

November 12, 2024

VIA E-MAIL

Jennifer Cruz, Principal Planner
Department of Conservation and Development
Contra Costa County
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**Re: Response to County's Second Incompleteness Notice
0 Bethel Island Road, Oakley
APN: 032-112-007
County File: #CDS23-09669 and CDDP23-03040**

Dear Ms. Cruz:

The purpose of this letter is to address the County's September 20, 2024 Second Notice of Incomplete Subdivision and Development Plan Applications ("Second Notice") for the 271-unit housing development project proposed on approximately 78 acres in Oakley, where 20% of the units will be deed-restricted to lower income households. The County continues to assert that the project application is incomplete and that the project is inconsistent with the County's applicable land use regulations. The County's position remains incorrect for reasons we have already explained, and its new rationale is incorrect for the reasons explained previously and here.

First, the County asserts that the application checklist the County cited in its May 17, 2024 Notice of Incomplete Subdivision and Development Plan Applications ("First Notice") "is not the exclusive or comprehensive list of required application materials." The County also asserts that it provides application requirements in other places, such as on its website, and cites as the authority for doing so Government Code section 65940. But Government Code section 65940—which is part of the Permit Streamlining Act—simply requires agencies to compile one or more "lists" and does not provide any authority for providing application requirements other than on a list. And Government Code section 65943—which is also part of the Permit Streamlining Act—requires and makes clear that "[t]he list shall be limited to those items *actually required* on the lead agency's submittal requirement checklist." (Gov. Code § 65943(a); emphasis added). The County has but one "Application Submittal Checklist," which under controlling state law is the only possible list here. That Application Submittal Checklist establishes all of the

items that can lawfully be required to review and determine the completeness of any development project.

Second, the County asserts that certain items the applicant provided based on the County's Application Submittal Checklist were either (1) incomplete, (2) conflicting, or (3) missing. To the extent anything provided was incomplete, such item would be a valid basis for determining the application is incomplete. (Gov. Code § 65943(a)). But as we explained and demonstrated in our August 22 and 28, 2024 correspondence, the 12 items the County asserted in its May 17 letter must be provided before the application may be deemed complete do not identify any items *actually required* on the one and only application checklist that have not already been provided. To the extent anything provided was conflicting, such inconsistency would be a valid basis to make a consistency determination under the Housing Accountability Act (Gov. Code § 65589.5(j)(2)) but would not serve as a valid basis to consider the application incomplete under the Permit Streamlining Act.

And finally, with respect to items the County asserts in its September 20 letter are missing, we refer again to the formal application submitted on April 19, 2024 based on the Application Submittal Checklist and our further submittals on August 22 and 28, as well as the following:

- Item 3
 - The First Notice identified an alleged "inconsistency" with the location of certain trees on the project site.
 - The Second Notice asserts that the applicant's tree information was "incomplete and conflicting."

The County's First Notice thus plainly only addresses an alleged inconsistency in the location of trees and does not allege that there is anything based on the checklist that was incomplete much less missing. The Second Notice asserts for the first time that certain tree information is missing. Under the Permit Streamlining Act, the project application is thus deemed complete with respect to this item.

- Item 5
 - The First Notice identifies an alleged inconsistency in the rear yard setback for single-family detached homes and asks for "clarification" about which setback is "correct."
 - The Second Notice asserts that the applicant's plans provided "incomplete and conflicting" setbacks.

The County's First Notice thus plainly only addresses an alleged inconsistency regarding setbacks and does not allege that there is anything based on the checklist that was incomplete. The County did not assert in

the First Notice that the application was missing anything regarding setbacks actually required on the Application Submittal Checklist. Under the Permit Streamlining Act, the project application is thus deemed complete with respect to this item.

- Items 6 and 7
 - The First Notice alleges that certain parking “details” were not provided and asks for dimensions that “comply” with code.
 - The Second Notice asserts that certain information regarding circulation and parking was “omitted.”

The County’s First Notice thus plainly only addresses certain parking details that were allegedly not provided and does not allege that there is anything based on the Application Submittal Checklist that was incomplete. Moreover, the Application Submittal Checklist merely requests “dimensioned parking spaces,” which were provided on sheet C3.4 in the project application. The County did not assert in the First Notice that the application was missing anything regarding parking details actually required on the Application Submittal Checklist. Under the Permit Streamlining Act, the project application is thus deemed complete with respect to these items.

- Item 8
 - The First Notice asked for “clarification” of certain easements shown on sheet C3.4 of the project plans.
 - The Second Notice stated that the project application included “incomplete and conflicting” easement information.

