



DEPARTMENT OF CITY PLANNING

APPEAL RECOMMENDATION REPORT TO CITY COUNCIL

Date:	June 12, 2023	Case No.:	CF 23-0525
Hearing Date:	June 20, 2023	CEQA No.:	N/A
Time:	After 2:00 P.M.	Related Cases:	N/A
Public Hearing:	Required	Council No.:	7 - Rodriguez
Appeal Status:	Not further appealable	Plan Area:	Sylmar
Expiration Date:	July 8, 2023	Specific Plan:	N/A
		GPLU:	Very Low I Residential
		Zone:	RA-1-K
		Applicant:	Janet Jha
		Representative:	Akhilesh Jha
		Appellant:	Janet Jha
		Representative:	Akhilesh Jha

PROJECT LOCATION: 13916 W. Polk Street

PROPOSED PROJECT: City Planning application for 40 residential dwelling units in a townhome configuration for sale on a 48,284.1 square foot lot. Eight units will be sold to low-income families. Each unit will be three-stories and 40 feet in height. The proposed project will have 99,868 square feet of floor area, 100,260 square feet of building area, and 48 parking spaces. One of the 40 units will be provided for an on-site property manager. As proposed, two non-protected on-site trees will be removed. There will be no phased development, and there are no plans for future expansion. The existing 1,961 square foot single-family home on site is proposed for demolition.

REQUEST: Appeal of City Planning's determination that the Project's Development Project Applications are incomplete under both Case No. CPC-2022-9268-DB-HCA (Density Bonus Application) and CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA (GPA Application), and the associated environmental case numbers.

RECOMMENDED ACTIONS:

1. **Deny** the appeal and **Sustain** the Department of City Planning's (City Planning) determination that the Project's Development Project Applications are incomplete under both Case Nos. CPC-2022-9268-DB-HCA (Density Bonus Application) and CPC-2022-

8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA (GPA Application), and the associated environmental case numbers;

2. **Adopt** the rationale and responses in the attached Appeal Report.

VINCENT P. BERTONI, AICP
Director of Planning

Blake Lamb

Blake Lamb
Principal City Planner

Laura Frazin Steele

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APPEAL REPORT

BACKGROUND

Pursuant to the Government Code Section 65943 in the Permit Streamlining Act ("PSA") (Gov. Code Sec. 65920 et seq.) the Appellant is challenging City Planning's determination that the Project's Development Project Applications are incomplete under both Case Nos. CPC-2022-9268-DB-HCA (Density Bonus Application) and CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA (GPA Application), and the associated environmental case numbers. This Appeal relates to a proposed 40 dwelling unit project located at 13916 W. Polk Street ("Project") (Exhibit B). The City's planning and zoning regulations allow a single family use, equinekeeping use, and one dwelling unit on the Project site based on the site's RA-1-K zoning, and the site's Very Low I Residential General Plan land use designation per the Sylmar Community Plan.

City zoning and planning ordinances, policies and standards collectively direct the Project to seek a General Plan Amendment and Zone Change (and other entitlements). However, Appellant claims the 40-unit Project may avoid local regulations based on two provisions of the Housing Accountability Act (HAA): a) Government Code Section 65589.5(d), also known as the "Builder's Remedy" provision; and b) Government Code Section 65589.5(o) that implements vesting rights arising from a Preliminary Application submitted under Government Code Section 65941.1. Appellant claims the Project may seek approval of 40 units through a Density Bonus application pursuant to Government Code Section 65915 and LAMC Section 12.22. A.25 (Exhibit A). The claim is premised on alleged vesting rights under the Project's Preliminary Application filed in accordance with Government Code Section 65941.1, prior to the State certifying the City's Housing Element. Appellant claims that due to the Project's Preliminary Application, the Project is vested in the local regulatory environment that existed when the City did not have a certified Housing Element. On this basis, Appellant claims the Project may pursue a Density Bonus entitlement, and has complete Development Approval Applications. This report does not make a recommendation regarding the merits of any of the referenced Development Project Applications; and no decision-maker has approved, conditioned or disapproved the referenced applications either. Following is a detailed timeline of application processing under Government Code Section 65920 et seq. (Permit Streamlining Act) and a project description.

Processing Timeline Summary

On **June 23, 2022** pursuant to Government Code Section 65941.1, the Appellant submitted a vesting Preliminary Application under Case No. PAR-2022-4490-VHCA ("Preliminary Application"), with City Planning's Preliminary Application Review Program (PARP). Appellant completed the Preliminary Application with PARP on **June 24, 2022**. As such, the vesting date for this Preliminary Application Case No. PAR-2022-4490-VHCA is **June 24, 2022**. Appellant had 180 days from June 24, 2022 (or Dec. 21, 2022) to submit all of the information required to process a Development Project Application pursuant to the list of application requirements the City identifies under Government Code Sections 65940, 65941, and 65941.5 (hereafter generally "Development Project Application").

On **August 11, 2022**, the Appellant filed an Affordable Housing Referral Form (AHRF) with City Planning's Affordable Housing Services Section (AHSS) under Case No. PAR-2022-5834-AHRF. As explained in greater detail below, AHSS advised the Appellant through her representative (Appellant and representative are collectively hereafter "Appellant") that the proper entitlement

path forward for the proposed Project is not a Density Bonus entitlement (Exhibit C). Instead, the Appellant was advised to file entitlement requests for a General Plan Amendment (GPA), Zone Change, Height District Change, K District Removal, Building Line Removal, Zone Variance, Zoning Administrator Adjustment, and Waiver of Dedication and Improvement based on the zoning and planning ordinances, policies and standards that existed on the date of the June 24, 2022 Preliminary Application.

On **December 9, 2022**, the Appellant submitted a Development Project Application for the Project at 13916 W. Polk Street utilizing Density Bonus as the entitlement path (i.e., Gov. Code Sec. 65915; LAMC Sec. 12.22.A.25). At that time, City Planning created Case No. CPC-2022-9268-DB-HCA ("Density Bonus Application") to reflect that Development Project Application as requested by the Appellant. On December 9, 2022, City Planning also created Case No. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA ("GPA Application") for the Project at 13916 W. Polk Street to reflect City Planning's position 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.

As of the writing of this staff recommendation report, two Status of Project Review Letters have been issued to the Appellant regarding Case Nos. CPC-2022-9268-DB-HCA (Density Bonus Application) and CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA (GPA Application), and their associated environmental case numbers.

On **January 6, 2023** City Planning issued by email the first Status of Project Review Letter ("January 6, 2023 Letter" – Exhibit D). This letter was issued 28 days after the December 9, 2022 submission date. The first Status of Project Review Letter, emailed to the Appellant, determined that both the Density Bonus Application and GPA Application were incomplete because required complete forms and information were missing as detailed in the letter. Information and forms missing included items such as but not limited to the SB 8 Replacement Unit Determination (RUD), plans reviewed and stamped by the Los Angeles Department of Building and Safety (LADBS), Landscape and Open Space plans, and Low Impact Development (LID) Planning Case Referral Form. Furthermore, in the January 6, 2023 Letter, City Planning stated its position that the correct entitlement path forward is not a Density Bonus entitlement, but a General Plan Amendment and Zone Change in addition to other entitlements.

On **April 28, 2023**, City Planning issued a Second Status of Project Review Letter ("April 28, 2023 Second Letter" – Exhibit E) by email. This Second Letter was in response to additional material submitted by the Appellant on **April 5 and 11, 2023**, and was issued 23 days after the April 5, 2023 submission. This April 28, 2023 Second Letter also determined both of the applications (Density Bonus Application and GPA Application) were incomplete because required completed forms and information were missing as detailed therein. Additionally, the April 28, 2023 Second Letter again stated that the correct entitlement path forward is not a Density Bonus request. The Appellant was again asked to proceed with 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.

On April 6, 2023, the 90-day time period under Government Code Section 65941.1(d)(2) to submit the information needed to complete either the Density Bonus Application or GPA Application ran. The 90-day period was calculated from the Status of Project Review Letter dated January 6, 2023.

On **May 9, 2023**, the Appellant stated a desire to Appeal, under Government Code Section 65943, City Planning's determination that the Density Bonus Application, GPA Application and associated

environmental analysis applications were incomplete. Appellant filed and paid for the Appeal on **May 12, 2023**, wherein Appellant also disputed City Planning's determination that the proper Project 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 represented by the GPA Application. Appellant filed and paid for the Appeal on May 12, 2023 ("Appeal"). The Appellant claims that based on vesting rights under the Project's Preliminary Application: the Project may seek approval under Government Code Section 65589.5(d); Government Code Section 65589.5(d) specifies the sole Project entitlement approval process; and therefore the Appellant may utilize a Density Bonus entitlement subject to HAA Government Code Section 65589.5(d) (Housing Accountability Act) as the Project entitlement path.

On **May 16, 2023**, City Planning then emailed a Loss of Vesting Rights Letter ("May 16, 2023 Loss of Vesting Rights Letter" – Exhibit G) to inform the Appellant that the vesting Preliminary Application, Case No. PAR-2022-4490-VHCA (Exhibit F), expired and has no further force or effect. Appellant lost Preliminary Application rights due to : a) Appellant's failure to submit all of the information required to process a Development Project Application within 180 days of the June 24, 2022 Preliminary Application; and b) Appellant's failure to submit all the missing application information 90 days after City Planning issued its Status of Project Review Letter dated January 6, 2023 that notified Appellant of application incompleteness issues in the Density Bonus Application, the GPA Application, and the associated environmental analysis applications. The May 16, 2023 Loss of Vesting Rights Letter also informed Appellant that the City is prepared to process the Density Bonus Application or GPA Application, without Preliminary Application vesting rights, once the Appellant provides specified information to complete a Development Project Application, and the associated environmental analysis application in order to conduct required environmental analysis under the California Environmental Quality Act (CEQA).

As of the date of this Report, City Planning has not received further submissions from Appellant that would go toward completing or processing an unvested Density Bonus Application or GPA Application.

Current Project Description

The Appeal filed by the Appellant on May 12, 2023 currently describes the project as 40 for-sale residential dwelling units in a townhome configuration on a 48,284.1 square foot lot. Eight units will be sold to low-income families. Each unit will be three-stories and 40 feet in height. The proposed project will have 99,868 square feet of floor area, 100,260 square feet of building area, and 48 parking spaces. One of the 40 units will be provided for an on-site property manager. As proposed, two non-protected on-site trees will be removed. There will be no phased development, and there are no plans for future expansion. The existing 1,961 square foot single-family home on site is proposed for demolition. Earlier documents submitted by the Appellant inconsistently describe the Project as containing 45 units, and describe the Project as containing rental units.

Subject Site

The Appellant's Density Bonus Application proposes to disregard the density and use associated with the site's RA-1-K Zone and the Very Low I Residential land use designation under the Sylmar Community Plan, in addition to all of the other City zoning and planning ordinances, policies and standards that existed on June 24, 2022. The rectangular-shaped subject site shown in Figure 1 is zoned RA-1-K and designated for Very Low I Residential land use under the Sylmar Community Plan adopted on June 10, 2015. Pursuant to Los Angeles Municipal Code (LAMC) Section 12.07,

the RA Zone, or Suburban Zone, permits single-family dwellings on lots with a minimum area of 17,500 per dwelling unit. As an exception, two-family dwellings are permitted in the RA Zone when the side lot line adjoins a lot in a commercial or industrial zone and specific lot area and distance criteria are met. On this particular site, there is not an abutting commercial or industrial zone, and therefore, two-family dwellings are not permitted by-right. Other uses permitted in the RA Zone include parks, playgrounds, and community centers; golf courses; truck gardening and nurseries; equine and small animal (e.g., rabbits, poultry) keeping; residential and equinekeeping accessory buildings; home occupations, some conditional uses as authorized by the Zoning Administrator or City Planning Commission; and backyard bee keeping. With the limited exception of two-family dwellings in specified circumstances, multi-family development is not among the list of uses permitted in the RA Zone. Height District No. 1 in the RA Zone limits height to 30 feet with a maximum of 36 feet depending on the roof pitch.

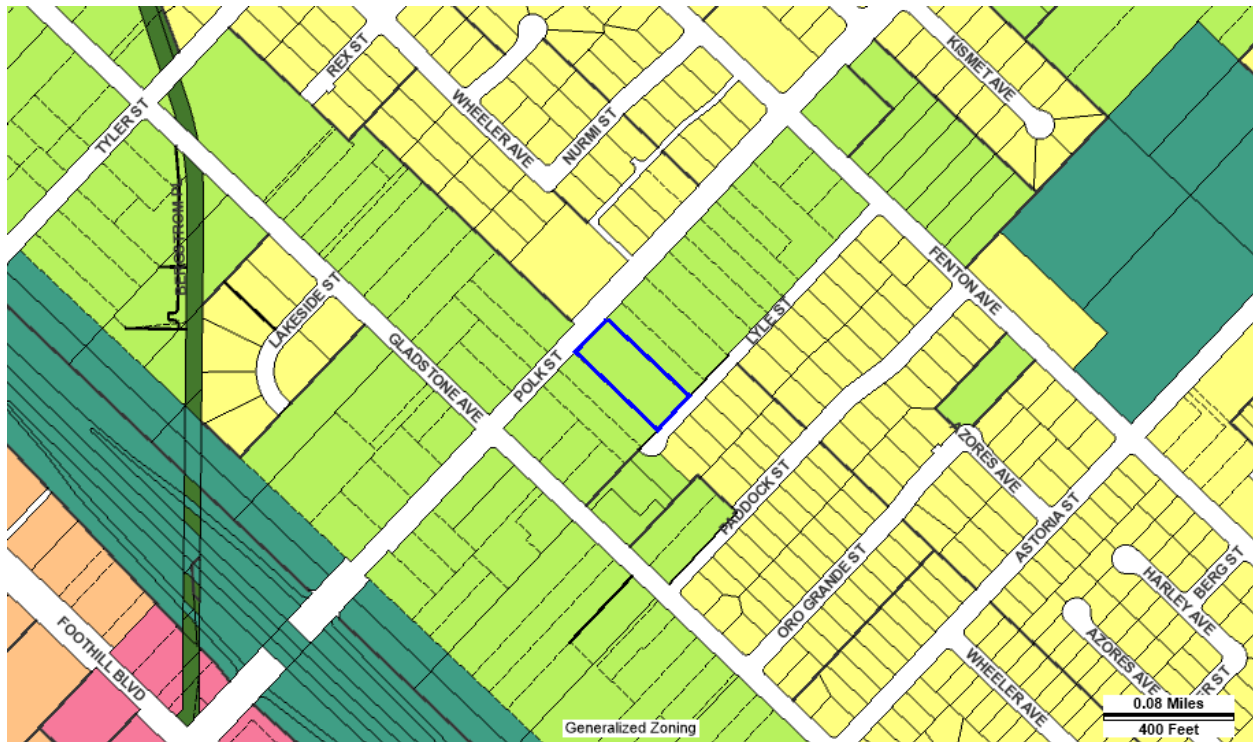


FIGURE 1. ZIMAS MAP

The “K” Zone is a “Supplemental Use District for Equinekeeping” that is regulated under LAMC Section 13.05. All properties in this K zoned area are required to comply with specific distance requirements between equine structures and habitable rooms. For example, an equine enclosure shall not be located closer than 35 feet to the habitable rooms of any dwelling unit.

