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YES IN MY BACK YARD,
SONJA TRAUSS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT - UNLIMITED JURISDICTION

YES IN MY BACK YARD, a California nonprofit corporation; SONJA TRAUSS, an individual,

Petitioners/Plaintiffs,

v.

CITY OF REDONDO BEACH; CITY COUNCIL OF THE CITY OF REDONDO BEACH; CITY OF REDONDO BEACH DEPARTMENT OF COMMUNITY DEVELOPMENT, and DOES 1 through 25 inclusive,

Respondents/Defendants,

9300 WILSHIRE LLC,

Real Party In Interest.

Case No.:

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

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

[Related Action: 23STCP02189**]**

Petitioners/plaintiffs YES IN MY BACK YARD, a California nonprofit corporation, and SONJA TRAUSS, an individual (collectively "Petitioners") by and through their attorneys, Patterson & O'Neill, PC, file this petition for writ of mandate and complaint for declaratory relief against respondents and defendants CITY OF REDONDO BEACH; CITY COUNCIL OF THE CITY OF REDONDO BEACH; CITY OF REDONDO BEACH DEPARTMENT OF COMMUNITY DEVELOPMENT, 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 ("HCA") (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 concerns Respondents' policies and practices which it institutes to avoid compliance with the most basic housing laws adopted by the California legislature to address the state's ongoing housing crisis. As illustrated in this case, Respondents' 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, when a city does not have a compliant housing element, and (iii) denying housing applicants vesting rights after submittal of complete preliminary applications. These illegal policies and practices are applied by Respondents to avoid their obligations under state law and subvert the ability of applicants to benefit from the legal protections established for housing development projects under state law, and prevents Redondo Beach from providing sufficient housing to meet the needs of the community.

PARTIES TO THE ACTION

2. Petitioner and Plaintiff Yes In My Back Yard ("YIMBY") is a § 501(c)(3) nonprofit corporation; YIMBY is the litigation affiliate of YIMBY Action, a § 501(c)(4) nonprofit corporation, whose membership cuts across socioeconomic lines, including members with very low, low, moderate, middle, and higher incomes ("YIMBY Members"). YIMBY's mission is to increase the accessibility and affordability of housing in California by enforcing

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state housing laws and by advocating for increased access to housing for households of all income levels, including for YIMBY Members who reside in, or wish to reside in, the City of Redondo Beach. 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.

3. Petitioner and Plaintiff Sonja Trauss ("Trauss") is a natural person and a resident of the State of California, and she is the founder and director of YIMBY and a member of YIMBY Action. Trauss has a substantial interest in ensuring that Respondents' actions are in conformity with the requirements of law, that those requirements are properly executed, and that the public duties of Respondents are enforced.

4. Respondent and Defendant City of Redondo Beach (the "City") is an incorporated municipality of the State of California.

5. Respondent and Defendant City Council of the City of Redondo Beach (the "City Council") is the City's policy making, legislative, and quasi-judicial municipal body.

6. Respondent and Defendant City of Redondo Beach Department of Community Development is the administrative agency of the City of Redondo Beach delegated to administer the City of Redondo Beach Municipal Code with respect to land use permits and applications in conformity with state and federal law.

7. 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.

8. Petitioners are informed and believe that at all times mentioned in this Petition and

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Complaint, all respondents/defendants were the agents or employees of the correspondent defendant, and in doing the things alleged in this Petition and Complaint, were acting within the course and scope of that agency and employment.

9. Real party in interest 9300 Wilshire LLC is a limited liability company existing under the laws of the State of Delaware and doing business in the State of California. 9300 Wilshire LLC is the authorized applicant for the subject housing development project.

JURISDICTION AND VENUE

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

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

12. 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).)

13. 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

Legislative Background

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

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15. To ensure that local governments adequately plan to meet the housing needs of everyone in the community, the Housing Element Law requires each local government to adopt a Housing Element as part of their General Plan. (Gov. Code § 65580, et. seq.) 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.)

16. To that end, the HAA provides an avenue for developers to provide desperately needed housing for very low, low-, or moderate-income households when a local government fail to carry out its responsibility to adopt a Housing Element that is in substantial compliance with the Housing Element Law.

