From: River Landon <riverlandonllc@gmail.com>
Sent: Thursday, August 20, 2026 12:19 PM
To: Lindsay Lara <lindsay.lara@cityofsanrafael.org>
Cc: Eli Hill <eli.hill@cityofsanrafael.org>; Rachel Kertz <rachel.kertz@cityofsanrafael.org>; Maribeth Bushey <maribeth.bushey@cityofsanrafael.org>
Subject: Written public comment September 8, 2026

Dear Ms. Lara, City Clerk, good morning:
Please accept the attached August 7, 2026 Letter and Memorandum, and this cover email, as written public comment for the September 8, 2026 San Rafael City Council meeting.
Please distribute the complete submission to the Mayor and every Councilmember; post it online as correspondence for Open Time for Public Expression; retain it with the meeting materials; and confirm receipt and posting. If any portion will not be posted, please identify the reason and any redactions made.
I also intend to attend the meeting and provide oral public comment. Among the questions I intend to raise are:

- Is the staff conduct documented in the record—particularly at PDF pages 165–210—reasonable and consistent with the City's obligations?
- To what extent did the challenged conduct reflect staff decisions, advice of counsel, or both?
- The documented similarities between San Rafael's and Menlo Park's approaches indicate use of a common legal-defense strategy to delay or defeat otherwise lawful housing applications, conduct condemned by the California Department of Justice? Is this reasonable for the City council to condone, both by its silence and lack of action?
- What oversight, corrective action, or consequences does the Council consider appropriate for City staff or legal counsel - and by when will this be taken?
- What is the Council's response to these documented concerns?

The attachment presents evidence, allegations, and issues for Council review; it does not represent that disputed matters have already been adjudicated. If substantive discussion is not permitted because the matter is not separately agendized, I request that the Council refer it for review and consider placing it on a future agenda.
This submission is being sent directly to three of the five members of the City Council—a majority of the legislative body—and copied to the City Clerk. Please treat it as written public comment and a public record, make it available for public inspection, and post the complete submission online with the correspondence for the September 8, 2026 meeting, consistent with the City's established practice. To the extent Government Code section 54957.5 applies, please comply with its public-access requirements.
Thank you. Please confirm by Tuesday August 25, 2026 that this will be posted.
Chris Sullivan

RIVER LANDON LLC

ALBUQUERQUE, NM

Councilmember Mr. Eli Hill,

Councilmember Ms. Rachel Kertz,

Councilmember Ms. Maribeth Bushey

City of San Rafael Council,

1400 5th Avenue, San Rafael, CA 94901. BY EMAIL

August 7, 2026

Dear Councilmember Hill, Councilmember Kertz, and Councilmember Bushey;

Coleman Drive multifamily 14 & 29 unit housing development projects deemed to satisfy all standards. Demand for Prompt Council Review of Statutory Compliance and Continuing Financial Exposure

I write to raise multiple grave concerns about what we allege – with substantial evidence developed over 6 years - is San Rafael's continued egregious non-compliance with law in continuing to not provide written approvals of our by-right ministerial planning entitlements for the 29 unit and 14 unit housing projects at Coleman Drive, San Rafael – with the 29 unit project outstanding since January 2024 - 2 ½ years ago.

This communication also responds to the city's legally defective July 1 response to applicant's Housing Accountability Act H6 notice of April 2, 2026. I explain below.

I am writing as River Landon's business representative, not as its lawyer. Our lawyers have pleaded, and will continue to address, the legal claims. My purpose is to place the Council squarely on notice of the business consequences, the documentary record, and the practical decision now before it.

Liability of the city to significant damages.

By not carrying out their mandatory ministerial duties, City staff have exposed the city to financial liabilities of at least $19,250,000, plus fees, costs and other expenses. These damages and consequential damages continue at a rate of at least *$642,000 per month*. This has now

been the case for 30 months. This is our position – and supported by much, much evidence. I will explain.

The Council now has an opportunity—and, in River Landon's view, a fiscal responsibility in prudent management —to stop the City from creating further avoidable exposure.

Those damages have not yet been adjudicated. But that - in no way - means that there is not serious financial risk. And every *additional month* adds materially to the City's potential exposure if River Landon prevails.

Ministerial duties of a local government are not immune from liability in the way that prior discretionary acts of a city in planning were – the housing landscape has dramatically changed. As the bill's author stated publicly this year – "I changed the way housing works in California"

One part of that change is that the review and processing is *ministerial*. Combining with that, inter alia review and processing is subject to very strict deadlines and very specific actions that the city must take within those deadlines– ensuring that the process works per the intent.

Government Code § 820.2**:** "A public employee is not liable where the act or omission resulted from "the exercise of the discretion vested in him"

Government Code § 815.6: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty.." And courts have found against California cities and counties in permitting cases under that code, awarded consequential damages, including a notable permitting case against Marin County.

It is established law in California that a government does not have immunity from financial liability where it has failed to perform, or incorrectly performed, ministerial duties.

Given this – why would the city now continue the conduct communicated in the applicant's H6 notice (as it is doing), & following the filing of our amended complaint on August 4th 2026? The reflexive position of the city has been counter-intuitive – continue to fight construction in your residential zones. But at the cost of the profit & value of the Coleman Drive development – which has moved into the city's liability column.

And in the dramatically different current regulatory regime - the more the City fights a compliant application - the more it has to pay in damages. That was simply not the case before – a city could essentially fight all it wanted – prior.

It may be an interesting theoretical exercise for the city to advise lawyers – primarily external -– to raise possible (and with no choice - very weak) defenses in Court (and work together with that counsel) - which is very time consuming - *but that simply has the direct effect of significant risk*

of increasing the payout by the city to the applicant. That is not a rhetorical point; it is the economic consequence of choosing – for example - another six months of delay.

The city for example could try to have SB 35 claims dismissed, on various theoretical bases – as it has tried for the last 6 months to do, unsuccessfully. In attempting to have the claims dismissed before the court, which has been quite attentive to the claims, that would likely take an additional six months. During that time the damages borne by us are an additional minimum of $4,000,000 - & owed by the city. The unnecessary and inappropriate (and failed) defenses by the city are – we believe and allege - costing it (a minimum of) **$8,000,000 a year**.

The Council should compare that potential exposure and additional defense costs with the available path of approval or prompt resolution.

The best course for the city – on any reasoned analysis – is to issue approval letters for these compliant developments – so that the damages accrual stops – no?

Why is River Landon pressing this case? - housing, the city's violation of our rights, and my personal experience

To build housing, and to build updated housing.

Because we want to build much needed, modern, healthy, mold-free, insulated new housing within the residential zones – and provide the first round of such units for rent in San Rafael.

The rental unit inventory in the *residential zones* in San Rafael is – as you know – often very challenging as to condition, most of it is at least 50 years old, the simplest and most elementary of homes rent for $4,000 per month and more, and with no competition there is unfortunately little incentive for landlords to undertake the expensive work to invest in, undertake & manage repairs and sometimes complex updates. Just as an example - one such project, a rental, that I am familiar with, in San Rafael, asbestos was discovered which significantly, & adversely, altered the project path and cost for the owner and the renter.

New construction will provide high quality housing in the residential zones - that public benefit is not a substitute for River Landon's legal rights, but it is an important part of why this prolonged obstruction by the city is so difficult for the City Council to justify.

Egregious acts of government against my family

Also – I write, as an executive with responsibility for these development applications. I will explain – and it involves personal things. My family had their homes taken from them by a government in Europe - in the most terrible and unlawful acts. My great uncles – lawyers with

much skill – worked to intervene. But the families, and all their possessions, were pulled from their homes by government officials, left on the street - and their homes burned & razed to the ground. During this the government staff waved 'official' papers they themselves had signed 'certifying' their actions as lawful – and with lawyer's names on the documents. The government, and their lawyers, then insisted that the homeowners pay for the costs incurred in (illegally) demolishing their homes.

My family resolved that – come what may – these type of acts would never happen to the family again – the taking of property by a government and related acts.

I do not equate San Rafael with that history. I include it because it explains why government interference with private property—particularly when justified by self-generated seemingly official paperwork – with lawyers confirming —is not an abstraction to me. It is why River Landon will continue, firmly and lawfully, until the City complies with the law or a court compels it to do so.

I thank you for reading this personal story - I thank you for indulging me in my explanation.

San Rafael government's action

Your government has, and continues even as I write to *egregiously* violate our fundamental rights & which it does it under color of law.

It gives no pleasure at all to raise and state this – San Rafael is engaged in unlawful acts against homes and private property.

San Rafael uses excuses to hide its conduct – it's for the environment, it doesn't comply with the city's 'objective standards' (which are not objective), build close to jobs, leave the San Rafael hillsides alone, maintain dark skies, there's problems with access to these lots, the applicant hasn't provided information (irrelevant information), etc. These statements – really a façade actually - attempt to soften the non-compliance by the government, but only a few minutes analysis reveals that the excuses are just that.

- The city has unlawfully rendered the private property useless and of no economic value by these unlawful acts.

- The city has unlawfully demanded that we pay fees – that *we pay* to fund these unlawful actions against us.

- The city has condemned the property - by among other things endless & continuing unlawful 'bureaucratic' hurdles.

And even despite several olive branches held out to you.

So we seek, and will never cease to seek – **justice** in this matter. These violations of our rights must immediately **CEASE** - Mr. Hill, no?

River Landon demands that the challenged conduct cease and asks each Councilmember addressed here to ensure that this legal matter is considered through a lawful Council process (strictly subject to SB 35 limitation on City Council consistency review/public review).

River Landon further alleges that political preferences concerning where housing should be located have materially influenced the City's treatment of the Coleman projects. The public statements, approval data, and processing record supporting that inference are set out below.

All of these matters (including the below) will be reviewed by the court.

The Attorney General's Menlo Park letter—and why it matters here

As I was finishing up all of this correspondence, a letter that has now been widely circulated on the internet -surfaced. The letter is addressed to Nira Doherty, counsel advising you since September 2024 on our development(s), and is from the State Attorney General.

And it's quite the letter - for sure.

The letter – one of the most direct and strongest communications that I personally have ever seen come out of Sacramento – addressed to Nira Doherty - castigates the approach adopted by City of Menlo Park and its adviser and city attorney Nira Doherty. Late determination letters, changing reasons for a project not complying with standards, denying the Builder's Remedy when it is in fact applicable, increasing the extent of the project site in a way that would make it *look* like it doesn't qualify (inappropriately focusing on parcel lines not the project site), determining that a project did not qualify for streamlined processing, maintaining that late determinations are valid, requested information not required for the application, not applying Density Bonus law waivers and bonuses, requiring the applicant to pay the fees of the lawyer that is advising different approaches for not approving the compliant development, requiring that the applicant hold a city harmless from actions taken against that same applicant. The Attorney General outright rejected all these approaches taken by the city and Nira Doherty its counsel & city attorney, and informed her that the city is in violation of the Housing Accountability Act.

And it means that the City's outside counsel has now received direct notice of the Attorney General's position on the same playbook line by line.

But – fancy this – while being advised principally by Nira Doherty, for the River Landon project, San Rafael has provided - late determination letters, constantly changing reasons for a project not complying with standards, Nira Doherty writing in summer 2025 that the project is not subject to the Builder's Remedy, Nira Doherty 'analyzing' that it is not a multifamily development, analyzing the project single family parcel by single family parcel (we have always proposed a multifamily development) rather than the actual project site (making it appear that the project did not qualify using lot lines - per Menlo Park), determining many times that our project does not qualify for SB 35 using a standard that has no uniform external benchmark despite staff undertaking that – your adviser Nira Doherty - would look into that and return to us which she

did not, requesting information not required for the application, not applying Density Bonus law waivers and bonuses, requiring from summer 2025 when litigation started that Nira Doherty's fees – who is advising the city regarding not approving the application – *advice provided against the applicant should be paid by the applicant*, the city requiring in writing in March/April 2026 that we must sign a document holding the city harmless for its actions against us (prohibited in State law) and until then the city will not process anything.

The State Attorney General has outright rejected these approaches. The letter is attached.

See the initial analysis attached – Menlo Park's discredited playbook v San Rafael's playbook. Bingo. The analysis (& of potential actions that will be taken as a result of further analysis) is continuing. The analysis clearly demonstrates (and under the HAA the entire record will be considered by the court) that a common schema has been used. Unsurprisingly, that schema is unlawful. It is shocking.

The Menlo Park matter does not decide River Landon's case. But the Attorney General has now formally rejected the same municipal methods as not being in accordance with law. The Council should not permit San Rafael to continue comparable conduct without inter alia obtaining a genuinely independent assessment.

Demanding that an applicant pay for counsel of the city to provide advice to the city on how to treat the application and (purportedly) deny it et al? Really - is San Rafael mad? And San Rafael – rather than properly respond to the public H (6) notice demanded the applicant INDEMNIFY the city from the (unlawful) conduct the city is engaged in against the applicant <u>and unless and until it did, it would not process the development</u>. Somebody look up the meaning of coercion. The <u>burden of proof</u> that the city acted lawfully is with the city, as result of the city's non-compliance with the H(6) notice – & that it took 3 months to study.

These analyses will be presented to the court. River Landon is very concerned – very concerned indeed - that this improper defendant litigation strategy with its alleged facts has already filtered into the court process, in representations made in Defendant's filings, and in oral representations – such as the multifamily representations, with no definition of attached and no timely consistency determination, and representations that the developments are not subject to the Builder's Remedy which would otherwise moot any objective standards determination, et al. The Attorney General has unequivocally denounced the legal approaches used, and those approaches (lost the Builder's remedy, demanding indemnities and fees, alleging inconsistency late yet maintaining it is valid and lawful etc etc etc) – to represent they were and are lawful - would constitute misrepresentations to the court. Those avenues are thus no longer available to the city. This position will be brought before the court.

As to the staff's purported defenses against the developments, and outside counsel's duplicative copy & paste project level-agnostic unlawful legal defense architecture, we like to say in the old mother country – "you've been rumbled". There's nothing left in it – give it up.

And turning briefly back to Menlo Park, Menlo Park has posted their objections to the Project on their website, but at the time of writing has not posted the Attorney General's letter – 'the Almanac' first obtained by PRA request.

San Rafael has not posted any correspondence from our lawyers, Cox Castle, has removed our H6 notice contesting the city's unlawful approach from its website, and has posted its (non-compliant) determination letters.

But government is to be a public, open entity.

All the attachments are important, but we ask that you do not fail to read Attachment "Analysis of the parallel, playbook law firm processing template used to block and deny applications. Menlo Park compared San Rafael. Not responsive/specific to facts"

What River Landon requires the Council to do

I am not asking any Councilmember to commit privately by return email. I am asking each of you to ensure that this matter is placed before the Council through a lawful process and that the City makes a real decision.

By August 18, 2026, River Landon requests that the Council:

1. place the Coleman matter on the earliest lawful agenda, including closed session as counsel advises;
2. obtain a written risk assessment addressing claimed damages, attorney's fees, statutory remedies, defense costs, and the cost of continued delay;
3. authorize the appropriate City official to issue the approvals River Landon contends are required, or authorize a prompt settlement providing equivalent relief; and
4. designate senior City representatives (not staff) with authority to meet with River Landon and its counsel within seven calendar days.

August 18 is River Landon's requested business and risk-management deadline. I do not represent it as a separately created statutory deadline.

We DEMAND that you issue written approvals by August 18, 2026.

Nothing in this letter waives any claim, vested right, deemed-consistency position, damages theory, monetary request, fact, statutory remedy, or entitlement to approval, or right to seek enforcement with other entities.

River Landon has remained available for a practical solution. What it will not do is enter another indefinite processing loop while the City's potential exposure continues to increase.

Please advise of the proposed dates, and the person selected. I can be reached at chris.sullivan@eosam.ch or (415) 209-5231.

If there is any reasonable question that you may have in the interim, please call or write.

Thank you, in anticipation of your action.

Chris Sullivan

For River Landon LLC

cc:-

Mr. Matthew Struhar, Deputy Attorney General, State of California matthew.struhar@doj.ca.gov

Mr. Rob Bonta, Attorney General, State of California rob.bonta@doj.ca.gov

Mr. David Zisser, California Housing and Community Development david.zisser@hcd.ca.gov

Mr. John Buettner, California Housing and Community Development john.buettner@hcd.ca.gov

Mr. Rob Epstein, City of San Rafael, City Attorney rob.epstein@cityofsanrafael.org

Mr. Andrew Sabey, Applicant Counsel, Cox Castle asabey@coxcastle.com

Mr. Scott Birkey, Applicant Counsel, Cox Castle sbirkey@coxcastle.com

Mr. Eric Cohn, Applicant Counsel, Cox Castle ecohn@coxcastle.com

Mr. Nicholas Eckenwiler, Supervising Attorney, Cal HDF nick@calhdf.org

Mr. James Lloyd, Attorney, Cal HDF james@calhdf.org

Mr. Dylan Casey, Founder and Attorney, Cal HDF dylan@calhdf.org

Mr. Don Chen, Of Counsel, Cal HDF don@calhdf.org

Coleman Drive Builder's Remedy multifamily development of 14 units and 29 units.

SB 35, the Housing Accountability Act, the July 1 H6 Response, City continues improper conduct after H(6) notice & response, and the City's Continuing Financial Exposure

SUPPORTING MEMORANDUM

August 7, 2026

Errors and Omissions Excepted.

Version 1.0

Table of Contents:

1 EVIDENCE OF A CITY POLICY FAVORING HOUSING ELSEWHERE AND AGAINST HOUSING IN THE RESIDENTIAL ZONES 11

2 NONE OF THE STANDARDS THE CITY HAS ATTEMPTED TO APPLY CAN (IN FACT) BE LAWFULLY APPLIED 14

3 DAMAGES - DEMAND TO CITY TO ISSUE APPROVALS FOR THE 14 UNIT AND 29 UNIT PROJECT - AND THUS MITIGATE & STOP DAMAGES ACCRUAL WHICH CURRENTLY STANDS AT $19,250,000 PLUS FEES & COSTS 18

4 STATEMENT OF FACTS 20

5 STATUTES & STATUTORY SCHEME(S) TO WHICH THE DEVELOPMENTS ARE SUBJECT AND PROTECTED: 36

6 ANALYSIS OF CLAIMS 50

7 ATTORNEY GENERAL TO CITY OF ELK GROVE 55

8 ATTORNEY GENERAL TO NIRA DOHERTY, OUTSIDE COUNSEL FOR SAN RAFAEL, AND OUTSIDE CITY ATTORNEY, MENLO PARK 56

9 TECHNICAL ASSISTANCE LETTERS HCD ON CONSISTENCY AND INCONSISTENCY LETTER, CODE REFERENCE, CAREFUL EXPLANATION, MUST BE TIMELY, MUST BE PROVIDED IN EACH AND EVERY CIRCUMSTANCE. ZONING DATA TABLE ET AL PROVIDES THE DATA REQUIRED FOR A REASONABLE PERSON TO ASSESS CONSISTENCY. 57

10 CARLA V CITY OF SAN MATEO 58

11 SB 35. 40 MAIN STREET OFFICES V CITY OF LOS ALTOS 59

12 ANALYSIS OF THE STANDARD, PARALLEL, PLAYBOOK LAW FIRM PROCESSING TEMPLATE USED TO BLOCK AND DENY APPLICATIONS. NOT RESPONSIVE/SPECIFIC TO ACTUAL *FACTS* 60

MENLO PARK COMPARED SAN RAFAEL 60

13 ANALYSIS OF SAN RAFAEL FORMAL RESPONSE TO APPLICANT H6 NOTICE 4/2/26 > 7/1/26 61

14 CITY OCTOBER 6 2025 'CONSISTENCY LETTER' COMPARED TO THE STANDARDS THAT ARE IN FACT ALLOWABLE 62

15 COMPLAINT AND WRIT, AMENDED AND FILED AUGUST 4, 2026. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, BEFORE HONORABLE JUDGE LAUREL BEELER. 63

1 Evidence of a City policy favoring housing elsewhere and against housing in the residential zones

That the city has not issued approvals is not due to our development applications being non-compliant (they are compliant). It is for reasons of the city's *political policy.* While that *MAY* have been permissible prior, now under the State Housing reform laws it is *definitively* not.

That is for the most part an inference, not a quotation from a secret City policy document. Yet my statement is supported by very clear City official's public statements, the extraordinary geographic distribution of approvals, and the repeated processing barriers imposed on projects in the residential zones, yet not in the commercial zones. The evidence should be considered together rather than in isolation.

I explain:

"‥ development can't come at the cost of the **community feel** San Rafael prides itself on, **so they choose projects that preserve open space** and are close to jobs and transportation". Kate Colin, Defendant, Eden Housing article. March 2024

"**It** [downtown] has the infrastructure, the transit access, the services – if you're going to build housing, **this is where it makes sense**". Micah Hinkle, in charge of Housing at city, Defendant. SF Chronicle, March 2026

"she "believes deeply in the planning framework our community developed through the general plan process" and questioned "**whether this project aligns with the long-term expectations of our community**" "Tonight, we have these binary choices, which are so **unsatisfying**, because I want to be talking about nuance," 'I support housing, I support density, and **I have concerns with this project.'"**

Colin, voting to uphold an appeal to reverse approval of compliant Irwin St development - the planning department stated in the public meeting that the project complied with all objective General Plan and zoning standards and criteria. Colin voted to deny the project, despite it being compliant with all planning and zoning law.

February 2026

Given the above, what chance does a project in the San Rafael hillsides stand?

"What has become clear is there is very little discretion for cities in state density bonus law housing projects, and there is no discretion at all in ministerial housing projects such as SB 35" – the city knows there is no discretion – but in bad faith refuses to approve River Landon's SB 35 developments.

