hon. Mary Arand Action Filed: February 3, 2023

Pursuant to the Stipulation for Entry of Judgment submitted by Petitioners CALIFORNIA HOUSING DEFENSE FUND ("CalHDF") and YES IN MY BACK YARD ("YIMBY") and Respondent CITY OF CUPERTINO ("City"), and pursuant to the Court's power under Code of Civil Procedure Section 664.6:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Petitioner and against Respondent based on the following findings:

1. The City did not adopt the sixth cycle update to its housing element ("Housing Element Revision") by the January 31, 2023 statutory deadline for doing so;

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2. Due to the significant undertaking of time and effort required to prepare the Housing Element Revision compared to City staff available to work on such preparation, the City was required to find and employ a planning consultant for assistance, and due in part to the timing of the due date for sixth cycle revisions for Southern California cities, the City had significant difficulty in locating an available consultant to assist;

3. After securing the services of a consultant in October 2021, and finding performance of such consultant inadequate, the City was forced to seek and engage the services of a different, second consultant to assist with its Housing Element Revision preparation, with such second consultant not being engaged until November 2022 for limited purposes then in March 2023 for the broader purpose of completing the Housing Element Revision for the City;

4. On February 3, 2023, the City submitted a draft Housing Element Revision to the California Department of Housing and Community Development ("HCD"), commencing the 90-day review period mandated by Government Code Section 65585(b). After receiving comments from HCD, the City revised its draft Housing Element Revision and submitted a second draft to HCD on October 16, 2023;

5. Government Code Section 65759, subdivision (a), provides that the California Environmental Quality Act does not apply to any action necessary to bring a city's housing element into compliance with a court order or judgment rendered under Article 14 of Chapter 3 of Division 1 of Title 7 of the Government Code;

6. Government Code Section 65754, subdivision (b), requires any judgment in favor of a petitioner which finds that the housing element does not substantially comply with the requirements of state law, must order the local jurisdiction to bring its housing element into compliance with those requirements within 120 days and bring its zoning ordinance into consistency with the updated housing element within 120 days thereafter;

7. Government Code Section 65759, subdivision (b), provides that, upon good cause shown, the court can extend the time required for a local jurisdiction to bring its housing element into compliance by way of two extensions of time, not to exceed a total of 240 days;

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8. The parties acknowledge that good cause may exist to grant the City additional time to meet the requirements of Government Code Section 65754, which additional time may be necessary to allow the City to develop a draft Housing Element Revision that is likely to be determined to be in substantial compliance by HCD, and that Petitioners would not oppose a request for an extension of time under Government Code Section 65754, provided that the City acts in good faith to meet its obligations under Section 1 of this Stipulated Judgment, below; and;

9. The parties have agreed to the entry of this judgment because they wish to avoid the time and expense of litigation, so as to avoid wasting taxpayer money on unnecessary litigation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

1. The City shall adopt a Housing Element Revision in substantial conformance with the Housing Element Law (Government Code Sections 65580 *et seq.*) and abide by the following schedule with respect to its Housing Element Revision:

a. With respect to the City's second draft Housing Element Revision, submitted to HCD on October 16, 2023:

i. In the event that HCD determines that the second draft Housing Element Revision substantially complies with the Housing Element Law, or conditionally determines that the second draft Housing Element Revision will substantially comply with the Housing Element Law upon changes agreed to by the City and communicated to Petitioners by the City, the City may adopt such second draft Housing Element Revision (and any pertinent changes referred to in this paragraph), but only after the 60-day review period pursuant to Government Code Section 65585(b)(3) has passed. Upon such adoption, the City will then be considered in substantial compliance with the Housing Element Law.

ii. In the event that HCD fails to review the second draft Housing Element Revision within 60 days, the City may adopt it, but only after the 60-day

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review period pursuant to Government Code Section 65585(b)(3) has passed.

b. If HCD finds that the City's second draft Housing Element Revision does not comply with the Housing Element Law, the City will submit a revised, third draft Housing Element Revision within 75 days after HCD's determination, notifying HCD that the draft is subject to the review procedure set forth under Government Code Section 65754. Subsections (i) and (ii) of Sections 1(a) above regarding the second draft Housing Element Revision shall also apply to any third draft Housing Element Revision submitted to HCD; provided, however, that the HCD review period shall be 45 days pursuant to Government Code Section 65754(a). However, if HCD finds that the City's third draft Housing Element Revision does not comply with the Housing Element Law, then the City may elect either to submit a revised, fourth draft Housing Element Revision within 45 days after HCD's determination, subject to the review procedure set forth in Section 1(a) and this subsection 1(b), or to adopt the Housing Element Revision as permitted by Government Code Section 65585(f). The procedures set forth in Section 1(a) and this subsection 1(b) will apply to any further submittals of the Housing Element Revision to HCD.

c. If the City elects to adopt the Housing Element Revision as permitted by Government Code Section 65585(f), then in the event that HCD determines that the adopted Housing Element Revision substantially complies with the Housing Element Law, or conditionally determines that the adopted Housing Element Revision will substantially comply with the Housing Element Law upon non-substantial changes agreed to by the City and communicated to Petitioners by the City, the City will then be considered in substantial compliance with the Housing Element Law. However, in the event that HCD determines that the adopted Housing Element Revision does not substantially comply with the Housing

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Element Law, then Petitioners may, after objecting to such draft within the time allowed for HCD review, challenge the validity of the adopted housing element within 60 days of adoption.

d. In accordance with Section 65755 of the Government Code, the Court will, with the entry of this Stipulated Judgment, mandate the approval of all final subdivision maps for residential housing projects as provided in Section 65755(a)(5).

e. All applications for building permits, development permits pursuant to Government Code Section 65940, or tentative or final subdivision maps, related to new residential units proposed to be constructed are currently available on the City's website. The City will ensure that all such applications will continue to be available to the public on the City's website.

f. The City will conform its zoning ordinance to any adopted Housing Element Revision within 120 days of the adoption of such Housing Element Revision.

g. Pursuant to Government Code Section 65759, the adoption of the City's Housing Element Revision, as well as those rezonings to which the Housing Element Revision commits, and which are required for an adequate housing element pursuant to Government Code Sections 65588(e)(4)(C) and 65587(d)(1), are exempt from the California Environmental Quality Act ("CEQA").

2. Until the date that the City adopts a Housing Element Revision that is in substantial compliance with Housing Element Law, the City shall not use the provisions in subdivision (d)(1) or (d)(5) of Government Code Section 65589.5 to disapprove a housing development project for very low, low-, or moderate impact households, as defined in Government Code Section 65589.5(h)(3), or an emergency shelter, or to condition the approval of such a project in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards. If the housing development project

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510 836-1035 FAX

or emergency shelter has filed a preliminary application under Government Code Section 65941.1 between February 1, 2023, and the date the City adopts a substantially compliant Housing Element Revision, the City agrees to comply with all of the provisions of Government Code Sections 65589.5(o) and 65941.1 in reviewing the housing development project or emergency shelter.

3. Regarding any preliminary application to develop "housing for very low, low, or moderate income households" pursuant to Government Code Section 65589.5(h)(3) that it has received or will receive from February 1, 2023 until the date the City adopts a Housing Element Revision following a determination of substantial compliance by HCD: if the City charges a processing fee for such preliminary application, it shall cite the ordinance or resolution expressly establishing such fee. If no such ordinance or resolution expressly establishes a processing fee for preliminary applications, then the City shall not charge a fee for processing a preliminary application submitted before such time as an ordinance or resolution expressly authorizing such fee is duly adopted.

4. In the event that any party believes the opposing party is in breach of any of the terms of this judgment, they shall give written notice to the opposing party of the breach, which notice shall set forth with reasonable particularity the alleged breach and the action that the notifying party believes is required to remedy the alleged breach. The parties shall meet, confer, and attempt to resolve the alleged breach within forty-five (45) calendar days of such notice. If the parties cannot resolve the alleged breach within such time, any party may seek judicial enforcement.

5. The City agrees to pay YIMBY a total of $6,000 and CalHDF a total of $9,000 as a compromise resolution for petitioners' claims for costs and fees.

///

Goldfarb & Lipman LLP
1300 Clay Street
Eleventh Floor
Oakland
California
94612
510 836-6336
510 836-1035 FAX

6. The Court shall retain jurisdiction over this action and the parties thereto until the terms of this Judgment are fulfilled.

DATED: January 8, 2024, ~~2023~~

Mary S. Orlando
JUDGE OF THE SUPERIOR COURT

Respectfully submitted (with signatures in counterpart),

CALIFORNIA HOUSING DEFENSE FUND

By: _____
DYLAN CASEY
Attorney for Petitioner
CALIFORNIA HOUSING DEFENSE FUND

YIMBY LAW

By: _____
KEITH E. DIGGS
Attorneys for Petitioner
YES IN MY BACK YARD

GOLDFARB & LIPMAN LLP

By: _____
CELIA W. LEE
Attorney for Respondent
CITY OF CUPERTINO

Goldfarb & Lipman LLP
1300 Clay Street
Eleventh Floor
Oakland
California
94612
510 836-6336
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EXHIBIT B

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.

---

[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)).

[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)).

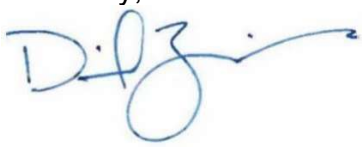
Conclusion

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 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

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

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

June 9, 2022

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

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

Dear Mr. Trigueiro:

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

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

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

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

Section I- Application Incomplete Items and Comments

A. Application and Title Sheet (A-0)

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

   Completed.

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

   Completed.

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

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

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

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

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

   Completed. Information added below the table.

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

   Completed.

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

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

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

   Completed.

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

   Completed.

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

    Completed.

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

    Completed.

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

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

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

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

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

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

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

    Completed.

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

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

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

    Completed.

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

    Completed.

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

    Completed.

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

    Not Completed. The application form remains incomplete where referenced.

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

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

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

B. Site Plan (A-1)

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

    Completed.

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

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

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

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

standards followed per zone.

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

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

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

Completed.

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

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

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

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

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

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

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

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

Completed.

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

Completed.

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

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

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

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

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

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

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

Completed.

35. Provide occupancy load factors and loads.

Completed.

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

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

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

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

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

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

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

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

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

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

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

Completed.

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

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

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

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

Completed.

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

Completed.

42. Plot the location of the water softener.

Completed.

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

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

Completed.

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

    Completed.

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

    Completed.

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

    Completed.

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

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

    Completed.

C. Floor Plans

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

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

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

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

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

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

Completed.

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

Completed.

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

Completed.

D. Elevations

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

Completed.

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

Completed.

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

Completed.

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

Completed.

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

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

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

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

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

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

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

requirements.

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

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

Completed.

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

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

Completed.

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

Completed.

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

Completed.

65. Identify the HVAC on Sheet A-5.

Completed.

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

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

Completed.

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

Not Completed.

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

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

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

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

Completed.

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

Completed.

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

Completed.

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

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

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

Completed.

E. Civil Plans

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

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

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

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

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

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

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

Completed.

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

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

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

Completed.

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

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

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

Completed.

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

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

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

Completed.

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

Completed.

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

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

application completeness.

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

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

Completed.

85. Provide sewer size and type.

Completed.

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

Completed.

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

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

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

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

F. Development Impact Fees:

The Project is required to pay all development impact fees.

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

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

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

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

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

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

requirements.

G. Landscaping

Provide the size of all proposed landscape areas.

Not Completed. See Section E3 of the application form.

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

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

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

Not Completed.

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

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

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

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

On sheet L1.1, provide pedestrian path lighting.

Completed.

H. Parking

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

Completed.

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

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

H. Density Bonus

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

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

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

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

Completed.

I. Supportive Housing

Indicate percentage of floor area provided for onsite supportive services.

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

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

See response to item #21.

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

Completed.

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

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

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

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

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

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

J. Street Width

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

Completed.

K. Circulation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Completed.

L. Fire Department

Identify fire backflow location on sheet C-1.

Not Completed. Please include for each building.

Identify the fire department connection on C-1.

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

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

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

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

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

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

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

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

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

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

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

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

Completed.

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

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

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

M. Gas

Identify on Sheet C3 the location of all gas lines.

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

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

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

N. Street Lights

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

Not Completed.

O. Electrical

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

Completed.

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

Completed.

P. Water

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

Not Completed. Existing water laterals are not shown.

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

Completed.

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

Q. Sewer

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

Completed.

R. Undergrounding

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

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

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

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

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

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

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

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

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

Provide a Cultural Resources study.

Completed.

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

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

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

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

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

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

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

Not Completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. General Plan/ Land Use Element

1. Goals, Policies, Implementation

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

Goal#1

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

Goal#2

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

Goal#3

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

Goal#5

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

residential areas to new development, where appropriate.

Policies LU-2

Provide incentives for development that will:

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

Policy LU-5

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

Policy LU-7

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

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

HCD Note: This includes subjective language.

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

2. Addressing Goals/Policies

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

HCD Note: This comment includes subjective language.

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

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

HCD Note: This comment includes subjective language.