Under the Sylmar Community Plan, the subject site’s Very Low I Residential land use designation corresponds to the RA (Suburban Zone) and RE (Residential Estate) Zones per the Sylmar Plan’s Table 3-1 and its General Plan Land Use Map Legend. The site’s RA zoning is therefore consistent with its land use designation.

The 48,284 square foot subject site extends along Polk Street for approximately 140 linear feet and extends along Lyle Street for approximately 140 linear feet. The lot depth is approximately

343 linear feet. A 37 foot building line established under Ordinance No. 99,113 extends along the Polk Street frontage. ZIMAS records show that the subject site is designated under ZI-2438 Equinekeeping in the City of Los Angeles, which regulates distances between equine uses and habitable rooms unless otherwise permitted by a Zoning Administrator pursuant to LAMC Section 12.24 X.5.

The subject site is not located within a community plan implementation overlay zone, geographic specific plan area, or community design overlay zone. The site is not designated historic. The site is not within an Airport Hazard area, Coastal Zone, Very High Fire Hazard Severity Zone, Flood Zone, Watercourse, Special Grading Area, Hazardous Waste/Border Zone, or Methane Hazard Site. There are no known oil wells on site. The site is designated for Urban and Built-up Land and is located within an Urban Agriculture Incentive Zone. According to ZIMAS records, the subject site is located within the Sierra Madre Fault Zone (San Fernando) but is not located within the Alquist-Priolo Fault Zone or an area designated as Landslide, Liquefaction, Preliminary Fault Rupture Study, or Tsunami Inundation.

The subject site is not identified in the 2021-2029 Housing Element of the General Plan Inventory of Adequate Sites for Housing (Table A) (Appendix 4.1). Additionally, the subject site is not identified in the Housing Element as a Candidate Site Identified to be Rezoned to Accommodate Housing Shortfall Need (Table B) (Appendix 4.7).

According to City records, the subject site is currently improved with an approximately 1,961 square foot single-family dwelling. According to a Tree Report provided by the Appellant on April 11, 2023, there are two on-site non-protected trees. The appeal application states that these two trees will be removed. A Tree Disclosure Statement provided by the Appellant on April 5, 2023 identifies trees in the public right-of-way but does not provide further information regarding the tree species or retention / removal of street trees.

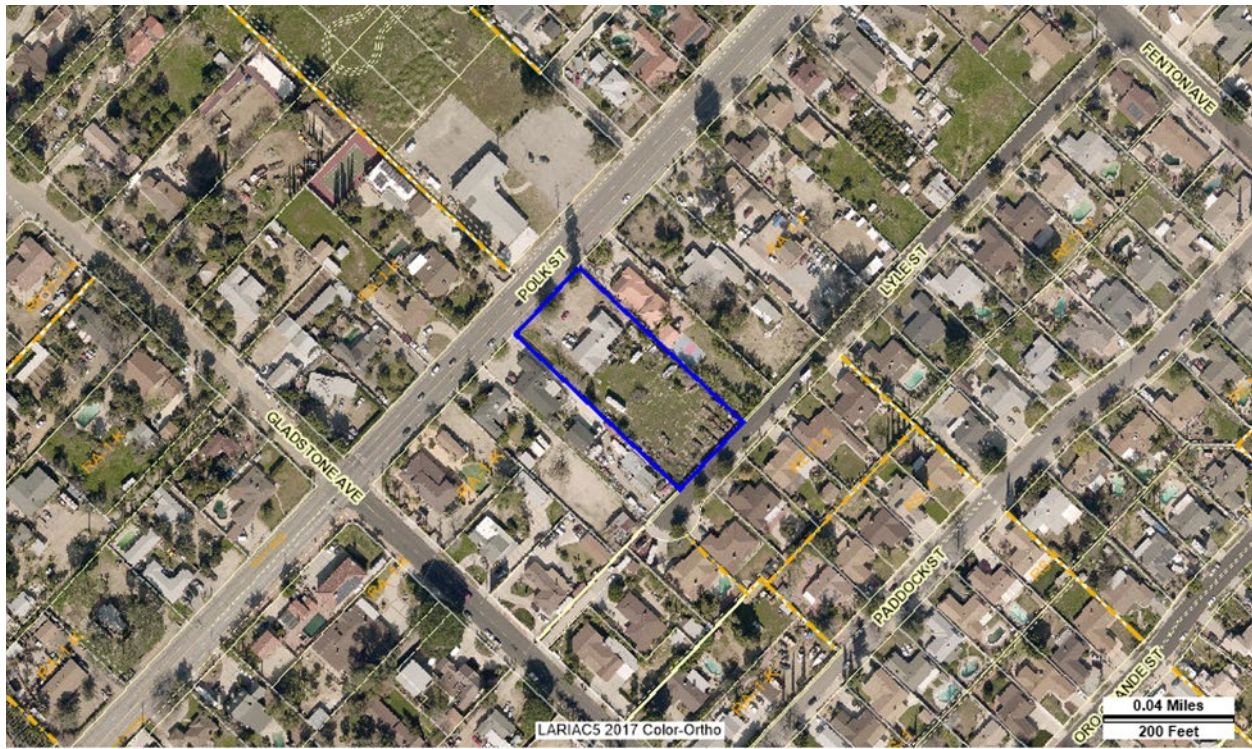


FIGURE 2. AERIAL VIEW

Surrounding Properties

As shown in Figure 2, surrounding sites within a 500 foot radius are primarily developed with residential land uses on large lots. There are also two institutional land uses (churches) along Polk Street and Fenton Avenue within the vicinity of the subject site. To the north, across Polk Street, land uses are designated Very Low I Residential and Very Low II Residential by the Community Plan and zoned RA-1-K and RE11-1. Further north, sites are designated Very Low I Residential and zoned A1-1-K (A1 is an Agriculture Zone). All of these sites are improved with one- and two-story single-family dwellings except for the sites at 13901 W. Polk Street (across from the subject site) and the site at 13724 Fenton Avenue (0.2 miles northeast of the subject site), both of which are improved with churches. To the south, sites are designated Very Low I Residential and Very Low II Residential by the Community Plan. These sites are zoned RA-1-K and RE11-1. Further south, sites are designated Low I Residential and are zoned RS-1. Sites to the south are improved with one- and two-story single-family dwellings. To the immediate east, sites along the south side of Polk Street are designated Very Low I Residential and zoned RA-1-K. These sites are improved with one- and two-story single-family dwellings. To the immediate west, along the south side of Polk Street, sites are designated Very Low I Residential and are zoned RA-1-K. These sites are improved with one- and two-story single-family dwellings. Further west, across Gladstone Avenue, sites are designated Very Low I Residential and are zoned RA-1. These sites are also improved with one- and two-story single-family dwellings. Further northwest, sites are designated Very Low II Residential and are zoned RE11-1-K. These sites are improved with one- and two-story single-family dwellings.

The Sylmar Community Plan designates the subject site and abutting sites to the east, west, northwest, and south as a “Special District for Equinekeeping” as designated by the “K” Zoning. The Community Plan states:

The Sylmar Equinekeeping “K” District, amended concurrently with this Community Plan, is an overlay ordinance that preserves the equestrian lifestyle on residential lots in the north and central areas of Sylmar by maintaining minimum lot size, equinekeeping lot features, adequate distance to non-equinekeeping neighbors, as well as assisting in access to and development of equestrian trails. This “K” District includes a set of conditions in addition to those in the LAMC Equinekeeping “K” District section. The Community Plan Design Guidelines also include specific guidelines for equinekeeping neighborhoods...

Under Residential Issues and Opportunities, the Community Plan states:

Improved transitions and connectivity between various types of residential... land uses will create better development and neighborhoods in the future.

Lots in the immediately vicinity that are not K zoned for equinekeeping, including abutting sites to the immediate south of the subject site, are designated under ZIMAS as ZI 2438 for “Equinekeeping in the City of Los Angeles.” As stated under ZI 2438, a long tradition of equinekeeping contributes to the communities’ distinctive character and quality-of-life. ZI 2438 was established in 2014 to protect lower density neighborhoods (i.e., lots zoned RA, RE20, RE40, A1, and A2) from development pressures that result in the subdivision of equestrian-oriented lots into sizes too small to accommodate equines. ZI 2438 also protects and buffers equine from non-equine uses which over time created a loss of equinekeeping rights, including obscuring or interrupting commonly used equine trails. As such, the intent of ZI 2438 is to strengthen and preserve the City’s equestrian tradition by regulating for distances between habitable rooms and equine uses. During plan check, the Los Angeles Department of Building and Safety (LADBS) reviews development on sites designated under ZI 2438. No building permit may be issued for a residential building or addition (excluding non-habitable rooms) that does not comply with the distance requirements, unless the Zoning Administrator makes an exception in accordance with LAMC Section 12.24 X.5 (Zoning Administrator Adjustment). Los Angeles County regulations (generally, LA County Health and Safety Code Sec. 11.16.090) restrict the distance between residences and animal keeping yards / buildings.

The significance of the equine tradition in this geographic area is immediately apparent and cannot be overemphasized. A windshield survey of the surrounding neighborhood by City Planning staff clearly showed the presence equine uses (including stables, corrals, horse trailers, horse trails) in the surrounding area. Community residents were seen riding horses on trails that line City designated rights-of-way.

Polk Street is designated an Avenue I by the Mobility Plan 2035 with a designated right-of-way width of 100 feet and a designated roadway width of 70 feet. Lyle Street is designated a Local Street – Standard by the Mobility Plan 2035 with a designated right-of-way width of 60 feet and a designated roadway width of 36 feet. Gladstone Avenue, which intersects Polk Street approximately 315 feet to the southwest, is designated a Collector by the Mobility Plan 2035 with a designated right-of-way width of 66 feet and a designated roadway width of 40 feet. Regional access to the site is provided by the Interstate 210 (Foothill Freeway) which is located approximately 890 feet to the southwest of the subject site. The subject site is approximately 2.6 miles northeast of the Sylmar/San Fernando Metrolink Station. The subject site is located approximately 0.7 miles northwest of the Metro 234 bus stop at Sayre Street and Fenton Avenue.

Timeline

The timeline below provides the dates and significant milestones for processing the Appellant's request.

- **June 16, 2022** – City Council's adoption of the City of Los Angeles's 2021-2029 Housing Element is final (Council File No 21-1230, 21-1230-S1, and related files).
- **June 23, 2022** – Appellant submitted a Preliminary Application to City Planning and paid invoice for Case No. PAR-2022-4490-VHCA (Exhibit F)
- **June 24, 2022** – Appellant completed the Preliminary Application with the City Planning Preliminary Application Review Program (PARP), and vested under Case No. PAR-2022-4490-VHCA. An Application for a Development Project must be filed by **December 21, 2022** to maintain vesting rights under Preliminary Application Case No. PAR-2022-4490-VHCA.
- **June 29, 2022** – Housing Element Certification. The Department of Housing and Community Development (HCD) informed the City of Los Angeles that HCD certifies the 2021-2029 Housing Element is substantially compliant with State law.
- **August 11, 2022** – Appellant submitted Affordable Housing Referral Form (AHRF) to City Planning Affordable Housing Services Section (AHSS) via the Online Application System (OAS) under Case No. PAR-2022-5834-AHRF (included in Exhibit D).
- **August 15, 2022** – Appellant paid invoice for Case No. PAR-2022-5834-AHRF.
- **September 14, 2022** – Beginning of email communication between City Planning AHSS and Appellant regarding the proper entitlement path including a GPA, Zone Change, and other entitlements represented by the GPA Application (Exhibit C).
- **September 15, 2022** – Appellant submitted a letter to City Planning AHSS describing the Project as seeking a Density Bonus entitlement (Exhibit C).
- **September 26, 2022** – City Planning AHSS emailed Appellant and explained that a General Plan Amendment and Zone Change entitlement is the proper entitlement path (Exhibit C). No Development Project Application has yet been submitted or filed by Appellant.
- **October 14, 2022** – City Planning AHSS emailed the Appellant to outline the proper entitlement path for the project as a General Plan Amendment, Zone Change, Height District Change, K District Removal, Building Line Removal, Zone Variance, Zoning Administrator Adjustment, Waiver of Dedication and Improvement, and if for sale units are proposed a Subdivision Map Act Tentative Tract Map application (Exhibit C).
- **November 9, 2022** – City Planning AHSS emailed the Appellant and queried Appellant's rationale for proposing a Density Bonus entitlement path given the site's RA Zoning. Appellant's response referred AHSS to previously submitted materials (Exhibit C).
- **December 9, 2022** – A virtual meeting took place between the Appellant and Development Services Center (DSC) staff to discuss application filing requirements and materials. The Appellant submitted a Development Project Application to the DSC requesting a Density Bonus entitlement. City Planning assigned Case Nos. CPC-2022-9268-DB-HCA and associated environmental Case No. ENV-2022-9270-EAF to this Density Bonus entitlement request and issued associated Invoice No. 85125 which the Appellant paid on December 21, 2022. Based on the same documents, City Planning also created Case Nos. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA and associated environmental Case No. ENV-2022-8944-EAF for the Appellant's Project, issued Invoice No. 84898 to the Appellant, and requested payment of the invoice. To date, no payment has been received for the GPA Application under Invoice No. 84898.

