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May 16, 2024

Vice-Chair Lambert Geissinger &
Honorable Members of the Board of Zoning Appeals
c/o Planning & Community Development Department
City of Pasadena
175 N. Garfield Avenue, 3d Floor
Pasadena, CA 91101

Re: 615 S. Catalina Avenue, Pasadena

Dear Vice-Chair Geissinger and Honorable Board Members:

This letter is submitted on behalf of our clients who are the owners and developers of the above-referenced property ("Appellant"). The property is currently a vacant parcel (APN 5327-018-007) with a mobile classroom towards the back of the lot (the "Property"). The Property is zoned RS-6, and Appellant is proposing construction of a 49-unit multi-family building with 10 on-site affordable units to comply with the City's Inclusionary Housing Ordinance (the "Project"). See Exhibit "A." Under the Housing Accountability Act ("HAA"), therefore, the Project qualifies as a "housing development project" as defined therein.

Although not set forth in the Staff Report, the timeline for the applications that have been filed for the Project is important to understanding the issues on appeal. Specifically:

1. On February 15, 2023, Appellant filed an SB330 Preliminary Application ("Preliminary Application") with the City as permitted under the HAA. The Preliminary Application vests the ordinances, policies, and standards, including fees, in effect at the time of filing. Cal. Gov't Code § 65589.5(o)(1) and (4). It also is "deemed complete" at the time of filing. Cal. Gov't § 65941.1. It is undisputed the City did *not* notify Appellant of any purported inconsistency with City's General Plan, Zoning Code, or any other "applicable plan, program, policy, ordinance,

standard, requirement, or other similar provision” within 30 days of the Preliminary Application filing as required under Government Code § 65589.5(j)(2).

2. On June 15, 2023, Appellant filed an application for Preliminary Plan Review, which “was complete when submitted,” as noted on page 7 of the Staff Report.
3. On July 13, 2023, Appellant filed an application for Concept Design Review (“CDR”) as required under the HAA, which is not mentioned in the Staff Report but proven by the “Received” stamped copy attached hereto as Exhibit “B” and incorporated herein by this reference. Under the HAA, a development project application (e.g., tentative map, development plans, design review, etc.) must be filed within 180 days after the filing of the Preliminary Application, otherwise the vested rights in the ordinances, policies, and standards, including fees, in effect at the time of filing expire.
4. Rather than send Appellant an invoice and process Appellant’s July 13 CDR application as required under the HAA, the staff rejected it that same day. *See* Exhibit “C.” This fact is *not* mentioned in the Staff Report.
5. On July 25, 2023, Appellant filed an application for Preliminary Consultation. On August 24, 2023, it was deemed incomplete for, among other reasons, not submitting “Design Evolution Exhibits.” *See* Exhibit “D.” Appellant resubmitted the requested information on October 10, 2023, and was deemed incomplete again on November 8, 2023, for the same reasons.
6. On January 11, 2024, Appellant submitted all the material and information requested in the August 24, 2023 deemed incomplete letter and, on February 8, 2024, the application for Preliminary Consultation was deemed complete. *See* Exhibit “E.” To this day, almost a year later, no hearing has been set before the Design Commission for it.
7. On March 4, 2024, a second CDR application was submitted. No invoice was sent to Appellant to be paid. No reason has been given and, candidly, there is no reason the invoice could not have been sent within a day or two after submission.
8. On April 3, 2024, the deemed incomplete letter with regard to the second CDR application attached as Exhibit E to the Staff Report was emailed to Appellant. The letter attaches for the first time the invoice for the second CDR application. In other words, the City sent a deemed incomplete letter based upon the non-payment of fees it had not invoiced, before it sent the letter attaching the invoice for the first time.
9. On April 25, 2024, the City sent Appellant its “Notice of Staff Comments” for Preliminary Consultation. *See* Exhibit “F.” In other words, the City sent a letter on April 3, 2024 asserting that the CDR application was deemed incomplete for, among

other reasons, not responding to the Design Commission's or Staff's comments during the Preliminary Consultation process even though no hearing has been set before the Design Commission to get its comments and Staff did not send its comments until three weeks *after* the April 3, 2024 letter was sent.

Based upon this timeline, Appellant contends that the April 3, 2024 deemed incomplete letter is invalid under the HAA and the Permit Streamlining Act ("PSA").

First, the City violated the HAA by rejecting Appellant's July 13, 2023 CDR application. The HAA preempts any inconsistent local policies and procedures that are used to delay and deny housing development projects. *See, e.g., AIDS Healthcare Foundation v. Bonta*, 101 Cal. App. 5th 73 (2024); *Cal. Renters Legal Advocacy and Educ. Fund v. City of San Mateo*, 68 Cal. App. 5th 820 (2021); *Ruegg & Ellsworth v City of Berkeley*, 89 Cal. App. 5th 258 (2021). There was no reason the City could not have accepted and processed it on its own or concurrently with any other required applications. That it chose to reject it to divest Appellant of the rights it secured with its SB330 Preliminary Application is blatant, intentional, and unlawful.

Second, as stated on page 6 of the Staff Report, the April 3, 2024 deemed incomplete letter asserts that because the City adopted a housing element in conformance with state law on January 11, 2023, which was before Appellant's SB330 Preliminary Application was filed on February 15, 2023, the "Builder's Remedy" under the HAA does not apply to the Project.

As background, under the HAA, the "Builder's Remedy" is available for certain affordable housing development projects (*e.g.*, 20% low-income on-site or 100% moderate), unless a city proves one of five defenses. As the statute makes clear:

A local agency shall not disapprove a[n affordable] housing development project...*including through the use of design review standards*, unless...:

- (1) The jurisdiction has adopted a [compliant] housing element...*and* the jurisdiction has met or exceeded its [RHNA] for the planning period....
- (2) The housing development project...would have a specific, adverse impact...
- (3) ...[S]tate or federal law [requires disapproval]
- (4) The ... land [is] zoned for agriculture or resource preservation...or [needs] water or wastewater facilities. . .
- (5) The...zoning ordinance and general plan [required disapproval] on the date the application was deemed complete, and the jurisdiction has adopted a [compliant] housing element....

If a city, therefore, does not have a Housing Element approved by the State Housing and Community Development Department (“HCD”), option nos. 1 and 5 are not available to it under the HAA. Further, option nos. 3 and 4 are not an option for an urban, in-fill housing development project. That leaves only option no. 2, *i.e.*, a city must identify a specific adverse impact, which is an objective, identifiable impact under one of its codes or plans or program, and the specific, adverse impact cannot be feasibly mitigated to avoid it. In the urban, in-fill context, that is essentially impossible, particularly for a proposed housing development project like this one.

In short, the Builder’s Remedy under the HAA prohibits cities from denying housing development projects, or imposing conditions of approval that render them infeasible, when the project is consistent with the above-listed affordability requirements, unless the city can make findings that the proposed housing development would cause a threat to public health and safety that cannot be mitigated.

In this case, the City’s position is that it admits that it did not have a Housing Element approved by HCD until March 10, 2023, but nonetheless can ignore the Builder’s Remedy under the HAA because it filed its Housing Element with the HCD on January 11, 2023. Legally, the City’s position with respect to its Housing Element is known as “self-certification.”

The problem with the City’s self-certification position, however, is that it is contrary to California law. As the Los Angeles Superior Court recently explained in the *Cal. Hous. Def. Fund v. City of La Canada Flintridge* case: “For an adopted housing element to be timely, all sections of [Government Code] sections 65583(c)(1)(A), 65583.2(c), and 65588€(4)(C)(i) require that a city’s housing element **be found by HCD** to be in substantial compliance with the Housing Element Law.” Mar. 1, 2024 Order on Petitioners for Writ of Mandate and Complaints for Declaratory Relief, Los Angeles Superior Court Case No. 23STCP02614 (emphasis added).

As the HCD’s March 16, 2023 Memorandum entitled “Summary and Clarification of requirements for Housing Element Compliance” attached hereto as Exhibit “G” and the HCD letters to the cities of Redondo Beach, San Jose, Santa Monica, and La Canada Flintridge attached hereto as Exhibit “H” make clear, a city does not have the authority to determine that its adopted housing element is in substantial compliance with the Housing Element Law. That authority is statutorily vested in the HCD under Government Code § 65585, subs. (i)–(j).

As such, since the City admits it did not receive HCD approval of its Housing Element until March 10, 2023, which was well after Appellant’s SB330 Preliminary Application was filed, Appellant has the right to enforce its Builder’s Remedy.

Third, as mentioned above, it is undisputed the City did **not** notify Appellant of any purported inconsistency with City’s General Plan, Zoning Code, or any other “applicable plan, program, policy, ordinance, standard, requirement, or other similar provision” within 30 days of

the SB330 Preliminary Application filing as required under Government Code § 65589.5(j)(2). The City's failure to do so means the Project is "deemed consistent, compliant, and in conformity with the [City's] applicable plan, program, policy, ordinance, standard, requirement, or other similar provision" as a matter of law. Cal. Gov't Code § 65589.5(j)(2)(B).

As such, the City is subject to Government Code § 65589.5(d), which requires approval of any 20% low-income, or 100% moderate-income housing development project, regardless of its inconsistency with the City's General Plan Land Use Element or Zoning Code.

Fourth, under the HAA, the local agency may not apply development standards to a housing development that were not adopted and in effect at the time the *preliminary* application was submitted (Cal. Gov't Code § 65589.5, subs. (f)(4), (o)(1)), and those development standards may only be applied if they are *objective* (Cal. Gov't Code § 65589.5, subs. (d)(2), (j)(1)). Further, a standard is subjective, rather than objective, if it cannot be applied without personal interpretation or subjective judgment. *See, e.g., Bankers Hill 150 v. City of San Diego*, 74 Cal. App. 5th 755, 777-778 (2022) (*quoting Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo*, 68 Cal. App. 5th 820, 839-840 (2021)).