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

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

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

HCD Note: This comment includes subjective language.

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

B. General Plan/ Circulation Element

1. Goals and Policies

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

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

Goal #28

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

Goal #29

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

Policies C-2

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

Policies C-3

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

Policies C-14

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

Policies C-18

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

Policies C-19

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

Implementation Measure 16

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

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

Alternative Transportation Facilities

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

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

2. Addressing Goals/Policies/implementations

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

The City reiterates the comment above.

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

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

Completed.

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

The City reiterates the comment above.

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

Provide decorative street benches along the sidewalk.

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

The City reiterates the comment above.

Provide decorative crosswalks at Palm Street and Santa Clara Street.

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

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

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

C. Downtown Specific Plan

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

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

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

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

D. Fillmore Zoning Ordinance/ Misc.

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

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

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

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

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

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

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

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

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

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

E. Architecture:

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

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

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

F. Floor Plan

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

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

The City reiterates the comment above.

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

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

Comments Based on the New Plans Submitted May 10, 2022

Building Plans

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

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

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

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

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

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

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

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

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

Concessions and Waivers

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

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

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

Sincerely,



FOR

Kevin McSweeney
Planning and Community Development Director

Attachments

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

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

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

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

EXHIBIT E

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

February 12, 2025

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

Dear Sean Mullin:

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

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

Background

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

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

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

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

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

Conclusion

Failure by the Town to allow for an additional 90-day resubmittal period after each of its incompleteness determinations would be a violation of the PSA. The Town must allow the applicant to resubmit the application within 90 days of any incompleteness determination. The Town should also uphold its PSA obligations under Government Code section 65941.1 by honoring the Project's vested rights.

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

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

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

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

Sincerely,



Shannan West
Housing Accountability Unit Chief

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

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Ste. 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

August 30, 2024

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

Dear Jennifer Armer:

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

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

Project Description and Background

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

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

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

attempting to submit a full application with the 180-day submittal window to maintain vesting under a Preliminary Application.[1] For the purposes of meeting PSA review deadlines for the full application[2], the Town considers the 30-day application completeness clock to have started when the invoice is paid, not when the application is submitted.

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

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

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

The 90-day deadline restarts with each subsequent resubmittal by the applicant. Subdivision (d) of Government Code section 65941.1 references section 65943, which provides for an iterative process in which deadlines reset upon resubmittal. Because of that reference, it is reasonable to conclude that the subdivision envisions a similar back-

[1] Gov. Code, § 65941.1, subd. (d)(1).
[2] Gov. Code, § 65943, subd. (a).
[3] Gov. Code, § 65921.

and-forth process. Nothing in the subdivision explicitly precludes this. Furthermore, requiring a single 90-day review period would limit the completeness determination process to only one or two resubmittals, making the process more difficult for diligent applicants seeking to use the protections of the preliminary application system. An interpretation that there is a single finite 90-day review period is inconsistent with both the intent of the PSA and the Legislature when it introduced this system in Senate Bill 330 (Chapter 654, Statutes of 2019). This interpretation is also inconsistent with a recent Los Angeles Superior Court ruling which concluded "that when an applicant receives **an** incompleteness determination pursuant to section 65943 – not just the **first** incompleteness determination – an applicant has 90 days to respond." (*Janet Jha v. City of Los Angeles, et al.,* (Super. Ct. L.A. County, 2024, No. 23STCP03499).)

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

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

Conclusion

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

Sincerely,

Shannan West
Housing Accountability Unit Chief

EXHIBIT F

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

August 22, 2024

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

Dear Michael Forbes:

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

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

Background

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

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

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

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

Determining Application Completeness under the Permit Streamlining Act

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

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

[1] Note: The Applicant submitted the materials via email to the City on August 9, 2023, but the City later claimed that it never received the August 9, 2023 submittal because it had been blocked by its email security system. At the request of the City, the Applicant then provided another electronic submission on September 18, 2023, which the City received. The City started the 30-day review clock from this date.
[2] Gov. Code, § 65589.5, subd. (d)(5).
[3] Gov. Code, § 65920 et seq.

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

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

Vesting under Government Code Section 65941.1

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

1. If the City determines that the application for the development project is not complete pursuant to Government Code section 65943, the development proponent is required to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information.[8] HCD reminds the City, however, that the 90-day deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have multiple 90-day periods.

2. The preliminary application shall remain vested unless the number of residential units or square footage of construction changes by 20 percent or more (subject to certain conditions as listed in the statute).[9] Other changes to the application falling outside these circumstances do not void vested rights under the preliminary application.

[4] Gov. Code, § 65940, subd. (a)(1).
[5] Gov. Code, § 65941, subd. (a).
[6] Gov. Code, § 65943, subd. (a).
[7] Requiring a GPA/ZC as part of the project application inherently requires a determination of whether the project is consistent with the general plan and zoning code. However, the HAA suggests that a determination of *consistency* may not be permitted during the application *completeness* determination phase but must instead occur *after* the application completeness determination. (Gov. Code, § 65589.5, subds. (j)(2)(A), (h)(10).) Therefore, it may be inappropriate to require a GPA/ZC as part of a determination of application completeness. Please note this is applicable to any project application, and not just those subject to the Builder's Remedy.
[8] Gov. Code, § 65941.1, subd. (d)(2).
[9] Gov. Code, § 65941.1, subd. (c).

Conclusion

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

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

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

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

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

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

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

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
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www.hcd.ca.gov

June 26, 2024

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

Dear Michael Forbes:

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

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

Background

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

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

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

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

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

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

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

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

[3] Gov. Code, § 65589.5, subd. (d)(5).

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

Determining Application Completeness under the Permit Streamlining Act

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

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

---

[4] HCD understands the desire to have development consistent with general plans and zoning, and to that end, jurisdictions may undertake a GPA/ZC independently from a development application. Jurisdictions should be advised that it may not be possible to process a project-specific GPA/ZC concurrently with project review, even when a jurisdiction is initiating the GPA/ZC itself. For a jurisdiction in which there may be multiple applications for projects subject to the Builder's Remedy, and the jurisdiction wishes to achieve general plan and/or zoning consistency, it may choose to "batch" amendments after project development applications are approved to ensure housing development projects are not unduly delayed or otherwise impacted.
[5] Gov. Code, § 65920 et seq.
[6] Gov. Code, § 65940, subd. (a)(1).
[7] Gov. Code, § 65941, subd. (a).
[8] Gov. Code, § 65943, subd. (a).

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

Conclusion

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

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

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

Sincerely,



Shannan West
Housing Accountability Unit Chief

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

EXHIBIT G

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 85

23STCP03499
JANET JHA vs CITY OF LOS ANGELES, et al.

July 24, 2024
9:00 AM

Judge: Honorable James C. Chalfant
Judicial Assistant: J. De Luna
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 07/18/2024 for Hearing on Petition for Writ of Mandate, now rules as follows:

Summary of the court's ruling:

Decision on petition for writ of mandate: granted with remand.

The ruling consisting of 32 pages is signed and filed this date.

Jha's counsel is ordered to prepare a proposed judgment and writ, serve them on the City's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections.

Order to Show Cause Re: Judgment is scheduled for 08/27/2024 at 09:30 AM in Department 85 at Stanley Mosk Courthouse.

The Administrative Record is ordered returned forthwith to the party who lodged it, to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of appeal in the event of an appeal.

Administrative record is to be picked up directly from Department 85 within ten days from the date of this order. Counsel/party is on notice that failure to pick up the administrative record within ten days from the date of this order will result in the destruction of administrative record by the court.

Clerk hereby gives notice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 85

23STCP03499
JANET JHA vs CITY OF LOS ANGELES, et al.

July 24, 2024
9:00 AM

Judge: Honorable James C. Chalfant
Judicial Assistant: J. De Luna
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

Certificate of Mailing is attached.

FILED
Superior Court of California
County of Los Angeles
JUL 24 2024
David W. Slayton, Executive Officer/Clerk of Court
By: J. De Luna, Deputy

Janet Jha v. City of Los Angeles et al., 23STCP03499

Decision on petition for writ of mandate: granted with remand

Petitioner Janet Jha ("Jha") seeks a writ of mandate compelling the Respondents City of Los Angeles and its City Council (collectively, "City") to review and process her development application pursuant to the Permit Streamlining Act ("PSA"), the Housing Accountability Act ("HAA"), and the Density Bonus Law ("DBL").

The court has read and considered the moving papers, oppositions, and replies, heard argument on July 18, 2024, and renders the following decision.

A. Statement of the Case

1. The Petition

Petitioner Jha filed the Petition against the City on September 21, 2023, alleging mandamus based on violations of the PSA, the HAA, and the DBL, and for declaratory relief. The Petition alleges in pertinent part as follows.

a. Housing Element Law

When the Legislature enacted the Housing Element Law, it declared that local governments need to designate and maintain a supply of land and adequate sites for the development of housing sufficient to meet the locality's housing need for all income levels. Pet., ¶21.

The HAA provides an avenue for developers to provide housing for very low, low-, or moderate-income households[1] when a local government fails to adopt a housing element in substantial compliance with the Housing Element Law. Pet., ¶22. The local government shall approve housing, and not condition that approval in a matter rendering that housing project infeasible, unless the local government can make certain written findings based upon a preponderance of the evidence. Pet., ¶23.

A local jurisdiction cannot determine whether its adopted element is in substantial compliance with the Housing Element Law. Pet., ¶25. It must submit a draft housing element to the State Department of Housing and Community Development ("HCD"), which must issue findings before the local jurisdiction adopts the housing element. Pet., ¶25. If HCD finds the draft element is not substantially compliant, the local jurisdiction must either revise the draft to address any issues or adopt the draft housing element with written findings explaining why it substantially complies with the Housing Element Law. Pet., ¶25. It must then submit the adopted housing element to HCD for it to find whether it substantially complies with the Housing Element Law. Pet., ¶25. In a March 16, 2023 memorandum, HCD advised that a local jurisdiction's housing element is only in substantial compliance with the Housing Element Law on the date HCD issues a letter finding to that effect. Pet., ¶26.

The Housing Element Law requires local governments to update their housing element in eight-year cycles. Pet., ¶27. The City had not adopted a substantially compliant housing element by the time the current cycle began on October 15, 2021. Pet., ¶27. Although it drafted a housing element on November 24, 2021, HCD found on February 22, 2022 that it was not substantially

07/25/2024

[1] For convenience, very low, low-, and moderate-income households are sometimes referred to herein as "low-cost housing".

compliant. Pet., ¶28. The City revised and resubmitted the draft housing element on April 28, 2022, and HCD found it substantially compliant on May 11, 2022. Pet., ¶28. The City adopted the housing element on June 14, 2022, and HCD certified its compliance with the Housing Element Law on June 29, 2022. Pet., ¶28.

Under Government Code[1] sections 65589.5(o)(1) and 65941.1(a), a housing development applicant who submits a complete preliminary application is vested with the zoning and general plan standards in effect at the time of submission. Pet., ¶30. This includes entitlement to the HAA's builder's remedy if submitted when the jurisdiction does not have a compliant housing element, even if it adopts one during the entitlement process. Pet., ¶31. HCD confirmed as much in a June 2023 Notice of Violation issued to the City of La Cañada Flintridge and in an October 2023 Letter of Technical Assistance to the City of Santa Monica. Pet., ¶32, Ex. A.

b. The Project

On June 23, 2022, Jha submitted a preliminary application for a 40-unit project with 20% set aside as affordable to lower-income households at 13916 W. Polk Street (the "Project"). Pet., ¶53. Because the City found the preliminary application for the Project was complete on June 24, 2022, development rights in effect on that date vested for the Project. Pet., ¶54.

Jha proposed a housing project that reserved 20% of the units for low-cost housing while the City was out of compliance with the Housing Element Law. Pet., ¶55. Under the builder's remedy, the City was barred from disapproving the Project unless it made one of the written findings required under section 65589.5(d). Pet., ¶55.

On August 11, 2022, Jha filed an Affordable Housing Referral Form with the Affordable Housing Services Section of the City's Planning Department ("Planning"). Pet., ¶57. The City signed this form on December 12, 2023. Pet., ¶64. After a meeting with City staff on December 9, 2022, Jha was allowed to submit a PSA development application. Pet., ¶66. Jha submitted the application and paid the fees on December 21, 2022. Pet., ¶66.

On January 26, 2023, the City sent Jha a 39-page Project Review letter. Pet., ¶67. The Project Review asserted the application was incomplete and did not comply with objective zoning standards. Pet., ¶67. The Project Review further said that, although the Project was eligible for the builder's remedy, HAA does not specify the entitlement process that a local government can require. Pet., ¶68. Planning's position was that a general plan amendment ("GPA") and rezoning were the proper entitlement path. Pet., ¶68. This is not an entitlement at all, but rather a legislative action. Pet., ¶68.