17. Colloquially known as the "Builder's Remedy," a local government is required to approve housing, or not otherwise condition approval in a manner that renders the housing development project infeasible, unless the local government can make certain written findings based upon a preponderance of the evidence. The required findings for disapproving such projects are:

a. the local agency has a compliant housing element and its jurisdiction has met or exceeded its regional housing needs allocation;

b. the proposed project would have a "specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid" the impact without rendering the project unaffordable;

c. 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 development unaffordable;

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d. the proposed project site is on land zoned for agricultural or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project; or

e. the proposed project 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 jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance" with the Housing Element Law. (Gov. Code § 65589.5, subd. (d)(1) – (5).)

18. Thus, under Gov. Code § 65589.5, subd. (d)(5), a local government cannot deny a housing development project for low-income households, even if the project is inconsistent with the jurisdiction's zoning and general plan land use designation, unless it makes written findings supported by a preponderance of the evidence in the record that it has adopted a Housing Element in substantial compliance with the Housing Element law, or that one of the above described sets of circumstances exist. This provision is known as the Builder's Remedy.

19. A local jurisdiction has no authority to determine that its adopted element is in substantial compliance with State Housing Element Law. Pursuant to Gov. Code § 65585, a local jurisdiction must first submit a draft housing element to the State Department of Housing and Community Development ("HCD"), the administrative agency responsible for declaring the legal compliance of housing elements in the State of California, 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).) Alternatively, an agency may 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 and receive findings regarding substantial on the adopted element from HCD. (Gov. Code § 65585, subd. (g)-(h).) The Housing

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Element Law does not provide a process for a local agency to adopt a Housing Element without first submitting a draft for HCD review.

20. HCD released a memorandum address to the Planning Directors of all 539 local jurisdictions in California on March 16, 2023. (**Exhibit A**.) The memorandum informed all local jurisdictions that a jurisdiction does not have the authority to determine that its adopted element is in substantial compliance with the Housing Element Law. Therefore, a jurisdiction is only "in compliance" as of the date that HCD's letter finding the adopted element in substantial compliance and recommended that jurisdictions "adopt" a Housing Element only after submitting the draft to HCD review and considering HCD's findings. In other words, a local jurisdiction is not authorized to "backdate" compliance to the date of its adoption of a housing element.

21. Gov. Code § 65941.1, subdivision (a), allows a housing development applicant to submit a "preliminary application." 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. Housing development projects are *only* subject to the zoning and general plan standards that adopted and in effect at the time a complete preliminary application is submitted. (Gov Code § 65589.5 subd. (o)(1).)

22. Therefore, if the preliminary application 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 remain throughout the entitlement process *even if* the jurisdiction subsequently achieves compliance during the entitlement process including because an agency's findings regarding substantial compliance of the jurisdiction's housing element and zoning documents are determined based on 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.*" (Gov. Code § 65589.5(d)(5).)

23. The state 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 from an applicant for a Formal Application for a development project (Gov. Code § 65940); includes strict timelines for agencies

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

24. The PSA is informational and is intended to provide a local agency with sufficient information to decide whether to approve or disapprove a project. The HAA provides a separate process for local governments to determine whether a project is inconsistent with applicable code standards. For projects with more than 150 units, the HAA states that written compliance documentation shall be provided "[w]ithin 60 days of the date that the application for the housing development project is determined to be complete" pursuant to the PSA. (Gov't Code 65589.5, subd, (h)(6).) Thus, inconsistency with local zoning standards may be a reason to deny an application in some circumstances, but it is not a basis for deeming an application incomplete and refusing to process an application. (Gov. Code § 65943, subd. (a).) Consistency determinations are made *after* an application is deemed complete.

25. In response to other local governments' attempts to circumvent the requirements of state law and deny housing projects by refusing to process applications, HCD has issued letters to cities that explain finding an application incomplete based on a purported inconsistency violates both the PSA and the HAA. (*See, e.g.,* HCD Notice of Violation issued to City of La Cañada Flintridge, CA on June 8, 2023 and attached as **Exhibit B**; HCD Notice of Violation issued to Fillmore, CA on August 24, 2023 and attached as **Exhibit C**.)

