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Ref: 82152-0003

January 30, 2023

VIA ONLINE SUBMITTAL

President Paul Krekorian and Hon.
Members of the Los Angeles City Council
City of Los Angeles
200 N. Spring Street
City Hall - Room 340
Los Angeles, CA 90012

Re: **Council File:** 22-1055-S1 and 22-1055
City Council Hearing Date: February 1, 2023.
Agenda Item: 4
Site Address: 1840-1848 West Adams Boulevard

Dear President Kerkorian and Hon. Members of the Los Angeles City Council:

Our office represents Tripalink, Corp. ("Applicant"), the owner of 1840-1848 West Adams Boulevard, Los Angeles, CA 90018 (the "Property") and applicant for the above referenced 10-unit small lot subdivision (the "Project"). We submit this letter to (i) further object to the Planning Land Use and Management ("PLUM") committee's arbitrary and capricious "Findings of Fact" (or "Alternative Findings") concerning the Project's Class 32 exemption; and, (ii) to raise additional concerns over the bad-faith tactics being employed to undermine a perfectly legal housing development project that is consistent with all applicable laws and regulations.[1]

A. The Project description is accurate and stable.

As noted in our prior correspondence, the Alternative Findings' contention that the Class 32 exemption is deficient because the project is "student housing dormitory with over 90 units," and not a 10 unit small-lot subdivision, is wrong as a matter of fact and law. As noted previously, this Project is not a dormitory and it is not student housing development; and to describe it as such, would be both inaccurate and speculative. In fact, the Alternative Findings' entire premise that the Project will be used by students is speculative, and the City has no right or legal grounds to presume who will own or live in these homes, and to deny a categorical exemption

[1] It remains Applicant's view that these proceedings are in violation of state and local law, and that the City has lost jurisdiction to act on the appeal. Accordingly, as with our prior correspondence, we submit this letter under protest and with a full reservation of our client's rights.

on that basis. Moreover, the findings are further wrong in claiming that the bedroom count and/or design of the building was somehow hidden from the City or not considered in the California Environmental Quality Act ("CEQA") analysis. In fact, the Project was specifically designed in reliance on feedback and recommendations provided by the Department of City Planning and Council District 8, and it was only after those recommendations were integrated into the design did the Project move forward to its initial hearing. (*See* **Exhibit A-2**) Accordingly, the Alternative Findings are simply wrong in claiming that the bedroom count was not considered in the environmental analysis.

B. The City is judicially estopped from taking the position that a dwelling unit is not a dwelling unit because of the bedroom count.

Significantly, in another case where an appellant argued that a CEQA exemption was improperly issued because a dwelling unit contained multiple bedrooms, the City and the City Council took the exact opposite position being taken by the Alternative Findings. Attached as **Exhibit B-2** are copies of the City's records concerning an appeal of a project proposed at 5817-5823 West Lexington Avenue and 5806-5812 West Lexington Avenue (Case No. ENV-2019-5389-CE), where the appellant in that case similarly argued that an apartment building's Class 32 exemption was issued in error because it failed to take into account the number of bedrooms. The City Council rejected that appeal, and expressly denied the appellant's contention that a single dwelling unit with multiple bedrooms should be treated as some other use simply because it contains multiple bedrooms and baths. When the appellant challenged this position in court, the City again pushed back, arguing in court that it is the Municipal Code's definition of the proposed use that is controlling, not the bedroom count or a speculative claim that the units could be used for some other purpose. A superior court judge agreed with the City, and rejected the very same arguments being advanced by the Alternative Findings. Attached as **Exhibit C-2** are copies of the court's records relating to this litigation. Accordingly, this City Council knows – or should know – that the theory advanced by the Alternative Findings is wrong and in conflict with the law.

C. The City's actions constitute a bad-faith violation of the Housing Accountability Act.

Second, we write to once again advise the City Council that the actions being advanced by the PLUM Committee's recommendation is in violation of the Housing Accountability Act ("HAA"). In this instance, the City is violating the HAA in multiple respects. First, by finding that the project is "inconsistent with the Community Plan Implementation Plan Overlay Zone and the community plan," almost a year after approving the project, the City is acting in direct violation of Government Code Sec. 65589.6(J)(2). Pursuant to this provision, the HAA requires a local government must provide written notification of an inconsistency with the applicable zoning within 30 days of the Project application being deemed complete. As the Project

was deemed complete more than a year ago, the City may not now decide that the project is inconsistent with the applicable zoning without violating the clear mandates of the HAA.[2]

Moreover, this upcoming hearing is once again a violation of Government Code Sec. 65905.5, which limits a local agency to conducting a maximum of five hearings in connection with a proposed housing development project. At this point, the City has already held no less than 11 hearings on this development, making any further action on this yet another blatant violation of state law. For reference, attached as **Exhibit D-2** is a copy of the Department of Housing and Community Development's Housing Accountability Act Technical Assistance Advisory Handbook, which provides guidance as to the applicability of these various legal issues. Thank you for your consideration.[3]

Very truly yours,

BENJAMIN M. REZNIK and
DANIEL FREEDMAN of
Jeffer Mangels Butler & Mitchell LLP

DF:df

CC Holly L. Wolcott, Los Angeles City Clerk (Cityclerk@lacity.org)
Kathryn C. Phelan, Deputy City Attorney
Clarissa G. Padilla, Deputy City Attorney

[2] Moreover, to the extent the City relies on this illegal appeal to further delay this project, the City is clearly violating Government Code Sec. 65589.5(J)(1), by denying a housing development project without making the required findings. The Project has been denied by operation of Government Code Sec. 65589.5(h)(6), because the City previously failed to approve or disapprove the Project within 60 days from the date the City determined the Project was exempt from CEQA.
[3] We further object to these proceedings as the City has failed to timely respond to a public records requests that seeks records that may be relevant to this quasi-adjudicative hearing. Accordingly, we reserve the right to supplement the administrative record with new records as they are disclosed.

Exhibit A-2

Date : 1/22/2021 4:39:22 PM
From : "Rafael Fontes"
To : "Michelle Levy"
Cc : "Danai Zaire" , "Holly Harper" , "Shana Bonstin"
Subject : Re: Meeting Request for UDS feedback - 1840 W Adams
Attachment : 1919_SD 14_2021-01-21.pdf;

Hello,

Sergio and I just had a meeting with the Tripalink team and their architect to view the second iteration of their proposal for the 1840 West Adams site.

They made substantial changes in response to the comments that they received from us and CD 8 last week (the updated plans are attached). We were wondering if it would be possible to schedule a meeting and go over some additional articulation/cladding strategies that could further help them develop the design.

Would UDS have any time available next week? Say, Thursday or Friday?

Beyond the applicant's team, please don't hesitate to let me know if there's anyone else that I need to include for the meeting as well. Thank you for everything so far, and have a great weekend!

Best,
Rafael

--

LOS ANGELES CITY PLANNING

Rafael Fontes
Preferred Pronouns: He, His, Him
Planning Assistant
Los Angeles City Planning
200 N. Spring St., Room 721
Los Angeles, CA 90012
T: (213) 978-1189 | Planning4LA.org
E-NEWS

1 3D Street View from Northwest_2021-01-21
12" = 1'-0"

TRIPALINK CO-LIVING TOWNHOMES
1840 - 1848 West Adams Boulevard
Los Angeles, California 90018
Scheme #14

ENVIROTECTURE
Architecture - Planning - Interior Design

3600 Wilshire Blvd suite 1402
Los Angeles, CA, 90010
Tel: 213.382.1210 Fax: 213.382.1285

Architect	John R. Poindexter
Firm	Envirotecture, Inc.
Address	3600 Wilshire Boulevard, Suite 1402 Los Angeles, California 90010
Phone	1-213-382-1210
Fax	1-213-382-1285
e-mail	john@envirotectureinc.com
Owner's Rep.	Ziyi Yang - Project Development, Design Lead
Firm	
Address	1846 W Adams Blvd, LLC 2905 S. Vermont Avenue
Phone	Los Angeles, California 90007
Fax	1-213-284-8845
e-mail	1-213-382-1285 ziyiyang@tripalink.com

No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT
JOHN ROGER POINDEXTER
C-9744
RENEWAL DATE
12-31-2021
STATE OF CALIFORNIA

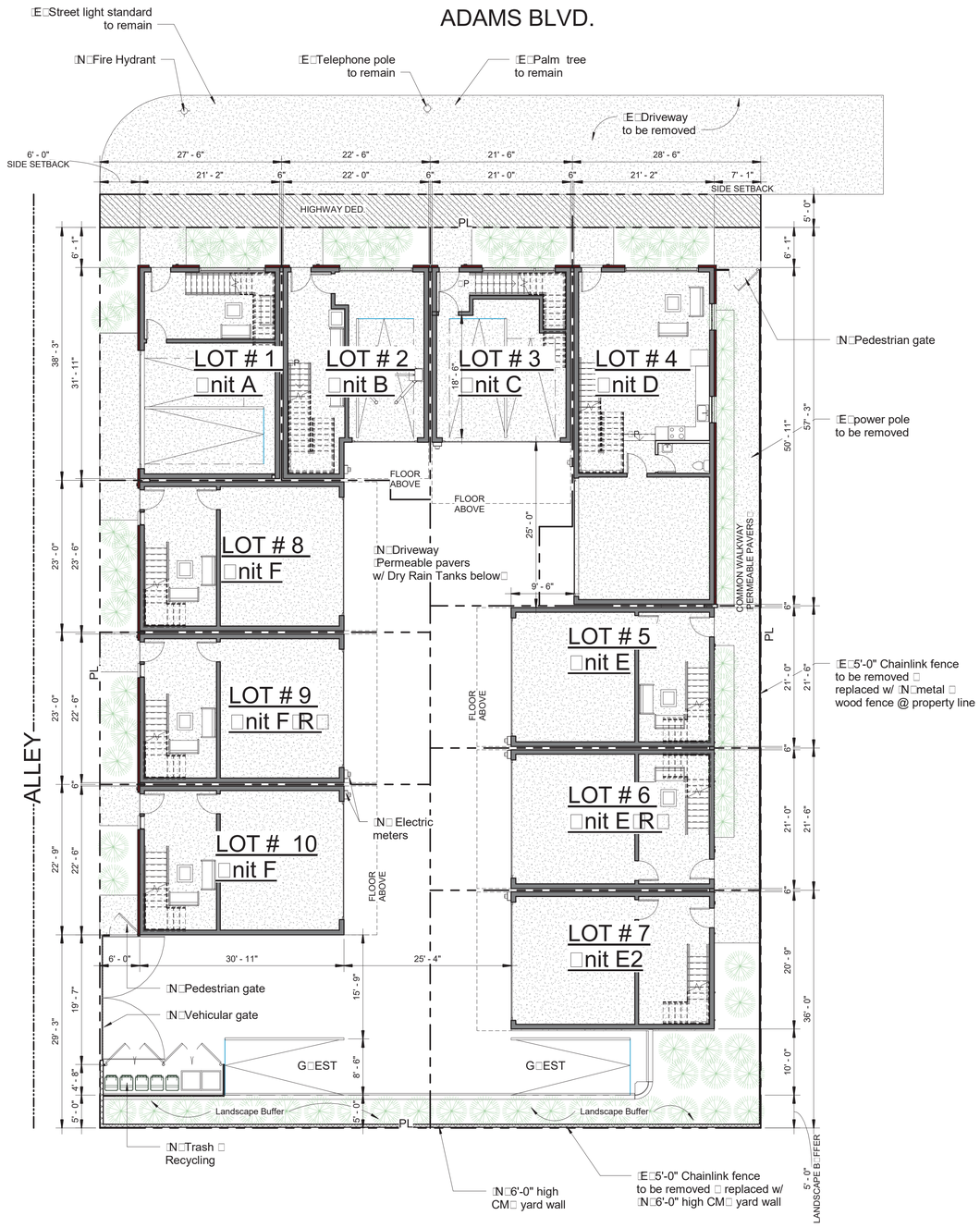
TITLE SHEET

Project number	1919 SD 14
Date	01-21-2021
Drawn by	Bayu T
Checked by	John P

A1.00

Scale 12" = 1'-0"

1/21/2021 4:52:01 PM



1 SITE PLAN
1" = 10'-0"

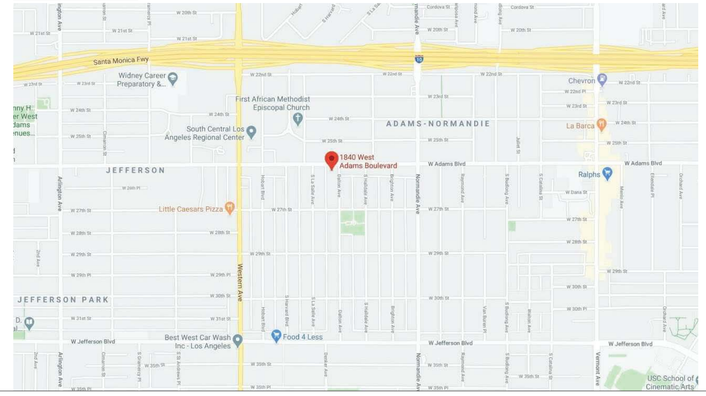
PROJECT DATA

PROJECT NAME:	Tripalink Co-Living Town Homes
JOB ADDRESS:	1840-1848 West Adams Boulevard Los Angeles, California 90018
LEGAL DESCRIPTION:	Fraction of Lots 13 14, Block 4 of Chas Victor Hall Tract
MAP BOOK REFERENCE:	Map Book 26, Page 65
ASSESSOR'S PARCEL No.:	5053-020-010 5053-020-011
PROPERTY OWNER:	Tripalink Property Management 2905 South Vermont Avenue Los Angeles, California 90007 Contact: Ziyi Yang Ph: 213 284-8845
TOTAL LOT AREA:	14,124.1 s ft.
SCOPE OF WORK:	Proposed 10 lot subdivision, with 4-story single-family dwellings
ZONING:	C2-1VL-0-CPIO
OCC PANCY:	R3
CONSTR CTION TYPE: V-B	
N MBER OF STORIES: 4	
SPRINKLER SYSTEM:	Yes NFPA 13D
N MBER OF NITS:	10
N MBER OF BEDROOMS:	94
N MBER OF BATHROOMS:	94

SHEET LIST

Sheet Number	Sheet Name
A1.00	TITLE SHEET
A1.01	SITE PLAN, PROJECT DATA
A1.02	FAR LOT COVERAGE
A2.01	1st 2nd FLOOR PLAN
A2.02	3rd 4th FLOOR PLAN
A2.03	LOWER PPER ROOF PLANS
A3.01	EXTERIOR ELEVATIONS
A3.02	EXTERIOR ELEVATIONS
A3.03	BILDING SECTIONS
A3.04	BILDING SECTIONS
A3.05	BILDING SECTIONS
A4.01	PARCEL PROFILE REPORT
A4.02	SMALL LOT DESIGN STDS CHECKLIST
A4.03	AXONOMETRIC VIEWS
A-2	SCHEME SD14

VICINITY MAP



ENVIROTECTURE
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Owner's Rep.	Ziyi Yang - Project Development, Design Lead
Firm	
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Phone	1-213-284-8845
Fax	1-213-382-1285
e-mail	ziyiyang@tripalink.com

No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT
JOHN ROGER POINDEXTER
C-9744
RENEWAL DATE
12-31-2021
STATE OF CALIFORNIA

SITE PLAN, PROJECT DATA

Project number	1919 SD 14
Date	01-21-2021
Drawn by	KA
Checked by	John P

A1.01

Scale	1" = 10'-0"

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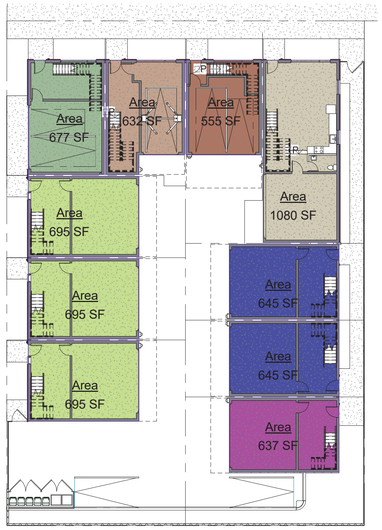


5 LEVEL 1
1" = 20'-0"

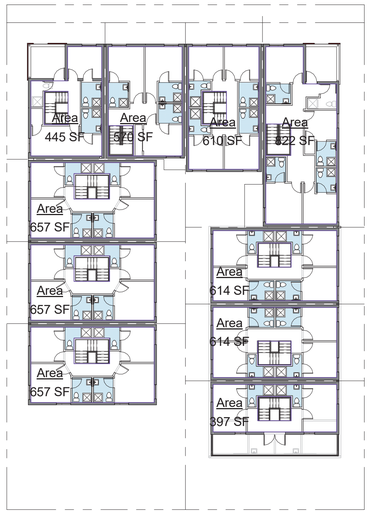
Building Area Legend

- 555 SF
- 632 SF
- 637 SF
- 645 SF
- 677 SF
- 695 SF
- 1080 SF

Area Schedule (Gross Building)		
Name	Level	Area
Area	LEVEL 1	1080 SF
Area	LEVEL 1	555 SF
Area	LEVEL 1	632 SF
Area	LEVEL 1	677 SF
Area	LEVEL 1	695 SF
Area	LEVEL 1	695 SF
Area	LEVEL 1	695 SF
Area	LEVEL 1	637 SF
Area	LEVEL 1	645 SF
Area	LEVEL 1	645 SF
		6957 SF
Grand total		6957 SF

LOT AREA: 14,124.1 S□.FT.
MIN. 30□ = 4,237.23 □6.957 S□.FT. LOT COVERAGE

Area Schedule (F.A.R)	
Level	Area
Area	
LEVEL 1	603 SF
LEVEL 1	99 SF
LEVEL 1	248 SF
LEVEL 1	202 SF
LEVEL 1	211 SF
LEVEL 1	211 SF
LEVEL 1	208 SF
LEVEL 1	231 SF
LEVEL 1	231 SF
LEVEL 1	231 SF
LEVEL 2	918 SF
LEVEL 2	621 SF
LEVEL 2	570 SF
LEVEL 2	556 SF
LEVEL 2	681 SF
LEVEL 2	681 SF
LEVEL 2	681 SF
LEVEL 2	625 SF
LEVEL 2	625 SF
LEVEL 2	625 SF
LEVEL 3	919 SF
LEVEL 3	610 SF
LEVEL 3	570 SF
LEVEL 3	543 SF
LEVEL 3	657 SF
LEVEL 3	614 SF
LEVEL 3	614 SF
LEVEL 3	614 SF
LEVEL 3	657 SF
LEVEL 3	657 SF
LEVEL 4	822 SF
LEVEL 4	610 SF
LEVEL 4	570 SF
LEVEL 4	445 SF
LEVEL 4	657 SF
LEVEL 4	614 SF
LEVEL 4	614 SF
LEVEL 4	397 SF
LEVEL 4	657 SF
LEVEL 4	657 SF
	21553 SF
Grand total	21553 SF



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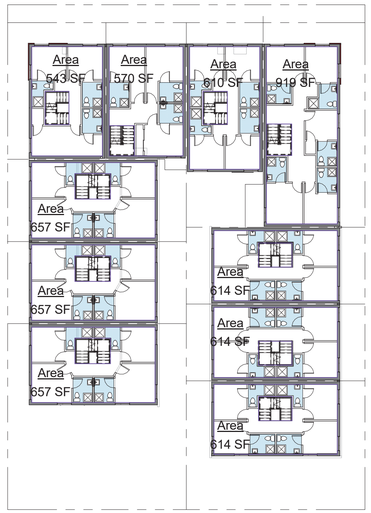

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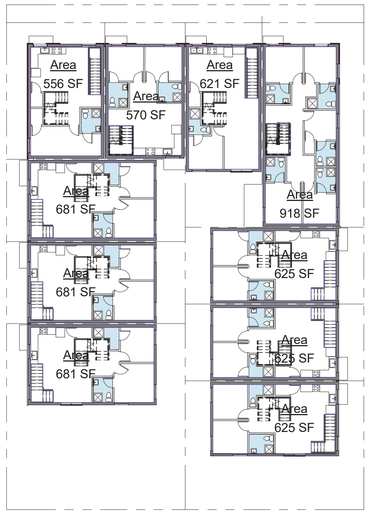

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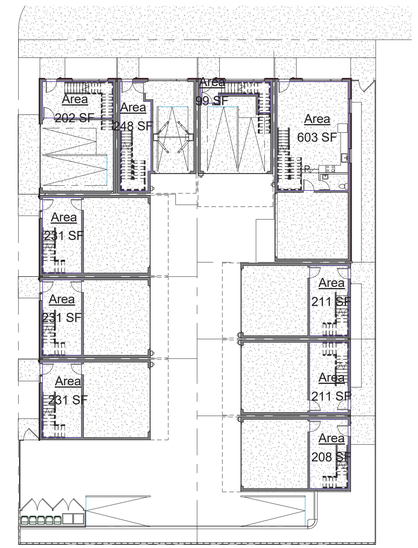

1 LEVEL 1
1" = 20'-0"

ENVIROTECTURE
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Tel: 213.382.1210 Fax: 213.382.1285

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Firm	
Address	1846 W Adams Blvd, LLC 2905 S. Vermont Avenue Los Angeles, California 90007
Phone	1-213-284-8845
Fax	1-213-382-1285
e-mail	ziyiyang@tripalink.com

No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT
JOHN ROGER POINDEXTER
C-9744
RENEWAL DATE
12-31-2021
STATE OF CALIFORNIA