Section 65589.5(d) does provide an entitlement path. Pet., ¶71. If HCD does not find a local jurisdiction's housing element substantially compliant by the jurisdiction's statutory deadline, the local jurisdiction may not use section 65589.5(d)(5) to deny a qualifying affordable housing project. Pet., ¶72. HCD's Notice of Violation to La Cañada Flintridge explained that a jurisdiction shall not disapprove a housing development project for low-cost housing, or condition approval in a manner that renders the housing development project infeasible for development for such households, without one of five written findings. Pet., ¶71, Ex. A.

On April 5, 2023, Jha resubmitted revised application materials in response to the Project Review. Pet., ¶81. The City sent a second Project Review asserting the application was incomplete for failure to comply with City code standards. Pet., ¶¶ 82-83. The letter emphasized that the City would not process the development application unless Jha sought legislative rezoning that she did not want. Pet., ¶85.

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Jha appealed the City's incompleteness determination of her application. Pet., ¶86. The City Council's Planning and Land Use Management Committee ("PLUM") recommended denial of the appeal, and the City Council denied it on June 27, 2023. Pet., ¶¶ 92-93.

On May 16, 2023, the City wrote Jha a letter asserting that the preliminary application's submittal had expired and that Jha's vested rights therefore had terminated. Pet., ¶95. Section 65941.1(d)(2) states that if a public agency determines that the application for the development project is incomplete, the development proponent shall submit the specific information necessary to complete the application within 90 days of receiving the agency's written identification of the necessary information. Pet., ¶99. This means that the 90-day period resets with every new completeness determination. Pet., ¶99. The City wrongly interpreted the statute to mean that an applicant has only a single 90-day clock after the first written incompleteness determination. Pet., ¶100. Planning argued that, even if Jha were entitled to approval pursuant to the builder's remedy, it no longer applied because Jha's vesting rights had expired and the City's Housing Element was now in substantial compliance with the Housing Element Law. Pet., ¶104.

After Jha received the City's May 16 letter, she asked HCD to clarify the preliminary application expiration provision. Pet., ¶103. HCD confirmed that the application remains valid after a second incompleteness determination so long as the applicant resubmits within 90 days of that determination. Pet., ¶103.

c. <u>Causes of Action</u>

The first cause of action seeks mandamus for violation of the PSA. The PSA requires public agencies to compile lists of the information required from an applicant for a development project. Pet., ¶109. It also has strict timelines when an agency must determine whether an application is complete. Pet., ¶109. Agencies can only judge whether an application is complete based on the items in the checklist. Pet., ¶109.

The City's Project Review letters violated the PSA because they treated project consistency with a zoning ordinance or general plan as an item necessary for an application to be complete. Pet., ¶110. The City refuses to process an application when it makes a substantive decision regarding project consistency. Pet., ¶110. Section 65931 defines a development "project" as an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. Pet., ¶111. This does not include rezonings or GPAs. Pet., ¶111. Courts have held that applicants cannot use the PSA to compel legislative changes to a zoning ordinance or a general plan. Pet., ¶111. Conversely, the City cannot demand that an applicant seek such changes through a PSA completeness determination. Pet., ¶111. The City refused to accept Jha's development application based on purported non-compliance with substantive zoning standards and criteria, not because of incomplete information. Pet., ¶114.

The second cause of action seeks mandamus for violation of the HAA. The City unlawfully disapproved the Project and failed to proceed in the manner required by law. Pet., ¶117. The City disapproved the low-cost housing Project without making one of the findings under section 65589.5(d)(1)-(5), and also did not support such findings by a preponderance of evidence in the record. Pet., ¶121. Although Jha submitted the preliminary application before the City's Housing Element was deemed substantially compliant with the Housing Element Law, the City attempted to deny her the builder's remedy. Pet., ¶122.

The third cause of action seeks mandamus for violation of the DBL. The Project reserved 20% of the units for low-cost housing. Pet., ¶128. This entitled the Project to two incentives or

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concessions and a waiver or reduction of any development standards that will physically preclude the Project at the proposed density. Pet., ¶128. The City denied Jha those incentives without making the public health and safety findings required under the HAA. Pet., ¶129.

The fourth cause of action seeks declaratory relief. The City has avoided its obligations under state law through its refusal to process housing development projects that qualify under the builder's remedy. Pet., ¶132.

d. Prayer for Relief

Jha seeks a writ of mandate compelling the City to review and process development applications pursuant to the PSA and SB 330. Pet. Prayer, ¶¶ 1-2. Jha also seeks a writ of mandate (1) voiding the June 27, 2023 denial of the PSA appeal based on violation of section 655589.5(d), (2) compelling Planning to accept and process the Project application, and (3) compelling the City and Planning to take all steps necessary to process the application, approve the Project, and issue all related approvals within 60 days. Pet. Prayer, ¶3. Jha seeks a declaration concerning the City's violations. Pet. Prayer, ¶7. Jha also seeks attorneys' fees, costs, and fines under section 65589.5. Pet. Prayer, ¶¶ 8-10.

2. Course of Proceedings

On September 25, 2023, Jha served the City with the Petition and Summons.

On November 6, 2023, the parties stipulated to extend the deadline for all responsive pleading to February 1, 2024.

On March 5, 2024, the Court overruled the City's demurrer and denied its motion to strike.

On March 22, 2024, the City filed its Answer.

B. Governing Law

1. The Housing Element Law

The Legislature finds that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government. §65580(c). The Housing Element Law details the substantive requirements that each housing element must include. §65583(a)-(c).

At least 90 days prior to adoption of a revision of its housing element, or 60 days prior to the adoption of a subsequent amendment thereto, the local jurisdiction agency shall submit a draft element revision or draft amendment to HCD. §65585(b)(1). In the preparation of review findings, HCD may consult with any public agency, group, or person and shall receive and consider any written comments from such entities regarding the draft or adopted element or amendment under review. §65585(c).

HCD shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision, or 60 days of its receipt of a subsequent draft amendment or an adopted revision or adopted amendment to an element. §65585(b)(3). In its written findings, HCD shall determine whether the draft element or draft amendment substantially complies with the Housing Element Law. §65585(d).

Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by HCD if they become available within the time limits set in section 65585. §65585(e).

If HCD finds that the draft element or draft amendment does not substantially comply with this article, the legislative body shall either change the draft element or amendment to so comply or adopt the draft element or draft amendment without changes. §65585(f). If the legislative body

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adopts without changes, it shall include in its resolution of adoption written findings that explain why the legislative body believes the draft element or draft amendment substantially complies with the Housing Element Law despite HCD's findings. §65585(f)(2).

The legislative body shall submit a copy to HCD promptly after adopting the element. §65585(g). HCD shall then review it and report its findings to the planning agency within 60 days of submission. §65585(h).

"Despite the mandatory nature of many of the Housing Element Law's provisions compliance has been mixed statewide." Martinez v. City of Clovis, (2023) 90 Cal.App.5th 193, 226. The Legislature has amended the Housing Element Law multiple times since 2017, and a 2018 amendment, AB 72, increased HCD's oversight powers. Id. AB 72 added HCD's ability to review any local government action that is inconsistent with an adopted housing element and to revoke its findings of substantial compliance until the local jurisdiction complies. Id. at 226, n. 9; §65585(i), (j).

The Housing Element Law provides that a local government that fails to adopt a housing element that has been found to be in substantial compliance within 120 days of the statutory deadline is required to complete mandatory rezoning within one year instead of the permitted three years. §65583.2(c). If the one-year requirement applies, the local government's housing element cannot be found to be in substantial compliance until that city has completed the rezoning. §65588(e)(4)(C)(iii).

A local government that fails to substantially comply with the Housing Element Law is subject to enforcement action by the Attorney General. §65585(l). A failure to adopt a housing element found by HCD to be in substantial compliance makes the local government ineligible for certain program funding. §65589.11. A local government that is compliant with Housing Element Law requirements is awarded preference for certain state funding programs. §65589.9. A "compliant housing element" is defined for purposes of this preference as "an adopted housing element that has been found to be in substantial compliance with the requirements of this article by [HCD] pursuant to Section 65585." §65589.9(f)(2).

2. The Housing Accountability Act

a. Legislative Findings and Intent

The Legislature recognizes the lack of housing as a critical problem that threatens the economic, environmental, and social quality of life in California. §65589.5(a)(1)(A). It adopted the HAA in 1982 to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." §65589.5(a)(2)(K). To date, the goal remains unfulfilled. Id.

The HAA reflects the Legislature's findings that "the availability of housing is of vital statewide importance," and that providing the necessary housing supply "requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels." §65580(a)-(b).

Effective January 1, 2018, the Legislature significantly amended the HAA to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. The HAA found that California is in a housing crisis that is "partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing". §65589.5(a)(1)(B).

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The consequences of those actions include discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration. §65589.5(a)(1)(C).

Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects. §65589.5(a)(1)(D). The state's homeownership rate was at its lowest level since the 1940s and ranks 49 out of the 50 states. §65589.5(a)(2)(E). The lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians. §65589.5(a)(2)(F).

The HAA 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." §65589.5(a)(2)(L).

It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety under either section 65589.5(d)(2) and 65589.5(j)(1) arise infrequently. §65589.5(a)(3).

It is the policy of the state that a local government not reject or make infeasible housing development projects that contribute to meeting the need determined pursuant to the HAA without a thorough analysis of the economic, social, and environmental effects of the action and without complying with section 65589.5(d). §65589.5(b).

b. Project Approval Based on Vested Rights

Section 65589.5 is referred to colloquially as the "anti-NIMBY law." Schellinger Brothers v. City of Sebastopol, (2009) 19 Cal.App.4th 1245 1253, n. 9. Subject to certain exceptions, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application which included all the information required by section 65941.1(a) was submitted. §65589.5(o)(1).

A housing development project "shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity." §65589.5(f)(4).

Section 65589.5(j)(1) provides:

> "When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:
>
> (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct,

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and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." (emphasis added).

Section 65589.5(j) applies to market rate housing as well as affordable housing. Honchariw v. County of Steinhaus, (2011) 200 Cal.App.4th 1066, 1070. The HAA applies to all residential housing developments and takes away the agency's ability to deny residential projects based on subjective development policies. Id. at 1072-77.

"Disapprove the housing development project" includes any instance in which a local agency "votes on a proposed housing development project application and it is disapproved", "fails to comply with the timer periods specified in Section 65950" or fails to meet the time limits specified in Section 65913.3. §65589.5(h)(6).

If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an "order or judgment directing the local agency to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l).

The local jurisdiction bears the burden of proving that its decision conforms to the conditions specified in section 65589.5. §65589.6.

c. The Builder's Remedy

A local agency shall not disapprove a housing development project for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low- or moderate-income households, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, for one of five conclusions:

(1) the local jurisdiction has adopted a housing element in substantial compliance with the Housing Element Law and has met or exceeded its share of the regional housing need allocation pursuant to section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by section 65008. §65589.5(d)(1).

(2) the proposed housing development would have a specific, adverse impact on the public health or safety that cannot be feasibly mitigated without rendering the project unaffordable or infeasible. A specific, adverse impact on public health or safety does not include inconsistency with the zoning ordinance or general plan land use designation. §65589.5(d)(2)(A);

(3) denial of the project is required to comply with specific state or federal law, and there is no feasible method to comply without rendering the project unaffordable or infeasible;

(4) the proposed land for the project is zoned for, and surrounded on at least two sides by, agriculture or resource preservation purposes;

(5) the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the

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jurisdiction has adopted a revised housing element in accordance with section 65588 that is in substantial compliance with the Housing Element Law. §§ 65589.5(d)(1)-(5).

Section 65589.5(d)(5) means that, when the local government does not have a housing element in substantial compliance with the Housing Element Law, it cannot disapprove an applicable project based on inconsistencies with the jurisdiction's zoning ordinance or general plan land use designation. This is colloquially referred to as the "builder's remedy."

A "housing development project" includes any mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use. §65589.5(h)(2). "Housing for very low, low-, or moderate-income households" includes buildings where 20% of the units are sold or rented to lower income households. §65589.5(h)(3).

"Deemed complete" means the applicant has submitted a preliminary application pursuant to section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to section 65943. §65589.5(h)(5).

"Disapproval of a housing development project" includes whenever a local agency votes 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. §65589.5(h)(6)(A).

A "specific, adverse impact" is a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." §65589.5(j)(1)(A). The Legislature's intent is that conditions that would have a specific, adverse impact upon the public health and safety should arise infrequently. §65589.5(a)(3).

d. Consistency with Other Laws

New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income. §65590(d). Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. Id.

Nothing in the HAA relieves the local agency from complying with, *inter alia*, the Coastal Act or the California Environmental Quality Act ("CEQA"). §65589.5(e). Nothing in the HAA, aside from section 65589.5(o), shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. §65589.5(f)(1). However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development. Id.

3. The Permit Streamlining Act

The PSA (§§ 65920-964) states that there is a statewide need to ensure a clear understanding of the specific requirements which must be met for the approval of development projects and to expedite decisions on such projects. §65921. The PSA requires that each agency maintain lists that "specify in detail the information that will be required from any applicant." §65940.

