



Office of the City Manager

Appeal of BZA Decision
Completeness Determination
615 South Catalina Avenue

City Council
June 10, 2024





Overview

Planning & Community Development Department

- Issue before Council is a completeness determination.
- The appellant has attempted to proceed through the Design Review process out of order.
- The City will continue to process the application when the required items are provided.
- The Builder's Remedy does not apply because the City's adopted Housing Element was in substantial compliance with State law when the SB330 preliminary application was submitted.



Background

Planning & Community Development Department

- What is before the Council is an appeal of a BZA determination that an application for Concept Design Review is incomplete for processing :
 - > On March 4, 2024, a Concept Design Review application was filed for a new multi-family project located at 615 S. Catalina Ave.
 - > The application was reviewed for completeness against the required submittal checklist for Concept Design Review.
 - > Required items from the checklist were not provided and staff deemed the application incomplete for processing.
 - > Project Notes:
 - 7-story, 49 rental units (10 affordable)
 - Single-family zone
 - Builders Remedy



Background: Board of Zoning Appeals

Planning & Community Development Department

- On May 16, 2024, the Board of Zoning Appeals heard the appeal at a scheduled public meeting:
 - > At the conclusion of the public hearing, a motion was made to deny the appeal and uphold the determination that the submitted Concept Design Review application is incomplete by a vote of 3-0.
 - > The decision was based on the fact that not all the required items from the checklist for Concept Design Review were submitted for the application.
 - > On May 28, 2024, the applicant filed an appeal application citing a disagreement with the decision of the Board of Zoning Appeals.



Appeal of Incomplete Notice

Planning & Community Development Department

- **Appeal:**
 - > The appellant asserts that the City violated State law:
 - Senate Bill 330 (the Housing Crisis Act)
 - The Housing Accountability Act
 - The Permit Streamlining Act, and
 - Other unspecified State laws that preempt the city's Zoning Code.
 - > The only issue before the Council is whether or not the Concept Design Review application was incomplete.
 - > The staff report does address all but one of the points raised in the appellants letter(s) and concludes that the City has not violated state law and the City will continue to process the Concept Design Review when the requested items are provided.



Incompleteness Determination

Planning & Community Development Department

Applicant has submitted various applications related to the project

- > SB330 Preliminary application - in effect
- > PPR - Finished, comments provided
- > Preliminary Consultation- Finished at staff level, comments provided
- > **Concept Design Review- status under appeal tonight**



Background-Concept Design Review

Planning & Community Development Department

- **Completeness Review:**

- > Under the Permit Streamlining Act, a public agency is required to review a development application and determine its completeness within 30 days of submission and notify the applicant of missing items. The application was submitted on March 4, 2024.
- > On April 3, 2024, the application was deemed incomplete due to missing three required items and an incomplete notice was sent to the applicant.
- > The Permit Streamlining Act requires that an appeal be heard and provided with a final written determination within 60 days (June 8, 2024, Saturday) by the governing agency.
- > A City Council appeal hearing date of June 3, 2024 (within 55 days), was offered to the appellant. However, due to scheduling conflicts, the appellant waived the 60-days and requested the date of June 10, 2024 (within 62 days).
- > In addition, the Code of Civil Procedure provides that when a deadline lands on a weekend, the deadline extends to the next business day, also June 10, 2024.



Incomplete Notice – Current Status

Planning & Community Development Department

- Deemed incomplete for missing these required submittal items:
 1. **Payment of application fees;**
 - Fees were paid after the BZA meeting (May 17, 2024)
 - ***This item has been addressed and is no longer outstanding***
 2. **Design Evolution** – Address comments provided in Preliminary Consultation; and
 - ***This item is still outstanding***
 3. **Compliance with the Zoning Code:** Density, Height, Setbacks, FAR
Or obtain a Variance, Zoning Map and General Plan Diagram Amendment
 - ***This item is still outstanding***



Incompleteness Determination

Planning & Community Development Department

Design Evolution – Address comments provided in Preliminary Consultation

- > Preliminary Consultation is the first step in the design review process and informs the second step, Concept Design Review. The steps cannot be skipped or taken out of sequence (Pasadena Muni Code Section 17.61.030.C.1):
 - **Preliminary Consultation** ✓
 - **Concept Design Review**
 - **Final Design Review**
- > The applicant is required to address the comments from the Preliminary Consultation in the Concept Design Review application and to explain how the design has evolved.
- > The applicant submitted the Concept Design Review prior to the completion of the Preliminary Consultation and comments being provided.



