

**STONER CARLSON LLP**  
**Attorneys at Law**

[www.carlsonnicholas.com](http://www.carlsonnicholas.com)

Scott W. Carlson, Partner  
Richard A. McDonald, Of Counsel

301 E. Colorado Blvd.  
Suite No. 320  
Pasadena, California 91101  
(626) 356-4801

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CITY OF PASADENA  
Scott@stonercarlson.com  
RMcDonald@stonercarlson.com

June 7, 2024

Mayor Victor M. Gordo  
Vice-Mayor Steve Madison &  
Honorable Councilmembers Hampton, Jones, Lyon, Masuda, Rivas, and Williams  
c/o City Clerk  
City of Pasadena  
100 N. Garfield Avenue, 2d Floor  
Pasadena, CA 91101

Re: Agenda Item #22: 615 S. Catalina Avenue, Pasadena

Dear Mayor Gordo, Vice-Mayor Madison, and Honorable Councilmembers:

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.

As stated in the staff report and presentation, there are two issues on appeal: (1) "Design Evolution", i.e., the applicant's response to comments from staff and the Design Commission during Preliminary Consultation process; and (2) compliance with the Zoning Code.<sup>1</sup>

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

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1. The third alleged issue regarding fees is moot. They have been paid.

6/10/2024  
Item 22

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 Code § 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).<sup>2</sup>
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. All the comments should have been completed within 60 days by August 15, 2023, but the memo was not sent until to March 14, 2024, i.e. nine months later.
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 could expire. As the March 19, 2024 letter from the State Housing and Community Development Department (“HCD”) to the City of San Jose (attached at

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2. The SB 330 Application was filed pursuant to the HAA, which in detail provides:
    - (2)(A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity ...
      - (i) Within 30 days of the date that the application for the housing development project is determined to be complete . . . .
    - (B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

Cal. Gov’t Code § 65589.5(j)(2). Further, under the HAA, an applicant’s SB 330 application is deemed complete upon submission. This “deemed complete” triggers the “freeze date” for applicable development standards, criteria, or conditions that can be applied to a project. Cal. Gov’t Code § 65589.5(j)(1). Last, the term “preliminary” is of no import as it simply refers to the start of the application process.

page 5 of Exhibit H to this letter) makes clear, a city violates the Permit Streamlining Act (“PSA”), “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.” Here, the City’s actions simply barred it rather than try to have the effect of barring it, which is an even clearer violation of the PSA and the HAA.

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 the application 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 regarding 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 9, 2024, Appellant filed its Notice of Appeal for the April 3, 2024 deemed incomplete letter.
10. 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 PSA.

*First*, Government Code § 65943(c), part of the PSA, states that:

A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both. ***There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal.*** The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, ***if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.***

Under California law, statutes are construed according to the plain meaning of their express language. If, however, that language is reasonably susceptible to two different interpretations, courts will look to the legislative intent.

Regarding time deadlines, if a court determines that a city council's failure to comply with a particular procedural requirement does not invalidate the resulting decision, the procedural requirement is considered "directory." *See, e.g., City and Cty. of San Francisco v. Cooper*, 13 Cal. 3d 898, 931 (1975) (wage resolution valid though enacted prior to date specified in city charter); *Castorena v. City of Los Angeles*, 34 Cal. App. 3d 901, 908 (1973) (reapportionment ordinance valid though enacted subsequent to charter designated deadline).

Alternatively, if the failure to comply with a procedural requirement does invalidate the decision, the requirement is designated "mandatory." *See, e.g., Pulcifer v. Cty. of Alameda*, 29 Cal. 2d 258, 262–263 (1946) (ordinance increasing compensation of elected official invalid because not enacted at least six months prior to election as provided by city charter).

In this case, the plain meaning of this statute is to establish a 60-day deadline for the final written determination on the appeal and further to impose direct consequences if that deadline is missed; namely, the application is deemed complete. The statutory language "[t]here shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal" and "if the final written determination on the appeal is not made within that 60-day period" create a 60-day window of time within which the City was to act. If it failed to do so, the application is deemed complete. Under California law, therefore, the deadline is mandatory, as opposed to directory, which is consistent with the legislative intent of the PSA:

The Legislature finds and declares that ***there is a statewide need to ensure clear understanding of the specific requirements*** which must be met in



connection with the approval of development projects and to expedite decisions on such projects. Consequently, the provisions of this chapter shall be applicable to all public agencies, including charter cities.

