



**MILLER STARR
REGALIA**

1331 N. California Blvd.
Suite 600
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.mslegal.com

Bryan W. Wenter, AICP
Direct Dial: 925 941 3268
bryan.wenter@mslegal.com

June 22, 2023

VIA E-MAIL

Eric Lee, Senior Planner
Community Development and Sustainability
23 Russell Blvd., Suite 2
Davis, CA 95616
Email: elee@cityofdavis.org

**Re: Submittal of SB 330 Preliminary Application and Formal Application
240 G Street, Davis, CA
APN 070-252-15**

Dear Mr. Lee:

Our client 240 G Partners LLC hereby submits a preliminary application (“Preliminary Application”) pursuant Senate Bill 330 (“SB 330”) for its proposed 240 G Street mixed-use housing development project within the City of Davis (“City”). This letter and the enclosed information constitute the submittal materials required by SB 330’s exclusive 17- item application checklist for a preliminary application under Government Code section 65941.1(a).

240 G Partners will submit its formal application (“Formal Application”) pursuant to Government Code section 65941.1(d) and the provisions of the Planning and Zoning Laws generally, and in particular Government Code sections 65940, 65941, and 65941.5 tomorrow. Please note that the “permit processing fee” required by SB 330 will be provided separately via check in the amount of \$9,807 in conjunction with the filing of the Formal Application.

I. Project Description

The proposed housing development project would consist of 120 apartment units and 6 ground floor live/work units with garage parking in one building (approximately 139,510 square feet in total), and related improvements (“Project”), on approximately 0.68 acres at 240 G Street in Davis (“Project Site”).

The Project Site is located within the Downtown Davis Specific Plan and is zoned Main Street-Large, which allows residential development in buildings up to seven stories in height.

II. Senate Bill 330

Effective January 1, 2020, SB 330 declared a statewide housing emergency (until 2030, as extended by Senate Bill 8) and amended the HAA and the Permit Streamlining Act (Gov. Code § 65920 *et seq.*) to facilitate the production of housing. During the housing emergency period, all cities are subject to specified project review requirements and timelines regarding applications for housing development projects.

A. Preliminary Application

SB 330 allows an applicant to submit a “preliminary application” for any housing development project. (Gov. Code § 65941.1). A preliminary application is distinct from, and does not require as much detail as, a traditional development application, i.e., a Formal Application. A local agency’s preliminary application checklist “shall not require or request any information beyond that expressly identified in subdivision (a) [of Government Code Section 65941.1].” (Gov. Code § 65941.1(b)(3)). In addition, the local agency has no role in determining the completeness of a preliminary application; rather, a preliminary application is deemed complete by operation of law once submitted in accordance with SB 330. (Gov. Code § 65941.1(d)(3)). By submitting the enclosed Preliminary Application for the Project in accordance with SB 330 and payment of the permit processing fee¹ for an SB 330 preliminary application, the Project is entitled to the protections of SB 330, as described below.

B. Early Statutory Vested Rights

Subject to limited exceptions,² SB 330 provides that a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application is submitted. (Gov. Code § 65589.5(o)). The state Department of Housing and Community Development (“HCD”), the state agency delegated by the Legislature with “primary responsibility for development and implementation of housing policy” (Health & Saf. Code § 50152), has determined that SB 330 vesting includes vesting of a jurisdiction’s noncompliant

¹ See

<https://www.sanjoseca.gov/home/showpublisheddocument/24803/638200235563870000>.

² Exceptions include: (1) development impact fees, application and permit processing fees, capacity or connection fees, or other charges may be annually adjusted based on a published cost index (Gov. Code § 65589.5(o)(2)(A)); (2) where the requirement is necessary to avoid an adverse impact to public health or safety as defined in state law (Gov. Code § 65589.5(o)(2)(B)); (3) where the requirement is necessary to avoid or lessen an impact under the California Environmental Quality Act (Gov. Code § 65589.5(o)(2)(C)); (4) where the project does not commence construction within two and one-half years of the project’s site permit being issued (Gov. Code § 65589.5(o)(2)(D)); and (5) where the project increases by more than 20 percent in the number of units or total square footage beyond the preliminary application, except as the project may be revised using a density bonus (Gov. Code § 65589.5(o)(2)(E)).

status with respect to the Housing Element Law for the duration of processing of the project, even if the jurisdiction subsequently achieves compliance. (See HCD, 3030 Nebraska Avenue, Santa Monica – Letter of Technical Assistance, October 22, 2022³).

There are significant penalties where a local agency fails to comply with the HAA. Where a court finds a violation, it must issue an order requiring compliance within 60 days and can direct the agency to approve the project if it finds the agency acted in bad faith. The court also must award the prevailing party its reasonable attorney fees and costs except in the “extraordinary circumstances” in which the court finds that awarding fees would not further the purposes of the statute. If an agency fails to comply with the HAA in 60 days of an order’s issuance, the court must impose a minimum fine on the agency of \$10,000 per housing unit in the housing development project as proposed on the date the application was deemed complete and can issue an order vacating the local agency’s action on the project, in which case the project is deemed approved. (Gov. Code, §§ 65589.5(k)-(l)).

C. Limited Public Hearings

Under SB 330, housing development projects that comply with applicable objective general plan and zoning standards are subject to a maximum of five public hearings prior to final action by the City. (Gov. Code § 65905.5(a)). The City must consider and either approve or disapprove the Project at one of these five hearings, after which no further hearings may be held in connection with project approval. (*Id.*).

D. Formal Application

After filing of a preliminary application for a project, SB 330 requires an applicant to submit a Formal Application within 180 days. (Gov. Code § 65941.1(d)(1)). As noted above, we will file our Formal Application tomorrow.

III. **Housing Accountability Act**

The Project is protected by the Housing Accountability Act (Gov. Code § 65589.5; “HAA”), a housing production statute that seeks “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 (§ 65589.5(a)(2)(K)). Moreover, the HAA expresses the state’s policy that this statute “be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” (Gov. Code § 65589.5(a)(2)(L)).

³ See <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santa-monica-TA-100522.pdf>.

As relevant here, subdivision (j) of the HAA directs that a decision to disapprove or reduce the density of a project that complies with “applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards” must be based on written findings supported by a preponderance of the evidence that (1) the project would have “a specific, adverse impact upon the public health or safety” *and* (2) that there is no feasible method to satisfactorily mitigate or avoid this adverse impact. (Gov’t Code § 65589.5(j)(1)). The HAA defines a “specific, adverse impact” to mean “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’t Code § 65589.5(j)(1)(A)).

Section 65589.5(j) thus requires cities to determine whether a project complies with the applicable, *objective* general plan, zoning, subdivision, and design standards. The HAA defines the term “objective” to mean “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(h)(8)). Cities must make this determination based on a “reasonable person” standard. (Gov. Code § 65589.5(f)(4)).

Accordingly, if a project complies with applicable, objective general plan, zoning, subdivision, and design standards in the eyes of a reasonable person, the project cannot be disapproved or conditioned on a lower density unless, based on a preponderance of the evidence in the record, it would have a "specific, adverse impact" upon public health or safety and there is no feasible way to mitigate that impact. If a city’s disapproval or conditional approval is challenged in court, the burden is on the City to prove its decision conformed to all the conditions specified in the HAA. (Gov. Code § 65589.6).

The courts have explained that the HAA’s findings constitute the “only” grounds for a lawful disapproval of a housing development project. (*North Pacifica, LLC v. City of Pacifica* (N.D.Cal. 2002) 234 F.Supp.2d 1053, 1059-60, disapproved on other grounds in *North Pacifica LLC v. City of Pacifica* (2008) 526 F.3d 478; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715-16). Moreover, the HAA creates such a “substantial limitation” on the government’s discretion to deny a permit that it amounts to a constitutionally protected property interest. (*North Pacifica, LLC v. City of Pacifica, supra*, 234 F.Supp.2d at 1059).

Eric Lee, Senior Planner
Community Development and Sustainability
June 22, 2023
Page 5

IV. Conclusion

240 G Partners looks forward to working in cooperation with the City to provide much needed housing, including affordable housing, to the community pursuant to critical state laws that are designed to facilitate housing production. We would be happy to discuss the Project or the Preliminary or Formal Application with you at any time.

Sincerely,

MILLER STARR REGALIA

Bryan W. Wenter

Bryan W. Wenter, AICP

BWW:kli