



633 West Fifth Street
64th Floor
Los Angeles, CA 90071
213.557.7222
www.rpnllp.com

Dave Rand
213.557.7224
Dave@rpnllp.com

October 16, 2023

VIA ELECTRONIC SUBMISSION

Chair Harris-Dawson and Honorable Members of the
Planning and Land Use Management Committee
Los Angeles City Council
201 N. Spring Street, 4th Floor
Los Angeles, CA 90012

clerk.plumcommittee@lacity.org

**Re: Appeal Pursuant to Government Code Section 65943(c)
Case No. ADM-2023-4428-DB-ED1-VHCA/CPC-2023-4428-DB-PHP-VHCA/7745 Wilbur Ave**

Chair Harris-Dawson and Honorable Committee Members:

Our firm represents 7749 Wilbur Avenue Real Estate LLC and Evolve Realty and Development, the property owner and applicant, respectively, (collectively referred to as the “Applicant”), of the proposed 190-unit 100 percent affordable housing development located at 7745-7751 N. Wilbur Avenue (the “Project”) in the City of Los Angeles (“City”). The Project seeks to use the City’s streamlined ministerial approval process for 100 percent affordable projects granted by the Mayor’s Executive Directive No. 1 (“ED 1”), originally issued on December 16, 2022. Accordingly, pursuant to Government Code Section 65941.1 and ED 1’s implementing guidelines published by the City (“ED 1 Guidelines”), the Applicant submitted a Housing Crisis Act (“HCA”) preliminary application (“HCA Preliminary Application”) for the Project on April 26, 2023, thereby vesting the Project against subsequent changes in City ordinances, policies, and standards, subject to a timely filing of the Project’s application materials as required by ED 1. On June 12, 2023, the Mayor issued a revised version of ED 1 (“Revised ED 1”) that no longer permitted 100 percent affordable projects proposed to be located on single-family zoned properties with General Plan land use designations that permit multifamily development to be eligible for streamlined ministerial processing. On June 28, 2023, the Applicant timely filed the application materials for the Project with the Department of City Planning (“DCP”) and the Project was assigned case number ADM-2023-4428-DB-ED1-VHCA (“Case Filing”).¹ On July 6, 2023, DCP issued a letter to the Applicant (“Notice of Ineligibility”), stating that, due to the issuance of the Revised ED 1, the Project was not eligible for ED 1 processing as it is partially located in a single family zone and “modification of entitlement requests will likely require updated and/or additional application materials.” On July 18,

¹ The case number ADM-2023-4428-DB-ED1-VHCA includes the following suffixes as defined by DCP’s website: “DB” meaning Density Bonus, “VHCA” meaning Vesting Housing Crisis Act, and “ED1” meaning Executive Directive 1.

2023, DCP issued another letter to the Applicant titled “Status of Project Review: Application Incomplete and Case Processing on Hold” (“First Status of Project Review Letter”), which repeated the assertion that the Project was not eligible for ED 1 processing and stated that “other entitlement options” may be available.

Since sending the Notice of Ineligibility, the City has taken the position that ED 1 is not a standard, ordinance, or policy which can be vested under the HCA and the Project must be processed through a discretionary entitlement process using case number CPC-2023-4428-DB-PHP-VHCA. Furthermore, since sending the Notice of Ineligibility, the City has failed to properly determine whether the Case Filing is complete, and has instead continued to insist that a new entitlement path must be pursued for the Project. Accordingly, on September 20, 2023, the Applicant submitted an appeal pursuant to Government Code Section 65943(c) to request that the City rescind the Notice of Ineligibility, convert the entitlement case number back to an ED 1 case, acknowledge that the Project has State law vested rights to utilize ED 1 based on the filing of the HCA Preliminary Application, and reinstate processing of the Project’s Case Filing under ED 1, consistent with the express provisions and intent of the HCA and the Housing Accountability Act (“HAA”).