The Project Application

26. On August 15, 2022, 9300 Wilshire LLC ("Applicant") submitted a Preliminary Application for a 2,700-unit mixed-use development project with 20 percent of its units set-aside as affordable units (i.e., for lower income households), located at 1100 N. Harbor Drive, in the City of Redondo Beach ("Property") (collectively, "Project") pursuant to the procedures set forth in Gov. Code §65941.1. The application included all the information required by Gov. Code §65941.1, such as the specific location; the existing uses on the project site; a site plan; the

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proposed land uses by number of units and square feet of residential development; and the proposed number of parking spaces.

27. When the Applicant submitted the Project's Preliminary Application on August 15, 2022, the City did not have "a revised housing element in accordance with Section 65588 that is in substantial compliance" with the Housing Element Law. (Gov. Code § 65589.5(d)(1) – (5).) Nor had HCD certified the City's Housing Element ("City Housing Element") as compliant. Instead, HCD had designated the City as "out-of-compliance" until HCD certified the City Housing Element on September 1, 2022.

28. On or about February 6, 2023, the Applicant followed up on its Preliminary Application with timely submission of its formal application for the Project ("Formal Application").

29. The City's Director of the Department of Community Development sent a letter to 9300 Wilshire LLC's representatives, dated March 3, 2023, stating the City would not accept or process the Formal Application because the Applicant was "not entitled" to processing under the HAA ("Rejection Notice"). The Rejection Notice acknowledged receipt of the Preliminary Application on August 15, 2022, and the Formal Application on February 6, 2023, but asserted that the Project could not avail itself of the Builder's Remedy and therefore the Applicant was required submit a completely different set of entitlement applications to the City for amendments to the City's Local Coastal Program, General Plan, and Zoning Code. Alternatively, the City stated that the applicant could contact the City for information on "the project types that may be developed" on the Property.

30. The Director's incompleteness determination letter stated that the reason the City found the application incomplete was not based on missing information, but because the City disapproved of the Project itself, stating that "[s]ince your client's application is inconsistent with the general plan land use designation, the Local Coastal Program land use category, and the zoning applicable to the project site, this application is deemed incomplete."

31. The Rejection Notice's supposed reasoning for requiring a different set of application submittals was the City's erroneous conclusion that City Housing Element was

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compliant as of July 5, 2022, *before it had even been submitted to HCD*, and therefore, 9300 Wilshire LLC was "not entitled to project approval under Section 65589.5 (d)(5) [i.e. the Builder's Remedy])."

32. The City's interpretation of the Housing Element Law is legally incorrect and directly conflicts with HCD's determination that the Housing Element was not compliant until September 1, 2022. Furthermore, the Rejection Notice contained none of the written findings required by Government Code §65589.5(b) to meet the City's burden to prove, by a preponderance of the evidence, that any of the required section 65589.5(d) findings were met.

33. While inconsistency with local zoning standards may be a reason to deny an application in some circumstances, 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)).

34. The City improperly sought to mischaracterize the Rejection Notice as a determination of incomplete application under Government Code section 65943. The Rejection Notice was an outright disapproval – and refusal to process – the Formal Application based on a finding of inconsistency with the City's zoning code and general plan, Under the HAA's Builder's Remedy provision, zoning and general plan inconsistency is an unlawful reason to deny the Project.

35. Furthermore, the Rejection Notice does not qualify as a valid notice of incomplete application under Government Code section 65943 because it does not identify necessary information needed to complete the application to process the Project as a Builder's Remedy proposal. Rather, the City flatly refuses to carry out its ministerial duty to process the Formal Application for the Project as proposed. The City's demand for the Applicant to either abandon the Project entirely or comply with the "notice of incomplete application" by seeking legislative zoning changes denies the Applicant its rights to the Builder's Remedy.

36. Under the Builder's Remedy, the Applicant is entitled to Project approval, regardless of the Property's zoning and land-use designation, because the City could not and did not make any of the findings listed under Government Code section 65589.5 subdivision (d) to

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justify denial of an HAA affordable housing project. Specifically, the City did not, and could not, make a finding, based on a preponderance of the evidence, that the City Housing Element was compliant with the Housing Element Law as of the time the Preliminary Application was submitted because, as a matter of law and HCD's own interpretation, the City Housing Element was *not* compliant and was *not* deemed compliant by the HCD.