Cal. Gov't Code § 65921. Additional provisions of the PSA prohibit a city from requiring a waiver of the time limits imposed under the PSA and impose strict 30-day deadlines for the review of submitted applications and materials. For example, under Government Code § 65943(a), if a city fails to notify an applicant that its application is not complete within 30 days, then it is deemed complete as a matter of law. All these sections show that the purpose of the PSA is to expedite local decisions on the initial applications so that development projects can be processed expeditiously. That Government Code § 65943(c) imposes a similar deadline for deciding an appeal is consistent with that legislative intent.

In this case, the last day for the City to make its “final written determination on the appeal” filed April 9, 2024 was 60 calendar days later, that is, June 8, 2024. Nothing extended that mandatory deadline, just as nothing extends the 30-day deadline under Government Code § 65943(a). Having thus missed that deadline, the application is now deemed complete as a matter of law<sup>3</sup>

**Second**, the City violated the HAA by rejecting Appellant’s July 13, 2023 CDR application and, instead, insisting that Appellant file applications for preliminary plan review and preliminary consultation. The HAA preempts any inconsistent local policies and procedures that are used to delay and deny housing development projects. *See, e.g., AIDS Healthcare Found. 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 not to do so and then took over nine months to issue its PPR memo.

Simply put, the City is not allowed to request unlawful information, then deem an application incomplete repeatedly to deprive an applicant of their rights under the HAA. When state law expressly prohibits municipalities from enacting local regulations or from varying from the state law provisions, then there is express preemption. *Fiscal v. City and Cty. of San Francisco*, 158 Cal. App. 4th 895, 912 (2008); *City of Santa Cruz v. Waterhouse*, 127 Cal. App. 4th 1483, 1490 (2005). Further, a local ordinance conflicts with general laws of the state if it “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” *O’Connell v. City of Stockton*, 41 Cal. 4th 1061, 1067 (2007) (*citing Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893, 897 (1993)). A local ordinance “duplicates” state law when it is “co-extensive” with state law. *Id.* at 1068. A local ordinance “contradicts” state law when it is inimical to or cannot be reconciled with state law. *Id.* A local ordinance enters a field fully occupied by state law in either of two situations—when the

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3. Appellant did not find any case law holding that California Code of Civil Procedure §12 applies to a mandatory deadline under the PSA.

Legislature “expressly manifests” its intent to occupy the legal area or when the Legislature “impliedly” occupies the field. *Id.* Here, state law preempts any such local procedures to circumvent the HAA mandates.

Further, as the March 19, 2024 letter from HCD to the City of San Jose (attached as part of Exhibit H to this letter) makes clear, a city violates the PSA, “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.” Here, the City’s actions simply barred it rather than try to have the effect of barring it. That it chose to reject the project applications to divest Appellant of the rights secured with its SB330 Preliminary Application is an intentional, and unlawful violation of the HAA and the PSA.

*Third*, as stated in 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....

Cal. Gov’t Code § 65589.5(d) (*italics added*).

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 programs, 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 the 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(c)(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 Petitions 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, subds. (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.

Last, the Staff reports cites the *New Commune DTLA, LLC v. City of Redondo Beach* action to support its position. That case is on appeal, did not involve a Builder's Remedy or even an SB330 application. To the contrary, it was a challenge to the City's Housing Element under the Housing Element Law that held a local ballot initiative was preempted under State Law as we argue above, and that the City had received HCD's conditional approval of its Housing Element before the voter initiative was adopted. It thus has nothing to do with this case, nor is even remotely applicable.

**Fourth**, 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.

Moreover, the City’s deemed incomplete letters do not satisfy the HAA requirement for such notice. Under California law, filing the applications for the Project triggered two different 30-day deadlines pursuant to two different statutes, *i.e.*, the HAA and the Permit Streamlining Act (the “PSA”). The requirements imposed by the 30-day deadline in the PSA are procedural, while those imposed by the deadline in the HAA are substantive.

