



Newmeyer & Dillion LLP  
895 Dove Street  
Second Floor  
Newport Beach, CA 92660  
(949) 854-7000

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Michael W. Shonafelt  
Michael.Shonafelt@ndlf.com

**VIA E-MAIL AND HAND DELIVERY**

Larry Longenecker  
Community Development Director  
City of Laguna Hills  
24035 El Toro Road  
Laguna Hills, CA 92653  
llongenecker@lagunahillsca.gov

Re: Site Development Permit No. 0147-2023 (La Paz Senior Living): Response to Third Notice of Incomplete Application

Dear Larry,

This office represents La Paz Village Investors LLC (“LPV”) with respect to the above-referenced affordable housing development proposed at 25250 – 25260 La Paz Road (“Project”) in the City of Laguna Hills (“City”).

This letter responds to your December 22, 2023, correspondence, which constitutes the third notice from the City regarding the status of the Project’s formal application submittal on June 12, 2023, (“Third NOI”). As you are aware, the June 12, 2023, formal application submittal (“Formal Application”) followed the December 14, 2022, submittal of a preliminary application for the Project (“Preliminary Application”), in accordance with what is colloquially referred to as the “Builders Remedy” (Gov. Code, § 65589.5, subd. (d)). The Third NOI seeks a “Letter of Justification” (Item No. 3) and a “Housing Plan” (Item No. 14). It also seeks additional information pursuant to the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.) (“CEQA”) (Item No. 2). In addition to the general responses provided herein and accompanying this letter, this letter also specifically responds to those requests.

**1. Item No. 3 – Letter of Justification: The Builder’s Remedy Mandates Approval of Affordable Housing Projects Even If They Are Inconsistent with Local Zoning.**

As for the identified inconsistencies with the Community Commercial (CC) land use and zoning district, LPV is not required to seek a zoning text or general plan

amendment for the Project. That is the very “remedy” afforded by the Builder’s Remedy, codified at Government Code section 65589.5 subdivision (d).

The Builder’s Remedy is contained within the Housing Accountability Act (Gov. Code, § 65589.5) (“HAA”). It establishes a stringent burden to justify a local government’s denial of an affordable housing project while the local government’s housing element remains non-compliant with the State Housing Element Law. (*Id.*, § 65589.5, subd. (d)(5).) The State Legislature enacted the HAA in 1982, but despite efforts to expand its provisions “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,” the statute recognizes such intent has “not been fulfilled.” (*Id.*, § 65589.5, subd. (a)(2)(K).) It is therefore the State’s policy to interpret the HAA “in a manner to afford the **fullest possible weight** to the interest of, and the approval and provision of, housing.” (*Id.*, § 65589.5, subd. (a)(2)(L), emphasis added.)

Under the Builder’s Remedy, “a local agency **shall not disapprove**” or condition approval in a manner which renders infeasible, a “housing development project . . . for very low, low-, or moderate-income households<sup>1</sup> . . . unless it makes written findings, based upon a preponderance of the evidence in the record” of one of five exceptions: (1) the local jurisdiction has adopted a substantially compliant housing element [discussed below in more detail] **and** has satisfied its regional housing need allocation; (2) the proposed housing development would have a specific, adverse impact on the public health or safety that cannot be feasibly mitigated without rendering the project unaffordable or infeasible; (3) denial of the project is required to comply with specific state or federal law, and there is no feasible method to comply without rendering the project unaffordable or infeasible; (4) the proposed land for the project is zoned for, and surrounded on at least two sides by, agriculture or resource preservation purposes; and

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction’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 jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(Gov. Code, § 65589.5 , subd. (d)(1) – (5).) All of this means that a qualifying affordable housing project must be approved even if it is facially inconsistent with the local zoning

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<sup>1</sup> A housing development project qualifies under the HAA as “housing for very low, low-, or moderate-income households” if at least 20 percent of the units in the project shall be sold or rented to lower income individuals. (Gov. Code, § 65589.5, subd. (h)(3)).

and land use designation where the local government's housing element is not in substantial compliance with the State Housing Element Law and the other narrowly tailored findings cannot be made.

A local government cannot overcome the mandatory duty to approve without written findings of an unmitigable "specific, adverse impact," to the public health and safety, based on a preponderance of the evidence. "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." (Gov. Code § 65589.5, subd. (d)(2).) Notably, "[i]nconsistency with the zoning ordinance or general plan land use designation" does not constitute a specific, adverse impact. (*Id.*, § 65589.5, subd. (d)(2)(A).) Further, the Legislature clearly intends for these findings to be taxing, stringent and difficult to make:

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) . . . arise ***infrequently***.

