

December 17, 2024

VIA E-MAIL

Mr. Kyle Rathbone
Assistant Planner
City of Saratoga
13777 Fruitvale Avenue
Saratoga, CA 95070

Re: 14486 Oak Place (APN 397-22-005) Application No. CPX24-0011 – Response to Notice of Incomplete Application Dated October 10, 2024

Dear Mr. Rathbone:

We write on behalf of our client Deepak Chandani (“Applicant”), the applicant for a proposed housing development project consisting of four residential units that was assigned Application No. CPX24-0011 (the “Project”) on 14486 Oak Place with Assessor’s Parcel No. 397-22-005 (the “Project Site”) in the City of Saratoga (“City”). On October 10, 2024, the City responded to Applicant’s formal Project application (the “Application”) with a Notice of Incomplete Application (the “Incompleteness Letter”). Having reviewed the Incompleteness Letter, we write to express our concerns with the City’s processing of the Application, including its conflation of the Permit Streamlining Act (i.e., Gov. Code, §§ 65920 et seq.) (the “PSA”) completeness determination with the subsequent Housing Accountability Act (i.e., Gov. Code, § 65589.5) (the “HAA”) consistency determination.

1. The Permit Streamlining Act Completeness Determination

Through the adoption of the PSA, the Legislature found and declared that “there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects.” (Gov. Code, § 65921.) Accordingly, the PSA mandates transparency in the local review process by, for example, requiring publicly available planning entitlement application checklists and timely determination regarding the completeness of a development project application. Furthermore, the PSA removes gamesmanship from the completeness determination by prohibiting agencies from “moving the goalposts,” such as by limiting initial completeness determinations only “to those items actually required on the lead agency’s submittal requirement checklist,” and in subsequent determinations prohibiting “the applicant [from being required] to provide any new information that was not stated in the initial list of items that were not complete.” (*Id.*, § 65943, subd. (a); see *id.*, subd. (b) [in making a completeness determination, “the public agency is limited to determining whether the application as supplemented or amended includes the information required by the list”].)

Notwithstanding the above mandates, in the Incompleteness Letter, the City has requested items beyond “those items actually required on the [City’s] submittal requirement checklist.” (*Id.*, subd. (a).) This violates the PSA.

The items properly listed in the Incompleteness Letter are listed below, with the location that the missing information can be found with this resubmittal:

- Item B.8¹ – Updated Site Plan and Elevations showing the location of solar panels.
- Item B.12 – Updated Cross Sections showing the interior room heights.
- Items B.13, B.14, B.15, B.16, and B.17 – Updated Landscaping Plans and Landscape Architect letter dated, December 16, 2024, showing and responding to the requested information.

In addition, the Incompleteness Letter lists several items that were already provided as part of the Application. We appreciate the City’s review of the Application and understand that certain items may have been inadvertently overlooked, including:

- Items B.2, B.3, and B.4 – Please see previously submitted Arborist Report, inclusive of Site Plan therein, where this information is provided. Furthermore, Applicant has cooperatively included the tree protective fencing and tree numbers on the Tentative Parcel Map (pages 3 and 4) submitted herewith.
- Item B.5 – Please see Tentative Parcel Map submitted herewith, which carries over this information from the previously submitted Tentative Parcel Map. Please note there is no proposed gas for the Project and as such no such connection is shown on the plans.
- Item B.6 – Please see previously submitted Site Plan where fences are called out and the fence detail on 15/AO-12. This is carried over to the updated Site Plan submittal.
- Item B.7 – Garbage cans are to be stored in garages.
- Item B.9 – Please see previously submitted Site Plan notes on A101. This is carried over to the updated Site Plan submittal.

¹ The letter corresponds to the departments as listed in the Incompleteness Letter (e.g., B = Community Development Department, C = Engineering) and the number corresponds to the underlying comment (including in the underlying department memoranda).

- Item B.11 – Please see previously submitted Elevations. This is carried over to the updated Elevations submittal.
- Item F.3 – Ground ladder access is shown on the plans as described in this comment.

The City is not allowed to request the other listed items in the Incompleteness Letter (e.g., Items B.1,² B.10, C [Engineering Items], D [City Arborist Items], E [Public Works items]³ and F.1, F.2,⁴ F.4, F.5, F.6, F.7) *for purposes of deeming the Application complete* because such items are either not on the City's submittal requirement checklist, not timely raised, or do not raise incompleteness issues.

More specifically, for the Engineering Items, as the Application was submitted on September 13, 2024,⁵ and these Engineering Items are dated October 16, 2024, and were transmitted to Applicant's representatives on October 17, 2024, these Engineering Items were *not* made within the 30-day completeness determination period required under the PSA (Gov. Code, § 65943, subd. (a)) and therefore cannot be a basis to hold up the Project's completeness determination. As a matter of law, the Project is deemed complete regarding the Engineering Items. (See *id.*)

The City Arborist Items appear to determine the Project is consistent with applicable tree removal requirements, subject to compliance with specified conditions of approval.⁶ Accordingly, the City Arborist Items do not raise any incompleteness issues.

² City Senior Planner Christopher Riordan has communicated to Applicant's representatives that "neighbor review forms" are *not* needed for the builder's remedy Project.

³ The Public Works memorandum is titled "Public Works *Inconsistency* Letter, CPX24-0011." (Emphasis added.) Furthermore, all off-site improvements are already shown on the previously submitted (and re-submitted) Grading Plan. Also, Applicant notes that the driveways will share a single 24-foot driveway approach (and this change, which goes to consistency, will be made to the plan set once the City finds the Application complete).

⁴ While not listed on the City's submittal requirement checklist, Applicant has included the requested note on the Architectural Cover Sheet submitted herewith.

⁵ The Incompleteness Letter states that the City received the Application on September 15, 2024. Even using this date, the City did not raise the Engineering Items within the 30-day completeness determination period under the PSA and therefore these items cannot be the basis for finding the Project's application incomplete. (Gov. Code, § 65943, subd. (a).)

⁶ Applicant does not necessarily agree or disagree with any of the specified conditions of approval listed in the City Arborist Items.

As discussed below, the inconsistency issues should be raised during consistency review, which occurs after the City finds the Application complete. The Applicant will respond to inconsistency comments at the appropriate time.

2. The PSA Completeness Determination is Different than the HAA Consistency Review

The City acknowledges that the Project’s consistency review occurs at a different stage in the Application process. (See Incompleteness Letter, p. 1 [“[the City] will provide a complete list of such inconsistencies at the appropriate time pursuant to Government Code section 66589.5(j)(2)”].) Yet most of the items identified in the Incompleteness Letter (other than those identified above) raise consistency issues, which are outside the scope of the PSA completeness determination.

Including consistency comments in a PSA Completeness determination letter that are “improperly characterize[d] as incomplete items [] impermissibly raises the bar to achieving a complete application, in violation of the PSA.” (California Department of Housing and Community Development (“HCD”) Letter of Technical Assistance to City of Gilroy, dated July 23, 2024⁷; accord HCD Letter of Technical Assistance to City of Fillmore, dated August 24, 2022.)⁸ “To remedy this issue and avoid a violation of the PSA, the City must ensure that, in its next . . . application completeness review, its determination is focused solely on an assessment of whether the applicant has satisfied those items actually required on the lead agency’s submittal requirement checklist.”⁹ (HCD Letter of Technical Assistance to City of Gilroy, dated July 23, 2024.)

We ask the City to review the resubmittal materials submitted with this letter and find the Application complete.

3. Potential Consequences under the HAA

The HAA was enacted to address the State’s pervasive housing crisis by increasing the approval and development of new housing. (See Gov. Code, § 65589.5, subd. (a).) The HAA defines “disapprove [a] housing development project” to include instances in which the local agency has failed to act within specified PSA time limits as well as other statutory time limits.

⁷ Available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/gilroy-ta-hau856-072324.pdf>.

⁸ Available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/fillmore-attachments-TA-082422.pdf>.

⁹ “If the City wishes to conduct the PSA completeness review and HAA consistency review concurrently [], it must ensure that [it] differentiates between these separate components of the review process, and that the HAA consistency review does not become a barrier to achieving an otherwise complete application.” (HCD Letter of Technical Assistance to City of Fillmore, dated August 24, 2022.)

(See *id.*, subd. (h)(6)(B)–(C), emphasis added [“‘[d]isapprove the housing development project’ includes any instance in which a local agency does any of the following: [] (B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. [] (C) Fails to meet the time limits specified in Section 65913.3”].)¹⁰ Therefore, non-compliance with the PSA time limits, which were enacted to protect project applicants in being able to timely develop new housing without delay, also could violate the HAA. (Cf. *Orsi v. City Council* (1990) 219 Cal.App.3d 1576, 1584 [“[t]he time limitations set forth in the [PSA] create a mandatory duty on the part of the lead agency where, as here, the ‘thrust of the legislation was recognition that delay *can* constitute denial”]; Gov. Code, § 65589.5, subd. (a)(2)(L) [“[i]t is the policy of the state 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”].)

Assembly Bill (“AB”) 1893, effective January 1, 2025, makes express that a local agency’s delay at the PSA completeness determination stage violates the HAA. (See *id.*, subds. (h)(6)(F)(i)–(iii), as modified by AB 1893.) Beginning in January, the HAA will presume that an agency has violated the HAA if the agency persists in its incompleteness determination following two resubmittals by an applicant. (See *id.*, subd. (h)(6)(F)(iv), as modified by AB 1893 [“[i]f a local agency determines that an application is incomplete under Section 65943 after two resubmittals of the application by the applicant, the local agency shall bear the burden of establishing that the determination is not an effective disapproval of a housing development project under [the HAA]”].)

The consequences to the City are significant if any processing delays are determined to be a disapproval of a housing development project under the HAA. Among other things, Applicant would be entitled to attorneys’ fees were it to prevail in litigation against the City brought under the HAA and the City could be subject to a minimum fine in the amount of \$10,000 per housing unit in the housing development, which amount, depending on the facts, can reach \$50,000 per housing unit if a court finds the City acted in bad faith. (*Id.*, subds. (k)(1)(A)(ii), (k)(1)(B), (l).)

4. Conclusion

Applicant appreciates the City’s detailed review of the Project and remains committed to working cooperatively with the City to develop the Project, which will provide much needed housing, including affordable housing, to the community. We are confident that with the

¹⁰ The statute’s use of the word “includes” indicates that the list of examples is non-exhaustive. (*Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1101 [the word “includes” is ordinarily a term of enlargement]; see *Cal. Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 634 [a court should give meaning to every word of a statute and should avoid constructions that would render any word or provision surplusage]; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 357 [“an interpretation that renders statutory language a nullity is obviously to be avoided”].)

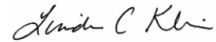
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submission of the above-listed material, the City will find the Application is complete. If helpful, we would be happy to discuss any of the abovementioned issues with you.

Sincerely,

Cox, Castle & Nicholson LLP



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