FAR □ LOT COVERAGE

Project number	1919 SD 14
Date	01-21-2021
Drawn by	Author
Checked by	Checker

A1.02

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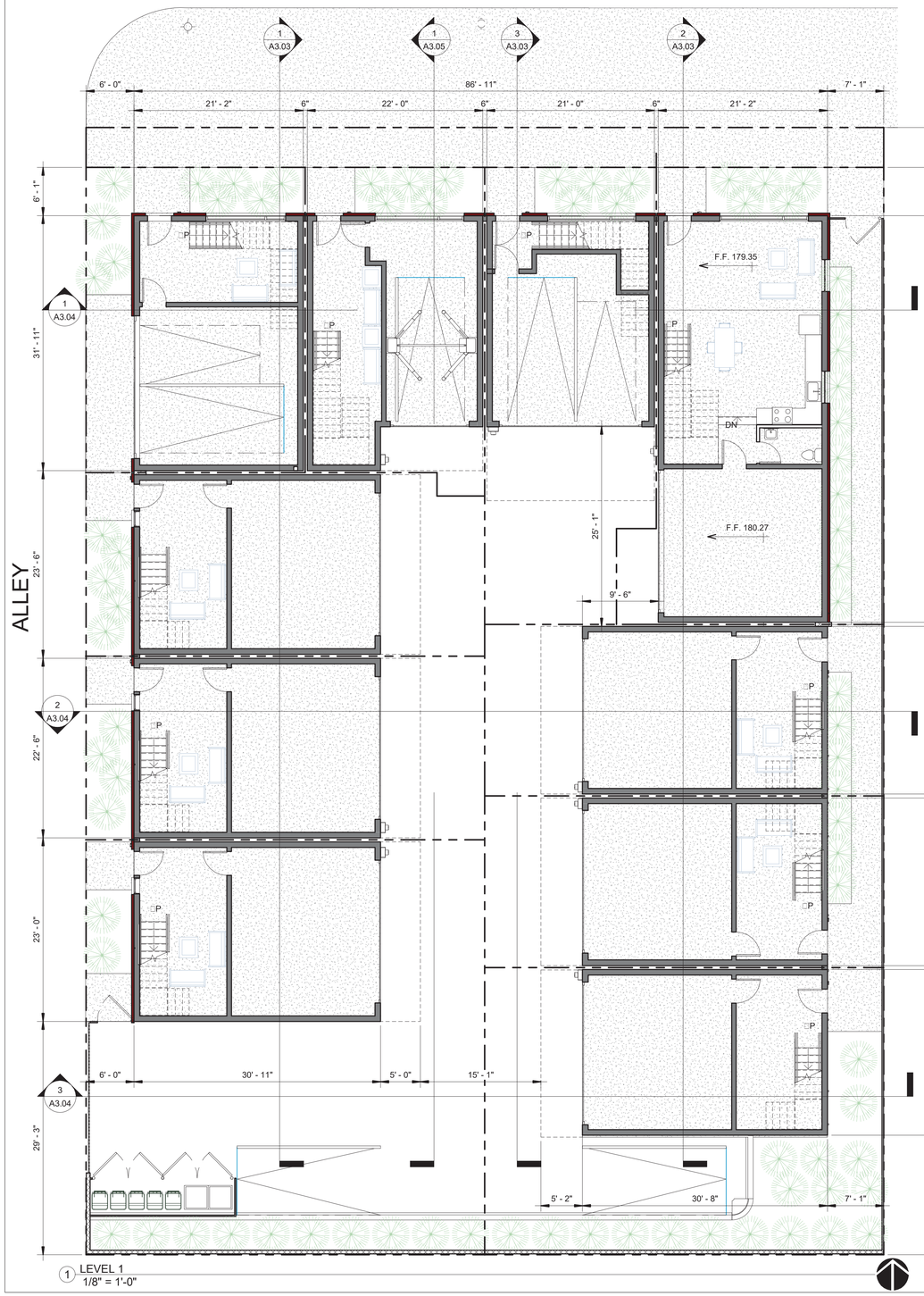
ADAMS BLVD.



1 LEVEL 1
1/8" = 1'-0"

2 LEVEL 2
1/8" = 1'-0"

ENVIROTECTURE
Architecture - Planning - Interior Design

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Tel: 213.382.1210 Fax: 213.382.1285

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e-mail	ziyiyang@tripalink.com

EXISTING C.M.□. WALL

EXISTING ST□D WALL SEE

NEW ST□D WALL SEE DETAILS

NEW F□RRED OVER □E□C.M.□, WALL SEE DETAIL

NEW 8" SO□ND WALL

NEW 1-HR. SHAFT WALL SEE

WALL LEGEND
1/4" = 1'-0"

No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT
JOHN ROGER POINDEXTER
C-9744
RENEWAL DATE
12-31-2021
STATE OF CALIFORNIA

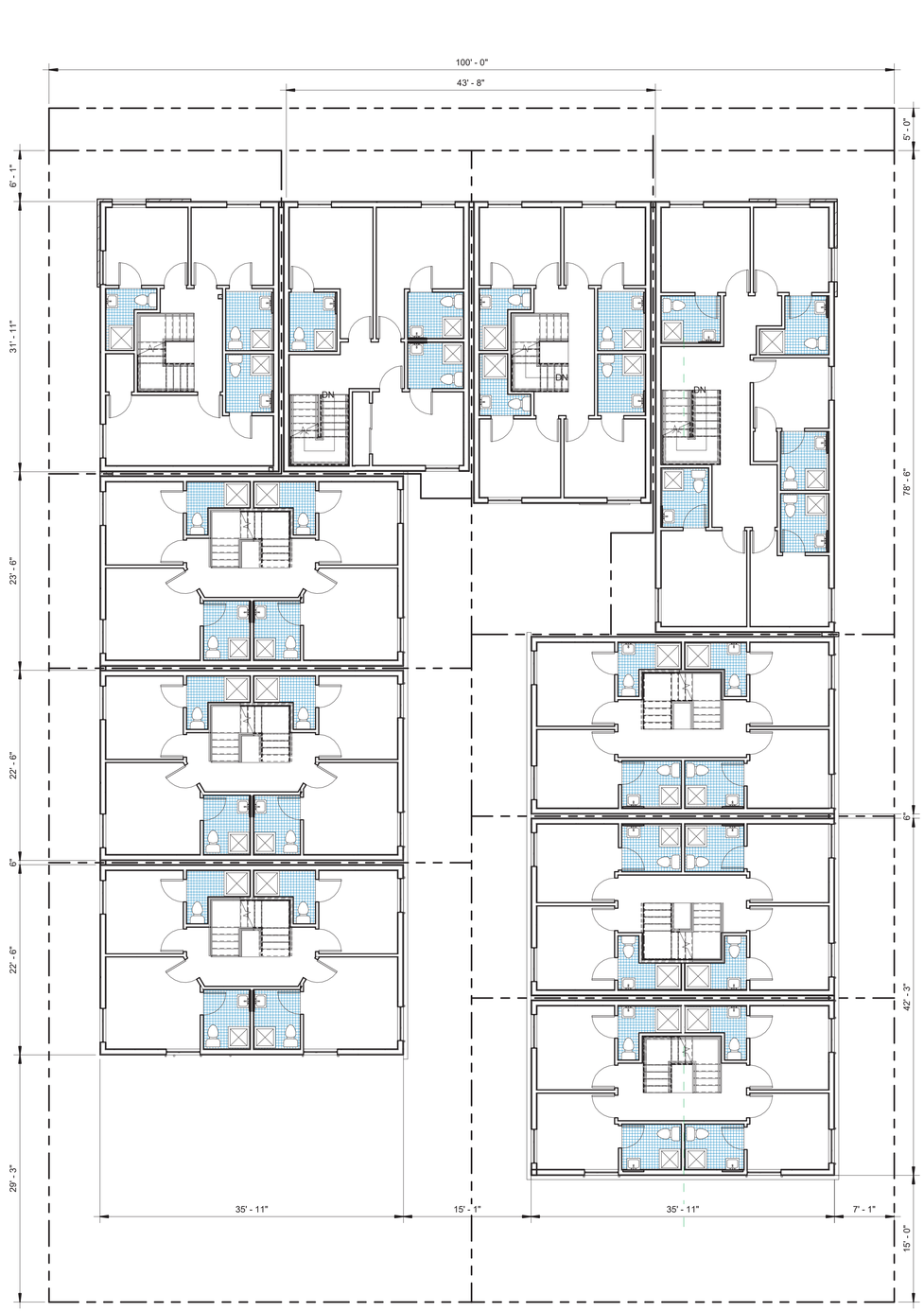
1st □ 2nd FLOOR PLAN

Project number	1919 SD 14
Date	01-21-2021
Drawn by	Bayu T
Checked by	John P

A2.01

Scale	As indicated

1/21/2021 4:52:15 PM



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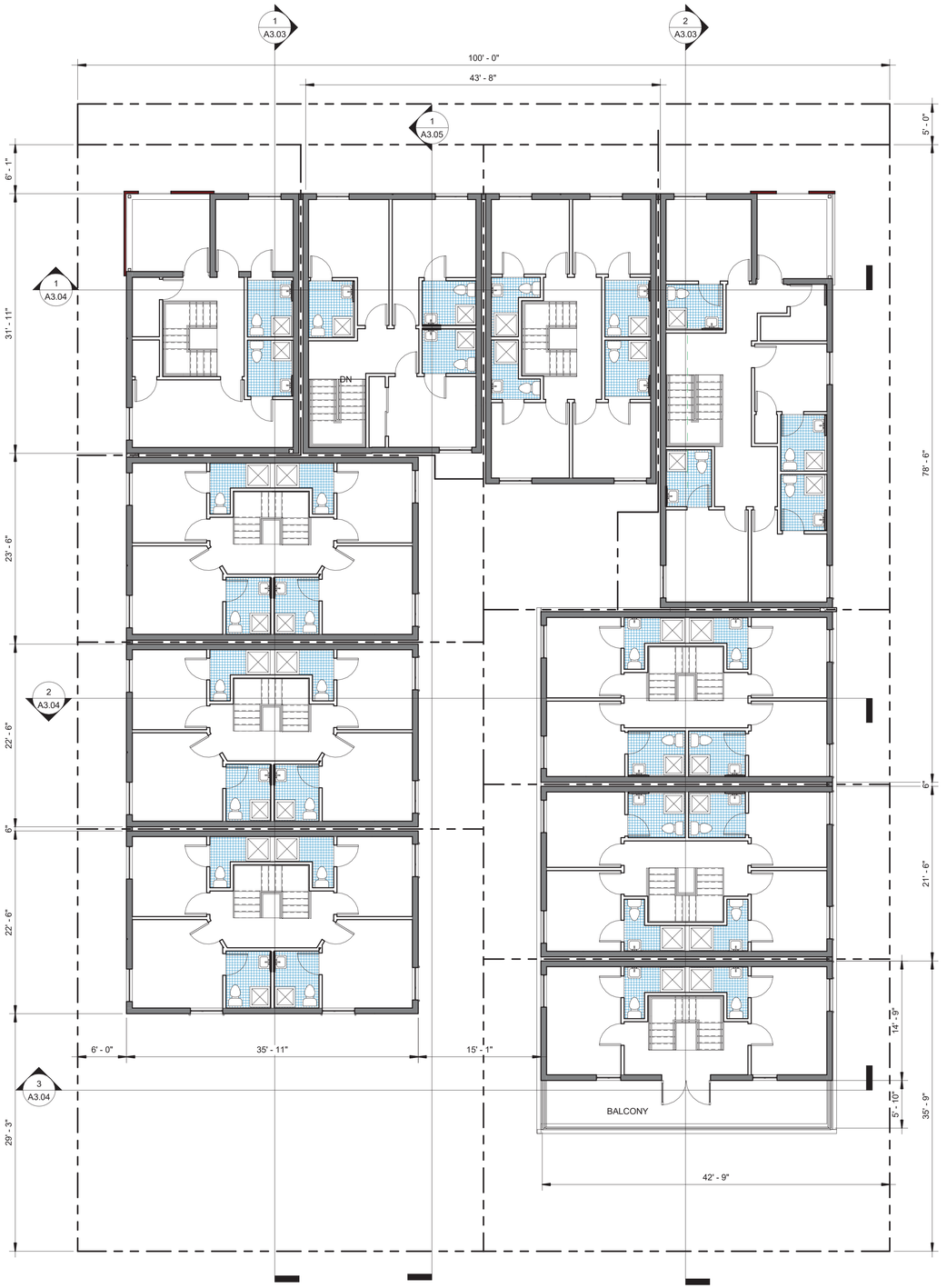

2 LEVEL 4
1/8" = 1'-0"

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Fax	1-213-284-8845
e-mail	1-213-382-1285 ziyiyang@tripalink.com

EXISTING C.M.□. WALL

EXISTING ST□D WALL SEE

NEW ST□D WALL SEE DETAILS

NEW F□RRED OVER □E□C.M.□. WALL SEE DETAIL

NEW 8" SO□ND WALL

NEW 1-HR. SHAFT WALL SEE

WALL LEGEND
1/4" = 1'-0"

No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT
JOHN ROGER POINDEXTER
C-9744
RENEWAL DATE
12-31-2021
STATE OF CALIFORNIA

3rd □ 4th FLOOR PLAN

Project number	1919 SD 14
Date	01-21-2021
Drawn by	Bayu T
Checked by	John P

A2.02

Scale: As indicated

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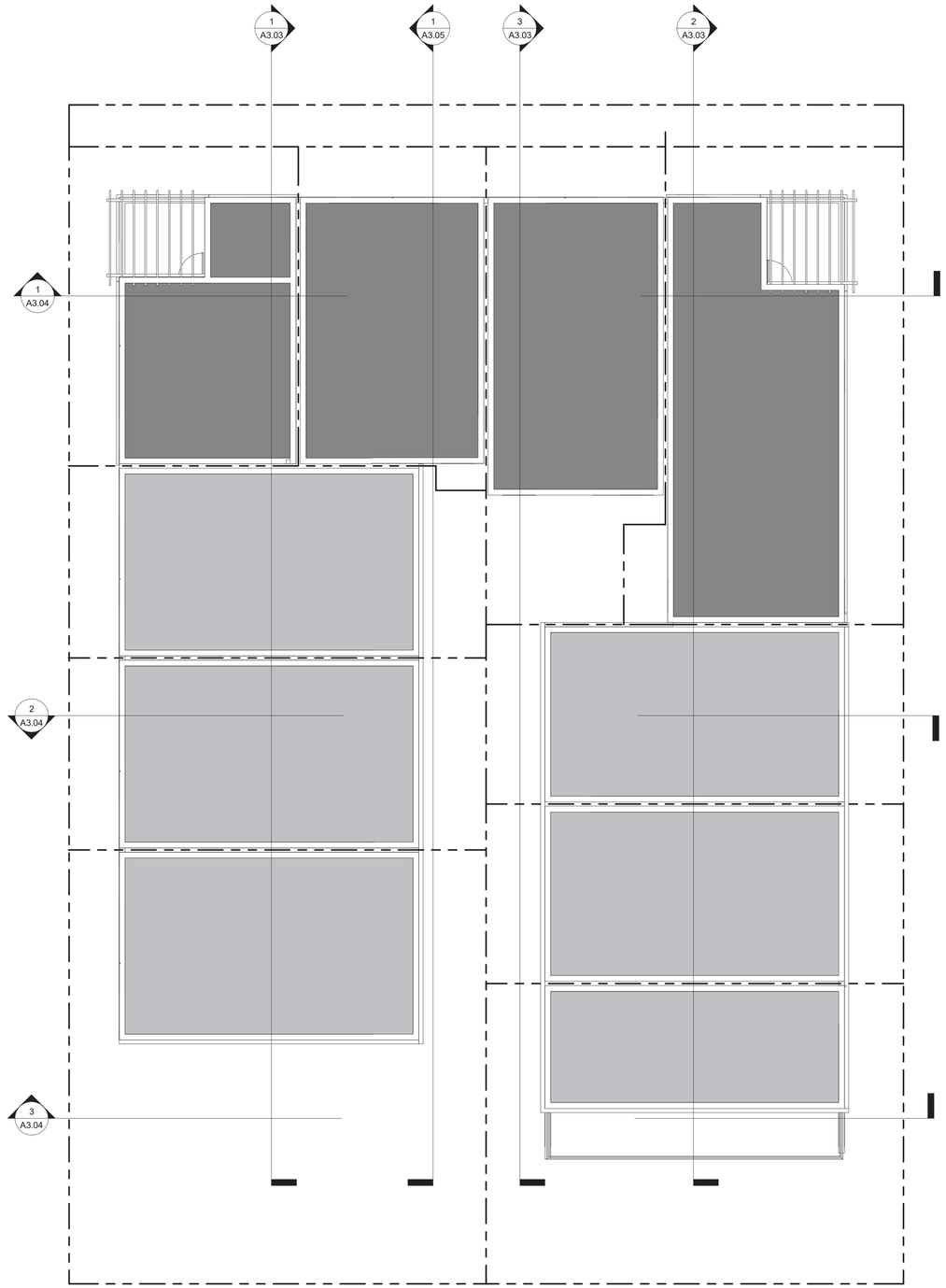

2 UPPER ROOF
1/8" = 1'-0"

ENVIROTECTURE
Architecture - Planning - Interior Design

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No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT
JOHN ROGER POINDEXTER
C-9744
RENEWAL DATE
12-31-2021
STATE OF CALIFORNIA

LOWER UPPER ROOF PLANS

Project number	1919 SD 14
Date	01-21-2021
Drawn by	Bayu T
Checked by	John P

A2.03

Scale 1/8" = 1'-0"

1/21/2021 4:52:23 PM

City of Los Angeles
Department of City Planning

6/19/2019
PARCEL PROFILE REPORT

PROPERTY ADDRESSES
1840 W ADAMS BLVD

ZIP CODES
90018

RECENT ACTIVITY
None

CASE NUMBERS
CPC-2008-1552-CPU
CPC-2004-2391-ICO
CPC-1990-346-CA
CPC-1986-603-GPC
CPC-1986-447-GPC
CPC-1983-506
CPC-12641
ORD-185926-SA1770
ORD-176589
ORD-171682
ORD-171681
ORD-167121-SA912
ORD-162128
ORD-121727
ZA-1980-124
ENV-2008-1781-EIR
ENV-2004-2409-CE-ICO
AFF-49871

Address/Legal Information	
PIN Number	123B193 618
Lot/Parcel Area (Calculated)	7,061.5 (sq ft)
Thomas Brothers Grid	PAGE 633 - GRID J6
	PAGE 633 - GRID J7
Assessor Parcel No. (APN)	5053020011
Tract	CHA'S VICTOR HALL TRACT
Map Reference	M R 26-65
Block	4
Lot	FR 14
Arb (Lot Cut Reference)	None
Map Sheet	123B193
Jurisdictional Information	
Community Plan Area	South Los Angeles
Area Planning Commission	South Los Angeles
Neighborhood Council	Empowerment Congress North Area
Council District	CD 8 - Marqueece Harris-Dawson
Census Tract #	2222.00
LADBS District Office	Los Angeles Metro
Planning and Zoning Information	
Special Notes	ZI-2477 South Los Angeles Community Plan Adoption
Zoning	C2-1VL-O-CPIO
Zoning Information (ZI)	ZI-2374 LOS ANGELES STATE ENTERPRISE ZONE
	ZI-2477 South Los Angeles Community Plan Adoption
	ZI-2452 Transit Priority Area in the City of Los Angeles
	ZI-1231 South Los Angeles Alcohol Sales
	ZI-2484 South Los Angeles Community Plan Implementation Overlay (CPIO) Dist
General Plan Land Use	General Commercial
General Plan Note(s)	Yes
Hillside Area (Zoning Code)	No
Specific Plan Area	South Los Angeles Alcohol Sales
Subarea	None
Special Land Use / Zoning	None
Design Review Board	No
Historic Preservation Review	No
Historic Preservation Overlay Zone	None
Other Historic Designations	None
Other Historic Survey Information	None
Mills Act Contract	None
CDO: Community Design Overlay	None
CPIO: Community Plan Imp. Overlay	South Los Angeles
Subarea	Neighborhood-Serving Corridor
CUGU: Clean Up-Green Up	None
HCR: Hillside Construction Regulation	No
NSO: Neighborhood Stabilization Overlay	No
POD: Pedestrian Oriented Districts	None
RFA: Residential Floor Area District	None

RIO: River Implementation Overlay	No
SN: Sign District	No
Streetscape	No
Adaptive Reuse Incentive Area	None
Affordable Housing Linkage Fee	
Residential Market Area	Low
Non-Residential Market Area	Low
Transit Oriented Communities (TOC)	Tier 2
CRA - Community Redevelopment Agency	None
Central City Parking	No
Downtown Parking	No
Building Line	None
500 Ft School Zone	No
500 Ft Park Zone	No
Assessor Information	
Assessor Parcel No. (APN)	5053020011
APN Area (Co. Public Works)*	0.149 (ac)
Use Code	0100 - Residential - Single Family Residence
Assessed Land Val.	$97,027
Assessed Improvement Val.	$30,348
Last Owner Change	11/16/2018
Last Sale Amount	$1,560,015
Tax Rate Area	312
Deed Ref No. (City Clerk)	884435
	8-197
	694555S
	563349S
	511021
	379084S
	309917S
	251452
	2-360
	1700960
	1525101-3
	1230526
	114024S
	1-344
Building 1	
Year Built	1915
Building Class	D4A
Number of Units	1
Number of Bedrooms	1
Number of Bathrooms	1
Building Square Footage	678.0 (sq ft)
Building 2	No data for building 2
Building 3	No data for building 3
Building 4	No data for building 4
Building 5	No data for building 5
Additional Information	
Airport Hazard	None
Coastal Zone	None
Farmland	Area Not Mapped
Urban Agriculture Incentive Zone	YES
Very High Fire Hazard Severity Zone	No
Fire District No. 1	No

Flood Zone	None
Watercourse	No
Hazardous Waste / Border Zone Properties	No
Methane Hazard Site	Methane Zone
High Wind Velocity Areas	No
Special Grading Area (BOE Basic Grid Map A-13372)	No
Oil Wells	None
Seismic Hazards	
Active Fault Near-Source Zone	
Nearest Fault (Distance in km)	2.12969856
Nearest Fault (Name)	Puente Hills Blind Thrust
Region	Los Angeles Blind Thrusts
Fault Type	B
Slip Rate (mm/year)	0.70000000
Slip Geometry	Reverse
Slip Type	Moderately / Poorly Constrained
Down Dip Width (km)	19.00000000
Rupture Top	5.00000000
Rupture Bottom	13.00000000
Dip Angle (degrees)	25.00000000
Maximum Magnitude	7.10000000
Alquist-Priolo Fault Zone	No
Landslide	No
Liquefaction	No
Preliminary Fault Rupture Study Area	No
Tsunami Inundation Zone	No
Economic Development Areas	
Business Improvement District	None
Opportunity Zone	No
Promise Zone	None
Renewal Community	No
Revitalization Zone	Central City
State Enterprise Zone	LOS ANGELES STATE ENTERPRISE ZONE
Targeted Neighborhood Initiative	West Adams
Housing	
Direct all Inquiries to	Housing+Community Investment Department
Telephone	(866) 557-7368
Website	http://hcidla.lacity.org
Rent Stabilization Ordinance (RSO)	No
Ellis Act Property	No
Public Safety	
Police Information	
Bureau	South
Division / Station	Southwest
Reporting District	326
Fire Information	
Bureau	Central
Batallion	11
District / Fire Station	26
Red Flag Restricted Parking	No

CASE SUMMARIES

Note: Information for case summaries is retrieved from the Planning Department's Plan Case Tracking System (PCTS) database.

