

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

651 Bannan Street, Suite 400  
Sacramento, CA 95811  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



December 2, 2024

Michael Forbes  
Director of Community Development  
City of Beverly Hills  
Via: [mforbes@beverlyhills.org](mailto:mforbes@beverlyhills.org)  
455 N Rexford Drive  
Beverly Hills, CA 90210

Dear Michael Forbes:

**RE: Beverly Hills Builder's Remedy Applications – Notice of Violation**

On June 26, 2024, the California Department of Housing and Community Development (HCD) issued a Letter of Support and Technical Assistance to the City of Beverly Hills (City) regarding compliance with Government Code section 65589.5, subdivision (d)(5), known colloquially as the "Builder's Remedy," pertaining to the proposed development at 125-129 Linden Drive (Linden Project). On August 22, 2024, HCD issued a Notice of Violation (NOV) to the City pertaining to the City Council's denial of the applicant's appeal of the City's incompleteness finding regarding the Linden Project, based on the finding that a General Plan Amendment and Zoning Change (GPA/ZC) are required for the submittal.

In addition to the Linden Project, HCD is aware of nine additional "Builder's Remedy" applications where the City has issued incompleteness determinations on the basis that a GPA/ZC is required. The ten projects in question represent a total of 981 units, including 198 units affordable to low-income households. Along with reiterating HCD's position that a GPA/ZC is not required for "Builder's Remedy" projects, HCD would like to expand further on two positions outlined in the August NOV:

(1) the iterative nature of the 90-day deadline described in Government Code section 65941.1, subdivision (d)(2), (i.e., the deadline resets each time the City makes an incompleteness determination);<sup>1</sup> and

(2) that an SB 330 preliminary application remains vested unless the number of residential units or square footage of construction changes by 20 percent or more.<sup>2</sup>

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<sup>1</sup> Gov. Code, § 65941.1, subd. (d)(2).

<sup>2</sup> Gov. Code, § 65941.1, subd. (c).

## **Background and Summary**

Following the issuance of the August NOV regarding the Linden Project, HCD received requests for technical assistance for nine other Builder's Remedy projects in Beverly Hills. HCD has reviewed the projects and has determined that each qualifies for the benefits described in Government Code section 65589.5, subdivision (d)(5). In each case, HCD understands that the applicant submitted a preliminary application pursuant to Government Code section 65941.1 prior to May 1, 2024, when HCD certified that the City's housing element was substantially compliant with state law.

HCD understands that the City rejects each application's vesting and status as a Builder's Remedy project. The consistent issue across all projects appears to be the City's requirement for a GPA/ZC. As stated in the previous NOV to the City and reiterated below, the Housing Accountability Act (HAA) and the Permit Streamlining Act (PSA) prohibit the City from requiring a GPA/ZC for projects qualifying under Government Code section 65589.5, subdivision (d)(5).

In addition to the requirement for a GPA/ZC, HCD also finds the City's liberal interpretation of what may disqualify a project from the vested rights protected under Government Code section 65941.1 to be problematic. Finally, HCD rejects the City's claim that the PSA only provides one 90-day period for a developer to submit all of the information necessary for its full application to be deemed complete. The remainder of this letter outlines these thematic issues and provides a summary of the projects in question.

## **General Plan Amendment and the Housing Accountability Act's Builder's Remedy**

The HAA is clear that a project protected by the Builder's Remedy may not be disapproved for inconsistency with a jurisdiction's general plan land use designation and zoning ordinance.<sup>3</sup> Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA/ZC (requested or required by the jurisdiction to resolve such an inconsistency) violates the HAA.

Indeed, where a jurisdiction cannot lawfully disapprove a project for inconsistency with the general plan land use designation or zoning ordinance, it would be illogical if the jurisdiction could lawfully disapprove a project for failing to resolve that very inconsistency. In other words, the City's requirement for a GPA/ZC is essentially a requirement for consistency, and disapproving the Project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. The HAA prohibits such a disapproval.

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<sup>3</sup> Gov. Code, § 65589.5, subd. (d)(5).

## **Determining Application Completeness under the Permit Streamlining Act**

Even if the City were permitted to require a GPA/ZC under the HAA, the PSA<sup>4</sup> prohibits the City from using the absence of the GPA/ZC application as a reason to determine that a project application is incomplete, if the item is not explicitly required on the submittal requirement checklist. The City cannot determine that an application is incomplete on the basis that it does not include a request for a GPA/ZC unless the City's submittal requirement checklist requires the applicant to submit such a request. When issuing an incompleteness determination, the City must provide a list of items that were not complete and "[t]hat list shall be limited to those items actually required on the lead agency's submittal requirement checklist."<sup>5</sup>

Here, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal, and therefore, the City cannot deem these applications incomplete for failing to include a GPA/ZC.

## **Vesting under Government Code Section 65941.1**

HCD would also like to inform the City of other obligations under Government Code section 65941.1 that protect the vested rights of a project.

If the City determines that the application for a development project is not complete pursuant to Government Code section 65943, the development proponent is required to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information.<sup>6</sup> If the applicant does not submit the information within the 90-day period, the preliminary application expires.<sup>7</sup> However, this 90-day deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have multiple 90-day periods.

In the recent case of *Jha v. City of Los Angeles*, the Superior Court held that multiple 90-day submission periods are permitted under the PSA:

Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. This statute supports [the developer's] reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.<sup>8</sup>

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<sup>4</sup> Gov. Code, § 65920 et seq.

<sup>5</sup> Gov. Code, § 65943, subd. (a).

<sup>6</sup> Gov. Code, § 65941.1, subd. (d)(2).