Incompleteness Determination

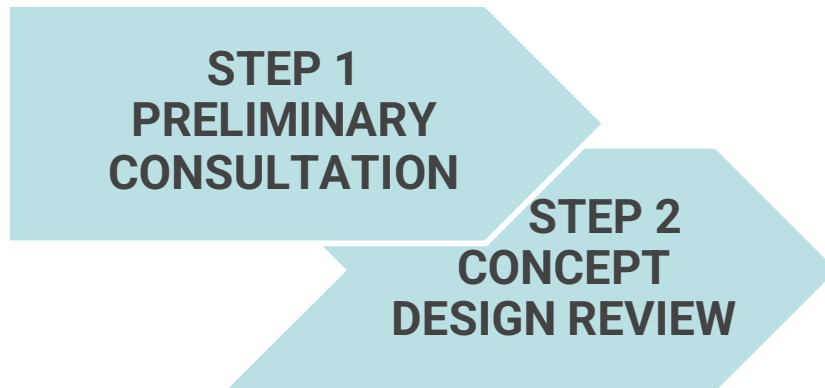
Planning & Community Development Department

Design Evolution – Address comments provided in Preliminary Consultation

Design Review Process



Current Application Submittals by Appellant





Incompleteness Determination

Planning & Community Development Department

Design Evolution – Address comments provided in Preliminary Consultation

- DESIGN EVOLUTION EXHIBIT** - *One (1) 11" x 17" copy (Additional 11"x 17" copies may be required for Design Commission reviews, subsequent to initial application submittal).*
 - 1) Written and illustrated exhibit (before and after imagery; e.g., story boards) describing 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.
 - 2) Provide images of studies conducted to address the Preliminary Consultation comments, including cases where comments were not implemented in the design.
 - 3) Written and illustrated exhibit describing how the previously presented Site Planning and Building Design Concepts have developed since the Preliminary Consultation. The exhibit should clearly visually depict the design evolution.



Incompleteness Determination

Planning & Community Development Department

Compliance with the Zoning Code: Density, Height, Setbacks, FAR, or obtain a Variance, Zoning Map and General Plan Diagram Amendment

- > On the Concept Design Review application, the applicant stated that the multi-family project was utilizing the “Builder’s Remedy”, based on their SB330 preliminary application submitted to the City on February 15, 2023.
- > The “Builder’s Remedy” arises from the Housing Accountability Act (Government Code Section 65589.5; the HAA). If a city has not adopted a housing element in substantial compliance with state law, developers may propose housing development projects that do not comply with either the zoning or the general plan.
- > The SB330 preliminary application was submitted under the assumption that the City of Pasadena did not have a compliant housing element; thus, attempting to vest rights to a “Builder’s Remedy” project not compliant with the existing zoning or the City’s general plan.



Incompleteness Determination

Planning & Community Development Department

Timeline

**Jul. 18,
2022**

City Council Adopted Housing Element

**Jan. 11,
2023**

Submitted final Housing Element to HCD. HCD determined that this Housing Element was in substantial compliance

**Feb. 15,
2023**

**Builder's Remedy
Preliminary Application submitted (SB 330)**

- > The City had an adopted housing element in conformance with state law before the SB330 preliminary application was submitted, the “Builder’s Remedy” does not apply to the project.
- > Therefore, the project must comply with the Zoning Code.



Incompleteness Determination

Planning & Community Development Department

Compliance with the Zoning Code: Density, Height, Setbacks, FAR, or obtain a Variance, Zoning Map and General Plan Diagram Amendment

- > Regardless of whether the project is eligible for the “Builder’s Remedy,” the project must either comply with the Zoning Code or apply for a Zoning Map and General Plan Diagram amendment or Variance (PMC 17.60.060.A.5.a)
- > Zoning Map Amendment:
 - ***To change zoning to allow multi-family***
- > General Plan Diagram Amendment:
 - ***To change the General Plan designation to allow a higher density residential***



Incompleteness Determination

Planning & Community Development Department

Compliance with the Zoning Code: Density, Height, Setbacks, FAR, or obtain a Variance, Zoning Map and General Plan Diagram Amendment

- Consult with the [Current Planning Section](#) to ensure that the proposed project complies with the **development standards** in the Zoning Code. (626) 744-6777; Window 3, Permit Center; or zoningquestions@cityofpasadena.net. If a Zoning Entitlement is not required for the proposed project, a Preliminary Plan Check will be formally conducted by Current Planning Staff upon submittal of an application for Concept Design Review. Projects that are found to be out of compliance with Zoning Code requirements or inconsistent with a previously approved Entitlement will not be scheduled for a Concept Design Review hearing or issued a staff decision until found to be in compliance.*



Conclusion and Recommendation

Planning & Community Development Department

- Uphold the BZA's decision and the determination that the Concept Design Review application No. DHP2024-00099 is incomplete, for the reasons described in detail in the staff report and in oral and written testimony and elsewhere in the record, in that the application does not contain the following information required on the City's application form and listed in the incompleteness letter:
 1. **Design Evolution** – Address comments provided in Preliminary Consultation; and
 2. **Compliance with the Zoning Code:** Density, Height, Setbacks, FAR Or obtain a Variance, Zoning Map and General Plan Diagram Amendment
- Staff recommends that the City Council deny the appeal.