Case Number:	CPC-2008-1552-CPU
Required Action(s):	CPU-COMMUNITY PLAN UPDATE
Project Descriptions(s):	SOUTH LOS ANGELES NEW COMMUNITY PLAN PROGRAM
Case Number:	CPC-2004-2391-ICO
Required Action(s):	ICO-INTERIM CONTROL ORDINANCE
Project Descriptions(s):	INTERIM CONTROL ORDINANCE/ AUTOMOTIVE RELATED USES
Case Number:	CPC-1990-346-CA
Required Action(s):	CA-CODE AMENDMENT
Project Descriptions(s):	AMENDMENT TO THE L.A.M.C. TO - DRAFT AN ORDINANCE TO PROHIBIT THE GRANTING OF A CONDITIONAL USE PERMIT FOR THE OFF-SITE SALE OF ALCOHOLIC BEVERAGES (LOURDES GREEN/KAREN HOO)\
Case Number:	CPC-1986-603-GPC
Required Action(s):	GPC-GENERAL PLAN/ZONING CONSISTENCY (AB283)
Project Descriptions(s):	GENERAL PLAN/ZONING CONSISTENCY PROGRAM
Case Number:	CPC-1986-447-GPC
Required Action(s):	GPC-GENERAL PLAN/ZONING CONSISTENCY (AB283)
Project Descriptions(s):	PLAN AND ZONE CONSISTENCY - SOUTH CENTRAL LOS ANGELES (HERB GLASCOW)
Case Number:	CPC-1983-506
Required Action(s):	Data Not Available
Project Descriptions(s):	SPECIFIC PLN ORD FOR INTERIM CONDITIONAL USE APPRVL FOR ESTABLISHMENTS FOR THE SALE OF ALCOHOL WHICH ARE GENERALLY LOCATED INTHE SOUTH CENTRAL AREA OF THE CITY.
Case Number:	ZA-1980-124
Required Action(s):	Data Not Available
Project Descriptions(s):	
Case Number:	ENV-2008-1781-EIR
Required Action(s):	EIR-ENVIRONMENTAL IMPACT REPORT
Project Descriptions(s):	SOUTH LOS ANGELES NEW COMMUNITY PLAN PROGRAM
Case Number:	ENV-2004-2409-CE-IOG
Required Action(s):	CE-CATEGORICAL EXEMPTION ICO-INTERIM CONTROL ORDINANCE
Project Descriptions(s):	INTERIM CONTROL ORDINANCE/ AUTOMOTIVE RELATED USES

DATA NOT AVAILABLE

CPC-12641
ORD-185926-SA1770
ORD-176589
ORD-171682
ORD-171681
ORD-167121-SA912
ORD-162128
ORD-121727
AFF-49871

ZIMAS PUBLIC — Generalized Zoning — 06/19/2019 — City of Los Angeles Department of City Planning

Address: 1840 W ADAMS BLVD
APN: 5053020011
PIN #: 123B193 618

Tract: CHA'S VICTOR HALL TRACT
Block: 4
Lot: FR 14
Arb: None

Zoning: C2-1VL-O-CPIO
General Plan: General Commercial

N W E S

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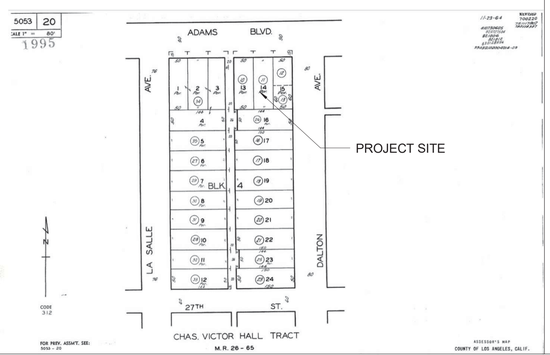

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Tel: 213.382.1210 Fax: 213.382.1285

Architect John R. Poindexter
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Owner's Rep. Ziyi Yang - Project Development, Design Lead
Firm
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2905 S. Vermont Avenue
Phone Los Angeles, California 90007
Fax 1-213-284-8845
e-mail 1-213-382-1285
ziyiyang@tripalink.com

No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT — JOHN ROGER POINDEXTER — C-9744 — RENEWAL DATE 12-31-2021 — STATE OF CALIFORNIA

PARCEL PROFILE REPORT

Project number	1919 SD 14
Date	01-21-2021
Drawn by	Bayu T
Checked by	John P

A4.01

Scale

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SMALL LOT DESIGN STANDARDS
ILLUSTRATED GUIDE FOR SMALL LOT DESIGN STANDARDS

CHECKLIST

	Yes	No	N/A	Plan Sheet
A. BUILDING DESIGN				
1. Dwelling Orientation				
a. Small Lot Homes abutting a right-of-way, including a public street, walk street, public stairways ("right-of-way") or private street shall orient the primary entryway ("front door") toward the right-of-way or, where there is a physical site constraint, shall provide a clearly identifiable pedestrian entry to the site from the right-of-way.	[x]			A2.01
b. Small Lot Homes located in the interior of the subdivision shall orient the primary entryway toward and be visible from a pedestrian pathway that is connected to the right-of-way.	[x]			A1.01
c. Small Lot Homes that abut an alley shall orient the primary entryway toward the alley, or shall be connected to a pedestrian pathway that leads directly to a right-of-way.	[x]			A1.01
2. Primary Entryways				
a. All Small Lot Homes shall have a primary entryway. All primary entryways shall provide the address or unit identification, ornamental low-level lighting to illuminate the entry area, and a landing area.	[x]			A3.01
b. All primary entryways shall incorporate at least four of the following elements:	[x]			A3.01
☐ i. The entryway shall be recessed at least 2 feet from the building façade to create a covered porch or landing area.				
X ii. The doorway shall be recessed at least 3 inches from the building façade.				
X iii. The entryway shall be designed with an overhead projection of at least 6 inches such as an awning or other architectural design features so as to distinguish the front door from the rest of the building façade, unless prohibited by LAMC Section 12.22 C.20.				
X iv. The entryway shall be clearly marked with a side lite window panel, adjacent window, or a door with a window.				
X v. The entryway shall be raised or sunken at least one stair step from the pedestrian pathway.				
☐ vi. The entryway landing area shall be enhanced with unique paving material, texture, pattern, or color that is differentiated from the pedestrian pathway.				

SMALL LOT DESIGN STANDARDS
ILLUSTRATED GUIDE FOR SMALL LOT DESIGN STANDARDS

CHECKLIST (continued)

	Yes	No	N/A	Plan Sheet
3. Primary Entryways Between Small Lot Homes				
a. Small Lot Homes shall provide at least an 8-foot separation between the face of a primary entryway of a Small Lot Home and the adjacent building wall of a neighboring Small Lot Home. The separation may include projections as listed in 2.b.iii above, but be clear to sky for a minimum of 7 feet. The separation shall be measured along the portion of the pedestrian pathway that provides access to the entryway.			[x]	
4. Façade Articulation				
a. Façades facing a right-of-way, the project perimeter, and all portions of exterior building elevations located greater than 7 feet from an adjacent Small Lot Home, shall be treated with an equal level of detail and articulation, and shall incorporate all of the following façade articulation techniques:	[x]			A3.01
X i. Change in exterior building materials to include at least two high-quality building façade materials that accentuate or correspond to variations in building massing. Building materials may include, but are not limited to: wood, glass, brick, metal spandrel, cement board siding, or tile.				
X ii. Porticos, awnings, terraces, balconies, eyebrows, or trellises of at least 6 inches in depth that provide variations in the building plane.				
X iii. Window treatments that are extruded or recessed from the building façade a minimum of 3 inches. Windows or doors that are flush with the plane of the building (rather than extruded or recessed at least 3 inches) will not qualify as facade articulation.				
☐ iv. A break in the façade plane of a minimum of 6 inches in depth that is applied to at least 10 vertical feet of the facade.				
☐ v. Other additional architectural enhancements to the floor of the primary entrance and below, so as to create a human scale to the building. Examples include handrails, fixed planters, and ornamental details, such as lighting, molding, or tiles.				

SMALL LOT DESIGN STANDARDS
ILLUSTRATED GUIDE FOR SMALL LOT DESIGN STANDARDS

CHECKLIST (continued)

	Yes	No	N/A	Plan Sheet
5. Varied Roofline				
a. For any Small Lot Home façade fronting a right-of-way exceeding two stories in height, the roofline shall be articulated by incorporating two of the following:	[x]			A3.01
☐ i. A roof with a slope equal to or greater than 2 inches to 12 inches, including but not limited to a sloped or curved roofline at the top of the dwelling.				
☐ ii. An open deck with a minimum of 6 feet in depth and 8 feet in width.				
☐ iii. A flat roof with a minimum of 2 feet vertical height difference for a minimum of 10 horizontal feet along the roofline of each building façade.				
X iv. A break in façade plane of a minimum of 6 inches in depth that is carried up to the roofline.				
X v. Any form of roofline modulation such as a step back, an outdoor stairwell, or a corner balcony.				
6. Roof Decks				
a. All roof decks along the project perimeter and abutting residential uses shall be stepped back a minimum of 5 feet from the roof edge, so that they are oriented away from and screened to prevent direct views of abutting residential neighbors. Roof decks facing a right-of-way are not required to be stepped back.			[x]	
7. Building Massing Variation				
a. Small Lot Homes shall be grouped into clusters to avoid long spans of building wall. Clusters of Small Lot Homes shall be no more than six Small Lot Homes in a single continuous row or 180 linear feet, whichever is smaller. Clusters of Small Lot Homes shall be separated with a building gap of a minimum of 6 feet in width, which shall be treated with a combination of landscaping, open space, and common walkways or driveways.	[x]			A1.01
b. Small Lot Homes in a single row shall provide a lateral shift or break in the façade of a minimum of 6 inches for every three Small Lot Homes or 90 linear feet, whichever is smaller.			[x]	
c. Small Lot Homes shall be unique in design so that there is variety between Small Lot Homes within a subdivision. For a Small Lot Subdivision containing more than six Small Lot Homes in a single row, there shall be at least two variations in building design, such as changes in dwelling orientation, primary entryways, fenestration pattern, façade articulation, or varied roofline as prescribed in Subsections 1-5. For a Small Lot Subdivision of 20 or more Small Lot Homes, there shall be at least three variations in building design as stated above.			[x]	

SMALL LOT DESIGN STANDARDS
ILLUSTRATED GUIDE FOR SMALL LOT DESIGN STANDARDS

CHECKLIST (continued)

	Yes	No	N/A	Plan Sheet
B. PEDESTRIAN CONNECTIVITY AND ACCESS				
1. Pedestrian Pathways				
a. Pedestrian pathways of a minimum width of 3 feet shall be provided from the right-of-way to all primary entryways and common areas, such as common open space areas, guest parking, mailboxes, and centralized trash enclosures.	[x]			A1.01
b. A pedestrian pathway located within or parallel to a Common Access Driveway shall be constructed and/or treated with a change of materials, finishes, pattern, or paving that distinguishes the pathway from vehicular traffic.			[x]	
c. Small Lot Subdivisions of 20 or more Small Lot Homes shall provide pedestrian and bicycle access to surrounding neighborhood rights-of-way.			[x]	
2. Fences/Walls				
a. Fences or walls abutting the street or common open space areas shall be decorative, including but not limited to lattiework, ornamental fences, screen walls, hedges or dense shrubs or trees. Solid masonry walls along the right-of-way are not permitted.	[x]			A3.01
b. Fences or walls abutting the right-of-way and within the yard shall provide a point of entry into each lot abutting the right-of-way.	[x]			A1.01
C. LANDSCAPING				
1. Landscaping, Common Open Space Areas, and Amenities				
a. All setback and open areas not used for buildings, parking areas, driveway, pedestrian pathways, utilities, and common open space areas shall be attractively landscaped and maintained.	[x]			A1.01
b. Required Common Open Space Areas must:				
X i. Be open to the sky and have no structures that project into the common open space area, except as provided in Section 12.22 C.20 (b).	[x]			A1.01
X ii. Be located at grade level, contiguous or connected, and readily accessible to all residents of the site.	[x]			A1.01
X iii. Have a minimum area of 300 sq. ft. with no horizontal dimension less than 15 feet when measured perpendicular from any point on each of the boundaries of the open space area. Driveways, parking spaces, or pedestrian pathways cannot be counted toward the open space requirement.	[x]			A1.01

SMALL LOT DESIGN STANDARDS
ILLUSTRATED GUIDE FOR SMALL LOT DESIGN STANDARDS

CHECKLIST (continued)

	Yes	No	N/A	Plan Sheet
c. The combination of required Common Open Space Areas shall be multi-functional and designed to accommodate a range of passive, active, or social uses, with enhancements such as landscaping, activity lawns, swimming pools, spas, picnic tables, benches, children's play areas, ball courts, barbecue areas, sitting areas, decorative bike racks, and/or dog washing stations. Common open space areas may include enhanced side yards and rear yards that meet the minimum area and dimension requirement above.			[x]	
d. All yards of a subdivision abutting the right-of-way shall be improved with landscaping (combination of groundcover, shrubs, and trees) and amenities. Amenities may include: decorative fencing, uncovered patios, enhanced pedestrian pathways, garden walls, seating areas, and/or decorative bike racks.	[x]			A1.01
D. MIXED USE SMALL LOTS				
Small Lot Subdivisions may provide Small Lot Homes that contain commercial uses at the ground floor ("Mixed Use Small Lot Homes"). Mixed Use Small Lots must comply with all other applicable regulations governing the site with regards to parking, signage, access, and FAR limitations in the LAMC. The following Design Standards shall be required for any Mixed Use Small Lot Home in addition to the other Design Standards contained in this document.				
1. Building Orientation and Entry				
a. Mixed Use Small Lot Homes shall be first located along the perimeter of the subdivision abutting the right-of-way.				
b. A Mixed Use Small Lot Home shall provide a separate ground floor entrance to the commercial use, or an identifiable lobby that serves both the residential and commercial uses. The commercial entrance shall be directly accessible from the right-of-way and open during the normal business hours posted by the business.				
2. Building Design				
a. A Mixed Use Small Lot Home shall be designed with an identifiable ground floor commercial component.				
b. Store entrances shall be recessed, not flush, with the edge of the building facade to articulate the storefront and provide shelter for persons entering and exiting.				
c. The ground floor commercial use shall be visually separated from upper residential floors, with a façade treatment such as an awning, framing, setback, or overhang of at least 18 inches in depth, so as to distinguish the commercial base of the building.				

ENVIROTECTURE
Architecture · Planning · Interior Design

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Tel: 213.382.1210 Fax: 213.382.1285

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Address	3600 Wilshire Boulevard, Suite 1402 Los Angeles, California 90010
Phone	1-213-382-1210
Fax	1-213-382-1285
e-mail	john@envirotectureinc.com
Owner's Rep.	Ziyi Yang - Project Development, Design Lead
Firm	
Address	1846 W Adams Blvd, LLC 2905 S. Vermont Avenue
Phone	Los Angeles, California 90007
Fax	1-213-284-8845
e-mail	1-213-382-1285 ziyiyang@tripalink.com

No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT
JOHN ROGER POINDEXTER
C-9744
RENEWAL DATE 12-31-2021
STATE OF CALIFORNIA

SMALL LOT DESIGN STDS CHECKLIST

Project number	1919 SD 14
Date	01-21-2021
Drawn by	Bayu T
Checked by	John P

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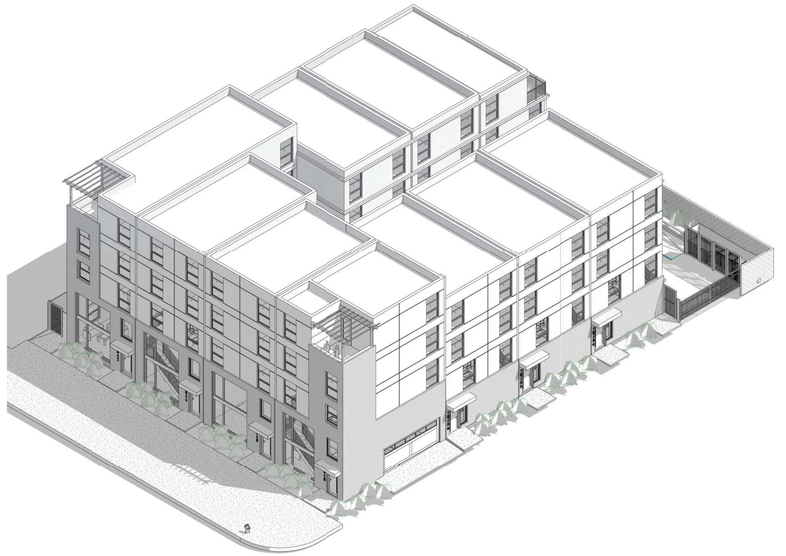
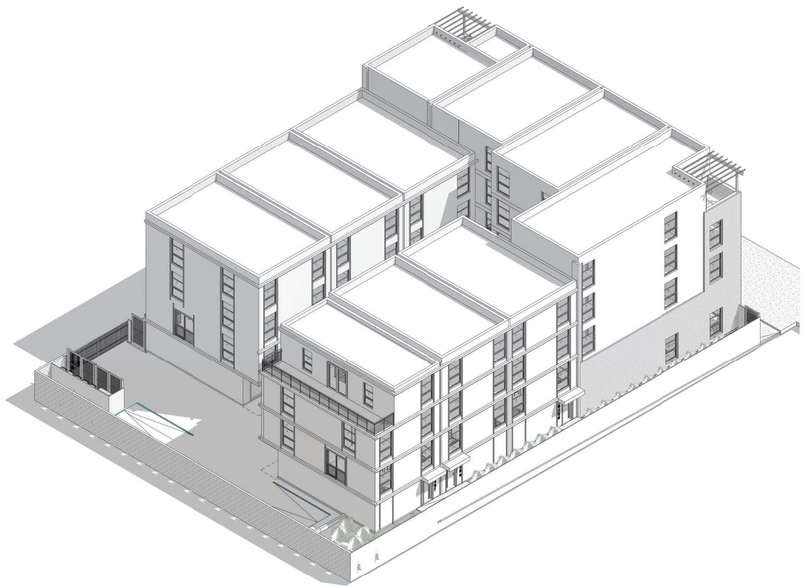
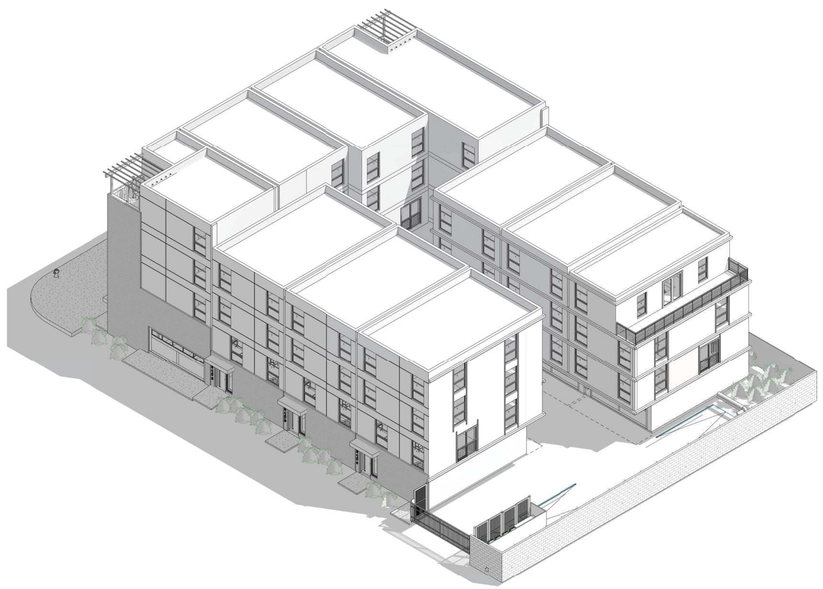
1 VIEW FROM NORTH EAST



2 VIEW FROM NORTH WEST



3 VIEW FROM SO□TH EAST



4 VIEW FROM SO□TH WEST

ENVIROTECTURE
Architecture - Planning - Interior Design

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e-mail	1-213-382-1285 ziyiyang@tripalink.com

No.	Description	Date

TRIPALINK CO-LIVING TOWNHOMES

1840-1848 W. ADAMS BLVD.

