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October 2, 2023

VIA ELECTRONIC SUBMISSION

Chair Harris-Dawson and Honorable Members of the Planning and
Land Use Management Committee
Los Angeles City Council
201 N. Spring Street, 4th Floor
Los Angeles, CA 90012

clerk.plumcommittee@lacity.org

**Re: Council File No. 23-0908, October 3, 2023 PLUM Meeting, Agenda Item No. 10
Response to Department of City Planning's Appeal Recommendation Report
Appeal Pursuant to Government Code Section 65943(c) – 8217 N. Winnetka Avenue
(Case Nos. ADM-2023-4274-DB-VHCA-ED1 / CPC-2023-3809-DB-PHP-VHCA-1A)**

Chair Harris-Dawson and Honorable Committee Members:

Our firm represents 8217 Winnetka LLC and Bedrock Properties Group, LLC, the property owner and applicant, respectively, (collectively referred to as the "Applicant"), of the proposed 360-unit 100 percent affordable housing development located at 8217 N. Winnetka Avenue (the "Project") in the Winnetka community of the City of Los Angeles ("City"). The Project is entirely privately financed and is not seeking any public subsidies, tax credits or bond financing. The Project seeks to use the City's streamlined ministerial approval process for 100 percent affordable projects granted by the Mayor's Executive Directive No. 1 ("ED 1"), originally issued on December 16, 2022. As set forth below, the Department of City Planning ("DCP") repeatedly (and correctly) deemed the Project eligible for ED 1's streamlined processing, and the Applicant has properly complied with all relevant City and State law requirements in submitting the Project's application materials. Moreover, the Project enjoys vested rights granted by State law against subsequent changes to ED 1 as well as other City ordinances, policies, and standards. Notwithstanding these vested rights, following the Mayor's revision of ED 1 in June 2023, DCP staff informed the Applicant that the Project's application was incomplete because the Project was now deemed ineligible to be processed under ED 1. Pursuant to Government Code Section 65943(c), the Applicant has appealed DCP's incompleteness determination, and the Planning and Land Use Management ("PLUM") Committee is scheduled to hear the appeal at its October 3, 2023 meeting as agenda item 10. Consistent with the City Council's recent determination that a similarly situated 100 percent affordable project enjoys a vested right to be processed under ED 1, the PLUM Committee should grant the requested Appeal.

PROJECT APPLICATION HISTORY AND PLANNING DEPARTMENT DETERMINATIONS

As noted above, the Project is a 100 percent affordable housing development project that meets ED 1's affordability requirements. Furthermore, while the Project site is currently subject to both multi-family and single-family zoning designations, as authorized by ED 1 and State law, the Project is eligible to utilize the density permitted by either the applicable zoning designation or the applicable General Plan land use designation. Consistent with ED 1, the Project utilizes the site's General Plan land use designation (which permits multifamily development) as well as State density bonus law ("DBL") to achieve its proposed unit count and building envelope. As set forth in the Applicant's initial appeal documents, the Applicant communicated extensively with DCP staff regarding the applicability of ED 1 and DBL to the Project, and in the course of these communications, DCP staff repeatedly and consistently confirmed that the Project would be accepted for ED 1 processing.

Pursuant to Government Code Section 65941.1 and ED 1's implementing guidelines published by the City ("ED 1 Guidelines"), the Applicant submitted and paid for a Housing Crisis Act ("HCA") preliminary application ("HCA Preliminary Application") for the Project on March 15, 2023, thereby vesting the Project against subsequent changes in City ordinances, policies, and standards pursuant to Government Code Section 65589.5(o)(1), subject to a timely filing of the Project's application materials as required by ED 1. On June 6, 2023, the Applicant timely filed these application materials for the Project with DCP and the Project was assigned case number ADM-2023-4274-DB-VHCA-ED1 ("Case Filing"). On June 12, 2023, the Mayor issued a revised version of ED 1 ("Revised ED 1")¹ that no longer permitted new 100 percent affordable projects proposed to be located on single-family zoned properties with General Plan land use designations that permit multifamily development to be eligible for streamlined ministerial processing.