(*Id.*, § 65589.5 subd. (a)(3), emphasis added.) Subdivision (d) further requires that each of the five subdivision (d) exceptions must be supported by "written findings, based upon a preponderance of the evidence in the record . . . ." (*Id.*, § 65589.5, subd. (d).)

In this case, the pivot point for presenting a Builder's Remedy application is that the City's housing element was not in substantial compliance with the State Housing Element Law at the time of the submittal of the Preliminary Application. The date of the submittal of the preliminary application is important. That is because an application for a housing development shall be subject only "to the ordinances, policies, and standard adopted and in effect" when the preliminary application is submitted. (Gov. Code, §§ 65589.5, subd. (o)(1).) The freezing in place of the regulatory state of affairs at the time of preliminary application submittal is a central feature of the HAA. (See *id.*, subds. (d)(2), (d)(5), (j)(1) [fixing regulatory scheme based on "deemed complete" date].) The vesting afforded by the HAA ensures the development community's ability to rely on the state of the regulatory regime in place when vesting is effected so that it can safely and confidently commit resources to development. Accordingly, in the HAA context, "the private sector should be able to rely" on a preliminary application "prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency . . . ." (*Kaufman & Broad Central Valley, Inc. v. City of Modesto* (1994) 25 Cal.App.4th 1577, 1588, citing Gov. Code, § 66498.9, subd. (b).) It is a matter of record that the City's housing element remains out of compliance with the State Department of Housing and Community Development ("HCD"). (See, Department of Housing and Community Development Housing Element

Compliance Report, [hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-and-compliance-report](https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-and-compliance-report) [accessed March 19, 2024].) An excerpt of the HCD's public compliance report as of February 27, 2023, is presented here:

Element Compliance Status	ADOPTED Count	%	CONDITIONAL Count	%	DRAFT Count	%	INITIAL DRAFT Count	%	NEW CYCLE Count	%	SUBSEQUENT DRAFT Count	%	Total Count	%	Total Jurisdictions
CONDITIONAL	2	0.52%											2	0.37%	539
IN	271	70.21%	9	100.00%	1	12.50%	2	2.94%					283	52.50%	
OUT	113	29.27%			7	87.50%	66	97.06%	17	100.00%	51	100.00%	254	47.12%	
<b>Total</b>	<b>386</b>	<b>100.00%</b>	<b>9</b>	<b>100.00%</b>	<b>8</b>	<b>100.00%</b>	<b>68</b>	<b>100.00%</b>	<b>17</b>	<b>100.00%</b>	<b>51</b>	<b>100.00%</b>	<b>539</b>	<b>100.00%</b>	

  

County	Jurisdiction	Planning Period	Record Type	Review Status	Date Received	Date Reviewed	Compliance Status
ORANGE	GARDEN GROVE	6	ADOPTED	OUT	11/12/2021	2/10/2022	OUT
ORANGE	HUNTINGTON BEACH	6	SUBSEQUENT DRAFT	IN	8/1/2022	9/30/2022	OUT
ORANGE	IRVINE	6	ADOPTED	IN	5/12/2022	5/24/2022	IN
ORANGE	LA HABRA	6	ADOPTED	IN REVIEW	2/22/2023		OUT
ORANGE	LA PALMA	6	ADOPTED	OUT	10/12/2021	1/10/2022	OUT
ORANGE	LAGUNA BEACH	6	ADOPTED	IN	1/27/2023	2/7/2023	IN
ORANGE	LAGUNA HILLS	6	SUBSEQUENT DRAFT	OUT	8/15/2022	9/28/2022	OUT
ORANGE	LAGUNA NIGUEL	6	ADOPTED	OUT	10/21/2021	1/19/2022	OUT
ORANGE	LAGUNA WOODS	6	ADOPTED	OUT	8/12/2022	10/11/2022	OUT
ORANGE	LAKE FOREST	6	ADOPTED	IN	1/6/2023	2/24/2023	IN
ORANGE	LOS Alamitos	6	SUBSEQUENT	IN	11/22/2022	11/23/2022	OUT

(See <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-review-and-compliance-report>.) The submittal of a preliminary application pursuant to Government Code section 65941.1 gives rise to a vested right to develop a housing development project in accordance with the ordinances, policies, and standards as they were in effect when the preliminary application was submitted. (Gov. Code §65589.5, subds. (d)(5), (o)(1).) Accordingly, because the Preliminary Application was submitted to the City while the City's Housing Element was out of compliance with the Housing Element Law, the City cannot make any of the required findings under Government Code section 65589.5 subdivision (d) and therefore must comply with the Builders Remedy. The Builder's Remedy therefore facially applies.