LICENSED ARCHITECT
JOHN ROGER POINDEXTER
C-9744
RENEWAL DATE
12-31-2021
STATE OF CALIFORNIA

AXONOMETRIC VIEWS

Project number	1919 SD 14
Date	01-21-2021
Drawn by	Bayu T
Checked by	John P

A4.03

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Exhibit B-2

HOLLY L. WOLCOTT
CITY CLERK

PETTY F. SANTOS
EXECUTIVE OFFICER

City of Los Angeles
CALIFORNIA

ERIC GARCETTI
MAYOR

OFFICE OF THE
CITY CLERK

Council and Public Services Division
200 N. SPRING STREET, ROOM 395
LOS ANGELES, CA 90012
GENERAL INFORMATION - (213) 978-1133
FAX: (213)978-1040

PATRICE Y. LATTIMORE
DIVISION MANAGER

CLERK.LACITY.ORG

May 20, 2021

OFFICIAL ACTION OF THE LOS ANGELES CITY COUNCIL

Council File No.: 20-0603-S1

Council Meeting Date: May 19, 2021

Agenda Item No.: 28

Agenda Description: CATEGORICAL EXEMPTION and PLANNING AND LAND USE MANAGEMENT COMMITTEE REPORT relative to a California Environmental Quality Act (CEQA) Appeal filed for the properties located at 5806-5812 West Lexington Avenue.

Council Action: PLANNING AND LAND USE MANAGEMENT COMMITTEE REPORT - ADOPTED FORTHWITH

Council Vote:

YES	Blumenfield	YES	Bonin	YES	Buscaino
YES	Cedillo	YES	de León	YES	Harris-Dawson
ABSENT	Koretz	YES	Krekorian	YES	Lee
YES	Martinez	YES	O'Farrell	YES	Price
YES	Raman	YES	Ridley-Thomas	YES	Rodriguez

HOLLY L. WOLCOTT
CITY CLERK

Adopted Report(s)Title
Report from Planning and Land Use Management Committee_05-04-21

CATEGORICAL EXEMPTION and PLANNING AND LAND USE MANAGEMENT (PLUM) COMMITTEE REPORT relative to a California Environmental Quality Act (CEQA) Appeal filed for the properties located at 5806-5812 West Lexington Avenue.

Recommendations for Council action:

1. FIND, that based on the whole of the administrative record, that the Project is exempt from the CEQA pursuant to CEQA Guidelines, Section 15332, Class 32, and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the CEQA Guidelines regarding location, cumulative impacts, significant effects based on unusual circumstances, scenic highways, hazardous waste sites, or historical resources apply.

2. ADOPT the FINDINGS of the Los Angeles City Planning Commission (LACPC) as the Findings of Council.

3. RESOLVE TO DENY THE APPEAL filed by Doug Haines, on behalf of La Mirada Avenue Neighborhood Association and Concerned Neighbors of Lexington Avenue (Representative: Robert Silverstein, The Silverstein Law Firm), and THEREBY SUSTAIN the determination of the LACPC in approving a Categorical Exemption from CEQA for the construction of a Transit Oriented Communities 17-unit multi-family project, with two units reserved for Extremely Low Income Households; the Lexington II Project involves the demolition of two existing single-family structures with associated accessory structures, and the construction, use and maintenance of the five-story, 56-foot tall, 17-unit, multi-family dwelling; the building will be constructed with four residential levels over one at-grade parking level, and will provide a total of 17 automobile parking spaces; for the properties located at 5806-5812 West Lexington Avenue.

Applicant: Daniel Pourbaba, 5806 Lexington, LLC

Representative: Erika Diaz, Woods, Diaz Group, LLC

Related Case No. DIR-2019-7067-TOC-1A

Environmental No. ENV-2019-5389-CE-1A

Fiscal Impact Statement: None submitted by the LACPC. Neither the City Administrative Officer nor the Chief Legislative Analyst has completed a financial analysis of this report.

Community Impact Statement: None submitted.

Summary:
At a regular meeting held on May 4, 2021, the PLUM Committee considered a report from the LACPC and a CEQA appeal for the properties located at 5806-5812 West Lexington Avenue. Department of City Planning staff provided an overview of the matter. A

Representative of Council District 13 provided comments in support of denying the appeal. After an opportunity for public comment, and presentations from the Applicant's Representative and Appellant, the Committee recommended to deny the appeal and sustain the LACPC's determination in approving the Categorical Exemption for the project. This matter is now submitted to the Council for consideration.

Respectfully Submitted,

PLANNING AND LAND USE MANAGEMENT COMMITTEE

MEMBER	VOTE
HARRIS-DAWSON:	YES
CEDILLO:	YES
BLUMENFIELD:	YES
RIDLEY-THOMAS:	YES
LEE:	ABSENT

AXB
20-0603-S1_rpt_PLUM_05-04-21

DEPARTMENT OF CITY PLANNING

COMMISSION OFFICE
(213) 978-1300

CITY PLANNING COMMISSION

SAMANTHA MILLMAN
PRESIDENT

VAHID KHORSAND
VICE-PRESIDENT

DAVID H. J. AMBROZ
CAROLINE CHOE
HELEN LEUNG
KAREN MACK
DANA M. PERLMAN
YVETTE LOPEZ-LEDESMA
AJAY RELAN

CITY OF LOS ANGELES
CALIFORNIA

ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES
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(213) 978-1271

VINCENT P. BERTONI, AICP
DIRECTOR

KEVIN J. KELLER, AICP
EXECUTIVE OFFICER

SHANA M.M. BONSTIN
DEPUTY DIRECTOR

ARTHI L.. VARMA, AICP
DEPUTY DIRECTOR

LISA M. WEBBER
DEPUTY DIRECTOR

VACANT
DEPUTY DIRECTOR

December 7, 2020

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

CEQA APPEALS FOR A PROPOSED PROJECT AT 5806-5812 WEST LEXINGTON AVENUE AND 5817-5823 WEST LEXINGTON AVENUE; CASE NO. ENV-2019-5389-CE; CF 20-0603-S1

At its meeting of April 23, 2020, the City Planning Commission (CPC) denied an appeal of a project (DIR-2019-5388-DB) comprised of the demolition of the two (2) existing duplexes and the construction, use and maintenance of a five-story, 56-foot tall, 21-unit multi-family dwelling. The building will be constructed with four (4) residential levels over one (1) at-grade parking level. The project will provide a total of 29 automobile parking spaces and includes grading resulting in the export of 800 cubic yards of soil located at 5817-5823 West Lexington Avenue. The CPC also determined that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332. The justification and notice of exemption provided for this project also includes the project for a nearby project (DIR-2019-7067-TOC) located at 5806-5812 West Lexington Avenue. This nearby project consists of the demolition of two (2) existing single-family structures with associated accessory structures and the construction, use and maintenance of a five-story, 56-foot tall, 17-unit, multi-family dwelling. The building will be constructed with four (4) residential levels over one (1) at-grade parking level. The project will provide a total of 17 automobile parking spaces. The CEQA exemption under Case No. ENV-2019-5389-CE analyzed both projects which result in 38 dwelling units across two project sites.

CEQA Guidelines Section 15332

One of the conditions for a Class 32 categorical exemption is that the project is consistent with the applicable general plan designation and all applicable general plan policies as well as applicable zoning designation and regulations.
The project is located within the Hollywood Community Plan and Hollywood Redevelopment Plan area and zoned R3-1 with a corresponding designation for Medium Residential land uses. The

project is consistent with the applicable general plan land use designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.

CEQA Guidelines Section 15300.2

The appellant identifies 48 projects within East Hollywood that have been approved or proposed over the last two (2) years and argues that the City has failed to consider the cumulative impacts of all 48 projects. Each are under different phases of their own project milestones and at various locations with some being farther than a mile a way from the subject property. The addition of the subject project will not result in any cumulative environmental impact. No projects identified among the 48 are within 500 feet of the project site. Four (4) projects among the 48 are within 1,000 feet of the project and are either under construction or have completed construction and thus the project will not result in cumulative environmental impacts.

The appellant contends that the density proposed is inconsistent with the R3 Zone and limitation of the Hollywood Redevelopment Plan. Furthermore, the units should be in fact be considered as Flexible Units resulting in a total of 94 units.

Concerning the project at 5817-5823 West Lexington Avenue, the subject site is 15,000 square feet. Based on the minimum lot area per dwelling unit of 800 square feet, the project's base density is calculated to be 19 units. By setting aside 2 units for Very Low Income Households, the project is entitled to at least a 25% density bonus, or 24 units. The project proposes a total of 21 units. Therefore the project complies with the R3 Zone and Affordable Housing Incentives – Density Bonus provisions. Furthermore, the provisions of the City Density Bonus ordinance were enacted pursuant to the State Density Bonus program; the Community Redevelopment Agency's density bonus limitations are not applicable.

Concerning the project at 5806-5812 West Lexington Avenue, the R3 zone limits density to one unit per 800 square feet of lot area. With a lot area of 15,000 square feet , the project would be limited to 19 units. However, as the property is located within the Hollywood Redevelopment Plan or HRP, the property is limited to the density limitations of the HRP which is 40 units per gross acre. Therefore, based on a lot area of .41 acres, the project is limited to 17 units.

Concerning the issue with Flexible Units, the projects are for a 21-unit and 17-unit apartment building, respectively. All units are designed with one entrance and not in such a way that would allow them to be easily divided into or used as separate units.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

Alexander Truong

Alex Truong
City Planning Associate

VPB:at

Armando Bencomo <armando.bencomo@lacity.org>

Re: Public Comment Response to Applicant Letter of May 3, 2021 in Support of CEQA Exemption - Reasons Why Developer's Arguments are Incorrect - Council File Nos. 20-0603-S1 and 20-0603

1 message

Noel Weiss <noelweiss@ca.rr.com> Tue, May 4, 2021 at 1:08 PM
To: clerk.plumcommittee@lacity.org, Armando.Bencomo@lacity.org

Armando:

Please for the record, post this email to Council File Nos. 20-0603 and 20-0603-S1.

This is in response to the comments of the Developer's Attorney in his letter to PLUM dated May 3, 2021.

CPC Approval – September 17, 2020 – ***5806-5817 Lexington*** –The approval says "***17 DWELLING UNITS***"

LOS ANGELES CITY PLANNING COMMISSION
200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.planning.lacity.org

LETTER OF DETERMINATION

MAILING DATE: SEP 22 2020

Case No. DIR-2019-7067-TOC-1A Council District: 13 – O' Farrell
CEQA: ENV-2019-5389-CE
Plan Area: Hollywood

Project Site: 5806 – 5812 West Lexington Avenue

3. **Approved**, pursuant to Section 12.22 A.31 of the Los Angeles Municipal Code, a Transit Oriented Communities (TOC) Affordable Housing Incentive Program for a Tier 2 project with a total of 17 dwelling units, including two units reserved for Extremely Low Income (ELI) Household occupancy for a period of 55 years, along with the following three Additional Incentives:

Yet the Project *Conditions* reference for 17 "***residential units***". . . . See how they play with language! There is no such thing as a "Residential Unit"defined in the Zoning Law (LAMC Section 12.03), the TOC Law (Measure JJJ - LAMC 12.21A(31)), or the TOC Guidelines. "Residential Unit" is defined in the City's implementation of the State Density Bonus law (LAMC Section 12.22(A)(25)(b).. That definition includes a circumstance where the residential unit configuration includes "guest rooms." So by using the term "residential units" outside of the context of the intended use, the project "description" for CEQA purposes is rendered purposely vague. This is another reason why neither project is entitled to a CEQA exemption.

So is the project a "17 *Residential Unit*" development – or a 17 Unit ***Apartment*** Project. The use of the term "Residential Unit" is misleading, it is purposefully ambiguous, it is legally irrelevant, and it is wrong because it does not describe adequately or legally the nature of the proposed "use".

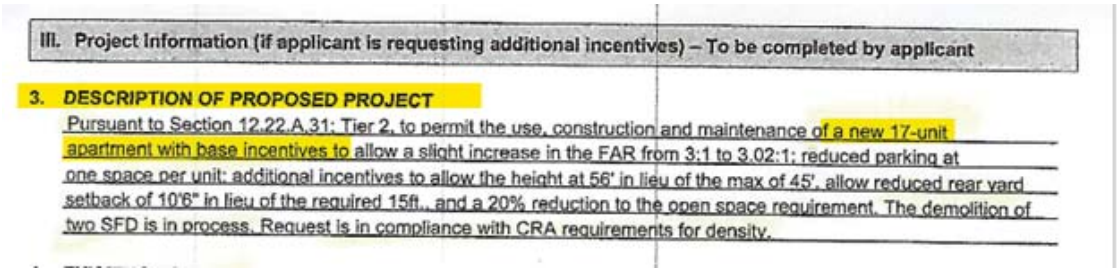
CONDITIONS OF APPROVAL

2. **Base Incentives.**

   a. **Residential Density**. The project shall be limited to a maximum density of 17 residential units, including On-site Restricted Affordable Units.

There is no category of use under the zoning law defined or identified as "residential units" or a "residential unit". This is purposely ambiguous and designed to hide the intended "Apartment House" use.

Meanwhile, "project" is described in TOC Referral Form as "***17-Unit Apartment***". . .



III. Project Information (if applicant is requesting additional incentives) – To be completed by applicant

3. DESCRIPTION OF PROPOSED PROJECT

Pursuant to Section 12.22.A.31; Tier 2, to permit the use, construction and maintenance of a new 17-unit apartment with base incentives to allow a slight increase in the FAR from 3:1 to 3.02:1; reduced parking at one space per unit; additional incentives to allow the height at 56' in lieu of the max of 45', allow reduced rear yard setback of 10'6" in lieu of the required 15ft., and a 20% reduction to the open space requirement. The demolition of two SFD is in process. Request is in compliance with CRA requirements for density.

What is lacking here is an analysis of the proposed "***USE***". . . . Which is as an "*Apartment Hotel*". . .See Definition Below. .. It speaks in terms of "use" not just "design".

The applicants talk about "design". Actual "use" under the definitions counts equally as well.

The applicant does not deny that:

1. Use of term "Unit" is generic and meaningless;

2. The developer intends a co-living format – A business model where beds and rooms are to be rented out individually and exclusively in a ***"rent-by-the-bed***" configuration where the renter has ***exclusive*** use of the bedroom and bed as his residence with co-equal use of the kitchen, living room, and other common-area facilities. . .That exclusive use – rent-by-the bed operational model creates an "Apartment Hotel" ***as used*** (forgetting the design). . . Nothing in the conditions prohibits this use. . . If they wanted 17 apartments, then they have to use them as Apartments. . That is not their intent. . and this fact is not disputed anywhere by applicant. .

3. Nor is it disputed that if it is used as a hotel, such use is a ***prohibited use*** under the zoning. . .

4. So if the developer wants the CEQA exemption, they have to promise to use these "units" as "*apartments"* and ***not*** as "*guest rooms*" located within each individual "apartment". . Something they are not willing to do and cannot do because their Wall Street investors and benefactors would go crazy. Use as an "Apartment Hotel" is the very reason they over-paid for these properties. . .Planning and the City should insist upon it. . Otherwise the system is being perverted and "gamed". . . by "designing" projects as "apartments" and then using the "apartments" as "Apartment Hotels". . . The developer does not deny this is its intent.

5. The developer's counsel does not deny the legal impact of the *Chun vs. Del Cid* case (2019) 34 Cal. App. 5th 806 where the court held renters of beds and bedrooms (exclusively) in a single-family home were protected by the rent control law because those individual beds and bedrooms, rented ***exclusively*** to tenants as their prime residence constituted "***guest rooms"*** under the zoning law (LAMC Section 12.03). . .because the occupants/bed-renters did ***not*** have co-equal rights to the use of the other bedrooms rented out exclusively to the other tenants in the house.

6. Relying on the "design" as controlling the outcome is legally incorrect because the definitions of "*guest room*" and "*apartment*" speak not just to "design", but to intended and actual "use". . . and if this developer gets a Certificate of Occupancy for "apartments", and uses them as "guest rooms" as per the Del Cid decision, then their Certificate of Occupancy will be rendered void and they will have to pay relocation to the tenants they have to evict. . . . to comply with the zoning law. This is reckless and it is stupid. . It is what bankrupted the developer of the Sunset/Gordon project. . . The only question is whether these developers think they can pull this scam off with whatever City Hall connections they possess. . . . They are not going to rent these 'units' as individual "apartments". . Who rents 5-6 bedroom traditional "apartments", as apartments anymore? It is just too expensive. . . The cost for a one-bedroom apt. approaches $2,000. . Making the cost of a 5-6 bedroom apartment $4K-$5K per month. . By renting "by the bed" at $1500 per month, they can get $7500-$9000 per month per "apartment". . . .

7. All for a measly 2 very low affordable units. . . . . By the way, the term "units" is not defined in the TOC guidelines either. . So by approving this project under TOC guidelines, you are violating the zoning law. . So no CEQA exemption is available on that basis either because the TOC guidelines, as applied here, violate the zoning law. . and Planning, via guidelines***, cannot amend the zoning laws. . Only the City Council can do that. . and the City Council has not done that***. None of this is disputed by the developer's counsel.

Here are the definitions of "Apartment". . . "Apartment House". . . . "Apartment Hotel". . . "Dwelling Unit" and "Guest House" under the Zoning Code (LAMC Section 12.03):

LAMC SECTION 12.03 (Definitions)

APARTMENT. Same as dwelling unit. **(Added by Ord. No. 107,884, Eff. 9/23/56.)**

APARTMENT HOTEL. A residential building designed *or* used for both *two* or more *dwelling units and six* or more *guest rooms* or *suites of rooms.* **(Amended by Ord. No. 107,884, Eff. 9/23/56.)**

APARTMENT HOUSE. A *residential building* designed *or* used for *three* or more *dwelling units* or a combination of three or more dwelling units and not more than *five guest rooms* or *suites* of rooms. **(Amended by Ord. No. 107,884, Eff. 9/23/56.)**

DWELLING UNIT. A group of *two* or more *rooms*, one of which is a kitchen, *designed* for occupancy by *one family* for living and sleeping purposes. **(Amended by Ord. No. 107,884, Eff. 9/23/56.)**

GUEST ROOM. Any habitable room except a kitchen, designed *or* used for occupancy by one or more persons *and not in a dwelling unit*. **(Added by Ord. No. 107,884, Eff. 9/23/56.)**

SEC. 12.22. EXCEPTIONS.

A. Use. . . . . .

25. Affordable Housing Incentives - Density Bonus. (Amended by Ord. No. 179,681, Eff. 4/15/08.)

(a) **Purpose.** The purpose of this subdivision is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915-65918, and to increase the production of affordable housing, consistent with City policies.

(b) **Definitions.** Notwithstanding any provision of this Code to the contrary, the following definitions shall apply to this subdivision:

Residential Unit - *a dwelling unit* or *joint living and work quarters;* a mobilehome, as defined in California Health and Safety Code Section 18008; a mobile home lot in a mobilehome park, as defined in California Health and Safety Code Section 18214; *or a Guest Room* or Efficiency Dwelling Unit *in a Residential Hotel.*

Here is the relevant quote from the *Del Cid* case referenced above at page 817 where the key factor the Court notes in whether the rented room in the house is a "guest room" is the factor of "exclusive occupancy" by the tenant/renter to the exclusion of all others renting or occupying the home:

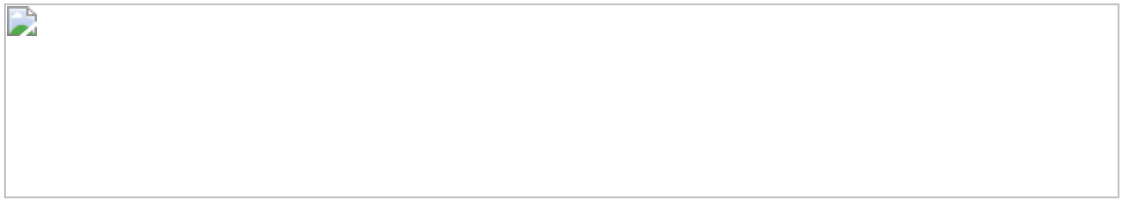
Given this undisputed evidence, we conclude that the Property as currently configured and occupied does not qualify for the exemption for a "Dwelling, one-family": within the plain meaning of relevant definitions of section 12.03, it is *not* a "*detached dwelling containing only one dwelling unit*." That is, it is not a single "group of two or more rooms, one of which is a

kitchen, ***designed for occupancy by one family for living and sleeping purposes***." (§ 12.03, italics added.) The term "***family***" is defined as ***"[o]ne or more persons living together in a dwelling unit," meaning that they must live together in the group of two or more rooms, one of which is a kitchen, that forms the dwelling unit***. (*Ibid.*) Moreover, besides living in that group of rooms, ***those persons also must have "common access to, and common use of all living***, kitchen, and eating ***areas*** within" that group of rooms. (*Ibid.*, italics added.) Thus, to be designed for occupancy by one family, the group of nine bedrooms, at least two bathrooms, and the kitchen contained in the Property must be designed to give the tenants common access to and use of not simply the kitchen, ***but also all living areas***. Here, ***the tenants do not have common access to and use of all living areas that form the purported dwelling unit, because (as the trial court found) the tenant of each of the four bedrooms being rented has exclusive use of and access to that room.*** Thus, the tenants do not comprise one family within the meaning of section 12.03, and the Property (whatever its original design) no longer has a design for occupancy by one family, and is not occupied by one family.