On June 30, 2023, DCP issued a letter to the Applicant and this firm titled "Status of Project Review: Application Incomplete and Case Processing on Hold," which listed twelve items that were required to be provided or revised to proceed with the processing of the case. Based on the issuance of the first incomplete letter, the Applicant had 90 days, or until September 28, 2023, to respond to DCP with the requested items.² On July 6, 2023, prior to this 90-day period elapsing, DCP issued a second letter to the Applicant and this firm (referred to as the "Notice of Ineligibility") that stated the Project was not eligible for ED 1 processing as it is partially located in a single family zone and "modification of entitlement requests will likely require updated and/or additional application materials." On August 4, 2023, the City issued a letter titled "Second Status of Project Review: Application Incomplete and Case Processing on Hold" ("Second Status of Project Review Letter"). In this letter, the City references the Revised ED 1 and Notice of Ineligibility to justify the conversion of the case to a "regular entitlement

¹ Note, DCP's Appeal Recommendation Report refers to the June 12, 2023 order as "Clarified ED 1." However, the order itself states it was "Revised: June 12, 2023," so this letter refers to it as "Revised ED 1". Additional commentary on this obfuscation is included herein.

The Mayor revised ED 1 once again on July 7, 2023, following the adoption of Los Angeles Administrative Code Section 8.33. This revision did not include any changes to the language of ED 1, but substituted the authorizing code section "8.29" with "8.33".

² The Applicant responded to DCP with revised materials and responses to the requested items on September 28, 2023, meeting the required 90-day timeline. These items are uploaded to Council File No. 23-0908 with a copy provided to the Project's assigned planner.

process” using case number CPC-2023-4274-DB-PHP-VHCA, along with an explanation that DCP considers the case to have been converted as of July 6 (the date of the Notice of Ineligibility) to a discretionary City Planning Commission review process based on the discretionary procedures specified in Los Angeles Municipal Code (“LAMC”) Section 12.22.A.25 for off-menu density bonus incentives and waivers.

As a matter of State law, the HCA Preliminary Application filed for the Project grants vesting protections that require the City’s continued ED 1 processing of the Case Filing, as the Project became vested prior to the issuance of the Revised ED 1. As such, an appeal was filed pursuant to Government Code Section 65943(c) on August 23, 2023 to request that the City rescind the Notice of Ineligibility, acknowledge that the Project has vested rights to utilize ED 1 based on the filing of the HCA Preliminary Application, and reinstate processing of the Project’s Case Filing under ED 1, consistent with the express provisions and intent of the HCA and the Housing Accountability Act (“HAA”).

In response to the Applicant’s appeal, DCP staff have submitted a recommendation report dated September 28, 2023 (“Appeal Recommendation Report”) to the PLUM Committee, which recommends that the City Council deny the appeal, which would have the effect of preventing the Project from being processed under the administrative procedures of ED 1. DCP’s position is that the HCA does not allow an applicant to “vest” in an emergency declared under local authority; the Appeal Recommendation Report further claims that the Mayor’s ED 1 is not an “adopted” policy or standard that can be vested under the HCA.

In advance of the PLUM Committee’s consideration of this matter, we are providing a detailed response to the Appeal Recommendation Report to further explain why the City should grant the appeal and reinstate processing of the Project’s Case Filing under ED 1. We implore the PLUM Committee to consider the Letter of Technical Assistance sent directly to the City of Los Angeles from the State’s Housing and Community Development (“HCD”) on September 14, 2023, in which HCD states explicitly that the City’s ED 1 is **not** excluded from the expansive HAA definition of “ordinances, policies, and standards” and which confirms that an “Executive Directive is a “rule[],” “requirement[],” or “polic[y]” under Government Code section 65589.5, subdivision (o)(4)” (see attached Exhibit A - HCD Letter of Technical Assistance). **HCD’s Letter of Technical Assistance explicitly states that an applicant that submitted a complete preliminary application at a time when ED 1 did not exclude single-family or more restrictive zones may proceed under the previous ED 1 regulations throughout the entitlement process.**

Additionally, the City Council has recently taken up the exact same issue presented in the Appeal in its September 26, 2023 granting of the appeal filed for the similarly situated 100 percent affordable ED 1 project located at the single-family zoned property at 5511, 5501 N. Ethel Avenue under Council File Number 23-0835 (“Ethel Project”), thus deeming the Ethel Project to be vested under ED 1 and allowing it to resume processing under ED 1’s streamlined ministerial process. By granting the Ethel Project appeal, the City Council upheld the vesting protections provided by a HCA Preliminary Application and permitted the Ethel Project to proceed under the original ED 1 process prior to the revision to ED 1. The Ethel Project appeal and the instant appeal for the Project at 8217 N. Winnetka Avenue posit the exact same justification for appeal – that the City must acknowledge that a project which has filed a HCA Preliminary Application, timely filed a full entitlement application within 180 days, has not revised the proposed number of units or total square footage of construction by 20 percent or more, and has satisfied all requirements to maintain vested rights as of the date of the HCA Preliminary