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Once a development project application has been submitted, the agency must make a written determination whether the application is complete within 30 calendar days, or else "the application together with the submitted materials shall be deemed complete." §65943(a). Agencies have "30 days, and 30 days only" to determine that an application is incomplete. Orsi v. City Council of Salinas, (1990) 219 Cal. App. 3d 1576, 1584.

When the agency makes an incompleteness determination, it must provide "an exhaustive list of items that were not complete" which is limited to those items required on the agency's submittal requirement checklist. §65943(a). Upon any resubmittal, a new 30-day review period begins during which the agency shall determine completeness, but the agency "shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." §65943(a).

If the application is determined incomplete, the agency must provide a right to appeal that determination. §65943(c). There shall be a final written determination on the appeal no later than 60 calendar days after receipt of the written appeal. Id. If a final written determination is not made within that 60-day period, "the application with the submitted materials shall be deemed complete." Id.

Deemed complete does not necessarily mean deemed approved. *See* §65950 (agency shall approve or disapprove project within specified time limits). The PSA does not create an exception to the well-established law requiring hierarchical consistency of land use permits, zoning ordinances, and general plans. Land Waste Management v. Contra Costa County Board of Supervisors, ("Land Waste") (1990) 222 Cal.App.3d 950, 960. Hence, the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change in the applicable zoning ordinance, general plan, or other controlling land use legislation. Id. at 961.

The City's actions under the PSA are reviewed as traditional mandate. §65943(c).

4. The Density Bonus Law

The DBL (§§ 65915-18) is intended to allow a developer to include more total units in a project that would otherwise be allowed by the local zoning ordinance in exchange for low-cost rental units, and to "cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." §65915(u).

A local government shall grant one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p), if an applicant agrees to construct a housing development that will contain stipulated percentages of low income and very low-income units or target population units (*e.g.*, disabled veterans). §65915(b).

A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i).

A "density bonus" means a "density increase over the otherwise maximum allowable gross residential density," but the developer also may elect "a lesser percentage of density increase, including, but not limited to, no increase in density." §65915(f). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

Density bonuses shall be granted based on the "maximum allowable density" for the project site, defined as "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density for the specific

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zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." §65915(o)(5).

An applicant for a density bonus pursuant to subdivision (b) may submit a proposal for specific incentives or concessions. §65915(d)(1). The local government shall grant the requested incentive or concession unless (1) it makes a written finding, based on substantial evidence, that the project will not result in "identifiable and actual cost reductions" of affordable housing costs or for rents of the targeted units as specified in subdivision (c), (2) the concession or incentive would have a specific adverse impact upon public health and safety, the physical environment, or real property listed in the California Register of Historical Resources and for which there is no feasible method of mitigation without rendering the development unaffordable to low- and moderate-income households, or (3) the concession or incentive would violate state or federal law. §65915(d)(1)(A)-(C). §65915(d).

The applicant may also apply for and receive development waivers or reductions that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions/incentives permitted. §65915(e)(1). The local agency may not apply a development standard that will have this effect. §65915(e)(1). However, the local government is not required to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id. Nor is the local government required to waive or reduce development standards that would have an adverse effect on real property listed in the California Register of Historical Resources, or to grant any waiver or reduction that would violate state or federal law. §65915(e)(1).

C. Standard of Review

1. Administrative Mandamus

Actions to enforce the HAA are brought as administrative mandamus. §65589.5(m); Honchariw v. County of Stanislaus, (2011) 200 Cal.App.4th 1066, 1072. *See* Pet. Op. Br. at 9.

The parties' principal debate for the HAA mandamus claim is whether (a) the City bears the burden of proof by a preponderance of the evidence under section 65589.6, (b) the HAA's "reasonable person" standard applies, pursuant to which a court must determine whether "substantial evidence…would allow a reasonable person to conclude that the housing development project" complies with applicable standards (§655589.5(f)(4)), and (c) any uncertainties should be resolved in favor of housing projects because the HAA must "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

The City argues that these standards do not apply because the reasonable person standard only applies to deciding whether the Project complies with a local "applicable plan, program, policy, ordinance, [or] standard" for a final merits decision and the City has not made a merits decision disapproving the Project. §65589.5(f)(4), (j). The reasonable person standard also does not apply to determine whether density bonus or general plan amendment ("GPA") application procedures are applicable because they are "questions of statutory interpretation that [the court] will review independently." Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo, ("Cal Renters") (2021) 68 Cal.App.5th 820, 839. Opp. at 13.

Jha correctly replies (Reply at 5) that the HAA's reasonable person standard applies to any action to enforce the HAA, including the determination whether a housing development project

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"is consistent, compliant, or in conformity" with applicable standards. §655589.5(f)(4). The HAA also broadly defines "disapproval" as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved." §65589.5(h)(6). Nothing limits the HAA solely to a final merits decision. Additionally, the court finds that the City's actions constitute a disapproval. *See post.*

2. Traditional Mandamus

Actions under the PSA are governed by traditional mandamus. §65943(c). Neither party addresses what form of mandamus applies to enforcement of the DBL, but in this context it is governed by traditional mandamus.

A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, (1991) 1 Cal.App.4th 495, 501-02. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

In the absence of a ministerial duty, traditional mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. In applying this deferential test, a court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." Western States Petroleum Assn v. Superior Court, (1995) 9 Cal.4th 559, 577. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579. No administrative record is required for traditional mandamus.

3. Overlap of HAA, PSA, and DBL

Jha argues that the issues under the PSA and DBL cannot be viewed in isolation, separate from the HAA's more favorable standards of review. Rather, these overlapping laws must be construed together to carry out the Legislature's directive that the law be interpreted to favor housing. Reply at 5. This is true, but it does not change the standard of review for enforcement of the PSA and DBL.

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Jha further argues that the question "whether an application is complete for purposes of the PSA is also relevant under the HAA, which incorporates by reference the PSA's definition of a complete application." Lafayette v. City of Lafayette, (2022) 85 Cal.App.5th 842, 851. The court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA". Id. at 855. Similarly, a DBL eligibility determination is inextricably linked to the HAA's consistency determination. The HAA expressly incorporates the DBL by reference, stating "the receipt of a density bonus, incentive, concession, waiver, or reduction of development standards pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent . . .." §65589.5(j)(3). In other words, a determination of consistency under the HAA also requires a determination of DBL eligibility, and both questions must be reviewed under the HAA's reasonable person standard. Reply at 6.

Insofar as it is evaluating a HAA claim, the court agrees that factual issues concerning the PSA and DBL determinations are governed by the reasonable person standard. However, a legal issue is "subject to *de novo* review. Citizens for E. Shore Parks v. State Lands Com., (2011) 202 Cal.App.4th 549, 573. The City is correct (Opp. at 13) that whether density bonus or GPA application procedures apply are "questions of statutory interpretation that [the court] will review independently." Cal. Renters, *supra,* 68 Cal.App.5th at 839.

In construing a statute, a court must ascertain the intent of the legislature so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The statutory language must be harmonized with provisions relating to the same subject matter to the extent possible. Id. "'The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it. [Citation.]'" MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration, ("MCI") (2018) 28 Cal. App. 5th 635, 643.

If a statute is ambiguous and susceptible to more than one reasonable interpretation, the court may resort to extrinsic aids, including principles of construction and legislative history. MacIsaac v. Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082 (*quoting* Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd., (1994) 23 Cal.App.4th 1120, 1126). In reviewing legislative history, ballot pamphlets, prior versions of the bill, legislative committee reports, legislative analyst reports, bill reports, and other legislative records are also appropriate sources indicative of legislative intent. In re John S., (2001) 88 Cal.App.4th 1140, 1144, n. 2; Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., 133 Cal.App.4th 26, 32. Documents not constituting legislative history include authoring legislator's letters, press releases, and letters by interested persons not communicated to the legislature as a whole, including letters to the Governor urging that a bill be signed or not signed. statements. Id. at 37.

Where ambiguity still remains, the court should consider "reason, practicality, and common sense." Id. at 1084. This requires consideration of the statute's purpose, the evils to be remedied, public policy, and contemporaneous administrative construction. MCI, *supra,* 28 Cal.App.5th at 643. The enactment must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intent of the lawmakers, practical rather than technical in

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nature, and which, when applied, will result in wise policy rather than mischief or absurdity. Lungren v. Deukmejian, (1988) 45 Cal. 3d 727, 735. Finally, statutes are not construed in isolation and every statute must be read and harmonized with the statutory scheme. People v. Ledesma, (1997) 16 Cal.4th 90, 95.

In interpreting the HAA, the court does not defer to the City's interpretation of its own regulations. Although a court would normally defer to an agency's interpretation of its own ordinances, land use decisions under the HAA are different precisely because the HAA cabins the discretion of local agencies. Cal Renters, *supra,* 68 Cal.App.5th 820, 844. The court must engage in a "more rigorous independent review…in order to prevent the City from circumventing what was intended to be a strict limitation on its authority." Ruegg & Ellsworth v. City of Berkeley, (2021) 63 Cal.App.5th 277, 299.

D. Statement of Facts[2]

1. The Preliminary Application

On June 23, 2022, Jha submitted a preliminary application for the Project to vest the development standards in effect at that time pursuant to section 65941.1. AR 57-64. The Project is a 40-unit housing development that reserves 20% of the units for low-income households. Id.

2. The AHRF

On August 11, 2022, Jha filed an Affordable Housing Referral Form ("AHRF") with Planning's Affordable Housing Services Section. AR 100-12. AHSS staff did not respond to the submittal until 34 days later, on September 26, 2022. AR 1637. AHSS staff determined that the Project was not eligible for the DBL program. Id. The staff stated that the Property site is in the RA zone, which permits only one family dwelling and does not allow multi-family uses. LAMC

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[2] Petitioner Jha requests judicial notice of (1) a HCD letter of technical assistance to the City of Fillmore dated August 24, 2023 (Ex A) and (2) a HCD notice of violation issued to La Cañada Flintridge dated June 8, 2023 (Ex. B). The unopposed requests are granted. Evid. Code §452(c); American Indian Model School v. Oakland Unified School District, (2014) 227 Cal.App.4th 258, 293.

The City requests judicial notice of (1) the legislative history for SB 330 (§65941.1) (Ex. 1), (2) a Mareh 16, 2023 memorandum from HCD's deputy director to planning directors and interested parties (Ex. 2), (3) a HCD letter of technical assistance to the City of Compton dated March 28, 2024, (4) a September 3, 2021 letter from HCD to the City concerning its draft housing element (Ex. 4), (5) a February 22, 2022 letter from HCD to Planning concerning the City's adopted housing element (Ex. 5), (6) a May 11, 2022 letter from HCD to Planning concerning the City's revised housing element (Ex. 6), (7) a June 29, 2022 letter from HCD to Planning concerning the City's adopted housing element (Ex. 7), (8) City Council files No. 21-1230 and 21-123—S1 concerning the City's housing element (Exs. 8, 9), (9) the City's housing element (Ex. 10), (10) Planning forms for density bonus, subdivision instructions, subdivider's statement, landscape plans, floor plans plot plans, and elevation plans (Ex. 11), (11) City Charter sections 100-07 (Ex. 12), and (12) year 2022 and 2023 calendars (Ex. 13). The requests are granted. Evid. Code §452(b), (c), (h).

In reply, Petitioner Jha requests judicial notice of a June 26, 2024 HCD letter of technical assistance to the City of Beverly Hills (Ex. 1). The request is granted. Evid. Code §452(c).

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§12.07.A.1. Id. AHSS staff stated that Jha will need to apply for a zoning change to allow multi-family uses. Id.

Jha requested an appeal of Planning's refusal to process the AHRF. According to Jha, the City responded that there is no recourse to challenge the City's processing of an AHRF. *See* AR 1637.

On October 14, 2022, a City Planner notified Jha via email that the AHRF was still in the processing stage. He indicated that a GPA, multiple zoning changes, and fees exceeding $100,000 would be necessary for the Project. AR 1641-42.

3. The Application and Project Review Letters

Jha contends that she was unable to submit the Project application until the City agreed to sign the AHRF. After multiple emails and meetings with Jha, a City Planner signed the AHRF on December 12, 2022. AR 1754.

According to Jha, Planning insisted that her Density Bonus request was invalid. On December 12, 2022, Planning created a new application with a new planning case number for a GPA Application and zone changes. AR 171. Planning issued case numbers for both a Density Bonus Application (AR 2039-40) and a GPA Application (AR 1796-97).

On December 21, 2022, Jha paid $38,352.77 in application filing fees for a Density Bonus Application. AR 2039-40. She was also invoiced $136,557.20 for the GPA Application and zone changes. Id. Jha's counsel at trial informed the court that she never submitted a GPA Application and did not pay this invoice.

