

FINDINGS IN SUPPORT OF DECISION TO DENY APPEAL OF STAFF'S DETERMINATION OF INCOMPLETE APPLICATION FOR COUNTY FILE #CDS23-09669 / CDDP23-03040; KEVIN WEISS (APPLICANT/APPELLANT) DUONG ESTUARY COVE LLC (OWNER)

The proposed project includes a proposed subdivision of an approximately 77-acre vacant property to allow 271 dwelling units, consisting of 209 market-rate low density single-family detached homes and 62 below-market-rate duets, and approximately 36 acres of open space, including a private trail system and parks. County staff has determined that the project application is incomplete. Applicant/Appellant Kevin Weiss has appealed staff's determination of an incomplete application pursuant to Section 65943(c) of the Government Code.

The County Planning Commission denies Kevin Weiss' appeal of County's staff's determination of an incomplete application and determines that the project application for County File #CDS23-09669/CDDP23-03040 remains incomplete on the following grounds and finds as follows:

FINDINGS:

1. The County informs the public of application requirements, depending on the application type, on its website and through the County's ePermit Center. Application checklists applicable to different types of proposed projects can be found at <https://www.contracosta.ca.gov/4782/Submitting-a-Planning-Application>. The checklists provided there include, amongst other checklists and reference materials, the County's General Planning Application Checklist and an Inclusionary Housing Plan Checklist.

The County's General Planning Application Checklist requires, amongst other items, that a complete application must include:

- Site plan with:
 - Clearly labeled setbacks
 - Traffic circulation
 - Dimensioned parking spaces
 - Existing/proposed rights-of-way
 - Easements
 - Conceptual grading and drainage plan
- Tree information, including accurate and full disclosure of tree location, species, dripline, and circumference
- Signage plan, including a site plan with monument sign setbacks

The Inclusionary Housing Plan Checklist requires an inclusionary housing plan that complies with the requirements listed in the checklist. The checklist refers to the County's Inclusionary Housing Ordinance, including Section 822-4.414 of the County Ordinance Code, which provides:

“An application for a discretionary approval of the residential development will not be deemed complete for processing until after the inclusionary housing plan has been accepted as complete. Preliminary approval of the inclusionary housing plan is required prior to any discretionary approval of the residential development.”

2. The applicant submitted a preliminary application to the County’s Department of Conservation and Development (“DCD”) for the proposed project on September 25, 2023, with resubmittal on October 26, 2023. The applicant submitted a formal application to DCD for the proposed project on April 29, 2024. County staff determined that the preliminary application was complete on November 2, 2023.
3. The applicant submitted a formal project application to DCD for the proposed project on April 19, 2024. On May 17, 2024, staff provided a Notice of Incomplete Application with staff’s determination that the formal application was incomplete. Staff’s Notice identified incomplete items from the formal project application that are required by the County’s planning application checklists. Thus, staff’s Notice was a valid incomplete notice under the Permit Streamlining Act. The formal project application was incomplete for the following reasons:
 - a. The proposed project’s dwelling unit density did not comply with the County’s General Plan land use designation for the project site. Either the project would need to be revised or the applicant would need to submit an application for a General Plan amendment feasibility study. The applicant had previously been informed by County staff that if not revised, the applicant would be required to submit the correct application, an application for a General Plan amendment. Because the correct application type was not submitted, the application was incomplete.
 - b. The site plan provided conflicting rear yard setback information for detached single-family units. Because the site plan did not provide accurate setback information on which staff could rely to process the application, the application was incomplete.
 - c. The site plan included unlabeled utility easements. Because the site plan did not provide accurate easement information on which staff could rely to process the application, the application was incomplete.
 - d. The site plan did not include parking and traffic circulation details for the public park parking area, including parking space dimensions, driveway aisle width, and access width in compliance with the County’s Off-Street Parking Ordinance standards. Because the site plan did not include the required parking and traffic circulation information, the application was incomplete.
 - e. The site plan did not include the width dimensions between parking spaces on Street F. Because the site plan did not include the required parking space dimension information, the application was incomplete.
 - f. The application identified six proposed monument signs, but the site plan provided the location and setbacks for only three monument signs. Because the site plan did not include the required signage plan with all monument sign locations and setbacks, the application was incomplete.
 - g. The application included conflicting tree information and tree locations. Because the application included conflicting tree information and locations, the application did not include accurate tree information and locations, and application was incomplete.

