

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

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December 12, 2023

Lucas Seibert, Community Development Director
Community Development Department
401 South Ventura Street
Ojai, CA 93023

**RE: 320 Bryant Street Affordable Housing Project – Letter of Support and
Technical Assistance**

Dear Lucas Seibert:

The California Department Housing and Community Development (HCD) received a request for technical assistance from the applicant, Cabrillo Economic Development Corporation, on August 1, 2023. The applicant seeks to utilize the Streamlined Ministerial Approval Process under Senate Bill (SB) 35 (Chapter 366, Statutes of 2017 and codified in Gov. Code, § 65913.4) and the State Density Bonus Law (SDBL) for a project that proposes to construct 49 affordable housing units and one market rate manager's unit located at 320 Bryant Street (Project). The purpose of this letter is to memorialize the discussion between HCD and the City of Ojai (City) at their August 17, 2023 meeting; to provide technical assistance related to the implementation provisions of the tribal scoping consultation; and ministerial processing under the Streamlined Ministerial Approval Process created by SB 35. This letter also provides technical assistance regarding the implementation of concessions and waivers under the SDBL (Gov. Code § 65915). HCD understands the Ojai City Council will be considering this Project at its December 12, 2023 City Council meeting, and HCD urges the City to approve this Project.

Tribal Scoping Consultation and the Defined Roles of Each Party

HCD understands the City has accepted and processed the application for the Bryant Street Project, but for future reference when processing SB 35 projects, AB 168 (Chapter 166, Statutes of 2020 and codified in Gov. Code, §§ 65400, 65913.4 and 65941.1) created a process for tribal scoping consultation for housing development proposals seeking review under the Streamlined Ministerial Approval Process. The statute adopts a 30-30-30 timeline, as outlined below:

- **Developer Responsibility:** Before submitting an application for the Streamlined Ministerial Approval Process, developers must submit a notice of intent to submit an application to a local government (Gov. Code, § 65913.4, subd. (b)(1)(A)(i)).
- **Local Government Responsibility:** Within 30 calendar days of receiving the developer's preliminary application, the local government must provide formal notice to each Tribe traditionally and culturally affiliated with the geographic area of the project site (Gov. Code, § 65913.4, subd. (b)(1)(A)(iii)(I)). The formal notice must include the location and a description of the proposed development, and an invitation to engage in scoping consultation (Gov. Code, § 65913.4, subd. (b)(1)(A)(iii)(I)(ia-ic)).
 - The local government is required to contact the Native American Heritage Commission (NAHC) for assistance in identifying any California Native American Tribe that is traditionally and culturally affiliated with the geographic area of the proposed development. (Gov. Code, § 65913.4, subd. (b)(1)(A)(ii)).
- **Tribal Responsibility:** Each Tribe that receives this notice has 30 calendar days to accept the invitation to engage in consultation (Gov. Code, § 65913.4, subd. (b)(1)(A)(iii)(II)).
- **Local Government Responsibility:** The local government must initiate scoping consultation within 30 calendar days of a Tribe's acceptance of the invitation to engage in scoping consultation (Gov. Code, § 65913.4, subd. (b)(1)(A)(iii)(III)).

It appears that the statutory timelines outlined above (i.e., the "30-30-30 timeline") may not have been met. HCD understands the City received the SB 330 preliminary application and notice of intent to submit an application under Streamlined Ministerial Approval Process on or about April 5, 2023. The City notified Tribes that the City was aware had some affiliation with the area on July 21, 2023, and notified the Native American Heritage Commission on August 2, 2023, which would exceed the 30 calendar days required by statute. HCD reminds the City of its statutory responsibility to notify Tribes within 30 calendar days of receiving the developer's preliminary application (Gov. Code, § 65913.4, subd. (b)(1)(A)(ii)).

HCD would like to remind the City that tribal scoping consultation concludes if either 1) the parties to the scoping consultation (i.e., the Local Government and the Tribe) document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present (Gov. Code, § 65913.4, subd. (b)(2)(D)(i)), or 2) one or more parties to the consultation, acting in good faith and after a reasonable effort, conclude that a mutual agreement cannot be achieved (Gov. Code, § 65913.4, subd. (b)(2)(D)(ii)). The City is required to accept an application under the Streamlined Ministerial Approval Process once tribal scoping consultation has concluded, when a Native American Tribe has received a formal notice of the applicant's notice of intent to submit an application and does not accept the invitation within 30 days from the receipt of that notice to engage (Gov. Code, § 65913.4, subd. (b)(1)(A)(i)(iii)(II)), or when a Native American Tribe accepts an invitation to engage in a scoping consultation but fails to engage in consultation after

repeated documented attempts by the City to engage the Native American Tribe (Gov. Code, § 65913.4, subd. (b)(3)). Tribal scoping should not unduly delay the acceptance and processing of a housing development application pursuant to the Streamlined Ministerial Approval Process.

Development Review and SB 35 Ministerial Processing

Additionally, HCD would like to remind the City that because the City has made insufficient progress toward meeting its above moderate-income Regional Housing Needs Allocation (RHNA) and lower-income RHNA, the City is required to process applications under SB 35 when a project proposes at least 10 percent affordability (Gov. Code, § 65913.4, subd. (a)(4)(B)(i)). Upon receipt and acceptance of an application that requests Streamlined Ministerial Approval Process, the City must determine consistency with objective zoning, subdivision, or design review standards within 60 calendar days of the submittal of the application if the development contains 150 or fewer units (Gov. Code, § 65913.4, subd. (c)(1)(A)).

The City must provide written documentation of inconsistencies with objective standards within the timeframes listed in subdivision (c) of paragraph (1) of Gov. Code § 65913.4, or in this case, within 60 days of the submittal. Failure to do so results in the project being deemed consistent with all objective planning standards. (Gov. Code, § 65913.4, subd. (c)(2)).

If design review or other public oversight is conducted for a project, it may be conducted by the local government's planning commission, design review board, or any equivalent board or commission for review and approval. However, design review or other public oversight must be reviewed against objective standards only, and the project may only be subject to objective design standards published and adopted by ordinance or resolution by the local government before submission of the development application (Gov. Code, § 65913.4, subd. (d)(1)). If a local government determines that a proposed development conflicts with any objective standards; it shall provide the applicant written documentation in support of its denial; identifying the standard(s) the project conflicts with and an explanation for the reason(s) the project conflicts with standards. For a project with less than 150 units, design review or public oversight must be completed within 90 calendar days of submittal of the application (Gov. Code, § 65913.4, subd. (d)(3)(D)). Failure to complete design review or other public oversight results with the project being deemed consistent with objective design review standards.

A local government must also determine if an application for Streamlined Ministerial Approval complies with the requirements and approve or disapprove the application within 90 calendar days of submittal of the application when a project contains 150 or fewer units. Timeframes for determining project eligibility for a density bonus concession, incentive, parking reduction, or waiver of development standards shall be subject to the timeframes listed in Government Code section 65913.4, subdivision (c)(1). Therefore, it is recommended that consistency review and design review occur concurrently to meet statutory deadlines for acting on an application.

Government Code section 65913.4, subdivision (a)(2)(B), requires at least 75 percent of the perimeter of the site to be adjoined by parcels developed with urban uses and parcels that are only separated by a street or highway are considered to be adjoined. At the November 1, 2023, Planning Commission meeting, City staff raised the question if the proposed project is eligible for SB 35 ministerial processing because the City is uncertain if the parcels adjoining the project site are urban uses. The project in question is adjoined by a self-storage facility to the south, an auto repair use to the north, and residential to the east. Government Code section 65913.4, subdivision (k)(12), defines “urban uses” to mean any current or former residential, commercial, public institutional, transit, or transportation passenger facility, or retail use, or any combination of those uses. The adjoining auto repair and self-storage facility are clearly urban uses as defined in subdivision (k)(12). Therefore, the project is eligible for SB 35 Streamlined Ministerial Approval Process.

Implementation of State Density Bonus Law Concessions and Waivers

When an applicant requests a density bonus pursuant to the SDBL, the granting of a density bonus shall not require a general plan amendment, zoning code amendment, or other discretionary approval (Gov. Code § 65915, subd. (f), paragraph (5)). The applicant for this proposed development project requested an allowable density bonus under the SDBL. However, the City has stated in its completeness letters that the proposed density is inconsistent with the City’s general plan and zoning code and would require a general plan amendment and zoning code amendment. The City is obligated under state law to properly implement the SDBL, including allowance of a density bonus and the granting of concessions and waivers to development standards or other requirements without requiring a general plan amendment and/or zoning code amendment.

At the November 1, 2023, Planning Commission meeting City staff stated the application is required to be reviewed and acted on by the City Council because of a provision in the Ojai Municipal Code, Section 10-2.704(g)(1) (Code), which sets occupancy standards for affordable housing projects within the Special Housing Overlay (SPL) such that a minimum of 15 percent of the total number of dwellings shall be developed for very low-income households; 15 percent must be developed for low income; and five percent must be developed for moderate income. Exceptions to the occupancy standards are granted by the City Council. It is HCD’s understanding that the applicant has requested a concession to these affordability rules to allow it to provide additional low-income units in place of the 5 percent moderate-income units called for in the Code and has provided documentation to demonstrate cost reductions as part of the request. Pursuant to Government Code section 65915, subdivision (d), concessions shall be granted unless the City makes written findings; based on substantial evidence that the concession does not result in identifiable and actual cost reductions; or the concession would have a specific, adverse impact upon public health and safety.

As a reminder, under SB 35 Streamlined Ministerial Approval Process, City Council review must be ministerial. Ministerial processing means a process for development

review involving little or no personal judgment and review is limited to objective zoning and design review standards¹.

Housing Element Compliance

HCD would like to remind the City that a local jurisdiction does not have the authority to determine that its adopted housing element is in substantial compliance with state law but may provide reasoning why HCD should make a finding of substantial compliance (Gov. Code § 65585, subd. (f)(2)). A jurisdiction is “in compliance” as of the date of HCD’s letter finding of substantial compliance. State statute gives HCD the authority to determine if a City’s housing element complies with state law and gives HCD the authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or State Housing Element Law. This includes failure to implement program actions included in the housing element (Gov. Code 65585).

Program B(6) – Affordable Housing Supply, identifies the SPL as an implementation tool to meet affordable housing needs by allowing ministerial review of affordable housing projects. Program B(6) also identifies objectives and timelines such as establishing written procedures for streamlined review of affordable housing projects pursuant to SB 35 by the end of 2022. The Project is located on a site in the City’s housing element sites inventory (Site 17) and is within the SPL Overlay and therefore is identified as an appropriate site for affordable housing. As stated in the City’s certified housing element, “These sites are available for development and there are no constraints that would prevent the development of housing on these sites during the 6th cycle housing element planning period” (Attachment B, p. 87).

It appears the City has not established written procedures to properly implement SB 35 applications, nor is the City appropriately processing affordable housing projects pursuant to the adopted SPL ordinance and certified housing element. HCD would like to remind the City of its obligations to effectively implement the programs outlined in the certified housing element. Failure to comply with the certified housing element may result in revocation of the City’s housing element compliance.

Conclusion

HCD expects the City to meet its statutory obligation to initiate and complete tribal consultation in a timely manner. This is an act that the City can and must perform pursuant to the timeline set forth in SB 35. For further information, you may refer to a document prepared by the Governor’s Office of Planning and Research (OPR) regarding AB 168: Tribal Scoping Consultation Requirements for Projects Seeking Review Under the Streamlined Ministerial Approval Process.² The City is also expected to process the application in accordance with SB 35 Streamlined Ministerial Approval Process and the SDBL, which requires the City to review the project ministerially, allow

¹ Updated Streamlined Ministerial Approval Process, Government Code Section 65913.4 Guidelines available online at: <https://www.hcd.ca.gov/policy-research/docs/SB-35-Guidelines-Update-Final.pdf>

² Also available on OPR’s website: https://opr.ca.gov/ceqa/docs/20201202-AB_168_Advisory_FINAL.pdf

for a density bonus, and apply the use of concessions and waivers consistent with state law. HCD further urges the City Council to approve the Project, as recommended by the City's Planning Commission.

HCD appreciates the opportunity to provide information regarding the entitlement process under SB 35 and SDBL. HCD would also like to remind the City that HCD has enforcement authority over SB 35, the SDBL, and housing element law among other state housing laws. If HCD finds that a city'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 (Gov. Code § 65585, subd. (j)). If you have questions or need additional information, please contact Jessica Evans, at jessica.evans@hcd.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West
Housing Accountability Unit Chief