Office of the City Manager

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Concept Design Rendering

Planning & Community Development Department





Street View – Context Photos

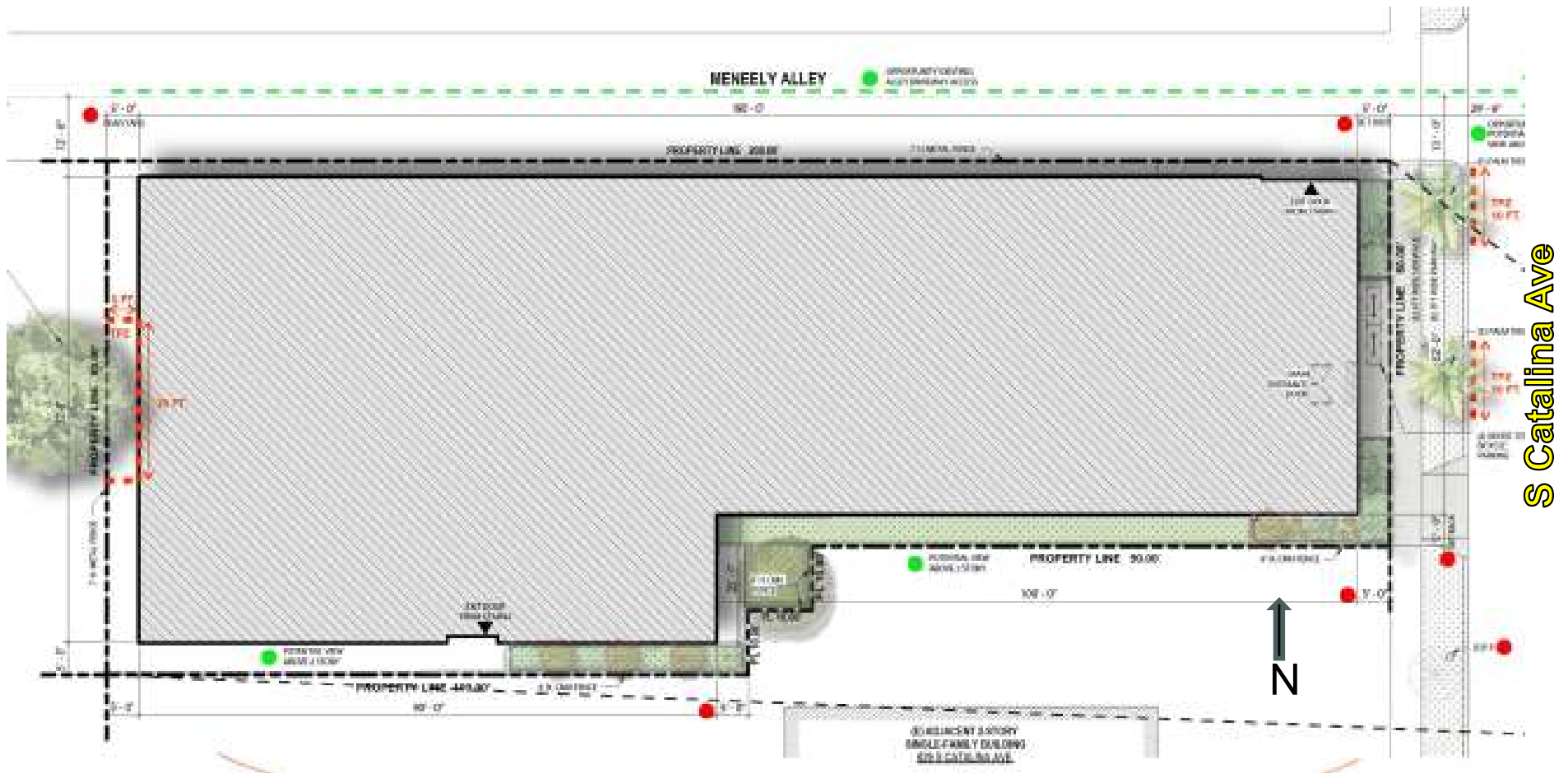
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Site Plan