- d. The re-submitted site plan omitted the typical duplex easements and setback diagram that had been included with the original submittal. Because the site plan did not provide required setback information on which staff could rely to process the application, the application was incomplete.
 - e. The re-submitted application did not include a complete inclusionary housing plan in conformity with the Inclusionary Housing Plan Checklist and as required by the County's Inclusionary Housing Ordinance, including Section 822-4.414 of the County Ordinance Code. Because the application did not include a complete inclusionary housing plan, the application was incomplete.
5. Moreover, the applicant's resubmittal of the formal project application, which did not include all of the required information, was submitted on August 22, 2024, more than 90 days after staff's May 17, 2024 Notice of Incomplete Application. Accordingly, pursuant to Section 65941.1(e)(2) of the Government Code, the project's preliminary application had expired, and the project will be subject to the ordinances, policies, and standards in effect when the project application is ultimately determined to be complete.
6. The applicant submitted a letter, on November 12, 2024, responding to staff's Second Notice of Incomplete Application. The applicant's response letter again asserted that the project application was complete, but provided no additional information, materials, or revised plans that addressed the remaining incomplete items in the Second Notice of Incomplete Application. On December 11, 2024, staff provided a Third Notice of Incomplete Application stating that staff's determination had not changed and that the formal application, with the re-submitted materials, was still incomplete. Staff's Third Notice identified incomplete items from the formal project application that are required by the County's planning application checklists. Thus, staff's Third Notice was a valid incomplete notice under the Permit Streamlining Act.
7. As of February 12, 2025, the formal project application remains incomplete for the following reasons:
 - a. The proposed project's dwelling unit density does not comply with the County's General Plan land use designation for the project site. Either the project needs to be revised or the applicant needs to submit an application for a General Plan amendment feasibility study. The applicant had previously been informed by County staff that if not revised, the applicant would be required to submit the correct application, an application for a General Plan amendment. Because the correct application type was not submitted, the application is incomplete.
 - b. The re-submitted site plan provides conflicting rear yard setback information for detached single-family units. Because the site plan does not provide accurate setback information on which staff can rely to process the application, the application is incomplete.

- c. The original site plan identified the parks as public parks and no details on the parking area were provided. The re-submitted site plan revised the park from a public park to a private park, but still does not include parking details. Parking is still required for a private park. The site plan does not include parking and traffic circulation details for the private park parking area, including parking space dimensions, driveway aisle width, access width, and the number of parking spaces in compliance with the County's Off-Street Parking Ordinance standards. Because the site plan does not include the required parking and traffic circulation information, the application is incomplete.
 - d. The original site plan included dimensioned parking spaces on Street F, but did not provide the width dimensions between the parking spaces. Staff's Second Notice requested the missing information regarding the width between parking spaces on Street F. The re-submitted site plan provides the width between the parking spaces on Street F, but removes the parking space dimensions. Because the site plan does not include the required parking information, the application is incomplete.
 - e. The re-submitted site plan omits the typical duplex easements and setback diagram that had been included with the original submittal. Because the site plan does not provide required setback information on which staff could rely to process the application, the application is incomplete.
 - f. The re-submitted application does not include a complete inclusionary housing plan in conformity with the Inclusionary Housing Plan Checklist and as required by the County's Inclusionary Housing Ordinance, including Section 822-4.414 of the County Ordinance Code. Because the application does not include a complete inclusionary housing plan, the application is incomplete.
8. The appeal by Kevin Weiss of staff's determination that the project application is incomplete is denied.