Specifically, under the HAA, Appellant’s Preliminary Application was deemed complete upon filing on February 13, 2023. Cal. Gov’t Code § 65941.1. Under the HAA, the City had thirty days from that date to notify Appellant of any inconsistencies with “an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.” Cal. Gov’t Code § 65589.5(j)(2)(A). It never did so, and, therefore, the Project was deemed consistent with all these criteria as a matter of law under the HAA.<sup>4</sup>

Under the PSA, however, the City had 30 days from the July 13, 2023 filing to provide Appellant with an exhaustive list of any items that were listed on the submittal checklist but not filed thus rendering the applications incomplete. Cal. Gov’t Code § 65943(a). As mentioned above, it rejected that application and only accepted the later PPR and PC ones. The deemed incomplete letters for those applications were then sent under this provision, not the HAA. However, as the PSA expressly states: “The provisions of subdivision (a) shall *not* be construed as requiring an applicant to submit with his or her initial application the entirety of the information which a public agency may require in order to take final action on the application. Prior to accepting an application, each public agency shall inform the applicant of any information included in the list prepared pursuant to Section 65940 which will subsequently be required from the applicant in order to complete final action on the application.” Cal. Gov’t Code § 65944(b) (emphasis added).

Nothing in the City’s checklist requires submission of applications for a General Plan Amendment and Zoning Amendment, nor did the City have the right to make any such demands

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<sup>4</sup> Staff’s analysis on this code section is simply wrong. It ignores the plain meaning of the express language of the statute and mixes up the HAA’s requirement to notify of inconsistencies with the PSA’s requirement of consistency.

given that the Project already was deemed consistent with the plans and code as a matter of law.<sup>5</sup> As mentioned above, the City's failure to notify Appellant of any inconsistency 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 later rely on any such alleged inconsistency to deem the application incomplete under the PSA.

*Fifth*, 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)).<sup>6</sup>

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

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5. The August 24, 2023 deemed incomplete letter is replete with items not on the City's checklist, all of which violated the PSA.

6. Staff's reliance on page 846 of the *CARLA v. City of San Mateo* (2021) 68 Cal. App. 5th 820 in Footnote 2 of its Report is in error as that case held the City's subjective height and other development standards violated the HAA and that the City could only impose conditions of approval after approving the project to mitigate public health issues so long as those conditions did not reduce density.

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.

**Sixth**, 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 April 3, 2024 deemed incomplete letter. As noted above, 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 addressed.

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.

**Seventh**, 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 in order 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.

**Eighth**, the City has further 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.

As the Court explained in *California Housing Defense Fund v City of La Canada Flintridge* (23STCP02614), in its ruling in favor of the property owner, the entire point of the Builder's Remedy is that developments are exempt from these standards, so requiring compliance with them was the equivalent of denying a builder's remedy project. The court then ruled that the City denied the project under the HAA and rejected the notion that CEQA was required before any such disapproval. For your convenience, pages 11- 14 from that decision are attached as Exhibit "I" to this letter.

*Nineth and finally*, the HCD Letter involving the City of Compton attached to the Staff Report is not the law, nor does it support the Staff's position. The HCD Letter refers to a preliminary application and says nothing about finding a project application incomplete because of alleged inconsistency with local plans and zoning. Inconsistency with local zoning standards is not a basis for deeming an application incomplete under the PSA and the HAA. *See* Gov't Code §§ 65941.1(d)(1), 65943(a).

Further, while the letter was only recently released and not available from August 2023 to February 2024 (thus demonstrating that the reference to it is nothing more than ad-hoc post rationalization), it also clearly states that "***if insisting on the GPA or Zoning Change delays project approval or increases the cost of the approval process, a violation of the HAA would result.***" The approval of the Project here has been delayed for over a year because of the City's insistence on the amendments and changes, which constitutes a violation of the HAA as indicated in the letter.

And the letter states the City of Compton was requesting the material ***along with the preliminary application*** in its letter to the applicant. To that extent, it means that the city complied with Government Code § 65589.5(j)(2) by notifying that applicant of inconsistencies and the need "to remedy the inconsistencies between the Project and applicable regulatory documents that will result when the Project is approved" to avoid a legal non-conformity.

Here, however, the City did not comply with Government Code § 65589.5(j)(2) as explained above, and thus lost that right. Beginning at page 5 of Exhibit H is the March 19, 2024 HCD letter to the City of San Jose that is on point in finding a violation of the HAA by requiring general plan amendment and other applications for Builder's Remedy projects, as well as reiterating that the denial of the right to proceed with a Builder's Remedy project is a violation of the HAA and the PSA.