Planning & Community Development Department

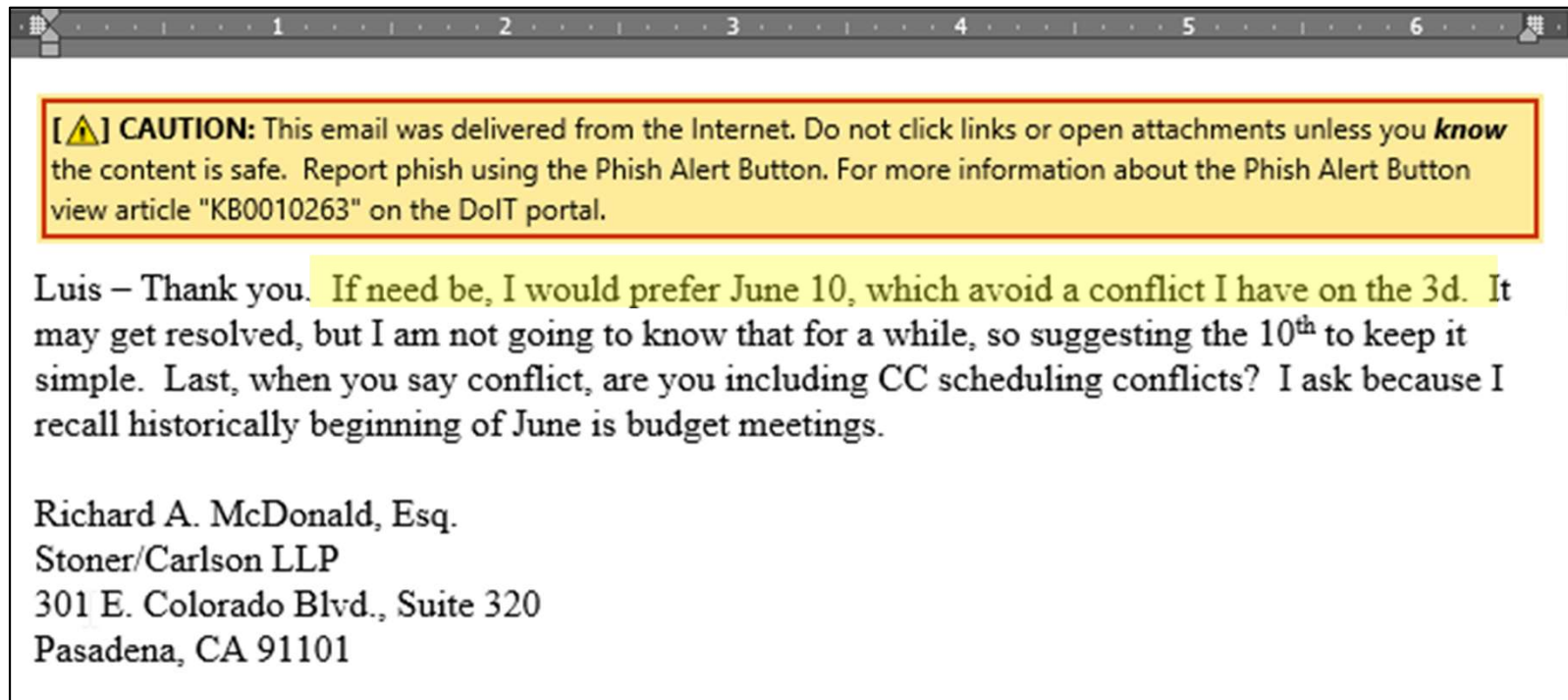




Response to Supplemental Letter- Point 1

Planning & Community Development Department

- The Permit Streamlining Act requires that an appeal be heard and provided with a final written determination within 60 days by the governing agency (June 8th)
- **April 11:** Email from the applicant preferring that the appeal be heard on June 10th (62 days).





Design Review Steps - Process

Planning & Community Development Department

- **Step 1: Preliminary Consultation (non-entitlement)**
 - > An informal discussion between the Director and the applicant to explain to the applicant the applicable design guidelines, findings, and procedures that will apply to the project, and to discuss compliance of the project with the design guidelines.
- **Step 2: Concept Design Review (entitlement)**
 - > Addressed the basic design of a project, including compatibility with surroundings, massing, proportion, siting, solid-to-void relationships, and compliance with applicable design guidelines. Applicants need to demonstrate visually and in writing how the revised design addresses the comments provided during Preliminary Consultation.
- **Step 3: Final Design Review (entitlement)**
 - > Focuses on construction details, finishes, materials, and landscaping, and on consistency of the project with the design and compliance with the conditions of the approved during Concept Design Review.