- **December 12, 2022** – The AHRF was signed by the City Planning AHSS with an expiration date of June 10, 2023. The AHRF was sent to the Appellant via email with an attachment outlining the proper entitlement path for the project as a General Plan Amendment, Zone Change, Height District Change, K District Removal, Building Line Removal, Zone Variance, Zoning Administrator Adjustment, Waiver of Dedication and Improvement, and if for sale units are proposed a Subdivision Map Act Tentative Tract Map application (Exhibit C).
- **December 13, 2022** – Via email, DSC informed Appellant that Case Nos. CPC-2022-9268-DB-HCA, ENV-2022-9270-EAF, CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA and ENV-2022-8944-EAF are incomplete; and based on the June 24, 2022 vesting Preliminary Application under Case No. PAR-2022-4490-VHCA, a Development Project Application must be filed by December 21, 2022 to maintain vesting status.
- **December 16, 2022** – Appellant notified AHSS via letter and email that the Appellant intends to seek Project approval through a Density Bonus entitlement and acknowledged that the Preliminary Application under Case No. PAR-2022-4490-VHCA is dated June 24, 2022. Appellant revises the number of units from 40 to 45.
- **December 19, 2022** – Appellant contacted AHSS via email and stated Appellant's intent to seek Project approval through a Density Bonus entitlement.
- **December 21, 2022** – This date represents the deadline for submitting a Development Project Application for the Project in order to maintain vesting rights under California Government Code Section 65941.1(d)(2). (Pursuant to Section 65941.1(d)(2), within 180 calendar days after submitting a Preliminary Application with all of the information required, the development proponent shall submit a Development Project Application that includes all of the information required to process the application consistent with Gov. Code Sections 65940, 65941 and 65941.5.) On December 21, 2022, the Appellant paid filing fees and submitted associated plans to City Planning for Case Nos. CPC-2022-9268-DB-HCA and ENV-2022-9270-EAF (Invoice No. 85125).
- **January 6, 2023** – Valley Project Planning sent a Status of Project Review Letter via email to the Appellant determining all Development Project Applications associated with the site address incomplete (i.e., Case Nos. CPC-2022-9268-DB-HCA, ENV-2022-9270-EAF, CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA and ENV-2022-8944-EAF). The letter states that December 9, 2022 is the initial submission date and December 21, 2022 is the date the Density Bonus Application was filed with associated plans and fees paid. The letter states that the Project's proper entitlement path forward 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.
- **April 4, 2023** – Appellant contacted the Los Angeles Housing Department (LAHD) Land Use Division via email requesting to apply for a Replacement Unit Determination (RUD) letter as required to comply with Government Code Section 66300 and the City's requirements for a complete development project application. Additionally, on this date the Appellant sent an email to LADBS, Grading Division regarding submittal of a soils report to LADBS.
- **April 5, 2023** – LAHD contacted the Appellant via email to request required RUD materials that were not provided. The Appellant contacted City Planning, Valley Project Planning to provide revised application materials in response to the January 6, 2023 Status of Project Review Letter. Revised materials submitted to City Planning show changes in the Project description from rental to "for sale" units, changes in the number of affordable units proposed, and an increase in building height from three to four stories. The materials

submitted by the Appellant stated that the Density Bonus Application materials could be used for the General Plan Amendment Application (Exhibit J).

- **April 6, 2023** – This date is 90 days from the January 6, 2023 Letter that stated all the reasons why Appellant's Development Project Applications were determined to be incomplete, in addition to the items that were not complete or missing, per authority in Government Code Sections 65940, 65941 and 65943. As such, April 6, 2023 was the last date that the Appellant had to submit a complete Development Project Application in order to retain vesting rights under Preliminary Application Case No. PAR-2022-4490-VHCA, pursuant to Government Code Section 65941.1(d). Without a complete application Appellant loses vesting rights and rights to invoke the Government Code 65589.5(d) "Builder's Remedy" under Preliminary Application Case No. PAR-2022-4490-VHCA. Additionally, on April 6, 2023, the Appellant submitted the remaining required materials to LAHD to seek a Replacement Unit Determination (RUD) letter. LAHD notified the Appellant that all required materials had been received to the satisfaction of LAHD, and LAHD issued the Appellant an invoice for payment. This invoice was not paid by the Appellant on April 6, 2023. Due to non-payment of fees, no RUD letter has been issued by LAHD to date.
- **April 11, 2023** – Valley Project Planning received additional revised application materials via USPS in response to the January 6, 2023 Status of Project Review Letter.
- **April 28, 2023** – City Planning issued the Second Status of Project Review Letter to the Appellant through Valley Project Planning via email. The letter states that the Density Bonus Application and GPA Application (and associated environmental review applications) continue to be incomplete and remain on hold. The Letter states that the proper entitlement path forward is a General Plan Amendment (GPA), Zone Change, Height District Change, K District Removal, Building Line Removal, Zone Variance, Zoning Administrator Adjustment, and Waiver of Dedication and Improvement. Additionally, if for sale units are proposed, as newly indicated on the Appellant's April 5, 2023 application materials, a Tentative Tract Map application is required pursuant to the State Subdivision Map Act and LAMC Section 17.00.
- **April 28, 2023** - LADBS, Grading issued a Soils Report Review Letter (Log # 125720) and transmitted it to the Appellant on May 3, 2023. The Soils Report Review Letter states that the review of the soils report submitted by the Appellant on April 4, 2023 cannot be completed and an addendum is required including but not limited to a revised site plan, revised calculations, and additional details about the proposed infiltration system (Exhibit K).
- **May 9, 2023** – Appellant emailed City Planning stating interest in filing an appeal of City Planning's Development Project Application incompleteness determinations under the Permit Streamlining Act (PSA) at Government Code Section 65943.
- **May 12, 2023** – Appellant paid for and filed a Permit Streamlining Act (PSA) Appeal to challenge City Planning's determination that the Development Project Applications are incomplete and that the proper path forward is not a Density Bonus entitlement but the entitlements represented by the GPA Application.
- **May 16, 2023** – City Planning sent a Loss of Vesting Rights Letter to Appellant (Exhibit G) via email. This letter notified the Appellant that Case No. PAR-2022-4490-VHCA expired and has no further force of effect for stated reasons. The letter formally notified Appellant that the Project lost vesting rights under the June 24, 2022 Preliminary Application per Government Code Section 65941.1 because the Project did not timely submit a complete Development Project Application.
- **May 17, 2023** – Appellant submitted a letter to City Planning, Valley Project Planning via email to challenge loss of vesting rights under the HCA (Exhibit C).

- **June 2, 2023** – Status of Project Review: Development Inconsistent letter emailed to Appellant explaining how the Project is inconsistent with City zoning and planning ordinances, policies and standards (Exhibit H).
- **June 10, 2023** – Expiration of AHRF dated December 12, 2022.

Rationale for City Planning's Determinations

The Appellant filed a Preliminary Application in 2022 in order to vest in the local regulatory environment that existed on June 24, 2022, just prior to the State's June 29, 2022 certification that the 2021-2029 Housing Element, adopted June 16, 2022, is substantially compliant with State Law. Appellant claimed vesting rights under the Preliminary Application in order to submit a development project application under Government Code Section 65589.5(d)(5), referred to as the "Builder's Remedy" provision of the Housing Accountability Act (HAA). The Builder's Remedy provision states that a local agency shall not disapprove a housing development project for very low, low, or moderate income households (as defined) or an emergency shelter, or condition approval in a manner that renders such a project infeasible, unless the jurisdiction can find by a preponderance of evidence that: a) the project is inconsistent with the zoning ordinance and general plan land use designation; and b) the jurisdiction has a housing element in substantial compliance with Government Code Tit. 7, Div. 1, Ch. 3, Art. 10.6 regarding Housing Elements.

Government Code Section 65589.5(d)(5) does not specify the entitlements, or process, for requesting a housing development project approval subject to the Builder's Remedy, nor does Section 65589.5(d) direct the City to waive existing local entitlement programs or processes. As a result, the entitlement process is determined by the local jurisdiction's existing laws and regulations, which in this instance is the City of Los Angeles' Charter, Los Angeles Municipal Code (LAMC), zoning codes, land use plans, and associated regulations.

City Planning's determination that the Density Bonus and GPA Applications are incomplete, and that the Density Bonus Application is not the proper entitlement path, are based on the following three factors discussed below: (1) Appellant's changes to the Project and Appellant's failures to provide the complete information or forms required for a complete Development Project Application; (2) State Law, and the City's zoning and planning ordinances, policies and standards that existed on June 24, 2022, that explain why the GPA Application contains the correct entitlement path and the Density Bonus Application is not the proper entitlement path; and (3) loss of vesting rights arising from the Appellant's Preliminary Application.

Appellant's Changes to the Project And Failures to Submit Complete Information Or Forms

The most recent information provided by the Appellant in their Appeal filed May 12, 2023 is that the Appellant is proposing a development with 40 residential dwelling units in a townhome configuration for sale on a 48,284.1 square foot lot. Eight units will be sold to low-income families. Each unit will be three-stories and 40 feet in height. The Project will have 99,868 square feet of floor area, 100,260 square feet of building area, and 48 parking spaces. One of the 40 units will be provided for an on-site property manager. As proposed, two non-protected on-site trees will be removed. There will be no phased development, and there are no plans for future expansion. The existing 1,961 square foot single-family home on site is proposed for demolition.

This Project description has changed from the time the Appellant's Preliminary Application was completed on June 24, 2022. The Project description changed when the Appellant submitted a Development Project Application on December 9, 2022. On April 5, 2023, when additional application materials were provided to City Planning, the Project description changed again. For

example, when Appellant completed the Preliminary Application on June 24, 2022, the Project description described a development of 40 residential units for rent with 8 units rented to low-income families. Then on December 9, 2022, the Appellant submitted papers describing a development of 45 residential units with 9 units rented to low income families. Plans submitted by the Appellant's on December 21, 2022 show the structure at three stories in height. However, on April 5, 2023, the Appellant submitted plans showing a fourth floor. Additionally, materials submitted on April 5, 2023 state that the Project is providing 28 affordable units and 32 market rate unit for a total of 12 market rate units and a new total of 60 units in the development. Based on the April 5, 2023 materials, it is unclear whether the Appellant is providing a total of 40 units or a total of 60 units (28 + 32), thereby increasing the unit count by 50%. In addition, according to the April 5, 2023 Project description, all units are "for-sale."

The majority of items listed as missing or incomplete in the January 6, 2023 Status of Project Review Letter remain incomplete to date (Exhibit I). Although the Appellant submitted revised or missing application materials on April 5, 2023 and April 11, 2023 (such as photos of the site), both applications are incomplete to date. The materials provided by the Appellant to date are unclear and contradictory. As previously stated, the Appellant proposes 8 low income units, 9 low income units, and 28 affordable units within application materials submitted on the same date. The Appellant proposes a three-story and a four-story structure within applicant materials submitted on the same date. The Appellant expresses an intent to expand the scope of the Project with an additional story, 20 more units, and a subdivision request to facilitate the "for-sale" units, whereas the December 9, 2022 submissions did not include those aspects of development, such as a request for additional height/stories, the intensity of 20 more units, or an approval under the Subdivision Map Act.

The Density Bonus Entitlement Path Is Not the Proper Path, But The General Plan Amendment and Zone Change Path Is

The City applied its local zoning and planning ordinances, policies and standards that existed on the date of Appellant's June 24, 2022 Preliminary Application, all of which direct the City to apply the entitlement path represented by the GPA Application. A decision on the merits of the GPA Application is then also subject to the findings in Gov. Code Sec. 65589.5(d)(5), if applicable. Government Code Section 65589.5(d)(5) and (o), and Government Code Section 65941.1, does not specify a particular entitlement or entitlement process, or a particular base density for the Project site. Nor does the HAA state that a jurisdiction is required to excuse or waive entitlements normally required by local ordinances, policies and standards, such as a General Plan Amendment or Zone Change. In fact, Government Code Sections 65589.5 and 65941.1, by referencing the Permit Streamlining Act, local planning, zoning, and subdivision standards, and the Subdivision Map Act, contemplate the City will apply its local zoning and planning ordinances, policies and standards that direct the Project to seek out a GPA, Zone Change, and tract map approval. This is in contrast to Government Code Section 65589.5(j)(4) that specifies rezoning cannot be required when zoning is inconsistent with the General Plan (i.e., Community Plan). However, that circumstance of zoning inconsistency with the General Plan is not present here. The Project site is zoned RA, one of the corresponding zones of the site's Very Low I Residential land use designation, as discussed earlier.