For example, a standard suggesting a building should "sensitively" and "adequately" transition to adjacent lower buildings," or "complement" the natural environment, or include features to "enhance" views, all may be considered matters of personal opinion or judgment, rather than objective, quantifiable standards, and may not serve as a basis for disapproval. *See, e.g., Save Livermore Downtown v. City of Livermore*, 87 Cal. App. 5th 1116, 1128 (2022) ("[W]e doubt that under the HAA these standards may be used to deny approval"). And, while a local agency may apply its existing, objective development standards and criteria to a housing development project under the HAA, it must do so in a manner that facilitates, rather than impedes, the attainment of housing densities equal to those allowable under its general plan and requested by the project proponent. Cal. Gov't Code § 65589.5(f)(1).

In this case, the deemed incomplete letter cites the lack of "design evolution information" as one of the reasons for it being issued. As noted above, however, the City requested that same information its August 24, 2023 letter for the Preliminary Consultation application (*see* Exhibit "D"), and the Appellant submitted it, which led to the February 8, 2024 deemed complete letter attached hereto as Exhibit "E."

The City, therefore, has the very information it claims it needs. Seriously, how can the City say on April 3, 2024 that it does not have the very information it acknowledged having on February 8, 2024?

Moreover, as Exhibit "A" shows, the Project elevations filed with the CDR application state the design narrative on page 1. Anything beyond that information is subjective and may not be requested, applied to, or used for the Project under the HAA. Simply put, the request for such additional information (that is, in addition to the information that was submitted with the application) violates the HAA.

Fifth, the City has violated the PSA by failing to comply with Government Code § 65943 *et. seq.* Specifically, under Government Code § 65943, the City is not allowed to require the submission of documents incapable of being submitted at the time of the entitlement application. However, that is exactly what the City did in this case in its deemed incomplete letter. As noted above, the City never sent an invoice for the first CDR application and sent the invoice for the second CDR application with its deemed incomplete letter, not before. Its absurd position is thus that the CDR application is incomplete for not paying an amount of money that the City did not tell the applicant to pay until it deemed the application incomplete for not paying it. There is no excuse for not having sent it. But after the City failed to do so, it cannot rely on that to deem the application incomplete.

Similarly, the City wants “Design Evolution Exhibits,” which according to the checklist must describe “how the project’s design concept responds to each of the comments and recommendations provided by the Design Commission and/or staff during the Preliminary Consultation process,” and provide “images of studies conducted to address the Preliminary Consultation comments” and written and illustrated exhibits “describing how the previously presented Site Planning and Building Design Concepts have developed since the Preliminary Consultation.” All of these are predicated on an applicant having the Design Commission’s and Staff’s comments to address, respond to, and/or incorporate into its plans. But that is not what happened here. As explained above, Staff did not send their comments until three weeks *after* the deemed incomplete letter; and, no Design Commission hearing has been scheduled, let alone held where comments could be provided.

Under the PSA, Staff cannot rely on the impossible to deem Appellant’s CDR application incomplete. That it did so on the last day of the 30-day window within which to respond to the March 4, 2023 CDR application shows how badly it wants to prevent Appellant from exercising their rights under the HAA.

Sixth, the City has violated the PSA by not raising the “zoning code compliance” in its August 24, 2023 deemed incomplete letter or at any other time prior to its April 3, 2024 letter. Government Code § 65941.1(c)(2) and § 65943 require the City to provide an “exhaustive list” of items on the City’s checklist that are missing. But if Appellant was required to respond to the Design Commission’s and Staff’s comments during the Preliminary Consultation process in its CDR application to be deemed complete, and nothing is mentioned about “zoning code compliance” in the submittals for that process, then regardless of the fact that Appellant did not have any such comments, the City has failed to provide the required exhaustive list.

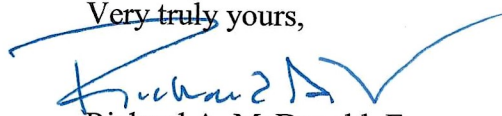
Seventh, the City has violated the PSA by asserting “zoning code compliance.” Specifically, as mentioned above, it is undisputed the City did *not* notify Appellant of any purported inconsistency with City’s General Plan, Zoning Code, or any other “applicable plan, program, policy, ordinance, standard, requirement, or other similar provision” within 30 days of the SB330 Preliminary Application filing as required under Government Code § 65589.5(j)(2).

The City's failure to do so means the Project is "deemed consistent, compliant, and in conformity with the [City's] applicable plan, program, policy, ordinance, standard, requirement, or other similar provision" as a matter of law. Cal. Gov't Code § 65589.5(j)(2)(B). It thus is not allowed to rely later on any such alleged inconsistency to deem the application incomplete under the PSA.

Eighth, and last, the City violated the PSA by failing to notify Appellant of its right to appeal the incomplete determinations as provided under Government Code § 65943.c. A review of the April 3, 2024 letter, and all of the other deemed incomplete letters, shows that they only state that "If a response to this letter is not received within 120 days, the application may be deemed withdrawn and no further processing will occur." Nothing is stated about the Appellants' right to appeal the decision.

Based upon the foregoing, Appellant contends the City has violated the HAA and PSA. Appellant, therefore, respectfully requests that the April 3, 2024 determination be reversed, and Appellant allowed to proceed with the Project accordingly.

Very truly yours,

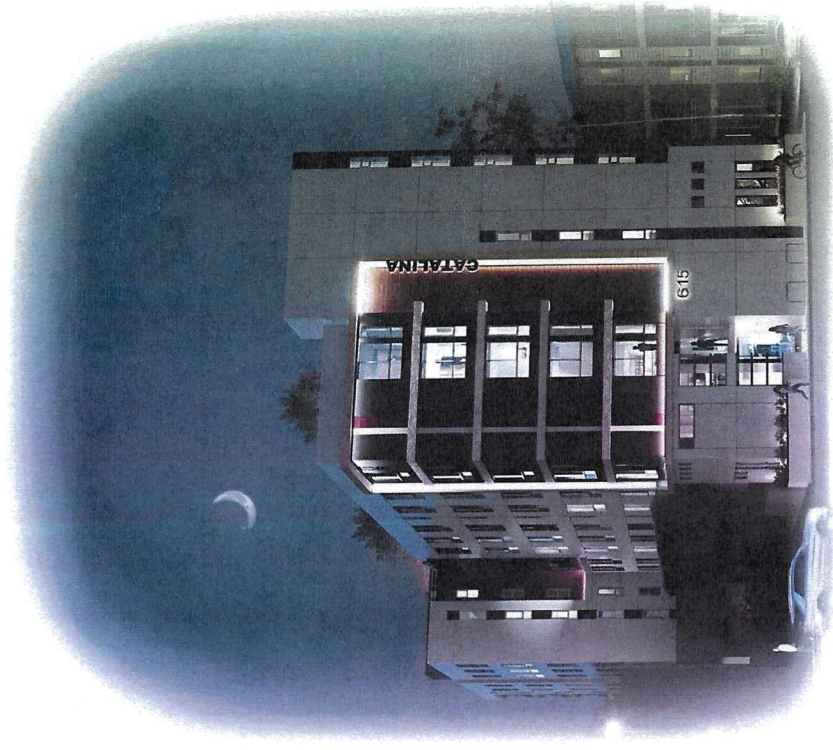


Richard A. McDonald, Esq.
Law Office of Richard A. McDonald,
Of Counsel, Stoner Carlson LLP

EXHIBIT A

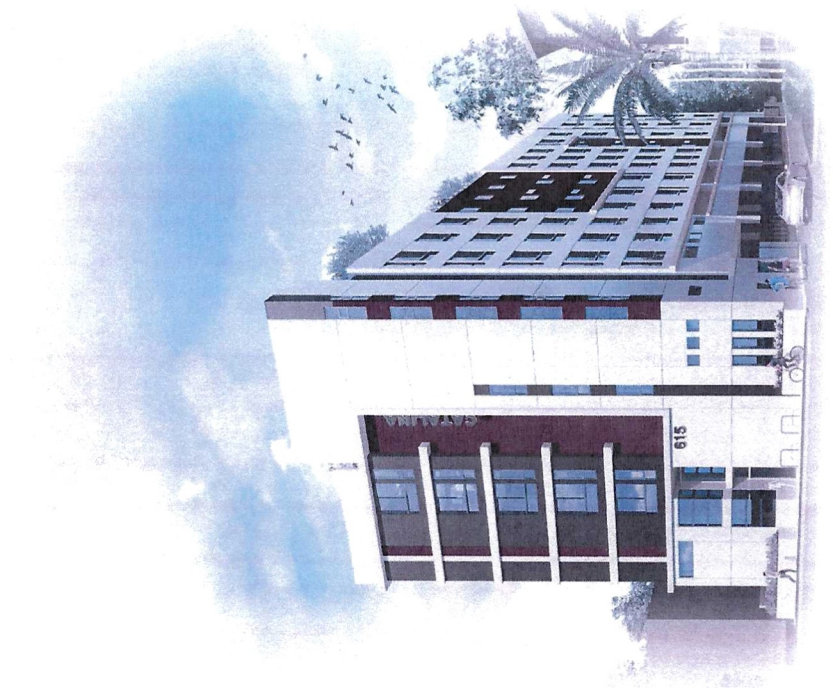
PROJECT PROGRAM NARRATIVE

The ultimate programmatic goal is to build multi-family housing and all the units are located from the 3rd floor to the 7th floor totaling 49 units. The automobile parking spaces are provided on the ground level entering from Menely Alley with 28 standard (Min. 8'-6" width & 18'-0" depth) sized parking, 6 compact (16'-0" depth), and 1 Van Accessible parking space. As the EV demand increases, the proposed standard parking will be equipped with charging devices. Nevertheless, the site is located near Cal Tech and South Lake Ave, where tenants would ride bicycles to commute and the project will provide 39 long-term bicycle parking spaces on the west side of the building on the ground level where the bikers could enjoy the protected Oak tree at the neighbor side property. On the second floor, there is a community Gym and study room which will perfectly meet most student tenants' use, moreover, the rooftop will have a beautiful scenery that can be enjoyable at the proposed roof deck w/ trees as well as benches.