Responses to Supplemental Letter Submitted to BZA

Planning & Community Development Department

- **Point No. 1:** The appellant claims that the City positioned itself to deprive the owner of the rights provided by the SB330 Preliminary Application.
 - > The City has never taken the position that the SB330 preliminary application has expired. The preliminary application remains in effect.
- **Point No. 2:** The appellant disagrees with the finding that the “Builder’s Remedy” does not apply to the project.
 - > HCD found on March 10, 2023, that the City’s adopted housing element submitted on January 11, 2023 was in substantial conformance with state law; the SB330 preliminary application was submitted in February.
 - > The Builder’s Remedy does not apply to the project.
 - > Regardless of whether the project is eligible for the “Builder’s Remedy,” applications for a Zoning Map amendment, with concurrent amendment to the General Plan diagram, or Variance, are required for the application to be determined to be complete.



Responses to Supplemental Letter Submitted to BZA

Planning & Community Development Department

- **Point No. 3:** The appellant asserts that notification of inconsistencies with the zoning code and general plan needs to be provided to an applicant within 30 days of the date that a SB330 preliminary application is submitted. If the notice is not sent, that application is “deemed consistent.” Because the City did not send this notice, the applicant asserts that the project has been “deemed consistent” with the existing zoning and general plan, and so no application for a Zoning Code or general plan amendment is needed.
 - > No statute requires the City to review the completeness of an SB 330 preliminary application within any time period or to notify the applicant of inconsistencies with the Zoning Code and General Plan within 30 days.



Responses to Supplemental Letter Submitted to BZA

Planning & Community Development Department

- **Point No. 4:** The appellant states that subjective design standards cannot be applied to the project. Furthermore, the appellant states that the Design Evolution information provided for Preliminary Consultation should suffice for Concept Design Review.
 - > The Housing Crisis Act of 2019 also allows use of subjective standards established before January 1, 2020. The City's subjective design standards were adopted 2015 and have not been amended since that date.
 - > Separate design evolution submittal information is required for the Preliminary Consultation application and the Concept Design Review application. The applicant is expected to use the comments on the Preliminary Consultation to modify the application for Concept Design Review and to explain how the design has evolved.
 - > Preliminary Consultation is the first step in the design review process and informs the second step, Concept Design Review. The steps cannot be skipped or taken out of sequence.



Responses to Supplemental Letter Submitted to BZA

Planning & Community Development Department

- **Point No. 5:** The appellant states that the City has violated the Permit Streamlining Act by requiring design evolution information for Concept Design Review when the Preliminary Consultation was not complete, and by not providing an invoice at an earlier date.
 - > The City's design review ordinance establishes a strict three-step design review process: 1) Preliminary Consultation; 2) Concept Design Review; and 3) Final Design Review.
 - > The conflict the appellant raises is a result of the applications being submitted out of sequence, i.e., the Concept Design Review application was submitted prior to the completion of the Preliminary Consultation application.
 - > Separate design evolution submittal information is required for the Preliminary Consultation application and the Concept Design Review application.
 - > Now that the Preliminary Consultation has been completed, the applicant can complete the Concept Design Review application.



Responses to Supplemental Letter Submitted to BZA

Planning & Community Development Department

- **Point No. 6:** The appellant states that the City violated the PSA by not notifying the applicant of inconsistencies with the Zoning Code in the incomplete letter for the Preliminary Consultation application, dated August 24, 2023, or at any other time prior to April 3, 2024.
 - > Zoning Code compliance is not a required item on the Preliminary Consultation submittal checklist.
- **Point No. 7:** The appellant reiterates that notification of inconsistencies with the zoning code and general plan needs to be provided to the applicant within 30 days of the submittal of an SB330 preliminary application containing all required information.
 - > Same response as to Point No. 3 - No statute requires the City to review the completeness of an SB 330 preliminary application within any time period or to notify the applicant of inconsistencies with the Zoning Code and General Plan within 30 days
- **Point No. 8:** The appellant states that the City violated the PSA by not notifying them of their rights to appeal an incomplete letter.
 - > State law does not require notification, only that a process is required to be provide to an appeal.



Responses to Supplemental Letter Submitted to BZA

Planning & Community Development Department

- **New Point No. 9:** The appellant states that the HCD letter to Compton is not the law, and inconsistency with zoning standards is not a basis for finding an application incomplete under the PSA and HAA.
 - > Neither the PSA nor the HAA state that zoning consistency cannot be required to find an application complete, nor do they proscribe a requirement to apply for a zoning amendment. Pasadena's Municipal Code and Concept Design Review application require zoning consistency to find an application complete.



SB330 Preliminary Application

Planning & Community Development Department

- **SB 330 Preliminary Application:**
 - > The Housing Crisis Act of 2019 (SB 330) created a preliminary application through which an applicant for a residential project may obtain assurances for continued review under the ordinances, standards, and policies in effect when a complete preliminary application is submitted.
 - > Once an SB330 preliminary application containing all required information is submitted to the City, the housing project is vested under the rules in effect at the time of submittal.
 - > The SB330 preliminary application was submitted to the City on February 15, 2023 .