With Lexington 1, the language is equally as purposefully ambiguous. . . . The talk in terms of a "multi-family "dwelling". . .with 21 "units". . Again, type of "unit" is not spelled out. . and "unit" is not a legally defined term. This misdescription of the intended use of the project means that the CEQA protocol has been misused and misapplied. No CEQA exemption for either project is permissible or lawful. For this reason, the appeals to the CEQA exemption in both projects must be granted.

Here is 5817-5823 (Lexington 1):

NOTE: THE "***PROJECT***" IS DESCRIBED AS A "***21-UNIT MULTI-FAMILY DWELLING***" - This description is purposely vague and therefore inaccurate because the developer intends on using the project as an "Apartment Hotel" containing 78 "guest rooms"and 4 "apartments".



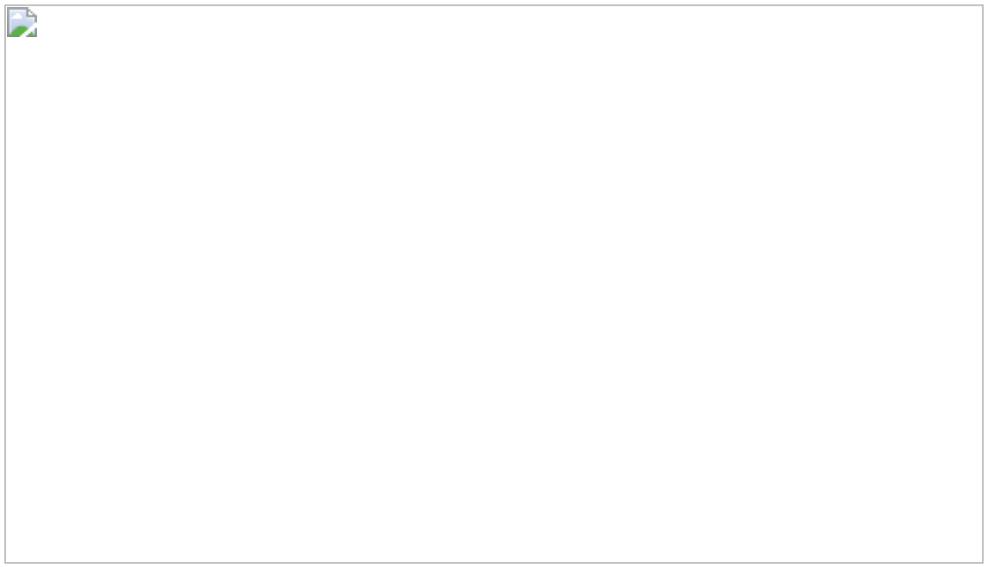
The Director's Determination approved "***21 Dwelling Units***". . .Meaning the use is limited to an "apartment" use. . . The developer intends on renting each bedroom out separately and exclusively to individual tenants. . This is the definition of a "guest room". . . . So the approval does not match the intended "use" and there is no express limitation on the proposed "use". . . This is error. . The applicant's lawyer in his letter does not deny the fact that the developer intends to "rent-by-the-bed". . Such a use is inconsistent with the zoning; the TOC guidelines cannot lawfully operate to amend the zoning code to permit such a use in an R-3 zone. . . Because the project, in its design and intended "use" is misdescribed, or inaccurately described, the is no factual or legal basis for granting a CEQA "in-fill" exemption.

Here are the conditions of approval. . .Back to "dwelling units" limited to 21.. . .The proposed ***use*** where 78 beds are going to be individually rented out exclusively to non-family individuals or groups as their primary residence is inconsistent with this grant. . . If the developer wants a CEQA exemption, the developer has to agree that the proposed "use" will be as "apartments" and not as an "Apartment Hotel". . . Something the developer cannot and will not do because his Wall Street investors expect to make a killing gaming the system by pretending the "use" is as "apartments" when the real intended use is as an "apartment hotel".

The developer's attorney speaks in terms of "design", but never mentions "use" and does not dispute the Appellants' contention that the real intention here is to "rent-by-the-bed" and use the building as an "Apartment Hotel".

CONDITIONS OF APPROVAL

2. **Residential Density.** The project shall be limited to a maximum density of 21 dwelling units including Density Bonus Units.



1. PROJECT DESCRIPTION

A. Briefly describe the entire project and any related entitlements (e.g. Tentative Tract, Conditional Use, Zone Change, etc.). The description must include all phases and plans for future expansion.

A 17-unit apartment; pursuant to TOC Guidelines, Tier 2 with Base incentives for FAR and reduced parking; additional incentives to allow the height, rear yard setback reduction and 20% reduction to the open space. Please see Attachment A.

This is false. . . . The intended use is to rent out each bedroom separately and exclusively under a "co-living" business model where exclusive use of bedrooms will be granted, along with non-exclusive use of the common areas (kitchen, living room, some bathrooms, etc.). While this is permissible in a Commercial zone, and in an R-4 or R-5 zone, it is not permissible in an R-3 zone. The developer does not deny this. . .

The appropriate planning protocol is for the developer to procure a zoning change, coupled with an application for a conditional use permit.

Here is the relevant provision from LAMC Section 12.24. . . Note the reference to "Apartment Hotels" and where they are permitted.. .in "C" zones and in "R-4"or "R-5" zones.

SEC. 12.24. CONDITIONAL USE PERMITS AND OTHER SIMILAR QUASI-JUDICIAL APPROVALS.

(Amended by Ord. No. 173,268, Eff. 7/1/00, Oper. 7/1/00.)

T. Vesting Conditional Use Applications.

3. **Procedures.**

(a) **Filing and Processing an Application.** ***A vesting conditional use permit application shall be filed on the same form and have the same contents, accompanying data and reports and shall be processed in the same manner as set forth in Subsections B through Q for a conditional use permit except as provided below.*** The application shall specify that the case is for a vesting conditional use permit. If any rules, regulations or ordinances in force at the time of filing require any additional approvals (such as a variance or coastal development permit), the complete application for these additional approvals shall be filed prior to or simultaneously with the vesting conditional use permit to be processed pursuant to Section 12.36. In all vesting conditional use permit cases, a site plan and a rendering of the architectural plan of the building envelope shall be submitted with the application. The plans and renderings shall show the proposed project's height, design, size and square footage, number of units, the location of buildings, driveways, internal vehicular circulation patterns, loading areas and docks, location of landscaped areas, walls and fences, pedestrian and vehicular entrances, location of public rights-of-way and any other information deemed necessary by the Director of Planning.

(b) **(Amended by Ord. No. 173,492, Eff. 10/10/00.)** Vesting conditional use permits may be filed for ***the following conditional uses*** under the authority of the City Planning Commission, Area Planning Commission, and Zoning

Administrator as described in Subsections U, V and W:

Hotels and apartment hotels, in the CR, C1, C1.5, C2, C4 and C5 Zones if within 500 feet of any A or R Zone or in the M1, M2, or M3 Zones when more than half of the lot is in a C Zone; ***hotels and motels in the R4 or R5 Zones***

. . . .

W. Authority of the Zoning Administrator for Conditional Uses/Initial Decision. The following uses and activities may be permitted in any zone, unless restricted to certain zones or locations, if approved by the Zoning Administrator as the initial decision-maker or the Area Planning Commission as the appellate body. The procedures for reviewing applications for these uses shall be those in Subsections B through Q in addition to those set out below. **(First Para. Amended by Ord. No. 173,992, Eff. 7/6/01.)**

24. Hotels. (Amended by Ord. No. 185,931, Eff. 7/1/19.)

(a) Hotels (including motels), ***apartment hotels***, or hostels in the CR, C1, C1.5, C2, C4, and C5 Zones when any portion of a structure proposed to be used as a hotel (including a motel), apartment hotel, or hostel is located within 500 feet of any A or R Zone.

The proposed Lexington 1 and Lexington 2 projects, as contemplated in its use, are ***not*** CEQA Exempt.. . . . Nothing in the developer's presentation supports a contrary conclusion because they do not deny what their intended use will be. . . as per their business model. . .

Lexington 1 - An residential building intended for use as 78 "guest rooms"and 4"apartments";

Lexington 2 - A residential building intended for use as 95 "guest rooms".

Noel Weiss
(310) 822-0239

Here is 5817-5823 (Lexington 1):

NOTE: THE "***PROJECT***" IS DESCRIBED AS A "***21-UNIT MULTI-FAMILY DWELLING***"

The proposed project includes the demolition of the two (2) existing single-family structures with associated accessory structures and the construction, use and maintenance of a five-story, 56-foot tall, 21-unit multi-family dwelling. The building will be constructed with four (4) residential levels over one (1) at-grade parking level. The project will provide a total of 29 automobile parking spaces.

The Director's Determination approved "***21 Dwelling Units***". . .

CONDITIONS OF APPROVAL

2. **Residential Density.** The project shall be limited to a maximum density of 21 dwelling units including Density Bonus Units.

Exhibit C-2

21STCP00048 January 14, 2022
CONCERNED NEIGHBORS OF LEXINGTON AVENUE, A CALIFORNIA UNINCORPORATED ASSOCIATION vs CITY OF LOS ANGELES, CHARTER CITY AND MUNICIPAL CORPORATION, et al. 9:00 AM

Judge: Honorable Maurice A. Leiter
Judicial Assistant: M. Tran
Courtroom Assistant: R. Manzo
CSR: Pam Myers #12940
ERM: None
Deputy Sheriff: None

THE MOTION TO STRIKE IS DENIED.

RESPONDENTS AND REAL PARTIES IN INTEREST TO NOTICE.

If the parties wish to submit on the tentative, please email the courtroom at SMCdept54@lacourt.org with notice to opposing counsel (or self-represented party) before 8:30 am on the day of the hearing.

The Court considers the moving papers, opposition and reply.

BACKGROUND

On January 11, 2021, Petitioner Concerned Neighbors of Lexington Avenue filed a Petition for Writ of Mandate and Complaint for Declaratory Relief. On June 25, 2021, Petitioner filed the operative First Amended Petition for Writ of Mandate and Complaint to Enjoin Public and Private Nuisance, For Damages and Declaratory Relief.

The First Amended Petition alleges these causes of action: (1) Abuse of Discretion in Approving CEQA Exemption; (2) Abuse of Discretion in Approving TOC Incentives for Lexington 2 Project; (3) Failure to Conduct Site Plan Review; (4) Processing of Building Permits Which Allow for Misuse of Property in Violation of the City's Zoning Laws; (5) Processing of TOC Application Which Omits Consideration of Potential Guest Room Use Thus Allowing for Misuse of Property in Violation of the City's Zoning Laws; (6) Nuisance; (7) Writ of Mandate; (8) Violation of the Brown Act; and (9) Declaratory Relief.

On December 17, 2021, Real Parties in Interest 5806 Lexington, LLC, 5817 Lexington, LLC, and Daniel Pourbaba and Respondents City of Los Angeles, Los Angeles County City Council, Los Angeles Department of Building and Safety filed a Joint Demurrer and Motion to Strike First Amended Petition for Writ of Mandate and Complaint.

ANALYSIS

A demurrer to a complaint may be taken to the whole complaint or to any of the causes of action in it. (Code Civ. Proc., § 430.50, subd. (a).) A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those

allegations. (Picton v. Anderson Union High Sch. Dist. (1996) 50 Cal.App.4th 726, 732.) The court must treat as true the complaint's material factual allegations, but not contentions, deductions or conclusions of fact or law. (Id., at pp. 732–33.) The complaint is to be construed liberally to determine whether a cause of action has been stated. (Id., at p. 733.)

A. Request for Judicial Notice

Respondents' and Real Parties in Interests' Request for Judicial Notice is GRANTED. (Evid. Code, §§ 451, 452, 453.)

B. First Amended Petition for Writ of Mandate and Complaint

The First Amended Petition for Writ of Mandate and Complaint is based on Respondents' approval of two development projects, "Lexington 1" and "Lexington 2". (First Amended Petition ("FAP"), ¶ 1.) The Lexington 1 Project concerns the development of a twenty-one-unit apartment building, consisting of fourteen five-bedroom units, one four-bedroom unit, and two two-bedroom units. (Id., ¶ 1.C.(ii).) On September 11, 2019, Real Parties applied to Respondent City of Los Angeles for a density land use entitlement to develop and construct the Lexington 1 Project. (Id., ¶ 18.) On March 10, 2020, Respondent Los Angeles Planning Department issued a Director's Determination granting Real Parties a CEQA categorical exemption and a density bonus incentive allowing for an increase in height of the apartment building. (Ibid.) Petitioner appealed Respondent's approval of the Lexington 1 Project. (Ibid.) On April 23, 2020, the Los Angeles City Planning Commission (the administrative body to whom Petitioner submitted the abovementioned appeal) denied Petitioner's appeal. (Ibid.)

The Lexington 2 Project concerns the development of a seventeen-unit apartment building which consists of fourteen six-bedroom units, one five-bedroom unit, and two three-bedroom units. (Id., ¶ 1.A.(ii).) On November 11, 2019, Real Parties in Interest applied to Respondent City of Los Angeles for a density land use entitlement to develop and construct the Lexington 2 Project. (Id., ¶ 20.) On July 23, 2020, Respondent Los Angeles Planning Department issued a Director's Determination granting Real Parties in Interest a CEQA categorial exemption. It also approved the Project's participation in the Transit Oriented Communities (TOC) Incentive Program, including (a) categorizing the Project as "Tier 2", (b) designating two "units" for very low income households for a period of fifty-five years, (c) permitting one additional story upon the

apartment building, (d) permitting an open space, and (e) permitting a yard set-back. (Ibid.) Petitioner appealed Respondent's approval of the Lexington 2 Project. (Id., ¶ 21.) On September 17, 2020, the Los Angeles City Planning Commission denied Petitioner's appeal.

The First Amended Petition and Complaint challenges the Los Angeles City Planning Commission's denial of Petitioner's two appeals.

C. First Cause of Action: Abuse of Discretion in Approving CEQA Exemption

Respondents and Real Parties demur to Petitioner's first cause of

action on the grounds that the cause of action fails to state facts sufficient to constitute

a cause of action. Respondents and Real Parties also move to strike paragraphs 28 and 29 of the first cause of action on the ground that these allegations are barred by the applicable statute of limitations.

The first cause of action seeks a writ of mandate directing Respondents to vacate and set aside Respondents' decision and approval of a CEQA exemption for the Lexington 1 and Lexington 2 Projects. (FAP, ¶¶ 31, Prayer 1.) Petitioner alleges that Respondents' approval of a CEQA exemption for the Lexington 1 and Lexington 2 Projects constitutes an abuse of discretion because each Project violates applicable zoning laws and therefore could not be subject to a CEQA exemption. (Id., ¶¶ 30, 31.) Petitioner also seeks a writ of mandate directing Respondents to vacate and set aside Respondents' decision and approval of the Lexington 1 and Lexington 2 Projects as approved because they violate the Hollywood Redevelopment Plan. (Id., ¶¶ 28-29.)

1. Statute of Limitations

Respondents and Real Parties move to strike paragraphs 28 and 29 of the First Amended Petition and Complaint, arguing the contentions in those paragraphs are time-barred by the statute of limitations in Government Code section 65009, subdivision (c)(1)(E). (Gov. Code, § 65009, subd. (c)(1)(E).)

Government Code section 65009 sets forth the applicable limitations period for filing and serving a Petition seeking "[t]o attack, review, set aside, void, or annul any decision on the

matters listed in Sections 65901 and 65903 [of the Government Code], or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit." (Gov. Code, § 65009, subd. (c)(1)(E).) Government Code section 65009, subdivision (c)(1) says that such an action must be commenced and served on the legislative body "within 90 days after the legislative body's decision." (Id., § 65009, subd. (c)(1).

The first cause of action seeks in part to void and set aside Respondents' approval of the Lexington 1 and Lexington 2 Projects on the ground that each Project was approved in violation of the Hollywood Redevelopment Plan. (FAP, ¶¶ 28-29.) The parties do not dispute that the ninety-day statute of limitations period of Government Code section 65009 is applicable to these administrative actions. The issue is whether Los Angeles Charter section 245 impacts when the ninety-day statute of limitations period of Government Code section 65009 begins.

The Court finds that Los Angeles Charter section 245 applies and affects the start of the ninety-day statute of limitations period of Government Code section 65009.

Los Angeles Charter section 245 states, "[a]ctions of the boards of commissioners shall become final at the expiration of the next five meeting days of the [City] Council . . . ." (Los Angeles Charter, section 245 [italics added].) Los Angeles Charter section 501 states, "[e]ach department created in the Charter shall have a board of commissioners consisting of five commissioners, unless some other number is provided in the Charter for a specific board." (Id., section 501.) And Los Angeles Charter section 551 specifies that, "[t]he Board of Commissioners of the City Planning Department shall be known as the City Planning Commission and shall consist of nine members." (Id., section 551 [italics added].)

As noted above, the parties do not dispute that the ninety-day statute of limitations period in Government Code section 65009 applies: Petitioner seeks "[t]o attack, review, set aside, void, or annul" the decision of the Los Angeles City Planning Commission, an administrative appellate body, to deny Petitioner's appeal. (Gov. Code, §§ 65009, subd. (c)(1)(E), 65903.) According to the plain language of Sections 245 and 551 of the Los Angeles Charter, the City Planning Commission's decision on Petitioner's appeal is not "final" (and the statute of limitations of Government Code section 65009 does not begin to run) until "the expiration of the next five meeting days of the [City] Council." (Los Angeles Charter, sections 245, 501, 551.)

Petitioner's challenge to the Lexington 1 Project is time-barred by Government Code section

65009 and Los Angeles Charter section 245. (Gov. Code, § 65009, subd. (c)(1)(E); Los Angeles Charter, section 245.) On April 28, 2020, the City Planning Commission denied Petitioner's appeal and challenge to Respondents' approval of the Lexington 1 Project. (FAP, ¶ 6.) Under Los Angeles Charter section 245, the decision of the City Planning Commission became final on May 13, 2020, five City Council meeting days after the City Planning Commission's decision. (Los Angeles Charter, section 245.) The ninety-day statute of limitations period of Government Code section 65009 began to run from this date of finality. (Ibid.) Ninety days after May 13, 2020 is August 11, 2020. Petitioner, then, was required to file and serve the Petition concerning Lexington 1 no later than August 11, 2020. (Gov. Code, § 65009, subd. (c)(1)(E); Los Angeles Charter, section 245.) Petitioner did not file the Petition until January 11, 2021.

Petitioner's challenge to the Lexington 2 Project, by contrast, was timely filed. (Gov. Code, § 65009, subd. (c)(1)(E); Los Angeles Charter, section 245.) On September 22, 2020, the City Planning Commission denied Petitioner's appeal and challenge to Respondents' approval of the Lexington 2 Project. (FAP, ¶ 1.A.(i), fn. 1.) Pursuant to Los Angeles Charter section 245, the decision of the Los Angeles City Planning Commission became final on October 14, 2020, five City Council meeting days after the City Planning Commission's decision. (Los Angeles Charter, section 245; FAP, ¶ 1.A.(i), fn. 1.) The ninety-day statute of limitations period of Government Code section 65009 began to run from this date of finality. (Ibid.) Ninety days from October 14, 2020 is January 12, 2021. Petitioner was required to file and serve the present Petition challenging the decision concerning Lexington 2 no later than January 12, 2021. (Gov. Code, § 65009, subd. (c)(1)(E); Los Angeles Charter, section 245.) Petitioner timely filed the Petition as to Lexington 2 on January 11, 2021.

The paragraphs sought to be stricken (paragraphs 28 and 29 of the First Amended Petition) include allegations concerning both the Lexington 1 and Lexington 2 Projects. As a result, even though Petitioner's challenge to the Lexington 1 Project is time-barred, the Court cannot strike all or portions of these paragraphs because they include Petitioner's timely allegations as to the Lexington 2 Project.

Respondents' and Real Parties in Interest's Motion to Strike paragraphs 28 and 29 of Plaintiffs' First Amended Petition and Complaint is DENIED.

2. Failure to State Sufficient Facts to Constitute a Cause of Action

As noted, Petitioner alleges that Respondents' approval of a CEQA exemption as to the Lexington 1 and Lexington 2 Projects is an abuse of discretion because each Project is in violation of the applicable zoning ordinance. Petitioner contends the Lexington 1 and Lexington 2 Projects constitute "Apartment Hotels" as defined in Los Angeles Municipal Code section 12.03. (FAP, ¶ 27.) Petitioner also states that the area in which the Lexington 1 and Lexington 2 Projects are to be constructed is in an "R3" (residential) zoning district, in which "Apartment Hotels" are not permitted. (Ibid.) As a result, Respondents' approval of a CEQA categorical exemption for the Lexington 1 and Lexington 2 Projects must be an abuse of discretion because "[t]he right to a CEQA categorical exemption assumes that the project . . . complies with the City's zoning laws." (Id., ¶¶ 27, 30, 31.)