PEDESTRIAN PERSPECTIVE NIGHT VIEW

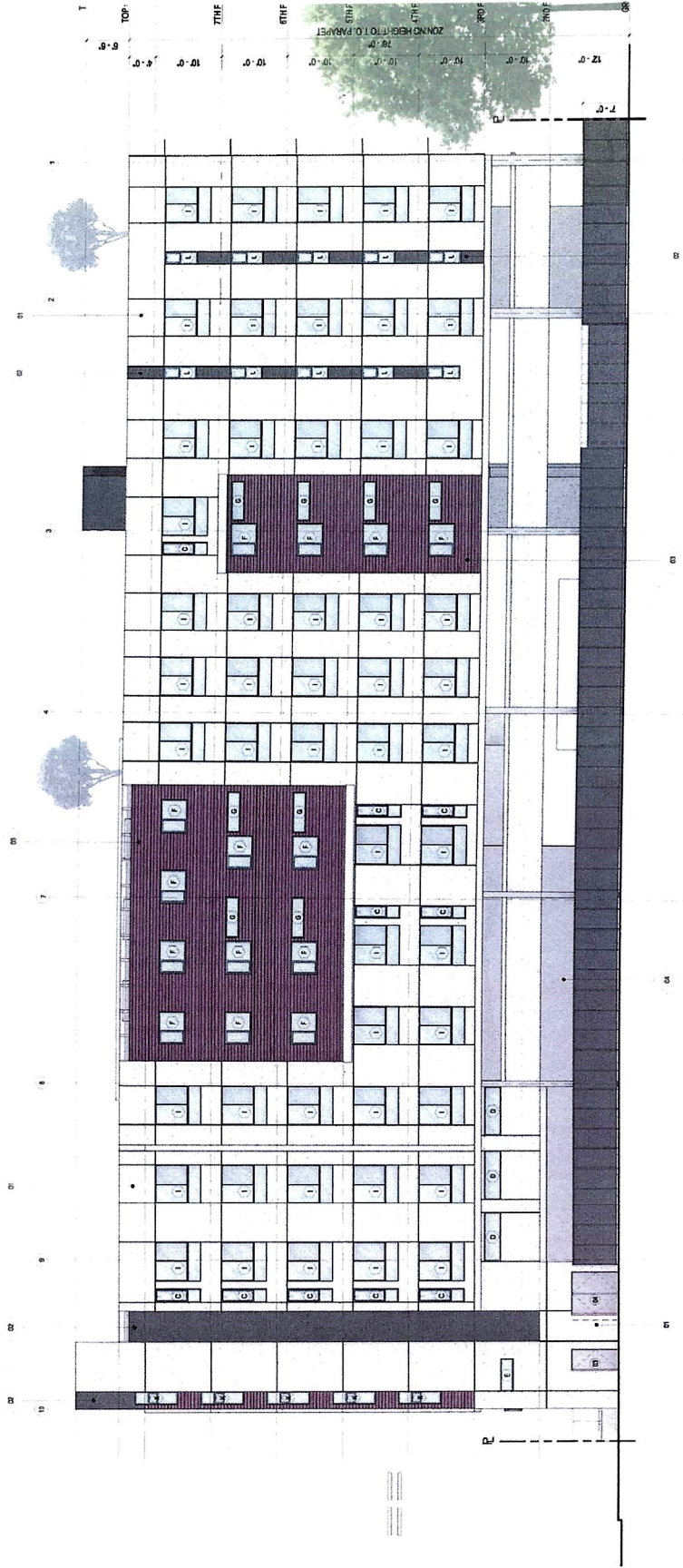
PERSPECTIVE VIEWS



PEDESTRIAN PERSPECTIVE DAYTIME VIEW

MATERIAL SAMPLE BOARD

- 01 PORTLAND CEMENT PLASTER - WHITE
- 02 PORTLAND CEMENT PLASTER - DARK GRAY
- 03 TERRAZZO THIN SETTLE - PASADENA ROSE
- 04 RIBBED CONCRETE WALL
- 05 DECORATIVE ARCHITECTURAL CONCRETE PAINT - YELLOW



NA APARTMENTS

NORTH ELEVATION

Plot Date: 01/11/24
 Drawing No: 01



MATERIAL SAMPLE BOARD



01 PORTLAND CEMENT PLASTER - WHITE



02 PORTLAND CEMENT PLASTER - DARK GRAY



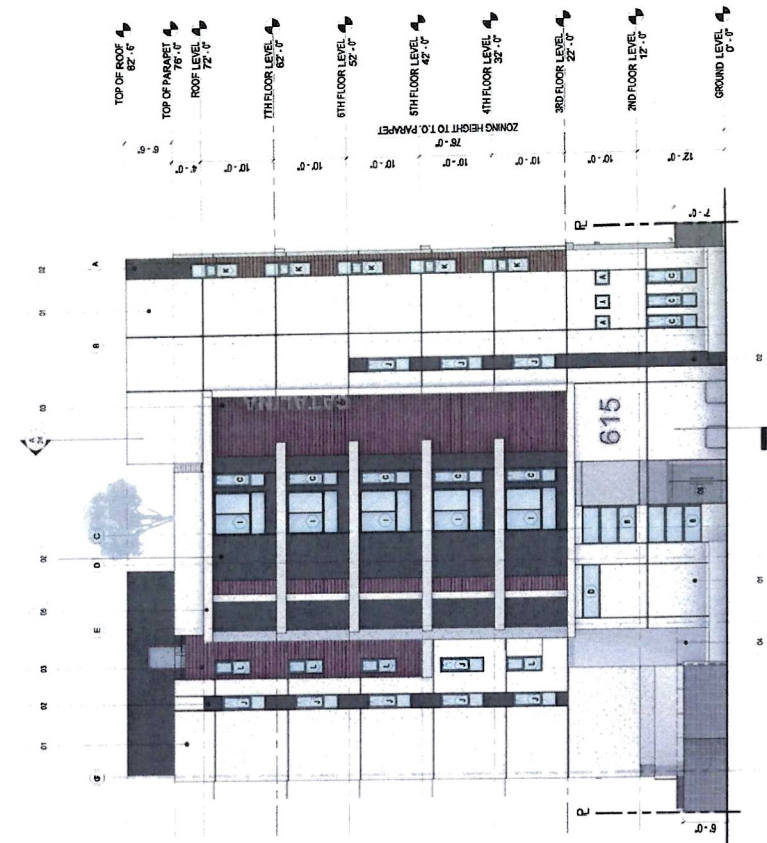
03 EXTERIOR TRIM SET TILE - PASADENA ROSE



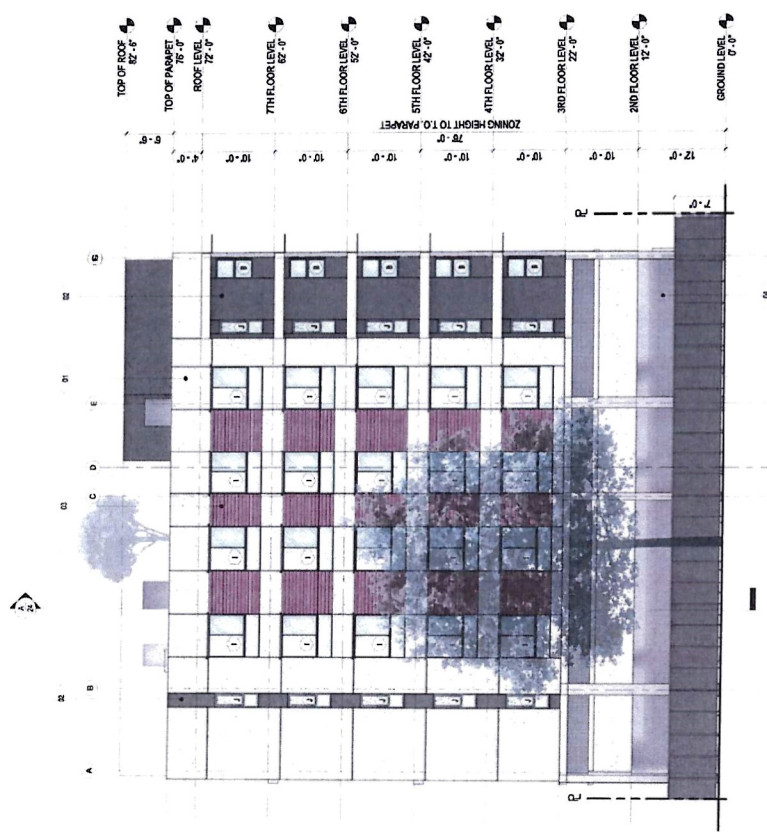
04 REBED CONCRETE WALL



05 DECORATIVE ARCHITECTURAL CORNICE PAINT - YELLOW



01 EAST ELEVATION (FRONT)



02 WEST ELEVATION (REAR)

MATERIAL SAMPLE BOARD

- 01 PORTLAND CEMENT PLASTER - WHITE
- 02 PORTLAND CEMENT PLASTER - DARK GRAY
- 03 EXTERIOR THINSET TILE - PASADENA ROSE
- 04 RIBBED CONCRETE WALL
- 05 DECORATIVE ARCHITECTURAL CORNICE PAINT - YELLOW