We are aware that the City Council recently denied an appeal involving very similar issues for a project located at 8217 Winnetka Avenue² (“Winnetka Project”). In testimony before the City Council on October 13, 2023, DCP staff asserted that the Applicant was required to complete the Winnetka Project’s originally filed ED 1 ministerial case (ADM-2023-4274-DB-VHCA-ED1) within 90 days of receiving an incomplete letter from DCP, despite DCP’s termination of the ED 1 ministerial case and the Applicant’s subsequent filing of an appeal to object to DCP’s determination that the Winnetka Project was ineligible for ED 1. Oddly, DCP staff’s testimony during the October 13th City Council hearing demonstrated that the City did acknowledge the HCA vesting associated with the ministerial case by continuing to uphold the statutory 90-day deadline³ by which the Applicant must respond, despite: 1) explicitly terminating the original ministerial case number and converting the Winnetka Project to a discretionary case, and 2) asserting repeatedly in written and verbal testimony that no such vesting could apply. In consideration of DCP staff’s recent actions regarding the Winnetka Project, this letter clarifies that DCP never sent the Applicant a written letter properly identifying the items needed to complete the ministerial ED 1 Case Filing. Instead, DCP sent multiple pieces of correspondence claiming that the Project was not eligible to use ED 1, none of which meet the statutory requirements for a determination of incompleteness. This letter recognizes that today, October 16, 2023, is 90 days from the issuance of the First Status of Project Review Letter on July 18, 2023; however, the statutory 90-day deadline for resubmitting ED 1 application materials to DCP is not applicable for the Project, as the City has refused to process the ED 1 ministerial application, which is the subject of the Applicant’s instant appeal.

² The appeal for the project located on 8217 Winnetka Avenue was denied by the Los Angeles City Council on October 13, 2023 and is associated with Council File Number 23-0908.

³ Government Code Section 65941.1(d)(2) “If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency’s written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.”

TIMELINE OF SUBMISSIONS AND CORRESPONDENCE

Below is a timeline of the submissions made by the Applicant to the City and the correspondences received by DCP. All of the documents referenced below are also included as attachments to the original appeal justification uploaded to the Council File:

- April 26, 2023: The Applicant submitted and paid for a HCA Preliminary Application for the Project, in accordance with the City's guidance and established procedures. The HCA Preliminary Application reflects a proposed density of 220 units and a total square footage of construction of 137,578 square feet. Pursuant to the HCA, the Applicant's submittal and payment of fees for the HCA Preliminary Application established vesting rights for the Project against future changes in City ordinances, policies, and standards. These vesting rights would terminate if the Project's full entitlement application was not submitted to the City within 180 days of the HCA Preliminary Application filing date, or if the Project's number of units or total square footage of construction was revised by 20 percent or more. The HCA Preliminary Application also includes reference to the ED 1 request in multiple locations, including a box checked off by Planning staff.
- June 12, 2023: As noted above, the Revised ED 1 was issued, prohibiting all projects located in single-family zones from utilizing ED 1's streamlined ministerial process (even if the site's land use designation permits multifamily use and density).
- June 28, 2023: The Applicant submitted and paid all required application submittal fees for the Case Filing, which reflects a total density of 190 units and a total square footage of construction of 152,318 square feet. The Project's vesting HCA Preliminary Application was acknowledged by DCP as part of the Case Filing, as evidenced by the "VHCA" suffix in the Case Filing number.
- July 6, 2023: The Applicant received DCP approval of an Affordable Housing Referral Form (AHRF) reflecting the Project's proposed entitlement strategy as well as its eligibility for ED 1 processing. This is a critical pre application form solely designed to confirm the Project's consistency with the State DBL. The form includes detailed information regarding Project density, height and parking. This form also includes an eligibility check box indicating that the Project is eligible for ED 1.
- July 6, 2023: The same day the Applicant received an approved AHRF stating that the Project may utilize ED 1, DCP issued the Notice of Ineligibility to the Applicant, which states in part "Per 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. This revision affects projects in the following zones: OS, A1, A2, RA, RE, RS, R1, RU, RZ, and RW1. The proposed project located at 7749 N Wilbur Avenue is in the RA-1 zone and is not eligible for ED1 processing."
- July 18, 2023: DCP issued a the First Status of Project Review Letter to the Applicant, which stated:

“On July 6, 2023 you were sent a letter stating that your project is no longer eligible as an ED1 project. However, there are other entitlement options available for your project to be considered for approval, none of which require a legislative act (e.g. General Plan Amendment or Zone Change). To discuss other project review options or to revise the Affordable Housing Referral Form for the project, please contact the Affordable Housing Services Section at planning.priorityhousing@lacity.org. Please be aware that modification of entitlement requests will likely require updated and/or additional application materials including environmental clearance documentation depending on what entitlement path is selected.”

The First Status of Project Review letter then went on to list 18 items required to be corrected or submitted to DCP, without any explanation of what “updated and/or additional application materials” would be required in connection with any to-be-determined Project review options. The HCA states that any determination of completeness must include a list and thorough description of the information needed to complete the application. While the City’s First Status of Project Review Letter does provide a list of 18 items to be corrected or submitted, it also states that the Project is not eligible to be processed under ED 1. Moreover, the letter fails to provide a thorough or descriptive list of the unnamed “updated and/or additional materials” that would have been required to continue processing of the case under some alternate entitlement path, as the Project was no longer considered eligible for ED 1.⁴ Thus, the First Status of Project Review Letter did not meet the statutory requirements to be considered a determination of completeness for the Case Filing itself, and therefore no 90-day resubmittal timeframe was established under the HCA.

- August 4, 2023: The City issued a Second Status of Project Review Letter to the Applicant just 17 days later. In this letter, the City references the Revised ED 1 and Notice of Ineligibility to justify the conversion of the case to a “regular entitlement process” using case number CPC-2023-4428-DB-PHP-VHCA, along with an explanation that the case was considered converted as of July 6 (the date of the Notice of Ineligibility) to a discretionary City Planning Commission review process based on the procedures specified in LAMC Section 12.22.A.25 for off-menu density bonus incentives and waivers. This letter also states that the Project application remains incomplete and requires the submittal of “further materials” including “materials related to needed CEQA analysis.”

DCP’s Second Status of Project Review Letter significantly expanded the list of “updated

⁴ Government Code Section 65943(a) “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 written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency’s determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.” (Emphasis added.)

and/or additional” application materials identified in the First Status of Project Review letter, including “materials related to needed CEQA analysis.” This indicates that DCP itself did not consider the July 18, 2023 First Status of Project Review Letter to constitute a valid determination of application incompleteness, because the clear language of Government Code Section 65943(a) prohibits the City from requesting any new information beyond the initial list of items requested in such an incomplete letter.⁵

In summary, despite referencing the Case Filing number ADM-2023-4428-DB-ED1-VHCA, the First Status of Project Review Letter states that the Project is not eligible to use ED 1 and references a required change to an unnamed alternative entitlement path. Shortly thereafter, DCP informed the Applicant that the original case number associated with the Project, ADM-2023-4428-DB-ED1-VHCA, no longer existed as it had already been converted, without the Applicant’s consent, to a discretionary case under case number CPC-2023-4428-DB-PHP-VHCA. Based on the content of the Notice of Ineligibility, the discontinuation of ministerial case processing efforts by DCP, and the forced conversion of the case to a discretionary City Planning Commission case, the City discontinued all processing of the Project’s ministerial Case Filing. Even if a 90-day statutory deadline had been established for the Applicant to resubmit the Project’s application materials, DCP’s actions have precluded the Applicant from responding within any such 90-day timeline. Thus, the City cannot cite the 90-day timeline nor the expiration of vesting as a reason to deny the appeal, as they erroneously did on the Winnetka Project.

The Project offers a chance to bring 190 privately funded deed-restricted affordable housing units to the City in the midst of a dire housing crisis. In light of this opportunity, the Applicant would like to pursue the opportunity to discuss with the City a limited time extension to the instant appeal, as contemplated and authorized by the HCA. During this time extension, the Applicant proposes that DCP produces a revised, statutorily compliant letter providing a thorough and exhaustive list of the items needed to complete the ministerial ED 1 Case Filing, which would establish a clear 90-day timeline during which the Applicant may produce the necessary items to proceed with processing of the ministerial Case Filing. Through this agreement, the Applicant and the City would be able to establish a coherent understanding of the application materials being evaluated and allow for the proper processing of the Project under ED 1.

If the City is not amenable to an extension of time, then we respectfully request that the City Council grant the appeal on the basis that the Project is vested under the original ED 1. We point the City to the most recent correspondence issued by the California Department of Housing and Community Development (“HCD”) on October 12, 2023, which explicitly urges the City to acknowledge the vesting of the Project (and this Project specifically) under ED 1 and to allow the Project to proceed under the ED 1 regulations. HCD’s letter has been uploaded to the Project’s Council File and is also incorporated here as Exhibit A.

⁵ Government Code Section 65943(a) “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. In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.” (Emphasis added).

7745 Wilbur Ave
October 16, 2023
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Sincerely,

Dave Rand

Dave Rand
Partner
of RAND PASTER & NELSON, LLP

ATTACHMENTS

Exhibit A – HCD’s Technical Assistance Letter Issued October 12, 2023

CC: Lisa Webber (lisa.webber@lacity.org)
Blake Lamb (blake.lamb@lacity.org)

Exhibit A – HCD’s Technical Assistance Letter Issued October 12, 2023

**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



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).

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



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 Yaroslavsky, 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).