The Court finds that Petitioner has failed to state a cause of action.

Petitioner alleges that the parcels on which Lexington 1 and Lexington 2 are to be developed are within a residential zoning district identified as "R3". (FAP, ¶ 30.) Under Los Angeles Municipal Code section 12.10, "Apartment Hotels" are not permitted in "R3" zoning districts. (FAP, ¶ 27; Los Angeles Municipal Code, section 12.10, subd. (A).) By contrast, "Apartment Houses" are permitted in "R3" zoning districts. (Los Angeles Municipal Code, section 12.10, subd. (A)(4).)

Los Angeles Municipal Code section 12.03 defines "Apartment Hotels" as, "[a] residential building designed or used for both two or more dwelling units and six or more guest rooms or suites of rooms." (Id., section 12.03 ["Definitions"].) A "Dwelling Unit" is "[a] group of two or more rooms, one of which is a kitchen, designed for occupancy by one family for living and sleeping purpose". (Ibid.) A "Family" is defined as "[o]ne or more persons living together in a dwelling unit, with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit. (Ibid.) "A "Guest Room" is "[a]ny habitable room except a kitchen, designed or used for occupancy by one or more persons and not in a dwelling unit." (Ibid.) A "Suite" is "[a] group of habitable rooms designed as a unit, and occupied by only one family, but not including a kitchen or other facilities for the preparation of food, with entrances and exits which are common to all rooms comprising the suite." (Ibid.) "Apartment Houses" are defined as "[a] residential building designed or used for three or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms." (Ibid.)

Petitioner has not adequately alleged that Lexington 1 or Lexington 2 is an impermissible "Apartment Hotel." Petitioner claims that Lexington 1 is an apartment building made up of

twenty-one separate residential units. (FAP, ¶ 1.C.(ii).) Each residential unit has a kitchen. (Ibid.) Petitioner alleges that Lexington 2 is an apartment building similarly made up of seventeen separate residential units. (Id., ¶ 1.A.(ii).) Based on Petitioner's allegations, these Projects are not "Apartment Hotels." Neither Project includes "Guest Room[s]" because every bedroom is located within a "Dwelling Unit", an apartment unit which includes a kitchen and is designed for occupancy by one or more persons. (Los Angeles Municipal Code, section 12.03.) Neither Project includes "Suite[s]" because every apartment unit includes a kitchen. (Ibid.)

Respondents' and Real Parties in Interest's Demurrer to Petitioner's first cause of action is SUSTAINED with leave to amend.

D. Second Cause of Action: Abuse of Discretion in Approving TOC Incentives

Respondents and Real Parties demur to Petitioner's second cause of action on the grounds that the cause of action is barred by the statute of limitations in Government Code section 65009, subdivision (c)(1)(E). (Gov. Code, § 65009, subd. (c)(1)(E).)

The second cause of action seeks a writ of mandate voiding and setting aside Respondents' approval of the Lexington 2 Project. (FAP, ¶ 36.) Petitioner contends that Respondents' approval of the Lexington 2 Project is an abuse of discretion because Respondents' authorized incentives for increased height, reduced open space, or reduced front, side or rear yards, are in excess of what is permissible under Measure JJJ and the Los Angeles Charter. (Id., ¶ 35.)

As with Petitioner's first cause of action, the second cause of action seeks "[t]o attack, review, set aside, void, or annul" the decision of the City Planning Commission to deny Petitioner's appeal challenging the approval of the Lexington 2 Project. (Gov. Code, §§ 65009, subd. (c)(1)(E), 65903.) As discussed in Section C.1., under Government Code section 65009 and Los Angeles Charter section 245, Petitioner was required to file and serve the Petition as to Lexington 2 no later than January 12, 2021. (Gov. Code, § 65009, subd. (c)(1)(E); Los Angeles Charter, section 245.) Petitioner filed the Petition on January 11, 2021; it is timely.

Respondents' and Real Parties in Interest's Demurrer to Petitioner's second cause of action is OVERRULED.

E. Third Cause of Action: Failure to Conduct Site Plan Review

Respondents and Real Parties contend Petitioner's third cause of action is barred by the statute of limitations of Government Code section 65009, subdivision (c)(1)(E). (Gov. Code, § 65009, subd. (c)(1)(E).) Respondents and Real Parties also contend Petitioner's third cause of action fails to state facts sufficient to constitute a cause of action.

The third cause of action contends that, under Los Angeles Municipal Code section 16.05, before the issuance of a "grading permit, foundation permit, building permit, or use of land permit", an administrative site plan review must be undertaken for "any development project which creates, or results in an increase of, 50 or more dwelling units or guest rooms, or a combination thereof". (FAP, ¶ 39.) The third cause of action alleges that Lexington 1 and Lexington 2 include more than 50 guest rooms—eighty-two guest rooms in Lexington 1 and ninety-five guest rooms in Lexington 2— and Respondents failed to conduct an administrative site plan review before approving either Project. (Id., ¶ 40.)

Petitioner also contends that Real Parties were required to complete a Transit Oriented Communities (TOC) Referral Form for Lexington 2, which was to be reviewed by Respondents, to determine whether the Project is subject to TOC entitlements. (FAP, ¶ 41.) Petitioner contends the Referral Form is vague, as it only requires applicants to specify the number of "units" included within the Project (as opposed to "dwelling units") and fails to specify the number of "guest rooms" to be included in the Project. (Ibid.) Petitioner alleges that under the applicable zoning ordinance "Apartment Hotels" are not permitted in "R3" (residential) zoning districts. (FAP, ¶ 15, fn. 3). The Lexington 2 Project is located is within an "R3" zoning district. (Id., ¶ 41.) As a result, the Referral Form precludes Respondents from determining whether this is an "Apartment Hotel" not permitted in "R3" zoning districts. (Id., ¶¶ 41-42.)

1. Statute of Limitations

As discussed above, under Government Code section 65009 and Los Angeles Charter section 245, Petitioner was required to file and serve the Petition challenging the Los Angeles City Planning Commission's decision with respect to the Lexington 2 Project no later than January 12, 2021. (Gov. Code, § 65009, subd. (c)(1)(E); Los Angeles Charter, section 245.) Petitioner timely filed the present Petition on January 11, 2021.

Respondents' and Real Parties in Interest's Demurrer to Petitioner's third cause of action is OVERRULED on statute of limitations grounds.

2. Failure to State Facts Sufficient to Constitute a Cause of Action

As noted, Petitioner's third cause of action alleges that, because the Lexington 2 Project constitutes an "Apartment Hotel", Respondents were required to complete an administrative site inspection pursuant to Los Angeles Municipal Code section 16.05. (FAP, ¶¶ 39-40.) Petitioner's third cause of action alleges that Respondents' improperly approved the Lexington 2 Project because the Project constituted an impermissible "Apartment Hotel".

As discussed in Section C. 2., Petitioner has not adequately pleaded that the Lexington 2 Project constitutes an impermissible "Apartment Hotel". Respondents' and Real Parties in Interest's Demurrer to Petitioner's third cause of action is SUSTAINED with leave to amend on this ground.

F. Fourth Cause of Action: Processing of Building Permits in Violation of Zoning Laws

Respondents and Real Parties argue Petitioner's fourth cause of action is barred by the applicable statute of limitations in Government Code section 65009, subdivision (c)(1)(E). (Gov. Code, § 65009, subd. (c)(1)(E).) Respondents and Real Parties also contend Petitioner's fourth cause of action fails to state facts sufficient to constitute a cause of action.

Petitioner's fourth cause of action alleges that Respondent Department of Building & Safety's processing of grading and building permits for the Lexington 1 and Lexington 2 Projects was in error because (1) an administrative site plan review has not taken place for either Project, and (2) the processing of the permits would constitute a violation of the subject zoning ordinance, which does not permit the development of "Apartment Hotels" in "R3" (residential) zoning districts. (FAP, ¶ 45.)

1. Statute of Limitations

As discussed in Section C.1., under Government Code section 65009 and Los Angeles Charter section 245, Petitioner was required to file and serve the present Petition challenging the Los

Angeles City Planning Commission's decision with respect to the Lexington 1 Project no later than August 11, 2020, and the Lexington 2 Project no later than January 12, 2021. (Gov. Code, § 65009, subd. (c)(1)(E); Los Angeles Charter, section 245.) Petitioner filed the Petition on January 11, 2021. Petitioner's fourth cause of action challenging the approval of the Lexington 2 Project is timely, but Petitioner's challenge to the approval of the Lexington 1 Project is untimely.

To sustain a Demurrer to a cause of action, the Demurrer must dispose of the entire cause of action. (Fremont Indemnity Co. v. Fremont General Corp. (2007) 148 Cal.App.4th 97, 119 ["A demurrer must dispose of an entire cause of action to be sustained."].) The Court cannot sustain a Demurrer to part of a cause of action, so the Demurrer to Petitioner's fourth cause of action fails on this ground.

Respondents' and Real Parties in Interest's Demurrer to Petitioner's fourth cause of action is OVERRULED on statute of limitations grounds.

2. Failure to State Facts Sufficient to Constitute a Cause of Action

As discussed in Section C. 2., Petitioner has not adequately alleged that the Lexington 1 and Lexington 2 Projects constitute impermissible "Apartment Hotel[s]". Petitioner has failed to properly allege facts to support the fourth cause of action.

Respondents' and Real Parties in Interest's Demurrer to Petitioner's fourth cause of action is SUSTAINED with leave to amend on this ground.

G. Fifth Cause of Action: Improper Processing of TOC Application

Respondents and Real Parties in Interest argue Petitioner's fifth cause of action is barred by the applicable statute of limitations. Respondents and Real Parties also contend Petitioner's fifth cause of action fails to state facts sufficient to constitute a cause of action.

Similar to the third cause of action, the fifth cause of action alleges that the TOC Referral Form employed with respect to the Lexington 2 Project is vague and improper, and allowed

Respondents to approve Projects beyond what is permitted within "R3" (residential) zoning districts. (FAP, ¶ 47.) By employing the TOC Referral Form, Petitioner contends that Respondent Los Angeles Department of Planning has violated its mandatory duty to follow the provisions of the City Charter. (Ibid.)

1. Statute of Limitations

As discussed in Section C.1., pursuant to Government Code section 65009 and Los Angeles Charter section 245, Petitioner was required to file and serve the present Petition challenging the City Planning Commission's decision with respect to the Lexington 2 Project no later than January 12, 2021. (Gov. Code, § 65009, subd. (c)(1)(E); Los Angeles Charter, section 245.) Petitioner timely filed the present Petition on January 11, 2021.

Respondents' and Real Parties in Interest's Demurrer to Petitioner's fifth cause of action is OVERRULED on statute of limitations grounds.

2. Failure to State Facts Sufficient to Constitute a Cause of Action

Petitioner's fifth cause of action alleges that the TOC Referral Form has permitted Respondents to approve the Lexington 2 Project, although the Project constitutes an improper "Apartment Hotel". (FAP, ¶ 47.) As discussed in Section C. 2, Petitioner has not alleged that the Lexington 1 and Lexington 2 Projects constitute impermissible "Apartment Hotel[s]". Petitioner has failed to properly allege facts to support the fifth cause of action.

Respondents' and Real Parties in Interest's Demurrer to Petitioner's fifth cause of action is SUSTAINED with leave to amend on this ground.

H. Ninth Cause of Action: Declaratory Relief

Respondents and Real Parties argue that Petitioner's ninth cause of action for declaratory relief fails as a matter of law because Code of Civil Procedure section 1094.5 is the exclusive mechanism to challenge an administrative decision made as a result of an administrative hearing.

Petitioner's ninth cause of action asserts that Respondents unlawfully adopted "recommendations" and "guidelines" of the Transit Oriented Communities (TOC) Affordable

Housing Program, which allowed Respondents to permit "incentives" and "concession" beyond those authorized by Measure JJJ for projects, including the Lexington 2 Project. (FAP, ¶¶ 2, 67.) Petitioner alleges the "recommendations" and "guidelines" have not been formally adopted by the City Council. (Ibid.) Petitioner seeks a declaration concerning: (1) the proper interpretation of Measure JJJ, and (2) where the City Council failed to enact the "guidelines" or "recommendations," whether Respondents' approval of the Lexington 2 Project was proper. (Id., ¶ Prayer 7.)

"Unless a party seeks a declaration [that] a statute or ordinance controlling development is facially unconstitutional as applied to all property governed and not to a particular parcel of land, an action for declaratory relief may not be had." (City of Santee v. Superior Court (1991) 228 Cal.App.3d 713, 718-719.) An action for declaratory relief is not appropriate to review the validity of an administrative decision. (Selby Realty Co. v. City of San Buenaventura (1973) 10 Ca.3d 110, 127.) "Rather, the proper method to challenge the validity of conditions imposed on a building permit is administrative mandamus under Code of Civil Procedure section 1094.5." (City of Santee, supra, 228 Cal.App.3d at p. 718.)

The ninth cause of action is a facial challenge to Respondents' "guidelines" and "recommendations" in an attempt to invalidate the building and grading permits issued for the construction and development of the Lexington 2 Project. (FAP, ¶¶ 2, 67.) Petitioner does not allege the "guidelines" and "recommendations" are unconstitutional as applied to all property governed, but rather contends each provision is improper as the authority employed to approve Lexington 2. (Ibid.) As Petitioner seeks to challenge the validity of the "guidelines" and "recommendations" as an avenue for voiding the decision of Respondents in approving the Lexington 2 Project, the proper avenue for relief is administrative mandamus, not declaratory relief.

Respondents' and Real Parties in Interest's Demurrer to Petitioner's ninth cause of action is SUSTAINED with leave to amend.

Real Party to give notice.

Exhibit D-2

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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September 15, 2020

MEMORANDUM FOR: Planning Directors and Interested Parties

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

SUBJECT: **Housing Accountability Act Technical Assistance Advisory (Government Code Section 65589.5)**

The Housing Accountability Act (HAA), Government Code section 65589.5, establishes limitations to a local government's ability to deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with objective local development standards and contribute to meeting housing need. The Legislature first enacted the HAA in 1982 and recently amended the HAA to expand and strengthen its provisions as part of the overall recognition of the critically low volumes of housing stock in California. In amending the HAA, the Legislature made repeated findings that the lack of housing and the lack of affordable housing, is a critical problem that threatens the economic, environmental, and social quality of life in California. This Technical Assistance Advisory provides guidance on implementation of the HAA, including the following amendments.

Chapter 368, Statutes of 2017 (Senate Bill 167), Chapter 373, Statutes of 2017 (Assembly Bill 678) - Strengthens the HAA by increasing the documentation necessary and the standard of proof required for a local agency to legally defend its denial of low-to-moderate-income housing development projects, and requiring courts to impose a fine of $10,000 or more per unit on local agencies that fail to legally defend their rejection of an affordable housing development project.

Chapter 378, Statutes of 2017 (Assembly Bill 1515) – Establishes a reasonable person standard for determining conformance with local land use requirements.

Chapter 243, Statutes of 2018 (Assembly Bill 3194) -Expands the meaning of zoning consistency to include projects that are consistent with general plan designations but not zoning designation on a site if that zone is inconsistent with the general plan.

Chapter 654, Statutes of 2019 (Senate Bill 330) - Defined previously undefined terms such as objective standards and complete application and set forth vesting rights for projects that use a new pre-application process. Most of these provisions sunset on January 1, 2025, unless extended by the Legislature and Governor.

If you have any questions, or would like additional information or technical assistance, please contact the Division of Housing Policy Development at (916) 263-2911.

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What is the Housing Accountability Act?

The Housing Accountability Act (HAA) (Government Code Section 65589.5), establishes the state's overarching policy that a local government may not deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with objective local development standards. Before doing any of those things, local governments must make specified written findings based upon a preponderance of the evidence that a specific, adverse health or safety impact exists. Legislative intent language indicates that the conditions that would give rise to such a specific, adverse impact upon the public health and safety would occur infrequently.

Subdivision (d) of the HAA describes requirements applicable to housing development projects that include units affordable to very- low, low- and moderate-income households (including transitional and supportive housing) as well as emergency shelters and farmworker housing. Subdivision (j) describes requirements applicable to all housing development projects, including both market-rate and affordable housing developments. Subdivisions (k), (l), and (m) expand the potential consequences for violations of the HAA. In 2017, the Legislature also granted the California Department of Housing and Community Development (HCD) authority to refer HAA violations to the Office of the Attorney General in Government Code section 65585.

The HAA was originally enacted in 1982 to address local opposition to growth and change. Communities resisted new housing, especially affordable housing, and, consequently, multiple levels of discretionary review often prevented or delayed development. As a result, developers had difficulty ascertaining the type, quantity, and location where development would be approved. The HAA was intended to overcome the lack of certainty developers experienced by limiting local governments' ability to deny, make infeasible, or reduce the density of housing development projects.

Recognizing that the HAA was falling short of its intended goal, in 2017, 2018, and again in 2019, the Legislature amended the HAA no less than seven times to expand and strengthen its provisions. Key restrictions on local governments' ability to take action against housing development projects are set out in Government Code section 65589.5, subdivisions (d) and (j). The law was amended by Chapter 368 Statutes of 2017 (Senate Bill 167), Chapter 373 Statutes of 2017 (Assembly Bill 678) and Chapter 378 Statutes of 2017 (Assembly Bill 1515), as part of the California 2017 Housing Package. The law was further amended by Chapter 243, Statutes of 2018 (Assembly Bill 3194) and Chapter 654, Statutes of 2019 (Senate Bill 330).

Why Do We Need the Housing Accountability Act?

The Housing Accountability Act has been in effect since 1982. Since that time, California's housing supply has not kept up with population and job growth, and the affordability crisis has grown significantly due to an undersupply of housing, which compounds inequality and limits economic and social mobility. Housing is a fundamental component of a healthy, equitable community. Lack of adequate housing hurts millions of Californians, stifles economic opportunities for workers and businesses, worsens poverty and homelessness, and undermines the state's environmental and climate goals and compounds the racial equity gaps faced by many communities across the state.

The legislative intent of the HAA was to limit local governments' ability to deny, make infeasible, or reduce the density of housing development projects. After determining that implementation of the HAA was not meeting the intent of the statute, the Legislature has amended the HAA to expand its provisions, strengthening the law to meaningfully and effectively curb the capacity of local governments to deny, reduce the density or render housing development projects infeasible.

Legislative Housing Accountability Act Interpretation Guidance

"It is the policy of the state that this section (HAA) 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." Government Code Section 65589.5 (a)(2)(L)

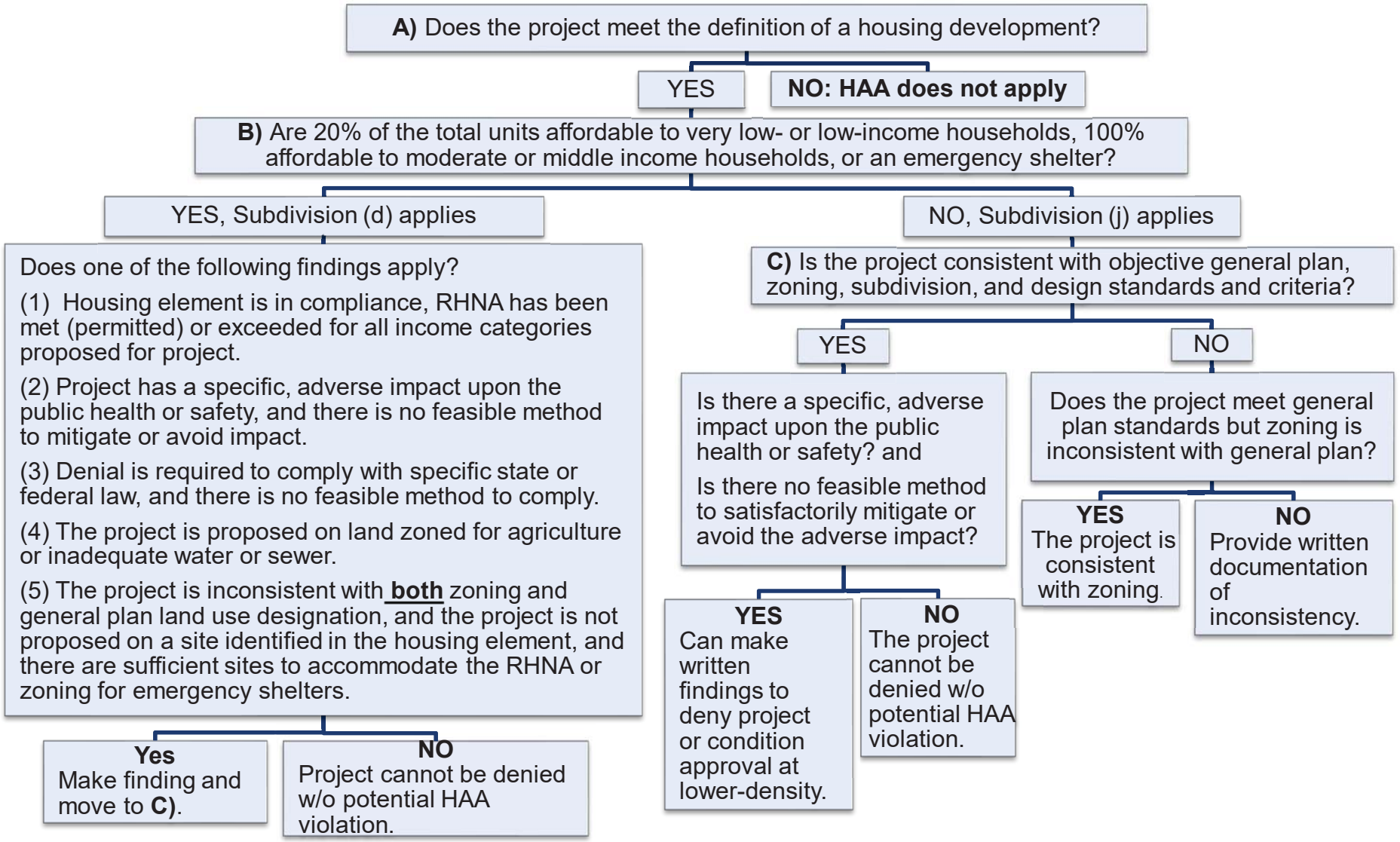
The following are findings and declarations found in the HAA pursuant to Government Code sections 65589.5(a):

- The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.
- California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.
- Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.
- Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.
- California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

- While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.
- The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.
- According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.
- California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.
- Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.
- The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.
- When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.
- An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.
- California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

Housing Accountability Act Decision Matrix

This decision tree generally describes the components of the HAA. Both affordable and market-rate developments are protected by components of the HAA. The statute contains detailed requirements that affect the applicability of the HAA to a specific housing project based on its characteristics.