Application, may proceed with streamlined ministerial processing under ED 1. As demonstrated in the response to the Appeal Recommendation Report below, DCP has not provided any new evidence which would distinguish the Project from the Ethel Project such that the City Council may make a different decision regarding vesting under the original ED 1. As advised by the City Attorney's office during the City Council's consideration of the Ethel Project's appeal, to reach a different conclusion regarding vesting for a similarly situated project would be arbitrary and capricious. Accordingly, we urge the PLUM Committee to heed HCD's technical guidance, recommend that the City Council grant the appeal, and allow the Project to continue to be processed under ED 1's streamlined ministerial approval process.

RESPONSE TO APPEAL RECOMMENDATION REPORT

A. DCP's Claim that Emergency Declarations are Not Subject to Vesting

Throughout the Appeal Recommendation Report, DCP states the rationale for denial of the appeal is due to an asserted distinction between local planning and zoning laws and emergency declarations for purposes of vesting under Government Code Section 65589.5(o)(4):

It is City Planning's position that the streamlined ministerial review process afforded under ED1 is enabled solely by the Mayor's temporary declaration of a State of Emergency, and there is no ability to "vest" in an emergency when declared under local charter authority. The Housing Accountability Act ("HAA") and Project Preliminary Application solely provide an ability to vest in planning and zoning ordinances, policies, and standards adopted and in effect as governed by Government Code Title 7 related to planning and zoning. An emergency exists for a limited duration and is subject to regular renewal or termination. It is also subject to, and explicitly authorized to, include modifications to respond to changing parameters and the emerging context of an emergency. A directive of this type does not carry with it the legislative intent of process, procedures, and development regulations expected to be vested under the Government Code Sections 65589.5 and 65941.1. (Appeal Recommendation Report, Page A-13)

However, a declaration of emergency status issued by the Mayor in response to a State of Emergency is not the equivalent of an ordinance, policy, standard, planning rule, or zoning rule. Further, an executive directive of this type does not carry the legislative intent of process, procedures, and development regulations expected to be vested under the Housing Crisis Act. It is the City's position that the ability to vest in a declared emergency is beyond the authorization of the Housing Crisis Act. A local declaration of emergency under the City Charter is not governed by Government Code Title 7, the rules related to local planning and zoning laws. (Appeal Recommendation Report, Page A-15)

As shown by the above excerpted language, DCP repeatedly insists that ED 1 did not include "legislative intent" of process, procedures, and development regulations. However, while it is correct that ED 1 does not establish new development regulations (such as height, setback, or floor area allowances), ED 1 is explicitly referenced as a "process" in nearly all of the City's published materials related to ED 1. As just one example, the very first provision of both ED 1 and Revised ED 1 says:

All City departments are directed to process all plans for such 100 percent affordable housing projects or Shelter using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4, State Density Bonus law.

Furthermore, the ED 1 Guidelines are nothing if not a holistic set of processes and procedures for City departments to follow to comply with ED 1, as confirmed on the very first page of the ED 1 Guidelines:

On December 16, 2022, Mayor Karen Bass issued Executive Directive 1 (ED 1) to facilitate the expeditious processing of Shelter projects and 100 Percent Affordable Housing Projects to address the housing and homelessness crisis in Los Angeles. Effective immediately, the project review procedures in the Department of City Planning (City Planning), the Department of Building and Safety (LADBS), and the Housing Department (LAHD) are modified in response to ED 1. As directed by ED 1, City Planning shall provide guidelines on the implementation of ED 1 related to applications and permitting processes. This memorandum provides guidance for applicants seeking to file an application for projects that are eligible for the ED 1 Ministerial Approval Process—summarizing eligibility criteria and exceptions, general procedures, project review timelines, filing requirements, City Planning fees, development standards, additional tools and resources, and contact information.

