

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

651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



August 5, 2025

Melanie Mintz, Community Development Director
Sean Moss, Planning Manager
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Dear Melanie Mintz and Sean Moss:

**RE: City of El Cerrito – 921 Kearney Street and 10167 San Pablo Avenue Projects
– Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the proposed projects located at 921 Kearney Street and 10167 San Pablo Avenue (Projects) in the City of El Cerrito (City). The purpose of this letter is to provide technical assistance to both the City and the applicant regarding implementation of the Permit Streamlining Act (PSA), Housing Accountability Act (HAA), State Density Bonus Law (SDBL), and the California Environmental Quality Act (CEQA) in relation to the Projects.

Background

The proposed Projects will create a combined total of 138 housing units. The Kearney Street Project is located on a 0.31-acre site and proposes 60 units, including 12 units affordable to lower-income households. The San Pablo Avenue Project is located on a 0.26-acre site and will consist of 78 units, including 16 units affordable to lower-income households. Both sites have a zoning and general plan designation of Transit-Oriented Medium-Intensity Mixed-Use and are located within the San Pablo Specific Plan.

HCD is informed and understands that the applicant submitted SB 330 preliminary applications for the Projects on March 21, 2023, and March 23, 2023, which were accepted as complete by the City on July 7, 2023. Upon the submittal dates of the applications, the City's housing element was out of compliance with Housing Element Law; therefore, both Projects qualify as Builder's Remedy projects. Subsequently, the applicant submitted full development applications for the Projects in October 2023. To date, the City has issued multiple incompleteness letters for each project, with the most recent letters on September 19, 2024, for the 10167 San Pablo Avenue Project and November 25, 2024, for the 921 Kearney Street Project.

The following are questions posed by the applicant for HCD's technical assistance in relation to the City's review of their Projects.

1. What standards apply for application completeness versus consistency review?

The PSA mandates transparency in the local review process, among other provisions, requiring publicly available planning entitlement application checklists and prompt determination regarding the completeness of a development project application. The PSA requires that local agencies begin the review of proposed development projects by determining the completeness of the submitted application before proceeding with continued processing. In making this determination, local agencies may only consider those submittal items identified in the applicable publicly available application checklists. Specifically, the PSA provides the following:

“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.*” (Emphasis added.)¹

To date, the City has issued multiple incompleteness letters to the Projects. HCD would like to remind the City that during a project application completeness review, the City must ensure its determination is “limited to those items actually required on the lead agency's submittal requirement checklist.”² When a local jurisdiction improperly characterizes consistency review comments as incomplete items, the jurisdiction unlawfully raises the bar to achieving a complete application, in violation of the PSA.

If the City chooses to conduct the PSA completeness review and HAA consistency review concurrently, rather than doing so in sequence as the HAA allows, it must ensure that its response letter specifically differentiates the two reviews with clear written responses to the applicant pursuant to Government Code sections 65589.5, subdivision (j) and 65943, respectively. Additionally, the HAA consistency review must not act as a barrier to achieving an otherwise complete application under the PSA.

¹ Gov. Code, § 65943, subd. (a).

² *Id.*

2. Is concurrent coverage of the Builder's Remedy and SDBL coverage possible for a project?

Yes. Under the Builder's Remedy provisions of the HAA, a jurisdiction cannot disapprove a qualifying affordable housing development on the basis that the project did not comply with the local zoning and general plan if the project applicant submitted a complete preliminary application or had a complete development application while the City's housing element was not substantially compliant with Housing Element Law.³

The proposed Projects are located within the City's San Pablo Area Specific Plan (SPASP) area, and consistent with the land use and density permitted in the SPASP area. Each Project requests one concession and four waivers. HCD is informed and understands that the City is requiring an applicant to choose between two state law paths for the Projects: Builder's Remedy or the SDBL. The City opines that if the Projects proceed under SDBL, the City will require an applicant to relinquish eligibility as Builder's Remedy projects. The City's determination is flawed and is not authorized by state law. Indeed, there are no provisions that prevent these two laws from being used together to complement one another for the approval of the Projects. Specifically, the HAA includes the following provision:

"Nothing in this section shall limit a project's eligibility for a density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to Section 65915."⁴

This provision affirms that a housing project can utilize both Builder's Remedy and SDBL benefits, provided the project meets all eligibility requirements for each statute. A jurisdiction cannot require an applicant to choose between laws for their project. Even if the applicant proceeds under the SDBL, they retain their eligibility under the Builder's Remedy.

3. Does a project's Builder's Remedy status preclude eligibility for a CEQA Class 32 infill exemption?

No. While the HAA does not relieve a local agency from complying with CEQA for a proposed housing development,⁵ a Builder's Remedy project may qualify for a CEQA Class 32 Infill Exemption if it meets the conditions described in subdivisions (a) through (e) of section 15332 of the CEQA Guidelines. For a Class 32 exemption, subdivision (a) requires that a project be "consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations." The HAA provides that a Builder's Remedy project is deemed to be "consistent...with an applicable plan, program, policy, ordinance, standard, requirement,

³ Gov. Code, § 65589.5, subds. (d) and (h).

⁴ Gov. Code, § 65589.5, subd. (f)(1).

⁵ Gov. Code, § 65589.5, subd. (e).

redevelopment plan and implementing structures, or other similar provisions for all purposes....”⁶ This includes for the purposes of CEQA.

Because a Builder’s Remedy project is deemed consistent with applicable underlying plans and policies, such a project is not precluded from utilizing a CEQA Class 32 infill exemption.

Conclusion

HCD looks forward to assisting the applicant and City in ensuring compliance with state housing laws and reminds the City that HCD has enforcement authority over the PSA, HAA, SDBL, and various other state housing laws. Accordingly, HCD may review local government actions to determine consistency with these laws. If HCD finds that a jurisdiction’s actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.⁷

HCD requests a written response from the City by September 4, 2025, indicating how the City plans to implement the guidance provided in this letter. If you have any questions regarding this letter or require additional technical assistance, please contact Troy Andres at troy.andres@hcd.ca.gov.

Sincerely,

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

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

⁶ Gov. Code, § 65589.5, subd. (f)(6)(D)(iii).

⁷ Gov. Code, § 65585, subd. (j).