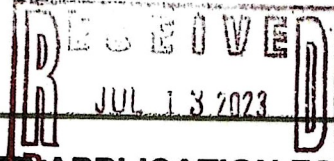
NA APARTMENTS

SOUTH ELEVATION

EXHIBIT B



PASADENA PERMIT CENTER
www.cityofpasadena.net/permitcenter



PLANNING DIVISION MASTER APPLICATION FORM

Project Address: 615 S Catalina Ave, Pasadena

Project Name: Catalina Apartments

Project Description: (Please describe demolitions, alterations and any new construction) DEMOLISH EXISTING TEMPORARY MODULAR CLASSROOM
NEW CONSTRUCTION OF 49-UNIT 7-STORY MULTIFAMILY DWELLING W/ 20% LOW INCOME UNITS BY USING BUILDER'S REMEDY PER SB-330
APPLICATION SUBMITTED ON FEB. 15, 2023

Zoning Designation: RS-6

General Plan Designation: Low density residential

Estimated Valuation (Cost of Project): \$4,847,500

APPLICANT / OWNER INFORMATION

APPLICANT NAME: 615 S Catalina Ave LLC

Address: 330 Goddard

City Irvine **State:** CA **Zip:** 92618

CONTACT PERSON: Victor Tang

Address: 330 Goddard

City Irvine **State:** CA **Zip:** 92618

PROPERTY OWNER NAME: 615 S Catalina Ave LLC

Address: 330 Goddard

City Irvine **State:** CA **Zip:** 92618

Telephone: [949] 278 6682

Fax: [] _____

Email: victor@socal-realty.com

Telephone: [949] 278-6682

Fax: [] _____

Email: victor@socal-realty.com

Telephone: [949] 278-6682

Fax: [] _____

Email: victor@socal-realty.com

TYPE OF PLANNING REVIEW AND APPROVALS REQUIRED (Mark clearly the type of approval(s) required):

- | | | |
|--|--|--|
| <input type="checkbox"/> ADJUSTMENT PERMIT | <input type="checkbox"/> HEIGHT AVERAGING | <input type="checkbox"/> PREDEVELOPMENT PLAN REVIEW |
| <input type="checkbox"/> AFFORDABLE HOUSING CONCESSION OR WAIVER | <input type="checkbox"/> HILLSIDE DEVELOPMENT PERMIT | <input type="checkbox"/> RELIEF FROM THE REPLACEMENT BUILDING PERMIT REQUIREMENT |
| <input type="checkbox"/> CERTIFICATE OF APPROPRIATENESS | <input type="checkbox"/> HISTORIC DESIGNATION (MONUMENT, LANDMARK, TREE OR SIGN) | <input type="checkbox"/> SIGN EXCEPTION |
| <input type="checkbox"/> CERTIFICATE OF EXCEPTION | <input type="checkbox"/> HISTORICAL RESEARCH/EVALUATION | <input type="checkbox"/> TENTATIVE PARCEL/TRACT MAP |
| <input type="checkbox"/> CHANGES TO APPROVED PROJECT | <input type="checkbox"/> LANDMARK TREE PRUNING | <input type="checkbox"/> TEMP. CONDITIONAL USE PERMIT |
| <input type="checkbox"/> CONDITIONAL USE PERMIT | <input type="checkbox"/> MASTER DEVELOPMENT PLAN | <input type="checkbox"/> TREE PROTECTION PLAN REVIEW |
| <input checked="" type="checkbox"/> DESIGN REVIEW | <input type="checkbox"/> MASTER SIGN PLAN | <input type="checkbox"/> TREE REMOVAL |
| <input type="checkbox"/> DEVELOPMENT AGREEMENT | <input type="checkbox"/> MINOR CONDITIONAL USE PERMIT | <input type="checkbox"/> VARIANCE |
| <input type="checkbox"/> EXPRESSIVE USE PERMIT | <input type="checkbox"/> MINOR VARIANCE | <input type="checkbox"/> VARIANCE FOR HISTORIC RESOURCES |
| <input type="checkbox"/> FLOOR AREA RATIO (FAR) INCREASE | <input type="checkbox"/> PLANNED DEVELOPMENT ZONE | <input type="checkbox"/> ZONE CHANGE (MAP AMENDMENT) |
| <input type="checkbox"/> GENERAL PLAN AMENDMENT | <input type="checkbox"/> PRELIMINARY PLAN CHECK | <input type="checkbox"/> OTHER: _____ |

Note: Space for signature is on reverse side

Master Application (without supplementals)5/27/20

EXHIBIT C

From: victor@socal-realty.com
To: "Cisneros, Stephanie"
Cc: "Richard McDonald"
Subject: RE: Application for 615 S Catalina Avenue
Date: Friday, July 14, 2023 3:35:48 PM

Thank you! Copying Richard to bring him current on this.

*Victor Tang, Broker
SoCal Realty & Investment, Inc.
330 Goddard
Irvine, CA 92618
Tel: 949-278-6682
Email: victor@socal-realty.com*

From: Cisneros, Stephanie <scisneros@cityofpasadena.net>
Sent: Thursday, July 13, 2023 4:06 PM
To: VICTOR@SOCAL-REALTY.COM
Subject: Application for 615 S Catalina Avenue

Good Afternoon,

DHP has received an application for Design Review for 615 S. Catalina Avenue. Given the size and number of units proposed, the project will require a Pre-Development Plan Review (PPR) prior to commencing the Design Review process. I have attached the Master Application & PPR submittal checklist for your review. The PPR can be filed in person at the Permit Center at 175 Garfield Avenue, Window 3.

Following completion of the PPR process, the project will require Design Review through the three phases: Preliminary Consultation, Concept Design Review, and Final Design Review. Additional information on the phases can be found here: <https://www.cityofpasadena.net/planning/planning-division/design-and-historic-preservation/design-review/>

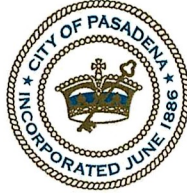
As such, we cannot process your application for Design Review at this time. Please proceed with submittal of your PPR application.

Best,

Stephanie

Stephanie Cisneros
Design & Historic Preservation

EXHIBIT D



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

August 24, 2023

Victor Tang
c/o 615 S Catalina Ave LLC
330 Goddard
Irvine, CA 92618

Via email: victor@socal-realty.com

NOTICE OF INCOMPLETE APPLICATION
Application for Preliminary Consultation
615 South Catalina Avenue

Date of Application Submittal: July 25, 2023
Case #: DHP2023-00224

Council District 7

Dear Mr. Tang:

Staff of the Design and Historic Preservation Section has reviewed your application for Preliminary Consultation of a new seven-story, 49-unit multi-family residential development located at the above-referenced address. Based on the materials submitted, the application has been deemed **incomplete** for processing. The following additional information needs to be submitted before we can complete our review (Preliminary Consultation Submittal Checklist in Attachment A):

- 1) A signed and dated Master Application form
- 2) Neighborhood Context: Color photographs of existing buildings on both sides of the street on which the project is proposed, between two cross streets. Photographs should identify the address of the property depicted. If the property is on a corner lot, photographs should include both street sides. The photographs provided in the submittal are only for the adjoining properties and properties located directly across the street and are not identified by addresses.
- 3) Building Program Narrative that describes the programmatic goals for the project.
- 4) Schematic Design Plans that include study drawings, such as figure/ground/massing studies, illustrations depicting building typology, storyboards with text/narrative that are intended to illustrate the design concepts, spatial relationships, building placement, scale, and massing
- 5) Urban Context Diagrams that include an Opportunities and Constraints Exhibit, Site Planning Diagram, Inspiration/Precedent Photos, and Architectural Intent Diagram (as described further in Attachment A)
- 6) Design Evolution Exhibits that contain vignettes, sketches, images, or previous plans or elevations organized to demonstrate the design evolution process and how the designer

- arrives at the proposed design concept. Also provide an exhibit that illustrate rejected design concepts, accompanied with an explanation of why the concept was rejected.
- 7) Proposed Site Planning Concept that includes a preliminary circulation diagram for all modes of transportation (pedestrian, bicycle, automobile)
 - 8) Proposed Building Design Concept that includes multiple pedestrian perspective views from the public right-of-way and explain how the building form responds to the factors identified in the Opportunities and Constraints Exhibit.
 - 9) Response to the Density Bonus Concessions and Incentives question listed on the bottom of Page 4 of the Submittal Checklist

Once you have addressed the above referenced items, please submit the revised information to staff for review. In the re-submittal, please include:

- 1) Revised Plans – submit one electronic copy with the requested information, clarifications, or corrections.
- 2) Signed and dated application form

If a response to this letter is not received within 120 days, the application may be deemed withdrawn and no further processing will occur. Additional information may also be requested during the course of processing to clarify, correct or otherwise supplement the information provided. Please feel free to contact me should you have any questions or comments regarding this letter.

Please be advised that the project is currently being reviewed by staff of the Current Planning Section and comments will be provided under separate cover.