Location Map

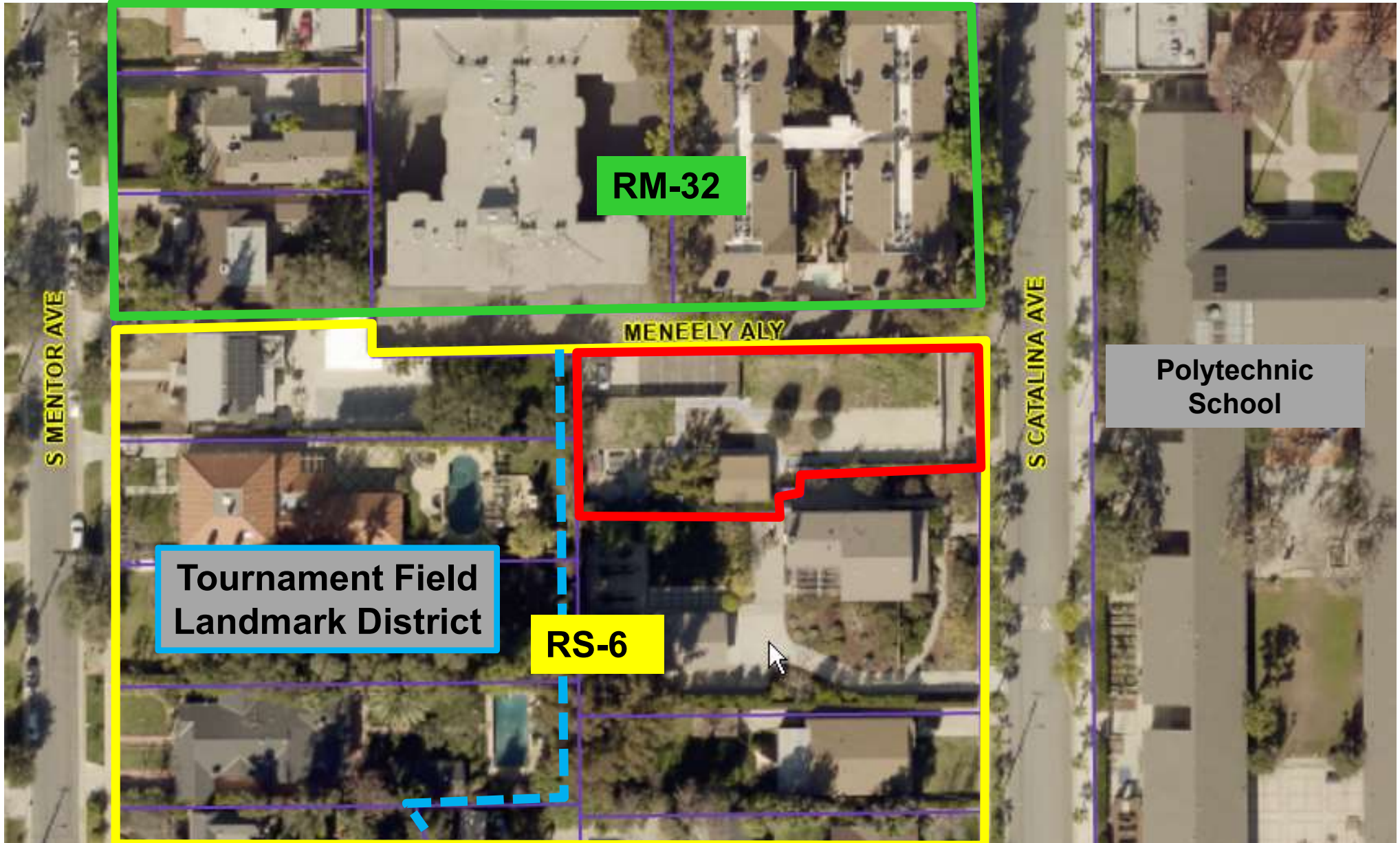
Planning & Community Development Department