To claim that the intent of ED 1 was not to establish a separate process or procedure is patently false. ED 1 (as well as the Revised ED 1) specifically modify local planning and zoning laws (specifically, the processes typically required to complete Site Plan Review [LAMC Section 16.05], Density Bonus Compliance Reviews with off-menu incentives and waivers [LAMC Section 12.22-A.25(g)(3)], and other entitlements which typically require lengthy discretionary review) in order to facilitate the streamlined processing of applications for affordable housing projects. The City's emergency authority powers authorized the Mayor to adopt these modified processes and procedures; however, there is nothing in either City law or State law that supports the proposition that an executive directive issued pursuant to an emergency declaration is somehow exempt from the HAA's broad definition of ordinances, policies and standards that are to be vested against by the filing of a Preliminary Application.

Given DCP's reliance on this claimed distinction between ED 1 and other regulations, this firm requested that HCD provide formal technical assistance on the question of whether an executive directive granted under emergency authority constitutes one of the "ordinances, policies, and standards" that vest upon submission of a complete Preliminary Application. HCD's Letter of Technical Assistance unequivocally states that such an executive directive falls within the scope of such "ordinances, policies, and standards." HCD's answer points to the statutory language of the HAA, which makes clear that "ordinances, policies, and standards" are not limited solely to planning and zoning regulations such as height and setback standards, but broadly includes "general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, **and any other rules, regulations, requirements, and policies of a local agency**, as defined in Section 66000."³ HCD's Letter of Technical Assistance also rejects DCP's claim that ED 1, as an emergency declaration, is something other than a "rule, requirement, or policy," and cites the specific language of the City's emergency authority provisions giving rise to ED 1, including Los Angeles Administrative Code Section 8.29, which authorizes the Mayor to "promulgate, issue and enforce rules, regulations, orders and

³ Gov. Code, § 65589.5, subd. (o)(4), emphasis added.

directives,” and Los Angeles Charter Section 231(j), which authorizes the Mayor to “establish procedures and implement policies” that “shall be binding on all departments, commissions, appointed officers and employees of the City.”

Thus, as explained in our original appeal justification and as now clearly confirmed by HCD, ED 1 is precisely such a rule, regulation, requirement, or policy that is vested through the filing of a Preliminary Application and the City should grant the appeal to allow the Project to proceed with ED 1 administrative processing.

B. Claim that ED 1 Was Clarified Rather Than Revised and Reissued

In the Appeal Recommendation Report, DCP makes a separate claim that ED 1 always intended to exclude projects in single family zones, but that only after a full six months did the Mayor’s office “clarify” it to explicitly exclude such projects.

The Mayor issued a clarification on ED 1 (“Clarified ED1”), to provide clarifying language that explains developments on sites” located in a single family or more restrictive zone” are not eligible for streamlined ministerial processing. (Appeal Recommendation Report, Page A-6)

The Appeal Recommendation Report’s claim regarding “clarification” is a departure from the word choices previously utilized by the City regarding the Revised ED 1. The Mayor’s own documentation, including the revised versions of ED 1 issued on June 12, 2023 and July 7, 2023, specifically state that it is a “revised” version of the same directive, not a “clarified” document. Furthermore, if ED 1 was merely being clarified, it would continue to be effective as of its original issuance date of December 16, 2022. However, DCP’s Appeal Recommendation Report cites June 27, 2023 as the date on which the Revised ED 1 cleared a mandatory 15-day period after which it became effective; this means that, up until June 27, 2023, the original ED 1 (which as explained in detail below, did not exclude projects in single family zones) was the prior effective version. Thus, as acknowledged by the Appeal Recommendation Report, the City’s intent in issuing the Revised ED 1 was to supersede and replace the original ED 1, not to “clarify” it.

In addition, in its prior correspondence with the Applicant regarding the Project, DCP staff confirmed that the Revised ED 1 represented a distinct substantive change from the original ED 1’s provisions with regard to single-family zoned properties. Specifically, in DCP’s July 6, 2023 Notice of Ineligibility letter to the Applicant and this firm, DCP staff stated the following:

Per the revised Executive Directive 1 (ED1) issued by Mayor Karen Bass on June 12, 2023, projects located in single-family or more restrictive zones cannot use the ED1 Ministerial Approval Process. This revision affects projects in the following zones: OS, A1, A2, RA, RE, RS, R1, RU, RZ, and RW1. The proposed project located at 5501-5511 N. Ethel Avenue is in the R1-1 zone and is not eligible for ED1 processing. (Emphasis added.)

