

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

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February 12, 2025

Sean Mullin, Planning Manager
Town of Los Gatos
Community Planning Department, Planning Division
110 E. Main Street
Los Gatos, CA 95030

Dear Sean Mullin:

RE: Town of Los Gatos – 980 University Avenue Project – Notice of Potential Violation

On August 30, 2024, the California Department of Housing and Community Development (HCD) issued a Letter of Technical Assistance (letter) (enclosed) to the Town of Los Gatos (Town) regarding compliance with the Permit Streamlining Act (PSA) (Gov. Code, §§ 65941.1, 65943) and the State Density Bonus Law (SDBL) (Gov. Code, § 65915). In the August 30, 2024 letter, HCD advised the Town that, under the PSA, the 90-day period for a developer to resubmit an application after an incompleteness determination resets with each incompleteness determination. However, on October 23, 2024, the Town informed an applicant for a development at 980 University Avenue (Project) that it interprets the PSA to provide a single 90-day period to achieve completeness and will treat applications not meeting this deadline as expired. As a result, and consistent with HCD's August 30, 2024 letter, HCD hereby notifies the Town that its failure to not reset the 90-day period after each incompleteness determination would be in potential violation of state housing law.

Background

HCD understands that the Project proposes to construct 68 townhouse units on the site, of which at least seven units (ten percent of the overall unit count) will be affordable to lower-income households. HCD also understands the applicant submitted a preliminary application for the Project pursuant to Government Code section 65941.1 on March 27, 2024, before resubmitting the preliminary application on April 5, 2024. HCD did not certify that the City's housing element was substantially compliant with state law until July 10, 2024. The applicant intends to make use of the provisions of the Housing Accountability Act (HAA) as amended by Assembly Bill 1893 (Chapter 268, Statutes of 2024) that went into effect on January 1, 2025.

HCD understands the applicant then filed a full development application for the Project on September 24, 2024, which was within the six-month statutory time period required by Government Code section 65941.1, subdivision (e), to maintain the vested rights conferred by the preliminary application. The Town determined the application to be incomplete on October 22, 2024, and informed the applicant the following day that it would continue to interpret the PSA to restrict applicants to a single 90-day period to achieve completeness. The Town further informed the applicant that it would treat applications not meeting this deadline as expired. Applicant would, therefore; have to achieve completeness by January 20, 2025. Although the Town and the applicant have mutually agreed to extend the time period, the Town maintains the position that there is only one 90-day review period.

90-Day Incompleteness Period under the Permit Streamlining Act (PSA)

Under the PSA, if an agency determines that the application for the 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.¹ HCD reminds the Town; however, that the 90-day deadline resets after each incompleteness determination made by the Town. A project with multiple incompleteness letters and responses may have multiple 90-day periods.

Imposing a single 90-day resubmittal period limits the completeness determination process to only one or two resubmittals, making the process more difficult for diligent applicants to benefit from the protections of the PSA's preliminary application process. The Town's incorrect interpretation of the PSA, namely that it allows an applicant only a single 90-day resubmittal period, is inconsistent with the intent of the PSA. The Town's interpretation was also expressly rejected in a recent Los Angeles Superior Court ruling which concluded "that when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond." (*Janet Jha v. City of Los Angeles, et al.* (Super. Ct. L.A. County, July 24, 2024, No. 23STCP03499), p. 24.)

Conclusion

Failure by the Town to allow for an additional 90-day resubmittal period after each of its incompleteness determinations would be a violation of the PSA. The Town must allow the applicant to resubmit the application within 90 days of any incompleteness determination. The Town should also uphold its PSA obligations under Government Code section 65941.1 by honoring the Project's vested rights.

¹ Gov. Code, § 65941.1, subd. (e)(2).

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 of those violations.

The City has until February 26, 2025, 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 David Ying at david.ying@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief

Enclosure: Town of Los Gatos – Saratoga Road Project – Letter of Technical Assistance (August 30, 2024)

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August 30, 2024

Jennifer Armer, Planning Manager
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Dear Jennifer Armer:

RE: Town of Los Gatos – Saratoga Road Project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from Arielle Harris of Cox Castle (CC) on behalf of SummerHill Homes (SHH) on April 17, 2024 regarding the application of the Permit Streamlining Act (PSA) (Gov. Code, §§ 65941.1, 65943) and the State Density Bonus Law (SDBL) (Gov. Code, § 65915). The PSA governs the timing of development applications, while the SDBL allows certain housing developments to obtain incentives/concessions in development standards by providing affordable housing, among other provisions. The purpose of this letter is to provide technical assistance for the benefit of the Town of Los Gatos (Town), CC, and SHH regarding eligibility under the law.