<sup>7</sup> *Ibid.*

<sup>8</sup> *Jha v. City of Los Angeles*, Decision on Petition for Writ of Mandate (July 24, 2024, Los Angeles Superior Court Case No. 23STCP03499), p. 23.

The court went on to conclude that the PSA should not be interpreted in a vacuum, but rather in its relation to the HAA, and the Legislature has mandated that the HAA must be interpreted to “afford the fullest possible weight to the interest of, and the approval and provision of, housing.”<sup>9</sup>

In addition, as explained in our June 26, 2024 letter, the preliminary application remains vested unless the number of residential units or square footage of construction proposed in the full application changes from the preliminary application by 20 percent or more (subject to certain conditions as listed in the statute).<sup>10</sup>

In HCD’s review of the “Builder’s Remedy” projects listed in the “Summary of Projects” section below, HCD found that the City improperly deemed preliminary applications void and of no effect due to changes that neither materially altered the project described in the full application from that contemplated in the preliminary application nor fell outside of the 20 percent provision of the PSA. These modifications include, but are not limited to, adding State Density Bonus Law (SDBL) concessions and waivers that did not change the unit count or square footage by more than 20 percent, requesting approval under the Subdivision Map Act because the project changed from apartments to condominiums, text contained in a submitted Zoning Change application that should not be considered in a completeness determination for a Builder’s Remedy project anyway, and the addition of a commercial use that did not change the unit count or square footage by more than 20 percent. These modifications do not justify disturbing the vesting of the preliminary applications.

A full summary and explanation of the projects and HCD’s understanding of the City’s reasons for lost vesting under Government Code section 65941.1 are found below.

### Summary of Projects

- **125 Linden Drive**
  - 165 units (33 affordable)
  - Preliminary application submitted: October 24, 2022
  - Application status: Appeal denied
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, preliminary application divests because of addition of commercial use
- **346 Maple Drive**
  - 65 units (13 affordable)
  - Preliminary application submitted: October 6, 2023
  - Application status: Second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC,<sup>11</sup> 90-day expiration<sup>12</sup>

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<sup>9</sup> *Ibid.* (quoting *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5<sup>th</sup> 842, 855).

<sup>10</sup> Gov. Code, § 65941.1, subd. (c).

<sup>11</sup> Refers to the City’s requirement for a GPA/ZC application as part of the submittal.

<sup>12</sup> Refers to the project losing vesting rights due to expiration of a single 90-day period.

- **401 Oakhurst Drive**
  - 25 units (5 affordable)
  - Preliminary application submitted: October 30, 2023
  - Application status: Second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration
- **232 South Tower Drive**
  - 55 units (11 affordable)
  - Preliminary application submitted: October 5, 2023
  - Application status: Second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration
- **9229 Wilshire Boulevard**
  - 116 units (24 affordable), Mixed Use project
  - Preliminary application submitted: December 13, 2023
  - Application status: Developer filed appeal to Beverly Hills City Council regarding second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions<sup>13</sup>
- **145 South Rodeo Drive**
  - 30 units (6 affordable), Mixed Use project
  - Preliminary application submitted: February 23, 2024
  - Application status: First Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions and submission of request under Subdivision Map Act<sup>14</sup>
- **140 South Camden Avenue**
  - 27 units (6 affordable)
  - Preliminary application submitted: March 15, 2024
  - Application status: First Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions and submission of request under Subdivision Map Act
- **214 Hamilton Drive**
  - 90 units (18 affordable)
  - Preliminary application submitted: October 30, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, compliance with City development standards<sup>15</sup>

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<sup>13</sup> The City claims the project lost vesting due to adding concessions and waivers that were not included in the preliminary application.

<sup>14</sup> The City claims the project lost vesting due to adding a subdivision map request that was not included in the preliminary application.

<sup>15</sup> Compliance with development standards is not an application checklist item under Government Code section 65941.1, subdivision (a).

- **8844 Burton Way**
  - 200 units (40 affordable); Mixed-Use project
  - Preliminary application submitted: December 15, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, compliance with City development standards
- **211 Hamilton Drive**
  - 210 units (42 affordable)
  - Preliminary application submitted: October 31, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): Preliminary application vesting lost because the change in the theoretical maximum density of the parcel indicated in the ZC application exceeded 20 percent<sup>16</sup>

## Conclusion

The City's failure to accept the applications for processing due to the lack of a GPA/ZC is in violation of the HAA and PSA. Furthermore, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal and the PSA prohibits the City from deeming an application incomplete for items not on the checklist. City staff must process all projects contained in this letter without further delay and without imposing a requirement for a GPA/ZC.

The City must also consider its obligations under Government Code section 65941.1 that retain each project's vested rights. First, the 90-day period to submit information to complete a full application reset after each incompleteness determination, and the preliminary application remains vested during these 90-day periods. Second, the modifications mentioned in the project summaries above do not void the vesting created by the preliminary application submittal.

Under Government Code section 65585, HCD must notify a local government when that local government takes actions that violate the HAA and the PSA and may notify the California Office of the Attorney General.<sup>17</sup>

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<sup>16</sup> The unit count of the project did not change between the preliminary application and full submittal. The theoretical maximum density proposed in a ZC application does not fall under the 20 percent change provision under Government Code section 65941.1, subdivision (c). Moreover, any information contained in a GPA or ZC application does not void vesting because those applications should not have been required for a Builder's Remedy project.

<sup>17</sup> Gov. Code, § 65585, subs. (i)(1), (j).

The City has until December 20, 2024, to provide a written response to this letter. 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 regarding the content of this letter or would like additional technical assistance, please contact Bentley Regehr at [bentley.regehr@hcd.ca.gov](mailto:bentley.regehr@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability