

## **Exhibit A – Appeal Application**



APPLICATIONS:

APPEAL APPLICATION

Instructions and Checklist

Related Code Section: Refer to the City Planning case determination to identify the Zone Code section for the entitlement and the appeal procedure.

Purpose: This application is for the appeal of Department of City Planning determinations authorized by the Los Angeles Municipal Code (LAMC).

A. APPELLATE BODY/CASE INFORMATION

1. APPELLATE BODY

- Area Planning Commission, City Planning Commission, City Council, Director of Planning, Zoning Administrator

Regarding Case Number: CPC-2022-9268-DB-HCA

Project Address: 13916 Polk St, Sylmar, CA 91342

Final Date to Appeal:

2. APPELLANT

- Appellant Identity (check all that apply): Representative, Applicant, Property Owner, Operator of the Use/Site

Person, other than the Applicant, Owner or Operator claiming to be aggrieved

Person affected by the determination made by the Department of Building and Safety

- Representative, Applicant, Owner, Operator, Aggrieved Party

3. APPELLANT INFORMATION

Appellant's Name: Janet Jha

Company/Organization:

Mailing Address: 5353 Del Moreno Dr

City: Woodland Hills State: CA Zip: 91364

Telephone: (310) 995-4859 E-mail: janetyjha@gmail.com

a. Is the appeal being filed on your behalf or on behalf of another party, organization or company?

- Self, Other:

b. Is the appeal being filed to support the original applicant's position? Yes, No

#### 4. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Akhilesh Jha

Company: \_\_\_\_\_

Mailing Address: 13123 Hoyt St

City: Pacoima State: CA Zip: 91331

Telephone: (310) 995-4859 E-mail: akhilesh.jha@gmail.com

#### 5. JUSTIFICATION/REASON FOR APPEAL

a. Is the entire decision, or only parts of it being appealed?  Entire  Part

b. Are specific conditions of approval being appealed?  Yes  No

If Yes, list the condition number(s) here: \_\_\_\_\_

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal  How you are aggrieved by the decision  
 Specifically the points at issue  Why you believe the decision-maker erred or abused their discretion

#### 6. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: *Akhilesh* Date: 05/11/2023

### GENERAL APPEAL FILING REQUIREMENTS

#### B. ALL CASES REQUIRE THE FOLLOWING ITEMS - SEE THE ADDITIONAL INSTRUCTIONS FOR SPECIFIC CASE TYPES

##### 1. Appeal Documents

a. **Three (3) sets** - The following documents are required for each appeal filed (1 original and 2 duplicates)  
Each case being appealed is required to provide three (3) sets of the listed documents.

- Appeal Application (form CP-7769)  
 Justification/Reason for Appeal  
 Copies of Original Determination Letter

##### b. Electronic Copy

- Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Appeal Form.pdf", "Justification/Reason Statement.pdf", or "Original Determination Letter.pdf" etc.). No file should exceed 9.8 MB in size.

##### c. Appeal Fee

- Original Applicant - A fee equal to 85% of the original application fee, provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.  
 Aggrieved Party - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

##### d. Notice Requirement

- Mailing List - All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC  
 Mailing Fee - The appeal notice mailing fee is paid by the project applicant, payment is made to the City Planning's mailing contractor (BTC), a copy of the receipt must be submitted as proof of payment.

## SPECIFIC CASE TYPES - APPEAL FILING INFORMATION

### C. DENSITY BONUS / TRANSIT ORIENTED COMMUNITIES (TOC)

#### 1. Density Bonus/TOC

Appeal procedures for Density Bonus/TOC per LAMC Section 12.22.A 25 (g) f.

#### NOTE:

- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.
- Appeals of Density Bonus/TOC cases can only be filed by adjacent owners or tenants (must have documentation), and always only appealable to the Citywide Planning Commission.
  - Provide documentation to confirm adjacent owner or tenant status, i.e., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, drivers license, bill statement etc.

### D. WAIVER OF DEDICATION AND OR IMPROVEMENT

Appeal procedure for Waiver of Dedication or Improvement per LAMC Section 12.37 I.

