

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT

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July 30, 2019

The Honorable Rico E. Medina, Mayor
 City of San Bruno
 567 El Camino Real
 San Bruno, CA 94066

RE: Approval of the Mills Park Center Project and Notice of Potential Housing Law Violations

Dear Honorable Rico E. Medina:

The Department of Housing and Community Development (HCD) is aware of a recent delay in the approval of the Mills Park Center development. The purpose of this letter is to inform the City of San Bruno that as a result of this delay, it may risk violating provisions of the Housing Accountability Act (Gov. Code Sec. 65589.5) and Housing Element law (Gov. Code Section 65580).

Mills Park Center Project would contribute to unmet RHNA

The Mills Park Center project consists of 425 units of for-sale condominiums, including 26 units proposed to be affordable to very low-income households, 19 units affordable to low-income households, and 19 units available to moderate-income households. As outlined in the Staff Report prepared by the City's Community and Economic Development Director before the City Council hearing on July 9, 2019, the project would be the city's first to contribute to its Regional Housing Needs Allocation (RHNA) goal for very low-income units for the current planning period; the project would also significantly contribute to the city's low, moderate, and above-moderate RHNA goals (City Council Agenda Packet, Staff Report – Regional Housing Needs Allocation, pg. 5).

	Very Low	Low	Moderate	Above Moderate
Current Cycle Permits	0	24	42	52
RHNA	358	161	205	431

Mills Park Center is proposed on a site identified to be zoned by-right in the Housing Element

The Mills Park Center is proposed for a number of consolidated parcels located on or adjacent to El Camino Real and identified in the city's housing element as underutilized or vacant to accommodate the city's housing need (City of San Bruno Housing Element 2015-2023, Land Inventory and Quantified Objectives, pg. 4-11; Tables 4.4-1, 4.4-2). The Program 2-A of the housing element also required the city to rezone these sites to reflect the San Bruno 2025 General Plan and Transit Corridors Plan to allow housing by-right without a conditional use permit (CUP), planned development permit, or other discretionary action by April 14, 2018.

Mills Park Center would provide housing near transit and does not require additional environmental review

In addition, the Mills Park Center project would provide a transit-oriented development for the city. It is proposed for a site approximately half a mile from the San Bruno Caltrain station and within the boundaries of the City's Transit Corridors Plan Area, which the city committed in its housing element to use to "increas[e] residential options" (City of San Bruno Housing Element 2015-2023, Program 2-B, 5-9). In 2014, 68% of San Bruno voters approved an increase in height and stories permitted in the Transit Corridors Area in order to spur development, and the Mills Park Center project would be the first to utilize this voter-approved zoning (City Council Agenda Packet, Staff Report – Transit Corridors Plan and Measure N Background, pg.4). The project was also consistent with the land-use classification for the site as designated in the City's General Plan (City Council Agenda Packet, Staff Report – Overall Project Summary, pg. 2). Finally, city staff determined that the project would not result in any significant environmental impacts and therefore did not need additional environmental reviews before approval (City Council Agenda Packet, Staff Report – Environmental Assessment, pg.8).

The Mills Park Center project was initially submitted to the city in 2017, and over the course of the next two years, the developer worked with city staff to revise the project a number of times (City Council Agenda Packet, Staff Report on Item 6a: Mills Park Center Mixed-Use Development - Project Chronology, pg.7). The completed application was unanimously approved by the Planning Commission on June 18, 2019. The approval was forwarded to the City Council, and, on July 9, 2019, the City Council considered the project and all relevant approvals. Ultimately, the City Council voted 2-1 *in favor* of a motion to consider approval of the project, but because a majority of the City Council was required for approval and two members of the five-member council had recused themselves from the vote, the project's approval was tabled. No vote is currently scheduled for the project.

Failure to approve could violate the Housing Accountability Act

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)). Approval of projects such as the Mills Park Center project fulfills this legislative intent.