In addition, in accordance with State Density Bonus Law at Government Code Section 65915-65918 (Gov. Code, Tit. 7, Div. 1, Ch.4.3, Density Bonuses and Other Incentives), and LAMC Section 12.22 A.25 (Affordable Housing Incentives – Density Bonus), the Project cannot be properly permitted under a Density Bonus entitlement. This is because the RA Zone allows for single family use and a density of one single-family dwelling at this site.

To be eligible for a Density Bonus, the site must be zoned for a minimum of five base dwelling units. Government Code Section 65915(i) defines a “Housing development,” as a “...development project for five or more residential units...” including a subdivision. It states that a density bonus is awarded when a developer proposes to construct “a housing development, excluding any units permitted by the density bonus awarded...that will contain at least any one of the following: (A) Ten percent of the total units of a housing development...[for lower income households....; Five percent of the total units of a housing development...[for] very low income households....” (Gov. Code Sec. 65915(b)(1).) Government Code Section 65917.2(a)(1) also defines an “eligible housing development” as “...a multifamily housing development that contains *five or more residential units, exclusive of any other floor area ratio bonus or incentive or concession awarded pursuant to this chapter...*” [emphasis added]. LAMC Section 12.22 A.25(b), Affordable Housing Incentives - Density Bonus, similarly defines a “Housing Development Project” as “the construction of five or more new residential dwelling units, *For the purpose of establishing the minimum number of five dwelling units, Restricted Affordable Units shall be included and density bonus units shall be excluded*” [emphasis added]. Simply explained, a lot zoned for one single-family dwelling unit does not provide a base zoning of five units.

On numerous occasions, City Planning staff informed the Appellant that Density Bonus is not the proper entitlement path. For example, this information was relayed to the Appellant during email exchanges with the AHSS beginning when the Appellant submitted an AHRF to City Planning on September 14, 2022, September 26, 2022, and October 14, 2022 (Exhibit C). On January 6, 2023 (Exhibit D) and again on April 28, 2023 (Exhibit E), Valley Project Planning staff issued Status of Project Review Letters to the Appellant and again stated that Density Bonus is not the correct entitlement path for the Project but the entitlement path represented by the GPA Application is.

At each of the above points of communication City Planning also expressed its position that the City’s zoning and planning ordinances, policies and standards specify the correct entitlement process (i.e., Development Project Application process) for 40 units on this site designated for Very Low I Residential land use and zoned RA-1-K. City regulations specify that this Project requires: a General Plan Amendment, Zone Change, Height District Change, K District Removal, Building Line Removal, Zone Variance, Zoning Administrator Adjustment, and Waiver of Dedication. Each of these entitlements are described pursuant to the City Charter and LAMC as follows within the context of the Appellant’s project:

- General Plan Amendment (GPA) subject to Measure JJJ pursuant to City Charter Section 555 and LAMC Sections 11.5.6 A and 11.5.11. The subject site is designated for Very Low I Residential land use under the Sylmar Community Plan. The Very Low I Residential Very Low I Residential land use designation corresponds to the RA and RE Zones. The RA Zone is a Suburban Zone that permits a maximum of one single-family residential dwelling on this lot and requires a minimum lot area of 17,500 per dwelling unit. The RE Zone is a Residential Estate Zone that requires a minimum of 9,000 square feet per dwelling unit. Since the applicant is proposing 40 residential dwelling units, a General Plan Amendment pursuant to City Charter Section 555 and LAMC Section 11.5.6 A is required in order to change the land use designation to one that allows more intense uses such as multi-family housing. Further, the General Plan Amendment applies to Appellant’s Project that proposes over 10 dwelling units, and is therefore subject to Measure JJJ as codified in LAMC Section 11.5.11.
- Zone Change (ZC) subject to Measure JJJ pursuant to LAMC Sections 12.32 F and 11.5.11. As previously stated, this site is zoned RA, which is a Suburban Zone that permits

a maximum of one single-family residential dwelling and requires a minimum area of 17,500 per dwelling unit. Therefore, a Zone Change request is also required for increased density.

- Height District (HD) Change pursuant to LAMC Section 12.32 F. Height District No. 1 in the RA Zone limits height to 30 feet with a maximum of 36 feet depending on the roof pitch. The Appellant is proposing at least a three-story, 40 foot in height structure, which consequently requires a Height District entitlement request to increase height.
- Building Line (BL) Removed pursuant to LAMC Section 12.32 R. A 37 foot building line established under Ordinance No. 99,113 extends along the Polk Street frontage. The Appellant is required to file an entitlement request or observe the 37 foot building line established under Ordinance No. 99,113 in the project design. Based on renderings provided by the Appellant and received by City Planning on April 5, 2023, the proposed structure violates the 37 foot building line. However, dimensions showing the distance of the building frontage from the public right-of-way are not provided.
- K District Removal pursuant to LAMC 12.32 S or Zoning Administrator Determination pursuant to LAMC Section 12.24 X.5. LAMC Section 13.05 established a Supplemental Use District to preserve and allow equinekeeping in the area of the Project site. The Project does not propose any equine use. However, the proposed development could impact abutting equine uses to the east and west by allowing the construction of a habitable room within 35 feet of neighboring equine use, which is otherwise prohibited. Therefore, the Appellant is required to apply for a K District Removal pursuant to LAMC Section 12.32 to remove the subject site from the K District, or apply for a Zoning Administrator Determination in accordance with the provisions of LAMC Section 12.24 X.5 to allow a residential building to be constructed closer than 35 feet from a legally existing equine enclosure.
- Waiver of Dedication and Improvements (WDI) pursuant to LAMC Section 12.37 I. The Project proposes to withhold all required dedications and improvements for the public right-of-way. This requires filing an entitlement request for relief from the dedications and improvements otherwise required by the Bureau of Engineering through LAMC Section 12.32 G (1) and the Mobility Plan.
- Zoning Administrator Adjustment (ZAA) pursuant to LAMC Section 12.28. The Project proposes to deviate from the zone's setbacks (yards), spaces between buildings, and passageway requirements. This requires a ZAA entitlement request.
- Zone Variance (ZV) pursuant to LAMC Section 12.27. The Project proposes to not include the required number of automobile parking spaces per dwelling unit. The Project is also proposing all parking spaces to be compact spaces and is also proposing a deviation in the required back-up space. The Project is proposing that bicycle parking requirements be waived. The Project is also proposing to deviate from Code requirements for open space, landscaping, and recycling areas. To request these deviations, the Appellant is required to file for a Zone Variance.
- Tentative Tract Map pursuant to the State Subdivision Map Act (Government Code Section 66410 et. seq. and LAMC Section 17.00. When Appellant provided revised application materials on April 5, 2023 and April 11, 2023, the materials indicated that the Project will consist of for sale units. This requires the Appellant to file for a Subdivision application with a Tentative Tract Map and comply with all the State Law requirements of the Subdivision Map Act.

Loss of Vesting Rights under Government Code Sec. 65941.1

The Appellant submitted a complete Preliminary Application for a housing development project on June 24, 2022 under preliminary Case No. PAR-2022-4490-VHCA. As such, the Project obtained vesting rights to the City's regulatory environment during a time period when the City had a substantially compliant adopted Housing Element, but did not yet have its State Housing Element certification of substantial compliance. The City General Plan Housing Element was deemed in full compliance with State Housing Element Law (Article 10.6 of the Government Code) by the State Department of Housing and Community Development (HCD) on June 29, 2022 (Housing Element Certification). The Project would be eligible to maintain its vesting rights after the June 29, 2022 Housing Element certification date based on two conditions:

1. To maintain vesting rights, a Development Project Application had to be filed with City Planning on or before December 21, 2022.

Pursuant to California Government Code Section 65941.1(d)(2), within 180 calendar days after submitting a Preliminary Application with all of the information required, the development proponent shall submit a Development Project Application that includes all of the information required to process the development application. December 21, 2022, was the 180 calendar day deadline to maintain vesting status under the June 24, 2022 Preliminary Application. On December 9, 2022, the applicant submitted materials for Case No. CPC-2022-9268-DB-HCA. On December 9, 2022, City Planning also created Case No. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA as the appropriate Development Project Application and entitlement path for the Project. The "VHCA" suffix indicates that the Project had vested rights on December 9, 2022 when materials were submitted.

2. To maintain vesting rights, a Development Project Application had to be made complete within 90 days of the first letter determining the applications to be incomplete.

Government Code Section 65941.1 states that if the public agency determines that the Development Project Application 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 any preliminary application shall expire and have no further force or effect.

Here, on January 6, 2023 (within 30 days of the December 9, 2022 application submission of papers for Case Nos. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA or CPC-2022-9268-DB-HCA), City Planning emailed a Status of Project Review Letter to notify the Appellant that the Case is on Hold and Determined Incomplete ("January 6, 2023 Letter"). This letter listed missing or incomplete application materials or information, and requested that the Appellant provide the specified materials. On April 5, 2023 and April 11, 2023, the Appellant submitted materials to City Planning that still did not fully address all aspects of the January 6, 2023 Letter. A Second Status of Project Review "Second Letter" was emailed to the Appellant on April 28, 2023 requesting previously identified missing information. Upon 90 days from the January 6, 2023 Letter, or April 6, 2023, Planning had not received all missing or incomplete information listed in the January 6, 2023 Letter. Therefore, on May 16, 2023, Planning issued a Loss of Vesting Rights letter to the Appellant to inform the Appellant that the vesting Preliminary Application under Case No.

PAR-2022-4490-VHCA has expired, has no further force of effect, and that vesting rights are terminated.

As noted above, both the January 6, 2023 and April 28, 2023 Status of Project Review Letters identified significant items that were missing or incomplete. Remaining missing items include the following:

- Replacement Unit Determination (RUD) Letter – An SB 8 RUD Letter from the Los Angeles Housing Department was not provided. As listed on Department of City Planning Application Filing Instructions, an SB 8 Replacement Unit Determination (RUD) Letter is required.
- Subdivision Application – A Subdivision Application is required and was not provided for the units that were newly described as “for-sale” units in Appellant’s April 5, 2023 submissions. The Department of City Planning Application Filing Instructions state that the applicant must provide information regarding simultaneous case filings (e.g., subdivision maps) or any intent to develop a larger project. The City, in an October 14, 2022 email, notified Appellant that a Tentative Tract Map under the Subdivision Map Act would be a necessary application “If” Appellant decided to develop “for-sale” units. Instead of submitting an application for a tentative tract map in December 2022, Appellant described the units as “for rent,” failed to submit either a complete Density Bonus Application or a complete GPA Application, failed to timely provide requested information in order to make either of the applications complete, and then Appellant modified the Project and expanded its scope to include “for-sale” units. This requires an approval under the State Subdivision Map Act, a land use approval that was not previously requested or declared in Preliminary Application materials that described the Project as “...40 residential units for rent” (Case No. PAR-2022-4490-VHCA) or the December 2022 application materials that described the project as “...45 residential units for rent.”
- An updated Affordable Housing Referral Form was not provided. The Affordable Housing Referral Form signed by the AHSS on December 12, 2022 requested corrections that were not made.

California Statute Authorizing This Appeal

California Government Code Section 65943 of the Permit Streamlining Act states that after City Planning has received a Development Project Application, it has 30 days to determine if the application is complete. Upon resubmittal of the missing materials, City Planning has another 30 days to determine whether the supplemented application is complete. An applicant may appeal the second determination that the application was not complete under Government Code Section 65943 (c). The instant appeal was authorized and accepted by City Planning pursuant to Government Code Section 65943 (c) of the Permit Streamlining Act:

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both...

The “public agency” has been determined to be the City of Los Angeles (Gov. Code Sec. 65932) and the “governing body of the agency” has been determined to be the Los Angeles City Council.

APPEAL POINTS AND STAFF RESPONSES

The following is a discussion of the appeal points raised by the Appellant and responses by Planning staff (Appeal Point Nos 1 – 3 in italics as stated in the Appeal). Planning is also addressing herein points raised by the Appellant in other communication submitted at various points in time during the Preliminary Application and Development Project Application process (Appeal Point Nos. 4 – 8).

Appeal Point No. 1

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).

Staff Response No. 1

Appellant's selected Density Bonus entitlement path is not supported by State or local laws for the following reasons:

1) Vesting under Appellant's Preliminary Application is irrelevant to this appeal because even though Appellant submitted a vesting Preliminary Application on June 24, 2022, prior to HCD

informing the City that HCD certifies the 2021-2029 Housing Element is substantially compliant with State law on June 29, 2022, Appellant did not submit a complete Development Project Application within the time required under Government Code Section 65941.1 in order to maintain vesting rights.

2) Based on the local zoning and planning regulations in effect on June 24, 2022, the date of the Preliminary Application, the City is entitled to and required to apply its zoning and planning ordinances, policies and standards in effect on that date, laws which collectively support use of the entitlement path in the GPA Application.

3) the Project site, with a base density of 1 unit, does not satisfy the 5 unit base density requirement of State and local Density Bonus law in order to make the Project site eligible for a Density Bonus entitlement path;

4) Government Code Section 65589.5(d) and (o) do not specify that Section 65589.5(d) is the sole approval process for housing development projects for very low, low-, or moderate-income households, as defined, and do not require the City to waive local entitlement procedures and application requirements for such projects.

5) Government Code Section 65589.5, and 65941.1 references the Permit Streamlining Act, the Subdivision Map Act, and local zoning and planning ordinances, policies and standards. Thus these Sections 65589.5, and 65941.1 contemplate the City will apply local entitlement procedures and application requirements that arise under the Permit Streamlining Act and Subdivision Map Act, *in addition* to any findings or procedures in Sections 65589.5 and 65941.1.

6) The HAA itself expressly provides the City with authority to enforce its objective planning and zoning standards, such as the City's density, height and other development standards in site's current zoning, therefore also supports the use of the entitlement path in the GPA Application (Section 65589.5(f)(1)).