#### NOTE:

- Waivers for By-Right Projects, can only be appealed by the owner.
- When a Waiver is on appeal and is part of a master land use application request or subdivider's statement for a project, the applicant may appeal pursuant to the procedures that governs the entitlement.

### E. TENTATIVE TRACT/VESTING

1. **Tentative Tract/Vesting** - Appeal procedure for Tentative Tract / Vesting application per LAMC Section 17.54 A.

NOTE: Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.

- Provide a copy of the written determination letter from Commission.

### F. BUILDING AND SAFETY DETERMINATION

- 1. Appeal of the Department of Building and Safety determination, per LAMC 12.26 K 1, an appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

#### a. Appeal Fee

- Original Applicant - The fee charged shall be in accordance with LAMC Section 19.01B 2, as stated in the Building and Safety determination letter, plus all surcharges. (the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code)

#### b. Notice Requirement

- Mailing Fee - The applicant must pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt as proof of payment.

- 2. Appeal of the Director of City Planning determination per LAMC Section 12.26 K 6, an applicant or any other aggrieved person may file an appeal, and is appealable to the Area Planning Commission or Citywide Planning Commission as noted in the determination.

#### a. Appeal Fee

- Original Applicant - The fee charged shall be in accordance with the LAMC Section 19.01 B 1 a.

#### b. Notice Requirement

- Mailing List - The appeal notification requirements per LAMC Section 12.26 K 7 apply.
- Mailing Fees - The appeal notice mailing fee is made to City Planning's mailing contractor (BTC), a copy of receipt must be submitted as proof of payment.

**G. NUISANCE ABATEMENT**

**1. Nuisance Abatement - Appeal procedure for Nuisance Abatement per LAMC Section 12.27.1 C 4**

NOTE:

- Nuisance Abatement is only appealable to the City Council.

**a. Appeal Fee**

Aggrieved Party the fee charged shall be in accordance with the LAMC Section 19.01 B 1.

**2. Plan Approval/Compliance Review**

Appeal procedure for Nuisance Abatement Plan Approval/Compliance Review per LAMC Section 12.27.1 C 4.

**a. Appeal Fee**

Compliance Review - The fee charged shall be in accordance with the LAMC Section 19.01 B.

Modification - The fee shall be in accordance with the LAMC Section 19.01 B.

**NOTES**

*A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.*

***Please note** that the appellate body must act on your appeal within a time period specified in the Section(s) of the Los Angeles Municipal Code (LAMC) pertaining to the type of appeal being filed. The Department of City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.*

This Section for City Planning Staff Use Only		
Base Fee: \$158	Reviewed & Accepted by (DSC Planner): Anna M. Vidal Ann M Vidal	Date: 5/12/23
Receipt No: see attached	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

**Applicant Copy**  
 Office: Van Nuys  
 Application Invoice No: 88145

City of Los Angeles  
 Department of City Planning



\*6800188145\*



### City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

If you have questions about this invoice, please contact the planner assigned to this case. To identify the assigned planner, please the assigned planner, please visit <https://planning.lacity.org/pdiscaseinfo/> and enter the Case Number.

Payment Info: \$194.34 was paid on 05/12/2023 with receipt number 12052303A-937CA53B-B117-4A55-BABF-91DD3E21EE3D

Applicant: Janet Jha ()
Representative: Akhilesh Jha ()
Project Address: 13916 Polk Street

NOTES:

Item	Fee	%	Charged Fee
Reports	\$194.34	100 %	\$194.34
<b>Case Total</b>			<b>\$194.34</b>
	* Fees Subject to Surcharges		\$0.00
	Fees Not Subject to Surcharges		\$194.34
	Plan & Land Use Fees Total		\$0.00
	Expediting Fee		\$0.00
	Development Services Center Surcharge (3%)		\$0.00
	City Planning Systems Development Surcharge (6%)		\$0.00
	Operating Surcharge (7%)		\$0.00
	General Plan Maintenance Surcharge (7%)		\$0.00

* Fees Subject to Surcharges	\$0.00
Fees Not Subject to Surcharges	\$194.34
Plan & Land Use Fees Total	\$0.00
Expediting Fee	\$0.00
Development Services Center Surcharge (3%)	\$0.00
City Planning Systems Dev. Surcharge (6%)	\$0.00
Operating Surcharge (7%)	\$0.00
General Plan Maintenance Surcharge (7%)	\$0.00
Grand Total	\$194.34
Total Overpayment Amount	\$0.00
Total Paid (amount must equal sum of all checks)	\$194.34

Council District:  
 Plan Area:  
 Processed by ANNA VIDAL on 5/12/2023

Signature: \_\_\_\_\_

## 1. Project Description

The housing development proposed at 13916 Polk St, Sylmar, CA 91342 ("Project") in the City of Los Angeles ("City") will comprise of 40 residential townhome-type units for sale on a 48,284.1 sf lot. Eight units will be sold to low-income family. Each unit will be three-story and 40 ft height. Project will have 99,868 sf of floor area, 100,260 sf of building area, and 48 parking space. It will provide one unit for on-site property manager. It will remove two non-protected on-site trees. There will be no phased development and there are no plans for future expansion. The existing single-family home of 3BR/2BA, 1961 sf will be demolished.

## 2. Entitlement Path chosen by this Project

This Project is filed in accordance with Gov. Code §65589.5, subd. (d), §65589.5, subd. (o) and §65941.1 among other applicable city, state, and federal laws. Since over two-thirds of the total square footage of the Project are dedicated to residential uses, the Project qualifies as a "housing development" under Gov. Code §65589.5, subd. (h)(2).) The Project site is located in the "Residential Agriculture" RA-1-K zoning and the "Very Low I Residential" land use designation.

This project will provide 20% (8) of the units to lower-income residents from the Project's total 40 units, which entitles the Project to develop an affordable housing at the Project site, notwithstanding the inconsistent density uses, pursuant to the affordable housing provisions of the Housing Accountability Act (Gov. Code §65589.5, subd. (d).) This right persists during the period of time the City's Housing Element remains noncompliant with the Housing Element Law (Gov. Code, § 65580, et seq.).

This project's SB-330 Preliminary Application was approved by the City on 06/24/2022. Therefore, this project is vested as of 06/24/2022 and only the ordinances, policies, and standards in effect on this day will be applicable to this Project. Please note that the City's Housing Element was not in compliance with the state law on 06/24/2022 as determined by a Housing Community Development ("HCD") staff. Furthermore, as opined by the HCD in letter dated May 8, 2023, a local jurisdiction does not have the authority to determine that its adopted element is in substantial compliance. A local jurisdiction is "in compliance" as of the date of HCD's letter finding the adopted element in substantial compliance. A local jurisdiction cannot "backdate" compliance to the date of adoption of a housing element."

The Main Application was submitted on December 9, 2022, associated with plans dated December 21, 2022, were submitted to the Department of City Planning Development Services Center. The fees were issued by the city on December 21, 2022 and the fees were paid on the same date.

Therefore, the Project satisfies all entitlement criteria under Gov. Code §65589.5, subd. (d).

## 3. Specific point at issue in this appeal

In the determination letter, dated April 28, 2023, the City Planning Department made the following determination, which is the main point of the appeal:

"...The Department's position is that the proper entitlement path is a General Plan Amendment, Zone Change, Height District Change, K District Removal, Building Line Removal, Zone Variance, Zoning Administrator Adjustment, and Waiver of Dedication and Improvement. ... While your application

materials indicate that you are requesting project approval under Government Code Section 65589.5(d), that section does not specify the entitlement process. We are now confirming that Density Bonus subject to the Housing Crisis Act is not the proper entitlement process.”

#### 4. How the decision-maker erred or abused their discretion

We disagree with City’s determination that Government Code Section 65589.5(d) does not specify the entitlement process and that this Project would require General Plan Amendment, Zone Change, Height District Change, K District Removal, Building Line Removal, Zone Variance, Zoning Administrator Adjustment, and Waiver of Dedication and Improvement for approval.