The Housing Accountability Act requires substantive findings 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 base its decision on written findings 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)).

Moreover, the written findings must be "supported by a preponderance of the evidence on the record" (Gov. Code Sec. 65589.5(j)(1)). The Legislature has defined a "specific adverse impact" carefully: it is "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, it declared that "a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan" (Gov. Code Sec. 65589(j)(4)).

Accordingly, the city must either approve the project or make the written findings described above. HCD notes that, given the support from the city staff, unanimous approval of the Planning Commission, majority approval of the voting members of the City Council, and compliance with voters' mandate in approving Measure N, a finding by a preponderance of the evidence, that the project poses a specific, unavoidable, un-mitigatable, adverse impact on public health or safety appears challenging. Absent those findings and consistent with the law, HCD encourages the city to approve the project.

Failure to approve could result in loss of Housing Element Compliance

Since 1969, California has required that all jurisdictions (cities and counties) adequately plan for and facilitate development to meet the housing needs of everyone in the community. California's local governments meet this requirement by adopting housing elements as part of their general plan. To demonstrate the availability of land to accommodate future housing development, the housing element is required to include an inventory of potential housing sites, "adequate sites", with sufficient capacity by income level to accommodate its RHNA by income category. (Gov. Code Sect. 65583 (a)(3).) If a jurisdiction does not have sufficient capacity to accommodate the RHNA, it must rezone sites to accommodate that shortfall within three years of the adoption of the housing element (Gov. Code Sect. 65583(c)(1).)

The City of San Bruno has a total RHNA of 1,155 units of which 519 units are for housing affordable to households with lower-incomes. At the time of adoption of the element, the city identified a shortfall of 354 units and included Program 2-A to revise the zoning ordinance to reflect the San Bruno 2025 General Plan and Transit Corridor Plan, including land-use designations allowing mixed-use development. In addition, the rezoning was to allow residential uses by-right without a conditional use permit (CUP), planned development permit or other discretionary action in the mixed-use and multi-use residential focus zoning districts pursuant to Gov. Code Section 65583.2(h) and (i). As stated previously, the Mills Park Center project is located on the sites identified in the housing element for rezone.

As stated in the 2018 Housing Element Annual Progress report received by HCD on April 4, 2019, while a comprehensive zoning code update is in progress, the rezoning efforts, required to be completed by April 14, 2018, have not yet been adopted. As a result of this failure to rezone by the deadline, pursuant to Gov. Code Section 65583(g), a local government may not disapprove a housing development project; nor require a CUP; planned unit development permit or other locally imposed discretionary permit; or impose a condition that would render the project infeasible if the housing development project (A) is proposed to be located on a site required to be rezoned pursuant to the program action required by that subparagraph and (B) complies with applicable, objective general plan and zoning standards and criteria, including design review standards.

The city should be aware of its obligation to implement programs in the housing element to facilitate the development of housing for moderate- and lower-income households. For example, Program 2-B obligates the city to promote housing in the Transit Corridor Plan area, Program 2-E commits the city to facilitate lot consolidation in support of housing opportunities, and Program 3-H requires the city to reduce parking requirements, among others. According to the City's Annual Progress Report, the city has only permitted 118 units of which 24 are affordable to lower-income households. Implementation of the city's housing element programs, as well as approval of projects such as the Mill Park Center


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Project, are critical to achieve the city's housing objectives and maintain housing element compliance.

HCD encourages the city to take the necessary and proactive steps to ensure compliance with state law and hopes for a speedy resolution of this matter. HCD remains committed to supporting the city in achieving its housing objectives across all income categories. Please contact Melinda Coy, of our staff, at 916-263-7425 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Olmstead". The signature is fluid and cursive, with a long horizontal stroke at the end.

Zachary Olmstead
Deputy Director, Housing Policy Development
Department of Housing and Community Development

cc: Jovan D Grogan, City Manager
Darcy Smith, Community and Economic Development Director
Mike Ghielmetti, President, Signature Development Group