Kavanaugh-Lynch, February 2026

And the results of that political policy are in:-

Table 1	Approvals **OUTSIDE** residential single family zones in downtown	Percentage of city (all per city General Plan table 3-1)	**Percentage of all city approvals that are within Downtown zone**	Approvals **WITHIN residential** single family zones	Percentage of city (all per city General Plan table 3-1)	**Percentage of all city approvals that are within residential** single family zones
2023	162	3.9%	**99.4%**	1	33.2%	**0.6%**
2024	204	3.9%	**100%**	0	33.2%	**0%**
2025	547	3.9%	**99.9%**	1	33.2%	**0.1%**

This data is taken from city's official Annual Production Reports required submitted to HCD.

San Rafael is unlawfully blocking our developments - simply because they are in the 'wrong place'. Nothing to do with standards, nor scoping, or that there are too many units on a single family parcel, nor that information has not been submitted by the applicant, nor a debate over what multifamily means, nor the height of lighting - as we *again* here demonstrate to the city from the above - San Rafael must pretend those are the reasons - yes –- but *actually* it's just way simpler - our developments (and all the others) are blocked because they're in the politically sensitive residential zones where despite there being extensive land available the plurality of voters do not want new housing approved. And that's it. End of story. Period. We know that. You know it. You know we know it, and we know you know it.

Take the highly tortured history of our entitlement processing. Take the public statements by city officials stating they don't want development in the hills. And – unsurprisingly - the results prove it out - the number of approved housing units per percentage point of City land was approximately 4,570 times greater downtown than in the residential single-family zones. The statistical probability that this is a coincidence and not the result of city policy is *zero* – not a 10% probability, not an 18% probability – a *0% probability* - i.e. it *cannot* under any circumstance be a coincidence. And, **if** both zones were treated equally by the city, there would have been 819 new permits in the single family zones, and 96 downtown.

The court will see all of these concerns, and we will ask the court to evaluate them.

The definitive statements of public policy help seal the fate of any defense to issuing entitlements. It is the implicated clear policy of city officials to block housing in the residential zones, yet strongly direct new approvals to only downtown (inter alia 'we pick the projects' 'close to jobs') – sorry, but a policy referred to in the industry as 'dumping'.

The big problem is – it's against the law – and equally significant problem for the city is that River Landon has suffered significant financial damages as a result of this city policy, and thus not carrying out its ministerial duty, & from which damages the city is not immune.

We put the city council on notice – again – that the city is exposed to very significant financial liability from the consequential loss that River Landon has suffered and continues to suffer. Under 815.6, the city has no immunity from failing to carry out its ministerial duties, and failing again and again and again, as is the crystal clear case here. The fact that there is no immunity for the city under our State claims is not an argument – that is uncontestable established law.

2 NONE of the standards the city has attempted to apply can (in fact) be lawfully applied

	Categorization of standards types that **cannot** be used by city. Multiple "types" of non-objective standards, standards that are disallowed in SB 35, explanation requirements, & timing. The City may describe the items in its letters as objective standards. River Landon's audit shows why, as applied here, those items did not lawfully support a finding of inconsistency. The principal defects fall into the following categories:	See supporting attachments		
1.	**Where a standard is, is codified as, or can be exercised by discretion** Standards, restrictions, & use restrictions that depend on the exercise of <u>discretion</u>, that involve discretion, are non-objective standards	Example "city has a mechanism to deviate from the development standards..for projects that meet the goals [of the Planning Area]""Because the HAA and SB 35 prohibit the application of a standard that involves *any* discretionary application". Emphasis Attorney General	CA Attorney General March 16, 2023 to City of Elk Grove. Page 2, Paragraph 2	Result – standards that can be confirmed, altered, or applied by exercise of discretion are not objective standards, and cannot be applied in SB 35
2.	**Any standard that involved personal interpretation or subjective judgment**		Not permitted to be applied in 65913.4 "they…require personal interpretation or subjective judgment that may vary from one situation to the next" "a standard that cannot be applied without personal interpretation or subjective judgment is not "objective" under the HAA" Carla v San Mateo	
3.	**Cannot discriminate on basis is SB 35 35 application – i.e. where discretion, City Council, Planning commission or other body, or Design Review, or city engineer or city official can provide relief, that standard(s) <u>cannot</u> be applied to SB 35 development**	City – in effect – has attempted to impose higher standards on this SB 35 development because it is a ministerial SB 35 development. How so? – because it attempts to hold the developments to a standard that – as each standard states – an applicant is entitled to	65913.4 (i) (1) A local government shall not .. impose any requirement.. that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section"	

		relief from complying with in discretionary review	SB 35 Guidelines in operation for processing at the relevant times.300 (f) "A local government shall not adopt or impose any requirement.. that applies to a project solely or partially on the basis that the project is eligible to receive streamlined processing"	
4.	**Standards that do not have a long-standing and consistent interpretation and city demands deference to its own unique determination**	City demands deference to its interpretation & Court finds that "serves as a tacit acknowledgment that the height Guidelines require something other than objective interpretation"	CARLA v San Mateo. Thus ruled as not an objective standard	
5.	**Standards for which there is an argument over interpretation including where there is ambiguity**		CARLA v San Mateo. Not an objective standard "Too ambiguous to be … susceptible to objective interpretation"	
6.	**Requests for more information to know if the Project will be consistent (including statement that not sufficient information)** This action by city is not sufficient because this is "not a determination that the project conflicted…[standard]" This includes statements by city "information not provided""requests more information" when in fact applicant not submitting for this entitlement – for example fences – there are no proposed nor needed fences. Another – doesn't comply with subdivision standards Title 15 – because applicant is NOT applying for subdivision. In those cases indicated at end of each analysis note – not applied for 'NAF'	Example "requested more information about whether the Project would have a pedestrian-oriented commercial use on ground floor" i.e. "failed to make a clear determination that the project conflicted.."	CA Attorney General March 16, 2023 to City of Elk Grove. Page 3, Paragraph 5	Result "City failed to determine in a timely and adequate manner that the Project conflicted" ..so.."Project was deemed to satisfy the standard"
7.	**Careful explanation of conflict with objective standards** Local governments "must carefully explain any determination that a proposed development conflicts with SB 35's objective planning standards" "within proscribed time periods" Here, those time periods are 30 & 60 days.	City did not carefully explain, neither did so within proscribed time periods	CA Attorney General March 16, 2023 to City of Elk Grove Page 3, Paragraph 4 explaining Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318	Result: the development is deemed to satisfy the standard (by operation of law)

8.	**Standards not articulated in the 30/60 days letters, then later used for denial**	"[part of] determination made 90 days after project submission. Denial made 90 days after submission"	CA Attorney General March 16, 2023 to City of Elk Grove Page 4, Paragraph 1	.."untimely basis for denial. This is exactly the shifting goalposts that the SB 35 determination deadline is meant to avoid" City informed would be sued by AG's office if not approved
9.	**Standards can only be applied if facilitate GP density, and meet RHNA numbers** Further restriction on use of standards even when they are objective	The local government must apply objective standards "appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need.. … 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 65589.5 subd. (f)(1)	CA Attorney General March 16, 2023 to City of Elk Grove Page 4, Paragraph 4, 5	"City's application of ….restriction…is not consistent with meeting its fair share…city is in it's second consecutive cycle of failing to meet its need for …low income households" "under the HAA, the city could only enforce the ..restriction in a manner "to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development 65589.5 subd. (j)(4) "city enforced …restriction to prevent such development, in violation of HAA" AG informed city it will sue them if not approved
10.	**Standards that have requested waivers, concessions, bonuses or incentives cannot be applied** Standards waived by, or subject to concessions or incentives		"In no case may a city…apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by Density Bonus Law" Govt Code 65915 (e)(1) A developer may seek a waiver or reduction of such standards that physically impede construction of the development" the city "shall bear the	Finding for the developer in SB 35 development - city had not granted concessions, waivers, bonuses. AG informed city it will sue them if not applied & approved See attachments Standards subject to requested Density Bonus relief cannot support disapproval

			burden of proof for the denial" (d)(4) 40 Main St Offices v City of Los Altos. River Landon's point is that the City could not treat the underlying standard as a final inconsistency ground while refusing to process the waiver request and without making the findings required to deny it.	

The audit included here – in its first round - evaluates 46 analytical rows corresponding to 47 City entries. It finds, broadly, that:

- 36 of the 46 rows rely on requests for additional information rather than actual determinations of conflict;
- 35 lack the careful explanation of conflict required by SB 35;
- nine concern entitlements River Landon did not seek;
- five involve standards for which Density Bonus Law waivers were requested;
- 45 fall into one or more challenged nonobjective, inapplicable, waived, untimely, or otherwise unavailable categories as applied; and
- only one possible facially external and uniform benchmark was identified, and the audit concludes that the City misapplied that benchmark to the facts.

The result is not merely that River Landon disagrees with the City's planning judgment. The result is that the City's letters did not identify a legally sufficient inconsistency capable of supporting denial.

3 DAMAGES - DEMAND to city to issue approvals for the 14 unit and 29 unit project - and thus mitigate & stop damages accrual which currently stands at $19,250,000 plus fees & costs

Since January 2024 – the date by which the applicant could readily have obtained all permits from the city if the city was following the law, but it did not and still has not, including as a direct consequence of the city not proceeding according to SB 35 and HAA. As a proximate cause, the applicant has suffered damages – consequential unlawful delay damages - of

Loss of rent, at 6% vacancy rate, after expenses $345,681 per month

Loss of appreciation of the development, 4% per year $296,000 per month

Total $641,681 per month, plus attorney's fees, costs, and applicant's otherwise unnecessary management, professional and project office costs (unnecessary if the city had proceeded according to law)

Directly following from the above (calculated as at the time of writing), the damages as a direct consequence of the unlawful city delay are:

$19,250,000

No court has yet awarded these amounts. But they are real claimed exposure, supported by a calculation & real basis - and they increase daily with every further attempt to defeat State law.

(As stated in amended complaint, in the event that the city's continues to not proceed according to law, it is *possible* the applicant may not continue with the project, and consequential damages would be for a total loss – in excess of $75 million, proximately caused by the city and thus owed by the city to the applicant, *plus* $19,250,000)

The point is – city officials – you – have a common duty to proper financial management, which includes in this case to mitigate loss and damages against the city, a subdivision of the State. Ready, fire, aim by others in the city will not work anymore. The sooner you issue the approvals – which is a mandatory ministerial duty with little effort – the sooner these lawful consequential damages of $21,389 per **day** – **per day** - will stop.

You can decide to keep fighting this development(s) through outside counsel. You can try Motions to Dismiss, motions for summary judgment. But the facts – the egregious history of the city's processing of this case, and the law – the strong state housing reform laws that you strongly object to, and do not follow – are not on your side. Neither are the carefully considered

opinions of the State. Let's take an example, for the sake of argument - you can take up the court's time for another six months, trying to fight the lawful development - then you will owe another $3,850,000 in consequential damages, for a total of $23,100,516. That's a big price for the taxpayers for blocking housing and political preservation – a very big price, and as prudent City Council members you will also be concerned that the city doesn't have ready access to those funds.

These are not hypothetical numbers to River Landon. They represent lost rent, lost value, carrying costs, professional work, and years during which the property could not be put to productive use.

The City may dispute every part of the damages model. But the Council should not confuse "disputed" with "no exposure." At $641,681 per month, another six months adds approximately $3,850,086. That is the financial choice the Council makes if it authorizes or permits another six months of the same course.

Continued litigation might conceivably vindicate the City's position. It may also result in an approval order, attorney's fees, continuing court supervision, damages, and further statutory remedies. A prudent Council should compare that risk with the cost of approving housing the City was required to process ministerially.

We feel quite uncomfortable with any entity owing us this much money. And we submit you should too.

WE DEMAND THAT YOU ISSUE WRITTEN APPROVALS, COMPLIANT WITH SB 35, FOR THE 14 UNIT AND 29 UNIT PROJECTS by August 18, 2026

California's housing statutes have changed the consequences of local processing delay. River Landon alleges that the duties at issue are ministerial, that the projects are consistent or deemed consistent, and that the City's continued refusal causes compensable loss. The City disputes those allegations. The Council must now decide whether to continue accepting that risk or to stop it.

Prior, a city didn't have to be worried about lawbreaking – now, as these state housing reform laws are ministerial – which acts are NOT immune, it should be very concerned (in its care about prudent financial management). City officials should not continue to gamble with the *City's* tight income statement, & balance sheet, nor make this determination for any political reasoning – instead, to reduce & mitigate the city's already alleged significant liability, as the liability is ongoing daily, thus the city has no alternative but to write approvals for the two deemed consistent developments forthwith.

4 Statement Of Facts

City prevents processing for just 2 homes, on 0.93 acres 2020 - 2022

The history starts in October 2020. The city would not process a discretionary permit for 2 homes on Coleman Drive on 0.93 acres. Two homes. Many existing homes in the district are on *0.15* acres.

In October 2020 we applied to the city for discretionary permits for two homes, and thus to work together with the city to achieve entitlements, *but* the city rather than doing that didn't process the application - claiming that it was 'not complete', formally introducing new 'incomplete' information requests no less than 7 times over a more than 2 year period – whereas law requires that only a single onetime list of incomplete items can be requested by a city. Govt Code 65943 (a), in force since January 2020, specifies that "In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the *initial* list of items that were not complete." The incomplete process by a city is limited to 30 days – not 2 years 1 month – 30 days - that's it.

It took 6 more bites at the cherry than it was allowed by law – just on the documentation standards.

By the time that initial process substantially ended in November 2022, (with a strong assertion by the city that the applicant now switch to another completely different processing regime – start again) the applicant's and owners project costs (and proposed construction costs) had risen sufficiently significantly during that long period that a larger development would have to be proposed in order for a project at the site to be financially viable.

Submittal of Notice of Intent and SB 35 application May 2023 (during a time that city had no compliant Housing Plan/Housing Element)

After preparation and internal agreement on a new plan, the applicant applied for a by right (rather than discretionary) housing development, at a time that the city had no Housing Element, and subject only to objective planning standards, not subject to local standards, and capable of being amended in the event the city advised of reasonable objective planning standards that the development did not conform to. Given the law breaking – overt law breaking - by the city to that date clearly we had very little trust in the city properly exercising its discretion – no person would trust another party after that – so we selected the 'by right' route – no arguments. In addition - the applicant submitted the required documents to benefit from the 'Builder's Remedy', a penalty provision of State law that mandates that if a city has not made the effort to publish a plan for where new housing will go -that written health/safety standards are the *only* basis on which to deny a housing development. Sounds pretty easy huh?

However – and again – city staff ignored the law. The stated intent of SB 35 is to significantly reduce the length of time to process a housing development approval, and, give the developer

complete certainty of what will be approved. HCD has now published that the average time to process SB 35 applications is 128 days or thereabouts.

No multiple Planning Commission meetings over years where commissioners express their personal opinion on what would look good or be appropriate. No contests on what may - or may not affect the environment. Just a permit.

But city staff blocked that one too. It has and had a ministerial duty to process the development(s) – ministerially – but never – to this time of writing - carried out its ministerial duty.

<u>City staff pretend to engage in a scoping consultation with Native American tribe</u>

To start - it failed to carry out the required scoping consultation per SB 35 (b) - mandated by the Statute - & which includes mandated compliance with carrying out the consult according to the Tribal consultation guidelines.

Kavanaugh-Lynch did not organize any studies, nor reports - improperly trying to shift that burden to the applicant. Kavanaugh-Lynch could make *no* notes, meeting notes nor any material from the scoping consultation available, & despite a Public Record Act request. Further, on information and belief, the native American tribe in essence elected not to engage in a 'scoping consultation' - which it is their absolute right to do – but which under SB 35 means that the city must then start processing an SB 35 submittal.

The city *claimed* to be undertaking a scoping consultation, but no action points, no activity, no schedule, nor requirements, nor any single action that the city took toward or in the scoping consultation has been (nor can be) identified by the city to the applicant regarding the scoping consultation, despite multiple verbal, written, and Public Records Act request(s) by the applicant & its lawyers for the city to do so. The *sole* activity that city staff undertook, and advised the applicant of, is that it had a general standing meeting schedule with the local Native American tribe set in advance to discuss matters concerning the city generally- which it stated had the nature of check-ins. A 'check-in schedule' is not a scoping consultation.

Actually - city staff schemed to use and used the direct government to government forum implicit in a scoping consultation (in which the applicant could not for this 'consultation' by law be involved) to obfuscate and endlessly delay the processing of the housing development application. This endless delay was and is not *anything* to do with any purported (& cursory) view of city staff that the housing development *may* not be 'multifamily' – this was nothing more than a ruse by the city to delay – and try to defeat the housing application - as the city knew it also had no defense against the next step in the sequence - the *by right* processing and over which city staff had no latitude.

City staff had *not* put in the very heavy lift to create objective standards for the residential areas of the city, but if it could (improperly) delay necessarily approving the housing development then

it could possibly discourage the applicant sufficiently that the applicant would simply give up – the government – the *government* – had started & entered into an unlawful war of attrition with an American business.

There were no confidentiality requirements other than not publishing the location of tribal resources in the public square - which exception simply doesn't apply here – but the city also attempted to hide behind that. California Housing and Community Development Department conducted oversight over the 'scoping consultation' with city staff during 2024 describing staff as very difficult to reach, tight lipped, answering in 'grunts and murmurs' – with HCD – in its oversight function – formally concluding in December 2024 that city staff were engaging in *'another version of SB 35 blocking'*

The *purported* scoping consultation – which the city assured the applicant - in writing - it was undertaking - kept the housing project approval process trapped in amber.

<u>Applicant sued the city, and the 'scoping consultation' miraculously immediately finished</u>

The applicant sued the city in June 2025. And suddenly – the scoping consultation was over, and the applicant's development processed! What are the odds?! Immediately the prior embargo ceased - the applicant had one meeting with the Native American tribe, the traveling draft passed between all the parties for approximately a week and the agreement was signed, on June 30, 2025. Within a couple of weeks of service of the complaint, and with absolutely nothing in the 'scoping consultation' nor the site setting changing, the 'scoping consultation' was finished, an enforceable agreement signed with the Native American tribe, and the housing development application under SB 35 put into processing. And it was impossible that city representatives Hinkle (MH) and Margaret Kavanaugh-Lynch (MKL) could have looked any more uncomfortable in the Zoom meeting organizing it's signing, and seemingly reducing the size of their faces being projected real time to a miniscule size. The meeting was uncomfortable - embarrassing for them actually.

The applicant considered that now would be the end of the obfuscation by the city, that after 5 frustrating years of applying for entitlements to develop the property, that city staff would finally relinquish on the city's political policy of opposition to housing *in the residential zones*, the development application would be processed within the mandatory 60 days, and arrangements for grading and preparing the site for desperately needed housing could begin - but *boy - was the applicant mistaken:*

<u>Processing of the SB 35 development was meant to begin</u>

Processing of the SB 35 development was meant to begin – but it didn't. The city simply wrote documents throwing inapplicable standards into letters and then – out of the shot clock deadline – purporting to deny the application by using the dishonestly applied inapplicable standards as justification.

A yet further opportunity for city staff to continue blocking the housing development, as the facts show. Under the color of law, taking the applicant's right to use its private property. Different day, slightly different method, but same intent – *no* politically sensitive housing in the actual residential zones – *none, in any of them*. But achieving political self-preservation – the motive.

City processing techniques – and not compliant ones

Kavanaugh-Lynch

– generated a confetti of paperwork raising subjective – not objective standards – in, inter alia, an attempt to throw a confusion veto over the approval of the development

Further, post hoc pretending that the development was not multifamily, had never been eligible for SB 35, and unilaterally cancelled the application

Kavanaugh-Lynch & Hinkle seized on an curable objective planning standard of 'multifamily' as being one the applicant had purportedly not met (despite the city prior documenting that the exact same development ***HAD*** met the multifamily standard) while providing no uniform external benchmark for multifamily or 'attached' to the applicant, as mandated by the Statute of SB 35 that it had to do, & despite a multiple requests by the applicant to do so, and a promise by staff to do so, falsely claiming the applicant had refused to make any changes (while all evidence shows it was waiting for the city), and, not raising this point & with a code reference until **after the deadline(s)** for doing so. It then instructed its outside counsel to try to defeat these compliant housing developments, and frankly, apparently instructed them to bamboozle the court with paperwork.

As if the prior scoff lawing were not enough to satisfy its apparent Machiavellian desire, it had undertaken a *breathtaking* initiative to elevate an objective planning standard to a position that it does not occupy in the Statute – and supported by Nira Doherty outside counsel - that because in the city's view, a position merely of convenience – and the city without reference to an external unchanging uniform benchmark as is required for that objective planning standards, that because Version 1.0 of the by right development submittal did not contain common *walls* between units – it made up its own proprietary version of attachment (common *walls*) and that outside of the deadlines and post-hoc, that it would be able to permanently sabotage the entire process and development in this continued war of attrition against a private American business. But as discussed below, the applicant has the simple right to resubmit to address such a *purported* inconsistency, and to work to be responsive to city concerns.

-pretending to the applicant and the court that the whole development failed on city staff's erroneous basis and that thus *processing was unilaterally cancelled* (in contravention of SB 35), and applicant would have to return through the house of horrors by starting all over again as if it were May 2023. It is our position that city staff – with outside counsel - worked to bamboozle the court with this horror fiction.

That this would presumably provide another 3 (or more) years of guaranteed paid work for the same city staff did not escape the applicants mind, but that all the while violating the applicant's State constitutional rights – using government funds from taxpayers, perpetuating unlawful acts, and creating damage to the applicant, its investors - and perpetuating the housing crisis.

In fact, SB 35 *specifically contemplates and provides for the applicant to be able to address city staff's feedback* regarding inconsistency, by a *simple* ***resubmittal*** (not re-application or new application nor new vesting/standards dates) 65913.4 (c)(1)(c). While *not* agreeing with city's 'analysis' (actually obfuscation, and neither was it on time) of multifamily, & attached, because the terms do not have an external unchanging uniform benchmark, nevertheless to respond to the city's stated concerns, the applicant resubmitted the development with common shared walls on March 20, 2026 (though we disagree with the city's position).

But City staff ***YET AGAIN*** – over and over and over again — failed to carry out their ministerial duty to approve the development, but rather – you've guessed it – documented that the resubmittal (which had the exact same level of details as the planning documents that the city had prior 'processed') was ....incomplete - which status, to the mind of the city lawfully 'halts' all processing. The City treated the resubmittal as an incomplete new general discretionary application and demanded that the entire process restart.

Abuse of the SB 35 resubmittal by city

On March 24, 2026 MKL – despite the applicant insisting many times in writing it be assigned to a different planner - wrote, thanking the applicant for its recent plan set, but stating that an altogether new application must be submitted - due to the city purportedly denying 14 unit application on December 3, 2025. The email stated "all of these items must be submitted to the City for the application to be considered filed" – despite that the majority of those items were and are irrelevant. Like a bad penny. The email was titled "Coleman Project -Steps needed to submit a new application". She stated this must include a cover form, and all the items on a General Planning Application Submittal Requirements/Development Checklist (for the greatest part for Discretionary processing, and NOT for SB 35 processing), with a link, which when pressed stated 'Access denied'. The city submittal requirements documents were not the narrow & specific requirements for SB 35 but for a generalized application, and a principal form was coded as being a January 12 2023 form yet included instructions to use OpenGov, a system only implemented at the city in late Spring 2026. The form, tellingly, demanded signatures from the applicant (and owners) to **indemnify the city against damages caused by the city against the applicant,** even though such has been prohibited by State law - & until this indemnification was submitted nothing would happen. **Of course, damages are a cause in current litigation against the city.** Sadly, the city has slid so low that it was attempting to coerce the applicant to waive the damages the city had caused, including by the very email from the city and process. "We're doing unlawful things, you must respond to those unlawful things, and sign that we will

not be liable for damages for those unlawful things - simultaneously". Truth is stranger than fiction.

Further frustrative letters from Kavanaugh-Lynch

Next, on April 17, 2026 MKL wrote a further letter to the applicant:

- in part repeating - that a completely new application would now have to be submitted to the city. And now – an application to be compliant with city's *updated* zoning rules including 2024 updates that were material which the city well knew would force significant re-design of the development(s) of both the 14 and 29 unit projects – one of the very things SB 35's processing regime was intended and is designed to avoid, then presumably the new impact fees (6 times higher), and for sure to be subject to a score of yet further incomplete statuses (i.e. the development is not being processed during that time),

- describing the statutorily simple March 20, 2026 re-submittal as 'incomplete' and subject to a long list of *new* supposedly required items despite city staff **prior** processing/accepting/creating a 'consistency letter(s)' *for the development that had* precisely *the same level of detail* as the resubmittal, that the city had 'processed' (or at least given the impression it had processed) between July & October 2025.

The State housing reform law required a focused consistency review of the proposal submitted to address written feedback—not a restart under a generalized discretionary application checklist and later-adopted requirements.

The document contained 39 links. All the 'Application Submittal Requirements' links – **26 links** - were broken. A process cannot fairly be described as a clear route forward when most of the referenced routes do not work. The applicant attempted to work through what the 'Application Submittal Requirements' hypothetically might be.

MKL requested among many other items not actually required. Some examples from the 100s of items unlawfully requested by her:

- grading & drainage (post entitlement requirements)

-photograph sets (not required to assess whether a project meets objective standards), - notations of colors, types, and manufacturers (not part of any objective standards that are applicable to the development),

-estimated plant materials growth within 3 years (not required to assess whether a project meets objective standards),

-the completion of a form to divide the property into 5 or more lots (the development in fact indicates – and has for 3 ½ years - that the *opposite* will happen to the lots – that they will be merged) which actually is an *Engineering department process* prior to a building permit (not *planning process*) in San Rafael (a *post entitlement* requirement),

-Section E.12.e NPDES MS4 permit Non-LID facilities documents indicating compliance (a possible post entitlement requirement)

-an indemnity be signed by owners and applicants in important part banned by State law

- backdoor CEQA processing requirements

and a *plethora* of further similar demands for reports, studies and documents expressly prohibited from being required by SB 35

and the city communicated that *the development would not be processed until such had been submitted.* **Does this sound familiar?**

Kafkaesque & Judge Engoron

A different court case comes to mind *(though not in this jurisdiction)* in a ruling, Judge Engoron of New York City said New York's review process for a particular new housing application "seems like Rube Goldberg, Franz Kafka, and the Marquis de Sade cooked it up over martinis" and finding all causes for the housing applicant. It is impossible to distinguish between an East Coast Rube Goldberg, Franz Kafka, and the Marquis de Sade and a West Coast Rube Goldberg, Franz Kafka, and the Marquis de Sade –--- perhaps you could help out with that – the difference?

The point being - whatever label one gives it, the result is Kafkaesque: a statutory resubmittal intended to answer one stated late objection was converted into a demand to restart through a general-application process containing extensive unrelated requirements.

That the applicant would have to start over at the beginning (as the city stated and documented) with all the multiple additional and irrelevant documentation requirements (beyond the simple resubmittal provided by the Statutory scheme) that such a *new* application would bring is nonsensical – and *clearly* an attempted ruse by city staff (and later we discovered, see below, outside city counsel) - but fortunately for the applicant one which the Legislature predicted, and into which the city (again) fell – that if the city fails to issue a compliant consistency & inconsistency letter within 60 days, the development is deemed (by operation of law) to satisfy all objective planning standards. Govt Code 95613.4 (c)(1)(c). Housing developers have begun to refer to this clause as the 'CIC clause' (the *Kick* clause)

H6 Notice, and city response

At the same time that this *endlessly* repeating scoff lawing by the city – in this instance - over a simple applicant re-submittal was going on, the applicant submitted a notice under Govt Code 65589.5 (h)(6). This provision recently yet further strengthened the Housing Accountability Act (an act to hold local government accountable for its failure to approve housing that has caused the housing crisis) by a public notice mechanism where the city must explain and commit to

objective bases for its actions in writing and advise the applicant of what if any final steps and information are required for an approval – or, face (yet further) penalties under the HAA.

In response to the H6 notice, the city shifted its explanations and excuses yet again. The city Community and Economic Director (MH) - waiting until the very end of the 90 day H6 period, *claimed that*:

- actually the SB 35 deadline was *90* days not 60 days to send a consistency/inconsistency letter and/or denial! The law is plain - that the deadlines are 30 days (resubmittal) and 60 days ('first' review). Hinkle was in communication with outside counsel.

- Thus then – intentionally misrepresenting the law for the umpteenth time – because the deadline of 90 days is applicable where a *publicly noticed* Brown Act *commission or board forum* has been called (at a city's sole election) to further (and not instead) review a development for applicable objective standards. But the city had never chosen that option. Or the development is more than 150 units.

- that the March 20, 2026 resubmittal should have been submitted through the 'etrakit portal'. But the portal *had prior sun-setted for any submittals!* and in any event the etrakit portal had NEVER at any prior time allowed submittals/re-submittals for these vacant lots. The Director stated that the applicant had submitted through the etrakit portal multiple times (in part to attempt to justify requiring it to do so again) but in fact the applicant had NEVER submitted through the etrakit portal. There is – in fact - now a new completely different portal - but it does *not* accept *resubmittals*! MH was attempting to show that the applicant had not resubmitted – and because it had not resubmitted that the applicant's development was thus *not* deemed consistent with all standards by operation of law – but in fact it was.

- Shifting from MKL's attempts at explanation, that the city *had* in fact responded to the resubmittal – but by stating it was incomplete and stating that scores of irrelevant studies, reports, documents, and additional proofs were in fact needed before the next review could be started (and then assumedly another magic 'scoping consultation' etc.). MH provided an explanation, conflicting with his own statements in the same communication, & shifting from MKL's prior written demands regarding March 20, 2026 resubmittal, and:

- that would be a *new application,* and provided a link to the document requirements. Hinkle's response to the formal (H)(6) notice specifically invoked these completeness requirements, referencing the SB 35 application. No attempt was made by the city to define *specifically* SB 35 data and documentation requirements - & no such new

submittal is any event required. Thus MH was additionally stating – in addition to other explanations - that the development had been submitted & accepted - but was incomplete.

- OR, that the applicant *could* submit a 'Revised (SB 35) application (a resubmittal) BUT that all incomplete items previously identified by the City as incomplete (see the tortuous unlawful demands of MKL above on 'incompleteness') must be submitted - and - those to be submitted through the defunct e-trakit.

The July 1 response offered several inconsistent descriptions of what River Landon was supposed to do next. It stated or suggested that:

- the March 20 submission was not a valid resubmittal;
- River Landon had to file a wholly new application;
- the City had nevertheless reviewed the March 20 submission for completeness;
- a revised submission should be made through eTRAKiT; and
- all generalized completeness items (including a plethora of discretionary processing items) first had to be provided.

River Landon contends that eTRAKiT had been retired for new submissions (per city memoranda) and, had never accepted these vacant-land applications, while the replacement portal did not provide a functioning resubmittal path for the pending SB 35 project.

A response that provides several mutually inconsistent routes is not a clear instruction. It is another confusion veto. (And assumedly the city would then further be able to use the ambiguity later against the applicant)

Judge Engoron's pithy public pronouncements again came to mind.

Thus, the city's required response to the HAA 65589.5 (h)(6) is not even close to complying with the law. It simply attempted to introduce the confusion veto again, to muddy the waters (which SB 35 was created to stop), it attempts in bad faith to rewrite the statutory scheme (claiming 90 days not 60 days) and to continue in the – you'll be familiar by now- endless loop and - falsely encourage the applicant 'that the applicant has to do just one more round and it will very likely get a permit' (then one more, and one more etc., apply under a different law, just send us one more document set, just follow one more new checklist)

But we are not Charlie Brown. And very far from it.

The July 1 response did not satisfy the HAA. It did not state that the City would cease the challenged conduct. It did not identify a clear and lawful route to the next approval. And it did not resolve the specific defects River Landon placed before the City. And the city's conduct challenged in the originating H(6) notice continued and continues.

The attached line-by-line comparison identifies:

- eleven rows in which the City used the September 6 plan set to defend the earlier August 27 determination, with no basis;
- 25 cross-references to sections that do not exist;
- two facial date errors;
- one citation to the wrong document;
- three conceded findings; and
- maintenance of the incorrect position that the city does not need to make consistency and inconsistency communication.

More fundamentally, the response devoted itself to defending past conduct rather than opening a lawful path forward. River Landon will not enter another endless loop.

– this was EXACTLY where the applicant was in *December 2020 (see history)* – just provide some more documents – and according to the city – still is, at the time of writing more than *five and a half years later.* As a result of the unlawful actions of the city in processing applications, and SB 35 development(s), the applicant has suffered *and continues to suffer* very substantial damages.

And the city attempts to drag the applicant, the investors, the ultimate occupiers of the new affordable housing, and ultimately- the court itself - into its web of a continued horror comedy.

It is noted that 'incomplete status' is and remains one of the principal 'go to;s' of San Rafael to effectively block all development in the residential zones.

Very tellingly – the official Annual Production Reports show that the city has approved just one 1 new 'vacant lot' home in the *residential zones* in the last 2 ½ years - with roughly 24,500 homes this represents a new home approval rate of 0.004% (that's not even 0.4% - that's 1/245 th of **one (1)** percentage point). A textbook example of a moratorium. If it acts like a duck, walks like a duck, and quacks like a duck – it's a duck. And it's a moratorium.

In fact - the position in law is that the March 20, 2026 resubmittal is deemed consistent with all objective planning standards including multifamily, and attached– all of 65913.4 (a) - as a matter of law.

<u>Pattern, practice and political policy:</u>

Conduct of Community and Economic Development Director Hinkle

Community and Economic Development Director Micah Hinkle has repeatedly expressed positions demonstrating opposition to development of the Coleman Drive property and resistance to State housing mandates.

In a documented meeting with representative of Plaintiff on July 25, 2024, Hinkle stated:

“I think you realize the challenge of Coleman. These are paper lots, done back in a recorded map era.”

He referred to “problems” with “lot access”, “problems with these lots”, “steep slope of the lots”, and “nobody has built on these lots.”

He stated: “This area is challenging, right? Utilities. Access. Approach. This is just a difficulty of this parcel of why it’s been vacant basically forever. The slope on it, slope and access, right? You know it, I know it. If you look at our hillside guidelines… it’s a difficult project. There isn’t really a lot of developable land in San Rafael.”

But in fact, the lack of development reflects the city’s resistance to housing in single-family zones rather than any inability to construct housing.

Hinkle continued: “They slated a lot of housing. Northgate, downtown.”

But - those are not the residential zones. Hinkle quotes success in approving housing – but he scores an own goal– it’s all in the downtown/commercial zones. He makes our point.

SB 35 specifically and intentionally prohibits processing a qualifying project based on generalized concerns regarding utilities, access, site approach, slope, neighborhood preference, or a city official’s view of where housing “makes sense.”

These statements identify generalized concerns about the historical lots, slope, utilities, access, and the City’s preferred locations for housing. River Landon contends that those generalized judgments cannot substitute for application of the specific objective standards governing a qualifying ministerial project.

The issue is that the City used those concerns to avoid the objective, time-limited review required by State law.

Conduct of Mayor Catherine “Kate” Colin

Defendant Mayor Catherine “Kate” Colin has publicly articulated the city’s housing policy – see above.

Projects downtown.

Projects near transit.

Projects in commercial zones.

Projects that preserve hillside “community feel”.

Not Plaintiff’s residentially zoned hillside property.

Not objective standards.

We pick the projects.

Expectations.

Community framework.

Planning philosophy.

Discretion.

The General Plan and its associated Environmental Impact Report state that the General Plan EIR project concentrates growth in existing urbanized areas and thereby results in fewer impacts from expansion of infrastructure into undeveloped greenfield areas; includes policies to protect hillsides; includes new policies to maintain dark skies; includes planning to reduce driving; sustains protection of local open space; supports goals related to neighborhood character and quality of life; encourages low-impact development; and promotes expedited infill development [specifically – author’s note] *in the Downtown area*.

Our project site — a large undeveloped hillside site overlooking 101, between otherwise developed lots — an urban infill project as SB 35 intended and mandates - is often referred to in San Rafael, or confused with, open space. It is a perfect example of the San Rafael hillsides, which the City’s General Plan states is not a place to build.

For a project at Irwin St, which city staff stated in the public meeting meets all standards (after Margaret Kavanaugh-Lynch interestingly no longer worked on the project), ‘She (Colin, Mayor) said San Rafael stands to thrive with more people living downtown, **but she’s also frustrated at state housing <u>laws</u> that have limited cities’ abilities to negotiate with developers to reach compromises**”. **Ergo - she voted to deny the lawful compliant application**. March 26, 2026 article.

So – she took the law into her own hands and broke it. Contrastingly, Eli Hill, Council Member, did not sustain the appeal, allowing the lawful approval to stand – he said that housing laws in the Assembly and Senate need to change (in his opinion) – but he didn’t break the law.

That then — the General Plan – community feel – community input – extracting compromises from developers for the city’s coffers— is the *housing policy* of Mayor Catherine “Kate” Colin. Not the law. But this time that lawbreaking catalyzes consequential damages to property owners and applicants.

And, following the useful adage "believe what you see, not what people say", Table 1 of the numbers of housing units approved and where tells the reader all he or she needs to know about the results of that housing policy – the actual housing policy of the city – not the statements of assurance from city staff. Sometimes declared publicly – signaling to the voters –a behind the scenes *policy* being executed by residential zone planning permit obfuscation and denials – and more than clearly demonstrated in the results.

Conduct of Planning Manager Margaret Kavanaugh-Lynch

Margaret Kavanaugh-Lynch has engaged in a pattern and practice of denying and delaying lawful housing development applications.

Other housing project applications have suffered the same treatment under Kavanaugh-Lynch. Regarding one such project – the same Irwin Street project referenced in this document - Kavanaugh-Lynch wrote on September 12, 2025 that "the City concluded that the Project is not eligible for the streamlined ministerial review process." Kavanaugh-Lynch wrote a mirror-image letter to those Plaintiff has received — copious Word tables alleging that city standards were not met. We now know this was in cooperation with outside counsel.

After that applicant managed to persuade the city to assign a different planner - the city approved the project weeks later.

Public statements by Kavanaugh-Lynch illustrate the city's reluctance to implement State housing mandates. During a documented San Rafael City Council study session on February 6, 2026, Kavanaugh-Lynch stated:

"The shift and the speed with which projects are now mandated for approval has… left staff *unsure on how to move forward*."

A February 8, 2026 article in the Marin Independent Journal reported that San Rafael staff were seeking guidance from the City Council regarding how to respond to State laws requiring ministerial approval of housing developments.

But if city staff were complying with the law - it is obvious how to respond! -

Approve the qualifying development.

That is the duty.

These statements reflect both resistance within the city's planning department to implementing State laws that mandate ministerial approval of qualifying housing developments, and that city staff openly wonder whether they should follow the law. And if city staff are prepared to take that risk openly – one assumes that they say, and do, much more in private.

Despite several written requests by Plaintiff and Plaintiff's legal representatives, the city has refused to assign a different planner to Plaintiff.

And the city has refused to issue an approval(s) for the development(s)

The statement reflects the difficulty staff perceived in adapting to State laws requiring faster and by ministerial review. River Landon's point is direct: implementation difficulty does not extend statutory deadlines or permit staff to continue using a discretionary-review model after the Legislature has removed that discretion.

<u>The closed loop</u>

The substantive premise is not about fences, or trees, or the Housing Crisis Act, or what "attached" means, or whether lighting is placed at 14 feet instead of 15 feet.

It is about the closed loop the city has put the applicant into – due to its clearly stated political policy.

Whatever the applicant does, the city responds with a letter that:

a) misrepresents facts (a screen is a fence, the applicant refuses to change anything);
b) states that thus the development is not compliant; and
c) has the effect of blocking processing.

The applicant then prepares another document, often very time consuming and expensive to produce, and around the loop the applicant goes again.

And now for five and a half years:-

Misrepresentative letter.

Applicant submits a new document.

Misrepresentative letter.

Applicant submits a new document.

Misrepresentative letter.

Applicant submits a new document.

Etc. etc. etc. etc.

City letter. Applicant response. New City letter. New demand. No approval.

River Landon responds to the stated issue. The City then recharacterizes the plans, identifies another requirement, relies on a different plan set, or directs River Landon to another process. The application remains unapproved. (Just like the Menlo Park project)

SB 35's fixed deadlines, contemporaneous-documentation requirement, and deemed-consistency consequence were enacted to prevent precisely this continual loop.

That is the city's process. That is unlawful action by the city that has improperly and unlawfully prevented the issuance of an approval letter, and, led to damages.

This is a political policy of denying housing in the residential single-family zones[1]

The city has engaged, and continues to engage, in a pattern, practice and policy of denying property owners in the residential single-family zones their protected property interests, including Plaintiff.

This is not speculation. This is visible in the numbers.

[1]NOTE:- City counsel have attempted to conflate our statements about the single-family zones with our development application. ('As the applicant said it's in the single family zones, and by counsel's improper extension - its 'single family' - or words to that effect) Our application(s) are and have always been for multifamily housing in the residential family zones, and specifically multifamily housing in the single family zones as per SB 35.

According to the city's own state-mandated annual housing production reports, during the highly delayed processing of the applicant's development, only two homes were approved in the single-family zones, while 913 homes were approved in the commercial zones — zones that comprise roughly only one-tenth the land area of the residential single-family zones. That is a factor of

4,570 - FOUR THOUSAND FIVE HUNDRED AND SEVENTY times. 4,570 times the housing has been approved in the downtown/commercial zones. The city doesn't build housing MKL stated. Gosh.

And in 2024, *when* the applicant's development could readily have been approved, the factor was infinite. San Rafael really had it in for housing in the residential single family zones that year didn't it.

Year	Approvals outside single-family zones	Percentage of city	Percentage of approvals	Approvals within single-family zones	Percentage of city	Percentage of approvals
2023	162	3.9%	99.4%	1	33.2%	0.6%
2024	204	3.9%	100%	0	33.2%	0%
2025	547	3.9%	99.8%	1	33.2%	0.1%

Table 1. The disparity is extraordinary.

The city took in a score of applications for housing in the residential single-family zones. Only 2 saw the light of day. But as if by a miracle, every application submitted for housing in the quiet downtown/commercial zones was efficiently, and in most cases rapidly, approved.

The percentages are entirely dispositive of the city's unlawful housing policy, and are unlawful under State law and the Federal Fair Housing Act. River Landon reserves all legally supported claims concerning unequal treatment/fair-housing obligations. This memorandum relies on the geographic figures principally as evidence relevant to City policy and pretext.

The applicant cannot up stakes and move the subject lots to the downtown area.

5 Statutes & Statutory scheme(s) to which the developments are subject and protected:

River Landon's developments are subject to the following (inter alia) Statutes, including the powerful protections of the HAA:

Permit Streamlining Act:

Concerning discretionary applications from October 2020 to November 2022 the Permit Streamlining Act controls. The Legislature describes the intent of the Permit Streamlining Act, **Gov. Code § 65921**

"The Legislature finds and declares that there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects. Consequently, the provisions of this chapter shall be applicable to all public agencies, including charter cities."

The Act, at Govt Code 65943 (a) enacted in January 2020, after an initial completeness review states "in any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the *initial* list of items that were not complete."

The California Supreme Court explains the Act in *Bickel v. City of Piedmont* :

"In 1977, the Legislature enacted the Permit Streamlining Act … to relieve applicants from protracted and unjustified governmental delays in processing their permit applications.. [T]he Act protects applicants from the caprice and arbitrariness associated with protracted and unjustified delays by the government."

Turning now to the ministerial application May 15, 2023 – & - the Housing Accountability Act

The Housing Accountability Act – Govt Code 65589.5 was enacted to impose accountability on local governments – & has the following intent:-

Gov. Code, § 65589.5(a)(1)(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."