Sincerely,



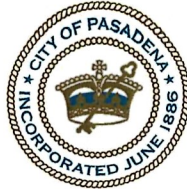
Rathar Duong
Senior Planner
Design and Historic Preservation Section
Tel 626-744-7346
Email: rduong@cityofpasadena.net

Attachment:

- A. Application Submittal Checklist

cc: address file; Energov

EXHIBIT E



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

February 8, 2024

Victor Tang
c/o 615 S Catalina Ave LLC
330 Goddard
Irvine, CA 92618

Via email: victor@socal-realty.com

NOTICE OF COMPLETE APPLICATION
Application for Preliminary Consultation
615 South Catalina Avenue
Date of Application Submittal: July 25, 2023
Date of Re-Submittal: January 11, 2024
Case #: DHP2023-00224

Council District 7

Dear Mr. Tang:

Staff of the Design and Historic Preservation Section has reviewed your application re-submittal for Preliminary Consultation of a new seven-story, 49-unit multi-family residential development located at the above-referenced address. Based on the materials submitted, the application has been deemed **complete** for processing. Your proposal will be scheduled for a review by the Design Commission and you will be informed when a date for that review has been scheduled.

Additional information may also be requested during the course of processing to clarify, correct or otherwise supplement the information provided. Please feel free to contact me should you have any questions or comments regarding this letter.

Sincerely,

Rathar Duong
Senior Planner
Design and Historic Preservation Section
Tel 626-744-7346
Email: rduong@cityofpasadena.net

cc: address file; Energov

EXHIBIT F



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

April 25, 2024

Victor Tang
c/o 615 S Catalina Ave LLC
330 Goddard
Irvine, CA 92618

Via email: victor@socal-realty.com

NOTICE OF STAFF COMMENTS

Application for Preliminary Consultation

615 S. Catalina Avenue (Single-Family Residential: RS-6)

Case #: DHP2023-00224

Council District 7

Dear Mr. Tang,

Acting under the provisions of Pasadena Municipal Code (PMC) Section 17.61.030, the Design & Historic Preservation staff has reviewed your application for Preliminary Consultation of a new seven-story, 49-unit multi-family residential development at the above-referenced address. The applicable design guidelines applied to this project are: the design related policies found in the General Plan Land Use Element and the purposes of design review in PMC Section 17.61.030.A.

These guidelines can be found at: <https://www.cityofpasadena.net/planning/planning-division/design-and-historic-preservation/design-guidelines/#citywide-design-guidelines>

Staff's comments on the preliminary design are as follows:

1. The proposed project includes the demolition of an existing building that was constructed in 1953, it is more than 45 years old and has not been previously evaluated for eligibility for designation as a landmark. For this reason, pursuant to PMC Section 17.62.080.A, a Historic Resource Evaluation (HRE) is required and, depending on the outcome, an environmental study may also be required in conjunction with the design review process. The HRE should be completed prior to submittal of the Concept Design Review application in order to inform the site and building design of the proposed project.
2. The proposed development generally extends to all property lines with the exception of a five-foot setback on the east (front), west (rear), and south property lines and approximately three feet from the north property line. Location and arrangement of buildings on a project site play an important role and could have design impacts on the development pattern, how buildings address the street and relate to existing buildings nearby. As designed, the proposed project does not achieve compatibility with the character of the existing neighborhood where there are greater setbacks along the front,

side, and rear property lines. Unlike the single-family residential development adjoining the property, parking is a significant component of the proposed project and is unnecessarily emphasized. Consider screening the parking garage or placing parking underground in a subterranean level. Similarly, consider providing bicycle parking areas in multiple locations to facilitate usability and accessibility. Reconsider the project's overall site planning to achieve compatibility with the existing development pattern and neighborhood character as specified by design-related goals and policies to achieve sensitivity to and respect the existing contextual setting.

General Plan Land Use Element, Policy 6.1: Require new development and changes to existing development to be located and designed to respect the defining elements of Pasadena's character and history such as its grid street pattern, block scale, public realm, courtyards, paseos, alleys, neighborhoods and districts, building massing and heights, significant architecture, and relationship to the mountains and Arroyo Seco.

General Plan Land Use Element, Policy 21.5: Encourage the renovation of existing housing stock in single- and multi-family neighborhoods. When additions or replacement housing is proposed, these should reflect the unique neighborhood character and qualities, including lot sizes; building form, scale, massing, and relationship to street frontages; architectural design and landscaped setbacks.

General Plan Land Use Element, Policy 23.3: Provide appropriate setbacks, consistent with the surrounding neighborhood, along the street frontage and, where there are setbacks, ensure adequate landscaping is provided.

3. A contemporary design can be compatible within the surrounding neighborhood due to its existing mix of architectural styles because it expands on the architectural diversity within the surrounding area. However, due to its size, scale, height, use and site planning/setbacks, the project is not consistent or compatible with the surrounding context and development pattern within the RS-6 zoning district, which is intended for single-family residential development. Buildings should improve the environment for the public, residents and visitors, while also responding to their context, should be compatible to the surroundings and should be supported by high quality and durable materials. A unique and creative proposal that references its specific site conditions would provide housing and improve the livability and walkability of the area while also adding interest and vitality to the neighborhood. Similarly, restudy the fenestration pattern throughout the project to achieve a clear hierarchy in window type, size, placement, and alignment that helps reinforce the architectural concept and the building's compatibility with its surroundings. For all of these reasons, careful measures should be taken to be more sensitive to the overall neighborhood context.

General Plan Land Use Element, Policy 7.1: Design each building as a high-quality, long-term addition to the City's urban fabric; exterior design and buildings material shall exhibit permanence and quality, minimize maintenance concerns, and extend the life of the building.

General Plan Land Use Element, Policy 7.2: Allow for the development of a diversity of building styles. Support innovative and creative design solutions to issues related to context and environmental sustainability.

General Plan Land Use Element, Policy 7.3: Require that new and adaptively re-used buildings are designed to respect and complement the defining built form, massing, scale, modulation, and architectural detailing of their contextual setting.

General Plan Land Use Element, Policy 21.3: Maintain elements of residential streets that unify and enhance the character of the neighborhood, including parkways, street trees, and compatible setbacks.

General Plan Land Use Element, Policy 21.5: Encourage the renovation of existing housing stock in single- and multi-family neighborhoods. When additions or replacement housing is proposed, these should reflect the unique neighborhood character and qualities, including lot sizes; building form, scale, massing, and relationship to street frontages; architectural design and landscaped setbacks.

General Plan Land Use Element, Policy 23.4: Ensure sensitive transitions in building scale between buildings in multi-family residential areas and lower-scale buildings in adjoining residential areas.

4. The proposed building design is contemporary that is expressed in a rectilinear form and supported by modern finishes and color palette. The design guidelines encourage a variety of architectural expressions and creative responses; a contemporary design appears to be consistent with and respond to the immediate neighborhood. However, the chosen design must be rooted in and supported by a strong architectural concept that is based on design precedent. As such, consider an overall simplification of the design and treatment of the façades that is supported by high quality materials and color palette as strategies to strengthen and achieve clarity to the design.

Similarly, the building should have a clear base that is cohesive with the design concept and will help anchor the building to its site. Reconsider whether a two-story base and double height volume with large openings for the parking area and as seen on the side and rear elevations is an appropriate design approach in creating a clear and attractive base design that is cohesive with the design and also consistent with adjoining developments as well as sensitive to the human scale.

General Plan Land Use Element, Policy 4.11: Require that development demonstrates a contextual relationship with neighboring structures and sites addressing such elements as building scale, massing, orientation, setbacks, buffering, the arrangement of shared and private open spaces, visibility, privacy, automobile and truck access, impacts of noise and lighting, landscape quality, infrastructure, and aesthetics.

General Plan Land Use Element, Policy 7.1: Design each building as a high-quality, long-term addition to the City's urban fabric; exterior design and buildings material shall exhibit permanence and quality, minimize maintenance concerns, and extend the life of the building.

General Plan Land Use Element, Policy 7.2: Allow for the development of a diversity of building styles. Support innovative and creative design solutions to issues related to context and environmental sustainability.

5. The proposed design also employs framed elements on the east, north and south facades to create design moments that are visually different. The rear or west elevation appears more conventional and relies on its fenestration and materials to communicate the design intent. If the framed features are important to and support the overall design concept, they should be purposeful, meaningful and fully integrated so that the contemporary building design can be elevated and consistent with the architectural language for the project. The placement, shape, size, method, and features to be framed need to also be carefully considered.

General Plan Land Use Element, Policy 7.2: Allow for the development of a diversity of building styles. Support innovative and creative design solutions to issues related to context and environmental sustainability.

6. Due to the existing context, development pattern, and zoning designation of the project site, the proposed seven-story building appears out of character within the surrounding neighborhood. Study how the massing and architectural character of the development is sensitive to the existing, surrounding context, and neighborhood character. The building should also take cues from nearby buildings to achieve complementary massing and scale. To that end, carefully consider the proportions of window and door openings, the modulation of building walls, shade and shadow, and light and air circulation. The preliminary design offers minimal modulation of the façades on the third to seventh floors on the north and west elevations and should seek similar modulation complementary to the south elevation, which has a significant break in the wall plane midway through the building. The introduction of receding and projecting volumes, balconies, and variation in the roofline could also help reduce the overall mass and ensure greater compatibility with the neighborhood. The lack of modulation and similar design techniques along the elevations coupled with size of the development, exaggerate the perceived mass and scale of the project within this neighborhood. A careful study of the final materials palette in regards to where or how they are applied on the building could help to visually scale the building down and create engaging and cohesive facades.