37. The City and the City Council failed to make requisite findings necessary to deny the project under the Builder's Remedy, and thus, the 9300 Wilshire LLC is entitled to have the Formal Application received for processing and approval. Regardless of the Project's inconsistencies with the existing zoning and land-use designation, the City's inability to make the necessary written findings means 9300 Wilshire LLC is entitled to invoke the Builder's Remedy and obtain mandatory Project approval. That is precisely the "remedy" the Legislature intended when enacting the Builder's Remedy provision in the law.

38. The Rejection Notice purports to repudiate the 9300 Wilshire LLC 's rights under the HAA, which mandates approval in the absence of the City's ability to meet its burden to make written findings based on a preponderance of the evidence of one of the criteria contained within section 65589.5 subdivision (d).

The PSA Appeal

39. 9300 Wilshire LLC timely requested an Administrative Appeal of the City Community Development's decision to reject the application. A City Council hearing was set for May 9, 2023 ("Administrative Appeal").

40. In advance of the City Council hearing, HCD issued a technical assistance letter to the City confirming that the City Housing Element was not in compliance with the Housing Element Law until September 1, 2022. HCD provided further guidance that the Builder's Remedy would apply to 9300 Wilshire LLC 's Project, and any other project, if the Preliminary Application was submitted before the City's Housing Element was compliant.

41. YIMBY and Sonja Trauss submitted a letter to the City in support of the Applicant's appeal. (**Exhibit D**.) The letter explained that a finding of project inconsistency is not a valid reason to find that a project is incomplete pursuant to the PSA, and that refusing to process

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the Formal Application for the project would constitute an unlawful disapproval under the HAA. The letter demanded that the City process the application, or YIMBY would be forced to take legal action to enforce state housing laws.

42. Despite HCD's determination, on May 9, 2023, the City Council adopted Resolution No. CC-2305-043 denying the Administrative Appeal and upholding the Community Development Director's decision to reject and refuse to process the Formal Application. The City Council did not present any evidence or make any findings, or otherwise make any effort to comply with requirements of Government Code 65589.5, subdivision (d). The 9300 Wilshire LLC fully exhausted its administrative remedies to challenge the City's repudiation of -- and refusal to process the application for -- the Project in a public hearing before the City's highest decision-making body; these claims, and the City's improper interpretations of state law, are ripe for review by this Court.

43. The HAA defines "disapprove" a project broadly to mean any instance in which an agency "[v]otes on a proposed housing development project *application* and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit." (Gov't Code 65589.5(j)(2).) A complete Formal Application is necessary for the issuance of a building permit, and the first step necessary to obtaining project entitlements. Thus, an erroneous vote to disapprove the completeness of a Formal Application based on unlawful inconsistency findings constitutes a violation of the HAA.

The Formal Application Resubmittal

44. Even though the City refused to state which fees were required, on June 1, 2023, 9300 Wilshire LLC paid a fee of $10,000 in connection with the filing of the Formal Application and submitted hard copies of the proposed plans as the City demanded.

45. On June 29, 2023, the City issued a second rejection notice, acknowledging receipt of payment and plans, but nevertheless reiterating that the Applicant was "not entitled to processing." The City again demanded that the Applicant either file an application for a completely different project "for an allowed land use per the Redondo Beach Municipal Code" or submit applications for legislative zoning changes.

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46. The letter also argued that because the Applicant did not capitulate to the City's demand to submit a zoning and general plan amendment, the applicant's preliminary application vesting rights had expired. This determination was also in error, as the Applicant had already submitted a complete application, but each resubmittal extends the date that preliminary application vesting rights expire by an additional 90 days.

47. The City's second rejection notice made clear that, no matter what information the applicant submitted, the City has no intention to carry out its ministerial duty to process housing development applications unless the Applicant abandons its rights under state housing laws.

FIRST CAUSE OF ACTION

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

Gov. Code § 65920

(Against All Respondents)

48. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 47 of this Petition and Complaint.

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

50. The PSA requires public agencies to compile lists that specify the information that will be required from an applicant for a development project, and it includes strict timelines for agencies to determine whether an application is complete. In making that determination, local

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agencies may only consider those submittal items that have been identified in the applicable publicly available application checklists.

51. 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).)