On January 6, 2023, Planning sent Jha a 39-page Project Review letter which stated that, while Jha believes the proper entitlement path for the Project is a Density Bonus, Planning's position is that the proper entitlement path is a GPA, zone change, various other zone adjustments, all of which are in City Charter section 558 and the LAMC and subject to the findings under section 65589.5(d). AR 2042. Planning's letter stated that section 65589.5(d) does not specify the entitlement process that can be required and confirmed that a Density Bonus is not the proper entitlement process. AR 2043. The letter cautioned that it was not a disapproval of the Project but rather an identification of the process by which the Project will be reviewed. AR 2043. The letter listed 54 items for correction of the information already submitted. AR 2043-79. Some of the corrections concerned the need for a GPA and zone change. *See* AR 2056. Other corrections sought compliance with various code requirements, such as requesting that Jha "show active engagement with the public street" and "show how human scale is maintained." AR 2048. According to Jha, the majority of items did not request information and instead sought signatures on referral forms by multiple City departments, including the Preliminary Application and Review Program Unit, Bureau of Engineering, Bureau of Sanitation, Housing Department, and Los Angeles Department of Building and Safety ("LADBS"). AR 2046-50. The various referral forms, in turn, were used by the different departments to indicate whether staff believed the Project complies with the City's code. *See, e.g.*, AR 39.

On April 5, 2023, Jha submitted revised application materials in response to Planning's Project Review letter. AR 2100-205. The City responded with a Second Project Review letter on April 28, 2023. AR 641-86. This letter again stated that Jha believes the proper entitlement path for the Project is a Density Bonus, but Planning's position is that the proper entitlement path is a GPA, zone change, various other zone adjustments, all of which are in City Charter section 558 and the LAMC and subject to the findings under section 65589.5(d). AR 642. Planning argued that section 65589.5(d) does not specify the entitlement process that can be required and confirmed

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that a Density Bonus is not the proper entitlement process. AR 642. The letter again cautioned that it was not a disapproval of the Project but rather an identification of the process by which the Project will be reviewed. AR 642.

The Second Project Review letter also noted that the Project is now a condominium project based on the April 3, 2023 communication but that was not previously identified. AR 642. The documents submitted cannot be considered complete for a subdivision because no subdivision application had been made or paid for, and none of the items on the checklist and subdivider's statement form had been provided. AR 642. The letter listed 45 items for Jha to "amplify, correct, clarify, and supplement". AR 642-84. The majority of the corrections concerned the need for a GPA and zoning changes. *See, e.g.*, AR 675 ("correct the allowable maximum height for all buildings and structures") AR 645 ("needs to be amplified, corrected, clarified and supplemented to identify the correct type of entitlement requested (e.g., General Plan Amendment....").

4. The Appeal and Planning's Determination of Loss of Vesting Rights

On May 12, 2023, Jha appealed Planning's incompleteness determination to the City Council pursuant to the PSA. AR 719-27. On May 16, 2023, while the appeal was pending, Planning wrote Jha that she had lost her vesting rights from the June 23, 2022 preliminary application. AR 761-63. Planning's letter stated the preliminary application was deemed submitted on June 23, 2022, the 180-day period under section 65941.1(d)(2) ended on December 21, 2022. The City's letter added that on January 6 2023, Planning wrote the initial Project Review letter and more than 90 days had passed without receipt of all missing or incomplete information identified. AR 762. Although Jha had submitted a response to the City's January 6, 2023 incompleteness letter within 90 days (AR 386), the resubmittal did not satisfy the required information. AR 762. In addition, Jha had modified the Project to be a condominium project. AR 762.

A complaint was made to HCD about the loss of vesting, but HCD's June 28, 2023 email stated that its investigation found "no apparent violation" of housing law". AR 2921, 2962. Jha submitted her own inquiry to HCD to ask whether the Project's vesting rights expired after receiving a second incompleteness determination. An HCD staff member responded: "No, the preliminary application does not expire if the development application is deemed incomplete since Government Code section 65943 allows for resubmittal of the requested items." AR 2638.

5. The City Council Appeal

Planning provided the City Council with a June 12, 2023 staff report that repeated its position that the "correct entitlement path forward is not a Density Bonus request" and that the Jha must "proceed with a General Plan Amendment, Zone Change, Height District Change" and other entitlements. AR 786. Planning recommended denial of the appeal "due to flaws" in Jha's submittals (rather than any missing information). AR 823.

On June 20, 2023, the City Council's PLUM Committee conducted a hearing and unanimously recommended denial of Jha's appeal under the PSA. AR 1077-78.

On June 27, 2023, the City Council held an appeal hearing and voted to deny Jha's PSA appeal. AR 1138.

E. Analysis

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Petitioner Jha seeks mandamus compelling the City to carry out its duties pursuant to the PSA, HAA, and DBL, accept her development application as complete, and approve the Project within 60 days.[3]

1. The PSA

The purpose of the PSA is "to expedite decisions" on development projects. The PSA is solely designed to gather information about the project being proposed, not to determine whether a project is zoning compliant. Once a development project application has been submitted, an agency must first determine whether the application is complete and provide an exhaustive list of incomplete items. §65943(a).[4]

In response to local governments' denial of housing projects, HCD has explained in a technical letter to the City of Filmore that a determination that an application is incomplete based on a purported zoning code inconsistency violates both the PSA and the HAA. HCD explained

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[3] Certain of the parties' arguments may be dealt with summarily. Jha is correct that the court determined on demurrer the builder's remedy applies to her project application. Pet. Op. Br. at 1. The City was required to update its sixth housing element cycle by October 15, 2021 but did not meet the deadline. The City was not in compliance with the Housing Element Law until HCD certified the City's housing element on June 29, 2022. The court determined that the City did not achieve housing element compliance by the June 23, 2022 date when Jha submitted a complete preliminary application, and therefore she may invoke the builder's remedy in section 65589.5(d). In doing so, the City still could require the Project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. §65589.5(f)(1).

Although the City's opposition reiterates these arguments and raises new arguments that imposition of the builder's remedy would violate the City's right to home rule and constitute an underground regulation/penalty, the arguments are not persuasive. *See* Reply at 7. As a result, the court need not address the City's arguments on the builder's remedy, including headings E, F, H, and I. *See* Opp. at 17-21.

The City also argues that the preliminary application does not vest against later state regulations (Opp. at 17), apparently suggesting that the application does not vest with respect to the HCD's certification of the City's housing element. At trial, the City's counsel reiterated that section 65589.5(o) subjects the Project only to the local ordinances, policies, and standards in effect at the time of the preliminary application, not the HCD's action. This issue was raised and rejected by the court on demurrer. *See* Reply at 6. The HCD's action prevents the City's housing element from being compliant but is not itself an ordinance, policy, or standard.

Finally, the City correctly argues that Jha fails to support her declaratory relief pattern and practice claim. Opp. at 21. While Jha tries to maintain the viability of that claim by arguing that she may request discovery and a separate trial regarding the City's pattern and practice of violating state housing law after the mandamus claim is heard, she did not have leave to bifurcate her claims. *See* Reply at 14. The pattern and practice claim is waived. *See* Balboa Insurance Co. v. Aguirre, (1983) 149 Cal.App.3d 1002, 1010.

[4] The HAA provides a separate process to determine zoning code compliance after an application is accepted as complete. For projects with fewer than 150 units, the written compliance determination shall be provided "[w]ithin 30 days of the date that the application for the housing development project is determined to be complete." §65589.5(j)(2).

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that a zoning 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." Pet. RJN Ex. A p. 2; RJN Ex. B, p. 5.

HCD's interpretation of the PSA is somewhat supported by section 65944(a), which prohibits an agency from requesting new information once a public agency accepts an application as complete. At that point, the local government may only request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application in the course of processing the application. Id.

Jha correctly contends that the City violated the PSA by demanding that she comply with zoning requirements in order for her application to be complete. Planning's Project Review letter states that the application "does not comply with objective zoning standards" and includes 34 demands for Jha to "clarify, amplify, correct, or otherwise supplement the information provided". Despite Planning's use of statutory language, the demands for corrections were based on the City's determination that the Project is not code-compliant rather than on missing items in the application. But this information can only be requested after the application is accepted as complete. Pet. Op. Br. at 11.

Jha also correctly argues that the City's demands for legislative action were outside the scope of the PSA, which only applies to "development projects", defined as "any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." §65931. Zoning changes and general plan amendments are legislative acts and not development projects involving the issuance of an entitlement. Arnel Development Co. v. City of Costa Mesa, ("Arnel Development") (1980) 28 Cal. 3d 511, 514. Legislative acts are not entitlements as they are subject to referendum, are not reviewed against established standards, do not need to be supported by findings, and do not require notice and hearing for affected property owners. Id. at 522. The PSA "cannot be used to compel legislative changes to a zoning ordinance or a general plan because the act is limited to projects that are adjudicatory in nature." Land Waste, *supa,* 222 Cal.App.3d at 959; *see also* Landi v. County of Monterey, (1983) 139 Cal.App.3d 934, 935-37. In short, legislative actions such as rezonings and GPAs fall outside the scope of the PSA. Pet. Op. Br. at 11.

Jha contends that the only items identified in the City's Project Review letter that were missing from the application were applications for GPAs and zone changes. The City does not even have an application for a GPA, which may only be initiated by the City itself. City Charter §555(b). Thus, the City is demanding an application that does not exist. The City's demand for legislative change applications is itself a determination that the Project does not comply with current zoning. Its incompleteness determination based on missing legislative applications therefore was invalid. Pet. Op. Br. at 11-2.

According to the City, nothing in the PSA forbids it from reviewing the completeness of a legislative application based on an existing list of application requirements and then providing a written list of missing materials within the time specified by section 65943. The City may borrow from the PSA process even though an application is not subject to the deemed approved terms of section 65950 for an agency's failure to timely act. Land Waste, *supra,* 222 Cal.App.3d at 950, 961 (the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change; section 65950 does not compel legislative acts such as GPAs or zoning changes). Opp. at 14-15.

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It is not clear what the City means by borrowing from the PSA process. Whether they are described as an entitlement or not, it is clear that the City cannot graft legislative changes such as a GPA or zoning change onto the completeness determination. The City's refusal to process an application based on a missing GPA Application was invalid.

Jha similarly argues that density bonus eligibility determinations similarly are outside the PSA. The DBL prohibits a local government from refusing to accept an application as incomplete merely because it believes the project is ineligible for a density bonus. Rather, the DBL states that "to provide for the expeditious processing of a density bonus application," a local government shall notify the applicant with the application is complete within the PSA's timelines. §65915(a)(3)(C). Only "[i]f the local government notifies the applicant that the application is deemed complete" may the agency provide a determination regarding density bonus eligibility. §65915(a)(3)(D). This determination regarding density bonus eligibility occurs after an application has been accepted as complete. Pet. Op. Br. at 12.

Jha states that the City refused to accept her application as complete based on an erroneous determination that the Project is not eligible for a density bonus. Planning's letters repeatedly state that a Density Bonus Application is "not the correct" entitlement path. Under the plain language of the DBL, the City's refusal to accept the application as complete based on a determination of density bonus ineligibility was invalid. Pet. Op. Br. at 12.

The City responds that Jha grafts the word "only" onto quoted language in section 65915(a)(3)(D) to incorrectly claim that the City is prohibited from identifying basic Density Bonus eligibility issues until an application is deemed complete. Jha promotes this rewriting to argue the City must accept and process all Density Bonus applications no matter how little information is provided. A court may not "under the guise of construction rewrite the law". DiCampli-Mintz v. County of Santa Clara, (2012) 55 Cal.4th 983, 992. Opp. at 14.

Section 65915(a)(3)(D) provides that "[i]f the local government notifies the applicant that the application is deemed complete", it may provide a determination regarding density bonus eligibility. It is true that the provision does not say that the local government can determine bonus density eligibility only in that circumstance. Nonetheless, the City cannot refuse to accept an application based on a determination of ineligibility for a density bonus. The DBL specifically allows local governments to create a "list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete." §65915(a)(3)(B). This is separate from a determination of density bonus eligibility and there is nothing in section 65915(a)(3)(B) permits a determination of ineligibility to be used to deny completeness. Section 65915(a)(3)(D) expressly states that any determination regarding the density bonus or eligibility for incentives, concessions, or waivers shall be based on the development project at the time the application is deemed complete. The City could not make this eligibility determination at the application completeness stage.

The City then argues that there is no basis to require a merits review of Jha's applications because Jha does not dispute that they are incomplete. The City notes that Planning issued a case number for both a Density Bonus Application (AR 2039-40) and a GPA Application (AR 1796-97). On January 6, 2023, Planning's letter identifying how both applications were incomplete. AR 2041-93. Jha submitted additional materials on April 5, 2023. AR 2100-2205. Planning's second letter on April 28, 2023 explained that both applications remained incomplete. AR 641-

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86. Jha appealed the incompleteness decisions to the City Council. AR 719-27.[5] Planning's June 12, 2023 staff report explained why the GPA Application process applies, and why both applications remained incomplete. AR 3020-61. The City Council upheld the incompleteness determination on June 27, 2023. AR 1138. Opp. at 9-10.

The issues raised in the City's review letters concern documents and information that are required in the City's lists of application requirements. AR 1792-1928; City RJN Ex. 11. The City is entitled to demand compliance with its list of application information. §§ 65940, 65943. Opp. at 16.