Given DCP’s prior explicit acknowledgment that the Revised ED 1 did in fact revise the processing requirements under the original ED 1, its current “clarification” claim cannot be supported.

In an effort to further advance its “clarification” argument, the Appeal Recommendation Report also claims that the original ED 1 itself intended to exclude single-family zoned properties from eligibility:

The claim is premised on alleged vesting rights under the Project’s Preliminary Application submitted during the period that the Mayor’s ED1 was not express about disqualifying multiunit projects in R1 and more restrictive zones like the RA zone. (Appeal Recommendation Report, Page A-4)

ED1 allowed for the “streamlined ministerial review” of 100 percent affordable housing projects, and at the time ED1 was issued, allowed at least 31 pending 100 percent affordable housing projects to be immediately expedited. Those projects were all located on sites that allowed multi-family housing. (Appeal Recommendation Report, Page A-5)

While the Project was initially taken in under the ADM Application, that action was not contemplated by the scope of ED1, which immediately converted only those 100% affordable projects in zones that allowed multi-family uses. (Appeal Recommendation Report, Page A-15)

However, not only did the original ED 1 not expressly exclude projects proposed in single family zones, it explicitly allowed such projects. As noted above, the original ED 1 and the ED 1 Guidelines explicitly state that a proposed project may utilize the density permitted by either the applicable zoning designation or the applicable General Plan land use designation, as well as DBL. In addition, as confirmed by the Applicant and this firm during preparation and City execution of the Project’s pre-application referral forms, the Project site’s partial single-family zoning designation did not preclude use of ED 1. Therefore, the Appeal Recommendation Report’s claim that ED 1 was always intended to exclude projects in single family zones ignores the plain language of the directive as well as the many months of consultation between the Applicant and City staff to expressly confirm the Project could proceed under ED 1 as proposed.

The City previously had the opportunity to make any such “clarification” of ED 1 explicit, but declined to do so. Specifically, the ED 1 Guidelines, issued nearly two months after the original ED 1, contain an explicit list of those projects that are excluded from utilizing ED 1’s provisions, including projects requiring a legislative action (e.g., General Plan Amendment, Zone Change, Height District Change), projects seeking a deviation from development standards (e.g., adjustment, variance, specific plan exception, waiver of dedication/improvement), or projects requiring a Coastal Development Permit or a subdivision. Nowhere do the ED 1 Guidelines state or imply that only multifamily-zoned properties are to be considered eligible for ED 1 processing, nor do they state or imply anywhere that single-family zoned properties would be ineligible. In fact, the ED 1 Guidelines go one step further than the language of ED 1 (which states that a project “may” use the density permitted by zoning or the General Plan) by stating that projects “**shall** utilize the maximum allowable base density under the zoning ordinance, specific plan or zoning overlay, or General Plan land use designation.” (ED 1 Guidelines, p. 10.)

It is abundantly clear that the City had multiple earlier opportunities to seek to exclude projects in single family zones from ED 1 eligibility, as it chose to do for projects that included subdivisions, coastal development permits, and other entitlements. If this change to exclude projects in single family

zones was intended to simply be a “clarification” then it could have been added to a revised version of the ED 1 Guidelines document, and not formally issued as a Revised ED 1. Instead, the City communicated to the Applicant and this firm that the Project, on the proposed site that is partially zoned for single-family uses, could proceed using ED 1 for over six months. Even after the Revised ED 1 was issued on June 12, 2023 and became “effective” on June 27, 2023, the City sent the first “Status of Project Review Letter” a full 18 days later on June 30, 2023, only asking the Applicant to provide a specified list of items in order to continue with processing of the case through ED 1 administrative review. The statements made in the DCP Appeal Recommendation Report regarding a “clarification” of ED 1 ignore these facts and attempt to obfuscate the formality of ED 1 and its subsequent revisions.