52. The PSA's process is informational, not substantive. Both Rejection Letters include comments that are 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, the jurisdiction impermissibly demands more information than necessary to achieve a complete application, in violation of the PSA. If the City refused to process an application based on a substantive decision regarding project compliance, this PSA violation is an undue constraint on the Project. Respondents failed to carry out a ministerial duty to accept and process development applications.

53. SB 330 added a Preliminary Application process to the PSA specifically for housing development projects, and it states that a Preliminary Application shall be deemed complete upon providing certain specific information. Respondents' refusal to accept a Formal Application based on purported noncompliance with substantive zoning standards and criteria, rather than incomplete information, is a clear effort by Respondents to avoid providing Petitioners, YIMBY Members, and others similarly situated the protections of SB330's state mandated vesting rights.

54. 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

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immediate stay or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to perform their legal duties under the PSA, including with respect to the Preliminary Application and development application for the proposed Project.

SECOND CAUSE OF ACTION

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

(Against All Respondents)

55. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 54 of this Petition and Complaint.

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

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

58. The HAA limits the ability of local governments to disapprove housing development projects for very low, low-, or moderate-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. The HAA defines "disapprove" as any instance in which an agency "[v]otes on a proposed housing development project application and

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the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit."

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

60. 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)

61. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 60 of this Petition and Complaint.

62. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their obligations and duties under California statutory law, including but not limited to Respondents' policies and practices which operate to avoid obligations established by state law, such as: (i) refusing to process housing development projects that qualify under the "Builder's Remedy" section of the Government Code; (ii) refusing to consider a housing development project application as being "complete" for the purposes of the PSA until after Respondents have determined a project is consistent with zoning and general plan standards; and, (iii) disregarding the vesting rights of Preliminary Applications and associated housing development project applications under state law. As set forth herein, Petitioners contend that Respondents' actions are prohibited by the state Housing Accountability Act (Gov. Code §

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65589.5), SB 330 (Gov. Code § 65941.1), and state Permit Streamlining Act (Gov. Code § 65943).

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

WHEREFORE, Petitioners demand judgment against Respondents for the following:

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

2. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to review and process housing development project Preliminary Applications pursuant to the provisions of SB 330, including refraining from denying vesting rights based on "inconsistent" Formal Applications;

3. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order declaring the City Council's May 9, 2023, adoption of the Resolution No. CC-2305-043 void for violating Government Code section 65589.5 subdivision (d); issuance of a writ of mandate ordering the City's Community Development Department to accept and process the Formal Application and for the City, the City Council, and the City's Community Development Director to take any and all necessary steps to immediately process the Application and approve the Project as submitted, and issue all related, necessary Project approvals within 60 days; and for the Court to retain continuing jurisdiction over this matter to ensure compliance with this Court's decision and applicable law;

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

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235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

declaration, and/or order issuance of a writ of mandate under Code of Civil Procedure sections 1094.5 and/or 1085: (a) commanding the City Council to take all appropriate action to rescind its May 9, 2023, adoption of the Resolution No. CC-2305-043; (b) commanding the City Community Development Department to fulfill its mandatory duty to accept and process the Formal Application pursuant to Government Code section 65589.5 subdivision (d); (c) commanding the City, the City Council, and the City Community Development Director to promptly render all appropriate and lawful approvals, entitlements and actions necessary to allow Petitioner to construct the Project, as originally presented in its Formal Application within 60 days, consistent with Petitioner's rights under state and local law, including specifically the HAA; and (c) for the Court to retain continuing jurisdiction over this matter to ensure compliance with this Court's decision and applicable law;

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

6. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to comply with the Housing Accountability Act with respect to the proposed Project at 1100 N. Harbor Drive, including, but not limited to, an order that the Project is deemed compliant and directing Respondents to approve the housing development project within 60 days due to Respondents' bad faith actions pursuant to Gov. Code § 65589.5;

7. A declaration that: (a) the City Community Development Director violated Government Code section 65589.5 subdivision (d) by failing to process and accept the Formal Application and approve the Project consistent with Government Code section 65589.5 subdivision (d); (b) the City Council violated Government Code section 65589.5 subdivision (d) by failing to grant the Administrative Appeal and direct staff to receive and process the Formal Application and approve the Project; (c) that the City Community Development Director and City

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Council's rejection of the Formal Application and denial of the Project was arbitrary, capricious, and devoid of merit or evidentiary support; and (d) the City Council's denial of the Project has no rational basis or foundation and no cognizable nexus to any discernable Project impact and (e) for an order declaring that the City's actions constituted bad faith as defined by Government Code section 65589.5 subdivision (l).