Jha does not address the City's detailed identification of incompleteness issues for the GPA Application. She merely contends that the GPA Application cannot be used. On or about December 12, 2022, Planning emailed all the instructions for the GPA Application process, including a GPA Initiation Request form that Jha could have filled out for GPA initiation. AR 1807-12.[6] Planning explained that, while Jha's application indicates that she is requesting Project approval under section 65589.5, that section does not specify the entitlement process. AR 2043. Once the GPA Application is complete, the application would be subject to the HAA builder's remedy findings at section 65589.5(d)(5), if applicable. AR 2042, 3034. Opp. at 15.[7]

The City adds that the Density Bonus Application was incomplete. The application materials have been either incomplete or internally inconsistent throughout the process of reviewing application completeness, resulting in review letters dated January 6, 2023 (First Review – AR 2042-79), April 28, 2023 (Second Review – AR 641-86), July 12, 2023 (Third Review – AR1139-89), August 2, 2023 (Fourth Review – AR1271-72), and August 23, 2023 (Fifth Review – AR1273-1330). Opp. at 15-16.

Contrary to Jha's claim, Planning's demand that the application be made "consistent" does not refer to project consistency with a City development standard but rather that Jha's Density Bonus Application be internally consistent. AR 641-705, 2041-93, 3300-309. For example, the description of housing units has been inconsistent even though the application form states that applications "filed with unclear or inconsistent information will result in delays...." AR 1901. Jha's initial application papers described a 45-unit Project. AR 82, 228. Other papers describe the Project as 40 units. AR 41, 232. The number of proposed units, market rate units and/or

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[5] The City argues that Jha provided responses that failed to complete either application (AR 3448-69 (6/2/23), 3411-46 (6/16/23), 3299-309 (missing items)) and Planning responded (AR 3337-39 (6/14/23)). Opp. at 9-10.

[6] Jha reiterates that the City's Charter prohibits private parties from initiating GPAs. City Charter §555. There are no "GPA application procedures" because there is no such thing as a GPA application. Reply at 10. However, the case relied on by Jha expressly states that City Charter section 555(a) does not place any limitation on a private party's ability to request a GPA. Westsiders Opposed to Overdevelopment v. City of Los Angeles, (2018) 27 Cal.App.5th 1079, 1089. The court accepts the City's position that Jha could initiate the GPA process.

[7] According to the City, Jha submitted a GPA Application in part (AR 3052-53 (Staff Appeal Resp. #4), but it was incomplete as explained in Planning's reports and its Exhibit I to the City Council. AR 3299-309 (Ex. I). Opp. at 15. At trial, Jha's counsel denied that Jha ever submitted a GPA Application. The City's citation (AR 3052-53) is to staff's statement that Jha directed the City to use material from the Density Bonus Application for the GPA Application, and she has submitted material for the GPA Application. This is insufficient to show submission of a GPA Application.

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affordable units remained inconsistent. AR 232, 1161, 1300. Other incompleteness and/or inconsistencies are: (1) failure to provide information about removal of off-site trees (AR 234, 663, 1299-1300, 1307-09); (2) an incomplete declaration regarding incentives and waivers (AR 667, 1301-03); (3) missing building permits and certificates of occupancy (AR 673, 1309); (4) illegible or inadequate floor plans (AR 677, 1313-14); and (5) missing landscaping and open space plans (AR 679, 1316). Opp. at 15-16.

Jha replies that her Density Bonus Application is complete. GPAs and zoning changes are outside the scope of PSA procedure, and most of the incomplete items were invalid demands for legislative changes, determinations of project consistency, and DBL eligibility determinations. Jha argues that she cannot go through all 45 pages of Planning's inane comments because of her briefing page limits but will address the items specifically discussed in the City's opposition, which demonstrate how the City abused the PSA process. Reply at 12-13.

While the City takes issue with the fact that Jah amended the Project from 45 units in the preliminary application to 40 units in the application, the HAA specifically allows an applicant to revise the number of units by less than 20% following the preliminary application submittal. §65589.5(o)(2)(E). Planning claimed the 40-unit Project is inconsistent with the AHRF that listed 45 units. AR 231. Planning failed to mention that Jha submitted the AHRF on August 11, 2022, just after the preliminary application. Planning failed to process the AHRF until December 12, 2022, four months after submittal and just a week before the deadline to submit a development application. AR 1754. The only reason the AHRF did not match the updated Project plans was because Planning failed to timely sign the form. Reply at 12.

The City also points to missing landscaping and open space plans, but Jha told Planning that landscaping and open space would not be included in the Project. AR 1316. She sought a DBL waiver from these requirements. Still, Planning argued that "[t]rees in the public right of way are landscaping." Id. In other words, Planning demanded that Jha submit a landscaping plan to identify existing off-site trees (that were already identified in her Tree Disclosure). Landscaping plans show the details of proposed landscaping, not the presence of existing off-site trees. *See* LAMC §12.21(G). Reply at 12-13.

The City points to an incomplete declaration regarding requested incentives and waivers. This is untrue. Jha did submit a complete declaration for waivers and incentives. AR 9-12. Planning did not request information from Jha and instead demanded that she confirm the applicable code standard with LADBS by submitting a Preliminary Zoning Form that is "intended to determine compliance with City zoning." AR 434, 1301. A determination regarding zoning code-compliance cannot be used as a basis for determining completeness. Reply at 13.

Other incomplete items included inadequate floor plans because the recreation room did not state whether it would be used as an "exercise room" or a "game room" (AR 1314), even though the term "recreation room" is defined as a room "designed to be utilized primarily for games, the pursuit of hobbies, social gatherings, and such activities." LAMC §12.03. The City also could not determine whether the clearly labeled rooftop terrace was a fourth story (AR 1315), yet simultaneously demanded that Jha "show how the terrace will be used directly on the plans" (AR 1314), as if Jha could predict how future residents will use their private terraces. Reply at 13.

Aside from the improper requirements for a GPA, zone change, and improper determination of density bonus eligibility, the court cannot determine from the parties' presentation whether the City had legitimate reasons to find the Density Bonus Application incomplete. There may be inconsistencies or incomplete information that could justify the

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determination.[8] However, the City clearly chose the wrong path in requiring a GPA, zone change, and determining density bonus ineligibility, and these were the main reasons for the incompleteness determination. As a result, the City's incompleteness determination cannot be upheld.

2. Jha's Vesting Rights Did Not Expire

In SB 330, the Legislature added a provision to the PSA preliminary application process specifically for housing development projects, the purpose of which is to secure vesting rights and lock into place existing development standards. §65941.1. To maintain vesting rights, an applicant must submit a development application within 180 days of submitting a preliminary application. §65941.1(d). Additionally, if an agency makes an incompleteness determination "pursuant to Section 65943",[9] the applicant must submit the information needed to complete the application within 90 days or the preliminary application expires. Id.

Jha contends that the City unlawfully refused to recognize the Project's vesting rights. According to Jha, section 65941.1(d) specifically references the iterative process of application and completeness determination, stating that an applicant must respond within 90 days if the public agency makes an incompleteness determination "pursuant to Section 65943." §65941.1(d). An incompleteness determination "pursuant to Section 65943" includes both an initial completeness determination and any subsequent determination made in response to a resubmittal. In other words, each time a new written completeness determination is made pursuant to section 65943, an applicant has 90 days to respond in order to maintain vesting rights. Pet. Op. Br. at 13.

The City argues that Jha's interpretation of section 65941.1(d) is incorrect. An applicant does not have 90 days to respond each time an incompleteness determination is made. The developer has 180 days after submitting a preliminary application to submit "all of the information" required for a complete application. §65941.1(d)(1). If there is an incompleteness determination, the developer "shall submit" the information for completion in 90 days. §65941.1(d)(2). A failure to do so means that "the preliminary application shall expire and have no further force or effect." Id. Opp. at 11-12.

The City points to the legislative history of SB 330 (section 65941.1) as establishing that a single 90-day period to complete the application was added so that the law "delineates a protocol for both the applicant and the jurisdiction." Resp. RJN Ex. 1, pp. 83, 98-99, 277, 284, 289, 300. It is designed so that a "developer doesn't just put in an initial application, lock rules, then go away for 10 years and come back wanting locked rules for their project."[10]

As a result of an amendment, the American Planning Association ("APA") removed its opposition to SB 330 because there would be an "obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights." Resp. RJN Ex. 1, p.

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[8] Neither party addresses Planning's point in the Second Project Review Letter that the Project is now a condominium project, the documents submitted cannot be considered complete for a subdivision because no subdivision application had been made or paid for, and none of the items on the checklist and subdivider's statement form had been provided. AR 642. At trial, Jha's counsel stated that the Project is a rental project, not a condominium project.

[9] Pursuant to the PSA, once an applicant resubmits an application in response to an agency's incompleteness determination, a new 30-day period begins wherein the agency must make another completeness determination. §65943(a).

[10] The City's citation for this quotation (Ex. 1, p. 267) is not in its requested judicial notice.

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1184. The APA letter urged the Legislature to utilize the PSA's existing process but removed its opposition to SB 330 when amendments created an "obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights." Resp. RJN Ex. 1, p. 68. The APA stated that it preferred the PSA's existing vesting trigger but noted that "these amendments are intended to ensure this new two-step application approval process creates incentives for the applicant to complete the development processes in a timely manner...." Id. The APA stated that the amendment "will require...the applicant to complete the process in a timely manner in order to receive the vesting benefits of the bill." Resp. RJN Ex. 1, p. 1182. Opp. at 11-12. [11]

The City concludes (Opp. at 10, 16) that this legislative history indicates that section 65941.1's 90-day provision is designed to cut off vesting rights and Jha's interpretation would interpret the 180-day and 90-day periods out of existence. *See* Select Base Materials, Inc. v. Bd. of Equalization, (1959) 51 Cal.2d 640, 645, 647 (statutes are construed to avoid rendering "nugatory important provisions of the statute."). Given this interpretation of section 65941.1(d), the Project has no builder's remedy protection because any vesting rights expired when Jha failed to submit a complete application within 90 days of Planning's January 6, 2023 incompleteness letter. AR 3037-38.

On May 16, 2023, Planning wrote Jha that she had lost her vesting rights from the June 23, 2022 preliminary application. AR 761-63. Planning stated the preliminary application was deemed submitted on June 23, 2022 and the 180-day period under section 65941.1(d)(2) ended on December 21, 2022. Planning wrote the initial Project Review letter on January 6 2023, and more than 90 days had passed without receipt of all missing or incomplete information identified. AR 762. Although Jha had submitted a response to the City's January 6, 2023 incompleteness letter within 90 days (AR 386), the resubmittal did not satisfy the required information. AR 762. Therefore, the vesting preliminary application had expired. AR 762.

The City notes that a complaint was made to HCD about the loss of vesting, but HCD's June 28, 2023 email stated that its investigation found "no apparent violation" of housing law". AR 2921, 2962. Opp. at 10, 16.

At trial, the City's counsel explained that the loss of vesting rights also means the loss of a section 65589.5(d) builder's remedy. The HAA prohibits a local government from applying development standards that were not in effect at the time a preliminary application is submitted. §65589.5(o). The HAA states that is a violation to require, or even attempt to require, a project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted. §65589.5(k)(1)(A)(i)(III). If vesting rights under the preliminary application expire, then the builder's remedy – which applies only when the local government does not have a housing element in substantial compliance with the Housing Element Law – would not apply to Jha because the City now has a compliant housing element.[12]

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[11] Assuming that the APA's statement is proper legislative history, it is a statement by a third party and not accorded significant weight. *See* Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., *supra,* 133 Cal.App.4th at 38.

[12] The City's counsel also stated that the loss of vesting rights would not prevent further review of the Project application. For this reason, Planning continued to review and deny Jha's Density Bonus Application as incomplete or internally inconsistent in additional review letters dated July 12, 2023 (AR 1139-89), August 2, 2023 (AR 1271-72), and August 23, 2023 (AR 1273-1330)

Section 65941.1(d)(1) provides that the applicant must submit an application that includes all necessary information within 180 days after submitting the preliminary application. The plain language of the provision sets a 180-day deadline. Section 65941.1(d)(2) provides that, if the agency determines that the application is incomplete pursuant to section 65943, the applicant shall submit the missing information within 90 days and the failure to do so will mean the application has expired. In turn, section 65943 provides that the agency must make a written determination on the completeness of an application within 30 days of submittal, or it will be deemed complete. §65943(a). Upon receipt of "any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." Id.

At trial, the parties' counsel agreed on the relationship of section 65941.1(d)(1) and (2). If an applicant fails to submit an application within 180 days after the preliminary injunction, the 180-day deadline in section 65941.1(d)(1) bars it from doing so. If, on the other hand, an applicant submits an application within 180 days, it is timely even if it is incomplete. This is true despite the language in section 65941.1(d)(1) that the application must include "all of the information required to process the development application". Counsel agreed that an incomplete application submitted within 180 days is still timely under section 65941.1(d)(1). The court accepts the parties' interpretation.

The incompleteness issue is dealt with by section 65941.1(d)(2). This is where the parties diverge. The City contends that the applicant receives a single 90-day period to cure the incomplete application. If the information submitted does not complete the application, then the preliminary application expires and is no further force and effect. §65941.1(d)(2). Jha contends that there may be multiple iterations of this 90-day submission and 30-day evaluation process. So long as an applicant meets the 90-day deadline, there is no bar.