First, Government Code Section 65589.5 (o) text about the impact of a preliminary application is not relevant to this appeal because Appellant's vesting Preliminary Application has since expired. Government Code Section 65589.5(o) states that a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when Appellant's preliminary application was submitted. However, Government Code Section 65941.1(d) explains that this benefit lasts only if Appellant timely submits a complete Development Project Application. Here, the Appellant's Project was vested on June 24, 2022, and Appellant submitted a Development Project Application within 180 days of that date. However, that Development Project Application was determined to be incomplete on January 6, 2023, whether the relevant application is considered the Density Bonus Application or the GPA Application. Then, Appellant did not submit missing required application materials and information by April 6, 2023 (90 days of January 6, 2023) to complete either the Density Bonus or GPA Application. As a result, the Appellant's Preliminary Application rights expired, and Appellant's Preliminary Application has no further force or effect pursuant to Government Code Section 65941.1(d).

Second, the June 24, 2022 vesting date of Appellant's Preliminary Application supports City Planning's position that the GPA Application contains the correct entitlement path, not the Density Bonus Application. On June 24, 2022, the ordinances, policies and standards in effect were: a) the site's RA-1-K zoning; b) the site's Very Low I Residential land use per the Sylmar Community Plan; and c) the City's 2021-2029 Housing Element finally adopted June 16, 2022; and d) all of the other Charter and LAMC provisions (i.e. 11.5.11, 12.32, 17.00, etc.) that work together to provide the Project with the entitlement path represented by the GPA Application.

Third, pursuant to Government Code Sections 65915-65918, and LAMC 12.22 A.25, the Project site is not eligible for a Density Bonus entitlement due to its base zoning of one unit. The subject site's RA zoning allows for one single-family dwelling at this site. To be eligible for a Density

Bonus, the site must be zoned for a minimum of five base dwelling units. Government Code Section 65915(i) defines a “Housing development,” as a “...development project for five or more residential units...” including a subdivision. It states that a density bonus is awarded when a developer proposes to construct “a housing development, excluding any units permitted by the density bonus awarded...that will contain at least any one of the following: (A) Ten percent of the total units of a housing development...[for lower income households....; Five percent of the total units of a housing development...[for] very low income households....” (Gov. Code Sec. 65915(b)(1).) Government Code Section 65917.2(a)(1) then defines an “eligible housing development” as “...a multifamily housing development that contains **five or more residential units, exclusive of any other floor area ratio bonus or incentive or concession awarded pursuant to this chapter...**” [emphasis added].

LAMC Section 12.22 A.25(b), Affordable Housing Incentives - Density Bonus, defines a “Housing Development Project” as “the construction of five or more new residential dwelling units, the addition of five or more residential dwelling units to an existing building or buildings, the remodeling of a building or buildings containing five or more residential dwelling units, or a mixed use development in which the residential floor area occupies at least fifty percent of the total floor area of the building or buildings. **For the purpose of establishing the minimum number of five dwelling units, Restricted Affordable Units shall be included and density bonus units shall be excluded**” [emphasis added].

As such, a site zoned for one single-family dwelling unit would not be eligible for a Density Bonus entitlement in accordance with the California Government Code or the Los Angeles Municipal Code, because the site does not have a base density of five units.

Fourth, Government Code Section 65589.5 (d) and (o) provide an *additional* set of findings or limitations that City decision-makers are subject to when deciding to approve, condition or disapprove a housing development project. However, those provisions do not specify that the HAA provides the *sole* entitlement procedures or requirements for a housing development project for very low, low-, or moderate-income households (defined in Gov. Code Sec. 65589.5(h) as projects with 20% lower or 100% moderate). Nor does the HAA direct the City to excuse, not require, or waive local entitlement procedures and application requirements for such projects. The HAA instead provides an additional set of findings or limitations that City decision-makers are subject to if they propose to disapprove, or impose certain types of conditions on, specified housing development projects.

By applying these HAA provisions as an additional set of findings or limitations, the applicable State and local laws are harmonized and allowed to operate concurrently. This avoids applying the HAA in a way that impliedly repeals local entitlement procedures.

There is nothing in the HAA that directs the City to apply any of the HAA’s disapproval findings as the sole means of reviewing Appellant’s Project. The HAA stands in contrast to statutes like Government Code 65913.4(a) that expressly states no conditional use permit is required and directs the City to conduct a “ministerial” approval of qualifying projects. The HAA also stands in contrast to Government Code Section 66411.7(a) and (b), that directs the City to “ministerially” approve lot splits without discretionary review. There is also nothing in the HAA that directs the City to use as the sole means of reviewing the Project, the other generally applicable HAA Section 65589.5(j) disapproval findings that apply to projects with less affordable housing (or no affordable housing). The absence of such text means that the HAA disapproval findings are meant to be applied in addition to, but not instead of, the City’s local code required approval procedures and regulations.

Whether considering the findings in HAA Section 65589.5(d) or (j), the HAA findings only become applicable if there is a disapproval of, or imposition of certain types of conditions on, a housing development project application through the local entitlement process. Project conditioning or disapproval requires the action of a code specified decision-maker under to specified procedures and entitlement paths that are identified by the local zoning and planning ordinances, policies and standards. State law contemplates that the City will identify the local ordinances, policies and standards used to approve housing development projects as referenced in Government Code Sections 65300 and 65458 (General Plan Authority) 65803 and 65804 (zoning code authority), 65940 and 65943 (authority for application processing requirements). There is nothing in the HAA which states that local procedures authorized by the State Legislature are to be supplanted by the HAA disapproval findings at Section 65589.5(d), or that a Density Bonus entitlement is the mandated means for reviewing and approving Appellant's Project.

The HAA at Government Code Section 65589.5(d) states that a local agency shall not disapprove a housing development project for very low, low-, or moderate-income households, or an emergency shelter, or condition approval for such housing approval in a manner that renders the housing development project infeasible unless the jurisdiction can support by a preponderance of evidence one of 5 alternative sets of disapproval findings, such as a finding that : a) a project is inconsistent with the zoning ordinance and general plan land use designation; and b) the jurisdiction has a housing element in substantial compliance with Government Code Tit. 7, Div. 1, Ch. 3, Art. 10.6 regarding Housing Elements.

Then, the HAA at Section 65589.5(o) states that a project with a valid vesting preliminary application is only subject to the local regulatory environment that existed on the date all material for a preliminary application was submitted. Section 65589.5(o) however qualifies that rule and states that in specified circumstances or upon the City making specified findings, the City may subject a project with a valid preliminary application to ordinances, policies or standards adopted after the submission of the preliminary application.

The plain text of these HAA subdivisions do not specify sole entitlement procedures or direct the City to waive local entitlement procedures. In addition, a discussion of the Section 65589.5 (d) or (o) findings is premature for purposes of this appeal. To date, no disapproval has been issued by City Planning, or conditions imposed, relative to the Appellant's Density Bonus Application or GPA Application. Moreover, this appeal response does not address the merits of those applications as an appeal because no Planning decision-maker has issued an initial appealable decision on the merits of those applications under the City's local findings or processes at LAMC 12.22.A.25 (Density Bonus) or the City's GPA, Zone Change and other approval procedures at LAMC 11.5.11, 12.32, 12.36, and other sections.

Fifth, references to the Permit Streamlining Act (Gov. Code Secs. 65920 – 65964.5), and the Subdivision Map Act (Gov. Code Sec. 66410-66499.40) in Government Code Sections 65589.5 and 65941.1, show that the Legislature contemplates the City will use its local land use regulations and entitlement processes to implement the Permit Streamlining Act and Subdivision Map Act. Thus, the City may require Appellant to: proceed with the City's local entitlement procedures in the GPA Application; provide all the information the City identifies in its application instructions, lists of required application information, and incompleteness letters created pursuant to the Permit Streamlining Act; and submit a complete application for a Subdivision Map Act approval for the newly proposed "for-sale" units at the Project site.

The Housing Accountability Act (HAA) (Gov. Code Sec. 65589.5(d)(2) and (5), (h)(5) and (9), and (j)), and the preliminary application provision (Gov. Code Sec. 65941.1(d)) reference timepoints or actions triggered by the submission of a complete application pursuant to the Permit Streamlining Act requirements in Government Code Sections 65940 and 65943. The Permit Streamlining Act provides very general procedures for the review of Development Project Applications (Gov. Code, Tit. 7, Div. 1, Ch. 4.5). Per Government Code Section 65940 in the Permit Streamlining Act, each public agency is required to compile one or more lists that specifically detail information and materials that will be required from any applicant for a Development Project Application (i.e., entitlement). These lists are available to all project applicants and interested parties on City Planning's website at Forms | Los Angeles City Planning (lacity.org). Specific instructional materials that are pertinent to Appellant's project are included on this site, for example: City Planning Application Filing Instructions Form No. CP-7810, Environmental Assessment Form No. CP-1204, Affordable Housing Referral Form No. CP-4043, Tentative Tract Maps for 5 or More Parcels - Tentative Tract Map Filing Instructions and Checklist Form No. CP-6110. These detailed lists and instructions were presented to the Appellant during communications between the Appellant and City Planning staff *prior* to submitting some of the Development Project Application materials on December 9, 2022. Per authority at Government Code Section 65940.1, the Appellant was also provided with a current schedule of fees that Appellant must pay prior to application filing and processing.

When the Legislature referenced Permit Streamlining Act activities and timepoints in the text of Government Code Sections 65589.5 and 65941.1, the Legislature contemplated that the City would apply its local ordinances, policies and standards that are the City's entitlement processes, application requirements, and fee requirements, and do so pursuant to the Permit Streamlining Act. Further, the HAA expressly contemplates that the City will apply the Project site's zoning and land use standards to determine what entitlements are applicable. This is because Section 65589.5(j)(2) requires the City to review Project compliance with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision, and provide the Appellant with an explanation for why the Project is not in compliance. In that review, the City would provide explanation about why a Density Bonus request is not the appropriate entitlement path, and how Appellant may cure that issue by using the entitlement path specified in the GPA Application.

While the obligation to provide the review in Section 65589.5(j)(2) was not triggered here because Appellant has not submitted a complete Development Project Application, the City provided a similar assessment via email September 26, 2022 and October 14, 2022 prior to Appellant submitting its Density Bonus Application, again at the time of initially submitting materials for the Development Project Application in December 2022, and then again in formal writings dated January 6, 2023, April 28, 2023, and June 2, 2023.

In addition, when the Legislature referenced the Subdivision Map Act in the preliminary application provision at Government Code Section 65941.1(a), the Legislature contemplated that a for-sale project subject to a preliminary application, would be submitting a subdivision application for a tentative tract map as specified under State and local subdivision laws. For this additional reason, Appellant may not argue that a sole Density Bonus Application is the appropriate entitlement path for its currently described Project of for-sale units.

Government Code Section 65941.1(a)(12) requires a complete preliminary application to indicate, among other required information, whether a project will request any approvals under the Subdivision Map Act, including a tentative map or condominium map. Then, Section 65941.1(d), requires an applicant to submit a Development Project Application, such as a subdivision application, within 180 days of submitting a preliminary application described in Section

65941.1(a). Although Appellant's Project description changed to include for sale units as of April 5, 2023, Appellant made this Project change without submitting a subdivision application pursuant to the Subdivision Map Act, and LAMC Section 17.00 within 180 days of the Project's Preliminary Application, or even within 90 days of the initial incompleteness letter January 6, 2023 (i.e., April 6, 2023).

Sixth, the HAA itself expressly provides the City with authority to apply its objective planning and zoning standards, such as the City's density, height and other development standards that inform the use of the GPA Application entitlement path. HAA Section 65589.5(f)(1) states that except as provided in Section 65589.5(o), nothing in the HAA shall be construed to prevent the City from requiring the Project to comply with objective written development standards, conditions and policies. Section 65589.5(o) says the Project is subject to the ordinances, policies and standards in effect when Appellant submitted a complete Preliminary Application on June 24, 2022, subject to an expiration of Preliminary Application rights if a complete Development Project Application is not timely submitted. On June 24, 2022, the ordinances, policies and standards in effect were: a) the site's RA-1-K zoning; b) the site's Very Low I Residential land use per the Sylmar Community Plan; and c) the City's 2021-2029 Housing Element finally adopted June 16, 2022; and d) all of the other City Charter and LAMC provisions (i.e. 11.5.11, 12.32, 17.00, etc.) that work together to provide the Project with the proper entitlement path represented by the GPA Application. HAA Section 65589.5(d)(5) does not say that local code and General Plan (i.e., Community Plan) provisions should not be considered when reviewing the Project if there is no substantially compliant Housing Element, or that those City regulations are inapplicable or waived. Instead, Section 65589.5(d)(5) expressly directs the City determine noncompliance with City code and General Plan provisions under the findings of Section 65589.5(d)(5) if the City proposes to disapprove the Project when there is no substantially compliant Housing Element. This means that even in the context of Section 65589.5(d)(5), the Legislature consistently contemplates that the City will apply its zoning and planning regulations that inform the GPA Application entitlement path.

Appellant's first appeal point has one primary flaw, because even under Appellant's theory of a proposed Density Bonus entitlement, the Density Bonus Application analyzed alone remains incomplete. Although Appellant submitted materials for a Density Bonus Application on December 9, 2022 within the 180 day period, the Appellant did not submit the materials required to make the application complete pursuant to Section 65943. Among the items required for a complete Development Project Application that Appellant has not provided, are things such as: 1) a Replacement Unit Determination Letter (RUD) from the Los Angeles Housing Department (LAHD); 2) a completed Preliminary Zoning Assessment (PZA) review form obtained from the Los Angeles Department of Building and Safety (LADBS) (See Planning Form No. CP-4064 page 1; and 3) revised or updated materials for internal application consistency related to a new fourth floor shown as of April 5, 2023, a consistent or uniform Project and affordable unit count in a revised Affordable Housing Referral Form, and a uniform or consistent Project description. Because this information remains missing, Appellant's Density Bonus Application remains incomplete as specified in City Planning's January 6 and April 23, 2023 incompleteness letters.