8. For costs of suit herein;

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

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

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

Dated: August 4, 2023

Respectfully Submitted,

PATTERSON & O'NEILL, PC



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

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

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VERIFICATION

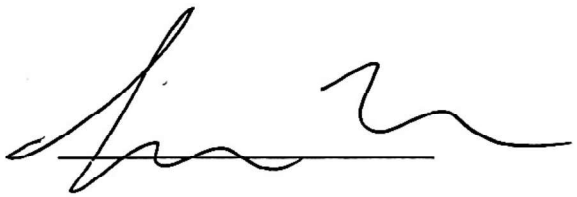
I, Sonja Trauss, declare as follows:

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

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF; COMPLAINT FOR DECLARATORY RELIEF and know its contents. The matters stated in the VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF; COMPLAINT FOR DECLARATORY RELIEF are true of my own knowledge from having reviewed the City Council's File No. 23-5887 that upheld the decision of the Community Development Director's Notice of Incomplete Application for the Proposed Mixed-Use Development at 1100 N. Harbor Drive, Redondo Beach, CA.

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

Executed on August 4, 2023.



Sonja Trauss

Exhibit A

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

MEMORANDUM

DATE: March 16, 2023

TO: Planning Directors and Interested Parties

FROM: Megan Kirkeby, Deputy Director
Division of Housing Policy Development

SUBJECT: **Summary and Clarification of Requirements for Housing Element Compliance**

HCD is committed to diligently reviewing all 539 local jurisdictions' housing elements for substantial compliance with State Housing Element Law. To comply with State Housing Element Law and avoid the consequences of noncompliance, a local jurisdiction must, among other things:

1. Submit a draft housing element to HCD at least 90 days before adoption[1] and receive findings from HCD determining whether the draft element is substantially compliant,[2] and consider HCD's findings before adopting the draft element.[3]

   In other words, where a jurisdiction submits an "adopted" housing element before submitting an initial draft or before considering HCD's findings on an initial draft, HCD will consider the "adopted" to be an initial draft for purposes of both HCD's review and the jurisdiction's statutory compliance.

2. If HCD finds the draft element is not substantially compliant, revise the draft to address any findings by HCD[4] or adopt without changes and include written findings explaining why the jurisdiction believes that the draft substantially complies.[5] Promptly following adoption, submit the adopted housing element to HCD[6] and receive findings on the adopted element from HCD.[7]

---

[1] Gov. Code, § 65585, subd. (b)(1)
[2] Gov. Code, § 65585, subds. (b)(3), (d)
[3] Gov. Code, § 65585, subd. (e)
[4] Gov. Code, § 65585, subd. (f)(1)
[5] Gov. Code, § 65585, subd. (f)(2)
[6] Gov. Code, § 65585, subd. (g)
[7] Gov. Code, § 65585, subd. (h)

In other words, a jurisdiction does not have the authority to determine that its adopted element is in substantial compliance but may provide reasoning why HCD should make a finding of substantial compliance.

In addition, a jurisdiction is "in compliance" as of the date of HCD's letter finding the adopted element in substantial compliance. Any other letters are not a finding of substantial compliance.

HCD recommends that a jurisdiction adopt only after receiving a letter from HCD finding the draft meets statutory requirements.

For more detailed information about this process, please visit HCD's Housing Elements webpage and Housing Elements Building Blocks.

Exhibit B

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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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)).

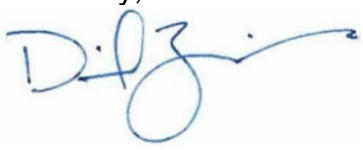
Conclusion

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
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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

PATTERSON & O'NEILL, PC

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www.pattersononeill.com

May 9, 2023

VIA E-MAIL

City of Redondo Beach City Council
415 Diamond Street
Redondo Beach, CA 90277

Re: 1100 N. Harbor Drive
Permit Application Incompleteness Determination Appeal (Council File 23-5887)

Dear Mayor Brand and Councilmembers:

Our office represents Yes In My Back Yard Law (YIMBY Law), a California nonprofit dedicated to increasing the accessibility and affordability of housing in California by enforcing state housing laws, and Sonja Trauss, Executive Director of YIMBY Law, in her individual capacity. YIMBY Law supports the appeal by 9300 Wilshire, LLC of the Community Development Director's determination that the project application for 1100 N. Harbor Drive is incomplete.