Another consideration to improve the massing of the building is to restudy the roofline to achieve architectural interest, such as a stepped roofline or through the use of material and/or detailing. As the project develops, further explanation of the massing, as it relates to the overall design concept will be required at the Preliminary Consultation phase and the presentation of various design studies or architectural schemes that were considered in the design process is required. Also consider placing the 35 at-grade parking spaces underground. This alternative would allow residential units to be located on the ground floor and create an opportunity to reduce the number of stories and be more sensitive to the existing neighborhood character. The proposed building should strive to achieve an overall massing and scale that is compatible with existing development in this single-family neighborhood and zoning district in which it is located.

The design of the first and second floors along the side and rear elevations show the greatest divergence from the architectural concept through their composition, porous treatment and large openings. As a result, the upper floors appear to be floating and top-heavy. If the design approach is intended to create a clear and readable base, alternative design treatment should be explored to achieve consistency and complementary design with the overall building, such as screening panels, size/width and placement of the columns.

General Plan Land Use Element, Policy 4.11: Require that development demonstrates a contextual relationship with neighboring structures and sites addressing such elements as building scale, massing, orientation, setbacks, buffering, the arrangement of shared and private open spaces, visibility, privacy, automobile and truck access, impacts of noise and lighting, landscape quality, infrastructure, and aesthetics.

General Plan Land Use Element, Policy 23.1: Design and modulate buildings to avoid the sense of “blocky” and undifferentiated building mass, incorporate well-defined entries, and use building materials, colors, and architectural details complementing the neighborhood, while allowing flexibility for distinguished design solutions.

General Plan Land Use Element, Policy 23.4: Ensure sensitive transitions in building scale between buildings in multi-family residential areas and lower-scale buildings in adjoining residential areas.

7. The arrangement of the public spaces and rooms as well as the vertical circulation on the ground floor could be further improved to assist the project in achieving a more seamless transition between the private and public realms, activating the street and creating additional design opportunities to achieve a more transparent and welcoming street-facing façade. For instance, consider swapping the location of the leasing office and mail room to position the leasing office, which is a more active space, to be street-facing and adjoining the right-of-way to help activate the public realm. Additionally, consider a unique or differentiated design for the stair tower located at the front property line with a well-defined form and/or treatment that enhances and is integral to the design of the front elevation. Similar treatments should be explored for the community room and fitness center located on the second floor that are also fronting the street to achieve the same transition and visual connection to the street.

General Plan Land Use Element, Policy 7.3: Require that new and adaptively re-used buildings are designed to respect and complement the defining built form, massing, scale, modulation, and architectural detailing of their contextual setting.

8. Materials and building colors are reviewed at the Final Design Review stage. However, some general questions about the primary materials and color scheme may be discussed during Concept Design Review. To that end, the project should carefully consider a material and color palette that complements each other while also achieving consistency with and supporting the building’s architectural style. Early consideration of the building materials should be studied by the design team preliminarily to ensure the design incorporates a variety of high quality and durable materials along with an attractive color palette. Materials and colors should be carefully employed and in areas of the façades that will strengthen the architectural concept and achieve a cohesive design throughout the building. Additionally, exterior finishes should not be reflective and changes in materials and colors should not create in-plane transitions, but terminate or wrap at/along the inside corners or similar natural stopping points.

General Plan Land Use Element, Policy 7.1: Design each building as a high-quality, long-term addition to the City’s urban fabric; exterior design and buildings material shall exhibit permanence and quality, minimize maintenance concerns, and extend the life of the building.

General Plan Land Use Element, Policy 23.1: Design and modulate buildings to avoid the sense of “blocky” and undifferentiated building mass, incorporate well-defined entries, and use building materials, colors, and architectural details complementing the neighborhood, while allowing flexibility for distinguished design solutions.

9. The proposed project should carefully consider its site landscaping and hardscape design as an opportunity to complement the architectural design and highlight important building features as well as support and create attractive, inviting and usable outdoor spaces that can be enjoyed by all residents. Areas that are outside of the building footprint or walkways, such as setback areas, should be fully landscaped to enhance the building’s visual quality. The types and placement of plant species and hardscape design should facilitate safe and attractive paths of travel throughout the site and create a seamless transition between the public and private realms at the sidewalk edge. Further consider the appropriateness of the landscape planter on the third floor of the south elevation relative to the enhancement of the building design, accessibility and maintenance. A large open roof deck above the seventh floor is proposed with a mix of spaces for different uses, such as a dog park. The roof deck should be carefully designed, landscaped, and programmed to encourage year-round use and enjoyment by all residents. In addition to the roof deck, additional landscaped areas are proposed at the ground floor within the front setback and along the south property line as well as in planters on the third level.

The common outdoor space on the roof deck should be appropriately programmed to accommodate various active and passive uses that appeal to all residents. Due to the adjoining lower-density development, consider a sensitive design for the roof deck and placement of uses within the spaces to minimize noise, privacy and view impacts into the adjoining buildings to the south of the project site away from the roof edge with planters or similar features to create a buffer. Ensure that all mechanical and rooftop equipment are sufficiently screened.

General Plan Land Use Element, Policy 23.3: Provide appropriate setbacks, consistent with the surrounding neighborhood, along the street frontage and, where there are setbacks, ensure adequate landscaping is provided.

General Plan Land Use Element, Policy 23.6: Require that open space is provided on-site, is accessible, and of sufficient size to be usable by residents, in common areas and/or with individual units pursuant to the Zoning Code.

NEXT STEPS

This completes the Preliminary Consultation process. The designs for the proposed multi-family residential development were reviewed for basic site design and architectural consistency only. The next step in the design review process will be **Concept Design Review**. As your project moves forward, the project should endeavor to address and respond, in writing and/or graphically, to the comments above. This review will require additional details and a more comprehensive submittal package than the one required for Preliminary Consultation. If the comments provided as part of this review are not satisfactorily addressed, revisions to the submitted plans may be required and the approval process for your project may be delayed.

Victor Tang
615 S. Catalina Ave. (DHP2023-00224)
Page 7 of 7

In addition, pursuant to Pasadena Municipal Code (PMC) Section 17.61.030.C, an application for Concept Design Review shall not be accepted as complete unless, or until the Director determines that, it is in compliance with zoning district requirements applicable to the site, except for a Zoning Map Amendment or Variance filed in compliance with Chapter 17.74 (Amendments). As provided to you in the Predevelopment Plan Review (PPR) process, the project has been found to be non-compliant with a number of zoning district requirements applicable to the site and an application for a Zoning Map Amendment and General Plan Amendment or Variance has not been filed. Please refer to Attachment A, PPR Comments, pages 11-21 for a review of the project's compliance with the zoning district requirements applicable to the site.

As noted on page 1 of the Concept Design Review Submittal Checklist, prior to submitting an application for Concept Design Review, applicants are required to consult with the Current Planning Section to ensure that the proposed project complies with the development standards in the Zoning Code. Applications not in compliance cannot receive Concept Design Review approval unless they obtain any necessary land use permit first (i.e., variance or Zoning Map Amendment and General Plan Amendment). The PPR found that the project did not comply with the development standards in the Zoning Code, and the project cannot be approved or found complete until either variances or a Zoning Map Amendment are obtained.

Please contact me if you have any questions about this letter.

Sincerely,



Rathar Duong
Senior Planner
Design & Historic Preservation Section
626-744-7346
rduong@cityofpasadena.net

cc: Energov; Address file

Attachment:

A. PPR Comments

EXHIBIT G

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

MEMORANDUM

DATE: March 16, 2023
TO: Planning Directors and Interested Parties
FROM: Megan Kirkeby, Deputy Director
Division of Housing Policy Development

A handwritten signature in black ink, appearing to read "Megan Kirkeby".

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 adoption¹ 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 HCD⁴ 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 HCD⁶ and receive findings on the adopted element from HCD.⁷

¹ Gov. Code, § 65585, subd. (b)(1)

² Gov. Code, § 65585, subs. (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)

Summary and Clarification of Requirements for Housing Element Compliance

Page 2

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 H

**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



May 8, 2023

City of Redondo Beach
Mayor and City Council Members
415 Diamond Street
Redondo Beach, CA 90277

Dear Mayor Bill Brand, Council Member Nils Nehrenheim, Council Member Todd Loewenstein, Council Member Paige Kaluderovic, Council Member Zein Obagi, Jr., and Council Member Scott Behrendt:

RE: City of Redondo Beach 1100 N. Harbor Drive – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands the City of Redondo Beach (City) City Council will consider an appeal of the application of the proposed housing project on the former AES Power Plant Facility located at 1100 N. Harbor Drive (Project). The purpose of this letter is to assist the City with its decision-making by providing technical assistance related to State Housing Element Law (Gov. Code, § 65580 et seq.) and the Housing Accountability Act (Gov. Code, § 65589.5). HCD recognizes the challenge of interpreting ever-changing housing and land use laws and appreciates the opportunity to provide technical assistance.

Background

HCD understands the Project would result in 2,700 housing units (2,160 market rate units and 540 units available to low-income households), 300 hotel rooms, 550,000 square feet of office space and 160,000 square feet of retail space. The City will hear an appeal to its March 3, 2023, letter to 9300 Wilshire, LLC. (Applicant) that determined the development application for the Project was incomplete. The City's incomplete letter provided the Applicant with a comprehensive list of items required to process the application. The City's determination was fundamentally based on the conclusion that the housing element adopted on July 5, 2022, was substantially compliant with State Housing Element Law, and; therefore, the Project was not entitled to the protections granted under Government Code section 65589.5, subdivision (d)(5) (colloquially referred to as the "Builder's Remedy").

The following are key dates related to the Project and the City's 6th Cycle Housing Element:

- July 5, 2022 – The City adopted its 6th Cycle Housing Element.