Key Provisions of the Housing Accountability Act

The HAA sets out restrictions on local governments' ability to take action against housing development projects in Government Code section 65589.5, subdivisions (d) and (j). Subdivision (d) describes requirements applicable to housing development projects that include units affordable to very-low, low-, and moderate-income households (including transitional and supportive housing) as well as emergency shelters and farmworker housing. Subdivision (j) describes requirements applicable to all housing development projects, including both market-rate and affordable housing developments[1]. In sum, the HAA significantly limits the ability of a local government to deny an affordable or market-rate housing project that is consistent with planning and zoning requirements. This table describes the various component parts of the HAA for ease of reference.

Topic	Subdivisions of Government Code Section 65589.5
Declarations and legislative intent	(a), (b), (c)
Provisions for housing affordable to very low, low-, or moderate-income households, or an emergency shelter	(d), (i)
Applicability of the statute to coastal zones, local laws, and charter cities	(e), (f), (g)
Definitions	(h)
Provisions relating to all housing developments	(j)
Consequences for violation	(k), (l), (m), (n)
Vesting rights for pre-applications (SB 330)	(o)

The following is an overview of key provisions of the HAA focusing on project qualifications, applicability of local standards, provisions that relate to all housing projects, provisions that relate just to housing affordable to lower- and moderate-income households and emergency shelters, and consequences for violation of the HAA. Appendix A includes a list of definitions of terms referenced throughout the HAA and Appendix B includes information related to the Preliminary Application Process pursuant to Senate Bill 330.

Housing Development Project Qualifications

In order for a development to qualify for the protections under the HAA it must meet the definition of a "housing development project". Furthermore, for a project to qualify for the affordable housing protections, it must also meet the definition of "Housing for very low-, low-, or moderate-income households".

[1] *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1072-1073

Housing Development Project Definition

Government Code, § 65589.5, subdivision (h)(2).

A "housing development project" means a use consisting of residential units only, mixed use developments consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use, or transitional or supportive housing. Because the term "units" is plural, a development must consist of more than one unit to qualify under the HAA. The development can consist of attached or detached units and may occupy more than one parcel, so long as the development is included in the same development application.

Housing for Very Low, Low-, or Moderate-Income Households

Government Code, § 65589.5, subdivision (h)(3).

In order to qualify as a housing development affordable to lower- or moderate- income households, the project must meet one of the following two criteria:

- At least 20 percent of the total units shall be sold or rented to lower income households. Lower-income households are those persons and families whose income does not exceed that specified by Health and Safety Code, § 50079.5, 80 percent of area median income.
- 100 percent of the units shall be sold or rented to persons and families of moderate income, or persons and families of middle income. Moderate-income households are those persons and families whose incomes are 80 percent to 120 percent of area median income (Health and Safety Code, § 50093.) Middle-income households are those persons and families whose income does not exceed 150 percent of area median income (Gov. Code, § 65008 subd. (c).)

In addition, the rental or sales prices of that housing cannot exceed the following standards:

- Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based.
- Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

Housing Developments Applying for the Streamlined Ministerial Approval Process Pursuant to Government Code Section 65913.4.

To facilitate and expedite the construction of housing, Chapter 366, Statutes of 2017 (SB 35, Wiener) established the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need (RHNA). Recent amendments to the law clarified that projects utilizing the Streamlined Ministerial Approval Process qualify for the protections under the HAA (Gov. Code, § 65913.4, subd. (g)(2).)

Applicability of Local Standards

In addition to limiting the conditions for which a housing development project can be denied, the HAA also sets parameters around aspects of the approval process. Specifically, it defines:

- The type of development standards, conditions, and policies with which a housing development or emergency shelter can be required to comply
- Parameters for fees and exactions that can be imposed
- Standards that can be applied once an application is deemed complete
- Actions by a local government that would constitute a denial of a project or impose development conditions

These requirements are intended to provide developers with greater transparency and clarity in the entitlement process.

Objective Development Standards, Conditions, Policies, Fees, and Exactions
Government Code, § 65589.5, subdivision (f)

Local governments are not prohibited from requiring a housing development project or emergency shelter to comply with objective, quantifiable, written development standards, conditions, and policies (subject to the vesting provisions of the HAA and other applicable laws). However, those standards, conditions, and policies must meet the following criteria:

- Be appropriate to, and consistent with, meeting the local government's share of the RHNA or meeting the local government's need for emergency shelters as identified in the housing element of the general plan.
- Be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development or to facilitate and accommodate the development of the emergency shelter project.
- Meet the definition of "objective". Objective standards are those that involve no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

The intent of these provisions of the HAA is that developers are given certainty in what standards, conditions, and policies apply to their project and how those standards can be met. Local governments that deny a project due to a failure to meet subjective standards (those standards that are not objective as defined) could be in violation of the HAA. In addition, objective standards that do apply should make it feasible for a developer to build to the density allowed by the zoning and not constrain a local government's ability to achieve its RHNA housing targets.

Nothing in the statute generally prohibits a local government from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter. However, the HAA does impose limitations on the fees and exactions that can be imposed on a specific housing development project once a preliminary application is submitted (see Appendix C).

Determination of Application Completeness

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. 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. 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. (See Appendix C).

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.

However, if the developer does not submit a preliminary application, the standards that must be applied are those that are in effect when the project is determined to be complete under the Permit Streamlining Act (Gov. Code § 65943).

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 (see page 10 below for inconsistency determinations).

Completeness Determination of Development Application

Government Code section 65943 states that local governments have 30 days after an application for a housing development project is submitted to inform the applicant whether or not the application is complete. If the local government does not inform the applicant of any deficiencies within that 30-day period, the application will be "deemed complete", even if it is deficient.

If the application is determined to be incomplete, the local government shall provide the applicant with an exhaustive list of items that were not complete pursuant to the local government's submittal requirement checklist. Information not included in the initial list of deficiencies in the application cannot be requested in subsequent reviews of the application.

A development applicant who submitted a preliminary application has 90 days to complete the application after receiving notice that the application is incomplete, or the preliminary application will expire. Each time an applicant resubmits new information, a local government has 30 calendar days to review the submittal materials and to identify deficiencies in the application.

Please note, Government Code section 65943 is triggered by an application submitted with all of the requirements on lists compiled by the local government and available when the application was submitted that specifies in detail the information that will be required from any applicant for a development project pursuant to Government Code section 65940. This is not the "preliminary application" referenced in Government Code section 65941.1.

Triggers for a Disapproval of a Housing Development Project
Government Code, § 65589.5, subdivisions (h)(6)

The HAA does not prohibit a local government from exercising its authority to disapprove a housing development project, but rather provides limitations and conditions for exercising that authority. The HAA defines disapproval as when the local government takes one of the following actions:

- Votes on a proposed housing development project application and the application is disapproved. This includes denial of other required land use approvals or entitlements necessary for the issuance of a building permit. Examples include, but are not limited to, denial of the development application, tentative or final maps, use permits, or design review. If the project is using the Streamlined Ministerial Approval Process, disapproval of the application would trigger the provisions of the HAA.
- Fails to comply with decision time periods for approval or disapproval of a development application[2]. Until 2025, the following timeframes apply:
    - 90 days after certification of an environmental impact report (prepared pursuant to the California Environmental Quality Act) by the lead agency for a housing development project.
    - 60 days after certification of an environmental impact report (prepared pursuant to the California Environmental Quality Act) by the lead agency for a housing development project where at least 49 percent of the units in the development project are affordable to very low or low-income households[3], and where rents for the lower income units are set at an affordable rent[4] for at least 30 years and owner-occupied units are available at an affordable housing cost[5], among other conditions (see Gov Code § 65950).
    - 60 days from the date of adoption by the lead agency of a negative declaration.
    - 60 days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act.

[2] Timeframes are pursuant to Government Code section 65950
[3] As defined by Health and Safety Code sections 50105 and 50079.5
[4] Pursuant to Section 50053 of the Health and Safety Code
[5] Pursuant to Section 50052.5 of the Health and Safety Code

Imposition of Development Conditions

Government Code, § 65589.5, subdivisions. (d), (h)(7), and (i)

Like the ability to deny a project, the HAA does not prohibit a local government from exercising its authority to condition the approval of a project, but rather provides limitations and conditions for the application of certain conditions. Specifically, the HAA limits the application of conditions that lower the residential density of the project, and, for housing affordable to lower- and moderate-income households and emergency shelters, conditions that would have a substantial adverse impact on the viability or affordability of providing those units unless specific findings are made and supported by a preponderance of the evidence in the record[6].

For purposes of the HAA, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing. This could include a condition that directly lowers the overall number of units proposed (e.g., the development proposes 50 units, but the local government approves only 45 units). It could also include indirect conditions that result in a lower density (e.g., a development proposes 50 units at 800 square feet per unit but the local government conditions the approval on the provision of 850 square feet per unit, resulting in the project having to provide fewer units to accommodate the increase in square footage). Another example would be a reduction in building height that would result in the project being able to provide fewer units than originally proposed.

Local governments must also consider if imposed conditions of approval would have an adverse effect on a project's ability to provide housing for very low-, low-, or moderate-Income households at the affordability levels proposed in the housing development project. This includes provisions that would render the project for very low-, low-, or moderate-income households infeasible or would have a substantial adverse effect on the viability or affordability of the proposed housing. For example, project approval for an affordable housing development might be conditioned on the need to use specific materials that significantly increase the cost of the project. This additional cost could either render the project financially infeasible altogether or require substantial changes to the affordability mix of the units where fewer very low-income units could be provided. In these cases, it is possible that the conditions would violate the HAA.

Conditions that should be analyzed for their effect on density and project feasibility (for affordable projects) include, but are not limited to, the following:

- Design changes
- Conditions that directly or indirectly lower density
- Reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning.

[6] See Page13 for more information on the preponderance of the evidence standard.

Housing Accountability Act Provisions That Apply to All Housing Projects

The following provisions apply to all housing development projects regardless of affordability.

Determination of Consistency with Applicable Plans, Standards, or Other Similar Provision Based on the Reasonable Person Standard

Government Code, § 65589.5, subdivision (f)(4)

A key component of the HAA is the determination as to whether or not the proposed housing development project is consistent, compliant and in conformity with all applicable plans, programs, policies, ordinances, standards, requirements, and other similar provisions.

Traditionally, this determination is made by local government, which is given significant deference to interpret its own plans, programs, policies, ordinances, standards, requirements, and other similar provisions. In most planning and zoning matters, courts traditionally uphold an agency's determination if there is "substantial evidence" to support that determination. If substantial evidence supports the agency's decision, an agency can reach a conclusion that a development project is inconsistent with applicable provisions, even if there is evidence to the contrary.

Departing from these traditional rules, the HAA sets forth its own standard for determining consistency with local government rules for housing development projects and emergency shelters. A housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that could allow *a reasonable person* to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity with applicable standards and requirements. The intent of this provision is to provide an objective standard and increase the likelihood of housing development projects being found consistent, compliant and in conformity.

Applicability of Density Bonus Law

Government Code, § 65589.5, subdivision (j)(3)

The receipt of a density bonus pursuant to Density Bonus Law (Government Code § 65915) does not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision. Receipt of a density bonus can include a bonus in number of units, incentives, concessions, or waivers to development standards allowed under Density Bonus Law.[7]

General Plan and Zoning Consistency Standard

Government Code, § 65589.5, subdivision (j)(4)

For various reasons, there is at times inconsistency between standards in a general plan and zoning standards. For example, a local government may have amended the general plan, but

[7] Please note pursuant to Government Code § 65915, subd. (f) a receipt of a density bonus does not require an increase in density. An applicant can elect to ask for just the concessions, incentives, and waivers that the project qualifies for under State Density Bonus Law.

has not yet amended all of its municipal ordinances to assure vertical consistency[8]. Recognizing this, the HAA clarifies that if the zoning standards and criteria are inconsistent with applicable, objective general plan standards, but the development project is consistent with the applicable objective general plan standards for the site, then the housing development project cannot be found inconsistent with the standards and criteria of the zoning. Further, if such an inconsistency exists, the local agency may not require rezoning prior to housing development project approval.

However, the local agency may require the proposed housing development project to comply with the objective standards and criteria contained elsewhere in the zoning code that are consistent with the general plan designation. For example, if a site has a general plan land use designation of high density residential, but the site is zoned industrial, then a local government can require the project to comply with objective development standards in zoning districts that are consistent with the high density residential designation, such as a multifamily high density residential zone.

However, under the HAA, the standards and criteria determined to apply to the project must facilitate and accommodate development at the density allowed the general plan on the project site and as proposed by the housing development project.

Written Notification of Inconsistency
Government Code, § 65589.5, subdivision (j)(2)

If a local government considers a proposed housing development project to be inconsistent, non-compliant, or not in conformity with any applicable plan, program, policy, ordinance, standard, requirement, or other similar provision, the local government must provide written notification and documentation of the inconsistency, noncompliance, or inconformity. This requirement applies to all housing development projects, regardless of affordability level. The documentation must:

- Identify the specific provision or provisions and provide an explanation of the reason or reasons why the local agency considers the housing development to be inconsistent, non-compliant, or non-conformant with identified provisions.
- Be provided to the applicant within 30 days of a project application being deemed complete for projects containing 150 or fewer housing units.
- Be provided to the applicant within 60 days of a project application being deemed complete for projects containing over 150 units.

Consequence for Failure to Provide Written Documentation

If the local government fails to provide the written documentation within the required timeframe, the housing development project is deemed consistent, compliant and in conformity with applicable plans, programs, policies, ordinances, standards, requirements, or other similar provisions.

[8] Pursuant to Government Code § 65860, city and county, including a charter city, zoning ordinances must be consistent with the adopted general plan. This is known as vertical consistency.

Denial of a Housing Project that is Consistent with Applicable Plans, Standards, or Other Similar Provisions Based on the Preponderance of the Evidence Standard
Government Code, § 65589.5, subdivision (j)(1)

When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

- The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density.

A **"specific, adverse impact"** means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Pursuant to Government Code section 65589.5 (a)(3) it is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety arise infrequently.

An example of a condition that does not constitute a specific, adverse impact would be criteria that requires a project to conform with "neighborhood character". Such a standard is not quantifiable and therefore would not meet the conditions set forth under the HAA.

- There is no feasible method to satisfactorily mitigate or avoid the adverse impact, other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

Preponderance of the Evidence Standard

In most actions, a local government is tasked with making findings or determinations based on "substantial evidence." Under the substantial evidence standard, local government is merely required to find reasonable, adequate evidence in support of their findings, even if the same or *even more* evidence supports a finding to the contrary.

Findings or determinations based on a "preponderance of the evidence" standard require that local governments weigh the evidence and conclude that the evidence on one side outweighs, preponderates over, is more than the evidence on the other side, not necessarily in the number or quantity, but in its convincing force upon those to whom it is addressed[9]. Evidence that is substantial, but not a preponderance of the evidence, does not meet this standard.

[9] People v. Miller (1916) 171 Cal. 649, 652. Harris v. Oaks Shopping Center (1999) 70 Cal.App.4th 206, 209 ("'Preponderance of the evidence' means evidence that has more convincing force than that opposed to it.").

Provisions Related to Housing Affordable to Very Low-, Low-, or Moderate-Income Household, Emergency Shelters, and Farmworker Housing

State Policy on Housing Project Approval

"It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article (RHNA) without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d)" Government Code, § 65589.5, subdivision (b).

The HAA provides additional protections for projects that contain housing affordable to very low-, low- or moderate-income households, including farmworker housing, or emergency shelters. State policy prohibits local governments from rejecting or otherwise making infeasible these types of housing development projects, including emergency shelters, without making specific findings.

Denial or Conditioning of Housing Affordable to Very Low-, Low- or Moderate-Income Households, Including Farmworker Housing, or Emergency Shelters
Government Code, § 65589.5, subdivision (d) and (i)

The HAA specifies findings that local governments must make, in addition to those in the previous section, if they wish to deny a housing development affordable to very low-, low-, or moderate-income housing (including farmworker housing) or emergency shelters. These requirements also apply when a local government wishes to condition such a project in a way that it would that render it infeasible or would have a substantial adverse effect on the viability or affordability of a housing development project for very low-, low-, or moderate-income households. In addition to the findings, described above, that apply to all housing development projects, a local government must also make specific findings based upon the preponderance of the evidence of one of the following:

(1) The local government has an adopted housing element in substantial compliance with California's Housing Element Law, contained in Article 10.6 of Government Code, *and* has met or exceeded development of its share of the RHNA in all income categories proposed in the housing development project. In the case of an emergency shelter, the local government shall have met or exceeded the need for emergency shelters as identified in the housing element. This requirement to meet or exceed its RHNA is in relationship to units built in the local government, not zoning. A local government's housing element Annual Progress Report pursuant to Government Code section 65400 can be used to demonstrate progress towards RHNA goals.

(2) The housing development project would have a specific, adverse impact upon public health or safety and there is no feasible method to mitigate or avoid the impact without rendering the housing development project unaffordable or financially infeasible. Specific to housing development projects affordable to very low-, low-, or moderate-income housing (including farmworker housing) or emergency shelters, specific, adverse impacts do not include inconsistency with the zoning ordinance or general plan land use designation or eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.

(3) Denial of the housing development project or the imposition of conditions is required to comply with specific state or federal law, *and* there is no feasible method to comply without

rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project is proposed on land zoned for agriculture or resource preservation that is either: (a) surrounded on two sides by land being used for agriculture or resource preservation; or (b) does not have adequate water or wastewater facilities to serve the housing development project.

(5) The housing development project meets both the following conditions:

- Is inconsistent with both the local government's zoning ordinance and the general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete. This means this finding cannot be used in situations where the project is inconsistent with one (e.g., the general plan designation), but is consistent with the other (e.g., zoning ordinance).
- The local government has an adopted housing element in substantial compliance with housing element Law.

  Finding (5) *cannot* be used when any of the following occur:

  - The housing development project is proposed for a site identified as suitable or available for very low-, low-, or moderate-income households within a housing element and the project is consistent with the specified density identified in the housing element.
  - The local government has failed to identify sufficient adequate sites in its inventory of available sites to accommodate its RNHA, and the housing development project is proposed on a site identified in any element of its general plan for residential use or in a commercial zone where residential uses are permitted or conditionally permitted.
  - The local government has failed to identify a zone(s) where emergency shelters are allowed without a conditional use or other discretionary permit, or has identified such zone(s) but has failed to demonstrate that they have sufficient capacity to accommodate the need for emergency shelter(s), and the proposed emergency shelter is for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses.

Any of these findings must be based on a preponderance of the evidence. For details, see "Preponderance of the evidence standard" on page 12 for further information.

Violations of Housing Accountability Act

The courts are the primary authority that enforces the HAA. Actions can be brought by eligible plaintiffs and petitioners to the court for potential violations of the law. Similarly, HCD under Government Code section 65585 (j), can find that a local government has taken an action in violation of the HAA. In that case, after notifying a local government of the violation, HCD would refer the violation to the Office of the Attorney General who could file a petition against a local government in the Superior Court.

Eligible Plaintiffs and Petitioners

Government Code, § 65589.5, subdivision (k)(1)(A) and (k)(2)

The applicant, a person eligible to apply for residency in the housing development project or emergency shelter, or a housing organization may bring action to enforce the HAA. A housing organization, however, may only file an action to challenge the disapproval of the housing development project and must have filed written or oral comments with the local government prior to its action on the housing development project.

"Housing organizations" means a trade or industry group engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households. A housing organization is entitled to reasonable attorney fees and costs when prevailing in an action. Labor unions, building associations, multifamily apartment management companies, and legal aid societies are examples of housing organizations.