9300 Wilshire, LLC submitted an application for a housing development project that includes 2,700 residential units, 300 hotel rooms and 550,00 square feet of office space. The Director erroneously determined that the project application is incomplete because the applicant must submit a request for a Zoning Amendment, Local Coastal Land Use Plan Amendment, and General Plan Amendment. The Director's incompleteness determination letter stated that "[s]ince your client's application is inconsistent with the general plan land use designation, the Local Coastal Program land use category, and the zoning applicable to the project site, this application is deemed incomplete."

The City cannot refuse to process an application based on a purported inconsistency with a general plan or zoning standard. The Permit Streamlining Act (PSA) is informational, not substantive, and the City cannot abuse the PSA process to force the applicant to submit a request for a zone change that the applicant does not want (or need). Notably, the Housing Accountability Act (HAA) provides a process for local governments to issue a consistency

determination that is entirely separate from the PSA completeness determination, which occurs *after* an application is deemed complete, confirming that the City cannot refuse to accept an application as incomplete based on a code compliance determination.

Moreover, the project was submitted pursuant to Gov. Code § 65589.5(d)(5), commonly referred to as the HAA's "Builder's Remedy" provision. The Builder's Remedy provision states that a City may only disapprove a housing development project if the City finds, based on a preponderance of the evidence, that the project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation ***and*** the jurisdiction has adopted a revised housing element that is in substantial compliance with state Housing Element Law. The City failed to adopt a housing element in substantial compliance with the Housing Element Law, and therefore the City cannot make the findings necessary to disapprove a Builder's Remedy project. Thus, even if the City could refuse to accept an application as complete based on a purported code inconsistency, the City cannot do so here where such a refusal would constitute an unlawful disapproval of the project.

1. <u>The Application Cannot Be Deemed Incomplete Based on a Purported Code Inconsistency.</u>

The PSA requires every agency to compile a list that "shall specify in detail the information that will be required from any applicant for a development project" and "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." (Gov. Code § 65940-65941.) If an agency determines that an application is incomplete, the agency must provide the applicant with an exhaustive list of items that were not complete, and the list "shall be limited to those items *actually required* on the lead agency's submittal requirement checklist." (Gov. Code § 65943.)

The City has refused to accept the application as complete not based on any missing information detailed in the City's application checklist, but based upon a finding that the project is inconsistent with general plan and zoning standards. The City's checklist does not state that an applicant must submit requests for general plan or zoning amendments. On this basis alone, the City cannot find the application incomplete because the City may only determine that an application is incomplete based on "items *actually required* on the lead agency's submittal requirement checklist." (Gov. Code § 65943.)

Moreover, the purpose of the PSA is "to relieve applicants from protracted and unjustified governmental delays in *processing* their permit applications." (*Bickel v. City of Piedmont*) (1997) 16 Cal.4th 1040, 1046.) Fundamentally the PSA is a *procedural* law that does not impose *substantive* requirements. Nothing in the PSA requires an applicant to submit a code compliant project, nor does the PSA authorize an agency to refuse to process an application based on a purported code inconsistency. This is confirmed by the HAA, which includes a separate requirement for agencies to make a written code compliance determination within 30 or 60 days *after* the date an application is determined to be complete. (Gov. Code § 65589.5(j)(2).) The HAA code compliance determination process would be entirely unnecessary if the PSA allowed an agency to refuse to accept an application based on a finding of inconsistency.

The City's PSA submittal requirement checklist does not state that general plan and zoning amendment applications are required, and therefore the City cannot find an application incomplete on this basis. Moreover, the City cannot refuse to process accept an application based on a purported code inconsistency.