Appeal Point No. 2

The Appellant states:

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."

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 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.

Staff Response No. 2

The Appellant incorrectly states City Planning's position. City Planning has not disapproved the Density Bonus Application or GPA Application related to the Appellant's Project, and this report does not constitute a recommendation for Council action on the merits of the Density Bonus Application under Government Code Section 65915 and LAMC 12.22.A.25, or the GPA Application under the City Charter and LAMC requirements. The appeal before Council, under the Permit Streamlining Act at Government Code 65943, discusses whether or not the Development Project Applications are complete. There is no text in the HAA, the Permit Streamlining Act, or Government Code 65941.1 that converts the expiration of a preliminary application, or a determination of Development Project Application incompleteness, into a "disapproval" of the Project or its applications.

This appeal point appears to conflate the sections of the Government Code in the Permit Streamlining Act related to application incompleteness (Gov. Code Sec 65943), and the termination of vesting rights under the Preliminary Application (Gov. Code Sec. 65941.1.), with the action of disapproving a Development Project Application on the merits or as a matter of law, as defined in the HAA. To "disapprove" a housing development project, is an action that is technically defined in Government Code Section 65589.5(h)(6) as:

"Disapprove the housing development project" includes any instance in which a local agency does any of the following:

- (A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.*
- (B) Fails to comply with the time periods specified in (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950 shall be deemed an extension of time pursuant to this paragraph.*
- (C) Fails to meet the time limits specified in Section 65913.3*

Under the above definition, no disapproval of the Appellant's Density Bonus or GPA Application has occurred. No vote has been taken on the required land use approvals or entitlements necessary for the issuance of a building permit. No determination, adoption or certification of environmental analysis under CEQA has been made for the Project under Section 65950. The

post-entitlement phase permits (i.e., building permits from the Department of Building and Safety) are not at issue in this appeal. No City Planning decision-maker has issued an appealable decision on the merits of the applications under the findings or processes applicable to the different entitlement applications at issue (the Density Bonus and / or the GPA Applications). The applications are solely before Council for purposes of determining under Government Code 65943, whether the applications are complete for further processing.

Upholding City Planning's incompleteness determination, does not prevent the proposed Project from seeking a land use entitlement that could support a building permit. For example, Appellant may provide the information necessary to complete the GPA Application (or Density Bonus Application), and apply for Project approval through that process.

A discussion of Development Project Application disapproval is premature in the context of this Appeal because the pre-decision nonconformance review process codified under Government Code Section 65589.5(j)(2) has not even been triggered at this point in time. The Density Bonus and GPA Applications are not determined to be complete by City Planning. In addition, the applications are not determined to be complete by operation of law under Government Code Section 65943 given that City Planning identified remaining incompleteness issues to the Appellant within 30 days of Appellant's April 5, 2023 supplemental application submission. The action recommended to the City Council by City Planning on this Appeal is not a disapproval of the Appellant's Development Project Applications (i.e., Density Bonus Application, GPA Application or related environmental applications) because the applications may be processed if Appellant makes its Development Project Application complete. Further, there can be no disapproval as a matter of law under the HAA because Government Code Section 65950 references timelines for approval of development permits triggered by the determination, adoption or certification of CEQA analysis, timelines that are not applicable here because no CEQA determination has been issued. As discussed in the January 6 and April 28, 2023 Letters, Appellant has not provided all needed information for a CEQA analysis. Lastly, Government Code Section 65913.3 refers to a post-entitlement permit phase, which not is applicable because the proposed Project is not in the post-entitlement permit phase, but is trying to determine whether it has complete Development Project Application.

The State Department of Housing and Community Development (HCD) Division of Housing Policy Development memorandum on Housing Accountability Act Technical Assistance Advisory (Government Code Section 6589.5) published on September 15, 2020, provides technical assistance and guidance on the implementation of the Housing Accountability Act and states:

Disapprove the housing development project means a local government either votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit, or fails to comply with specified timeframes in the Permit Streamlining Act. (Gov. Code, § 65589.5, subd. (h)(5).)

Under the above HCD guidance, City Planning's actions do not constitute a disapproval either. There has been no vote taken to either approve or disapprove the Appellant's land use entitlement, and to date, the City has complied with all applicable timeframes in the Permit Streamlining Act. No City Planning decision-maker has issued an appealable decision on the merits of the applications under the findings or processes applicable to the different entitlement applications at issue. The pre-decision nonconformance review process codified under Government Code Section 65589.5(j)(2) has not even been triggered at this point in time, because the application is not actually determined to be complete by operation of law under

Section 65943 given that City Planning responded to the Appellant within 30 days of Appellant's April 5, 2023 supplemental application submission. Any vote taken by the City Council under the instant appeal is not equivalent to an approval or disapproval of the Appellant's Development Project Applications. Instead, it is a vote indicating that the applications are complete; or it is a vote upholding City Planning determination that the applications are not complete and Appellant needs to provide required information in order to complete the applications and continue with processing.

Furthermore, the City is requiring the Appellant to seek approval of the Project in accordance with the entitlement path codified by the City Charter and Los Angeles Municipal Code. The five findings listed at HAA Section 65589.5(d), are only applicable if the City is disapproving an eligible project. Those findings are inapplicable at this time because to date, the City has issued no disapproval of the Development Project Applications (i.e., the Density Bonus or GPA Application, and associated environmental applications).

Appeal Point No. 3

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:

<i>City's Demands on the Project</i>	<i>Response</i>
<i>General Plan Amendment, subject to Measure JJJ, pursuant to LAMC Sections 11.5.6 A and 11.5.11 and City Charter Section 555</i>	<i>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.</i>
<i>Zone Change, subject to Measure JJJ, pursuant to LAMC Sections 12.32 F and 11.5.11</i>	<i>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.</i>
<i>Height District Change pursuant to LAMC Section 12.32 F</i>	<i>This project used state density bonus laws Gov. Code §65915 - §65918. This project is asking requesting [sic] this item as an incentive or waiver. Therefore, this request must</i>

	<i>be evaluated on the basis of the criteria to accept or reject incentives or waivers.</i>
<i>Building Line Removal pursuant to LAMC Section 12.32 R</i>	<i>This project used state density bonus laws Gov. Code §65915 - §65918. This project is asking requesting [sic] this item as an incentive or waiver. Therefore, this request must be evaluated on the basis of the criteria to accept or reject incentives or waivers.</i>
<i>Waiver of Dedication and Improvements pursuant to LAMC Section 12.37 I (must be filed separately, not as an incentive)</i>	<i>This project used state density bonus laws Gov. Code §65915 - §65918. This project is asking requesting [sic] this item as an incentive or waiver. Therefore, this request must be evaluated on the basis of the criteria to accept or reject incentives or waivers.</i>
<i>Zoning Administrator Adjustment pursuant to LAMC Section 12.28 to deviate from setbacks (yards), spaces between buildings and passageway requirements</i>	<i>This project used state density bonus laws Gov. Code §65915 - §65918. This project is asking requesting [sic] this item as an incentive or waiver. Therefore, this request must be evaluated on the basis of the criteria to accept or reject incentives or waivers.</i>
<i>Zone Variance pursuant to LAMC Section 12.27 to deviate automobile parking requirements</i>	<i>This project used state density bonus laws Gov. Code §65915 - §65918. This project is asking requesting [sic] this item as an incentive or waiver. Therefore, this request must be evaluated on the basis of the criteria to accept or reject incentives or waivers.</i>

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.

Staff Response No. 3

As previously explained in the City's responses to Appeal Points 1 and 2, the Processing Timeline Summary, and the section titled Rationale for City Planning's Determinations, Appellant's Density Bonus Application analyzed alone is incomplete, and both State and Municipal laws provide that this Project through the GPA Application entitlement path and should not be processed as a Density Bonus project because the site does not meet the base density minimum. Even though a complete vesting Preliminary Application was submitted on June 24, 2022, prior to the June 29, 2022 date when HCD informed the City of Los Angeles that HCD certifies the 2021-2029 Housing Element for substantial compliance with State law, that Preliminary Application no longer has any force or effect. The Preliminary Application has no force because Appellant did not timely submit a complete Development Project Application, even if the application completeness analysis is limited to the completeness of Appellant's Density Bonus Application. In addition, the entitlement path represented by the GPA Application is supported by the local regulatory environment that existed when a complete Preliminary Application was submitted on June 24, 2022, and Appellant did not timely submit a complete GPA Application either. Appellant has provided no evidence that any of the zoning and planning ordinances, policies, standards or programs represented by the LAMC code sections referenced in this appeal point will "kill" the Project. Any of the requirements are objective requirements specified by local legislation.

The HAA, Density Bonus provision at Government Code Section 65915, the preliminary application provision in Government Code Section 65941.1, nor the existence of Appellant's Preliminary Application, provide Appellant with the authority to have the Project to avoid all other State laws and local ordinances, policies and standards.

First, Appellant now proposes to develop for-sale units, unlike prior descriptions of the Project. As a result, the Project now requires compliance with the Subdivision Map Act, and use of the City's procedures at LAMC 17.00 et seq. which implement the Subdivision Map Act in the City. Compliance with the Subdivision Map Act and the procedures in LAMC 17.00 are required in order to approve a tentative tract map that will create separately conveyable ground or air lots, the Project's for-sale units. There is nothing in the HAA that requires the City to avoid the standards, rules and procedures of the Subdivision Map Act and the City's subdivision regulations.

Second, the HAA itself at 65589.5(d)(5) is silent about the entitlement path for a project that falls within its criteria, and contains no language that directs the City to process the Project through State Density Bonus law, or local density bonus implementing regulations (i.e., LAMC 12.22.A.25). Government Code Section 65589.5(d)(5) also does not direct the City to excuse a zone change or GPA. Nor does the HAA state that the City shall not require a rezoning or a GPA for a Project that seeks approval under Section 65589.5(d)(5). If the Legislature wanted to require the City to excuse a GPA or zone change for a project subject to Section 65589.5(d), it would have stated so as it stated in HAA Section 65589.5(j)(4) where the Legislature states the City shall not require a rezoning if the zoning is inconsistent with the General Plan.

Third, the HAA text expressly contemplates that a project will be reviewed for consistency with local standards, policies and programs per Section 65589.5(d) and (j). Subdivisions (d) and (j) expressly refer to the City's obligation to review the Project with reference to local zoning and planning standards, programs or processes. This means the Legislature intended the City to apply its local zoning and planning ordinances, policies and standards to Development Project Applications subject to Section 65589.5(d). Therefore, any HAA disapproval findings in Section 65589.5(d) are contemplated to be in addition to the findings and procedures in the ordinances, policies and standards in the City's local regulatory environment.

Fourth, the Section 65589.5 and 65941.1 references to the Permit Streamlining Act also contemplate that the City will apply its local codes, land use regulations, and entitlement procedures in order to consider (and potentially approve) a housing development project. These sections refer to the process of: a) submitting a Development Project Application that satisfies the list of City application requirements (Gov. Code Sec. 65940), and then b) determining when an application is complete (Gov. Code Sec. 65943). By using these timepoints and actions described in the Permit Streamlining Act to identify applicable standards, trigger certain review obligations, or retain vesting rights under Section 65941.1, the Legislature expresses the intent for the City to apply its local ordinances, policies and standards when processing a Development Project Application subject to Sections 65589.5 and 65941.1. Detailed zoning and development standards, such as density, floor area, yards, and maximum height do not exist in either Section 65589.5 or 65941.1. Nor do notice, hearing or appeal procedures exist in those sections for purposes of reviewing or making a decision on a Development Project Application. There is also no language in either section that states the City must approve a project subject to either statute in a ministerial or administrative fashion, such as the Legislature did in Government Code Sections 65913.4 (S.B.35) and 66411.7 (S.B.9). There is also an absence of express language in Section 65589.5 or 65941.1 that directs the City to: not require a zone change for the Project (compare, Sec. 65589.5(j)(4)); review the Project without a hearing (compare, Gov. Code Sec.

65852.21(a)); or deem the Project consistent and compliant with zoning and land use regulations (compare Sec. 65589.5(j)(3)). It cannot be the case that Sections 65589.5 and 65941.1 impliedly requires the City to waive, excuse or repeal all local land use regulations and procedures for the Project. Such an interpretation of Sections 65589.5 and 65941.1 would be contrary to the statutory interpretation principle of harmonizing state and local law so that State and local provisions may operate concurrently. Due to the absence of express State law direction regarding the sole process and standards that are applicable to a project seeking approval under Section 65589.5(d), the City must honor its own regulations, zoning, and land use approval procedures to determine the Project's entitlement path.

Fifth, the HAA and Density Bonus statutes alone, without applying the Project site's existing zoning and land use designation, cannot be used to determine the base number of units at this particular site. The reason is that the HAA and Density Bonus at Government Code Section 65915, provide no minimum density number. Instead, Density Bonus at Government Code Section 65915(o)(6), identifies base density, or maximum allowable residential density, in terms of the Project site's existing zoning or land use designation as specified by the City's local zoning and planning regulations. Here, Appellant's Project site is zoned RA-1-K and designated for Very Low I Residential land use by the Sylmar Community Plan, and has a base density of one dwelling unit.