C. Claims Regarding Applicant’s Responsibility to Respond to Incomplete Letters

Throughout the Appeal Recommendation Report, DCP claims that the Applicant has failed to respond to various requests for additional information or items needed to deem the application complete. See below:

Since LADCP had not received further processing materials from Appellant to complete or convert the existing ADM Application, on August 4, 2023, the Department issued a Second Status of Project Review letter detailing the proper entitlement process for the Project, notifying Appellant that the ADM Application was being converted to the CPC Application, and that the CPC Application was incomplete for the same reasons stated in the June 30, 2023 incompleteness determination related to the ADM Application. (Appeal Recommendation Report, Page A-13)

The Project is vested under the Project Preliminary Application to the extent allowed by the requirements and timelines in Government Code Section 65941.1, which require Appellant to complete its Development Project Application 90 days from the date of the June 30, 2023 incompleteness letter. (Appeal Recommendation Report, Page A-15)

However, it is important to clarify the various correspondences that DCP has sent to the Applicant relative to the timelines and milestones set forth by the PSA and HAA, and also identify the procedural issues that have already taken place. Thus far, the City has issued three formal pieces of correspondence to the Applicant:

- On June 30, 2023, DCP issued a letter to the Applicant and this firm titled “Status of Project Review: Application Incomplete and Case Processing on Hold,” which listed 12 items that were required to be provided or revised to proceed with the processing of the case. Based on the issuance of the first incomplete letter, the Applicant has 90 days, or until September 28, 2023, to respond to DCP with the requested items. As noted above, the City issued this correspondence after ED 1 was revised, yet this correspondence did not state that the Project was ineligible to use ED 1.
- On July 6, 2023, DCP issued a second letter to the Applicant and this firm, the Notice of Ineligibility, stating that, due to the issuance of the Revised ED 1, the Project was not eligible for ED 1 processing as it is partially located in a single family zone and “modification of entitlement requests will likely require updated and/or additional application materials.” This correspondence was not described as a determination of completeness, but it

communicates that the Project would not be processed according to ED 1 and did not include a specific list of additional materials that would be required in order to continue processing of the case. This correspondence had the effect of putting the Project in a state of procedural limbo.

- On August 4, 2023, the City issued the Second Status of Project Review Letter. In this letter, the City references the Revised ED 1 and Notice of Ineligibility to justify the conversion of the case to a “regular entitlement process” using case number CPC-2023-4274-DB-PHP-VHCA, along with an explanation that the case was considered converted as of July 6 (the date of the Notice of Ineligibility) to a discretionary City Planning Commission review process based on the procedures specified in LAMC Section 12.22.A.25 for off-menu density bonus incentives and waivers. This letter also states that the Project application remains incomplete and requires the submittal of “further materials” including “materials related to needed CEQA analysis.”

The Appeal Recommendation Report then claims that the Applicant has not made any attempts to provide documents in response to DCP’s incomplete letters, which the Appeal Recommendation Report appears to consider as the June 30, 2023 and August 4, 2023 letters. However, the City did not wait for the initial statutory 90-day period for resubmittal to end on September 28, 2023 before making this claim in the Appeal Recommendation Report issued on the same day. Moreover, the City has already informed the Applicant that the original case number associated with the Project, ADM-2023-4274-DB-VHCA-ED1, no longer exists as it has already been converted, without the Applicant’s consent, to a discretionary case under case number CPC-2023-4274-DB-PHP-VHCA. Notwithstanding the practical impossibility of completing an application that DCP claims to have “converted” to an entirely different type of case, the Applicant has submitted the applicable items requested by DCP’s June 30, 2023 letter on September 28, 2023. This submission is uploaded to the Council File for the Project and the assigned planner was copied on the electronic submission. It is noted that these items were timely provided within the 90-day statutory timeline under Government Code Section 65941.1(d)(2), which began on June 30, 2023 and ended on September 28, 2023.

Furthermore, as noted above, in addition to claiming to have converted the original application to an entirely new case, DCP’s Second Status of Project Review Letter significantly expands the list of required materials for the Applicant to submit, including “materials related to needed CEQA analysis.” DCP made this request despite the clear language of Government Code Section 65943(a), which prohibits the City from requesting new information beyond the initial list of items requested in the June 30, 2023 Status of Project Review letter.⁴

The Appeal Recommendation Report seeks to portray DCP’s review of the Applicant’s submitted materials as a straightforward application completeness determination process, which the Applicant has

⁴ Government Code Section 65943(a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency’s submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.

failed to be responsive to. This could not be further from the truth. Without the consent of the Applicant to convert the case to a new discretionary process, the Second Status of Project Review Letter sent on August 4, 2023 states that the Applicant must both submit revised application materials reflecting a new discretionary review process for the Project, and, contrary to the requirements of Government Code Section 65943(a), must also submit new environmental review application forms and associated materials and studies, and if these materials are not provided in 30 days, DCP may terminate the case. And again, DCP did not even wait for the end of the initial statutory resubmittal period to issue these letters to the Applicant. Far from failing to be responsive to DCP's attempt to deviate from the clear requirements of State law pertaining to vested rights and application completeness determinations, the Applicant is pursuing this appeal to assert its right to have the Project processed under ED 1's ministerial process.