- August 12, 2022 – The Applicant submitted its Preliminary Application.
- August 15, 2022 – The Applicant submitted an updated Preliminary Application and architectural plan set.
- September 1, 2022 – HCD issued a letter finding the City’s July 5, 2022, adopted 6th Cycle Housing Element to be in substantial compliance.¹
- February 6, 2023 – The Applicant submitted its development application.

Housing Element Compliance

Pursuant to Government Code Section 65585, a local jurisdiction must submit a draft housing element to HCD and receive HCD’s findings. 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)(2)). Promptly following adoption, the local jurisdiction must submit the adopted housing element to HCD (Gov. Code, § 65585, subd. (h)).

In other words, a local jurisdiction does not have the authority to determine that its adopted element is in substantial compliance. A local jurisdiction is “in compliance” as of the date of HCD’s letter finding the adopted element in substantial compliance.² A local jurisdiction cannot “backdate” compliance to the date of adoption of a housing element. For the City of Redondo Beach, the housing element was found by HCD to be in substantial compliance on September 1, 2022.

Housing Accountability Act (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 households³ or condition approval in a manner that renders the housing development project infeasible for development for the use of very low-, low-, or moderate-income households unless it makes written findings, based upon a preponderance of evidence in the record, as to one of five findings in subdivision (d).

¹ HCD Approval Letter - Redondo Beach’s 6th Cycle (2021-2029) Adopted Housing Element, dated September 1, 2022. Attached.

² HCD, Memorandum - Summary and Clarification of Requirements for Housing Element Compliance, dated March 16, 2023. Attached.

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)).

If a local jurisdiction's adopted housing element is not found substantially compliant by HCD as of the jurisdiction's statutory deadline, the jurisdiction may not use subdivision (d)(5) of Government Code section 65589.5, inconsistency with zoning and general plan standards, as a basis to lawfully deny qualifying an affordable housing project. Again, subdivision (d)(4) is colloquially referred to as the "Builder's Remedy." Alternative means of denial may be available, such as subdivisions (d)(2) through (d)(4), and under subdivision (e), jurisdictions are still required to comply with both California Environmental Quality Act (CEQA) and the California Coastal Act,⁴ as applicable.

Preliminary Application

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)).

The central point of contention between the City and the Applicant is as follows:

Can the Project utilize "Builder's Remedy" if the Applicant submitted a complete preliminary application after the City adopted a housing element, but before HCD has found the housing element to be in substantial compliance?

The answer is "yes." The submittal of a complete preliminary application pursuant to Government Code section 65941.1 vests the right to develop a housing development project in accordance with the ordinances, policies, and standards in effect when a preliminary application is submitted. (Gov. Code § 65589.5, subd. (o)(1)). Therefore, if the 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 period⁵, any potential benefits afforded to the applicant resulting from the jurisdiction's noncompliant status would remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance.

Conclusion

Notwithstanding the unique environmental circumstances of this Project site, the City should remain mindful of its obligations under the HAA as it considers the appeal of the

⁴ "Nothing in this section shall be construed to relieve the local agency from complying with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) or from making one or more findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code)." (Gov. Code, § 65589.5, subd. (e)).

⁵ Gov. Code § 65941.1, subd. (d)(1)

Project application. Because the City had not attained substantial compliance with the State Housing Element Law until September 1, 2022, the City may not deny the Project pursuant to Government Code section 65589.5, subdivision (d)(5). HCD would also like to remind the City that HCD has enforcement authority over the HAA, among other state housing laws. Accordingly, HCD may notify the California Office of the Attorney General that a local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

HCD remains committed to supporting Redondo Beach in achieving housing objectives across all income categories and hopes the City finds this clarification helpful. If you have any questions or need additional information, please contact Gabriel A. Pena-Lora, of our staff, at gabriel.pena-lora@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief

cc: Brandy Forbs, AICP, Community Development Director

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
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www.hcd.ca.gov



March 19, 2024

Christopher Burton, Director, Planning Division
City of San José
200 East Santa Clara Street
San José, CA 95113

Dear Christopher Burton:

RE: City of San José's Denial of "Builder's Remedy" Project Applications – Notice of Potential Violation

The California Department of Housing and Community Development (HCD) is aware that on or about January 31, 2024, the City of San José (City) deemed a number of preliminary applications "not eligible to be submitted under the Builder's Remedy" on the grounds that its June 20, 2023 adopted housing element was allegedly in substantial compliance with Housing Element Law despite subsequent contrary findings by HCD on August 28, 2023. In other words, the City made it clear that it would not accept an application or issue, under the Builder's Remedy, the required land use approvals or entitlements necessary for the proposed projects. Subsequently, however, City staff verbally informed HCD that the City is now accepting and processing those applications.

To avoid any confusion, HCD hereby advises that the City may be in violation of the Housing Accountability Act (HAA)¹ if the City either fails to process those applications or ultimately denies those applications based upon inconsistency with zoning and general plan land use designations pursuant to Government Code section 65589.5, subdivision (d)(5). Furthermore, the City may be in violation of the Permit Streamlining Act (PSA)² if the City's actions have the effect of barring the submittal of a full application within the statutory 180 calendar days of the preliminary application.

Housing Element Compliance

The following are key dates related to the City's 6th Cycle housing element:

- **September 16, 2022.** The City submitted a draft housing element to HCD for initial review (Version 1).

¹ Gov. Code, § 65589.5.

² Gov. Code, § 65941.1.

- **December 15, 2022.** HCD found that Version 1 required revisions to substantially comply with Housing Element Law.³
- **January 31, 2023.** The statutory deadline for the City to adopt a housing element in substantial compliance with State Housing Element Law.
- **June 20, 2023.** The City Council adopted a revised housing element (Version 2).
- **June 29, 2023.** The City submitted Version 2 for HCD's review.
- **August 28, 2023.** HCD found that Version 2 required additional revisions to substantially comply with State Housing Element Law.
- **November 30, 2023.** The City submitted a revised housing element (Version 3) for HCD's review. The City did so without further action or re-adoption by the City Council pursuant to Section 10 of Council Resolution No. RES2023-263, dated June 26, 2023, which directed and authorized the Director of Planning, Building, and Code Enforcement, or his or her designee, to "make all non-substantive changes to the housing element to make it internally consistent or to address any non-substantive changes or amendments requested by HCD to achieve certification."
- **January 29, 2024.** HCD found Version 3 in substantial compliance with State Housing Element Law "as of January 29, 2024."

As indicated by the key dates listed above, the City's adopted housing element was not in substantial compliance with State Housing Element Law from February 1, 2023 through January 28, 2024. The City acknowledged HCD's August 28, 2023 findings of noncompliance by submitting a revised housing element (Version 3) to HCD on November 30, 2023. Examples of substantive revisions that were required for Version 3 to be in substantial compliance include the following:

- **Governmental Constraints (Gov. Code, § 65583, subd. (a)(5)).** Analysis of the City's permit processing procedures for potential constraints on housing supply, including cost, timing, financial feasibility, approval certainty, and ability to achieve maximum densities.
- **Affirmatively Furthering Fair Housing (Gov. Code, § 65583, subd. (c)(10)(A)).** Prioritization of contributing factors to fair housing and analysis of the City's trends including disability, familial status, and education in comparison to the region.
- **Sites Inventory (Gov. Code, § 65583, subd. (a)(3)).** Sufficient detail of the assumptions and methodology used to demonstrate realistic capacity estimates of the sites inventory, including comparable properties and their densities and affordability levels.

Because of these and other revisions in Version 3, HCD issued a letter of substantial compliance to the City on January 29, 2024.

³ Gov. Code, § 65580 et seq.

A local jurisdiction cannot self-certify or determine that its own housing element substantially complies with Housing Element Law.⁴ Instead, a local jurisdiction has two options upon receiving HCD's determination that its draft housing element is not in substantial compliance. First, it can revise the draft element to substantially comply with HCD's findings. Second, it can adopt the draft element without changes, and include in its resolution of adoption written findings explaining why it believes the draft element substantially complies with Housing Element Law.⁵ Ultimately, HCD has a statutory mandate to determine whether a housing element substantially complies with Housing Element Law.⁶

Housing Accountability Act (HAA)

Under the HAA, a jurisdiction shall not disapprove a qualifying affordable housing development⁷ on the basis that the project does not comply with the local zoning and general plan if the developer submits all statutorily required preliminary application materials, or has a complete development application,⁸ while the City's housing element is out of substantial compliance with Housing Element Law.⁹ This provision of the HAA is colloquially known as the "Builder's Remedy." The submittal of a preliminary application, or a complete development application, while the jurisdiction is out of substantial compliance vests the applicant's right to invoke the Builder's Remedy, even if the jurisdiction subsequently achieves compliance.¹⁰

Therefore, the City cannot reverse the vesting of a preliminary application or disapprove a qualifying Builder's Remedy project on the grounds that the City's housing element is now substantially compliant. To be sure, such projects may still be disapproved under the HAA if, upon a preponderance of the evidence, the City makes written findings as to other reasons unrelated to zoning or general plan inconsistency.¹¹ In addition, projects under the Builder's Remedy are still required to comply with California Environmental Quality Act (CEQA), unless exempt under other provisions of CEQA or other state streamlining laws. The HAA specifically states nothing relieves the local agency from making the required CEQA findings and otherwise complying with CEQA.¹²

⁴ Housing Compliance Memo. HCD, March 16, 2023, <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/memos/HousingElementComplianceMemo03162023.pdf>; see Order on Petitions for Writ of Mandate and Complaints for Declaratory Relief, *Cal. Housing Defense Fund v. City of La Canada Flintridge* (Superior Court of Los Angeles County, March 4, 2024) Case No. 23STCP02614.

⁵ Gov. Code, § 65585, subd. (f)(2).