2. <u>The City Failed to Make Findings Necessary to Disapprove the Project.</u>

The HAA greatly limits a local government's ability to disapprove a housing development project for very low, low-, or moderate-income households.[1] To disapprove such a project, the HAA requires an agency to make one of the findings one of the required findings in Gov. Code § 65589.5(d) and support the finding with a preponderance of the evidence in the record.

Gov. Code § 65589.5(d)(5), commonly referred to as the HAA's "Builder's Remedy" provision, is one such finding that authorizes an agency to disapprove a housing development project for very low, low-, or moderate-income households. The Builder's Remedy provision states that a City may disapprove a project if the City finds that the project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation *and* the

[1] The HAA defines a housing development project for very low, low-, or moderate-income households as a project that provides at least 20 percent of the total units to lower income households. (Gov. Code § 65589.5(h)(3).) This project provides 20 percent of the total units to lower income households and therefore qualifies as housing for very low, low-, or moderate-income households.

jurisdiction has adopted a revised housing element that is in substantial compliance with state Housing Element Law.

The staff report for this appeal purports to make such a finding, arguing that the City adopted an updated Housing Element on July 5, 2022 before the application was submitted. The City's adopted housing element is *not* in substantially compliance with the Housing Element Law. As a threshold issue, a jurisdiction does ***not*** have the authority to determine that an adopted housing element is in substantial compliance and is required to submit any draft to HCD *before* adoption for HCD to determine whether a draft is substantially compliant. (Gov. Code § 65585(e).) Thus, if a local agency ignores the proper procedure and adopts a housing element prior to HCD's review, a local agency has failed to adopt a housing element in compliance with the Housing Element Law. HCD's confirms this is the case and has provided guidance urging jurisdictions to adopt *only* after submitting to HCD for review and clearly stating that a jurisdiction is only considered "in compliance" as of the date of HCD's letter finding an adopted element in substantial compliance.[2] Even if the City's adopted housing element did comply with state law, the City could not be considered in compliance until after HCD completed its review.

In this case, HCD did not issue a letter finding the City's housing element in substantial compliance until September 1, 2022. Thus, the City was not incompliance until that date. The applicant, however, submitted a preliminary application on August 15, 2022 when the City was still out of compliance with the housing element law. HCD just confirmed in a Letter of Technical Assistance to the City that the City was out of compliance until September 1, 2022, and the applicant submitted an application prior to that date. The City therefore cannot disapprove this project based on Gov. Code § 65589.5(d)(5) because the City cannot make that the City adopted a revised housing element in substantial compliance with state Housing Element Law. If the City wishes to disapprove the project, the City *must* make one of the other findings in Gov. Code § 65589.5(d), and support the findings based on a preponderance of the evidence, which the City cannot do.

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[2] HCD, *Summary and Clarification of Requirements for Housing Element Compliance*, March 16, 2023, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/memos/HousingElementComplianceMemo03162023.pdf

3. <u>The City's Refusal to Accept the Application as Complete Constitutes an Unlawful Disapproval Under the HAA.</u>

The HAA defines "disapproval" as any instance in which a local agency "[v]otes on a proposed housing development project *application* and the *application* is disapproved, including any required land use approvals or entitlements *necessary for the issuance of a building permit.*" (Gov. Code § 65589.5(h)(6).) The HAA definition of disapproval is explicitly tied to the project ***application***, and any vote that prevents an applicant from obtaining a building permit constitutes project disapproval.

The Director's completeness determination explicitly states the reason the application was deemed incomplete was based on a finding that the project is inconsistent with general plan and zoning standards. If the City Council were to vote to disapprove the application completeness based on a purported code inconsistency, which is necessary for the issuance of a building permit, this vote would constitute an unlawful disapproval of the project application. If the City Council wishes to disapprove the project, the Council ***must*** make one of the required findings in Gov. Code § 65589.5(d), and support such findings based upon a preponderance of the evidence in the record.

<u>Conclusion</u>

The project application cannot be deemed incomplete based on a "missing" general plan or zoning amendment request that is not identified on the City's application submittal requirement checklist, nor can the City deem an application incomplete based on a purported code inconsistency. The City's refusal to process the project application, without making any of the required findings, constitutes an unlawful disapproval of the project under the HAA. We demand that you process the housing development project application. If necessary, we are prepared to take legal action to enforce state housing law.

Very truly yours,

PATTERSON & O'NEILL, PC



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