Gov. Code, § 65589.5(a)(1)(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."

Gov. Code, § 65589.5(a)(2)(A)

The Legislature made crisis findings (using the same language that describes a natural disaster)

"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."

Gov. Code, § 65589.5(a)(2)(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 (emphasis added) 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."

Gov. Code, § 65589.5(a)(2)(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."

Builder's Remedy

SB 35 Applications can be & are subject to the "Builder's Remedy" – a penalty against local government for not making plans for housing - and a powerful provision for developers:

Gov. Code § 65589.5(f)(6)(F)(ii):

"A builder's remedy project shall be deemed to be in compliance with the objective zoning standards, objective subdivision standards, and objective design review standards for the

purposes of complying with paragraph (5) of subdivision (a) of Section 65913.4." § 65913.4(a)(5)**.**

There we have it. This provision moots **all** misrepresentations by a city about consistency with General Plan and zoning standards.

It is – for non-compliant cities – for cities that have failed to carry out their duty timely - the 'nuclear option'.

Gov. Code § 65589.5(d)(5):

Zoning code/planning standards/general plan inconsistency is a valid denial finding only when the jurisdiction had a substantially compliant revised housing element on the deemed-complete date or date when a preliminary application or notice of intent is filed. The following citations lay out the rules. The local government does not have to apply the Builder's Remedy if:

"**On the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction had adopted a revised housing element that was in substantial compliance with this article, and the housing development project or emergency shelter was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation…"**

Otherwise – it does have to apply the Builder's Remedy – no local zoning rules.

Gov. Code § 65589.55(a):

As to applicability of Builder's Remedy, relevant dates relating to Housing Element certification for above for vesting includes when a preliminary application (and/or Notice of Intent) has been filed (and the local government doesn't have an HCD certified Housing Element):

"For purposes of a local agency's approval, conditional approval, or disapproval of a housing development project pursuant to subdivision (d) of Section 65589.5, a housing element or amendment shall be considered in substantial compliance with this article only if the element or amendment was in substantial compliance, as determined by the department or a court of competent jurisdiction, *when a preliminary application*, including all of the information required by subdivision (a) of Section 65941.1, was submitted"

Gov. Code § 65913.4(a)(5)

Then, this is the SB 35 provision that the Builder's Remedy cross-reference plugs into.

Normally, SB 35 requires consistency with objective zoning, subdivision, and design-review standards. But under **§ 65589.5 (f)(6)(F)(ii)**, a Builder's Remedy project is deemed compliant with those standards for this SB 35 purpose.

In the event there was even a scintilla of doubt about the applicability of the builder's remedy provision – which is a suspension of all local zoning code – that, for example, the city managed to push the application 'out of' Builder's remedy misrepresenting that it was running a scoping consultation – the date used for the existence or otherwise of a compliant city Housing Element (with no certified Housing Element on that date, Builder's Remedy applies) is the date of the Notice of Intent:

"The development … is consistent with objective zoning standards, objective subdivision standards, and objective design review standards ….""**…in effect at the time that the development is submitted … or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier."**

And finally on this, coming full circle in SB 35 itself:

Gov. Code § 65913.4(j)(2):

SB 35 applications are explicitly protected by the Housing Accountability Act, including the Builder's Remedy codified within the Housing Accountability Act:

"This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law."

H6 provisions for local government's errant conduct:

As to actions by local government such as harassment of the applicant by local government (yes – now codified in State law), government actions causing unnecessary delay or needless increases in cost, the HAA was further enhanced to add:

Gov. Code § 65589.5(h)(6)

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

"(E) Fails to cease a course of conduct undertaken for an improper purpose, such as to ***harass*** or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action if all of the following conditions are met:"

Required notice by applicant — § 65589.5(h)(6)(E)(i)

"The project applicant provides written notice detailing the challenged conduct and why it constitutes disapproval to the local agency established under Section 65100."

City posting requirement — § 65589.5(h)(6)(E)(ii)

"Within five working days of receiving the applicant's written notice described in clause (i), the local agency shall post the notice on the local agency's internet website, provide a copy of the notice to any person who has made a written request for notices pursuant to subdivision (f) of Section 21167 of the Public Resources Code, and file the notice with the county clerk of each county in which the project will be located."

"The county clerk shall post the notice and make it available for public inspection in the manner set forth in subdivision (c) of Section 21152 of the Public Resources Code."

City must consider comments and wait at least 60 days — § 65589.5(h)(6)(E)(iii)

"The local agency shall consider all objections, comments, evidence, and concerns about the project or the applicant's written notice and shall not make a determination until at least 60 days after the applicant has given written notice to the local agency pursuant to clause (i)."

City must respond within 90 days — § 65589.5(h)(6)(E)(iv)

"Within 90 days of receipt of the applicant's written notice described in clause (i), the local agency shall issue a written statement that it will immediately cease the challenged conduct or issue written findings that comply with both of the following requirements:"

"(I) The findings articulate an objective basis for why the challenged course of conduct is necessary."

"(II) The findings provide clear instructions on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing."

Burden / final administrative action consequence — § 65589.5(h)(6)(E)(v):

"(I) If a local agency continues the challenged course of conduct described in the applicant's written notice and fails to issue the written findings described in clause (iv), the local agency shall bear the burden of establishing that its course of conduct does not constitute a disapproval of the housing development project under this subparagraph in an action taken by the applicant."

"(II) If an applicant challenges a local agency's course of conduct as a disapproval under this subparagraph, the local agency's written findings described in clause (iv) shall be incorporated into the administrative record and be deemed to be the final administrative action for purposes of adjudicating whether the local agency's course of conduct constitutes a disapproval of the housing development project under this subparagraph."

The Legislature introduced yet further legislation, to penalize such acts by local government:

Following those actions that the city undertook, as to (H)(6) above, under the **Housing Accountability Act**, the penalties/remedies for an improper disapproval of a housing development project are primarily in **Gov. Code § 65589.5(k)–(l)**.

Gov. Code § 65589.5(k)(1)(A)(i):

Enforcement trigger — improper disapproval / post-vesting standards / Builder's Remedy

"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):"

"The local agency, in violation of subdivision (d), disapproved a housing development project … without making the findings required by this section."

"The local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria … without making the findings required by this section."

"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."

"The local agency violated a provision of this section applicable to a builder's remedy project."

Gov. Code § 65589.5(k)(1)(A)(ii):

Mandatory court order — compliance within 60 days

"The court shall issue an order or judgment compelling compliance with this section within a time period not to exceed 60 days…"

Gov. Code § 65589.5(k)(1)(A)(ii):

Approval order if bad faith is found

"The court may issue an order or judgment directing the local agency to approve the housing development project … if the court finds that the local agency acted in bad faith…"

Gov. Code § 65589.5(k)(1)(A)(ii):

Attorneys' fees and costs

"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…"

Gov. Code § 65589.5(k)(1)(B):

Minimum fine — $10,000 per unit

"Upon a determination that the local agency has failed to comply with the order or judgment … the court shall impose fines…"

"The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project…"

Gov. Code § 65589.5(k)(1)(C):

Further order / deemed approval if the City still does not comply **"If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders … including … an order to vacate the decision of the local agency and to approve the housing development project…"**

"…the application … shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency."

Gov. Code § 65589.5(l):

Bad-faith multiplier — 5x

"If the court finds that the local agency (1) acted in bad faith when it violated this section and (2) failed to carry out the court's order or judgment … the court … shall multiply the fine … by a factor of five."

Gov. Code § 65589.5(l):

The definition of bad faith

"'Bad faith' includes, but is not limited to, an action or inaction that is frivolous, pretextual, intended to cause unnecessary delay, or entirely without merit."

ADU law

Gov. Code §66317(a)(3)

If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved

The city did not write, nor state, that it wished to delay approving or denying ADU permits. Neither did in allege any ADU application(s) were incomplete. (In fact, it misstated the provisions for when applying for multifamily housing, mischaracterizing the application)

Streamlined Ministerial Approval Process - SB 35

Due to the continuing housing crisis in California, in 2017 the Legislature enacted a statutory scheme that removed the power of local government to engage in certain housing approval processes, removed the applicability of CEQA (often the cause of very significant delay to approvals) specifically to urban infill housing, removed the authority of elected City Councils to review projects, removed the authority of Planning Commissions to apply personal and subjective opinions to the approval of housing, and made approvals subject to only externally referenceable objective standards known at application time, all these in order to provide absolute certainty to the housing development proponent. The Legislature removed developments submitted under this law from the political process – the Statute removed that power from City Councils.

Gov. Code § 65913.4(a)(5):
SB 35 limits the City to objective zoning, subdivision, and design-review standards only. It also fixes those standards at the earlier of the SB 35 application or the Notice of Intent:
"The development … is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted … or at the time a notice of intent is submitted … whichever occurs earlier."

Gov. Code § 65913.4(a)(5):
A supposed standard is not objective unless it has an external, uniform benchmark known before submittal. If the City has "various views" about what the standard means, that is the opposite of an SB 35 objective standard:
"'Objective zoning standards,' 'objective subdivision standards,' and 'objective design review standards' mean standards that involve no personal or subjective judgment by a public official and are 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 before submittal."

Gov. Code § 65913.4(b)(1)(A)(ii):
The City, not the applicant nor any other party, has the statutory duty to conduct the SB 35 scoping-consultation process after receiving the Notice of Intent. The City cannot shift that ministerial duty to the applicant nor to any other party including the Native Tribe and then use the city's own delay as the reason processing or scoping consultation did not occur:
"Upon receipt of a notice of intent … the local government shall engage in a scoping consultation regarding the proposed development with any California Native American tribe…."

Also see section here governing when the Native American tribe elects *not* to engage after accepting the invitation to conduct a scoping-consultation.

Gov. Code § 65913.4(b)(7)(A); Tribal Consultation Guidelines:
SB 35 expressly incorporates the State Tribal Consultation Guidelines' best practices. Those Guidelines put the process on the local government: contact, notice, referral, consultation, records, and management of the consultation process:

"A lead agency shall consult the tribal consultation best practices described in the 'State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines'…."
"SB 18 established responsibilities for local governments to contact, and consult with tribes." SB-18-Tribal-Consultation-Guide.

Tribal Consultation Guidelines:
The Guidelines contemplate that the local government provides the project information, technical documents, maps, cultural-resource materials, archaeological summaries, and grading or ground-disturbance information needed for meaningful consultation. The City cannot treat scoping as a blank box while providing no action points, no documentation, no reports, and no record of what it did:

"Relevant technical documents should be provided with a concise explanation that clearly describes the proposed … plan … and its potential impacts on cultural resources"
"Technical reports, including summaries of cultural resource reports and archaeological reports …"

Tribal Consultation Guidelines:
The Guidelines contemplate that the local government may use professionals and conduct record searches to develop the technical, factual, legal, cultural, and archaeological information needed for consultation. That supports the point that the City, as lead agency, must actively manage and document scoping — not merely report "check-ins":
"The services of other professionals (attorneys, contractors, or consultants) may be utilized to develop legal, factual, or technical information necessary to facilitate consultation."

Tribal Consultation Guidelines:

The Guidelines expect documentation of consultation activity. This is directly relevant where the City cannot identify meetings, action items, written records, unanswered correspondence, or any actual scoping activity during a more than two-year period:
"Both parties should attempt to document the progress of consultation, including letters, telephone calls, and direct meetings"

"Both parties should maintain clear records of communications, including letters, telephone calls, and faxes."

Tribal Consultation Guidelines:

Consultation is much more than a schedule of check-ins. The Guidelines also emphasize that a consultation has a focus on potential or actual *resources* that have in fact been identified (not just a general conversation)

"Consultation is a process in which both the tribe and local government <u>invest time and effort</u> into seeking a mutually agreeable resolution for the purpose of preserving or mitigating impacts to a cultural place, where feasible."

Tribal Consultation Guidelines:

The Guidelines use the word should (rather than shall) on occasion - the Guidelines regulate the local government and cannot in fact regulate the Native American nation – the way that is dealt with is that SB 35 provides for that – Govt Code 65913.4 (b)(3)(B) **"tribe….substantially failed to engage in the scoping consultation after repeated documented attempts by the local government to engage the California Native American tribe"** then the applicant qualifies for SB 35 streamlined processing.

If the tribe substantially fails to engage, the process is not at all that the Tribe will be compelled – simply, the SB 35 application processing begins.

This explanation is provided to counter any local government point that 'some of these processes in the Tribal Consultation Guidelines are not mandatory'

Tribal Consultation Guidelines:

"Tribal consultation should be done face-to-face. If acceptable to both parties, local and tribal governments may wish to define circumstances under which parts of the consultation process can be carried out via conference calls, e-mails, or letters"

Tribal Consultation Guidelines:

The Tribal Consultation Guidelines make scores of references to consultations being required to be undertaken in good faith by both local government and the Native American tribe

Gov. Code § 65913.4(b)(1)(A)(iii), (b)(7)(A)–(B):
SB 35 requires a fast and structured scoping process: notice within 30 days, tribe response within 30 days, and commencement within 30 days after acceptance. As importantly, the process must be meaningful and timely, and scoping means early discussions or investigations:
"The local government shall provide a formal notice … within 30 days of receiving that notice of intent."
"Each California Native American tribe … shall have 30 days … to accept the invitation….")

“The local government shall commence the scoping consultation within 30 days of receiving that response.”
“‘Consultation’ means the meaningful and timely process….”
“‘Scoping’ means the act of participating in early discussions or investigations….”

Tribal Consultation Guidelines:

The Guidelines confirm that merely sending letters or checking in is not consultation. A “check-in schedule” without identified issues, records, technical exchange, documented consultation activity is not a bona fide scoping consultation:
“Simply notifying a tribe of a plan proposal is not the same as consultation” SB-18-Tribal-Consultation-Guide…
“Written correspondence requesting consultation with a tribe was not sufficient … telephone calls or more direct forms of contact may be required.” SB-18-Tribal-Consultation-Guide…

Gov. Code § 65913.4(b)(3)(A)–(B):

If the tribe does not accept, or accepts but then substantially fails to engage after repeated documented attempts by the City, the City may accept the SB 35 application. This prevents the consultation requirement from becoming an indefinite City-controlled embargo:

“A local government may only accept an application … if [various]… [O]r [Native American Tribe… substantially failed to engage in the scoping consultation after repeated documented attempts by the local government….”

Gov. Code § 65913.4(b)(2)(D):

Scoping is deemed concluded when there is an enforceable agreement, or when one or more parties acting in good faith and after reasonable effort conclude agreement cannot be reached. It is not a process the City may leave unresolved for years:
“A scoping consultation shall be deemed to be concluded if … [t]he parties … document an enforceable agreement….”

Gov. Code § 65913.4(b)(1)(D); Tribal Consultation Guidelines:
Confidentiality is not a blanket privilege over the existence, timing, administration, or documentation of the City’s scoping consultation actions. Confidentiality solely protects sensitive cultural-place and archaeological-site location information where resources actually exist;. The City may protect specific site information while still documenting what it did, when it did it, whether consultation was actually occurring, & share that with the applicant/owners:
“The participants to a scoping consultation … shall comply with … confidentiality requirements” being “[R]ecords of Native American graves, cemeteries, and sacred places …” …of course, in the event that there actually are such graves, cemeteries, sacred places and similar.

"Local governments should avoid including any specific cultural place information within CEQA documents … or staff reports…." SB-18-Tribal-Consultation-Guide.

Gov. Code § 65913.4(c)(1)(A):

For projects of 150 units or fewer, the City has 60 days to issue a legally compliant inconsistency letter. That letter must identify the specific objective standard and explain the specific conflict:
"[T]he local government … shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons…."
"Within 60 days of submittal … if the development contains 150 or fewer housing units."

Gov. Code § 65913.4(c)(2):

If the City fails to issue the required written documentation on time, the development is deemed to satisfy the objective planning standards. This is the core SB 35 consequence for a defective or missing consistency letter:

"If the local government's planning director or equivalent position fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a)."

As per the findings in in Govt Code 65589.5(a)(2)(K) the legislation's purpose is "**to significantly increase the approval and construction of new housing… That intent has not been fulfilled."** Thus, the Legislature has begun to introduce penalties, fines and consequences for local governments – this deemed by operation of law to satisfy is one such introduced provision.

Gov. Code § 65913.4(a)(1), (c)(1)(C):

"Multifamily" is listed as one of SB 35's objective planning standards (as the Court's order states) - and a claimed conflict with that standard is addressable by resubmittal. If the applicant resubmits to address written feedback — including by adding shared walls — the City has 30 days to respond, not a right to demand a brand-new application:
"The development is a multifamily housing development that contains two or more residential units."
"Within 30 days of submittal of any development proposal that was resubmitted to address written feedback provided by the local government pursuant to this paragraph."

Gov. Code § 65913.4(f)(1)–(2):

The City cannot require studies, reports, extra materials, or post-entitlement compliance before SB 35 approval unless directly tied to determining consistency with objective standards. That blocks pre-approval demands for grading, drainage, NPDES, CEQA-style transportation analysis, building-permit-level information, and similar post-entitlement material:
"A local government shall not require … [s]tudies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards…."
"[Nor] [c]ompliance with any standards necessary to receive a postentitlement permit."

Gov. Code § 65913.4(c)(3):
The City cannot reject the project merely by saying it wants more materials if the application contains substantial evidence of consistency. The standard is whether a reasonable person could conclude the project is consistent:
"A development is consistent … if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent…."
"The local government shall not determine that a development … is in conflict … on the basis that application materials are not included, if the application contains substantial evidence…."

See also HCD technical assistance letters in this document that go into considerable detail on this subject

Govt Code 65913.4 (a)

"may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit or any other nonlegislative discretionary approval if the development complies with subdivision (b) and satisfies all of the following objective planning standards:"

The Statute continues - listing all the objective planning standards, from multifamily, urbanized area, residential zoning, below market rate housing, objective zoning standards, objective subdivision standards, objective design review standards, not prime farmland etc. It does not distinguish between any of these – they are all simply "objective planning standards"

65913.4 continues **Govt Code 65913.4 (c)**

"(c)(1) Notwithstanding any local law, if a local government's planning director or equivalent position determines that a development submitted pursuant to this section is consistent with the objective planning standards specified in subdivision (a) and pursuant to paragraph (3) of this subdivision, the local government shall approve the development. Upon a determination that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), the local government staff or relevant local planning and permitting department that made the determination shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(C) Within 30 days of submittal of any development proposal that was resubmitted to address written feedback provided by the local government pursuant to this paragraph"

The applicant resubmits to address written feedback provided by the local government on ANY standard in (a). All the standards in a) are, and explicitly, objective planning standards.

Gov. Code 65913.4 (c)(2):

"(2) If the local government's planning director or equivalent position fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a)"

Gov. Code § 65913.4(d)(1):

The *90-day period* (as compared to the *60-day period*) is in fact to provide for objective design review by a *board or commission* and only in the event the City chooses to use that process, and – also per HCD - is subject to public notice requirements; and, it does not replace the 60-day (150 units or fewer) consistency-letter requirement - it in fact supplements it (and doesn't replace it).

"(d)(1) Any design review of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for design review…. That design review shall be completed, and if the development is consistent with all objective standards, the local government shall approve the development as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable: (A) Within <u>90</u> days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units"

Gov. Code § 65913.4(u):
SB 35 contains its own pro-housing interpretive command. Any ambiguity over "multifamily," attachment, timing, resubmittals, objective standards, or processing must be resolved with the fullest possible weight toward housing approval and increased housing supply:
"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, increased housing supply."

6 Analysis of Claims

Claim Five. Failure to carry out ministerial scoping consultation duty Violation of SB 35

River Landon states that the city didn't carry out the scoping consultation.

River Landon was owed a ministerial obligation by the city to carry out a scoping consultation – timely, early to identify any resources and potentially adjust the application, and in good faith, so that processing of the development could continue to a permit. The city did not undertake a scoping consultation. It misrepresented to the applicant that it was undertaking such, did not develop the technical, factual, cultural and archaeological information needed, hired no assistance as is customary, created no documentation of its activities, hid behind confidentiality whereas confidentiality only applies to not publishing location of resources publicly, expressed concern to the applicant that the Native American tribe was not engaging, and no documentation (per Tribal Consultation Guidelines) on any actual scoping consultation whatsoever was produced following a Public Records Act request.

City responds that a series of meetings (that included other projects) were scheduled in advance as standing meetings. Applicant responds that a series of standing meetings is not a scoping consultation.

The court can find that the city's failure to carry out a scoping consultation led to loss and damages for the applicant.

Claim Six Unlawful Inconsistency Determination and Treatment for 29 Unit project Violation of SB 35. Failed to proceed in manner required by law. Reasonable person can find consistent. Failed to approve.

Applicant had a right to a lawful consistency and inconsistency determination.

The development was and is subject to the (so-called) Builder's Remedy which when a Notice of Intent is filed at a time that a city does not have its housing plan certified by CA Housing and Community Development, no zoning controls or local laws can be used to deny the development. The law is intended to punish a city for not having a housing plan under which applicants and landowners can readily & efficiently gain planning entitlements. The applicant had also requested waivers, bonuses and concessions timely in multiple times in advance (and acknowledged by the city) of the development processing & consistency & inconsistency letter. Contrary to city code requiring these be issued within 30 days, the city did not issue them.

The inconsistency letter (the city failed to address consistency) contained scores of subjective standards including subjective standards that could only be determined by inter alia discretionary review of bodies, commissions and a discretionary City Engineer's review – and despite

comprehensive review by the applicant, the applicant cannot identify a single *applicable* objective standard in the inconsistency review. This is because the city has not actually created objective standards. Because of this failure, the development is deemed to satisfy ALL objective planning standards.

The city failed to carry out its ministerial duty to approve the 29 home development.