The court agrees with Jha that multiple iterations of the 90-day submission/30-day review are permissible under section 65941.1(d)(2). 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. The statute supports Jha's reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.

The court's conclusion is supported by the fact that the court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA," and the Legislature has mandated the HAA must be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing." Save Lafayette v. City of Lafayette, (2022) 85 Cal.App.5th 842, 855 (refusing to interpret the PSA to treat a multi-year delay as a resubmittal that terminated earlier vesting rights and instead recognizing the project's decade-old vesting rights in part because the HAA's policy that favors housing).[13] The City's interpretation makes it more difficult for

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[13] The City argues that the court in Save Lafayette v. City of Lafayette, *supra*, 85 Cal.App.5th at 854-55, rejected the prospect of a "deemed disapproved" consequence to passage of the PSA's timelines in part because no statutory text supported the argument and there is no statutory text to support Jha's argument either. Opp. at 16-17. Perhaps, but the point remains that the PSA and HAA must be interpreted to give full weight to the approval of housing.

applicants to maintain vesting rights and directly conflicts with the Legislature's clear mandate to interpret its provisions in favor of housing development.[14]

The legislative history provided by the City does not undermine this conclusion. The Assembly Bill Analysis states that "[i]f the local agency determines that the information provided is not complete, the proponent has 90 days after receiving this determination in writing to provide the information, or their preliminary application will expire." Resp. RJN Ex. 1, p. 40. This statement is consistent with the conclusion 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. This interpretation does not read the 90-day deadline out of existence because an applicant still must diligently respond to each incompleteness determination within 90 days.

The June 28, 2023 email HCD email cited by the City is not weighty. HCD staff wrote that it had "received a request for a letter of support" for the Project and found "no apparent violation of state housing law." AR 2962. The email's conclusion is unsupported by any facts or analysis. In contrast, Jha submitted an inquiry to HCD asking whether the Project's vesting rights expired after receiving a second incompleteness determination. An HCD staff member responded: "No, the preliminary application does not expire if the development application is deemed incomplete since Government Code section 65943 allows for resubmittal of the requested items." AR 2638. Reply at 8-9. Jha responded to the City's incompleteness determination within 90 days as required and there was no violation of section 65941.1(d)(2).

Jha submitted the preliminary application on June 23, 2022. She filed the AHRF on August 11, 2022 and the City waited four months to sign it, until December 12, 2022. Jha paid her Density Bonus Application fees nine days later. After Planning sent her the January 6, 2023 Project Review letter, Jha submitted revised the application materials within 90 days, on April 5, 2023. After Planning's second Project Review letter of April 28, 2023, Jha promptly appealed on May 12, 2023. This timeline shows Jha's diligence in pursuing her application.

Jha's vesting rights did not expire, and the City's refusal to recognize them was inconsistent with the PSA and violated the HAA.

3. The City Disapproved the Project Under the HAA

It is undisputed that the Project meets the definition of "housing for very low, low-, or moderate-income households" under the HAA. §65589.5(h)(3). The HAA prohibits a local government from disapproving an affordable housing project unless it makes written findings based on a preponderance of the evidence in the record as to one of five specifically enumerated findings. §65589.5(d). The court has already determined that the City cannot disapprove the Project based on section 65589.5(d)(5) (the builder's remedy) because the City was not in compliance with the Housing Element Law on the date that Jha submitted a complete preliminary application. There is no evidence that any of the other enumerated findings apply, and the City did not attempt to make such findings. In short, there is no valid basis for the City to disapprove the proposed affordable housing Project.

The City argues that the court is reviewing the City's determination of incompleteness under PSA section 65943 as to both applications. The builder's remedy disapproval findings

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[14] Can the local government ever end the cycle of resubmissions within 90 days? Probably so by relying on the 180-day period in section 65941.1(d)(1), but the court need not decide this issue.

apply to a merits disapproval of the Project entitlement, not an incompleteness appeal. §65589.5(d)(5). Nothing in the HAA equates a decision on PSA incompleteness to the disapproval of a project application or entitlement. *Cf.* §65589.5(h)(6)(HAA definition of "disapprove" references the "land use approvals or entitlements" for a building permit). Planning stated that the applications remain incomplete, but it will process either of them once complete. AR 3338. To the extent that Planning made an "early pre-decision compliance review," it was for Jha's information, not a decision on the merits. AR 764-76. The City has not made a final merits disapproval of either application, and for that reason Jha cannot claim that Planning's statement that the GPA Application is the correct process is itself a disapproval of the Project. Opp. at 19.

The short answer is that Jha is correct that the City Council's decision on completeness is a disapproval. Pet. Op. Br. at 17. The HAA defines disapproval as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved . . .." §65589.5(h)(6). While the City Council purported only to vote on whether the application was complete, its vote disapproved the Project based primarily on the City's perceived general plan and zoning inconsistencies. The City did not simply recommend a GPA and zone change; it required them. The City Council made clear the Project cannot be approved unless it is modified to be consistent with the general plan or the general plan is modified to be consistent with the Project. This is a disapproval.

4. <u>The City Violated the HAA</u>

The court has already determined that the builder's remedy applies, and therefore general plan and zoning inconsistencies are not a valid basis to deny the Project. The City did not make any written findings regarding any of the other four enumerated bases to disapprove an affordable housing project, and therefore the City's vote to disapprove the project was in violation of the HAA. §65589.5(k)(1)(A)(i).

The City correctly notes that the HAA does not specify procedures for the review and processing of a builder's remedy project. Unlike other HAA or DBL provisions, there is no HAA text that prevents legislative procedures from applying to projects receiving builder's remedy protection. *Cf.* §§ 65589.5(j)(4) (project "shall not require" rezoning), 65915(f)(5), (j)(1) (density bonus or incentive "shall not require" a plan amendment). There is also nothing in the HAA that says a builder's remedy project must be approved ministerially, or that a specific process must be used, in contrast to other statutes that expressly reference a ministerial process. *Cf.* §§ 65913.4(a), 66317(a), 65852.21, 66411.7(a), (b)(1). Opp. at 11.

The City argues that it is contrary to the plain language of section 65589.5(o) for Jha to claim that the City must use a process that does not follow the laws and policies under which the Project vested. The entitlements associated with the GPA Application honor the City policies in effect on the June 24, 2022 date of the preliminary application that specify the GPA Application procedure and satisfy the need to legalize the Project within the City's zoning and planning framework. §65589.5(o)(1); AR 1535-42. Nothing in the HAA prohibits the City from seeking a GPA or zone change. Opp. at 11-12.

The City relies on a March 28, 2024 HCD letter of technical assistance to the City of Compton in which HCD agreed that the HAA does not specify the process for reviewing a project with builder's remedy protection and also agrees that a jurisdiction may require a general plan amendment or zone change to review such a project. Resp. RJN Ex. 3. Opp. at 12.

HCD's letter stated that a jurisdiction without an adopted housing element in substantial compliance with state law when the preliminary application was submitted and subject to the

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builder's remedy is not prevented by the HAA "from requesting a general plan/zoning code amendment" to avoid a legal non-conformity. Resp. RJN, Ex. 3. Further, the builder's remedy does not expressly prevent the city from requiring discretionary permits and/or legislative actions that would be required for similar projects *(e.g.*, GPAs, zoning changes, CUP, specific plan amendments). Ex. 3. HCD warned, however, that the HAA would be violated if the city's insistence on a GPA or zone change would render the project infeasible because it "delays project approval or increases the cost of the approval process." Ex. 3. Opp. at 12.

Jha agrees that the builder's remedy does not specify the entitlement process and that nothing requires the City to approve the Project ministerially. Jha correctly argues (Pet. Op. Br. at 15-16; Reply at 9) that the City attempts to sidestep the HAA by claiming that the builder's remedy does not specify the entitlement path that a local government must follow, and that the proper entitlement path for the Project is a GPA and zoning change. The HAA requires agencies to approve applications pursuant to the PSA's mandatory deadlines, and nothing permits an agency to force an applicant to seek a legislative change that is outside the scope of those protections. §65589.5(o)(6)(B); Land Waste, *supra*, 222 Cal.App.3d at 959. The HAA requires mandatory approval unless fact-specific findings are made, and forcing an applicant to seek a legislative action strips the applicant of these rights and protections.

Jha argues that GPAs are not entitlements, they are legislative acts. Arnel Development, *supra,* 28 Cal. 3d at 514. GPAs are governed by Chapter 3 of the Planning and Zoning Law, and most sections do not apply to charter cities. §65700. The review and approval of development projects, on the other hand, are governed by Chapter 4.5, the entirety of which applies to charter cities (including the PSA). § 65921. Legislative actions and the review of development projects are two distinct processes, subject to different procedures, and serve different functions. "[A] legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts." Patterson v. Central Coast Regional Com, (1976) 58 Cal.App.3d 833, 840. Reply at 9.

The court need not agree with Jha that GPAs and zone changes are not entitlements to agree that they are legislative enactments that cannot be compelled when the builder's remedy applies. The City cannot compel Jha to seek a legislative action through the review of a development project for the same reason Jha cannot compel the City to approve a legislative action through the submittal of a development application. The builder's remedy applies to projects, not properties, and legislative changes are not "housing development projects" governed by the HAA. Chandis Securities Co. v. City of Dana Point, (1996) 52 Cal.App.4th 475, 485-86. Reply at 9.

Jha is correct that the City's interpretation of the HAA would eviscerate the builder's remedy in section 65589.5(d)(5), which states that a local government must approve an affordable housing project notwithstanding any purported general plan or zoning inconsistency. In other words, requiring legislative changes is simply a more circuitous route of requiring general plan and zoning consistency, which is not permitted when a jurisdiction does not have a certified housing element and the builder's remedy applies. A local government with a compliant housing element could disapprove a project for such an inconsistency, or could inform an applicant that his or her project would be disapproved unless a legislative change is granted, but it cannot do so where an affordable housing project is protected by the builder's remedy.[15]

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[15] According to Jha, the City attempts to nullify the builder's remedy by relying on section 65589.5(f)(1), which states that the HAA should not be interpreted to prohibit a local agency from requiring compliance "with objective, quantifiable, written development standards, conditions,

The City points to the language in section 65589.5(j)(4) that a project "shall not require a rezoning" to suggest that the City can require rezoning. Opp. at 11, 13. Jha correctly replies (Reply at 10) that section 65589.5(j)(4)'s reference to rezoning relates to a determination of project consistency, which is required for market-rate housing projects protected by the HAA. Section 65589.5(j)(4) states that a housing project is not inconsistent with applicable zoning standards, and rezoning is not required, if the project is consistent with objective general plan standards. For builder's remedy projects, consistency is not required for the project to be approved.

Jha notes (Reply at 10-11) that the HCD recently superseded March 28, 2024 Compton technical letter in a June 26, 2025 technical letter to the City of Beverly Hills. Reply RJN Ex. 1. The Beverly Hills technical letter noted that the March 28 letter to Compton stated that the HAA does not prohibit a city from requesting a general plan/zoning code amendment to avoid a legal non-conformity but also clarified that such an action may not be required where the builder's remedy applies. Reply RJN Ex. 1. In its Beverly Hills letter, HCD stated that the HAA is clear

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and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584." (emphasis added). The first step in the housing element process is for a local government to identify the "appropriate zoning and development standards" to accommodate its RHNA. §65583(c)(1). Section 65589.5(f)(1) only allows a local government to enforce standards that are "appropriate to, and consistent with," meeting a jurisdiction's RHNA. A local government that failed to have a certified housing element and is subject to the builder's remedy does not have standards "appropriate to, and consistent with" meeting its RHNA requirements. This is why the builder's remedy exists. If a local government has failed to go through the required housing element process to identify the standards "appropriate to, and consistent with" meeting its RHNA requirements, section 65589.5(d)(5) allows affordable housing projects a path to approval notwithstanding existing standards. Pet. Op. Br. at 16.

Moreover, section 65589.5(f)(1) requires that the development standards, conditions, and policies be applied to "facilitate and accommodate development at the density permitted on the site and proposed by the development," not to provide a backchannel method to thwart the protections of section 65589.5(d)(5). Jha proposed an affordable housing project at a time when the City did not have a compliant housing element and the "density permitted" on the site is not constrained by existing general plan and zoning density standards. The builder's remedy makes clear that such density standards are not a valid reason to disapprove the project. The City can enforce other objective standards (*e.g.*, height, setbacks) but must do so in a manner that facilitates and accommodates the density proposed by the Project. Pet. Op. Br. at 16-17.