ZONING MAP

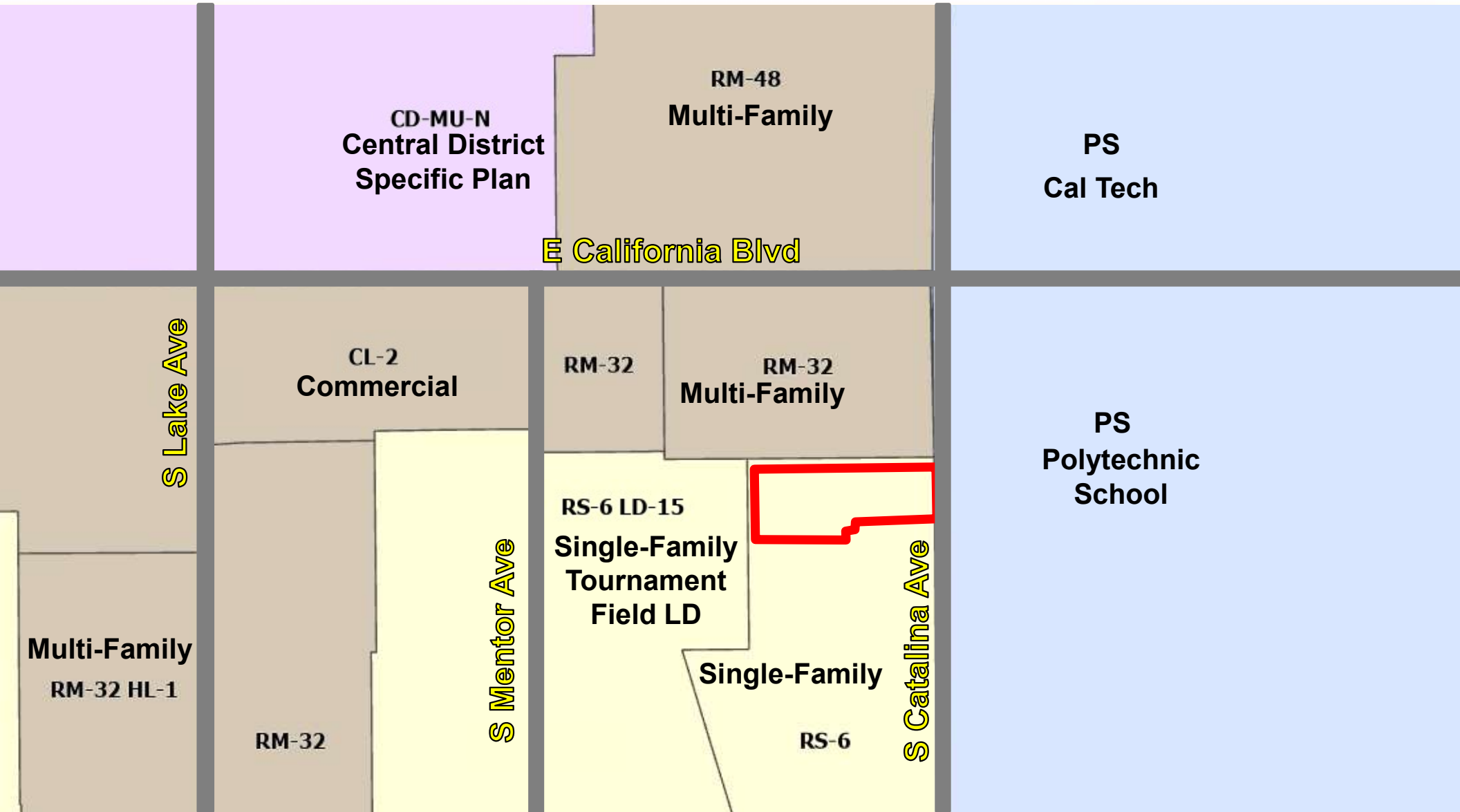
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Zoning Map

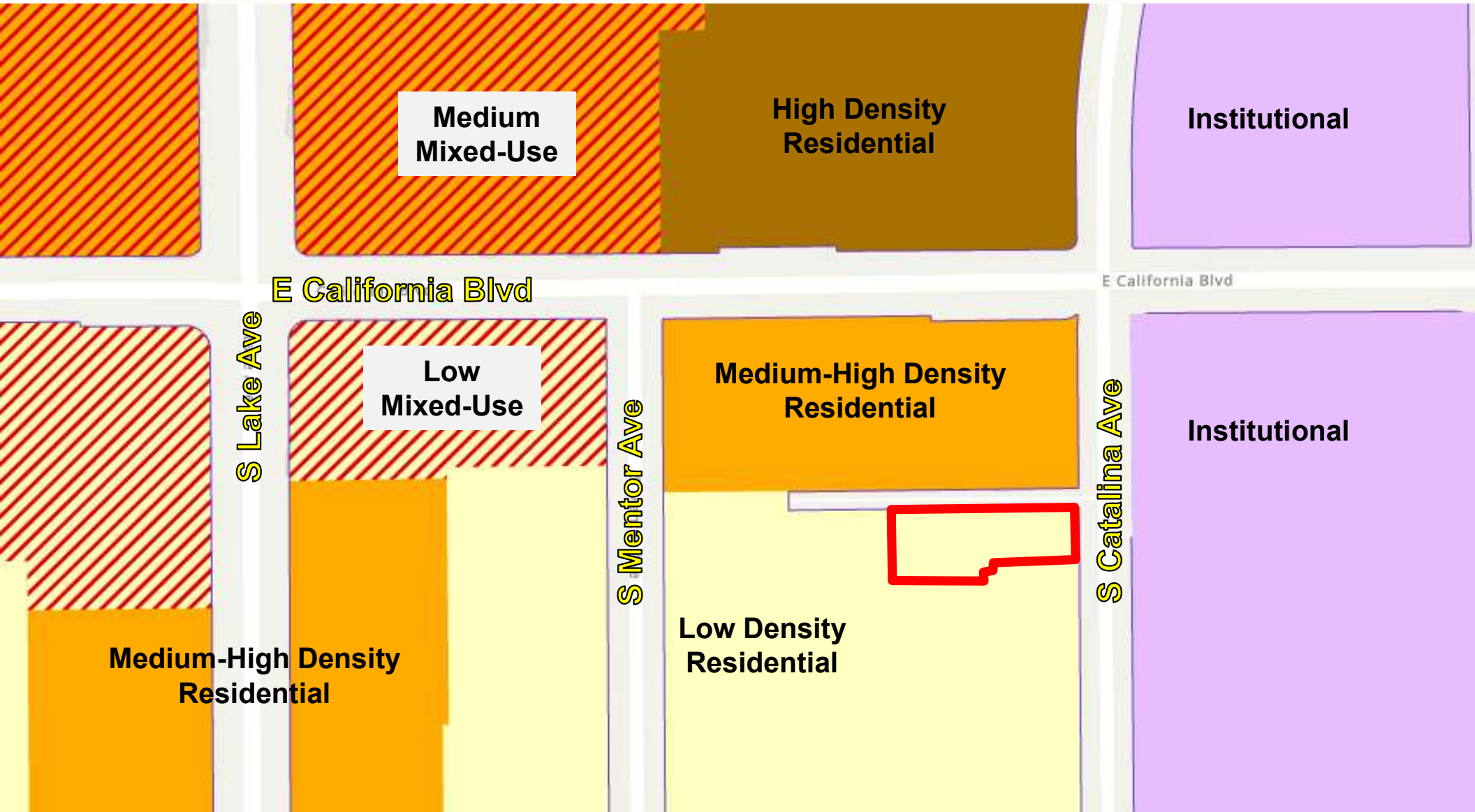
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General Plan Map

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HCD Letter

Planning & Community Development Department

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

GAVIN NEWSOM, Governor

**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



March 10, 2023

David Reyes, Assistant City Manager
City of Pasadena
100 North Garfield Avenue, Suite 228
Pasadena, CA 91101

Dear David Reyes:

RE: City of Pasadena's 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting Pasadena's (City) housing element adopted July 18, 2022 and received for review on January 11, 2023, including modifications authorized by Resolution Number 9935. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Pasadena Affordable Housing Coalition, Josh Albrekston and Abundant Housing LA and YIMBY Law pursuant to Government Code section 65585, subdivision (c).

HCD is pleased to find the adopted housing element, including modifications, in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code). The adopted element addresses the statutory requirements described in HCD's October 14, 2022 review.



HCD Letter

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March 10, 2023

David Reyes, Assistant City Manager
City of Pasadena
100 North Garfield Avenue, Suite 228
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Additionally, the City must continue timely and effective implementation of all programs including but not limited to the following:

- Program 2 (Northwest Pasadena)
- Program 6 (Housing Sites)
- Program 7 (Mixed Use/TOD Strategy)
- Program 9 (Removal of Constraints)
- Program 10 (Regulatory Incentives)
- Program 11 (Alternative Housing Opportunities)
- Program 12 (Financial Assistance)
- Program 20 (Fair Housing)
- Program 21 (Education and Monitoring)
- Program 23 (Zoning Code Updates)



HCD Letter

David Reyes, Assistant City Manager

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The City must monitor and report on the results of these and other programs through the annual progress report, required pursuant to Government Code section 65400. Please be aware, Government Code section 65585, subdivision (i) grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB1) Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City now meets housing element requirements for these and other funding sources.

HCD appreciates the hard work, cooperation, and responsiveness the City's housing element team provided throughout the housing element review and update. HCD wishes the City success in implementing its housing element and looks forward to following its progress through the General Plan annual progress reports pursuant to Government Code section 65400. If HCD can provide assistance in implementing the housing element, please contact Reid Miller, of our staff, at Reid.Miller@hcd.ca.gov.

Sincerely,

Paul McDougall
Senior Program Manager