Quoting Housing and Community Development letter, date May 8, 2023, attached with this letter:

“Pursuant to Government Code section 65589.5, subdivision (d), a jurisdiction shall not disapprove a housing development project for very low-, low-, or moderate-income households or condition approval in a manner that renders the housing development project infeasible for development for the use of very low-, low-, or moderate-income households unless it makes written findings, based upon a preponderance of evidence in the record, as to one of five findings in subdivision (d).

If a local jurisdiction’s adopted housing element is not found substantially compliant by HCD as of the jurisdiction’s statutory deadline, the jurisdiction may not use subdivision (d)(5) of Government Code section 65589.5, inconsistency with zoning and general plan standards, as a basis to lawfully deny qualifying an affordable housing project. Again, subdivision (d)(4) is colloquially referred to as the “Builder’s Remedy.” Alternative means of denial may be available, such as subdivisions (d)(2) through (d)(4), and under subdivision (e), jurisdictions are still required to comply with both California Environmental Quality Act (CEQA) and the California Coastal Act, as applicable.”

Contrary to City’s determination, the HAA, under which this project is seeking the entitlement, does provide an entitlement path that very clearly enumerates criteria for approval and disapproval of a housing project. The HAA requires that cities and counties make one of five findings to deny, or to apply conditions that make infeasible, a housing development project “for very low, low- or moderate-income households” or an emergency shelter. (§65589.5(d).) A housing development project with 20 percent of the total units available to lower income households or with all of the units available for moderate- or middle-income households may qualify as housing “for very low, low- or moderate-income households. The five findings which would allow denial of an eligible project can be summarized as follows:

1. The city or county has met or exceeded its Regional Housing Needs Allocation (RHNA) for the proposed income categories in the development.
2. The housing development or emergency shelter would have a specific adverse impact on public health and safety, and there is no way to mitigate or avoid the impact without making the development unaffordable. The impact must be based on objective, written public health or safety standards in place when the application was deemed complete.
3. The denial or condition is required to meet state or federal law, and there is no feasible method to comply without making the development unaffordable.

4. The project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agriculture or resource preservation or there are not adequate water or sewage facilities to the serve the project.

5. The project is inconsistent with both the zoning ordinance and the land use designation as specified in any general plan element. However, a city or county cannot make this finding if it has not adopted a housing element in substantial compliance with state law.

Therefore, “[t]he Department’s position is that the proper entitlement path is a General Plan Amendment, Zone Change, Height District Change, K District Removal, Building Line Removal, Zone Variance, Zoning Administrator Adjustment, and Waiver of Dedication and Improvement” is inconsistent with the Government Code section 65589.5, subdivision (d), which provides a very clear path of entitlement.

### 5. Arduous requirements imposed by the City to kill the project

Once the planning department erroneously determined that the HAA does not specify an entitlement process, it is adopting a clever strategy of “throwing a kitchen sink” at the project. As explained earlier, this project uses the HAA laws for the determination of the base number of units. Thereafter, this project uses State density bonus laws (Gov. Code §65915 – §65918) for density bonus, incentives, and waivers. The following table shows city’s onerous demands on the project and my response to the demands:

City's Demands on the Project	Response
General Plan Amendment, subject to Measure JJJ, pursuant to LAMC Sections 11.5.6A and 11.5.11 and City Charter Section 555	This project is not required to request a “General Plan Amendment” because, irrespective of zoning ordinance and general plan land use designation of the lot, under Gov. Code §65589.5(d)(5), the local government cannot reject a housing project if the jurisdiction has not adopted a revised housing element in accordance with Section 65588 that is in substantial compliance. This project is vested as of 06/24/2022. The City of Los Angeles housing element was not in substantial compliance with state laws on 06/24/2022.
Zone Change, subject to Measure JJJ, pursuant to LAMC Sections 12.32F and 11.5.11	This project is not required to request a “Zone Change” because, irrespective of zoning ordinance and general plan land use designation of the lot, under Gov. Code §65589.5(d)(5), the local government cannot reject a housing project if the jurisdiction has not adopted a revised housing element in accordance with Section 65588 that is in substantial compliance. This project is vested as of 06/24/2022. The City of Los Angeles housing element was not in substantial compliance with state laws on 06/24/2022.
Height District Change pursuant to LAMC Section 12.32F	This project used state density bonus laws Gov. Code §65915 – §65918. This project is asking requesting this item as an incentive or a waiver. Therefore, this request