Sixth, Appellant has provided no evidence that any of the development standards, requirements or programs represented by the LAMC code sections referenced in this appeal point will "kill" the Project. The appeal point merely points out objective requirements specified by local legislation that the Project needs to comply with. For example, the imposition of affordable unit percentages and labor requirements required by LAMC 11.5.11 cannot presumptively "kill" the Project. The reason is that mandatory affordable unit percentages and labor requirements are common aspects of different types of housing development projects authorized by State laws such as: Section 65915 (Density Bonus requires affordable units), Section 65913.4 (S.B.35 requires 10% or 15% lower income units and labor requirements), Section 66300 (requires specified demolished units to be replaced as affordable units), Section 65912.110-65912.131 (requires affordable units and labor requirements for certain mixed use projects in commercial areas). In addition, required dedications and improvements under the Mobility Plan, designed to provide adequate vehicle and pedestrian access, are lawful and uniformly required throughout the City. There is also no evidence that the State law LID requirements or other standards will "kill" the Project. Further, the City is not requiring the Project structure to conform to the height, yard, building line or parking standards, but merely follow the proper entitlement path in order to seek permission to deviate from those existing standards that are applicable.

Seventh, the Density Bonus Application is not the appropriate entitlement path for the Project, and the GPA Application represents the appropriate entitlement path for the Project as discussed in Appeal Responses 1 and 2 above. Appeal Responses 1 and 2 are incorporated fully in response to the third appeal point by this reference. A proposal to develop a three-story, 40 unit residential housing project in a semi-rural equine area is not consistent or compliant with State or local Density Bonus regulations that require a base density of 5 units. To achieve five or more base units on this RA zoned site, or to achieve a density of 40 units, would require a General Plan Amendment and Zone Change as informed by the City's ordinances, policies and procedures in effect now and on June 24, 2022 when Appellant submitted a complete Preliminary Application.

If the Project site does not meet the base density eligibility requirement of the Density Bonus provisions, Appellant lacks a regulatory basis to claim that the proposed Building Line Removal; Waiver of Dedication and Improvements; deviations for setbacks (yards), and spaces between

buildings and passageway requirements; and deviations from automobile parking requirements must be evaluated on the basis of the criteria to accept or reject Density Bonus incentives or waivers under Government Code Section 65915 and LAMC Section 12.22.A.25. It is also notable that the Appellant does not address all requested incentives and waivers. Some of the Appellant's requests may not be achievable due to State and L.A. County regulations that City Planning does not have jurisdiction to alter. For example, the Appellant is requesting to waive Low Impact Development (LID) requirements required by the State National Pollutant Discharge Elimination System (NPDES) water permit applicable to development in the City (California Regional Water Quality Control Board MS4 NPDES Permit No.CAS004004, Order R4-2021-0105, or as subsequently amended for the City of Los Angeles and Los Angeles County). The Appellant has not provided a referral form from the Bureau of Sanitation (LASAN), which implements the State Permit LID requirements, to show whether State LID requirements are triggered in relation to the applicable NPDES water permit. The Appellant is also requesting to waive K District (equinekeeping requirements) but has not shown compliance with distance and sanitation requirements of the Los Angeles County Health and Safety Code Section 11.16.090.

Appeal Point No. 4

On May 9, 2022, the Appellant communicated via letter to City Planning (Exhibit C) that the "correction list is contradictory to your statement." In the January 6, 2023 Status of Project Review letter, City Planning stated:

"...we are happy to schedule a meeting with you via telephone or google meets should you need help or clarification of the above requirements. If no clarification is needed, the application materials for Case No. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA and the associated environmental case can be filed at the Downtown Metro Development Services Center to the attention of Maritza Przekop at maritza.przekop@lacity.org or Noah McCoy at noah.mccoy@lacity.org... Materials for Case No. CPC-2022-9268-DB-HCA and the associated environmental case can be submitted to me directly."

In response, the Appellant states in the May 9, 2022 letter:

I am not pursuing CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA. Therefore, I have not paid the associated fees and I have not submitted any documents to Maritza Przekop or Noah McCoy.

*However, I **have** paid the fees and I **have** submitted supplemental document per your correction list and per your direction to you for CPC-2022-9268-DB-HCA.*

However, I still see that you are demanding fees and documents for CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA. If I had intended to pursue CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA, I would have done so and I have paid the fees and that I would have contacted the people you asked me to contact. Now, your approach to tag-along CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA with CPC-2022-9268-DB-HCA is contrary to your own statement, contrary to my own action, contrary to the city policy of not having two applications for the same project, and contrary to any common sense of a development process.

Staff Response No. 4

Appellant directed the City to use any or all material from the Density Bonus Application for the GPA Application, and has submitted material for the GPA Application. In the above

correspondence City Planning stated: "...we are happy to schedule a meeting with you via telephone or google meets should you need help or clarification of the above requirements." The Appellant did not reach out to schedule a meeting to clarify any of the City's requirements on the GPA Application. Had the Appellant done so, the City would have scheduled a meeting to clarify requirements or any perceived contradictions in correspondence.

The January 6, 2023 Status of Project Review Letter included a list of corrections. Item No. 52 on that list for the Density Bonus Application requires the Appellant to submit the following information:

Duplicate copy of the associated entitlement Case No. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA including Plot/Site Plans, Floor Plans, Elevations, Sections, Landscape and Open Space Plans, Color Photos and Index Map, and Tree Report is required but has not been provided.

On April 5, 2023, the Appellant responded to Item No. 52 on the corrections list as follows: "Please use any or all material for CPC-2022-9268-DB-HCA" see screenshot below:

52	Associated Application	Duplicate copy of application for the associated entitlement, Case No. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA including Plot/Site Plans, Floor Plans, Elevations, Sections, Landscape and Open Space Plans,	Please use any or all material for CPC-2022-9268-DB-HCA
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As previously stated, Planning staff would be happy to meet with the Appellant to clarify any confusion Appellant has from previous correspondence. Based on the totality of communications, Appellant submitted documents for the proposed Project under the Density Bonus Application in addition to the GPA Application. City Planning timely reviewed the completeness of both applications, issued incompleteness letters related to both applications on January 6, 2023 and April 28, 2023, and both applications for the Project remain incomplete for further processing as of the date of this Report. Whether the analysis is focused on the Density Bonus Application or the GPA Application, the Project did not submit a timely complete Development Project Application under Government Code Sections 65940 and 65943 (the PSA) in order to retain vesting rights under the associated June 24, 2022 Preliminary Application.

Appeal Point No. 5

In a letter dated May 9, 2023 (Exhibit C), the Appellant states:

Your correction list is contradictory to the state laws

It is to be noted that the original Corrections list, dated January 6, 2023, from the review of CPC-2022-9268-DB-HCA did not ask for "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". It appears to me that you are adding these requirements to the correction list. The state law prohibits you to add requirements that were not mentioned in the original correction list with my application. Therefore, demand of any additional demand is in violation of the state laws.

Staff Response No. 5

The April 28, 2023 Status of Project Review Letter (Exhibit E) adds one item to the original corrections list sent to the Appellant in the January 6, 2023 Status of Project Review Letter (Exhibit D). This is the request for a subdivision and tentative tract map application that is required only because the Appellant changed the Project. On the Department of City Planning Application Form No. CP-7771.1 received by City Planning on April 5, 2023, the Appellant changed the project description from rental to for sale units. In compliance with the State Subdivision Map Act and LAMC Section 17.00, the Appellant is required to apply for a subdivision with a tentative tract map.

The 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 was requested by City Planning as early as September 14, 2022 (email sent to the Appellant by the City Planning AHSS – see Exhibit C). City Planning also requested that the Appellant use the entitlement path represented by the GPA Application on September 26, 2022, October 14, 2022, and December 9, 2022. In the January 6, 2023 Status of Project Review Letter the City identified the missing and incomplete aspects of the Density Bonus Application, including the need to use the entitlement path represented by the GPA Application. This same issue of needing to use the entitlement path represented by the GPA Application was stated in City Planning's April 28, 2023 letter. A chart showing the items incomplete as of April 28, 2023, even though they were requested in the January 6, 2023 letter, and also required by City Planning application information lists and instructions, is attached at Exhibit I. It is inaccurate for the Appellant to claim that the City is demanding additional information in violation of State laws.

Appeal Point No. 6

In a letter to City Planning, Valley Project Planning dated May 9, 2023 the Appellant states:

Your determination lacks written finding as required by the law

Since I am not going to apply for "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" because I am not pursuing CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA, your determination regarding CPC-2022-9268-DB-HCA that my housing project lacks a proper entitlement process is equivalent of rejecting my housing project as submitted. Therefore, I request that a proper finding to be made on why my housing project was rejected by the city.

Please note that I am very much willing to comply with your correction list coming from the review of CPC-2022-9268-DB-HCA on April 28, 2023 as long as it is consistent with Government Code Section 65589.5(d). As of now, your correction list is not consistent with Government Code Section 65589.5(d) since you are asking for General Plan Amendment, Zone Change, Height District Change, K District Removal,, [sic] which directly contradicts the plain reading of the law. Furthermore, I will never follow the city's entitlement path of the General Plan Amendment, Zone Change, Height District Change, K District Removal, Therefore, my project is already denied per your entitlement process.

This leaves me with no choice but to seek an appeal under Government Code Section §659431 of your finding that Government Code Section 65589.5(d) is not a proper entitlement path for my project.

Staff Response No. 6

City Planning has repeatedly stated that it not rejecting or disapproving the Project under the Density Bonus Application associated with Case No. CPC-2022-9268-DB-HCA, or the GPA Application (See correspondence from City Planning dated January 6, 2023, April 28, 2023, May 16, 2023, and June 2, 2023 at Exhibits D, E, G, and H.). Instead, City Planning's position is that planning and zoning ordinances, policies and standards on June 24, 2022 support the use of the entitlement path represented by the GPA Application, and not a Density Bonus entitlement path. For among other reasons, the Project site's RA Zoning does not allow the Project site to satisfy the five base unit requirement of State and local Density Bonus regulations in order to seek a density bonus, and requested incentives and waivers. This is discussed in City Planning's response to Appeal Points 1, 2 and 3, that is incorporated here by reference.

As stated in the City's January 6, 2023 Status of Project Review Letter (Exhibit D), April 28, 2023 Status of Project Review Letter (Exhibit E), May 16, 2023 Loss of Vesting Rights Letter (Exhibit G) and the June 2, 2023 Status of Project Review: Development Inconsistent Letter (Exhibit H) the City is not rejecting or disapproving the Project, or either application. City Planning is prepared to process an application for the Project if an application is made complete by Appellant. However, Appellant has not submitted a complete Development Project Application, under either a Density Bonus Application or GPA Application entitlement path, and elected to file this Appeal instead.

Appeal Point No. 7

As previously stated, on May 16, 2023 City Planning, Valley Project Planning, emailed a letter to the Appellant stating that vesting status under preliminary Case No. PAR-2022-4490-VHCA has expired and has no further force of effect. On May 17, 2023, the Appellant submitted a letter via email (see Exhibit C) to Valley Project Planning staff and stated:

Let's start with what California Government Code Section 65943 actually states:

CA Govt Code § 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. 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 to relevant section]...I submitted documents on 04/05/2023, which would start "a new 30-day period". The city, in fact, responded my 04/05/2023 submission [sic] on 04/28/2023, which is within 30 days. Therefore, as a matter of law, I have 90 days from 04/28/2023 to submit any missing documents or modify any documents and HCA Vesting Preliminary Application under Case No. PAR-2022-4490-VHCA has not expired... I submitted the Replacement Unit Determination for to Los Angeles Housing Department on 04/04/2023, Geology and Soils Approval for to Los Angeles Department of Building and Safety on 04/04/2023, and the Affordable Housing Referral Form does not expire until 06/10/2023, which, therefore, does not need any update yet. Therefore, notwithstanding even the plain reading of the law, the documents have been submitted to the respective documents for approval before the due date of 04/06/2023. Therefore, my HCA Vesting Preliminary Application under Case No. PAR-2022-4490-VHCA has not expired.

Staff Response No. 7

City Planning responds to this Appeal point in four ways:

First, the Appellant is misstating State law and conflating the timelines and requirements for two statutes: (1) on the one hand the timelines and requirements for retaining rights under the Preliminary Application as specified at Government Code Section 65941.1(d); and (2) on the other hand the timelines and requirements for submitting a complete Development Project Application as specified in Government Code Section 65940, 65941 and 65943. The applications and pertinent Government Code sections are discussed as follows:

- Timelines and Requirements for Retaining Preliminary Application Rights - As codified under Government Code Section 65941.1, a housing development project has the option of filing a Vesting Preliminary Application. An applicant has the option to submit a Vesting Preliminary Application, to vest in the City ordinances, policies, and standards adopted and in effect on the day that a complete Preliminary Application is submitted. The Vesting Preliminary Application does not affirm the feasibility or entitlement review path of the proposed project, nor does it constitute the Development Project Application addressed by Government Code Sections 65940 and 65943. The Appellant submitted a complete Vesting Preliminary Application on June 24, 2022, and was assigned Preliminary Application Case No PAR-2022-4490-VHCA.

As codified under Government Code Section 65941.1(d), within 180 days after submitting a complete Preliminary Application, the development proponent shall submit an application for development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.

On December 9, 2022, the Appellant did submit material for a Development Project Application and this submittal fell within the 180 days required. The City generated the case numbers associated with the Density Bonus Application and GPA Application. However, the applications did not include all of the information required for a complete Development Project Application consistent with Government Code Sections 65940, 65941, and 65941.5. Planning notified Appellant that both applications were incomplete by letter dated January 6, 2023.

As further codified by Government Code Section 65941.1, if the public agency determines that the application for the development project is not complete pursuant to Section 65943,

the development proponent (i.e., applicant) 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 applicant does not submit the information needed to complete the application within the 90-day period, the Preliminary Application (specifically, Case No. PAR-2022-4490-VHCA) expires and has no further force or effect. Here, the applicant (i.e., Appellant) did not complete either the Density Bonus Application or the GPA Application within 90 days of the emailed January 6, 2023 letter that identified a variety of missing application information. As a result, Appellant's Preliminary Application no longer has force or effect.