Project Description and Background

HCD understands that the proposed project involves the construction of 155 units, of which 18 percent are affordable (28 units) to lower-income households, on an 8.82-acre site. On June 30, 2023, SHH submitted a preliminary application to vest rights for the project under the HAA, followed by a full application on December 15, 2023. The Town issued an invoice for the full application on December 19, which SHH paid the following day. CC has posed the following questions:

Question #1: When is an “application for a development project” deemed “submitted” under Government Code section 65941.1, subdivision (d)(1), where the local agency intake process does not offer a means of concurrent fee payment?

HCD understands that when development project applications are submitted to the Town, a Town staff person first checks to verify the appropriate type of permit being sought, then generates the invoice accordingly. Because this process requires action on the part of the staff person, it is not procedurally possible for an applicant to submit an application and associated fee at the same time. While in most instances this practice creates an insignificant delay, it is a matter of great concern to an applicant that is

attempting to submit a full application with the 180-day submittal window to maintain vesting under a Preliminary Application.¹ For the purposes of meeting PSA review deadlines for the full application², the Town considers the 30-day application completeness clock to have started when the invoice is paid, not when the application is submitted.

While it is reasonable for the Town to start its review of the project – and with it the application completeness clock – after its fees are paid, the inconsistent lag time between application submittal and invoice payment is concerning. The Legislature found and declared with the passing of the PSA that “there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects”.³ The intent of the PSA is to ensure that applicants are provided clear instructions and that local jurisdictions are consistently processing projects in accordance with the specific timelines outlined in the statute to streamline development. Considering the current housing crisis in California, delays in permitting processes and approval times add constraints to the cost of residential construction. Therefore, compliance with the PSA is even more pertinent today to meet the urgent housing needs across California.

As mentioned above, it is critically important for an applicant to be able to submit a full application within the 180-day submittal window to maintain vesting under a Preliminary Application. The Town should explore modifying its intake procedures for development applications of this type to provide an option for the applicant to pay the fee associated with the type of application being sought. If the applicant has misidentified the type of application, the Town can subsequently charge or refund the applicant the difference between the fees. Alternatively, the Town might consider amending its municipal code or other adopted procedures to address the circumstance encountered by the subject project (i.e., establish that procedural delays for which the Town is responsible are not a basis to lose Preliminary Application vesting status).

Question #2: Does the 90-day deadline provided in Government Code section 65941.1, subdivision (d)(2), of the Permit Streamlining Act require the housing development project applicant to achieve “application completeness” within 90 days of the agency’s first incompleteness determination to avoid expiration of the preliminary application, or does it allow for multiple rounds of completeness review and resubmittals as long as the applicant responds within 90 days of each incompleteness determination, consistent with Government Code section 65943?

The 90-day deadline restarts with each subsequent resubmittal by the applicant. Subdivision (d) of Government Code section 65941.1 references section 65943, which provides for an iterative process in which deadlines reset upon resubmittal. Because of that reference, it is reasonable to conclude that the subdivision envisions a similar back-

¹ Gov. Code, § 65941.1, subd. (d)(1).

² Gov. Code, § 65943, subd. (a).

³ Gov. Code, § 65921.

and-forth process. Nothing in the subdivision explicitly precludes this. Furthermore, requiring a single 90-day review period would limit the completeness determination process to only one or two resubmittals, making the process more difficult for diligent applicants seeking to use the protections of the preliminary application system. An interpretation that there is a single finite 90-day review period is inconsistent with both the intent of the PSA and the Legislature when it introduced this system in Senate Bill 330 (Chapter 654, Statutes of 2019). This interpretation is also inconsistent with a recent Los Angeles Superior Court ruling which concluded “that when an applicant receives **an** incompleteness determination pursuant to section 65943 – not just the **first** incompleteness determination – an applicant has 90 days to respond.” (*Janet Jha v. City of Los Angeles, et al.*, (Super. Ct. L.A. County, 2024, No. 23STCP03499).)

Question #3: Can a housing development project applicant and a city or county mutually agree to an extension of the 90-day time limit provided in Government Code section 65941.1, subdivision (d)(2)?

Yes. As mentioned above, subdivision (d)(1) links its process to that of section 65943, which provides in its subdivision (d) that the timelines for submittal do not preclude “an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.” It logically follows that if a project is in a situation where section 65943 is applicable because the application is not complete, then the local government and the applicant should be able to extend the submittal timelines by mutual agreement. HCD encourages local governments and applicants to work together to successfully realize residential development projects.

Conclusion

In conclusion, while applications under Government Code section 65941.1, subdivision (d)(1), are deemed “submitted” upon submission of required materials and payment of applicable fees, cities should make it possible for applicants to submit all materials and payments concurrently to maximize efficiency. The 90-day review period for completeness determination under the PSA is not finite and, rather, resets for subsequent resubmittals, and when mutually agreement upon by both applicants and local governments, the 90-day time limit may be extended. HCD remains committed to supporting the Town of Los Gatos in facilitating housing at all income levels and hopes the Town finds this clarification helpful. If you have questions or need additional information, please contact David Ying at David.Ying@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief