

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

2020 W. El Camino Avenue, Suite 500
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October 12, 2023

Los Angeles City Council
City of Los Angeles
200 North Spring Street, 395 Floor
Los Angeles, CA 90012

Dear City Councilmembers Eunisses Hernandez, Paul Krekorian, Bob Blumenfield, Nithya Raman, Katy Yaroslavsky, Imelda Padilla, Monica Rodriguez, Marqueece Harris-Dawson, Curren D. Price, Jr., Heather Hutt, Traci Park, John S. Lee, Hugo Soto-Martinez, Kevin de León, and Tim McOsker:

RE: Preliminary Application Vesting of ED1 Projects – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands that the City of Los Angeles (City) City Council will consider the Planning and Land Use Management (PLUM) Committee recommendation for denial of the appeal for the project located at 8217 North Winnetka Avenue (Winnetka Project). Additionally, HCD is aware that the PLUM Committee will consider an upcoming appeal for another project located at 7745-7751 N. Wilbur Avenue (Wilbur Project).

The purpose of this letter is to further assist the City with its decision making by providing technical assistance related to the preliminary applications as described in the Housing Accountability Act (HAA) (Gov. Code, § 65589.5) and Permit Streamlining Act (PSA) (Gov. Code, § 65941.1). HCD urges the City to apply the law consistently and to allow projects vested by the preliminary applications to be processed under the “ordinances, policies, and standards” in effect, including Executive Directive No. 1 (ED1), when the complete preliminary application was submitted.

HCD’s Prior Technical Assistance on this Matter

HCD has already issued technical assistance on this matter. The City has not presented any new information that would change HCD’s guidance. Enclosed here for the City’s convenience is a copy of HCD’s Letter of Technical Assistance dated September 14, 2023, regarding the ED1 project located at 5501-5511 N. Ethel Avenue. To reiterate, under the HAA, submission of a preliminary application that meets the requirements of the PSA at Government Code section 65941.1 vests the “ordinances, policies, and standards” in effect when the application is submitted.

(Gov. Code, § 65589.5, subd. (o)(1).) Such “ordinances, policies, and standards” include “rules, regulations, requirements, and policies of a local agency.” (Gov. Code, § 65859.5, subd. (o)(4).) HCD’s September 14, 2023, letter explains that an executive directive such as ED1 is one of the “rules, regulations, requirements, and policies” that vest upon submission of a complete preliminary application and is not excluded from the expansive HAA definition of “ordinances, policies, and standards.”

To the extent that the appeals for the Winnetka Project, Wilbur Project, or any other ED1 projects address the same question raised by the project located at 5501-5511 N. Ethel Avenue, the technical assistance provided in HCD’s September 14, 2023, letter applies. An applicant that submitted a complete preliminary application may proceed under the ED1 regulations that were in effect at the time the preliminary application was complete. The preliminary application vesting status remains in effect as long as the development application submittal occurs within the 180-day required period¹ and any revisions to the development application do not exceed a change of 20 percent of the number of residential units or square footage of construction, exclusive of any increase resulting from the density bonus, incentive, concession, waiver or similar provision.²

Conclusion

HCD found on September 14, 2023, that the preliminary application vesting rights conferred by Government Code section 65941.1 include ED1. HCD remains committed to supporting the City of Los Angeles in achieving housing objectives across all income levels and hopes the City finds this clarification helpful. HCD also reminds the City that HCD has enforcement authority over the HAA, among other state housing laws. If HCD finds that a city’s act or failure to act does not substantially comply with state law, HCD may notify the California Office of the Attorney General. (Gov. Code, § 65585, subd. (j).) If you have any questions or need additional information, please contact Gabriel A. Pena-Lora, of our staff, at gabriel.pena-lora@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief

cc: Lisa M. Webber, AICP Deputy Director Los Angeles City Planning
Blake Lamb, Principal City Planner Los Angeles City Planning

Enclosure: September 14, 2023, HCD Letter of Technical Assistance

¹ Gov. Code, § 65941.1, subd. (d)(1).

² Gov. Code, § 65941.1, subd. (c).

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September 14, 2023

City Council Planning and Land Use Management Committee
City of Los Angeles
200 North Spring Street, 395 Floor
Los Angeles, CA 90012

Dear City Councilmembers Marqueece Harris-Dawson, John S. Lee, Katy Yaroslavy, Imelda Padilla, and Heather Hutt:

RE: 5501-5511 N. Ethel Avenue – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) understands that on September 19, 2023, the City of Los Angeles (City) City Council's Planning and Land Use Management Committee (PLUM) will consider an appeal of the City's determination that the project located at 5501-5511 N. Ethel Avenue (Project) is ineligible for ministerial processing under Executive Directive No. 1 (ED1).

The purpose of this letter is to assist the PLUM with its decision making by providing technical assistance related to the Preliminary Application as described in the Housing Accountability Act (Gov. Code, § 65589.5) and Permit Streamlining Act (Gov. Code, § 65941.1). HCD urges the City to expeditiously process all ED1 projects in accordance with the rules and regulations that were in effect at the time the preliminary applications were complete. HCD recognizes the challenge of interpreting housing and land use laws and appreciates the opportunity to provide technical assistance.

Background***ED1***

Mayor Karen Bass issued ED1 on December 16, 2022, creating a streamlined ministerial approval process for 100 percent affordable and shelter projects. The original ED1 regulations specified that the density permitted for a project site could be based on either the zoning or the general plan land use designation and that projects could utilize State Density Bonus Law (SDBL). The City revised ED1 on June 12, 2023, and explicitly prohibited ED1 ministerial processing on sites located in single-family or more restrictive zones.¹

¹ Executive Directive No. 1, Page 1, Revised June 12, 2023.

Project History

The proposed Project is a 100 percent affordable residential development that would result in a total of 200 affordable dwelling units, inclusive of one manager's unit. The Project site is zoned R1-1, One-Family Zone (single-family zone), with a General Plan land use designation of Low Residential. The Project includes a State Density Bonus Law (SDBL) request for additional density with incentives, concessions, and waivers of development standards. The City deemed the Project's preliminary application complete on March 23, 2023. The City's signed preliminary application review form indicated that the Project was eligible for ED1 and had until September 19, 2023 to file the City Planning application.² The applicant submitted the full development application on June 6, 2023. Then, on July 6, 2023, the City issued a Notice of Ineligibility (NOI) that indicated, "[p]er the revised Executive Directive 1 (ED1) issued by Mayor Karen Bass on June 12, 2023, projects located in single-family or more restrictive zones cannot use the ED1 Ministerial Approval Process."³ The NOI explicitly stated that the Project is not eligible for ED1 processing because it is in the R1-1 zone, but noted that there are other entitlement options available for the Project which do not require a legislative act (e.g. General Plan Amendment or Zone Change).

Preliminary Application Vesting Rights and the City's Executive Directive-1

The central question between the City and the Applicant is as follows:
Is an executive directive one of the rules, regulations, requirements, and policies that vest upon submission of a complete Preliminary Application?

The answer is "yes." Submission of a preliminary application that meets the requirements of Government Code section 65941.1 vests the "ordinances, policies and standards" in effect when the application is submitted. (Gov. Code § 65589.5, subd. (o)(1).) The Housing Accountability Act (HAA) makes it clear that,

"[f]or purposes of this subdivision, 'ordinances, policies, and standards' includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions."⁴

The City's ED1 is not excluded from the expansive HAA definition of "ordinances, policies, and standards." The Mayor issued the executive directive under the provisions of Los Angeles City Charter section 231(i) and section 8.29 of the Los Angeles Administrative Code, which, during a period of local emergency, deem the Mayor the

² City of Los Angeles Housing Crisis Act Vesting Preliminary Application, Page 1, Signed March 31, 2023.

³ City of Los Angeles Notice of Ineligibility dated July 6, 2023.

⁴ Gov. Code, § 65589.5, subd. (o)(4). Emphasis added.

Director of the Emergency Operations Organization and authorize the Director to “promulgate, issue and enforce rules, regulations, orders and directives which the Director considers necessary for the protection of life and property.” Charter section 231(j), meanwhile, authorizes the Mayor to “establish procedures and implement policies” to manage the Mayor’s responsibilities “through the issuance of executive directives, which, in the absence of conflicting provisions in the Charter or ordinance, and until revised or rescinded by the Mayor, shall be binding on all departments, commissions, appointed officers and employees of the City” (emphasis added). There is no doubt, then, that an Executive Directive is a “rule[],” “requirement[],” or “polic[y]” under Government Code section 65589.5, subdivision (o)(4).

Therefore, an applicant that submitted a complete preliminary application at a time when ED1 did not exclude single-family or more restrictive zones may proceed under the previous ED1 regulations throughout the entitlement process. The preliminary application vesting status remains in effect as long as the development application submittal occurs within the 180-day required period⁵ and any revisions to the development application do not exceed a change of 20 percent of the number of residential units or square footage of construction, exclusive of any increase resulting from the density bonus, incentive, concession, waiver or similar provision.⁶ However, HCD emphasizes that any incomplete preliminary applications submitted prior to the June 12, 2023 revised ED1, and any preliminary applications submitted after June 12, 2023, would not be entitled to ED1 ministerial processing in single-family or more restrictive zones, as any such applications would not have secured vesting rights under the original ED1 policy.

Conclusion

In sum, HCD finds that the preliminary application vesting rights conferred by Government Code section 65941.1 include ED1. HCD remains committed to supporting the City of Los Angeles in achieving housing objectives across all income categories and hopes the City finds this clarification helpful. If you have any questions or need additional information, please contact Gabriel A. Pena-Lora, of our staff, at gabriel.pena-lora@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief

cc: Lisa M. Webber, AICP Deputy Director Los Angeles City Planning
Blake Lamb, Principal City Planner Los Angeles City Planning

⁵ Gov. Code, § 65941.1, subd. (d)(1).

⁶ Gov. Code, § 65941.1, subd. (c).