- Timelines and Requirements for a Complete Development Project Application – The Permit Streamlining Act (PSA), at Government Code Sections 65920 et seq., generally applies to Development Project Application processing whether or not a development has submitted a preliminary application. The PSA authorizes the City to compile one or more lists that specify in detail the information that will be required for a Development Project Application, and the criteria that will apply for determining the completeness of an application (Gov. Code 65940, 65941). When the City receives a Development Project Application, the City has 30 days to determine in writing whether the application is incomplete; and if the incompleteness determination is untimely, the application is “deemed complete” (Gov. Code Section 65943(a)). When an applicant resubmits the application, or submits supplemental materials or amendments to an application in order to complete the application, the City has another 30 days from that submission to again determine in writing whether the application is incomplete; and if the incompleteness determination is untimely, the application is also “deemed complete” for processing (Gov. Code Section 65943(a)-b).) In contrast to Section 65941.1 that provides Appellant with a deadline to submit a complete Development Project Application associated with Appellant's Preliminary Application, these PSA sections (i.e., 65940, 65941, 65943) do not provide Appellant with a deadline to submit a complete Development Project Application that is not associated with a preliminary application. Thus, Appellant may submit additional material to complete the Development Project Applications at issue in this Appeal, but the applications will not be impacted by Appellant's June 24, 2022 Preliminary Application.

Second, the Appeal point's conflated discussion of the statutes, or confusion, may arise from the fact the HAA references both Government Code Section 65941.1, and the PSA at Government Code Sections 65940 and 65943; and the fact the HAA has its own specific definition of the phrases “deemed complete” and “determined to be complete” solely for purposes of the HAA. In the HCD 2020 Technical Advisory, HCD states:

Government Code, § 65589.5, subdivisions (d)(5), (h)(5) and (9), and (j)(1).

*The process of submitting an application for a housing development project can be iterative. For example, **applications that are missing information cannot be fully evaluated by a local government for compliance with local objective standards.** [emphasis added] Therefore, an application is not typically processed until it is “determined to be complete”. The HAA currently uses two terms related to completeness, “deemed complete” and “determined to be complete.”*

Deemed Complete: For the purposes of the HAA, until January 1, 2025, “deemed complete” means the date on which a Preliminary Application was submitted under the provisions of Government Code section 65941.1. Submittal of a Preliminary Application allows a developer to provide a specific subset of information on the proposed housing development before providing

the full information required by the local government for a housing development application. Submittal of this information allows a housing developer to “freeze” the applicable standards for their project while they assemble the rest of the material necessary for a full application submittal. [emphasis added] This ensures development requirements do not change during this time, potentially adding costs to a project. No affirmative determination by a local government regarding the completeness of a Preliminary Application is required...

The term “deemed complete” triggers the “freeze date” for applicable development standards, criteria, or condition that can be applied to a project. Changes to the zoning ordinance, general plan land use designation, standards, and criteria, subdivision ordinance, and design review standards, made subsequent to the date the housing development project Preliminary Application was “deemed complete”, cannot be applied to a housing development project or used to disapprove or condition approval of the project...

Determined to be complete: Until January 1, 2025, the full application is “determined to be complete” when it is found to be complete under the Permit Streamlining Act (Gov. Code § 65943). This phrase triggers the timing provisions for the local government to provide written documentation of inconsistency with any applicable plan, program, policy, ordinance, standard, requirement, or other similar provision...

Third, Appellant’s proposed interpretation of an additional 90 days to submit material impermissibly rewrites State law and does not further the purpose of the preliminary application provision and the HAA to expedite the approval of housing (Sections 65941.1, 65589.5). Appellant’s interpretation impermissibly rewrites Section 65941.1 to delete or excuse the Legislature’s specified consequences of failing to timely submit a complete Development Project Application as specified in Section 65941.1. On January 6, 2023 (30 days from the December 9, 2022 submission of material for Case Nos. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA or CPC-2022-9268-DB-HCA), the Department of City Planning emailed a Status of Project Review Letter to notify the applicant that the case is on hold and determined to be incomplete (“Letter”). This letter listed missing or incomplete application information to Appellant. On April 5, 2023 and April 11, 2023, the Appellant submitted revised materials to City Planning that still did not fully address all aspects of the January 6, 2023 Letter, and even at that late phase changed the scope of the Project by proposing for-sale units without submitting a subdivision and tentative tract map application. Government Code Section 65941.1(d) states that due to Appellant’s failure to provide all the materials for a complete application 90 days after the January 6, 2023 Letter, Appellant’s Preliminary Application has no further force or effect. Appellant’s interpretation would ignore this express statutory consequence or provide an exception to this consequence.

Re-starting the clock every 90 days in order to keep a vesting Preliminary Application in force would have the opposite effect of accelerating the construction of housing. Re-starting the clock every 90 days could result in no actual housing construction, but merely a developer taking an indefinite amount of time to utilize vesting rights, or encourage speculative real estate land transactions based on a site tied to older local regulations vested by a preliminary application. Such an interpretation would allow developer related delays to frustrate the goal of expeditiously constructing new housing, and directly detract from a preliminary application’s ability to speed up housing construction through timelines imposed on developers (see e.g., Section 65941.1(d) and 65589.5(a)(1)(K) and (o)(2)(D)). Appellant’s proposed interpretation may also encourage developers to make multiple incomplete submissions solely in order to extend the life of a preliminary application, an activity that could divert scarce City resources away from expeditiously reviewing and processing *complete* housing development applications that move forward to actual housing construction.

Fourth, even though Appellant's Preliminary Application has no further force or effect, Appellant may still complete the Density Bonus or GPA Applications and move forward with processing an application that does not have any rights under the June 24, 2022 Preliminary Application.

Examples of the items Appellant needs to provide to City Planning for a complete Development Project Application are:

- A complete Replacement Unit Determination (RUD) from the Los Angeles Housing Department. Although Appellant applied to LAHD for the RUD, as of April 6, 2023 (90 days after the first Status of Project Review Letter was emailed to the Appellant), the Appellant had not paid associated fees required by LAHD to process the RUD letter. The Appellant did not provide a RUD letter to City Planning.
- A complete Preliminary Zoning Assessment (PZA) review form obtained from the Los Angeles Department of Building and Safety (LADBS) (See Planning Form No. CP-4064 page 1)
- A revised Affordable Housing Referral Form that is reconciled with conflicting information in other application documents provided by Appellant. On December 12, 2022, the City Planning AHSS issued an Affordable Housing Referral Form under Case No. PAR-2022-5834-AHRF with an expiration date of June 10, 2023. In the January 6, 2023 and April 28, 2023 Status of Project Review Letters, City Planning staff requested an updated Affordable Housing Referral Form that reflects the proposed Project description. Additional corrections are needed to make the Project description consistent, or stable, with the Project description provided on the Appellant's application materials: pages 1 and 2 of the Department of City Planning Application Form that states that the Project involves the development of 28 affordable units, 32 market rate units, 12 market rate units, and a total of 40 units; page 2 of the Appellant's Preliminary Zoning Assessment Referral Form No. CP-4064 provided to City Planning on April 5, 2023 that states the Project involves 45 residential units with 9 units to low income families; page 1 of the Appellant's "Declaration Supporting Requested Waivers and Incentives" provided to City Planning on April 5, 2023 that states the Project involves 40 residential units for sale with 8 units sold to low income families. The Letter clearly states: "You shall make these documents consistent."
- A subdivision application and tentative tract map due to Appellant's recent change to a for-sale development. The Appellant modified the Project and expanded its scope to include for sale units through an approval under the Subdivision Map Act, a land use approval that was not previously declared or included in Preliminary Application materials that described the Project as "...40 residential units for rent" (Case No. PAR-2022-4490-VHCA) or the application filing materials that described the Project as "...45 residential units for rent." A Second Status of Project Review "Second Letter" was emailed to the Appellant on April 28, 2023 requesting previously identified missing information, and to seek further clarification, amplification, correction, and/or supplementation of the submitted materials so that there would be a consistent and stable set of Project details. Although the Affordable Housing Referral Form does not expire until June 10, 2023, Planning has clearly and consistently shown that this information is missing and needed.

Over 90 days passed from the date City Planning provided Appellant with the January 6, 2023 Letter, and Planning still has not received all missing or incomplete information listed in the January 6, 2023 Letter. Planning requested the missing information required by the City's application instructions and lists because, as stated by HCD, "applications that are missing information cannot be fully evaluated by a local government for compliance with local objective standards." The Appellant's Development Project Applications have been determined incomplete since the issuance of the January 6, 2023 Status of Project Review Letter. Since Appellant did not submit all the information and materials to complete either the Density Bonus or GPA Application within 90 days of January 6, 2023, the Preliminary Application, Case No. PAR-2022-4490-VHCA is now expired and has no effect.

Appeal Point No. 8

According to the Appellant the City is "...incorrectly assigning multiple case numbers to one project." In a letter submitted to City Planning, Valley Project Planning on May 17, 2023, the Appellant states:

As you know an applicant do not create case number [sic]. The city created the case number CPC-2022-9268-DB-HCA for my housing project on December 9, 2021. The city also generated the fees for this case on 04/21/2023. I paid the fees on 04/21/2023. In fact, the city, subsequently, reviewed the case CPC-2022-9268-DB-HCA twice - firstly on 01/06/2023 and secondly on 04/28/2023. I have not paid fees or submitted documents for any case other than CPC-2022-9268-DB-HCA. Therefore, there is no other case applicable to this project.

Staff Response No. 8

Two case numbers were created to give the Appellant the opportunity to utilize the proper entitlement path for the development of the 40 unit project under Appellant's June 24, 2022 Preliminary Application. As stated previously in the preceding appeal points, based on the regulatory environment as of June 24, 2022, the appropriate entitlement path is not a Density Bonus entitlement on a RA Zoned site designated for Very Low I Residential land use, but the entitlement path represented by the GPA Application. This issue with Appellant's Development Project Application submissions was raised in writing numerous times on September 14, 2022, September 16, 2022, October 14, 2022, January 6, 2023, April 28, 2023, May 16, 2023, and June 2, 2023. Fees for Case No. CPC-2022-9268-DB-HCA and the associated environmental Case No. ENV-2022-9270-EAF were issued by City Planning on December 21, 2023, and paid by the Appellant on December 21, 2023 (not April 21, 2023). Fees for Case Nos. CPC-2022-8993-GPA-ZC-HD-K-BL-ZV-ZAA-WDI-VHCA and the associated environmental Case No. ENV-2022-8944-EAF were issued by City Planning on December 21, 2023, and have not been paid to date. As discussed in Appeal point 4, Appellant directed City Planning to use any and all materials from the Density Bonus Application for the GPA Application.

CONCLUSION

City Planning has conducted an in-depth review and analysis of the issues raised by the Appellant. First, no City Planning decision-maker has issued an appealable decision or disapproval on the merits of either the Density Bonus or GPA Application, under the findings or processes applicable to the different entitlement applications at issue (the Density Bonus and / or the GPA Application). The pre-decision nonconformance review process codified under Government Code Section 65589.5(j)(2) has not been triggered at this point in time, because the application is not

determined to be complete by operation of law under 65943 given that City Planning responded to the Appellant within 30 days of April 5, 2023, when supplemental application materials were provided in response to the January 6, 2023 Status of Project Review Letter. While the City recently provided Appellant with a letter on June 2, 2023 that identifies many of the ways in which the Project and its Density Bonus Application and GPA Application are not compliant with specific City standards, programs or policies, that letter is not the pre-decision conformance review under Section 65589.5(j)(2), even though it is similar.

Second, as stated by HCD, “applications that are missing information cannot be fully evaluated by a local government for compliance with local objective standards.” Here, the Appellant’s Development Project Applications are missing information, and therefore, cannot be fully evaluated by City Planning for compliance with local objective standards. This missing information is listed in Status of Project Review Letters transmitted to the appellant on January 6, 2023 and April 28, 2023. Moreover, prior to Appellant submitting application documents to City Planning in December 2022, or in April 2023, several City Planning staff notified the Appellant of these requirements that are listed and made available to the public on the City Planning website at Forms | Los Angeles City Planning (Form Nos. CP-7810, CP 7771.1, CP-4043, CP-6110, CP-4064, CP-4067, CP-4068, CP-4070, CP-4056, CP-7751, CP-7817, CP-7774 ZC, CP 7301 ZV, CP-7781 ZAA, CP-4084, CP-1204, CP-3251, CP-6110, CP-6730 – Exhibit I).

Third, the Appellant was notified by City Planning staff during the Preliminary Application and Development Project Application submission phases that the subject site’s RA Zoning and Very Low I Residential land use designation does not permit a Density Bonus application because the site’s one unit base density does not meet 5 unit base density needed to be eligible for the Density Bonus entitlement. As a result, City Planning repeatedly informed Appellant that according to existing ordinances, policies, and standards the Project’s proposed 40 unit multi-family residential development would require a General Plan Amendment and Zone Change, in addition to other entitlements, in order to be built on the subject site. In addition, City Planning has determined that the Appellant has not provided the material necessary for a full Development Project Application pursuant to Government Code Section 65943 of the Permit Streamlining Act, whether under an analysis of the Density Bonus Application or GPA Application. This is due to flaws in requests, missing information, deficiencies in documents submitted, and the omission of pertinent documents and reports.

City Planning, and the City of Los Angeles as a whole, is committed to producing housing that meets the letter and spirit of State and local law. As such, City Planning recommends that the appeal be denied and that the Appellant be required to provide a complete application for processing.