⁶ Gov. Code, § 65585, subds. (i)-(j).

⁷ Gov. Code, § 65589.5, subd. (h)(3).

⁸ Gov. Code, § 65589.5, subd. (h)(5).

⁹ Gov. Code, § 65589.5, subd. (d)(5).

¹⁰ Gov. Code, § 65589.5, subd. (o)(1).

¹¹ See, e.g., Gov. Code, § 65589.5, subds. (d)(2)-(4).

¹² Gov. Code, § 65589.5, subd. (e).

Potential Violation of the HAA

After June 20, 2023, but before the City of San Jose achieved substantial compliance on January 29, 2024, a number of developers filed project applications invoking the Builder's Remedy. On or about January 31, 2024, the City issued letters (Denial Letters) in response to those applications claiming that the projects were "not eligible to be submitted under the Builder's Remedy" on the basis that the City Council found that its June 20, 2023 housing element (Version 2) substantially complied with Housing Element Law (See Enclosure, example Denial Letters). However, HCD did not find the City's housing element in substantial compliance until January 29, 2024.

By precluding the right of developers who submitted preliminary applications between June 20, 2023 through January 28, 2024, the City potentially "disapproved" the projects¹³ in violation of the HAA. However, on March 7 and March 14, 2024, HCD staff met with the City to discuss the City's Denial Letters. During those conversations, City staff verbally explained that, despite language to the contrary in the Denial Letters, the City *is* accepting Builder's Remedy applications and will not disapprove such projects for being inconsistent with zoning and general plan land use designations. However, the City has not confirmed as much in writing. Therefore, HCD advises that the City be aware that not processing the applications in accordance with the HAA would be a violation of state law.

Potential Violation of the Permit Streamlining Act (PSA)

Furthermore, HCD is evaluating whether the City's Denial Letters violated the PSA by effectively preventing developers from submitting, or by failing to process, full development applications, or by imposing unlawful application requirements.¹⁴ Therefore, HCD advises the City to confirm in writing to affected applicants and HCD that the City will process full development applications, following preliminary applications submitted from June 20, 2023 to January 28, 2024 that invoked the Builder's Remedy.

Conclusion and Next Steps

The City's improper Denial Letters to developers that submitted preliminary applications under the Builder's Remedy constitutes a potential violation of the HAA and PSA. The City has until April 18, 2024 to provide a written response to this Notice, including its proposed plan to address the processing of these applications. In addition, the City's written response should include the following information for HCD to evaluate the scope and extent of the potential violation:

¹³ Gov. Code, § 65589.5, subd. (h)(6).

¹⁴ Gov. Code, §§ 65941.1, 65943.

- **A list of all preliminary applications submitted under the Builder's Remedy between June 20, 2023 through January 28, 2024.** The list must contain the date of the preliminary application submittal, the project address(es), the total number of housing units proposed, the percentage of affordable units, and, if applicable, the total number of units previously approved and entitled for the project site.
- **A list of all project applicants who received Denial Letters and copies of each letter.** The list must contain the name of the applicant, their project address(es), the date the letter of ineligibility was issued, and the listed contact information in the City's permit system, including email and phone number.
- **All correspondence from the City of San Jose to project applicants who submitted under the Builder's Remedy between June 20, 2023 through January 28, 2024.** Please also include any preliminary application notices of expiration, if issued.
- **Copies of notices or letters the City sent in response to formal applications submitted under the Builder's Remedy.** Please include any notices of completeness pursuant to Government Code section 65943, and notices of consistency with applicable objective standards pursuant to Government Code section 65589.5.

HCD will consider the City's written response before taking further action authorized by Government Code section 65585, subdivision (j)(1), including, but not limited to, referral to the California Office of the Attorney General.

Please note, HCD must reject an application for Prohousing Designation if it determines that the applicant has not met threshold requirements, including compliance with state housing laws or if HCD discovers that the applicant is violating state housing laws, including the HAA.¹⁵ Therefore, the City is ineligible for Prohousing Designation until the City takes corrective action to accept and process applicable Builder's Remedy applications without further delay. If you have any questions or would like to discuss the content of this letter, please contact Grace Wu of our staff at Grace.Wu@hcd.ca.gov.

Sincerely,



Melinda Coy
Proactive Housing Accountability Chief

cc: Rosalynn Hughey, Deputy City Manager and Acting Housing Director
Johnny Phan, Chief Deputy City Attorney
Ruth Cueto, Supervising Planner
Jared Ferguson, Principal Planner

¹⁵ CCR, § 6604.1, subds. (b)(4), (c), (d)(2).

Enclosures

City of San Jose. Letter to Vicky Kwoh Ching regarding 2222 Senter Road, dated February 1, 2024.

City of San Jose. Letter to Vince Rivero, Stuart Whang, Paul Lee, and Xavier Campos regarding 2159 Chisin Street, dated February 1, 2024.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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October 5, 2022

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

Dear Dave Rand:

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

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

Background

A housing development project with housing for very low-, low-, or moderate-income households¹ cannot be denied (or approved in a way such that conditions render the inclusion of affordable housing infeasible) unless one of five potential written findings, based upon a preponderance of the evidence in the record, can be made. (Gov. Code, § 65589.5, subd. (d).) Under subdivision (d)(5), a jurisdiction can only deny a qualifying project if both of the following criteria are satisfied: (1) The project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation and (2) the jurisdiction has a housing element in substantial compliance with State Housing Element Law. Therefore, the status of a jurisdiction's housing element is of critical importance when determining the applicability of the provisions of subdivision (d)(5).

¹ "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. (Gov. Code, § 65589.5, subd. (h)(3).)

Analysis

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

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

The answer is "yes." The submittal of a complete preliminary application pursuant to Government Code section 65941.1 vests the right to develop a housing development project in accordance with the ordinances, policies, and standards in effect when a preliminary application is submitted. (Gov. Code § 65589.5, subd. (o)(1).) Therefore, if the submittal occurs at a time when the jurisdiction does not have a compliant housing element, any potential benefits afforded to the applicant as a result of the jurisdiction's noncompliant status would remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance during the entitlement process.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long horizontal stroke extending to the right.

Melinda Coy
Proactive Housing Accountability Unit Chief

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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March 22, 2023

Susan Koleda, AICP
Director of Community Development
City of La Cañada Flintridge
One Civic Center Drive
La Cañada Flintridge, CA 91011

Dear Susan Koleda:

RE: City of La Cañada Flintridge 600 Foothill Boulevard – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands that the City of La Cañada Flintridge (City) City Council will hear an appeal for consideration of the application of the project at 600 Foothill Boulevard (Project). The purpose of this letter is to assist the City with its decision-making by providing technical assistance related to State Housing Element Law (Gov. Code, § 65580 et seq.) and the Housing Accountability Act (Gov. Code, § 65589.5). HCD recognizes the challenge of interpreting ever-changing housing and land use laws and appreciates the opportunity to provide technical assistance.

Background

HCD understands that the City will hear an appeal to its March 1, 2023, letter to Cedar Street Partners LLC determining the application for the Project was incomplete. The City's determination was based on its conclusion that the housing element adopted on October 4, 2022, was substantially compliant with State Housing Element Law and therefore the project was not qualified to apply with the protections granted under Government Code section 65589.5, subdivision (d)(5).

As you are aware, on December 6, 2022, HCD found the October 4, 2022, housing element to not be in substantial compliance, and while the City submitted a revised adopted element on February 23, 2023, HCD has not yet completed its review pursuant to Government Code section 65585, subdivision (h). As of the date of this letter, the City's housing element is not in substantial compliance with State Housing Element Law.

Housing Element Compliance

Pursuant to Government Code section 65585, a local jurisdiction must submit a draft housing element to HCD and receive HCD's finding. 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 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)).

In other words, a local 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. 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 adoption of a housing element. Moreover, as stated above, the October 4, 2022, adopted element did not substantially comply with State Housing Element Law. It should also be noted that the City's October 4, 2022, resolution adopting the housing element made no findings pursuant to Government Code section 65585, subdivision (f)(2).

Housing Accountability Act (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 households¹ or condition approval in a manner that renders the housing development project infeasible for development for the use of very low-, low-, or moderate-income households 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 a local jurisdiction's adopted housing element is not found substantially compliant by HCD as of the jurisdiction's statutory deadline, the jurisdiction would be unable to use subdivision (d)(5) of Government Code section 65589.5, inconsistency with zoning and general plan standards, as a basis to lawfully deny qualifying an affordable housing project as defined in subdivision (h). This is colloquially referred to as the "Builder's Remedy." Alternative means of denial may be available, such as subdivisions (d)(2) through (d)(4), and under subdivision (e), jurisdictions are still required to comply with

¹ "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code (Gov. Code, § 65589.5, subd. (h)(3)).

both California Environmental Quality Act (CEQA) and the California Coastal Act, as applicable.

Conclusion

The City should remain mindful of its obligations under the HAA as it considers the appeal of the Project application. Because the City has not attained substantial compliance with State Housing Element Law, the City may not deny the Project pursuant to Government Code section 65589.5, subdivision (d)(5). HCD would also like to remind the City that HCD has enforcement authority over the HAA, among other state housing laws. Accordingly, HCD may notify the California Office of the Attorney General that a local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

HCD remains committed to supporting La Cañada Flintridge in achieving housing objectives across all income categories and hopes the City finds this clarification helpful. If you have any questions or need additional information, please contact me at melinda.coy@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long horizontal stroke extending to the right.

Melinda Coy
Proactive Housing Accountability Chief

**DEPARTMENT OF HOUSING AND COMMUNITY 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 households³ 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, subs. (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)