Because of separately each, and all of, Builder's Remedy, State Density Bonus law, and a failed inconsistency communication(s), the applicant is entitled to approval of the 29 unit development

Claim Seven Unlawful Inconsistency Determination and Treatment for 14 Unit project Violation of SB 35. Failed to proceed in manner required by law. Reasonable person can find consistent. Failed to approve.

In a compromise, the City Council 'authorized staff to proceed and approve a 14 unit development'

The applicant rebuilt the plans, and submitted the 14 unit development forthwith – even though it had no legal obligation to do so.

Applicant had a right to a lawful consistency and inconsistency determination – which would have enabled the applicant to make any small final changes (if needed) to the development, and resubmit. The city unlawfully took that benefit.

The development was and is subject to the (so-named) Builder's Remedy which when a Notice of Intent is filed at a time that a city does not have its housing plan certified by CA Housing and Community Development - no zoning controls or local laws can be used to deny the development. The law is specifically intended a punishment for a city not having a housing plan *by which* applicants and landowners can gain planning entitlements. The applicant had also requested waivers, bonuses and concessions timely *in advance* (and acknowledged by the city) of the development processing & consistency & inconsistency letter. Contrary to city code requiring these be issued within 30 days -the city did not issue them.

The inconsistency letter (the city failed to address consistency) contained scores of subjective standards including subjective standards that could only be determined by discretionary review of bodies, commissions and a discretionary City Engineer's review – and despite comprehensive review by the applicant - the applicant cannot identify any applicable *objective* standards in the inconsistency review. This is because the city has not actually created objective standards. Because of the city's failure to clearly identify and explain any inconsistency with it's objective standards (such as they exist), the development is deemed to satisfy ALL objective planning standards.

Then, the city failed to carry out its ministerial duty to approve the 14 unit development.

Because of separately each, and all of, Builder's Remedy, State Density Bonus law, a failed inconsistency communication, and a further failure to make a consistency determination, the applicant is entitled to approval of the 14 unit development

Claim Eight Unlawful failure to process and approve the *Resubmitted* 14 unit Project

The Plaintiff states it resubmitted the 14 unit development to the city on March 20, 2026, as it was unarguably allowed to do under the express terms of SB 35, addressing the stated concern of the city regarding attachment (though the applicant does not agree).

The city takes the position that it would not process the resubmittal, because on December 3, 2025 it had denied that development, and, that a completely new application, with a completeness check for General applications mandating scores of irrelevant and impermissible documents, studies, reports and analyses must be submitted before the resubmittal will be processed.

The applicant states in response that no new application is required, none of the referenced multitudinous, very time consuming, and superfluous documentation is required, which SB 35 does not authorize - and that it maintains vesting at May 15, 2023, which a new application by law would implicitly not possess. The city had prior processed and reviewed River Landon's development applications with precisely the same level of detail and documentation as was re-submitted on March 20, 2026.

SB 35 expressly provides that an application be reviewed for consistency within 30 or 60 days, (and by technical assistance from HCD on SB 35), mandates that a consistency *and* inconsistency determination MUST be made within 30 (in this case) or 60 days, and that the city is prohibited from determining that an application is in conflict with objective planning standards on the basis that application materials are not included. The government failed to make the or any proper consistency and inconsistency determination, and therefore the development is deemed to satisfy all objective planning standards – both State, and local, standards.

Claim Nine Breach of Mandatory Duty 815.6. Submitted claim timely. City failed to approve 29 and 14 unit project. Consequential damages.

The Plaintiff states that the city's failure to carry out its mandatory duty has caused damage to the Plaintiff. The Plaintiff has suffered inter alia loss of revenue, development value, and increase in construction cost & interest, which it would not have had the city undertaken its mandatory duty.

The city responds that the Plaintiff did not submit a valid SB 35 application.

The Plaintiff responds that the city violated its rights in not undertaking a timely scoping consultation and not issuing true consistency/inconsistency letters, whereas if it had the Plaintiff could have simply made any minor clarifications & corrections and the approval would issue. This all continued as the city refused to issue an approval even after the developments were

deemed to satisfy all objective planning standards in 65913.4 (a) by operation of law. The city had clear mandatory duties. The loss has accumulated from *January 2024* to the time of writing at a minimum $642,000 per month by 31 months $19,900,000 being plus attorney's costs fees, and, River Landon professional, managerial and executive time at a minimum of $1,000,000. These losses continue to cumulate until issuance of approval letters. The duties are intentionally & explicitly ministerial under the statutory scheme and the city and its officials have no immunity.

The court can find that these damages were proximately caused by the failure of the Defendants to carry out its mandatory ministerial duty, and award the consequential damages against the city due to its unlawful conduct.

Claim Ten. Violation of HAA. Action to enforce HAA. Never ending scoping consult. Did not make findings for disapproval. City bears burden of proof. Bad faith. Court can direct to approve. City's actions continue on all applicant H6 notice items.

Plaintiff states that city acted in bad faith, and unlawfully obstructed the project. It documented subjective standards, claimed information was missing when in fact the components were not even proposed, fabricated its own code, promoted constantly shifting reasons for not approving the developments, and hid behind a mandatory scoping consultation but without actually conducting a scoping consultation.

The court can make an order to order the city to issue an approval of the 29 unit project.

Claim Eleven. 29 unit project. Disapproved. Stated that vesting has expired. Disparate treatment due to being SB 35 project. Didn't make findings Burden of proof that its decision conformed to all conditions of HAA.

The court to make an order to order the city to issue an approval of the 29 unit project.

Claim Twelve 14 unit project. Disapproved. Stated that vesting has expired. Disparate treatment due to being SB 35 project, and Builder's Remedy project. Didn't make findings Burden of proof that its decision conformed to all conditions of HAA. City did not and could not identify an externally referenceable uniform benchmark for attached. City did not quote code reference of attached from HCD Guidelines in its inconsistency letter, nor did it quote the Guidelines (now not in effect).

In part because late determinations are disqualified, &, the development is deemed to satisfy all the objective planning standards at (a), the city did not identify objective standards, & the development is subject to the Builder's Remedy.

The court to make an order for the local agency to issue an approval of the 14-unit project.

Claim Thirteen. 14 unit project. Disapproved. Failed to cease course of conduct such as harass applicant. Failed to articulate an objective basis for applicant to receive approval. City bears

burden to show its actions do not constitute an unlawful disapproval under the HAA. Housing organization challenged the city's actions, and its lawyers detailed that the city's actions were not in conformance with the law – the City did not properly consider these objections. Acted in bad faith when it disapproved the project. City has not ceased the course of conduct outlined in April 2, 2026 letter.

The court to make an order for the local agency to issue an approval of the 14-unit project.

7 Attorney General to City of Elk Grove

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7246
Facsimile: (916) 327-2319
E-Mail: Matthew.Struhar@doj.ca.gov

March 16, 2023

Mayor Bobbie Singh-Allen
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
(916) 691-2489
bsinghallen@elkgrovecity.org

RE: DISAPPROVAL OF OAK ROSE APARTMENTS

Dear Mayor Singh-Allen:

We write regarding the City Council of Elk Grove's July 27, 2022 denial of the Oak Rose Apartments (the Project), a proposed supportive housing project in the City's Old Town Special Planning Area (the OTSPA). The proposed project would have added 66 units of supportive housing for lower-income households at risk of homelessness, in a jurisdiction in dire need of low-income housing opportunities. The Council denied the Project on the basis that it did not meet the city's objective zoning standards and was therefore ineligible for Senate Bill (SB) 35 ministerial review.

In response to the City Council's action, the California Department of Housing and Community Development (HCD) issued a Notice of Violation finding the City in violation of SB 35 (section 65913.4 of the Government Code), the Housing Accountability Act (the HAA), the Nondiscrimination in Land Use Law (Section 65008), the Affirmatively Furthering Fair Housing Statute (the AFFH Statute), and the Housing Element Law. The City responded to HCD's Notice of Violation on November 10, 2022.

Our office has reviewed the Notice of Violation and the City's November 10 response letter (the Letter). We agree with HCD's conclusion that the City's denial of the Project violated state law. We urge the City to reconsider and take prompt action to conform with state law.

I. THE GROUND FLOOR USE RESTRICTION IS NOT AN "OBJECTIVE STANDARD" UNDER EITHER SB 35 OR THE HAA

SB 35 requires local governments to provide streamlined, ministerial (nondiscretionary) approval of projects that are consistent with objective zoning standards. (Gov. Code, § 65913.4,

subd. (a)(5).)[1] To qualify as an "objective standard" under SB 35, a local zoning policy must "involve *no* personal or subjective judgment by a public official." (*Ibid*., italics added.) That definition is also in the HAA. (Compare § 65913.4, subd. (a)(5) with § 65589.5, subd. (h)(8).) This requirement ensures that the application of local standards is predictable. (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 850.)

The City contends that the Project does not qualify for ministerial approval under SB 35 because it conflicts with the following use restriction from the OTSPA: "Buildings used for 2nd and 3rd floor residential must be used for pedestrian oriented commercial uses on the ground floor (i.e., retail, restaurant, or office)." (OTSPA at p. 13.) The City's arguments in the Letter rely on the assumption that this use restriction is an "objective standard" within the meaning of SB 35 and the HAA, but it is not because its application depends on the exercise of discretion. Indeed the City itself acknowledges that its OTSPA standards—including the ground floor use restriction—involve discretion, noting that the City "has a mechanism to deviate from development standards under the OTSPA for projects that meet the goals of the OTSPA." (Letter at p. 15.) That mechanism allows considering the compatibility of a project with community character, which demonstrates that the OTSPA use restriction is not objective. Because the HAA and SB 35 prohibit the application of a standard that involves *any* discretionary application, the City cannot rely on OTSPA use restriction as a basis to deny the Project.

II. SB 35 AND THE HAA REQUIRE THE CITY TO TREAT THE PROJECT AS CONSISTENT WITH THE USE RESTRICTION

A. The Use Restriction "Relates to" Housing Density Under SB 35

Even if the OTSPA use restriction were an "objective standard" within the meaning of SB 35, the City was still required to approve the project because the use restriction is "related to housing density" and the project is compliant with maximum allowed density.

Under SB 35, a "development shall be deemed consistent with the objective zoning standards *related to housing density*, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing permitted." (§ 65913.4, subd. (a)(5), emphasis added.) The City argues that the OTSPA use restriction does not "relate to housing density" within the meaning of SB 35 because it does not numerically establish the allowable units onsite.

In arguing that the use restriction is not strictly a density standard, the City ignores the broad interpretation of the term "related to" under SB 35. Importantly, the phrase "related to" must be interpreted broadly here given SB 35's admonition that the statute "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval

[1] All statutory references are to the Government Code unless otherwise noted.

and provision of, increased housing supply." (§ 65913.4, subd. (n).) More broadly under state law, the meaning of "related to" includes "both logical and causal connections." (*Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 873; see also *Chawanakee Unified School District v. County of Madera* (2011) 196 Cal.App.4th 1016, 1028 [distinguishing the broader term "related to" from the narrower term "on"].)

Here, the OTSPA use restriction can be reasonably read as requiring *some* ground floor commercial uses, but not *entirely* commercial uses. Requiring solely commercial uses on the ground floor of otherwise residential buildings (i.e., prohibiting ground floor residential units) restricts the Project's ability to supply housing at the density allowable under the applicable land use designation and the Density Bonus Law. Such a prohibition *directly regulates* housing density at the Project site, because it restricts the feasible development of new housing to a level below what the general plan, coupled with the Density Bonus Law, allow. And to the extent the use restriction actually prohibits ground floor residential units, it is unquestionably a "zoning standard related to housing density" in both logical and practical effect. Therefore, the Project is deemed consistent with the use restriction and thus subject to ministerial approval under SB 35. (*Id*., subd. (a)(5).)

B. The City Did Not Timely Determine That the Project Violated the Use Restriction Due to Its Inclusion of Ground Floor Residential Units

Further, even if the Project was inconsistent with the OTSPA use restriction, the City failed to timely notify the project proponent as required by SB 35.

To find proposed new housing inconsistent with SB 35's objective planning standards, a local government "must provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards" within proscribed time periods. (*Id*., subd. (c)(1).) Local governments must "carefully explain any determination that a proposed development conflicts with" SB 35's objective planning standards. (*Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 318.) Here, the City was required to do so within 60 days of application submission. (See § 65913.4, subd. (c)(1)(A).)

The City provided a letter to the Project developer on April 15, 2022, which was within 60 days, but that letter failed to make a clear determination that the project conflicted with local zoning standards. Rather, it requested "more information to know if the Project will be consistent with the standards." (Letter at p. 4.) In particular, it requested more information about whether the Project would have a pedestrian-oriented commercial use on the ground floor. Staff's request for additional information was not a determination that the project conflicted with the use restriction, and certainly did not reflect a "careful explanation" of any such determination. . Because the City failed to determine in a timely and adequate manner that the Project conflicted with the use restriction , the Project was deemed to satisfy the standard. (§ 65913.4, subd. (c)(2).)

In fact, the City ultimately determined that the Project *did* have a pedestrian-oriented commercial use on the ground floor, obviating its denial. It denied the project on a basis—the

presence of residential units on the ground floor—that was never articulated in the April 15 determination letter. (See June 2 Planning Staff Report at p. 10.) Because that determination was not made until 90 days after the project submission, on June 2, 2022, it was an untimely basis for denial. This is exactly the shifting goalposts that the SB 35 determination deadline is meant to avoid.

For those reasons, the City was required to treat the Project as consistent with the use restriction.

III. THE CITY VIOLATED THE HOUSING ACCOUNTABILITY ACT BY ENFORCING THE USE RESTRICTION

Even if the use restriction was objective and the City timely asserted its application, the HAA requires more of local planning decisions than simply applying objective standards. When the general plan authorizes a certain maximum residential density, the HAA requires the zoning and development standards to facilitate development at that density in order to accommodate the jurisdiction's regional housing need.

The local government must apply objective standards "appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need …. 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." (§ 65589.5, subd. (f)(1); see also *California Renters*, *supra*, 68 Cal.App.5th at p. 850.) Here, the City's application of the use restriction to the Project is not consistent with meeting its fair share of the regional housing need. The City is in its second consecutive cycle of failing to meet its need for low- and very low-income households, and the Project would have provided 66 units of lower-income housing.

Similarly, under the HAA, the City could only enforce the use restriction in a manner "to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project." (§ 65589.5, subd. (j)(4).) Here, the Project falls within the density allowable under the general plan. Any zoning standard that the City would enforce against the Project must facilitate development at that proposed density. Yet the City enforced the use restriction to prevent such development, in violation of the HAA.

IV. THE CITY VIOLATED FAIR HOUSING LAWS

In its Notice of Violation, HCD charged the City with violating two important fair housing laws: Section 65008 and the AFFH Statute. Both of these statutes prohibit the City from engaging in discriminatory land use practices that disproportionately harm lower-income households. The City's denial of the project based on the use restriction constituted a discriminatory land use practice.

A. The City Violated Section 65008

Local governments violate Section 65008 whenever a land use decision is based on discriminatory intent *or* has a discriminatory effect. Here, there is evidence of both. First, the City's dissimilar treatment of a market-rate housing development, the Elk Grove Railroad Courtyards Project, evidences discriminatory intent. As the City admits in the Letter, Railroad Courtyards "is a multifamily, market-rate project that is located within the OTSPA and contains ground floor residential units." (Letter at p. 14.) Despite the presence of ground floor residential units, the City found that Railroad Courtyards was consistent with planning standards, and completely avoided any discussion of the use restriction. (See May 5 Planning Staff Report for Railroad Courtyards at p. 3.)[2]

With the Project, however, the City reached a different conclusion. There, the City adopted a strict interpretation of the use restriction as outright prohibiting ground floor residential units. The City thus adopted two conflicting interpretations of the OTSPA use restriction for two similarly situated projects serving different populations. It applied a more permissive interpretation to approve a lower density market-rate project, and it applied a stricter interpretation to disapprove the Project, a higher density lower-income supportive housing project. That conduct is impermissible under Section 65008.

In addition, the City's denial of the Project has a discriminatory effect and no compelling purpose to override that effect. The City applied the use restriction to disapprove an application to develop low-income housing in a jurisdiction that badly needs it. The residents who would benefit from the housing would be forced to look elsewhere for similar housing opportunities. That suffices to show a discriminatory effect. (See *Keith v. Volpe* (1988) 858 F.2d 467, 485 [holding that a City land use decision that adversely affect only low-income persons violated section 65008].)

The City's application of the use restriction was not necessary to achieve a legitimate policy goal, such as would override the discriminatory effect. To the contrary, on June 2, 2022, the Planning Commission, in adopting staff's findings, found that the Project would be consistent with the City policy of promoting "a greater concentration of high-density residential, office commercial or mixed-use sites" at "appropriate locations." (See June 2 Staff Report at p. 6.) Planning staff also found that the Project would be consistent with a City policy of providing "an increase of housing diversity and promot[ing] walkability with the Project in close proximity to other commercial businesses on Elk Grove Boulevard," and therefore "the proposed Project will be generally consistent with the General Plan." (*Ibid*.)

---

[2] In fact, because the City relied on CEQA's exemption for infill housing development, it had to find consistency with local planning and zoning laws. (*Id*. at p. 9; see CEQA Guidelines, § 15332.)

The City's discriminatory intent and the discriminatory effect of its actions violated Section 65008.

B. The City Violated the AFFH Statute by Applying the Use Restriction

Under the AFFH Statute, the City must "administer its programs and activities"—all of them—"relating to housing and community development in a manner to affirmatively further fair housing," and the City may "take no action that is materially inconsistent with its obligation to affirmatively further fair housing." (§ 8899.50, subd. (b)(1).) The AFFH Statute thus applies to the local enforcement of zoning standards in the context of both SB 35 and the HAA.

The City takes the position that AFFH compliance depends on all of the City's actions related to housing. In making this argument, the City cites subdivision (d) of the AFFH Statute, which provides that in "selecting meaningful actions to affirmatively further fair housing, this section does not require a public agency to take, or prohibit a public agency from taking, one particular action." (*Id*., subd. (d).) That subdivision only speaks to the City's obligation to select meaningful actions to affirmatively further fair housing. It says nothing about the City's parallel obligation to avoid taking any action that is materially inconsistent with its mandatory duty to affirmatively further fair housing. (Id., subd. (b)(1).) Here, the City's action was contrary to AFFH because it applied the OTSPA use restriction in a subjective and discriminatory manner. For that reason, the City's legal argument that its Project-specific decision making is beyond the reach of the AFFH Statute is without merit.

V. HCD'S FINDINGS UNDER THE HOUSING ELEMENT LAW ARE ENTITLED TO GREAT WEIGHT

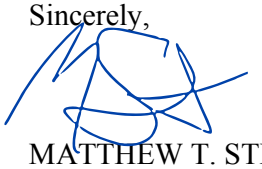
According to the City, a single "decision on one project cannot form the basis for a determination that the city is not implementing its Housing Element." (Letter at p. 17.) The City cites no authority for this proposition. Nor could it, as HCD may review "*any* action or failure to act" by the City that HCD "determines is inconsistent with the housing element or Section 65583." (§ 65589.5, subd. (i)(1)(A), italics added.) A single action can, in fact, bring the City out of substantial compliance with the Housing Element Law. (See *id*., subd. (i)(1)(B).) If HCD finds that *any action* violates the Housing Element Law, it may revoke its compliance findings until it determines that the locality has taken appropriate corrective action. (*Ibid*.)

The law vests HCD with the authority to review any action, including a project disapproval, for noncompliance with the Housing Element Law. Here, HCD's review found that the City's actions regarding the Project violated the Housing Element Law. The City should give great weight to that determination and review its actions in light of HCD's findings.

***

We urge the City to reconsider the Project in light of HCD's guidance and the legal analysis set forth in this letter. If the City does not make efforts to remediate its actions within 30 days, this Office is ready to enforce California's housing laws in court. Please feel free to contact me to discuss this matter.

Sincerely,



MATTHEW T. STRUHAR
Deputy Attorney General

For ROB BONTA
Attorney General

Cc: Elk Grove City Council
Jonathan P. Hobbs, City Attorney
Lauren Langer, Best Best & Krieger
Martin Carr, California Department of Housing and Community Development

8 Attorney General to Nira Doherty, outside counsel for San Rafael, and outside city attorney, Menlo Park

CALIFORNIA
DEPARTMENT OF JUSTICE

Rob Bonta
Attorney General

1300 I STREET, SUITE 125
SACRAMENTO, CA 95814

Public: (916) 445-9555
Telephone: (916) 210-6382
Facsimile:
E-Mail: Matthew.Struhar@doj.ca.gov

July 29, 2026

VIA E-MAIL

Deanna M. Chow
Community Development Director
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
DMChow@menlopark.gov

Nina F. Doherty
Burke, Williams & Sorensen, LLP
City Attorney
City of Menlo Park
181 Third Street, Suite 200
San Rafael, CA 94901
NDoherty@bwslaw.com

RE: NOTICE REGARDING 80 WILLOW ROAD (PLN2023-00049) (GOV. CODE, § 65914.2.)

Ms. Chow and Ms. Doherty:

Thank you for meeting with us recently to discuss the application for a housing development project ("Project") at 80 Willow Road in Menlo Park. The Office of the Attorney General remains concerned that the City has not handled the application in accordance with the Affordable Housing and High Road Jobs Act of 2022 (the "Act"). (Gov. Code, §§ 65912.100-65912.140.)[1] As we discussed, records show that the City untimely asserted additional grounds to support its initial determination that the Project was ineligible for streamlined approval under the Act. Because the City cannot change its rationale for finding the Project ineligible for streamlined approval from its initial rationale, and because the City's initial rationale is incorrect, the City's handling of the application for this Project would represent a violation of the Act.