In sum, based upon the foregoing, Appellant contends the City has violated the HAA and PSA. Appellant, therefore, respectfully requests that the deemed incomplete determination be reversed, and Appellant allowed to proceed with the Project accordingly.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Richard A. McDonald". The signature is stylized with a large initial "R" and a checkmark-like flourish at the end.

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 Meneely 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 DAYTIME VIEW**



**PEDESTRIAN PERSPECTIVE NIGHT VIEW**

**PERSPECTIVE VIEWS**

MATERIAL SAMPLE BOARD



NA APARTMENTS

NORTH ELEVATION

Publication Date: 01/11/24

Drawing No.:





MATERIAL SAMPLE BOARD



NA APARTMENTS

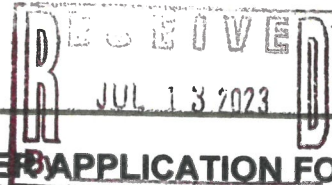
SOUTH ELEVATION

Plotch Date: 01/11/20  
 Drawing No: 01

# **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

PLANNING DEPARTMENT #  
PLANNING DIVISION

175 NORTH GARFIELD AVENUE  
PASADENA, CA 91101

T 626-744-4009  
F 626-744-4785

# **EXHIBIT C**



**From:** [victor@socal-realty.com](mailto: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](mailto:victor@socal-realty.com)*

**From:** Cisneros, Stephanie <[scisneros@cityofpasadena.net](mailto: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](mailto: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

Victor Tang  
615 S. Catalina Ave (DHP2023-00224)  
Page 2 of 2

- 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](mailto: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](mailto: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,

A handwritten signature in blue ink, appearing to read "Rathar Duong".

Rathar Duong  
Senior Planner  
Design and Historic Preservation Section  
Tel 626-744-7346  
Email: [rduong@cityofpasadena.net](mailto: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](mailto: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](mailto: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](http://www.hcd.ca.gov)

**MEMORANDUM**

**DATE:** March 16, 2023

**TO:** Planning Directors and Interested Parties

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

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

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

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

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

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

<sup>1</sup> Gov. Code, § 65585, subd. (b)(1)

<sup>2</sup> Gov. Code, § 65585, subds. (b)(3), (d)

<sup>3</sup> Gov. Code, § 65585, subd. (e)

<sup>4</sup> Gov. Code, § 65585, subd. (f)(1)

<sup>5</sup> Gov. Code, § 65585, subd. (f)(2)

<sup>6</sup> Gov. Code, § 65585, subd. (g)

<sup>7</sup> Gov. Code, § 65585, subd. (h)



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

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

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

For more detailed information about this process, please visit HCD’s [Housing Elements webpage](#) and [Housing Elements Building Blocks](#).

# **EXHIBIT 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](http://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 6<sup>th</sup> Cycle Housing Element:

- July 5, 2022 – The City adopted its 6<sup>th</sup> 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 6<sup>th</sup> Cycle Housing Element to be in substantial compliance.<sup>1</sup>
- 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.<sup>2</sup> 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 households<sup>3</sup> 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).

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

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

<sup>3</sup> “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,<sup>4</sup> 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 period<sup>5</sup>, 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

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<sup>4</sup> "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)).

<sup>5</sup> 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](mailto:gabriel.pena-lora@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "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  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://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)<sup>1</sup> 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)<sup>2</sup> 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 6<sup>th</sup> Cycle housing element:

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

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<sup>1</sup> Gov. Code, § 65589.5.

<sup>2</sup> Gov. Code, § 65941.1.

- **December 15, 2022.** HCD found that Version 1 required revisions to substantially comply with Housing Element Law.<sup>3</sup>
- **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.

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<sup>3</sup> Gov. Code, § 65580 et seq.



A local jurisdiction cannot self-certify or determine that its own housing element substantially complies with Housing Element Law.<sup>4</sup> 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.<sup>5</sup> Ultimately, HCD has a statutory mandate to determine whether a housing element substantially complies with Housing Element Law.<sup>6</sup>

### **Housing Accountability Act (HAA)**

Under the HAA, a jurisdiction shall not disapprove a qualifying affordable housing development<sup>7</sup> 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,<sup>8</sup> while the City's housing element is out of substantial compliance with Housing Element Law.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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<sup>4</sup> 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.