	must be evaluated on the basis of the criteria to accept or reject incentives and waivers.
Building Line Removal pursuant to LAMC Section 12.32R	This project used state density bonus laws Gov. Code §65915 – §65918. This project is asking requesting this item as an incentive or a waiver. Therefore, this request must be evaluated on the basis of the criteria to accept or reject incentives and waivers.
Waiver of Dedication and Improvements pursuant to LAMC Section 12.371 (must be filed separately, not as an incentive)	This project used state density bonus laws Gov. Code §65915 – §65918. This project is asking requesting this item as an incentive or a waiver. Therefore, this request must be evaluated on the basis of the criteria to accept or reject incentives and waivers.
Zoning Administrator Adjustment pursuant to LAMC Section 12.28 to deviate from setbacks (yards), spaces between buildings and passageway requirements	This project used state density bonus laws Gov. Code §65915 – §65918. This project is asking requesting these items as an incentive or a waiver. Therefore, these requests must be evaluated on the basis of the criteria to accept or reject incentives and waivers.
Zone Variance pursuant to LAMC Section 12.27 to deviate automobile parking requirements	This project used state density bonus laws Gov. Code §65915 – §65918. This project is requesting these items as an incentive or a waiver. Therefore, these requests must be evaluated on the basis of the criteria to accept or reject incentives and waivers.

I would expect the city's planning department follows the city's goal of producing housing and the letter and spirit of the state laws. As summarized in CA Govt Code § 65589.5 (a)(2)(L), it is the policy of the state that its housing laws 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.

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



September 1, 2022

Mike Witzansky, City Manager  
City of Redondo Beach  
415 Diamond Street  
Redondo Beach, CA 90277

Dear Mike Witzansky:

**RE: Redondo Beach's 6<sup>th</sup> Cycle (2021-2029) Adopted Housing Element**

Thank you for submitting the City of Redondo Beach's (City) housing element adopted July 5, 2022 and received for review on July 11, 2022. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from Oliver Fries, Leo Pustilnikov, Dawn Sarmiento, Chris Voisey, Mushki Gorowitz, Abundant Housing LA, YIMBY Law, John & Laurie Oester, Josh Albrekston, Grace Peng and Susan Andrade pursuant to Government Code section 65585, subdivision (c).

HCD is pleased to find the adopted housing element in full compliance with State Housing Element Law (Article 10.6 of the Gov. Code). The adopted element addresses the statutory requirements described in HCD's April 12, 2022 review, including required analysis of sites proposed for rezoning and amendments to multiple programs, including programs to affirmatively further fair housing.

HCD commends the inclusion of an executive summary in the housing element. By providing additional history and context regarding policy decisions, the executive summary assists the public in its review of the housing element. The City must continue timely and effective implementation of all programs including but not limited to the following:

- Program 6 (Affordable Housing Development) includes multiple strategies and incentives to facilitate affordable housing development for a variety of housing types.
- Program 8 (Residential Sites Inventory and Monitoring No Net Loss) commits to rezone sites to address a shortfall of sites available to accommodate affordable housing and to ensure the City's Regional Housing Need Allocation (RHNA) can be accommodated for all income levels at all times throughout the planning period.