The County’s First Notice thus plainly only addresses staff’s desire for clarification regarding easements that were identified in the project application and does not allege that there is anything based on the checklist that was incomplete. Moreover, the Application Submittal Checklist merely requests “easements,” which were provided on sheets C1.0, C2.0, C3.3, and C6.0 of the project application. The County did not assert in the First Notice that the application was missing anything regarding easements actually required on the Application Submittal Checklist. Under the Permit Streamlining Act, the project application is thus deemed complete with respect to this item.

- Item 10
 - The First Notice asked for confirmation regarding the location of monument signs shown on sheets L2.2, L2.3, and L2.4 of the project plans and reminded the applicant of the need for the signs to conform with the County code.

- The Second Notice asserts that the applicant's sign plan is "incomplete."

The County's First Notice thus plainly only addresses the location of the project's signs and provides a reminder the signs need to conform with code and does not allege that there is anything based on the checklist that was incomplete. The First Notice did not assert that the application was missing anything regarding setbacks actually required on the Application Submittal Checklist. The Second Notice asserts for the first time that the sign plan is incomplete. Under the Permit Streamlining Act, the project application is thus deemed complete with respect to this item.

General Plan Amendment

- The First Notice stated that the project is "inconsistent" with the density range established on the AL and OIBA General Plan land use designation and that a General Plan amendment application is required and must be blessed by the Board of Supervisors in order for the project to be processed.
- The Second Notice reasserts the foregoing statement.

The County's First Notice thus plainly only addresses an alleged consistency issue under the Housing Accountability Act, not a completeness issue based on the Application Submittal Checklist under the Permit Streamlining Act. Moreover, we note that the California Department of Housing and Community Development has already addressed this issue in its Letter of Support and Technical Assistance for the 125-129 Linden Drive, Beverly Hills project.¹ As HCD correctly concluded:

"Under the HAA, the City should not require applicants of projects protected by the Builder's Remedy to seek amendments to the City's general plan or zoning code. Even if such amendments could somehow be required without violating the intent of the HAA, the PSA prohibits the City from using the absence of the GPA/ZC application as a reason to determine a project application is incomplete, if the requirement was not on the submittal requirement checklist."

The project application is not and cannot lawfully be deemed complete for not filing an application for approvals the project does not require. This remains a builder's remedy project with a Preliminary Application filed for an affordable housing project while the County's 6th Cycle Housing Element was not in substantial compliance with state housing law, and the builder's remedy

¹ <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-hau-1071-nov-082224.pdf>.

provides that a project on the basis that the project is inconsistent with the agency's zoning ordinance and general plan land use designation.

PUD Design Objectives

- The First Notice requested the reasoning for the project's design and attached the "design objectives" requiring "design compatibility" for the surrounding area.
- The Second Notice asserts that the project must comply with the PUD design objectives and concludes the project is inconsistent with those objectives.

The County's First Notice does not identify any information actually required on the Application Submittal Checklist that was not provided but merely alleges an inconsistency. Under the Permit Streamlining Act, the project application is thus deemed complete with respect to this item.

Agency Comment Letters

- The First Notice identifies certain agency comments regarding inclusionary housing, transportation planning, Delta agriculture, geologic issues, cultural resources, public works issues, and reclamation issues.
- The Second Notice references the First Notice of Incompleteness.

The First Notice does not allege that there is anything based on the Application Submittal Checklist that was incomplete. While the information the County or other agencies desire will be provided in connection with the processing of the project, none of that information is a lawful basis to deem the project application incomplete. Under the Permit Streamlining Act, the project application is thus deemed complete with respect to all of these items.

As we have demonstrated again, because the County has failed to make a valid and timely application completeness determination under the controlling requirements of state law--indeed, the County has not identified a single item on its Application Submittal Checklist that was not provided with the original application submittal, the application is complete as a matter of law and has not and could not have expired. Moreover, while the County continues to assert that the project is not consistent with the General Plan and requires a General Plan amendment application to be processed, this point is moot because the application is deemed complete and the project is deemed consistent as a matter of law because the County did not make a timely, valid consistency determination after the application was deemed complete. However, even if the application were somehow not deemed consistent because the County claimed in its First Notice that the project does not comply with the density range of the AL and OIBA land use designation, these regulations are not a valid

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basis to disapprove or refuse to process the project under the builder's remedy, as HCD has already opined.

We continue to hope the County will elect to productively work with us to process this housing development project, which is and remains protected by state law.

Sincerely,

MILLER STARR REGALIA

Bryan W. Wenter

Bryan W. Wenter, AICP

BWW:kli

cc: Kevin Weiss