The City's treatment of the Project also violates the Housing Accountability Act (the "HAA") in two respects. First, the City is failing to afford the Project the protections to which it is entitled under the builder's remedy. (§ 65589.5, subd. (d)(5)-(6).) Second, the City is unlawfully requiring the Project applicant to pay for the City's legal counsel in connection with the City's review of the Project, which goes beyond the limited authority the HAA reserves to local agencies to impose fees on development applicants. (See *id*., subd. (f)(3).) That practice

[1] All statutory references are to the Government Code unless otherwise indicated.

also violates Section 65914.2 ("A.B. 712"), which prohibits the City from requiring project applicants to indemnify the City for any litigation-related expenses.

I. Background

a. The Project

80 Willow Road LLC (the "Applicant") submitted its preliminary application on December 7, 2023, followed by a formal development application on May 24, 2024. The Project is a mixed-use, mixed-income housing development that would adjoin the City of Palo Alto's Timothy Hopkins Creekside Park (the "Park") and other urban uses in Menlo Park. As currently proposed, the Project would develop 665 new housing units, 15 percent of which would be affordable to lower-income households. The City determined that the Project application was complete on November 14, 2024.

b. The City's First AB 2011 Determination Letter

On June 22, 2024, the City sent the Applicant the City's determination that the Project was ineligible for streamlined approval under the Act (the "First Determination Letter"). The City concluded that the Project was inconsistent with certain of the Act's site criteria and development standards for mixed-income housing development. The City did not find any inconsistencies with the Act's affordability criteria.

The City's initial inconsistency findings under Section 65912.121. The City alleged that the Project site did not satisfy three site criteria for mixed-income housing under the Act. (First Determination Letter at p. 2.) First, the City alleged that the Project site did not sufficiently abut parcels developed with urban uses, as the Act requires 75 percent of a development site to abut urban uses. (*Ibid*.) According to the City, the Project site adjoined the Park, which the City claimed to be a non-urban use. (*Ibid*.) By the City's math, that meant that only 40 percent of the Project site's perimeter abutted urban uses. (*Ibid*.)

The other two site criteria are from Section 65913.4. (See § 65912.121, subd. (g).) The City claimed that, because the Project site included jurisdictional wetlands under the United States Fish and Wildlife Service Manual (the "Manual"), Part 660 FW 2 (June 21, 1993), the Project site failed to comply Section 65913.4(a)(6)(C). (First Determination Letter at p. 2.) The City also claimed that, because "environmental studies have identified the Project Site as habitat for California red-legged frog and central California coast steelhead (Oncorhynchus mykiss)," the Project constituted habitat for listed species. (*Ibid*.)

The City's initial inconsistency findings under Section 65912.123. With the First Determination Letter, the City found the Project inconsistent with four development standards, but only two of which the City continues to determine conflict with the Project. First, the City found that the Project exceeded the density restrictions under Section 65912.123(b). (First Determination Letter at p. 3.) Second, the City found that the Project exceeded the Act's height restrictions under Section 65912.123(c). (*Ibid*.)

c. The Applicant's First Reply Letter

On October 10, 2025, the Applicant submitted a revised application under the Act and a reply letter (the "First Reply Letter") to address the alleged inconsistencies asserted in the First Determination Letter. For the site criteria, the Applicant noted that the Legislature, in adopting A.B. 2243, included public parks in the Act's definition of "urban uses." (First Reply Letter at pp. 1-2.) In addressing wetlands and habitat, the Applicant also drew a distinction between the Project site and the legal parcel on which the site is located. (*Id*. at p. 2.) The Applicant explained that, while the legal parcel hosting the site includes protected wetlands and habitat, the Project site itself would not. (*Ibid*.)

For the development standards flagged in the First Determination Letter, the Applicant noted that A.B. 1893, which reformed the builder's remedy, mooted the City's finding that the Project was inconsistent with Act's density restrictions. (*Id*. at p. 3.) The Applicant further explained how A.B. 2243 allowed project proponents under the Act to take advantage of the Density Bonus Law, which addressed the City's finding that the Project was inconsistent with the Act's height restrictions. (*Ibid*.)

d. The City's Second Determination Letter

On November 7, 2025, the City submitted a second determination letter (the "Second Determination Letter") to address the resubmitted Project and the First Reply Letter. The City again found the Project inconsistent with the Act's objective planning standards, but it made new inconsistency findings separate from those in the First Determination Letter.

The City's subsequent inconsistency findings under Section 65912.121. With the Second Determination Letter, the City found, for the first time, that the Project was inconsistent with the Act because the Project site was not "located within a zone where office, retail, or parking are a principally permitted use." (§ 65912.121, subd. (a).) According to the City, the Project site is zoned C-1, and the City's C-1 zone does not have any permitted uses. (Second Determination Letter at p. 2.) Because any development in the C-1 zone requires a conditional use permit, the City reasoned that the Project site does not satisfy Section 65912.121(a). (*Ibid*.)

The City continued to find the Project inconsistent with Section 65912.121(e)'s requirement that urban uses surrounded 75 percent of project sites. (*Id*. at p. 3.) In making that finding, the City took the position that the City of Palo Alto's lands adjoining the Project site are not a park. (*Ibid*.) The City also rejected the Applicant's argument distinguishing between sites and parcels. (See *ibid*.) By treating the Project site as coterminous with the legal parcel on which the Project site is located, the City continued to find that the Project site included protected wetlands and habitat for protected species. (*Id*. at p. 4-5.)

The City's subsequent inconsistency findings under Section 65912.123. The City faulted the Project for failing to comply with the Act's height limits, parking setbacks, and frontage requirements, despite acknowledging that these development standards are subject to the Density Bonus Law's incentives, concessions, and waivers. (*Id*. at pp. 7-8.) The City also took the position, for the first time, that the Project was not a housing development project for purposes of

the Act or the HAA, as required by Section 65912.123(a). (*Id*. at pp. 2-3.) The City took this position because the total residential gross square footage, by the City's calculation, only accounted for 61.18 percent of the Project's total gross square footage. (*Ibid*.) The City did not find the Project inconsistent with any standard set forth under Section 65912.123(a) in its First Determination Letter.

e. Subsequent Correspondence

The Applicant responded to the Second Determination Letter on November 19, 2025, in which it faulted the City for improperly making new inconsistency findings in violation of the Act. The City responded on December 18, 2025, reiterating the positions it asserted in its Second Determination Letter, and taking the position that there was nothing improper in the City finding the Project inconsistent with additional objective planning standards that were not cited in the First Determination Letter. The Applicant replied to that letter on December 24, 2025. Since then, the City has continued to find the Project inconsistent with multiple planning standards.

On May 6, 2026, the City submitted its latest determination letter ("May 6 Determination Letter"), in which it reiterated its bases for finding the Project ineligible for streamlined approval under AB 2011. But the City conceded other points to the Applicant, including that the Project satisfies the residential area requirements necessary to qualify as a housing development project under the HAA.

II. Legal Analysis

a. The City's Treatment of the Project Violates the Act

The City cannot apply the Act's objective planning standards in a manner inconsistent with Section 65912.124(a). For mixed-income developments under the Act, Section 65912.124(a) requires local governments to make an initial inconsistency determination within 60 or 90 days, depending on the size of the proposed development. (§ 65912.124, subd. (a)(1).) Absent a timely initial finding that a development conflicts with a particular of the Act's standards, the Act requires the local government to treat the proposed development as consistent with that standard. (§ 65912.124, subd. (a)(4).) That is true now, and it was true before A.B. 2243 took effect last year. (See former § 65912.124, subd. (b), eff. Jan. 1, 2024 ["If the local government fails to provide the required documentation pursuant to subdivision (a), the development shall be deemed to satisfy the required objective planning standards."].)

A.B. 2243 reinforced this understanding of the Act. With A.B. 2243, the Legislature amended the Act to provide that, "[i]n any subsequent review of the application determined to be in conflict with the objective planning standards specified in this article, the local government shall not request the development proponent to provide any new information that was not stated in the initial list of items that were determined to be in conflict." (§ 65912.124, subd. (a)(2)(B).) In other words, once a local government makes an inconsistency determination, the Act prohibits the local government from asserting newly discovered bases to find a proposed A.B. 2011 project inconsistent with the Act's objective planning standards.

According to the City, it was allowed to find additional inconsistencies from those identified in the First Determination Letter because, before A.B. 2243 took effect, the Act did not specify that the City had to provide the Applicant "with an exhaustive list" of objective planning standards that conflicted with the Project. (§ 65912.124, subd. (a)(2)(A).) That point ignores A.B. 2243's express prohibition on requiring development proponents "to provide any new information that was not stated in the initial list of items that were determined to be in conflict." (*Id*., subd. (a)(2)(B).) That prohibition applies to "*any* subsequent review of the application determined to be in conflict with" the Act's objective planning standards. (*Ibid*., italics added.) The term "any" is all-inclusive. (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 635.) By using the term "any," the Legislature stated its intent to prohibit local governments from making *any* post-hoc inconsistency findings in *any* subsequent review of *any* A.B. 2011 applications, including those that, like this one, that were submitted and found inconsistent with the Act before A.B. 2243 became law.

For these reasons, the Act prohibits the City from finding new inconsistencies with the Act's standards that were not identified in the First Determination Letter. With the May 6 Determination Letter, the City is accordingly violating the Act by finding that the Project conflicted with the Act's standards in the following ways:

- By finding that the Project site was not located within a zone where office, retail, or parking were a principally permitted use (§ 65912.121, subd. (a));[2]
- By finding that Project was not surrounded by urban uses based on the Project site's parcel configuration (§ 65912.121, subd. (e));[3]
- By finding that the Project did not satisfy the Act's affordability criteria concerning the Project's affordable units (§ 65912.122, subd. (d));

[2] Although the City's zoning code provides that there are no permitted uses on the Project site absent a conditional use permit, the City's general plan designates the Project site as commercial, and the general plan provides that the commercial designation accommodates commercial uses. (See General Plan, City of Menlo Park (Nov. 29, 2016) at LU-12, LU-13, LU-15.) We thus do not believe that the City can rely on its zoning code to treat commercial uses at the Project site as only conditionally permitted for purposes of AB 2011. (See §§ 65912.101, subd. (u), 65912.121, subd. (a).) "The tail does not wag the dog." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.) "The general plan is the charter to which the ordinance must conform." (*Ibid*.)

[3] This is not to say that all of the site criteria listed in Section 65912.121 constitute waivable standards, but the site criteria concerning infill development in commercial zones qualify as "planning standards" for purposes of the Act given that other laws treat such requirements as planning standards. (See, e.g., §§ 65913.4, subds. (a)(2)(A) [treating an infill site requirement as a planning standard], (a)(2)(C) [treating base zoning as a planning standard].) For more information, we refer you to HCD's Affordable Housing and High Road Jobs Act of 2022 Draft Guidelines, available here: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/draft-ab-2011-guidelines.pdf.

- By finding that the Project is not a housing development project (§ 65912.123, subd. (a)); and

- By finding that the Project did not satisfy the Act's development standards concerning parking setbacks and frontage (§ 65912.123, subd. (d)(1)).

Because these alleged conflicts were not identified in the City's First Determination Letter, the City cannot rely on these alleged conflicts to determine that the Project is not eligible for streamlined approval under the Act.

b. The Project Is Consistent with the Act's Objective Planning Standards

The First Determination Letter sets the parameters of the City's subsequent review of the Project under the Act. Based on the information provided by the Applicant in response to the First Determination Letter, we have concluded that the City's handling of the Project application has been inconsistent with the Act.

The Project site adjoins urban land uses. In the First Determination Letter, the City found that less than 75 percent of the Project site adjoined urban land uses. Section 65912.121(e) requires at least 75 percent of a project site to adjoin urban land uses for a proposed development to qualify for streamlined approval under the Act. (§ 65912.121, subd. (e).) At the time, as the City noted, the Act's definition of "urban uses" did not expressly include parks, open space, or natural areas, and the Project site adjoins the Park. A.B. 2243, however, amended the Act to define "urban uses" as including a "public park that is surrounded by other urban uses…." (§ 65912.101, subd. (x).) Because the Park is a public park surrounded by other urban uses, it is an urban use for purposes of the Act, and the Project site thus complies with Section 65912.121(e).

The City's argument that A.B. 2243 has no effect on its initial determination regarding the site perimeter is unavailing. First, the City argues that the Park is not a park. (See, e.g., Second Determination Letter at p. 3.) That would be news to the City of Palo Alto, whose municipal code provides that the Park "is hereby reserved for park, playground, recreation or conservation purposes." (City of Palto Alto Mun. Code, § 22.08.290.) Parks may serve open-space or conservation purposes. (See, e.g., Pub. Resources Code, § 5902, subd. (i) [defining "park" for purposes of the California Wildlife, Coastal, and Park Land Conservation Act as meaning "a tract of land with outstanding scenic, natural, open-space, or recreational values, set apart to conserve natural, scenic, cultural, or ecological resources for present and future generations, and to be used by the public as a place for rest, recreation, education, exercise, inspiration, or enjoyment"].) The City cannot escape the effect of A.B. 2243 by describing the Park as "open space … preserved for its environmental value…." (May 6 Determination Letter at p. 6, internal quotation omitted.)

Second, the City conflates the Project site with the legal parcel hosting the site. The Legislature recently added Section 65912.103.5 to the Act, and that statute restricts the City's "review of the property or site … to the area described as being physically disturbed by construction in the application for streamlined, ministerial review and shall not include, unless expressly stated otherwise, other contiguous or noncontiguous areas even if under the ownership

or control of the project proponent." (§ 65912.103.5.) The Act thus directs the City to only consider the Project site itself, not the parcel on which the Project site is located, in determining eligibility for streamlined approval.

The Project complies with the Act's density standards because it is a builder's remedy project. The HAA specifies that builder's remedy projects are consistent with the Act's density standards under Section 65912.123(b). (See § 65589.5, subd. (f)(6)(F)(i).) To avoid this effect, the City has contended that the Project is not a housing development project as defined by the HAA. (See §§ 65589.5, subd. (h)(3), 65912.101, subd. (i).) In the May 6 Determination Letter, the City makes only one point to support this argument, which is that the Project includes a hotel.

The Project is not subject to the HAA's restrictions on hotel development because the application was deemed complete before A.B. 1893 took effect and because the Project is a builder's remedy project. The HAA is not ambiguous on this point:

> For a housing development project application that is deemed complete before January 1, 2025, the development proponent for the project may choose to be subject to the provisions of this section that were in place on the date the preliminary application was submitted, or, if the project meets the definition of a builder's remedy project, it may choose to be subject to any or all of the provisions of this section applicable as of January 1, 2025.

(§ 65589.5 subd. (f)(7)(A).)[4]

There is no dispute that the Project application was deemed complete before January 1, 2025. Nor is there any dispute that the Project satisfies the requirements for the builder's remedy, aside from the fact that the Project includes a hotel. The HAA's hotel restrictions took effect as part of A.B. 1893, which entitles the Applicant to "choose to be subject to any or all of the provisions of this section applicable as of January 1, 2025." (*Ibid*.) The HAA thus allows the Applicant to disregard A.B. 1893's restrictions on hotels while also taking advantage of A.B. 1893's relaxed affordability provisions. For that reason, the Project is a builder's remedy project notwithstanding its inclusion of a hotel.

The Project is entitled to the protections of the Density Bonus Law. The Act allows project applicants to use incentives, concessions, and waivers or reductions of development standards under the Density Bonus Law "to deviate from the objective standards in" Section 65912.123(c) and (d)(2)-(3). (§ 65912.124, subd. (f)(2).) The Density Bonus Law prohibits local governments from applying "any development standard that will have the effect of physically precluding the construction of a development" entitled to densities, concessions, or incentives

[4] To only apply this provision to builder's remedy projects that satisfy the precise requirements of A.B. 1893 would have the effect of negating this provision altogether, as this provision entitles builder's remedy applicants to opt in or out of *any* provision that A.B. 1893 added to the HAA. To date, the City has not offered a persuasive explanation for why A.B. 1893's hotel provisions are different from, say, the HAA's new density requirements for builder's remedy projects. Nor could it. (See § 65589.5, subd. (a)(2)(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."].)

under the Density Bonus Law. (§ 65915, subd. (e)(1).) The Applicant is accordingly entitled to a waiver of the height restriction the City seeks to enforce against the Project, and the City cannot enforce the height restriction under the plain terms of the Density Bonus Law. (See *ibid*.)[5] Moreover, the City cannot enforce local development standards to prevent the Project from being developed at the density proposed by the Applicant.

The Project site is neither a protected wetland nor habitat for protected species. The Act incorporates several criteria from Section 65913.4. Relevant here, Section 65913.4 does not allow for streamlined, ministerial approval if a project site is wetlands "as defined in the [Manual]." (§ 65913.4, subd. (a)(6)(C).) In addition, the statute does not allow for streamlined approval on a site that is habitat "for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code)." (§ 65913.4, subd. (a)(6)(J).)

The site itself must be protected wetlands or habitat for protected species, as the Act provides that the Project site is not coterminous with the legal parcel. (See § 65912.103.5.) Here, the Applicant has provided evidence that the Project site is neither protected wetlands nor habitat for protected species, even if the legal parcel on which the site sits includes such wetlands or habitat. Despite that evidence, the City nevertheless found that the Project site includes wetlands and habitat for protected species based solely on evidence that such conditions exist elsewhere on the parcel. The City has identified no evidence to support a finding that the *site itself* is protected wetlands or habitat for protected species.

For those reasons, the City cannot continue to find the Project inconsistent with the Act's objective planning standards.

c. The City Cannot Require the Applicant to Pay the City's Attorney's Fees

Our office is informed that the City is requiring the Applicant to pay its attorney fees in connection with the City's consideration of the Project. The City's municipal code provides that

> [a]s a condition precedent to issuance of any permit for construction or demolition for a covered project, the applicant shall pay to the city a cash fee sufficient to compensate the city for all direct and indirect expenses incurred in administering the permit. The amount of this fee shall be determined in accordance with the City Council approved master fee schedule.

(City of Menlo Park Mun. Code, § 12.48.070.)

[5] In the May 6 Determination Letter, the City acknowledged that, *should the Applicant receive a waiver of the height restriction*, the Project would be deemed compliant with Section 65912.123(c). (See May 6 Determination Letter at p. 9.)

The City's master fee schedule, however, does not mention hourly fees for legal counsel to advise the City in its consideration of a housing development project. Nothing in the municipal code or the master fee schedule places applicants on notice that they will be liable for attorney's fees if the City procures counsel. Moreover, under the HAA, conditions of approval must be objective, which means their application cannot depend on the subjective judgment of a public official, and they must be "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." (§ 65589.5, subd. (h)(9).) Applicants cannot verify, by reference to any uniform benchmark, in advance whether the City will procure the services of counsel to consider a particular project application. And although recovering costs related to permit processing may be permitted, those fees cannot exceed the reasonable cost of providing those charged services. (See § 66014.) Based on the City's conduct of issuing successive inconsistency determinations, and the purported legal bases for those letters, the fees incurred appear to do nothing more than to support the subjective judgment of public officials to refuse to process and approve the project under strained interpretations of state law. Indeed, the City's conduct runs the risk of rendering the project infeasible by charging exorbitant legal fees, which would further implicate the HAA.

To be sure, nothing in the HAA "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." (§ 65589.5, subd. (f)(3).) But that only narrowly protects the City's authority to impose impact fees based on the increased demand for public services created by new housing developments. (See *ibid*.; see also § 66001 [the Mitigation Fee Act].) And the Mitigation Fee Act expressly excludes fees incurred in processing application fees from its definition of development impact fees. (See § 66000, subd. (b).) Moreover, the City cannot charge excessive fees, and even where they can charge fees, it must be to cover the costs of providing public services to the Project and its residents. (See § 66014.) And the City cannot impose new fees or increase its fees without complying with the Mitigation Fee Act's procedures. (See § 60016, subd. (a).) In short, the Mitigation Fee Act does not contemplate assessing fees for legal services incurred in reviewing project applications for consistency with state housing law, and so, for the City to charge such fees, it must be pursuant to an objective standard as defined by the HAA.

Finally, effective January 1, 2026, the City's fee-shifting requirement also violates A.B. 712. A.B. 712 prohibits local agencies from requiring a housing development applicant "to indemnify, defend, or hold harmless the public agency in any manner with respect to an action brought by the applicant, or any other person, alleging that the public agency violated the applicant's rights or deprived the applicant of the benefits or protections provided by a housing reform law." (§ 65914.2, subd. (c)(1).) Any "requirement, condition of approval, or agreement in violation" of Section 65914.2(c)(1) "is against public policy and void and unenforceable." (*Id*., subd. (c)(2).) The record here suggests that the City is requiring the applicant to pay for legal services procured in the anticipation of litigation, not for legal services procured to ensure compliance with state law. At this point, the City's successive determination letters are tantamount to prelawsuit communications, not legal review of the project for compliance with state housing law.

For those reasons, the City should cease requiring the Applicant to pay for its legal services in connection with its review of the Project application.

* * *

The Act and the HAA both constitute housing reform laws for purposes of A.B. 712. (See § 65914.2, subd. (d)(2)(A).) The City's actions with respect to the Project application, as set forth above, would represent a violation of both laws.

Sincerely,

/s/ Matthew T. Struhar
MATTHEW T. STRUHAR
Deputy Attorney General

For ROB BONTA
Attorney General

MS:

9 Technical assistance letters HCD on consistency and inconsistency letter, code reference, careful explanation, must be timely, must be provided in each and every circumstance. Zoning data table et al provides the data required for a reasonable person to assess consistency.

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

March 11, 2019

Daniel Golub, Associate
Holland & Knight LLP
50 California Street, Suite 2899
San Francisco, CA 94111

RE: City of Los Altos SB 35 Application Technical Assistance

Dear Daniel Golb:

This letter is in response to your March 6, 2019 request for technical assistance regarding the requirements of Government Code § 65913.4 (SB 35, Chapter 366, Statutes of 2017) also known as the "Streamlined Ministerial Approval Process". The Department of Housing and Community Development (HCD) is informed that Rhoades Planning Group submitted an SB 35 application to the City of Los Altos on behalf of 40 Main Street Offices, LLC on November 8, 2018 for a 15-unit project of which 10 percent of the units are affordable to lower-income households.