- Program 9 (By-Right Approval for Projects with 20 Percent Affordable Units) ensures nondiscretionary processing for nonvacant sites identified in the City's previous housing element.
- Program 11 (Small Lot Development/Lot Consolidation) facilitates, incentivizes, and expedites affordable development on small lots, including the consolidation of small lots.
- Program 12 (Accessory Dwelling Units) includes actions to facilitate the development of 240 ADUs within the planning period, monitor the City's progress in meeting the goal, and adjusting its strategies and incentives if the City is not meeting that goal in 2025.
- Program 13 (Amendments to the Zoning Ordinance) commits to update the City's Zoning Ordinance to comply with multiple state laws and implement the City's new General Plan.
- Program 14 (Objective Design Standards) commits the City to update existing design standards to create objective standards by the end of 2022 and the create objective standards for rezoned sites by October 15, 2024.
- Program 15 (Monitoring the Effect of Article 27 of the City Charter [Measure DD]) ensures the City monitors and responds appropriately to votes of the electorate, including a vote regarding the recommended Land Use Plan of the General Plan and associated rezoning required by State Housing Element Law.
- Program 18 (Fair Housing) includes a variety of actions to ensure that the City meets its obligation to Affirmatively Further Fair Housing (AFFH) pursuant to Government Code section 8899.50.

HCD acknowledges that although the City Council adopted a Preferred Land Use Plan in May 2021, the City is still in the process of updating its general plan, including the land use element. This update requires approval by the electorate. The City anticipates placing the issue on the ballot in March 2023 with multiple implementing program actions to be completed subsequent to voter approval. The housing element has been written to be consistent with the Preferred Land Use Plan. Should the ballot measure be disapproved by the electorate, the City must take additional timely actions as outlined in Program 15 (Monitoring the Effect of Article 27 of the City Charter [Measure DD]) to ensure continued compliance with State Housing Element Law.

Regarding Program 13 (Amendments to the Zoning Ordinance), HCD reminds the City that although the Zoning Ordinance may not be updated, and regardless of housing element compliance status, the City has an obligation to apply current state law as opposed to an outdated zoning code, examples include:

- Density Bonus,
- Transitional and Supportive Housing,
- Emergency Shelters and Low Barrier Navigation Centers,
- Affordable Housing Streamlined Approval (SB 35),
- Employee Housing,

- Reasonable Accommodation,
- Definition of Family, and
- Unlicensed Group Homes.

The element includes Program 8 (Residential Sites Inventory and Monitoring of No Net Loss) identifying adequate sites to accommodate the shortfall of 1,164 units for lower-income households. Among other things, the program commits to zoning with densities of 20-55 units per acre and permitting owner-occupied and rental multifamily uses by right for developments in which 20 percent or more of the units are affordable to lower income households. Pursuant to Senate Bill 197 (Chapter 70, Statutes of 2022), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), Program 8 (Residential Sites Inventory and Monitoring of No Net Loss) must be completed no later than three years and 120 days from the statutory deadline (February 12, 2025). Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i).

The City must monitor and report on the results of all housing element programs through the annual progress report, required pursuant to Government Code section 65400. Please be aware, Government Code section 65585, subdivision (i) grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the dedication, professionalism, cooperation, and assistance the City's housing element team provided throughout the course of the housing element review. Among others, the team included yourself, Brandy Forbes, Community Development Director, Sean Scully, Planning Manager, and the City's consultant, Veronica Tam. HCD wishes the City success in implementing its housing element and looks forward to following its progress through the General Plan annual progress reports pursuant to Government Code section 65400. If HCD can provide assistance in implementing the housing element, please contact Robin Huntley, of our staff, at [Robin.Huntley@hcd.ca.gov](mailto:Robin.Huntley@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall  
Senior Program Manager

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)

**MEMORANDUM**

**DATE:** March 16, 2023

**TO:** Planning Directors and Interested Parties

**FROM:** Megan Kirkeby, Deputy Director  
Division of Housing Policy Development

A handwritten signature in black ink, appearing to read "Megan Kirkeby".

**SUBJECT: Summary and Clarification of Requirements for Housing Element Compliance**

HCD is committed to diligently reviewing all 539 local jurisdictions' housing elements for substantial compliance with State Housing Element Law. To comply with State Housing Element Law and avoid the consequences of noncompliance, a local jurisdiction must, among other things:

1. Submit a draft housing element to HCD at least 90 days before adoption<sup>1</sup> and receive findings from HCD determining whether the draft element is substantially compliant,<sup>2</sup> and consider HCD's findings before adopting the draft element.<sup>3</sup>