## 2. Item No. 14 – Housing Plan.

Item No. 14 requests a "Housing Plan," which describes the "type of housing proposed (i.e., apartment, transitional, supportive, rental, sale, age-restricted), and/or affordability (very-low, low, moderate, market, etc.)." This section also seeks information concerning State Density Bonus Law bonuses, incentives and/or concessions.

As expressed throughout the application materials, the Project proposes 180 age-restricted rental units. Pursuant to the Builder's Remedy of the HAA, the Project qualifies as an affordable housing project because it sets aside 20 percent of its total units (36 units) for lower-income households. (Gov. Code, § 65589.5, subd. (g)(2)(C)(3).) "Lower-income households" is defined at Health & Safety Code section 50079.5. Such units are required to be made available at monthly housing costs that do not exceed 30 percent of 60 percent of area median income or 80% of Medium Family Income, with adjustments for household size. (*Ibid.*) Specific locations of the affordable units have not yet been determined; LPV intends to disperse the units throughout the

Project in a manner and at locations that are mutually acceptable to the City and LPV. LPV anticipates a mix of studio, one and two-bedroom configurations for the 36 lower-income units and dispersion of those units throughout the four levels of the Project, above on-grade parking at the first and basement levels. The Project will not seek to invoke the State Density Bonus Law bonus and incentives program, as those laws would not apply in the Builder's Remedy context, but only apply where existing residential zoning and development standards are in place. The State Density Bonus Law does not apply to Builder's Remedy projects because -- by definition -- such projects proceed without reference to existing zoning. They therefore do not require relief from underlying development standards through State Density Bonus Law bonuses, incentives or waivers.

### **3. Item No. 2: Environmental Information Form.**

The Third NOI also requests additional supporting documentation to assist in the environmental analysis of the Project to ensure compliance with CEQA. Under the Permit Streamlining Act, the City "shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete." (Gov. Code, § 65941, subd. (b).) Moreover, while the City may request that an applicant "clarify, amplify, correct, or otherwise supplement" information already submitted, it may not request information not included on its pre-existing application checklist, nor may it base a determination of incompleteness on information that is not part of that checklist. (Gov. Code, §§ 65944, subd. (a); 65943, subd. (a).) LPV is willing to supply information required to make the appropriate environmental review or exemption determination pursuant to the California Environmental Quality Act (Pub. Resources Code §§ 21000, et seq.) -- if warranted and necessary -- but only at the appropriate time.

### **4. Conclusion and Request for Appeal Information.**

The City is bound by the Permit Streamlining Act, the HAA -- and by theories established by case law -- to process applications for housing development projects like this. (See, e.g., *Building Industry Legal Defense Foundation v. City of San Juan Capistrano* (1999) 72 Cal.App.4th 1410 [mandatory duty to process submitted applications].) LPV therefore requests that the City seriously consider the principles set forth in this letter and accept and process the Formal Application as a complete Builder's Remedy project so that it is properly disposed for presentation to the decision-maker capable of making findings based on a written record.

Because time is of the essence, LPV requests an affirmative representation, in writing to the undersigned, that the City will accept and process the Formal Application as a Builder's Remedy project, without requiring any legislative action to amend the City's Zoning Code and/or General Plan. We also request that the City provide the undersigned with notice as to the proper administrative process to appeal the City's

determination, and the Third NOI, if one exists, as required by Government Code section 69543 subdivision (c). We request this response by ***no later than close-of-business Friday, April 5, 2024***. We will be compelled to consider a statement of refusal to accept the Project or a failure to respond as an official decision of the City and invoke further administrative and legal recourse including, but not limited to mandamus and declaratory relief, as necessary.

If you have any questions about this letter, please do not hesitate to call me.

Very truly yours,



Michael W. Shonafelt

MWS

cc: Nick Buchanan, La Paz Village Partners LLC