SB 35 was part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, it requires 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. Government Code § 65913.4(l) states it is the policy of the state that section 65913.4 be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply. Approval of projects such as 40 Main Street fulfill this legislative intent.

Pursuant to Government Code § 65913.4(j), HCD, among other things, is responsible for reviewing, adopting, amending, and repealing guidelines to implement uniform standards or criteria that supplement or clarify the terms, reference, or standards set forth under Government Code § 65913.4. To that end, HCD released a series of Frequently Asked Questions in 2018 to facilitate implementation of the law. On November 29, 2018, HCD released guidelines pursuant to Government Code § 65913.4(j) which became effective January 1, 2019.

The following are HCD's responses to questions *(in italics)* posed in your March 6, 2019 request.

1) *In light of SB 35's requirement that a locality provide "the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard," Government Code § 65913.4(b)(1); see also Guidelines, § 301(a)(3), can a locality deny an SB 35 application by issuing a written statement which claims that the project conflicts with an objective zoning standard, but does not cite the section or sections of the zoning ordinance containing the standard that the project supposedly violates?*

   No. Pursuant to Government Code § 65913.4(b)(1), if a local government determines that a proposed development conflicts with any of the objective planning standards, it must provide the development proponent written documentation of which standard or standards the development conflicts with. This would include a specific reference to what the specific objective standard is and a citation to where it can be found. Without this citation, the specific standard is not verifiable and thus would not meet the definition of objective standard pursuant to Government Code § 65913.4 (a)(5).

2) *Can a locality deny a SB 35 application by stating, without citing any code section, that a project does not provide "adequate access/egress to the proposed off-street parking," or by referring to notes written by staff members which state that effects on parking spaces are not "acceptable" and that parking circulation is "inadequate"?*

   No. Pursuant to Government Code § 65913.4 (a)(5) "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment and are 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 before submittal. Terms like "adequate", "acceptable", and "inadequate" imply a subjective determination if they are not accompanied with reference to the specific requirement not met.

3) *If the locality does not provide any written communication to the applicant citing any specific code section that the project violates within the applicable 60- or 90-day timeline from the date the application is submitted, is the project deemed to satisfy the objective standards?*

   Yes. Pursuant to Government Code § 65913.4(b)(2), if the local government fails to provide the required documentation pursuant to Government Code § 65913.4(b)(1), the development shall be deemed to satisfy the objective planning standards.

4) *Can a locality deny an SB 35 application on the grounds that the SB 35 application did not include the application material that the locality requires for complete discretionary Design Review and Use Permit applications?*

No. Pursuant to Government Code § 65913.4 (a)(5) the only objective standards that can apply to the project are those external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. Discretionary design review would not apply. Specifically, Government Code § 65913.4 (c) states design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects. Design review or public oversight can not in any way inhibit, chill, or preclude the streamlined ministerial approval process.

In addition, the Streamlined Ministerial Permit process is a ministerial process. The requirement to apply for use permits, which are by definition discretionary, would also not apply. As stated in the Department's FAQs, Government Code § 65913.4 specifically exempts developments from the conditional use permit process and they must be approved through a streamlined, ministerial approval process if they satisfy the objective planning standards. Pursuant to the Streamlined Ministerial Approval Guidelines, the locality's process and application requirements shall not in any way inhibit, chill, or preclude the ministerial approval process, which must be strictly focused on assessing compliance with the criteria required for streamlined projects.

HCD appreciates the opportunity to provide comments. If you have any questions, please contact me at (916) 263-7425.

Sincerely,

Melinda Coy
Senior Policy Specialist

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

January 7, 2020

Daniel Golub, Associate
Holland & Knight LLP
50 California Street, Suite 2899
San Francisco, CA 94111

RE: Streamlined Ministerial Approval Process (Government Code section 65913.4) Technical Assistance

Dear Daniel Golub:

This letter is in response to your December 17, 2019 and January 4, 2020 requests for technical assistance regarding the requirements of Government Code § 65913.4 also known as the "Streamlined Ministerial Approval Process" and the subsequent guidelines effective January 1, 2019.

Government Code § 65913.4 requires the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress toward their allocation of the regional housing need. Gov. Code § 65913.4(l) states it is the policy of the state that section 65913.4 be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply. Approval of projects such as 40 Main Street fulfill this legislative intent.

Pursuant to Government Code § 65913.4(j), the California Department of Housing and Community Development (HCD), among other things, is responsible for reviewing, adopting, amending, and repealing guidelines to implement uniform standards or criteria that supplement or clarify the terms, reference, or standards set forth under Gov. Code § 65913.4. To that end, on November 29, 2018, HCD released guidelines which became effective January 1, 2019.

The following are HCD's responses to the questions *(in italics)* posed in your December 17, 2019 letter and further clarified in your January 4th request.

Section 300(a) of the Guidelines states that "[a] local government that has been designated as subject to the Streamlined Ministerial Approval Process by the Department shall provide information, in a manner readily accessible to the general public, about the locality's process for applying and receiving ministerial approval, materials required for an application as defined in Section 102(b), and relevant objective standards to be used to evaluate the application."

Section 102(b) in turn defines "Application" to "mean[] a submission containing such information necessary for the locality to determine whether the development complies with the criteria outlined in Article IV of these Guidelines. This may include a checklist or other application documents generated by the local government pursuant to Section 300(a) that specifies in detail the information required to be included in an application, provided that the information is only that required to determine compliance with objective standards and criteria outlined in article IV of these Guidelines." Section 301(b)(1) also states that "[a]n application submitted hereunder shall be reviewed by the agency whether or not it contains all materials required by the agency for the proposed project, and it is not a basis to deny the project if either: (A) The application contains sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards (outlined in Article IV of these Guidelines); or (B) The application contains all documents and other information required by the local government as referenced in section 300(a) of these Guidelines."

If a local government has not provided information to the general public about the "materials required for an application as defined in Section 102(b)" at the time a development proponent submits a proposal for a streamlined ministerial approval, can the local government lawfully refuse to grant the permit, by contending, without citing any objective planning standards with which the development conflicts, that in the city's opinion the development proponent's submission did not "contain[] such information necessary for the locality to determine whether the development complies with the criteria outlined in Article IV of these Guidelines" or did not "contain[] sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards"?

No. As stated in section 300(a), the jurisdiction must provide information in a manner readily accessible to the public, the objective standards and requirements for an application. However, if a jurisdiction has failed to make that information readily available, the jurisdiction is not excused from considering a Streamlined Approval Process application. Absent specific information provided by the jurisdiction, pursuant to section 301(b), a jurisdiction is still required to review the project application and cannot deny a project if the application includes information demonstrating the project meets the requirements of Gov. Code § 65913.4. The information contained in the application, of course, must be sufficient for a reasonable person to determine whether the development is consistent, compliant, or in conformity with objective standards. Pursuant to section 301(b)(2)(C), the jurisdiction must provide documentation of inconsistencies with objective standards within the required 60 or 90 days of submission. If the local government fails to provide the required documentation determining consistency within these timeframes, the development shall be deemed to satisfy the objective planning standards.

Does anything in the Guidelines sections 102(b) or 301(b)(1) relieve a local government in this situation of its statutory responsibility to identify, within 60 or 90 days of submission, specific objective planning standards with which the development conflicts? Gov. Code § 65913.4(b).

The purpose of the guidelines is to implement, interpret, and make specific Gov. Code § 65913.4. Nothing in the guidelines relieves the jurisdiction of its obligation to follow state law relating to the availability of the Streamlined Ministerial Process. Furthermore, nothing in the guidelines condition receipt of an application for the Streamlined Ministerial Process on the jurisdiction posting its objective standards. Absent posting of these standards, state law controls. Thus, as long as, the development application contains information showing how the development meets the requirements of Gov. Code § 65913.4 (e.g. an application includes a list of the standards and describes how the development meets those standards) the jurisdiction has 60 to 90 days from submission to evaluate the application pursuant to state law standards, provide the developer with a written determination of consistency, and detail any inconsistencies.

HCD appreciates the opportunity to provide comments. If you have any questions, please contact me at (916) 263-7425.

Sincerely,

Melinda Coy
Senior Policy Specialist

10 CARLA v City of San Mateo

Filed 9/10/21

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CALIFORNIA RENTERS LEGAL ADVOCACY AND EDUCATION FUND et al., Plaintiffs and Appellants, v. CITY OF SAN MATEO et al., Defendants and Respondents; TONY MEHMET GUNDOGDU et al., Real Parties in Interest; ROB BONTA, as Attorney General, etc., Intervener and Respondent.	A159320, A159658 (San Mateo County Super. Ct. No. 18-CIV-02105)

"California has a housing supply and affordability crisis of historic proportions." (Gov. Code, § 65589.5, subd. (a)(2)(A).)[1] This "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." (§ 65589.5, subd. (a)(2)(J).) Among these statutes is the Housing Accountability Act (HAA) (Gov. Code, § 65589.5), enacted in 1982 with the goal of "meaningfully and effectively curbing the capability of

[1] All undesignated statutory references are to the Government Code.

local governments to deny, reduce the density for, or render infeasible housing development projects." (§ 65589.5, subd. (a)(2)(K).) In this, the HAA has historically failed. (*Ibid.*)

These were the findings of the Legislature in 2017, when it amended the HAA to strengthen the statute. (Stats. 2017, ch. 378, § 1.5.) In relevant part, the HAA restricts the ability of local governments to deny an application to build housing if the proposed project complies with general plan, zoning, and design review standards that are "objective." (§ 65589.5, subd. (j)(1).) A 2017 amendment adds teeth to this restriction by defining what it means to comply with such standards: a housing development project is deemed to comply if "substantial evidence . . . would allow a reasonable person to conclude" that it does. (§ 65589.5, subd. (f)(4) (subdivision (f)(4)).) This case raises questions about how to apply the HAA as amended and whether the statute, especially subdivision (f)(4), violates the California Constitution.

After the City of San Mateo (the City) denied an application to build a ten-unit apartment building, petitioners California Renters Legal Advocacy and Education Fund, Victoria Fierce, and John Moon (collectively, CARLA) sought a writ of administrative mandamus seeking to compel the project's approval.[2] The trial court denied the petition, ruling that the project did not satisfy the City's design guidelines for multifamily homes and that, to the extent the HAA required the City to ignore its own guidelines, it was an unconstitutional infringement on the City's right to home rule and an unconstitutional delegation of municipal powers.

[2] The petition was also brought on behalf of San Francisco Bay Area Renters Association, which is not a party to this appeal.

We conclude otherwise. The design guideline the City invoked as part of its reason for rejecting this housing development is not "objective" for purposes of the HAA, and so cannot support the City's decision to reject the project. And because the HAA checks municipal authority only as necessary to further the statewide interest in new housing development, the HAA does not infringe on the City's right to home rule. Rejecting the City's other constitutional arguments as well, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Tony Gundogdu submitted an application to build a four-story, ten-unit multifamily residential building (the building or the project) in San Mateo in 2015. As proposed, the building would stretch the length of a block on North El Camino Real, bounded by El Camino Real on the east, West Santa Inez Avenue at the south, and Engle Road at the north. West Santa Inez Avenue and Engle Road are both in residential neighborhoods of single-family houses. Immediately to the west of the project are a two-story house on West Santa Inez Avenue and a single-story house on Engle Road. The project site is designated in the City's general plan—and zoned—for high-density multifamily dwellings, "R4" Zoning.

Staff to the City's Planning Commission (the Commission) reviewed Gundogdu's application and, after securing minor changes to the proposal, concluded it was consistent with the City's general plan and its Multi-Family Design Guidelines (the Guidelines). Staff recommended the Commission approve the project. They reported that "[v]ariations in the roof forms help to create a transition" between the building and the single-family homes to the north and west, and that "[p]roposed landscaping helps to soften the structure and provide buffers to the adjacent single-family residences." Alterations made at the behest of Commission staff included adding trellises

to facades "to create more articulation and add horizontal elements," thus "reduc[ing] the appearance of height."

The application came before the Commission in August 2017. At the hearing, a number of City residents opposed the project, on grounds including concerns that it was out of scale with the adjacent single-family residential area. The Commission continued the hearing. Before the next hearing, planning staff again recommended approval, subject to revised conditions. The staff again proposed the Commission find the project is "in scale and harmonious with the character of the neighborhood" and "meets all applicable standards," including that it "complies with the City's Multi-Family Dwelling Design Guidelines."

On September 26, 2017, commissioners nonetheless expressed concern that the proposed building was out of scale with the houses in the neighborhood, and the Commission voted to disapprove the project, directing staff to prepare findings for denial. So directed, the staff next proposed findings that the project is "not in scale and . . . not harmonious with the character of the neighborhood." The building is "too tall," "too large and bulky for the subject site due to [its] four-story height," and "not in keeping with the smaller one and two story dwellings in the area." Key to this case, the proposed findings noted that on the Engle Road side there is a two-story differential between the project and adjacent single-family dwellings (ignoring the fourth story, which is stepped back). Thus, "[t]he project is not in substantial compliance with" the Guidelines' limitations on building scale, which direct that if there is more than a one-story variation in height between adjacent buildings, "a transition or step in height is necessary," including that a project should "step back upper floors to ease the transition."

Adopting these proposed findings in full, the Commission denied the project without prejudice on October 10, 2017. The City Council considered the appeal on February 5, 2018, and upheld the Commission's decision, also denying the application without prejudice. Appellants then brought this action seeking a writ of administrative mandamus (Code Civ. Proc., § 1094.5) on the ground the denial violated the HAA.

The trial court denied the petition. Before doing so, the court asked the parties for additional briefing on a number of issues, including the following: "If either party contends that some aspect of [subdivision] (f)(4) is or is not enforceable or is or is not applicable to this action, the parties are ordered to provide all authority supporting that contention." In response, the City argued that the HAA's subdivision (f)(4) violates the California Constitution by infringing on the City's right to "home rule"—or control of its own municipal affairs as a charter city—and by unlawfully delegating municipal functions to private parties, and that subdivision (f)(4) raises due process concerns because it deprives neighboring landowners of a meaningful hearing. CARLA did not address these issues, either in its briefing or at the hearing on the petition.

The trial court in its ruling found that the City's Guidelines were " 'applicable, objective' " standards for purposes of the HAA and that the project did not satisfy the Guidelines, and accordingly stated it would deny the petition for writ of mandate. Despite reaching this seemingly dispositive result, the court went on to conclude that, to the extent the HAA conflicted with "otherwise enforceable portions of the city's Municipal Code regarding review of housing development projects," it was unenforceable as an impermissible intrusion into the City's municipal affairs under the home rule doctrine of the California Constitution (Cal. Const., art. XI, § 5(a)) and

violated the prohibition on delegation of municipal affairs to private parties (Cal. Const., art. XI, § 11(a)). With these sweeping conclusions, the court had no occasion to reach the City's due process argument.

The court later denied CARLA's motion for a new trial, and this timely appeal ensued. Before this court, CARLA defends the constitutionality of the HAA and argues the project meets all applicable standards. Intervening, the Attorney General argues that the HAA is constitutional and that the trial court erred in deferring to the City's interpretation of its Guidelines. (See Code Civ. Proc., §§ 664.5, subd. (e), 902.1.) The City urges us to affirm the trial court's judgment without reaching the constitutional issues, but also contends that CARLA's interpretation of the HAA violates the California Constitution. And numerous amici have weighed in with helpful briefs.[3]

DISCUSSION

Because it is fundamental, we begin with a careful examination of the HAA as it operates and has evolved in the context of California's system for approving new housing development. We then address whether the City's denial of this project application violates the HAA; if, as the City urges, we answer that question in the negative, we need not reach the constitutional issues. (See *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 66 [courts do not decide constitutional issues unnecessarily].) Because we

[3] In support of appellants are the Building Industry Association-Bay Area, the San Francisco Bay Area Planning and Urban Research Association, Bay Area Council, and Housing Action Coalition; Californians for Homeownership and the California Association of Realtors®; Habitat for Humanity Greater San Francisco, Inc.; and law professors Christopher S. Elmendorf, Michelle Wilder Anderson, Anika Singh Lemar, Dave Owen, Darien Shanske, and Kenneth Stahl. In support of respondents are the League of California Cities and the California State Association of Counties.

conclude that the City's decision did violate the HAA, we go on to address the constitutionality of, and uphold, the statute.

I. The Housing Accountability Act

More than 50 years ago, the Legislature enacted a broad measure requiring counties and cities to " 'adopt a comprehensive, long-term general plan for the physical development of the county or city,' " with a housing element designed to promote adequate housing for the community. (*California Building Industry Assn. v. City of San* Jose (2015) 61 Cal.4th 435, 444 (*San Jose*), quoting Gov. Code., § 65300 et seq., enacted by Stats. 1965, ch. 1880, § 5.) The Legislature went further in 1980 with the Housing Element Law, which "set forth in considerable detail a municipality's obligations to analyze and quantify the . . . locality's share of the regional housing need as determined by the applicable regional ' "[c]ouncil of governments" ' (Gov. Code., § 65582, subd. (b)), and to adopt and to submit to California's Department of Housing and Community Development a multiyear schedule of actions the local government is undertaking to meet these needs. (*Id.*, §§ 65583–65588.)" (*San Jose*, at p. 445; see Elmendorf, *Beyond the Double Veto: Housing Plans as Preemptive Intergovernmental Compacts* (2019) 71 Hastings L.J. 79, 100–103.) Local governments prepare housing elements, but the state's Department of Housing and Community Development must approve them. (*San Jose*, at p. 445.)

Since 1980, local governments have failed to approve, and developers have failed to build, housing in quantities approximating regional housing needs. As an example, a report of the Civil Grand Jury of Santa Clara County shows that of 16 jurisdictions in the county, fewer than half met their regional housing needs assessment between 2007 and 2014. (Civil Grand Jury of Santa Clara County, Affordable Housing Crisis: Density is our

Destiny (June 2018), p. 7.) And the California Department of Housing and Community Development reported in 2018 that for the previous ten years, California had averaged fewer than 80,000 new homes permitted annually—less than half the projected need for 180,000 homes a year. (Dept. of Housing and Community Development, California's Housing Future: Challenges and Opportunities, Final Statewide Housing Assessment 2025 (Feb. 2018) p. 5.) A report from the California Legislative Analyst's Office found a similar shortfall for the entire period of 1980 to 2010, and attributed it in part to community resistance to new housing, facilitated by laws allowing cities and counties to control when and where development occurs. (Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences (Mar. 2015) pp. 15, 21.)

Against this backdrop, the Legislature enacted in 1982 the HAA, colloquially known as the "Anti-NIMBY" (Not-In-My-Back-Yard) law, and it has amended the statute repeatedly in an increasing effort to compel local governments to approve more housing. (§ 65589.5, subd. (a); *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 295–297 (*Ruegg*); *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1068 (*Honchariw*).) As originally enacted—and still generally today—the HAA provides that when a proposed housing development complies with applicable general plan, zoning, and development policies, the local agency may disapprove the project (or approve it on condition that it be developed at lower density) only if the local agency finds that the project would have a specific, adverse, and unavoidable impact on public health or safety. (Stats. 1982, ch. 1438, § 2; *Honchariw*, at pp. 1074–1075; § 65589.5, subd. (j)(1).)

Ensuing amendments to the HAA have sought to serve and clarify the Legislature's intent. In 1990, the Legislature made the HAA expressly

applicable to charter cities. (Former § 65589.5, subds. (a)(1) & (2), (g); Stats. 1990, ch. 1439, § 1.) In 1999, the Legislature amended the operative language of subdivision (j) to narrow the kinds of policies that could be invoked to defeat an application, adding the italicized words: "When a proposed housing development project complies with applicable, *objective* general plan and zoning *standards and criteria*," the project cannot be denied or reduced in density without the specified health and safety findings. (Stats. 1999, ch. 968, § 6, italics added.) A 2002 amendment clarified that the phrase "general plan and zoning standards and criteria" includes "design review standards." (Stats. 2002, ch. 1721, § 1.) And a 2005 amendment authorized fines if a local agency denied a project in bad faith. (Former § 655589.5, subd. (*l*); Stats. 2005, ch. 601, § 1.)

In 2016, the Legislature added an enhanced standing provision, allowing not only a person eligible for residency in a development but also a housing organization to bring an action to challenge a local agency's disapproval of a housing development. (Former § 655589.5, subd. (k)(1) & (2), Stats. 2016, ch. 420, § 1.)

Still dissatisfied with the dearth of housing in this state, the Legislature in 2017 passed further amendments to the HAA, supported by detailed findings. The Legislature added a provision requiring that an applicant receive timely written notice and an explanation if an agency considers a proposed housing development inconsistent with applicable standards. (§ 65589.5, subd. (j)(1); Stats. 2017, ch. 378, § 1.5.) It heightened fines for bad faith disapproval of a project. (§ 65589.5, subd. (*l*); Stats. 2017, ch. 378, § 1.5.) And it increased the burden of proof required for a finding of adverse effect on public health or safety. (§ 655589.5, subd. (j)(1); Stats. 2017, ch. 378, § 1.5.)

Most importantly for our purposes, the Legislature added subdivision (f)(4), which provides, "For purposes of this section, a housing development project . . . 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 . . . is consistent, compliant, and in conformity." (Stats. 2017, ch. 378, § 1.5.)

Finally, the Legislature added this interpretative gloss on the statute: "It is the policy of the state that [the 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." (§ 65589.5, subd. (a)(2)(L), Stats. 2017, ch. 378, § 1.5.)

In this case, the City made no findings regarding an adverse impact on public health or safety, and no party contends this portion of the statute is relevant to our analysis. Also not at issue are separate provisions of the HAA addressing below-market-rate housing and emergency shelters. (See, e.g., § 65589.5, subds. (d), (h)(3), (k)(1)(A)(ii).) The key provision for our review is subdivision (j), which now provides that in the absence of health and safety findings a local agency may not disapprove or reduce the density of a proposed housing development that "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." (§ 65589.5, subd. (j)(1).)