**In other words, where a jurisdiction submits an "adopted" housing element before submitting an initial draft or before considering HCD's findings on an initial draft, HCD will consider the "adopted" to be an initial draft for purposes of both HCD's review and the jurisdiction's statutory compliance.**

2. If HCD finds the draft element is not substantially compliant, revise the draft to address any findings by HCD<sup>4</sup> or adopt without changes and include written findings explaining why the jurisdiction believes that the draft substantially complies.<sup>5</sup> Promptly following adoption, submit the adopted housing element to HCD<sup>6</sup> and receive findings on the adopted element from HCD.<sup>7</sup>

<sup>1</sup> Gov. Code, § 65585, subd. (b)(1)

<sup>2</sup> Gov. Code, § 65585, subs. (b)(3), (d)

<sup>3</sup> Gov. Code, § 65585, subd. (e)

<sup>4</sup> Gov. Code, § 65585, subd. (f)(1)

<sup>5</sup> Gov. Code, § 65585, subd. (f)(2)

<sup>6</sup> Gov. Code, § 65585, subd. (g)

<sup>7</sup> Gov. Code, § 65585, subd. (h)

**In other words, a jurisdiction does not have the authority to determine that its adopted element is in substantial compliance but may provide reasoning why HCD should make a finding of substantial compliance.**

**In addition, a jurisdiction is “in compliance” as of the date of HCD’s letter finding the adopted element in substantial compliance. Any other letters are not a finding of substantial compliance.**

**HCD recommends that a jurisdiction adopt only after receiving a letter from HCD finding the draft meets statutory requirements.**

For more detailed information about this process, please visit HCD’s [Housing Elements](#) webpage and [Housing Elements Building Blocks](#).

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

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May 8, 2023

City of Redondo Beach  
Mayor and City Council Members  
415 Diamond Street  
Redondo Beach, CA 90277

Dear Mayor Bill Brand, Council Member Nils Nehrenheim, Council Member Todd Loewenstein, Council Member Paige Kaluderovic, Council Member Zein Obagi, Jr., and Council Member Scott Behrendt:

**RE: City of Redondo Beach 1100 N. Harbor Drive – Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) understands the City of Redondo Beach (City) City Council will consider an appeal of the application of the proposed housing project on the former AES Power Plant Facility located at 1100 N. Harbor Drive (Project). The purpose of this letter is to assist the City with its decision-making by providing technical assistance related to State Housing Element Law (Gov. Code, § 65580 et seq.) and the Housing Accountability Act (Gov. Code, § 65589.5). HCD recognizes the challenge of interpreting ever-changing housing and land use laws and appreciates the opportunity to provide technical assistance.

**Background**

HCD understands the Project would result in 2,700 housing units (2,160 market rate units and 540 units available to low-income households), 300 hotel rooms, 550,000 square feet of office space and 160,000 square feet of retail space. The City will hear an appeal to its March 3, 2023, letter to 9300 Wilshire, LLC. (Applicant) that determined the development application for the Project was incomplete. The City's incomplete letter provided the Applicant with a comprehensive list of items required to process the application. The City's determination was fundamentally based on the conclusion that the housing element adopted on July 5, 2022, was substantially compliant with State Housing Element Law, and; therefore, the Project was not entitled to the protections granted under Government Code section 65589.5, subdivision (d)(5) (colloquially referred to as the "Builder's Remedy").

The following are key dates related to the Project and the City's 6<sup>th</sup> Cycle Housing Element:

- July 5, 2022 – The City adopted its 6<sup>th</sup> Cycle Housing Element.

- August 12, 2022 – The Applicant submitted its Preliminary Application.
- August 15, 2022 – The Applicant submitted an updated Preliminary Application and architectural plan set.
- September 1, 2022 – HCD issued a letter finding the City’s July 5, 2022, adopted 6<sup>th</sup> Cycle Housing Element to be in substantial compliance.<sup>1</sup>
- February 6, 2023 – The Applicant submitted its development application.

### **Housing Element Compliance**

Pursuant to Government Code Section 65585, a local jurisdiction must submit a draft housing element to HCD and receive HCD’s findings. If HCD finds the draft element is not substantially compliant, the local jurisdiction must revise the draft to address any findings by HCD (Gov. Code, § 65585, subd. (f)(2)). Promptly following adoption, the local jurisdiction must submit the adopted housing element to HCD (Gov. Code, § 65585, subd. (h)).

In other words, a local jurisdiction does not have the authority to determine that its adopted element is in substantial compliance. A local jurisdiction is “in compliance” as of the date of HCD’s letter finding the adopted element in substantial compliance.<sup>2</sup> A local jurisdiction cannot “backdate” compliance to the date of adoption of a housing element. For the City of Redondo Beach, the housing element was found by HCD to be in substantial compliance on September 1, 2022.

### **Housing Accountability Act (HAA)**

Pursuant to Government Code section 65589.5, subdivision (d), a jurisdiction shall not disapprove a housing development project for very low-, low-, or moderate-income households<sup>3</sup> or condition approval in a manner that renders the housing development project infeasible for development for the use of very low-, low-, or moderate-income households unless it makes written findings, based upon a preponderance of evidence in the record, as to one of five findings in subdivision (d).

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<sup>1</sup> HCD Approval Letter - Redondo Beach’s 6<sup>th</sup> Cycle (2021-2029) Adopted Housing Element, dated September 1, 2022. Attached.

<sup>2</sup> HCD, Memorandum - Summary and Clarification of Requirements for Housing Element Compliance, dated March 16, 2023. Attached.

<sup>3</sup> “Housing for very low, low-, or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code (Gov. Code, § 65589.5, subd. (h)(3)).

If a local jurisdiction's adopted housing element is not found substantially compliant by HCD as of the jurisdiction's statutory deadline, the jurisdiction may not use subdivision (d)(5) of Government Code section 65589.5, inconsistency with zoning and general plan standards, as a basis to lawfully deny qualifying an affordable housing project. Again, subdivision (d)(4) is colloquially referred to as the "Builder's Remedy." Alternative means of denial may be available, such as subdivisions (d)(2) through (d)(4), and under subdivision (e), jurisdictions are still required to comply with both California Environmental Quality Act (CEQA) and the California Coastal Act,<sup>4</sup> as applicable.

### **Preliminary Application**

Pursuant to Government Code section 65941.1, subdivision (a), the submittal of a complete Preliminary Application vests the right to develop a housing development project in accordance with the ordinances, policies, and standards in effect when a preliminary application is submitted. (Gov. Code §65589.5, subd. (o)(1)).

The central point of contention between the City and the Applicant is as follows:

**Can the Project utilize "Builder's Remedy" if the Applicant submitted a complete preliminary application after the City adopted a housing element, but before HCD has found the housing element to be in substantial compliance?**

The answer is "yes." The submittal of a complete preliminary application pursuant to Government Code section 65941.1 vests the right to develop a housing development project in accordance with the ordinances, policies, and standards in effect when a preliminary application is submitted. (Gov. Code § 65589.5, subd. (o)(1)). Therefore, if the preliminary application submittal occurs at a time when the jurisdiction does not have a compliant housing element, and the development submittal occurs within the 180-day required period<sup>5</sup>, any potential benefits afforded to the applicant resulting from the jurisdiction's noncompliant status would remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance.

### **Conclusion**

Notwithstanding the unique environmental circumstances of this Project site, the City should remain mindful of its obligations under the HAA as it considers the appeal of the

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<sup>4</sup> "Nothing in this section shall be construed to relieve the local agency from complying with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) or from making one or more findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code)." (Gov. Code, § 65589.5, subd. (e)).

<sup>5</sup> Gov. Code § 65941.1, subd. (d)(1)

Project application. Because the City had not attained substantial compliance with the State Housing Element Law until September 1, 2022, the City may not deny the Project pursuant to Government Code section 65589.5, subdivision (d)(5). HCD would also like to remind the City that HCD has enforcement authority over the HAA, among other state housing laws. Accordingly, HCD may notify the California Office of the Attorney General that a local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

HCD remains committed to supporting Redondo Beach 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](mailto:gabriel.pena-lora@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

cc: Brandy Forbs, AICP, Community Development Director