CONCLUSION

To summarize, the Project submitted and paid for an HCA Preliminary Application on March 15, 2023 during the effective period of the original ED 1, timely filed a full entitlement application within 180 days, has not revised the Project's number of units or total square footage of construction by 20 percent or more, and therefore has satisfied all requirements to maintain vested rights as of the date of the HCA Preliminary Application. All this effort occurred after many discussions with DCP staff and receipt of multiple approved pre-application forms for the Project – all of which confirmed and re-confirmed the Project's eligibility for ministerial processing under ED1. The Applicant's decision to purchase the Project site and proceed with the Project was predicated on the expectation of expedited ministerial processing under ED 1, and the City's decision to abruptly deny the Project ED 1 processing has now gravely threatened the Project's feasibility and viability.

Despite these facts, the Appeal Recommendation Report now claims that ED 1 is something other than a local rule, regulation, requirement, or policy that can be vested against under the HCA and HAA. However, the City has received HCD's Letter of Technical Assistance, which explicitly disavows that argument. We understand the reasons behind the Mayor's decision to formally amend and revise ED 1 to *prospectively* prohibit ED 1's ministerial streamlined processing benefits from applying to projects filed on single family zoned properties *in the future*, notwithstanding the allowances and protections afforded by State DBL. The issue of this appeal is ensuring that applicants who filed timely applications under the original ED 1 (an official City regulatory order) and obtained a legal vested right under the HCA may proceed with ED 1 processing. We are hopeful that the City can resolve the discrepancy, concur with HCD's opinion that the projects which are vesting prior to the Revised ED 1 should be afforded the right to continue with administrative processing, and make a decision that is consistent with the City Council's recent granting of the appeal for the Ethel Project, which presented the exact same facts and circumstances as the instant appeal.

We respectfully request that the City grant the appeal, reinstate the processing of the Project's Case Filing, and grant approval of the Project pursuant to the streamlined review procedures of ED 1.

8217 N. Winnetka Ave – Response to Staff Recommendation Report

October 2, 2023

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Sincerely,

Dave Rand

Dave Rand

Partner

of RAND PASTER & NELSON, LLP

Attachments

Exhibit A – HCD Letter of Technical Assistance

Exhibit A – HCD Letter of Technical Assistance

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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September 14, 2023

City Council Planning and Land Use Management Committee
City of Los Angeles
200 North Spring Street, 395 Floor
Los Angeles, CA 90012

Dear City Councilmembers Marqueece Harris-Dawson, John S. Lee, Katy Yaroslavsky, Imelda Padilla, and Heather Hutt:

RE: 5501-5511 N. Ethel Avenue – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands that on September 19, 2023, the City of Los Angeles (City) City Council's Planning and Land Use Management Committee (PLUM) will consider an appeal of the City's determination that the project located at 5501-5511 N. Ethel Avenue (Project) is ineligible for ministerial processing under Executive Directive No. 1 (ED1).

The purpose of this letter is to assist the PLUM with its decision making by providing technical assistance related to the Preliminary Application as described in the Housing Accountability Act (Gov. Code, § 65589.5) and Permit Streamlining Act (Gov. Code, § 65941.1). HCD urges the City to expeditiously process all ED1 projects in accordance with the rules and regulations that were in effect at the time the preliminary applications were complete. HCD recognizes the challenge of interpreting housing and land use laws and appreciates the opportunity to provide technical assistance.

Background*ED1*

Mayor Karen Bass issued ED1 on December 16, 2022, creating a streamlined ministerial approval process for 100 percent affordable and shelter projects. The original ED1 regulations specified that the density permitted for a project site could be based on either the zoning or the general plan land use designation and that projects could utilize State Density Bonus Law (SDBL). The City revised ED1 on June 12, 2023, and explicitly prohibited ED1 ministerial processing on sites located in single-family or more restrictive zones.¹

¹ Executive Directive No. 1, Page 1, Revised June 12, 2023.

Project History

The proposed Project is a 100 percent affordable residential development that would result in a total of 200 affordable dwelling units, inclusive of one manager's unit. The Project site is zoned R1-1, One-Family Zone (single-family zone), with a General Plan land use designation of Low Residential. The Project includes a State Density Bonus Law (SDBL) request for additional density with incentives, concessions, and waivers of development standards. The City deemed the Project's preliminary application complete on March 23, 2023. The City's signed preliminary application review form indicated that the Project was eligible for ED1 and had until September 19, 2023 to file the City Planning application.² The applicant submitted the full development application on June 6, 2023. Then, on July 6, 2023, the City issued a Notice of Ineligibility (NOI) that indicated, "[p]er the revised Executive Directive 1 (ED1) issued by Mayor Karen Bass on June 12, 2023, projects located in single-family or more restrictive zones cannot use the ED1 Ministerial Approval Process."³ The NOI explicitly stated that the Project is not eligible for ED1 processing because it is in the R1-1 zone, but noted that there are other entitlement options available for the Project which do not require a legislative act (e.g. General Plan Amendment or Zone Change).

Preliminary Application Vesting Rights and the City's Executive Directive-1

The central question between the City and the Applicant is as follows:
Is an executive directive one of the rules, regulations, requirements, and policies that vest upon submission of a complete Preliminary Application?

The answer is "yes." Submission of a preliminary application that meets the requirements of Government Code section 65941.1 vests the "ordinances, policies and standards" in effect when the application is submitted. (Gov. Code § 65589.5, subd. (o)(1).) The Housing Accountability Act (HAA) makes it clear that,

"[f]or purposes of this subdivision, 'ordinances, policies, and standards' includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions."⁴

The City's ED1 is not excluded from the expansive HAA definition of "ordinances, policies, and standards." The Mayor issued the executive directive under the provisions of Los Angeles City Charter section 231(i) and section 8.29 of the Los Angeles Administrative Code, which, during a period of local emergency, deem the Mayor the

² City of Los Angeles Housing Crisis Act Vesting Preliminary Application, Page 1, Signed March 31, 2023.

³ City of Los Angeles Notice of Ineligibility dated July 6, 2023.

⁴ Gov. Code, § 65589.5, subd. (o)(4). Emphasis added.

Director of the Emergency Operations Organization and authorize the Director to “promulgate, issue and enforce rules, regulations, orders and directives which the Director considers necessary for the protection of life and property.” Charter section 231(j), meanwhile, authorizes the Mayor to “establish procedures and implement policies” to manage the Mayor’s responsibilities “through the issuance of executive directives, which, in the absence of conflicting provisions in the Charter or ordinance, and until revised or rescinded by the Mayor, shall be binding on all departments, commissions, appointed officers and employees of the City” (emphasis added). There is no doubt, then, that an Executive Directive is a “rule[],” “requirement[],” or “polic[y]” under Government Code section 65589.5, subdivision (o)(4).

Therefore, an applicant that submitted a complete preliminary application at a time when ED1 did not exclude single-family or more restrictive zones may proceed under the previous ED1 regulations throughout the entitlement process. The preliminary application vesting status remains in effect as long as the development application submittal occurs within the 180-day required period⁵ and any revisions to the development application do not exceed a change of 20 percent of the number of residential units or square footage of construction, exclusive of any increase resulting from the density bonus, incentive, concession, waiver or similar provision.⁶ However, HCD emphasizes that any incomplete preliminary applications submitted prior to the June 12, 2023 revised ED1, and any preliminary applications submitted after June 12, 2023, would not be entitled to ED1 ministerial processing in single-family or more restrictive zones, as any such applications would not have secured vesting rights under the original ED1 policy.

Conclusion

In sum, HCD finds that the preliminary application vesting rights conferred by Government Code section 65941.1 include ED1. HCD remains committed to supporting the City of Los Angeles 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.

Sincerely,



Shannan West
Housing Accountability Unit Chief

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⁵ Gov. Code, § 65941.1, subd. (d)(1).

⁶ Gov. Code, § 65941.1, subd. (c).