

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

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March 22, 2023

Susan Koleda, AICP
Director of Community Development
City of La Cañada Flintridge
One Civic Center Drive
La Cañada Flintridge, CA 91011

Dear Susan Koleda:

RE: City of La Cañada Flintridge 600 Foothill Boulevard – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands that the City of La Cañada Flintridge (City) City Council will hear an appeal for consideration of the application of the project at 600 Foothill Boulevard (Project). The purpose of this letter is to assist the City with its decision-making by providing technical assistance related to State Housing Element Law (Gov. Code, § 65580 et seq.) and the Housing Accountability Act (Gov. Code, § 65589.5). HCD recognizes the challenge of interpreting ever-changing housing and land use laws and appreciates the opportunity to provide technical assistance.

Background

HCD understands that the City will hear an appeal to its March 1, 2023, letter to Cedar Street Partners LLC determining the application for the Project was incomplete. The City's determination was based on its conclusion that the housing element adopted on October 4, 2022, was substantially compliant with State Housing Element Law and therefore the project was not qualified to apply with the protections granted under Government Code section 65589.5, subdivision (d)(5).

As you are aware, on December 6, 2022, HCD found the October 4, 2022, housing element to not be in substantial compliance, and while the City submitted a revised adopted element on February 23, 2023, HCD has not yet completed its review pursuant to Government Code section 65585, subdivision (h). As of the date of this letter, the City's housing element is not in substantial compliance with State Housing Element Law.

Housing Element Compliance

Pursuant to Government Code section 65585, a local jurisdiction must submit a draft housing element to HCD and receive HCD's finding. If HCD finds the draft element is not substantially compliant, the local jurisdiction must revise the draft to address any findings by HCD (Gov. Code, § 65585, subd. (f)(1)) or adopt without changes and include written findings explaining why the local jurisdiction believes that the draft substantially complies (Gov. Code, § 65585, subd. (f)(2)). Promptly following adoption, the local jurisdiction must submit the adopted housing element to HCD (Gov. Code, § 65585, subd. (g)) and receive findings on the adopted element from HCD (Gov. Code, § 65585, subd. (h)).

In other words, a local jurisdiction does not have the authority to determine that its adopted element is in substantial compliance but may provide reasoning why HCD should make a finding of substantial compliance. A local jurisdiction is "in compliance" as of the date of HCD's letter finding the adopted element in substantial compliance. A local jurisdiction cannot "backdate" compliance to the date of adoption of a housing element. Moreover, as stated above, the October 4, 2022, adopted element did not substantially comply with State Housing Element Law. It should also be noted that the City's October 4, 2022, resolution adopting the housing element made no findings pursuant to Government Code section 65585, subdivision (f)(2).

Housing Accountability Act (HAA)

Pursuant to Government Code section 65589.5, subdivision (d), a jurisdiction shall not disapprove a housing development project for very low-, low-, or moderate-income households¹ or condition approval in a manner that renders the housing development project infeasible for development for the use of very low-, low-, or moderate-income households unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of five findings in subdivision (d).

If a local jurisdiction's adopted housing element is not found substantially compliant by HCD as of the jurisdiction's statutory deadline, the jurisdiction would be unable to use subdivision (d)(5) of Government Code section 65589.5, inconsistency with zoning and general plan standards, as a basis to lawfully deny qualifying an affordable housing project as defined in subdivision (h). This is colloquially referred to as the "Builder's Remedy." Alternative means of denial may be available, such as subdivisions (d)(2) through (d)(4), and under subdivision (e), jurisdictions are still required to comply with

¹ "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code (Gov. Code, § 65589.5, subd. (h)(3)).

both California Environmental Quality Act (CEQA) and the California Coastal Act, as applicable.

Conclusion

The City should remain mindful of its obligations under the HAA as it considers the appeal of the Project application. Because the City has not attained substantial compliance with State Housing Element Law, the City may not deny the Project pursuant to Government Code section 65589.5, subdivision (d)(5). HCD would also like to remind the City that HCD has enforcement authority over the HAA, among other state housing laws. Accordingly, HCD may notify the California Office of the Attorney General that a local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

HCD remains committed to supporting La Cañada Flintridge 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 me at melinda.coy@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long horizontal stroke extending to the right.

Melinda Coy
Proactive Housing Accountability Chief