<sup>5</sup> Gov. Code, § 65585, subd. (f)(2).

<sup>6</sup> Gov. Code, § 65585, subds. (i)-(j).

<sup>7</sup> Gov. Code, § 65589.5, subd. (h)(3).

<sup>8</sup> Gov. Code, § 65589.5, subd. (h)(5).

<sup>9</sup> Gov. Code, § 65589.5, subd. (d)(5).

<sup>10</sup> Gov. Code, § 65589.5, subd. (o)(1).

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

<sup>12</sup> 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 projects<sup>13</sup> 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.<sup>14</sup> 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:

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<sup>13</sup> Gov. Code, § 65589.5, subd. (h)(6).

<sup>14</sup> 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.<sup>15</sup> 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](mailto: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

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<sup>15</sup> CCR, § 6604.1, subds. (b)(4), (c), (d)(2).

Christopher Burton, Director, Planning Division  
Page 6

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**

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



October 5, 2022

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

Dear Dave Rand:

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

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

**Background**

A housing development project with housing for very low-, low-, or moderate-income households<sup>1</sup> 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).

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<sup>1</sup> "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. (d)(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](mailto: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

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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 households<sup>1</sup> 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

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<sup>1</sup> "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](mailto: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  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



June 8, 2023

Mark R. Alexander, City Manager  
City of La Cañada Flintridge  
One Civic Center Drive  
La Cañada Flintridge, CA 91011

Dear Mark R. Alexander:

**RE: City of La Cañada Flintridge Denial of 600 Foothill Boulevard Housing Project  
– Notice of Violation**

The California Department of Housing and Community Development (HCD) writes to notify the City of La Cañada Flintridge (City), and its City Council, that it is in violation of State Housing Element Law and the Housing Accountability Act (HAA) (Gov. Code, § 65589.5). This violation occurred when the City, despite technical assistance from HCD, denied an appeal related to the application of the housing project at 600 Foothill Boulevard (Project). The City did so by adopting Resolution 23-14, which purports to uphold the Planning Division's incompleteness determination for the Project application, issued on March 1, 2023.

The basis for the City's denial includes, among other findings:

1. that Government Code section 65589.5, subdivision (d)(5), colloquially referred to as the Builder's Remedy, does not apply and is not available for the Project; and
2. that the Project did not "vest" as a Builder's Remedy project as alleged in the Project's preliminary application because the City's housing element, adopted on October 4, 2022 (October 4, 2022, Adopted Housing Element), was in compliance with State Housing Element Law (Gov. Code, § 65580 et seq.).

Based on HCD's review of pertinent information in the City's own staff report, these findings are flawed. The City cannot "backdate" its housing element compliance date to an earlier date so as to avoid approving a Builder's Remedy application. In short, the October 4, 2022 Adopted Housing Element did not substantially comply with State Housing Element Law, regardless of any declaration by the City. Therefore, the Builder's Remedy applies, and the City's denial of the Project application based on inconsistency with zoning and land use designation is a violation of the HAA.

HCD further reminds the City that, as of the date of this letter, the City remains out of compliance with Housing Element Law unless and until it completes statutorily required rezoning.

## **Background**

The Project is proposed as an 80-unit mixed-use project where 20 percent of the units (16 units) will be affordable to lower-income households. The residential portion equates to approximately 89 percent of the Project; therefore, the Project qualifies as a “housing development project” under the HAA (Gov. Code, § 65589.5, subd. (h)(2)(B)). The base density proposed for this Project is approximately 40.5 units per acre before the application of density bonus under State Density Bonus Law (Gov. Code, §§ 65915-65918). HCD understands the timeline for the Project as follows:

- On November 11, 2022, pursuant to Government Code section 65941.1, the Project applicant submitted a preliminary application that was vested on November 14, 2023, after payment of application fees.
- A full application was submitted to the City for the Project on January 13, 2023, and fees were paid on the invoice on January 31, 2023. By submitting this full application within the 180-day period prescribed by Government Code section 65941.1, subdivision (d)(1), the applicant established November 14, 2023 (the date it submitted the preliminary application) as the vesting date of the application.
- On February 10, 2023, the City’s planning division issued the first incompleteness letter on this application, which cited information required for the site plan, floor plan, elevation, landscape plans, grading plans, and the density bonus application, among other things. The letter did not comment on density or development standards relating to the Mixed-Use 2 designation.
- On March 1, 2023, the City’s planning division issued a second incompleteness letter that further found that the Builder’s Remedy would not apply to the Project, that the Project was therefore inconsistent with the Mixed-Use 2 designation, and that the applicant must submit revised plans and materials based on a density of 12-15 units per acre.
- On March 9, 2023, the applicant appealed this incompleteness letter to the City Council.
- On March 22, 2023, HCD provided a Letter of Technical Assistance to the City to help with decision-making related to this appeal.
- On May 1, 2023, the City Council heard and denied the appeal by adopting Resolution 23-14. The Resolution found the following:
  - the Builder’s Remedy under the HAA did not apply and is not available for the Project; and
  - the Project did not “vest” as a Builder’s Remedy project as alleged in the Project’s SB 330 Preliminary Application (submitted November 14, 2022) because the City’s October 4, 2022 Adopted Housing Element was in substantial compliance with State Housing Element Law, regardless of HCD’s finding to the contrary.

## Housing Element Compliance

The City's determination that the October 4, 2022 Adopted Housing Element was in substantial compliance with State Housing Element Law is incorrect and unsupported by law. Pursuant to Government Code section 65585, a local jurisdiction must first submit a draft housing element to HCD and receive HCD's findings before formally adopting a revised housing element. If HCD finds the draft element is not substantially compliant, the local jurisdiction must revise the draft to address any findings by HCD (Gov. Code, § 65585, subd. (f)(1)) or adopt the housing element without changes and include written findings explaining why the local jurisdiction believes that the draft substantially complies (Gov. Code, § 65585, subd. (f)(2)). Promptly following adoption, the local jurisdiction must submit the adopted housing element to HCD (Gov. Code, § 65585, subd. (g)) and receive findings on the adopted element from HCD (Gov. Code, § 65585, subd. (h)). The following represents the record of housing element submittals to HCD and HCD's formal responses.

- October 6, 2021 – The City submitted the initial draft housing element to HCD.
- October 15, 2021 – Due date of 6<sup>th</sup> 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.<sup>1</sup> 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.<sup>2</sup> Moreover, by revising its October 4, 2022 Adopted Housing Element (in response to HCD's findings made on December 6, 2022), the City directly contradicted its declaration that that Adopted Housing Element substantially complied with State Housing Element Law. In short, the October 4, 2022 Adopted Housing Element did not substantially comply with State Housing Element Law, regardless of any declaration by the City.

### **Housing Accountability Act (HAA)**

Resolution 23-14 improperly blocks the Project applicant from utilizing protections provided in the HAA. Pursuant to Government Code section 65589.5, subdivision (d), a jurisdiction shall not disapprove a housing development project for very low-, low-, or moderate-income households<sup>3</sup> 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.

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<sup>1</sup> 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>.

<sup>2</sup> Ibid.

<sup>3</sup> "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.<sup>4</sup> 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)).

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<sup>4</sup> 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](mailto:melinda.coy@hcd.ca.gov).

Sincerely,



David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability



Melinda Coy  
Proactive Housing Accountability Chief

cc: David Pai, Supervising Deputy Attorney General, California Department of Justice (via email)  
Susan Koleda, AICP, Community Development Director (via email)



# **EXHIBIT I**



The court's task "is therefore to determine whether the City 'proceeded in the manner required by law,' with a decision supported by the findings, and findings supported by the evidence; if not, the City abused its discretion." (*California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 837.) The City "bear[s] the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5." (§ 65589.6.)

As noted, based on the circumstances, the court reaches the same result in its analysis even if the petitions, or parts thereof, are governed by Code of Civil Procedure section 1085. (See e.g., § 65587, subd. (d)(2) [action to compel compliance with Housing Element Law "shall" be brought pursuant to Code of Civil Procedure section 1085].) The HAA claims raise legal questions of statutory construction and concerns about Respondents' substantial compliance with the Housing Element Law. The court decides such issues independently, regardless of whether Code of Civil Procedure section 1094.5 or 1085 governs. (See e.g. *Martinez, supra*, 90 Cal.App.5th at 237.)

The City "Disapproved" the Builder's Remedy Project

600 Foothill contends the City "disapproved" the Project, as the term is defined in the HAA, because the City "determined that the Project could not proceed because it believed the Builder's Remedy was inapplicable." (600 Foothill Opening Brief 7:11-12.) CHDF and Intervenors make the same argument. (CHDF Opening Brief 21:25-28; Intervenors' Opening Brief 15:27-16:3.)

