

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

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September 18, 2019

Scott Chadwick, City Manager
1200 Carlsbad Village Drive
Carlsbad, CA 92008

RE: City of Carlsbad, Romeria Pointe Project

Dear Scott Chadwick:

The purpose of this letter is to assist the city in complying with the Housing Accountability Act (Gov. Code Sec. 65589.5). The Department of Housing and Community Development (HCD) recognizes the challenge of interpreting ever-changing housing and land-use laws, and appreciates the city's efforts to maintain compliance with all applicable laws.

In enacting the Housing Accountability Act, the Legislature declared, "California has a housing supply and affordability crisis of historic proportions" (Gov. Code Sec 65589.5(a)(2)(A)). This housing crisis, the Legislature found, has adverse impacts on Californians and California, impacting citizens' health, safety, economic standing and the state's environment and competitiveness (Gov. Code Sec. 65589.5(a)(2)). Through the Housing Accountability Act, the Legislature intended "to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing developments" (Gov. Code Sec. 65589.5(a)(2)(K)). Furthermore, the Legislature declared, "It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing" (Gov. Code Sec. 65589.5(a)(2)(L)).

Through communications with the developer and Carlsbad city staff, we have been made aware of delays with the Romeria Pointe project (Project No. SDP 2018-0004 (DEV2017-0151)). The Romeria Pointe project consists of 23 units of housing, including 3 units designated as very-low income. By virtue of its very low-income units, the project was granted a 35% density bonus as well as height and unit concessions provided by State Density Bonus Law (Gov. Code Sec. 65915) and applicable Carlsbad Municipal Code (CMC Section 21.86.050). The project is proposed for two lots (APNs: 2163001200, 2163001300) designated in the Housing Element for moderate-income units (City of Carlsbad, 2013-2021 Housing Element, pg. B-2). According to the Planning Department staff report provided in advance of the project consideration by the Planning Commission and City Council, the Romeria Pointe application was deemed

complete on October 12, 2018, compliant with all applicable zoning laws, and exempt from providing environmental documents pursuant to the California Environmental Quality Act (CEQA) because it was an in-fill development project (City Council Agenda Packet, Item #12, Exhibit 4, "Planning Commission Staff Report").

The project was approved by a unanimous vote of the Planning Commission on March 20, 2019. The approval was appealed, and, on June 11, 2019, the City Council considered the appeal in an open session. The debate at City Council was extensive, but the outcome unclear. From HCD's examination of the meeting record, it appears that the Council neither accepted nor denied the appeal. Instead, the Council chose to remand the project to the Planning Commission for a "focused EIR" that would consider both geotechnical and traffic impacts of the project. No written findings were made by the Council.

By virtue of this decision, the city risks violating the Housing Accountability Act. The Housing Accountability Act creates substantive preconditions for the delay and disapproval of housing. If a housing project "complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete," the Housing Accountability Act requires jurisdictions to make specific findings when "the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density" (Gov. Code Sec. 65589.5(j)(1)). In particular, the local agency must determine, in writing, that "[t]he housing development project would have a specific, adverse impact upon the public health or safety" (Gov. Code Sec. 65589.5(j)(1)(A)) and "[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact" (Gov. Code Sec. 65589.5(j)(1)(B)).

These written findings must be "supported by a preponderance of the evidence on the record" (Gov. Code Sec. 65589.5(j)(1)). Moreover, the Legislature has declared its intent "that the conditions that would have a specific adverse impact upon the public health and safety . . . arise infrequently" (Gov. Code Sec. 65889(a)(3)). "Specific adverse impact" is narrowly defined as "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" (Gov. Code Sec. 65589.5(j)(1)(A)). Finally, the Legislature has declared that "the receipt of a density bonus . . . shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision" (Gov. Code Sec. 65589(j)(3)).

Under Government Code Section 65589.5(h)(5)(B), disapproval means failure "to comply with the time periods" established by Gov. Code Section 65950. The Legislature has determined that "A public agency that is the lead agency for a development project shall approve or disapprove the project within . . . [s]ixty days from the determination by

the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if the project is exempt from that act.” (Gov. Code Sec. 65950(a)(5)). The city has, thus far, made no findings that negate the Planning Department’s determination that the project is exempt. The Housing Accountability Act does not free the city from complying with CEQA (Gov. Code Sec. 65589.5(e)). But, by extending the development process substantially for this project, the City of Carlsbad risks violating the Housing Accountability Act.

Please contact Cynthia Marsh (916-263-7421), of our staff, if we can be of any support.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Olmstead". The signature is fluid and cursive, written over a white background.

Zachary Olmstead
Deputy Director

cc: Matt Hall, Mayor
City of Carlsbad

Celia A. Brewer, City Attorney
City of Carlsbad

Don Neu, City Planner
City of Carlsbad