Remedies

Government Code, § 65589.5, subdivision (k)(1)(A)

If the plaintiff or petitioner prevails, the court must issue an order compelling compliance with the HAA within 60 days. The court's order would at a minimum require the local agency to take action on the housing development project or emergency shelter during that time period. The court is further empowered to issue an order or judgment that actually directs the local government to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of the HAA. "Bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

If the plaintiff or petitioner prevails, the court shall award reasonable attorney fees and costs of the suit to the plaintiff or petitioner for both affordable and market-rate housing development projects,[10] except in the "extraordinary circumstances" in which the court finds that awarding fees would not further the purposes of the HAA.

Local Agency Appeal Bond

Government Code, § 65589.5, subdivision (m)

If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant. In this provision, the Legislature has waived, to some degree, the immunity from damages that normally extends to local agencies, recognizing that the project applicant incurs costs due to the delay of its project when a local agency appeals. (Contrast Gov. Code, § 65589.5, subd. (m), with Code Civ. Proc., § 995.220, subd. (b) [local public entities do not have to post bonds].)

[10] / *Honchariw v. County of Stanislaus* (2013) 218 Cal.App.4th 1019, 1023–1024, which ruled to the contrary, was superseded by statutory changes in Senate Bill 167 (Stats. 2017, ch. 368, § 1), Assembly Bill 678 (Stats. 2017, ch. 373, § 1), and Senate Bill 330 (Stats. 2019, ch. 654, § 3).

Failure to Comply with Court Order

Government Code, § 65589.5, subdivision (k)(1)(B)(i), (k)(1)(C), and (l)

If the local government fails to comply with the order or judgment within 60 days of issuance, the court must impose a fine on the local government. The *minimum* fine that may be imposed is $10,000 per housing unit in the housing development project as proposed on the date the application was deemed complete. Please note, the use of the term "deemed complete" in this instance has the same meaning as "determined to be complete" as referenced on page 7. The monies are to be deposited into the State's Building Homes and Jobs fund or the Housing Rehabilitation Loan fund. In calculating the amount of the fine in excess of the minimum, the court is directed to consider the following factors:

- The local government's progress in meeting its RHNA and any previous violations of the HAA.
- Whether the local government acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of the HAA. If the court finds that the local government acted in bad faith, the total amount of the fine must be multiplied by five.

The court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and an order to approve the housing development project.

Court-Imposed Fines

Court-imposed fines begin at $10,000 per housing unit and could be much higher. If the court determines the local government acted in bad faith, the fine is multiplied by five. This equates to a minimum fine of $50,000 per unit.

Bad faith includes, but is not limited to, an action that is frivolous or otherwise entirely without merit. For example, in a recent Los Altos Superior Court order, the court issued an order directing the local agency to approve the housing development project and found that the local agency acted in bad faith when it disapproved the housing development because its denial was entirely without merit. The city's denial letter did not reflect that the city made a benign error in the course of attempting, in good faith, to follow the law by explaining to the developer how the project conflicted with objective standards that existed at the time of application; instead, the city denied the application with a facially deficient letter, employed strained interpretations of statute and local standards, and adopted a resolution enumerating insufficient reasons for its denial[11]. Bad faith can be demonstrated through both substantive decisions and procedural actions. In the Los Altos case, the court found that demanding an administrative appeal with less than a days' notice revealed bad faith. Repeated, undue delay may likewise reveal bad faith.

[11] Order Granting Consolidated Petitions for Writ of Mandate, 40 Main Street Offices, LLC v. City of Los Altos et al. (Santa Clara Superior Court Case No. 19CV349845, April 27, 2020), p. 38

APPENDIX A: Frequently Asked Questions

What types of housing development project applications are subject to the Housing Accountability Act (HAA)?

The HAA applies to both market rate and affordable housing development projects. (*Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1073.) It applies to housing development projects that consist of residential units and mixed-use developments when two-thirds or more of the square footage is designated for residential use. It also applies to transitional housing, supportive housing, farmworker housing, and emergency shelters. (Gov. Code, § 65589.5, subds. (d) and (h)(2).)

Does the Housing Accountability Act apply to charter cities?

Yes, the HAA applies to charter cities (Gov. Code, § 65589.5, subd. (g).)

Does the Housing Accountability Act apply to housing development projects in coastal zones?

Yes. However, local governments must still comply with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) (Gov. Code, § 65589.5, subd. (e).)

Are housing developments still subject to the California Environmental Quality Act (CEQA) if they qualify for the protections under the Housing Accountability Act?

Yes. Jurisdictions are still required to comply with CEQA (Division 13 (commencing with Section 21000) of the Public Resources Code) as applicable to the project. (Gov. Code, § 65589.5, subd. (e).)

Does the California Department of Housing and Community Development have enforcement authority for the Housing Accountability Act?

Yes. HCD has authority to find that a local government's actions do not substantially comply with the HAA (Gov. Code, § 65585, subd. (j)(1).) In such a case, HCD may notify the California State Attorney General's Office that a local government has taken action in violation of the HAA.

If approval of a housing development project triggers the No-Net Loss Law, may a local government disapprove the project?

No. Triggering a required action under the No-Net Loss Law is not a valid basis to disapprove a housing development project. (Gov. Code, § 65863, subd. (c)(2).) The only valid reasons for disapproving a housing development project are defined in the HAA under subdivisions (d) and (j). Subdivision (j) contains requirements that apply to all housing development projects; subdivision (d) contains additional requirements for housing development projects for very low-, low- or moderate-income households or emergency shelters.

Does the Housing Accountability Act apply to a residential development project on an historic property?

Yes. The HAA does not limit the applicability of its provisions based on individual site characteristics or criteria. The local government may apply objective, quantifiable, written development standards, conditions, and policies related to historic preservation to the housing development project, so long as they were in effect when the application was deemed

complete[12]. The standards should be appropriate to, and consistent with, meeting the local government's regional housing need and facilitate development at the permitted density. (Gov. Code, § 65589.5, subd. (f)(1).) However, it should be noted that compliance with historic preservation laws may otherwise constrain the approval of a housing development.

Under the Housing Accountability Act, is the retail/commercial component of a mixed-use project subject to review when the housing component must be approved?

Yes. The local government may apply objective, quantifiable, written development standards, conditions and policies to the entirety of the mixed-use project, so long as they were in effect when the application was deemed complete. (Gov. Code, § 65589.5, subd. (f)(1).)

Does the Housing Accountability Act apply to subdivision maps and other discretionary land use applications?

Yes. The HAA applies to denials of subdivision maps and other discretionary land use approvals or entitlements necessary for the issuance of a building permit (Gov. Code, § 65589.5, subd (h)(6).)

Does the Housing Accountability Act apply to applications for individual single-family residences or individual Accessory Dwelling Units (ADUs)?

No. A "housing development project" means a use consisting of residential units only, mixed use developments consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use, or transitional or supportive housing. Because the term "units" is plural, a development has to consist of more than one unit to qualify under the HAA (Gov. Code, § 65589.5, subd. (h)(2).).

Does the Housing Accountability Act apply to an application that includes both a single-family residence and an Accessory Dwelling Unit?

Yes. Since an application for both a single-family residence and an ADU includes more than one residential unit, the HAA applies (Gov. Code, § 65589.5, subd. (h)(2).)

Does the Housing Accountability Act apply to an application for a duplex?

Yes. Since an application for a duplex includes more than one residential unit, the HAA applies. (Gov. Code, § 65589.5, subd. (h)(2).)

Does the Housing Accountability Act apply to market-rate housing developments?

Yes. Market-rate housing developments are subject to the HAA (Gov. Code, § 65589.5, subd. (h)(2).) In *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, the court found the definition of "housing development project" was not limited to projects involving affordable housing and extended to market-rate projects. Market-rate housing development projects are subject to the requirements of paragraph (j) (Gov. Code, § 65589.5, subd. (j).)

[12] For purposes of determination of whether a site is historic, "deemed complete" is used with reference to Government Code §65940. See Government Code § 65913.10.

Under the Housing Accountability Act, if a housing development project is consistent with local planning rules, can it be denied or conditioned on a density reduction?

Yes. However, a local government may deny a housing development that is consistent with local planning rules, or condition it on reduction in density, only under very specific circumstances. (Gov. Code, § 65589.5, subds. (j)(1)(A), (B).) The local government must make written findings based on a preponderance of the evidence that both:

(1) The housing development project would have a specific, adverse impact upon public health or safety unless disapproved or approved at a lower density; and

(2) There is no feasible method to satisfactorily mitigate or avoid the impact.

(See definition of and specific requirements for finding of "specific, adverse impact" discussed below.)

Under the Housing Accountability Act, can a housing development project affordable to very low-, low-, or moderate-income households (including farmworker housing) or emergency shelter that is inconsistent with local planning requirements be denied or conditioned in a manner that renders it infeasible for the use proposed?

Yes, but only under specific circumstances. The local government must make written findings based on a preponderance of the evidence as to specific criteria. However, inconsistency with zoning does not justify denial or conditioning if the project is consistent with the general plan. (See Page 11 for more details). See also Gov. Code, § 65589.5, subds. (d)(1)-(5).)

Is there a definition for "specific, adverse impact" upon public health and safety?

Yes. The HAA provides that a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation is not such a specific, adverse impact upon the public health or safety. (Gov. Code, § 65589.5, subds. (d)(2) and (j)(1)(A).)

The HAA considers that such impacts would be rare: "It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently." (Gov. Code, § 65589.5, subd. (a)(3).)

Appendix B: Definitions

Area median income means area median income as periodically established by the HCD pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years. (Gov. Code, § 65589.5, subd. (h)(4).)

Bad faith includes, but is not limited to, an action that is frivolous or otherwise entirely without merit. (Gov. Code, § 65589.5, subd. (l).) This definition arises in the context of the action a local government takes when it disapproved or conditionally approved the housing development or emergency shelter in violation of the HAA.

Deemed complete means that the applicant has submitted a preliminary application pursuant to Government Code section 65941.1 (Gov. Code, § 65589.5, subd. (h)(5).) However, in Government Code section 65589.5(k)(1)(B)(i) deemed complete has the same meaning as "Determined to be Complete".

Determined to be complete means that the applicant has submitted a complete application pursuant to Government Code section 65943 (Gov. Code, § 65589.5, subd. (h)(9).)

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).)

Farmworker housing means housing in which at least 50 percent of the units are available to, and occupied by, farmworkers and their households.

Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. (Gov. Code, § 65589.5, subd. (h)(1).)

Housing development project means a use consisting of any of the following: (1) development projects with only residential units, (2) mixed-use developments consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use, (3) transitional or supportive housing.

Housing organization means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. (Gov. Code, § 65589.5, subd. (k)(2).) This definition is relevant to the individuals or entities that have standing to bring an HAA enforcement action against a local agency.

Housing for very low-, low-, or moderate-income households means that either:

- At least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or

- One hundred (100) percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code.

Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based. (Gov. Code, § 65589.5, subd. (h)(3).)

Lower density (as used in the sense of "to lower density") means a reduction in the units built per acre. It includes conditions that directly lower density and conditions that effectively do so via indirect means. (Gov. Code, § 65589.5, subd. (h)(7).)

Mixed use means a development consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use. (Gov. Code, § 65589.5, subd. (h)(2)(B).)

Objective means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. (Gov. Code, § 65589.5, subd. (h)(2)(B).)

Regional housing needs allocation (RHNA) means the share of the regional housing needs assigned to each jurisdiction by income category pursuant to Government Code section 65584 though 65584.6.

Specific adverse impact means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety. (Gov. Code, § 65589.5, subds. (d)(2), (j)(1)(A).) This definition is relevant to the written findings that a local agency must make when it disapproves or imposes conditions on a housing development project or an emergency shelter that conforms with all objective standards. It is the express intent of the Legislature that the conditions that would give rise to a specific, adverse impact upon the public health and safety occur infrequently. (Gov. Code, § 65589.5, subd. (a)(3).)

Appendix C: Preliminary Application (Senate Bill 330, Statutes of 2019)

The Housing Crisis Act of 2019 (Chapter 654, Statutes of 2019 (SB 330)) strengthens protections for housing development projects under the Housing Accountability Act (HAA), Planning and Zoning Law, and the Permit Streamlining Act. The provisions set forth under SB 330 sunset in 2025.

Among other provisions, to increase transparency and certainty early in the development application process, SB 330 allows a housing developer the option of submitting a "preliminary application" for any housing development project. Submittal of a preliminary application allows a developer to provide a specific subset of information on the proposed housing development before providing the complete information required by the local government. Upon submittal of an application and a payment of the permit processing fee, a housing developer is allowed to "freeze" the applicable standards to their project early while they assemble the rest of the material necessary for a full application submittal. This ensures development requirements do not change during this time, adding costs to a project due to potential redesigns due to changing local standards.

Benefits of a Preliminary Application

Government Code, § 65589.5, subdivision (o)

The primary benefit of a preliminary application is that a housing development project is subject only to the ordinances, policies, standard, or any other measure (standards) adopted and in effect when a preliminary application was submitted. "Ordinances, policies, and standards" includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

However, there are some circumstances where the housing development project can be subjected to a standard beyond those in effect when a preliminary application is filed:

- In the case of a fee, charge, or other monetary exaction, an increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.
- A preponderance of the evidence in the record establishes that the standard is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.
- The standard is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
- The housing development project has not commenced construction within two and a-half years following the date that the project received final approval. "Final approval" means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits and either of the following is met:
    - The expiration of all applicable appeal periods, petition periods, reconsideration periods, or statute of limitations for challenging that final approval without an appeal, petition,

request for reconsideration, or legal challenge have been filed. If a challenge is filed, that challenge is fully resolved or settled in favor of the housing development project.

- The housing development project is revised following submittal of a preliminary application pursuant to Section 65941.1 such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision. "Square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations). However, a local government is not prevented from applying the standards in effect at the time of the preliminary application submittal.
- Once a residential project is complete and a certificate of occupancy has been issued, local governments are not limited in the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.

Contents of a Preliminary Application

Government Code, § 65941.1

Each local government shall compile a checklist and application form that applicants for housing development projects may use for submittal of a preliminary application. However, HCD has adopted a standardized form that may be used to submit a preliminary application if a local agency has not developed its own application form. The preliminary application form can be found on HCD's website.

The following are the items that are contained in the application form. Local government checklists or forms cannot require or request any information beyond these 17 items.

1. The specific location, including parcel numbers, a legal description, and site address, if applicable.
2. The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.
3. A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.
4. The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.
5. The proposed number of parking spaces.
6. Any proposed point sources of air or water pollutants.
7. Any species of special concern known to occur on the property.
8. Whether a portion of the property is located within any of the following:
    - A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.
    - Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

- A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.
- A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.
- A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
- A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

9. Any historic or cultural resources known to exist on the property.
10. The number of proposed below market rate units and their affordability levels.
11. The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.
12. Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.
13. The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.
14. For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:
    - Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.
    - Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.
    - A tsunami run-up zone.
    - Use of the site for public access to or along the coast.
15. The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.
16. A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.
17. The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

Timing Provisions from Filing of a Preliminary Application to Determination of Consistency with Applicable Standards under the Housing Accountability Act

Step 1: Preliminary Application Submittal GC 65941.1

- Applicant submits preliminary application form.
- Applicant pays permit processing fees.
- No affirmative determination by local government regarding the completeness of a preliminary application is required.

Step 2: Full Application Submittal

- Applicant submits full application within 180 days of preliminary application submittal.
- Application contains all information required by the local government application checklist pursuant to Government Code Sections 65940, 65941, and 65941.5[13].

Step 3: Determination of Application Completeness GC 65943

- Local government has 30 days to determine application completeness and provide in writing both the determination of whether the application is complete and, when applicable, a list of items that were not complete. This list is based on the agency's submittal requirement checklist. If written notice is not provided within 30 days, the application is deemed complete.
- An applicant that has submitted a preliminary application has 90 days to correct deficiencies and submit the material needed to complete the application[14].
- Upon resubmittal, local government has 30 days to evaluate. Evaluation is based on previous stated items and the supplemented or amended materials. If still not correct, the local agency must specify those parts of the application that were incomplete and indicate the specific information needed to complete the application.
- Upon a third determination of an incomplete application, an appeals process must be provided.

Step 4: Application Consistency with Standards (HAA) GC 65589.5

- Identify the specific provision or provisions and provide an explanation of the reason or reasons why the local agency considers the housing development to be inconsistent, non-compliant, or non-conformant with identified provisions.

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[13] Government Codes § 65940, 65941, and 65941.5 require, among other things, a local government to compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Copies of the information shall be made available to all applicants for development projects and to any person who requests the information.

[14] The statute is silent on applications that did not use the preliminary application process. There is no statutory timeline for resubmittal in those instances.

- 30 days of a project application being deemed complete for projects containing 150 or fewer housing units.
- 60 days of a project application being deemed complete for projects containing over 150 units.

Step 5: Other Entitlement Process Requirements Pursuant to SB 330

- Pursuant to Government Code section 65905.5, if a proposed housing development project complies with the applicable, objective general plan and zoning standards, the local government can conduct a maximum of five hearings, including hearing continuances, in connection with the approval of the project. Compliance with applicable, objective general plan and zoning standards has the same meaning and provisions as in the HAA, including circumstances when there is inconsistency between the general plan and zoning.

  A "hearing" includes any public hearing, workshop, or similar meeting conducted by the local government with respect to the housing development project, whether by the legislative body of the city or county, the planning agency, or any other agency, department, board, commission, or any other designated hearing officer or body of the city or county, or any committee or subcommittee thereof. A "hearing" does not include a hearing to review a legislative approval required for a proposed housing development project, including, but not limited to, a general plan amendment, a specific plan adoption or amendment, or a zoning amendment, or any hearing arising from a timely appeal of the approval or disapproval of a legislative approval.

  However, it should be noted nothing in this requirement supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to CEQA.

- Pursuant to Government Code section 65950, a local government must make a final decision on a residential project within 90 days after certification of an environmental impact report (or 60 days after adoption of a mitigated negative declaration or an environment report for an affordable housing project).

Appendix D: Housing Accountability Act Statute (2020)

GOVERNMENT CODE - GOV
TITLE 7. PLANNING AND LAND USE [65000 - 66499.58]
DIVISION 1. PLANNING AND ZONING [65000 - 66301]

CHAPTER 3. Local Planning [65100 - 65763]
ARTICLE 10.6. Housing Elements [65580 - 65589.11]

65589.5.
(a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per

capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local governments should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, 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, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The local government has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the local government has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the local government has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the local government shall be calculated consistently with the forms and definitions that may be adopted by HCD pursuant to Section 65400. In the case of an emergency shelter, the local government shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety:

(A) Inconsistency with the zoning ordinance or general plan land use designation.

(B) The eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the local government's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the local government has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the local government's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the local government's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the local government's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Except as provided in subdivision (o), nothing in shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the local government's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Except as provided in subdivision (o), nothing in shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the local government's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this

code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) “Area median income” means area median income as periodically established by the HCD pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) Notwithstanding any other law, until January 1, 2025, “deemed complete” means that the applicant has submitted a preliminary application pursuant to Section 65941.1.

(6) “Disapprove the housing development project” includes any instance in which a local agency does either 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 subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(7) “Lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(8) Until January 1, 2025, “objective” means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

(9) Notwithstanding any other law, until January 1, 2025, “determined to be complete” means that the applicant has submitted a complete application pursuant to Section 65943.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time housing development project’s the application is complete, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d), and that the findings are supported by a preponderance of the evidence in the record, and with the requirements of subdivision (o).

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and

accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(k) (1) (A) (i) The applicant, a person who would be eligible to apply for residency in the housing development project or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that any of the following are met, the court shall issue an order pursuant to clause (ii):

(I) The local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence.

(II) The local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence.

(III) (ia) Subject to sub-subclause (ib), the local agency, in violation of subdivision (o), required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted.

(ib) This subclause shall become inoperative on January 1, 2025.

(ii) If the court finds that one of the conditions in clause(i) is met, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated

to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, “housing organization” means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney’s fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court’s order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, “bad faith” includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any

other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) (1) Subject to paragraphs (2), (6), and (7), and subdivision (d) of Section 65941.1, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.

(2) Paragraph (1) shall not prohibit a housing development project from being subject to ordinances, policies, and standards adopted after the preliminary application was submitted pursuant to Section 65941.1 in the following circumstances:

(A) In the case of a fee, charge, or other monetary exaction, to an increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.

(B) A preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, as defined in subparagraph (A) of paragraph (1) of subdivision (j), and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

(C) Subjecting the housing development project to an ordinance, policy, standard, or any other measure, beyond those in effect when a preliminary application was submitted is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(D) The housing development project has not commenced construction within two and one-half years following the date that the project received final approval. For purposes of this subparagraph, "final approval" means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits and either of the following is met:

(i) The expiration of all applicable appeal periods, petition periods, reconsideration periods, or statute of limitations for challenging that final approval without an appeal, petition, request for reconsideration, or legal challenge having been filed.

(ii) If a challenge is filed, that challenge is fully resolved or settled in favor of the housing development project.

(E) The housing development project is revised following submittal of a preliminary application pursuant to Section 65941.1 such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(3) This subdivision does not prevent a local agency from subjecting the additional units or square footage of construction that result from project revisions occurring after a preliminary application is submitted pursuant to Section 65941.1 to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.

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

(5) This subdivision shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.

(6) This subdivision shall not restrict the authority of a public agency or local agency to require mitigation measures to lessen the impacts of a housing development project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(7) With respect to completed residential units for which the project approval process is complete and a certificate of occupancy has been issued, nothing in this subdivision shall limit the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.

(8) This subdivision shall become inoperative on January 1, 2025.

(p) This section shall be known, and may be cited, as the Housing Accountability Act.