The Builder's Remedy, at section 65589.5, subdivision (d)(5) provides in pertinent part:

(d) A local agency **shall not disapprove** a housing development project . . . for 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 the following:

....

(5) The housing development project . . . is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, **and** the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. (Emphasis added.)

Thus, to prove their claim under the HAA and to proceed with the Project as a Builder's Remedy, Petitioners must show the City "disapprove[d] a housing development project."

(§ 65589.5, subd. (d).)<sup>8</sup> Section 65589.5, subdivision (h)(6) provides to “disapprove the housing development project’ **includes** any instance in which a local agency does any of the following: (A) Votes on a proposed housing development project application and the application is disapproved, **including any required land use approvals or entitlements necessary for the issuance of a building permit . . .**” (Emphasis added.)

Here, on May 1, 2023, the City Council denied Petitioner’s appeal of the Second Incompleteness Determination stating:

[T]he City Council of the City of La Cañada Flintridge hereby denies the appeal and upholds the Planning Division’s March 1, 2023, incompleteness determination for the mixed use project at 600 Foothill Boulevard, on the basis that the ‘builder’s remedy’ under the Housing Accountability Act does not apply and is not available for the project, and that the project did not ‘vest’ as a ‘builder’s remedy’ project as alleged in the project’s SB 330 Preliminary Application submission dated November 14, 2022, because the City’s Housing Element was, as of October 4, 2022, in substantial compliance with the Housing Element law. (AR 7167.)

Notably, Director Koleda informed the City Council, prior to its vote on the appeal, that “if the appeal is denied, the project will be processed accordingly as a standard, nonbuilder’s remedy project.” (AR 7103.) Thus, the City Council “voted” on a proposed housing development project application and determined the Project could not proceed as a Builder’s Remedy project—that is, the Project would be subject to the City’s discretionary approvals.

The Legislature has expressed its intent that the HAA “be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” (§ 65589.5, subd. (a)(2)(L); *California Renters Legal Advocacy & Education Fund. v. City of San Mateo*, *supra*, 68 Cal.App.5th at 854.) In addition, “[a]s a basic principle of statutory construction, ‘include’ is generally used as a word of enlargement and not of limitation. . . . Thus, where the word ‘include’ is used to refer to specified items, it may be expanded to cover other items.” (*Rea v. Blue Shield of California* (2014) 226 Cal.App.4th 1209, 1227.) Applying these canons of statutory construction, the court finds section 65589.5, subdivision (h)(6) should be given a broad construction. Because the City Council made clear any required land use approvals or entitlements would not be issued for the Project, **as a Builder’s Remedy project**, the City Council’s May 1, 2023 decision falls within the HAA’s broad definition of “disapprove.”

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<sup>8</sup> It is undisputed the Project constitutes a “housing development project . . . for very low, low-, or moderate-income households” within the meaning of the HAA. HCD advised the City on June 8, 2023: “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)).” (AR 7171.) Respondents develop no argument to the contrary.

Respondents contend:

600 Foothill defined the “approvals” and “entitlements” it sought in its application – namely, a Conditional Use Permit (USE-2023-0016), Tentative Tract Map 83375 (LAND-2023-0001), and Tree Removal Permit (DEV-2023-0003). (AR 5285.) There was no vote on May 1, 2023, on any of these “required land use approvals” or “entitlements” and, thus, . . . the “vote” needed under the HAA has not occurred. (Opposition to 600 Foothill 19:22-26 [emphasis in original].)

Respondents’ narrow interpretation of the statute is unpersuasive. (See § 65589.5, subd. (a)(2)(L).) While the City Council may not have voted to deny the conditional use permit, tentative tract map, and tree removal permit, the City Council voted on May 1, 2023 and determined the Project could not proceed as the project proposed—a Builder’s Remedy project. Because the Project was proposed as a Builder’s Remedy, the City Council’s May 1, 2023 vote on the project application was a “disapproval” within the meaning of the HAA.