Finally, section 65589.5(f) merely contains a series of general interpretive provisions regarding how the HAA should be "construed." Section 65589.5(d) provides the specific findings that a local government must make to lawfully disapprove a proposed affordable housing project. It is a basic canon of statutory construction that "when a general and particular provision are inconsistent, the latter is paramount to the former." CCP §1859. A general interpretive provision cannot be read to nullify the builder's remedy provision as it applies to a particular project. Interpreting section 65589.5(f)(1) to allow cities to impose zoning and general standards that section 65589.4(d)(5) states are not a valid reason to disapprove a project would reduce the builder's remedy to mere surplusage. A "construction making some words surplusage is to be avoided.'" People v. Valencia, (2017) 3 Cal.5th 347, 357. Pet. Op. Br. at 17.

While the court agrees with Jha's analysis, the City's opposition does not rely on section 65589.5(f)(1).

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that a project protected by the builder's remedy may not be disapproved for inconsistency with the jurisdiction's general plan and zoning ordinance. §65589.5(d)(5). "Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA[zoning change] requires or required by the jurisdiction to resolve such an inconsistency violates the intent of the HAA." Ex. 1. The requirement of a GPA or zoning change is "essentially a requirement for consistency," and disapproval of a project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. Ex. 1. HCD also noted that Beverly Hills did not have a GPA or zone change on its submittal requirement checklist and under the PSA the city could not determine that an application is incomplete based on failure to include a request for a GPA or zone change. Ex. 1.

The deference and the weight given to an agency's interpretation is situational and dependent on the presence or absence of factors supporting the merit of the interpretation. Yamaha Corp. of America v. State Board of Equalization, (1998) 19 Cal.4th 1, 7-8, 12. Some deference is warranted where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.'" Id. at 13. An administrative construction of a statute is only entitled to as much deference as is warranted by "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control". Hoechst Celanese Corp. v. Franchise Tax Bd., (2001) 25 Cal.4th 508, 524.

The Beverly Hills technical letter strongly supports Jha's position and is entitled to some weight. It is consistent with the court's view, which is that the City may not require GPA or zone change on Jha's Project that is protected by the builder's remedy. Therefore, the City violated the HAA.

5. The City Violated the DBL

The DBL (§§ 65915-18) is intended to allow a developer to include more total units in a project that would otherwise be allowed by the local zoning ordinance in exchange for low-cost rental units, and to "cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." §65915(u).

A local government shall grant one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p), if an applicant agrees to construct a housing development that will contain stipulated percentages of low income and very low-income units or target population units (*e.g.*, disabled veterans). §65915(b).

A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i).

A "density bonus" means a "density increase over the otherwise maximum allowable gross residential density," but the developer also may elect "a lesser percentage of density increase, including, but not limited to, no increase in density." §65915(f). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

Density bonuses shall be granted based on the "maximum allowable density" for the project site, defined as "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density

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allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." §65915(o)(5).

An applicant for a density bonus pursuant to subdivision (b) may submit a proposal for specific incentives or concessions. §65915(d)(1). The local government shall grant the requested incentive or concession unless (1) it makes a written finding, based on substantial evidence, that the project will not result in "identifiable and actual cost reductions" of affordable housing costs or for rents of the targeted units as specified in subdivision (c), (2) the concession or incentive would have a specific adverse impact upon public health and safety, the physical environment, or real property listed in the California Register of Historical Resources and for which there is no feasible method of mitigation without rendering the development unaffordable to low- and moderate-income households, or (3) the concession or incentive would violate state or federal law. §65915(d)(1)(A)-(C). §65915(d).

The applicant may also apply for and receive development waivers or reductions that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions/incentives permitted. §65915(e)(1). The local agency may not apply a development standard that will have this effect. §65915(e)(1). However, the local government is not required to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id. Nor is the local government required to waive or reduce development standards that would have an adverse effect on real property listed in the California Register of Historical Resources, or to grant any waiver or reduction that would violate state or federal law. §65915(e)(1).

Jha argues that the amount of density bonus is based on the "maximum allowable gross residential density" or "base density," which the law defines as "the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan...." §65915(o)(6). On the other hand, incentives/concessions and waivers are awarded based on the percentage of "total units" that are restricted to low- and very-low income households. §65915(d). The DBL definition of "total units" is unrelated to zoning and is simply "a calculation of the number of units that: (i) Excludes a unit added by a density bonus awarded pursuant to this section. (ii) Includes a unit designated to satisfy an inclusionary zoning requirement." §65915(o)(8). In other words, the term "total units" simply means the number of units proposed for the project. Similarly, the DBL defines a "housing development" to mean "a development project for five or more residential units, including mixed-use developments" without any reference to zoning standards. §65915(i). Thus, a "housing development" is a project that proposes at least five units. Pet. Op. Br. at 18-19.

Jha's Project is a housing development that includes 20% of units restricted to low-income households and is therefore entitled to two incentives/concessions and an unlimited number of development standard waivers. §65915(d), (e). Jha proposed incentives to the applicable floor area ratio and low-impact development standards, as well as various waivers to development standards of setbacks, height limits, parking standards, and others. AR 136-37.

AHSS staff determined that the Project is not eligible for the DBL program. AR 1637. The staff stated that the Property site is in the RA zone, which permits only one family dwelling and does not allow multi-family uses. LAMC §12.07.A.1. AR 1637. AHSS staff stated that Jha will need to apply for a zoning change to allow multi-family uses. AR 145-47, 1637. In fact, the City unilaterally converted the application from a density bonus request to a zone change, assigning the Project a new Planning number. AR 171. Pet. Op. Br. at 19.

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Jha contends that the City did not deny the requested incentives/concessions, and development standard waivers due to public health and safety concerns, but rather due to the City's erroneous determination that a site must be zoned for a minimum of five base units to be eligible for any of the DBL's protections. The number of base units is only relevant to calculate the density bonus which Jha does not seek. It is distinct from the "total units" used to determine eligibility for incentives/concessions/development standard waivers. So long as the project includes the minimum level of affordability, the City may only deny the proposed incentives/concessions/waivers for the statutorily enumerated reasons. §65915(d), (e). The DBL includes "very limited exceptions" to deny requested incentives/concessions/waivers and zoning inconsistency is not one of them. *See* Bankers Hill 150 v. City of San Diego, (2022) 74 Cal.App.5th 755, 770. The City's refusal to grant the incentives/concessions/waivers is a violation of the DBL. Pet. Op. Br. at 19.

The City responds that Jha incorrectly reads the DBL. Her literal reading of the terms "total units" and "housing development" in sections 65915(o)(8) and 65915(i), respectively, would create an absurd result. Both terms refer to the number of base units identified by the zoning and land use designation based on usage of the "housing development" term. *Compare* §§ 65915(b)(1)(G), (c)(1)(B)(ii)("all units in the development, including total units and density bonus units"), §§ 65915(a)(1)("When an applicant seeks a density bonus for a housing development"), 65915(b)(1)(if an applicant "seeks and agrees to construct a housing development, excluding any units permitted by the density bonus") *with* 65915(o)(8)(i)("total units…[e]xcludes a unit added by a density bonus"). Jha's literal application of the definitions in sections 65915(o)(8) and 65915(i) would permit a density bonus project in any industrial zone or land use category that does not authorize residential uses so long as the number of proposed units is five or more. At trial, the City's counsel reiterated that Jha's interpretation would allow incentives, concessions, and waivers for a project in an industrial zone. *See* Unzueta v. Ocean View School Dist., (1992) 6 Cal.App.4th 1689 (statutes are interpreted to avoid absurd results). Opp. at 14.

Scrutiny of the DBL shows the City is wrong. An applicant for a qualifying housing development make seek and obtain one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p). §65915(b)(1). A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i). The developer may elect to seek no increase in density as part of her density bonus (§65915(f)) and may seek specific incentives or concessions (§65915(d)(1) and development waivers or reductions (§65915(e)(1)) as Jha has. While the density bonus available pursuant to section 65915(b) is defined as an increase to maximum allowable density (§65915(f)) and maximum allowable density means the greatest number units allowed by the zoning ordinance (§65915)(o)(6)), there is simply no tie between bonus density, incentives or concessions, and waivers or reductions in development standards that would permit application of the maximum allowable density definition too the latter two entitlements.

The court agrees with Jha (Reply at 11-12) that the City is equating the terms "total units" in section 65915(o)(8) and "base density" in 65915(o)(6) even though each has a specific, unique definition in the DBL. "Total units" refers to the number of units in a project excluding any density bonus units. §65915(o)(6). "Base density" is only relevant for determining the amount of density bonus and refers to the units allowed under the zoning or general plan. §65915(o)(8). Reading these terms to be identical would render the statutory definitions surplusage. *See* MacIsaac v.

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Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082. Reply at 11.

The plain language of the DBL controls. So long as a project that restricts a certain percentage of the "total units" to low-cost housing can be approved, it is eligible for incentives, concessions, and waivers with "very limited exceptions." *See* Bankers Hill 150 v. City of San Diego, (2022) 74 Cal.App.5th 755, 770. Zoning is not one of those exceptions. While the City argues that reliance on the plain language definition of "total units" would allow density bonus projects in zones where residential uses are not permitted, such as in an industrial zone, inconsistency with zoning or general plan requirements could be a valid reason to disapprove a project where (a) there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact (b) there would be an adverse effect on real property listed in the California Register of Historical Resources, or (c) it would violate state or federal law. §65915(d)(1), (e)(1). Because the Project restricts 20% of the total units as affordable, the City's refusal to grant incentives, concessions, and waivers violated the DBL.[16]

F. Conclusion

The Petition is granted in large part. Jha is entitled to a judgment on her mandamus claims that (1) the City's determination that Jha's application is incomplete violated the PSA because the City wrongly required a GPA, zone change, and determined density bonus ineligibility, (2) the City violated the HAA by imposing a GPA and zone change on Jha's Project protected by the builder's remedy, (3) Jha's vesting rights did not expire, and the City's refusal to recognize them was inconsistent with the PSA and violated the HAA, and (4) the City's refusal to grant regulatory incentives, concessions, and waivers violated the DBL. Jha's claim for declaratory relief is denied. A writ shall issue directing the City to set aside the City Council's denial of the June 27, 2023 PSA appeal and to review and process Jha's Project application pursuant to the PSA, HAA and DBL as interpreted herein.

Jha's counsel is ordered to prepare a proposed judgment and writ, serve them on the City's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for August 27, 2024 at 9:30 a.m.

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[16] The City argues that it acted in good faith. Opp. at 21-22. The City's bad faith is relevant only to whether the court should direct it to approve the Project. §65589.5(k)(1)(A)(ii). If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an "order or judgment directing the local agency to approve the housing development project" and attorney fees and costs. §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l). Jha fails to seriously address this issue and the court's decision requires further proceedings anyway.

Dated: July 23, 2024

Superior Court Judge

JAMES C. CHALFANT

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EXHIBIT H

CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
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SENT VIA ELECTRONIC MAIL

March 17, 2025

Chunhua & Dan Tang
20739 Scofield Dr.
Cupertino, CA 95014
chunhuatang911@gmail.com

Subject: Appeal of an Administrative Decision for a 20-unit Residential Project (ASA-2024-009, TM-2024-004, TR-2024-031) Located at 20739 Scofield Drive (APN 359-09-016)

Dear Chunhua and Dan Tang,

On January 22, 2025, the City received an appeal to an Administrative Decision determining that a development application for a 20-unit residential project located at 20739 Scofield Drive is deemed incomplete. This decision, noticed to the applicant (Mr. Chunhua Tang) on January 9, 2025, listed multiple items missing as listed on the City's General Planning Application form[1].

The applicant purported to submit an appeal under Government Code section 65943(c), which requires local agencies to provide procedures to appeal a determination of incompleteness under the Permit Streamlining Act, and Cupertino Municipal Code (CMC) section 19.12.040(F), which provides for the appeal of administrative interpretations of Municipal Code Title 19 (including completeness determinations under CMC section 19.12.090) to the Planning Commission. However, the applicant does not contest the City's incompleteness determination or raise any issue related to the interpretation of the Municipal Code. In fact the letter from your legal counsel on page 1 states, "On January 9, 2025, Mr. Tang received an 'Application

[1] Pursuant to California Government Code Section 65941.1(d)(1) and 65941.1(d)(2), the City had determined that the application for the development project was not complete because the specific information needed to complete the application had not been submitted within 90 days of receiving the City's written identification of the necessary information. Since this information was not submitted within the 90-day period, the preliminary application pursuant to Govt. Code Section 65941.1 had expired and had no further force or effect.

Incomplete Letter' . . . . In this letter, staff concluded the preliminary application has expired and 'has no further force or effect.' This decision is incorrect and is the subject of this appeal."

Instead, the applicant seeks to advance an incorrect interpretation of Government Code, section 65941.1(d)(2) unrelated to the Community Development Director's incompleteness determination or any interpretation of the Municipal Code. Neither the Director nor the Planning Commission has jurisdiction to rewrite state law. Accordingly, the appeal process set forth in Government Code, section 65943(c) does not apply to this appeal request and the applicant has waived any legitimate grounds for appeal. As such, the Director's January 9, 2025 administrative decision is final.

Please contact me at (408) 777-3319 or gianm@cupertino.gov for any questions or concerns related to these comments.

Sincerely,
/s/
Gian Paolo Martire
Senior Planner

Attachments: (A) Completed Appeal Form received on January 22, 2025.