Respondents also contend “[t]he City cannot as a matter of law approve or disapprove a development project, including a project under the Builder’s Remedy, prior to conducting environmental review under CEQA . . . .”<sup>9</sup> (Opposition to 600 Foothill 16:15-16.) Respondents argue the HAA does not authorize the court “to order the City to accommodate CEQA review after a possible finding by the Court of a violation of the HAA.” (Opposition to 600 Foothill 16:25-26 [emphasis in original].)

Again, Respondents’ arguments are unpersuasive—a city can disapprove a project without having undertaken CEQA review. Nothing requires a city to undertake CEQA review *before deciding to disapprove a project*. CEQA does not apply to “[p]rojects which a public agency rejects or disapproves.” (Pub. Res. Code, § 21080, subd. (b)(5).) “[I]f an agency at any time decides not to proceed with a project, CEQA is inapplicable from that time forward.” (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 850.) Respondents do not cite any language from the HAA that supports their position.<sup>10</sup>

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<sup>9</sup> CEQA refers to the California Environmental Quality Act at Public Resources Code section 21000, *et seq.*

<sup>10</sup> During argument, the City emphasized its reliance on section 65589.5, subdivision (m)(1) its language concerning finality—an action cannot be brought to enforce the HAA’s provisions until there is a “final action on a housing development project” and the City did not take final action on the Project—it merely determined the Project could not be built as a Builder’s Remedy project and would be subject to discretionary approvals. As noted by 600 Foothill, an action to enforce the HAA may be initiated after a municipality imposes conditions upon, disapproves or takes final action on a housing project. The City made clear in its May 1, 2023 Decision that the Project could not proceed as proposed as a Builder’s Remedy project.

While CEQA review is preserved by the HAA<sup>11</sup> nothing suggests a disapproval under the HAA can occur only after CEQA review or that a court lacks authority to issue a writ to *compel compliance with the HAA*, even if a Builder's Remedy project is subject to CEQA compliance. Notably, a suit to enforce the HAA must be filed "no later than 90 days from" project disapproval. (§ 65589.5, subd. (m)(1).) Further, the HAA must "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (§ 65589.5, subd. (a)(2)(L).) Respondents' interpretation of the HAA, under which a disapproval cannot occur prior to CEQA review, would hinder the approval and provision of housing. Accordingly, an agency may "disapprove" a project under the HAA before conducting any environmental review under CEQA, and a petitioner's claim to enforce the HAA may be ripe for consideration even if CEQA review has not been performed or completed.

Respondents' reliance on *Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1262 [*Schellinger*] is misplaced. *Schellinger* involved a request to **compel** the certification of an environmental impact report. *Schellinger* did not hold that all claims under the HAA or other housing laws are unripe or cannot be filed until CEQA review is completed. The case did not address CEQA in the context of a claim to enforce the Builder's Remedy provision in the HAA. The case also did not suggest a trial court lacks discretion to structure a writ issued pursuant to the HAA in a manner that allows for CEQA review to be completed. "An opinion is not authority for propositions not considered." (*People v. Knoller* (2007) 41 Cal.4th 139, 154-55.)

The court acknowledges *Schellinger* advised the HAA "specifically pegs its applicability to the approval, denial or conditional approval of a 'housing development project' . . . which, as previously noted, can occur *only after the EIR is certified*. (CEQA Guidelines, § 15090(a).)" (*Schellinger, supra*, 179 Cal.App.4th at 1262.) Nonetheless, the court's statement must be interpreted in the context of the issues before that Court. Because the agency there had not disapproved the project at issue, the Court's reference to the "denial" of a housing development project was a dictum. In any event, as discussed, *Schellinger* did not decide the legal question presented here—whether the City "disapproved" a Project when it determined, through a vote of its City Council, the Builder's Remedy Project did not qualify for the Builder's Remedy under the HAA.<sup>12</sup>

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<sup>11</sup> See section 65589.5, subdivisions (e) and (o)(6).

<sup>12</sup> Respondents indicate the City took action to pay for CEQA review of the Project starting in September 2023. (Opposition to 600 Foothill 18:11-14 [citing Sheridan Decl. Exh. JJ].) By that time, however, the City Council had already determined the Project could not proceed as proposed pursuant to the Builder's Remedy. (AR 7167; see also AR 7176.) Respondents do not explain the purpose of CEQA review for a project the City Council has determined could not be approved consistent with the law. This evidence does not support Respondents' position the City Council's May 1, 2023 Decision did not constitute a "disapproval" under the HAA.