II. The City's Rejection of the Project Violated the HAA

A. Standard of Review

CARLA brings this petition for administrative mandamus under Code of Civil Procedure section 1094.5, seeking to enforce the HAA. (See

§ 65589.5, subd. (m).) Our task is therefore to determine whether the City "proceeded in the manner required by law," with a decision supported by the findings, and findings supported by the evidence; if not, the City abused its discretion. (Code Civ. Proc., § 1094.5, subd. (b); *Honchariw*, *supra*, 200 Cal.App.4th at p. 1072.)

To the extent our decision rests on factual issues, our scope of review is identical to that of the trial court. We examine the findings of the public entity itself and the relevant materials in the administrative record to determine whether the decision should be upheld, reviewing the City's action, and not the trial court's decision. (See *Kalnel Gardens*, *LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 937–938.) However, instead of asking, as is common in administrative mandamus actions, "whether the City's findings are supported by substantial evidence" (*ibid.*), we inquire whether there is "substantial evidence that would allow a reasonable person to conclude that the housing development project" complies with pertinent standards. (§ 655589.5, subd. (f)(4).) As the public entity that disapproved the project, the City bears the burden of proof that its decision conformed to the HAA. (§ 65589.6.)

Questions of law, including the proper interpretation of a statute, we review independently, although we may take into account an agency's interpretation of its own rules in appropriate circumstances. (*Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 8 (*Yamaha*).) Where the constitutionality of a statute is challenged, we bear in mind that "a statute, once duly enacted, 'is presumed to be constitutional,' " such that any " '[u]nconstitutionality must be clearly shown.' " (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1086.)

B. General Plan and Multifamily Design Guidelines

One of the goals enumerated in the housing element of the City's general plan is to "[m]aintain the character and physical quality of residential neighborhoods." To that end, the housing element establishes a policy of "[r]eview[ing] development proposals for conformance to the City's multi-family design guidelines for sites located in areas that contain substantial numbers of single-family homes." "[N]ew multi-family projects in areas having a predominance of single-family residences should be of a scale and include design features which are compatible with surrounding single-family homes," the housing element directs, "while maintaining housing affordability as a major goal."

The urban design element of the general plan also notes that the City adopted the Guidelines because "the character of the neighborhood," including the scale of its buildings, is important in a residential area. To maintain and enhance the character of residential neighborhoods, the urban design element includes a policy to "[e]nsure that new multi-family developments substantially conform to the City's Multi-family and Small Lot Multi-family Design Guidelines. . . ."

The portion of the Guidelines with which the City found the project inconsistent addresses building scale. The Guidelines provide, under the topic "Height," as follows: "Most multi[-]family neighborhoods in San Mateo are 1 to 4 stories in height. When the changes in height are gradual, the scale is compatible and visually interesting. If height varies by more than 1 story between buildings, *a transition or step in height is necessary*. Any portion of a building constructed taller than surrounding structures should have the taller section built to a width that acknowledges the traditional building width pattern of the City—generally 30 to 50 feet in width." The

design objectives listed for this guideline are, "Avoid changes in building height greater than one story from adjacent structures. *If changes are greater*, *stepback upper floors to ease the transition*," and "Construct taller portions at traditional building widths, generally 30 to 50 feet wide." (Partial italics omitted.)

An accompanying illustration shows an appropriate design in which "[u]pper floors of the multi[-]family building are stepped[ ]back where adjacent to an existing building that is two stories lower." In that illustration, no adjacent portion of the larger building is more than one story higher than the smaller existing building. An illustration of an inappropriate design shows a two-story house next to a box-like four-story multifamily building.

C. Application of the HAA

The pivotal question in our application of the HAA is whether the Guidelines qualify as "applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards," which would allow the City to disapprove the project if they are not satisfied. (§ 65589.5, subd. (j)(1).) As to the portion of the Guidelines that addresses height, we conclude the Guidelines do not qualify as objective for purposes of the HAA.

As an initial matter, the parties disagree on the standard of review. The City urges that the issue be treated as one of law, subject to our de novo review as an issue of statutory interpretation but with deference to the City in interpreting its own rules. CARLA urges us to apply, to legal as well as factual issues, subdivision (f)(4)'s mandate that a project is deemed consistent with applicable standards if there is substantial evidence allowing a reasonable person so to conclude.

We model our answer on the decision of our colleagues in Division Two of this court in *Ruegg*. In construing a different statute intended also to restrict local authorities' ability to deny applications for new housing, they considered whether a project " 'would require the demolition of a historic structure that was placed on a national, state, or local historic register.' " (*Ruegg*, *supra*, 63 Cal.App.5th at p. 301, quoting § 65913.4, subd. (a)(7)(C).) This question, the *Ruegg* court concluded, had both a legal and a factual component: whether the type of object at issue, an ancient shellmound, was a " 'structure' " within the meaning of the statute was a question of statutory interpretation to be reviewed de novo; whether a shellmound existed on the project site was a question of fact. (*Ruegg*, at p. 301.)

Similarly here, we conclude that whether the height standards in the Guidelines are "applicable" and "objective" for purposes of the HAA is a question of law; whether the project is consistent with those standards is one of fact, to be evaluated under the standards of subdivision (f)(4). The questions of whether the height guidelines are "applicable" and "objective" require us to discern the meaning and legal effect of the HAA and the Guidelines, so they are questions of statutory interpretation we will review independently. (*Yamaha*, *supra*, 19 Cal.4th at p. 8.)

The first issue—applicability—is straight-forward. Relying on *Honchariw*, CARLA argues that to fall within the scope of section 65589.5 a standard must be *part of* a city's "general plan, zoning, and subdivision standards and criteria." (§ 65589.5, subd. (j); *Honchariw*, *supra*, 200 Cal.App.4th at p. 1077.) We are unpersuaded. The Guidelines, adopted in November 1994, recite that they are intended to implement multiple general plan policies, including a general plan directive to "[p]repare specific guidelines for multi[-]family development that address the preservation and

enhancement of neighborhood character," including by addressing "building scale." The applicable version of the City's general plan, mostly recently amended in 2015, specifically refers to the Guidelines in its housing and urban design elements, effectively incorporating them by reference. In the circumstances, we conclude the Guidelines fall within the scope of "general plan . . . standards and criteria, including design review standards." (§ 65589.5, subd. (j)(1).)

CARLA fares better with its second argument, that the Guidelines do not provide *objective* standards for purposes of the HAA. At the time of the events at issue here, the HAA did not define the term "objective," so we look to the ordinary meaning of that term. One dictionary defines "objective" as "expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations." (Merriam-Webster's Collegiate Dict. (10th ed. 2001) p. 799.) The definition added to the HAA effective January 1, 2020 is a longer version of the same idea. The HAA now defines "objective" as "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." (§ 65589.5, subd. (h)(8), added Stats. 2019, ch. 665, § 3.1.) Using either of these definitions, a standard that cannot be applied without personal interpretation or subjective judgment is not "objective" under the HAA.

Further guidance is found in *Honchariw*, which looked at the Legislature's purpose in adding the word "objective" to the HAA. *Honchariw* explains that an amendment made in 1999 to subdivision (j) of section 65589.5, replacing an earlier reference to " 'applicable general plan, zoning, and development policies' " with " 'applicable, *objective* general plan and

zoning standards and criteria,' " "appears to have been intended to strengthen the law by taking away an agency's ability to use what might be called a 'subjective' development 'policy' (for example, 'suitability') to exempt a proposed housing development project from the reach of subdivision (j)." (*Honchariw*, *supra*, 200 Cal.App.4th at pp. 1076–1077.) On their face, the Guidelines' provisions regarding the relative height of multifamily buildings and adjacent single-family houses are certainly less vague or subjective than a term such as "suitable." But, in our view, they nevertheless require personal interpretation or subjective judgment that may vary from one situation to the next.

First, the language of the Guidelines is ambiguous as to whether a proposed building *must* incorporate a stepback in height when a project is taller than adjacent buildings. The applicable portion of the Guidelines states that if height varies by more than one story between buildings, "a transition *or* step in height is necessary." (Italics added.) One reasonable reading of this language is that a transition that is something *other* than a step in building height may be acceptable. Indeed, to read it otherwise would render the words "transition or" superfluous.

An interpretation that allows for a transition other than one accomplished by a step in height is consistent with the City's consultant's assessment—which planning staff appear originally to have shared—that trees between the project and the nearest house on Engle Road and a nearby street tree would "substantially mitigate [the] height differential." The project calls for four large trees—each depicted as almost two stories tall—to run along the property line between the project and its nearest Engle Road neighbor. Can large trees provide an adequate "transition or step in height"? Answering this question not only allows, but requires, interpretation or

judgment. Under the planning staff's original interpretation of the Guidelines, the question is treated as one of design choice, which may be resolved in myriad ways depending on what form the designer views as most "compatible" with adjacent structures and "visually interesting."

A similar question arises with regard to trellises. The project includes, attached to the building along the Engle Road side, a trellis or arbor that looks to be about 10 feet wide and that creates a covered walkway alongside the building, next to the row of new trees. This trellis approximates the first floor in height, and a series of smaller trellises, each appearing to be two to three feet wide, also attaches to the building over windows at the level of the second story. Since these trellises are affixed to or abut the building's facade, perhaps the project's footprint includes the trellises, such that the building steps back from that footprint at the second and third floors on the Engle Road side. But if the trellises do not create a stepback, do they nonetheless create an adequate "transition"? Again, there is no clear answer to this interpretive question, and reasonable designers may disagree on the most satisfactory solution.

Second, to the extent the Guidelines do require a stepback in building height excluding trellises, the Guidelines offer no guidance on how extensive such a stepback must be. Where a stepback is required, it is unclear how far back upper floors of the building must step. In response to a question at oral argument, counsel for the City assessed a six-inch stepback of upper floors as sufficient for compliance with the Guidelines, although such a small setback would provide a less robust visual transition to the single-story home next door than would the much larger trellises and trees on which the project applicant relies. Also unclear is how far along a building's aspect a stepback must run. Is the City concerned primarily with street view, or should a

stepback run the length of the building? The Guidelines do not address this issue. Then there is the question of how many floors must be stepped back when a four-story project is adjacent to a single-story home. On this question, the City itself has taken different positions during the course of this dispute. The City Attorney who explained the stepback requirement to the City Council appears to have said that the Guidelines require *every* floor above the first to be stepped back along the Engle Road side, which is the position the City defended in its briefing in the trial court. In this court, however, the City maintains that the Guidelines require the third and fourth floors—but not the second—to be stepped back.

The City is certainly capable of setting more specific standards, as the Guidelines themselves show. The requirements for setbacks from property lines specify to the foot the required setbacks, and they further provide different setback standards where buildings are more than three stories in height, are adjacent to properties zoned R1 or R2, or are on specified blocks of El Camino Real. There are even more detailed standards for setbacks from property lines and stepbacks in height in the Gateway area of the City; for instance, "South side of Third Avenue and Fourth Avenue: Buildings shall be set back a minimum of 15' to a maximum of 20' from the Fourth Avenue property line for at least 60 % of the building frontage. *Portions of the building over 30'* [*in*] *height shall be stepped back 8' minimum*." (Italics added.) Particularly relevant to this case is the specific height standard for R4 zoning at the project site, which according to a City staff report allows a maximum building height of 45 feet. The building here tops out at 38 feet, demonstrably within that quantitative limit.

The Guidelines standard on height, by contrast, provides no such specificity, and on its face requires interpretation and subjective judgment.

This is no knock on the Guidelines. They were adopted in 1994, before the HAA required objective criteria, when Guidelines could appropriately leave such ambiguities to the discretionary judgment of staff and elected officials. In the exercise of such discretion the City's planning staff and its experienced consultant originally concluded the project complied with the Guidelines; exercising *their* discretion, the Commission and City Council later determined that it did not. The problem for the City is that since 1999, the HAA has required that a City rely only on objective, not discretionary, criteria in rejecting applications to build new housing.

The Legislature insists on objective criteria so as to ensure "reasonable certainty . . . to all stakeholders" about the constraints a municipality will impose. (Assem., 3d reading analysis of Assem. Bill No. 1515, as amended May 1, 2017, p. 2.) Reasonable certainty is important to Department of Housing and Community Development officials, so they understand the impact of a locality's housing element in deciding whether to approve it. Reasonable certainty is important to neighbors, who want to know how big a building can be erected next door, and it is important to those who build housing, so they know what size project can be approved for a particular site. Yet reasonable certainty in application—that is, objectivity—is precisely the test that the height provisions of the Guidelines fail.

The City protests that an argument over interpretation does not mean the Guidelines lack objectivity. In another case posing a discrete interpretive issue that might be true, but here the ambiguities in the Guidelines' height standard are pervasive and not amenable to objective resolution. The problem is fundamentally different from the narrow interpretive issue posited by amici: a quantitative ordinance requiring roads to be designed to support a load of " '25 ton[s],' " which leaves to interpretation whether a short

ton, a long ton, or a metric ton is intended. A definitional question of this type can be resolved objectively (e.g., by reference to common usage in a community or trade), leaving room for a single standard, knowable in advance, to be applied to all. The standards imposed by the height Guidelines, by contrast, are too ambiguous to be similarly susceptible to objective interpretation.

To resolve the pervasive ambiguities, the City asks us to defer to its interpretation of its own Guidelines. As the City points out, where the meaning of an enactment is at issue, the interpretation of an agency charged with enforcing it is one tool available to the court as it exercises its independent judgment (*Yamaha*, *supra*, 19 Cal.4th at pp. 6–8; *Ocean Park Associates v. Santa Monica Rent Control Bd.* (2004) 114 Cal.App.4th 1050, 1062), and in appropriate situations we may accord " 'great weight' " to the agency's construction (*Yamaha*, at p. 12; *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911 (*Boling*)). This rule applies to a city's interpretation of its own ordinances. (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193.) Crucially, however, such weight is given to *consistent* administrative construction of an enactment, particularly when the agency's interpretation is "of long standing." (*Mason v. Retirement Board* (2003) 111 Cal.App.4th 1221, 1228, citing *Yamaha*, *supra*, 19 Cal.4th at p. 13; see *Tower Lane Properties v. City of Los Angeles* (2014) 224 Cal.App.4th 262, 278.) "[L]awmakers are presumed to be aware of long-standing administrative practice and, thus, . . . the failure to substantially modify a provision[] is a strong indication the administrative practice was consistent with underlying legislative intent." (*DeYoung v. City of San Diego* (1983) 147

Cal.App.3d 11, 18–19, disapproved on another ground in *Yamaha*, *supra*, 19 Cal.4th at p. 15.)

This principle of deference does not assist the City here because the record does not show a long-standing and consistent interpretation of the Guidelines' requirement for "a transition or step in height." Rather, the record suggests the opposite. In its initial design review, the planning staff concluded that, with certain modifications, the project satisfied the Guidelines. Staff reached this conclusion *after* the design review consultant for the City reported, in a letter attached to the staff report, that the height differential at the portion of the project that was not stepped back adjacent to the Engle Road house was "problematic[]" but would be substantially mitigated by the trees at the property line and the street trees. Thus, fully aware of the issue, the City's planning staff nevertheless assessed that the project was consistent with the Guidelines, and so reported to the Commission. The record does not indicate the Commission disagreed with this assessment when it directed staff to prepare findings to deny the project. Rather, the commissioners expressed more general concern about the size and density of the project in relation to the neighboring residences. Staff pointed to an inconsistency with the height Guideline for the first time only *after* the Commission decided to deny the application. This record belies the notion that the City has consistently construed the height standards in the manner it now urges.

The City also argues that deference is appropriate because of its greater familiarity and expertise in applying the Guidelines. In an appropriate case, courts "are inclined to defer to a government entity's interpretation of its own regulation ' "since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical

implications of one interpretation over another." ' " (*J. Arthur Properties, II, LLC v. City of San Jose* (2018) 21 Cal.App.5th 480, 486; see also *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 305 [deferring to city's determination of a project's consistency with its general plan "because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity"]; *Boling*, *supra*, 5 Cal.5th at p. 911 [affording greater weight to an agency's construction of a statute " 'when " 'the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion' " ' "].) Such deference makes sense where a local agency must weigh and balance competing interests in applying policies that require broad discretion. (*East Sacramento Partnerships*, at p. 305.) But land use decisions under the HAA are different. Precisely because the HAA cabins the discretion of a local agency to reject proposals for new housing, it is inappropriate for us to defer to the City's interpretation of the Guidelines. We must engage in " 'more rigorous independent review . . . in order to prevent the City from circumventing what was intended to be a strict limitation on its authority.' " (*Ruegg*, *supra*, 63 Cal.App.5th at p. 299, quoting *San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 669–670.)

The City's request that we defer to its interpretation of the Guidelines serves as a tacit acknowledgement that the height Guidelines require something other than objective interpretation. But the HAA requires municipalities to apply standards that are both "objective" and "in effect at the time that the application was deemed complete" (§ 65589.5, subd. (j)(1)),

not to apply standards that are rendered objective only by adding an after-the-fact interpretive gloss.

Our conclusion that the applicable portion of the Guidelines does not provide an objective standard is confirmed by considering subdivision (f)(4) of the HAA, which complements and reinforces subdivision (j)'s objectivity requirement. Added in 2017 as the Legislature sought to strengthen the HAA, subdivision (f)(4) deems a project consistent with applicable objective standards "if there is substantial evidence that would allow a reasonable person to conclude that the [project] is consistent, compliant, or in conformity" with such standards. (§ 65589.5, subd. (f)(4).) The City sees all manner of mischief in this standard—as we will see shortly in the next section—but where a standard is truly objective, in that it is "*uniformly verifiable* by reference to an external and uniform benchmark" (§ 65589.5, subd. (h)(8), italics added), there is little to no room for reasonable persons to differ on whether a project complies with such a benchmark. Subdivision (f)(4) is intentionally deferential to housing development. It is also an excellent backstop to ensure that the standards a municipality are applying are indeed objective.

Applying subdivision (f)(4) in this case leads to the conclusion that the City violated the HAA for much the same reason as we have found the pertinent Guideline not to be objective. A reasonable person could read the Guideline to allow a "transition" comprised of trees rather than a stepback in building height, or could find a sufficient stepback where the building recedes from a project footprint that includes the ground-floor trellises. Reasonably concluding that the proposed landscaping and trellises do provide the requisite transition, the City's planning staff and consultant originally found the project consistent with the Guidelines, while the Commission and City

Council later determined, again reasonably, that the project does not comply because of an insufficient stepback of (at least) the third floor. The plausibility of both views demonstrates that the height guidelines are not objective *and* that a reasonable person could conclude the project satisfies them. Whether one focuses on the first, subdivision (j)(1) question or on the second, applying subdivision (f)(4), the effect is the same.

To the extent the question of whether the City denied the project for failure to conform to an objective standard is close, recall that the City has the burden to show its decision conformed to the HAA (§ 65589.6), and that the Legislature has declared the HAA must be interpreted and implemented to "afford the fullest possible weight" to the approval of housing (§ 65589.5, subd. (a)(2)(L)). Although the HAA should not be construed to prohibit local governments from requiring compliance with "objective, quantifiable, written development standards" that are consistent with meeting the jurisdiction's share in regional housing need (§§ 65589.5, subd. (f)(1), 65583), the criteria at issue here are neither objective nor quantifiable. We therefore conclude that the City did not "proceed[] in the manner required by law" in denying approval of the project based on its interpretation of the height Guideline, and the trial court erred in determining otherwise. (Code Civ. Proc., § 1094.5, subd. (b).)

In reaching this conclusion, we emphasize two things. First, the HAA does not prevent local agencies from establishing and enforcing appropriate design review standards. But those standards must be objective and they must be in place at the time an application is complete. (§ 65589.5, subd. (j)(1).) Second, even with respect to standards that are not objective, the HAA does not bar local agencies from imposing conditions of approval; rather, it prohibits conditions of approval "that the project be developed *at a lower*

density," unless public health or safety findings are made. (§ 65589.5, subd. (j)(1), italics added.) Thus, nothing in our opinion prevents the City from imposing appropriate conditions of approval to mitigate any effects the height differential may have on the surrounding neighborhood, as long as those conditions do not reduce the density of the project.

III. Constitutionality of HAA

Having concluded the City abused its discretion in denying the project based on inconsistency with the height guidelines, we must reverse unless persuaded by the City's arguments that the HAA transgresses provisions of the California Constitution. We consider the trial court's ruling that the HAA in general and subdivision (f)(4) in particular violate the home rule doctrine for charter cities, and the prohibition on delegation of municipal functions. We also consider the City's contention that subdivision (f)(4) would result in a meaningless, predetermined hearing that does not comport with due process.

In so doing, we reject out of hand the City's contention that CARLA waived its defense of the HAA's constitutionality when it failed to address this issue in the trial court. Even if CARLA's failure to anticipate and respond to a constitutional challenge that was neither pleaded nor argued could somehow oblige us to acquiesce in striking down a duly enacted statute—a proposition absurd on its face—the trial court's cryptic invitation to address the enforceability of subdivision (f)(4) said nothing about the enforceability of the HAA as a whole and made no reference to the constitutionality of the statute. There was no waiver of the issue we now consider, and in any event the Attorney General has, as authorized by statute, intervened to defend the HAA's constitutionality. (Code Civ. Proc., §§ 664.5, subd. (e), 902.1.)

A. Home Rule

California's Constitution authorizes charter cities to "govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 555; Cal. Const., Art. XI, § 5.) As to truly municipal affairs, "charter cities are 'supreme and beyond the reach of legislative enactment.' " (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 12 (*California Fed. Savings*).)

To determine whether the Legislature may exert control over the actions of a charter city despite its right to home rule, we apply a four-part test: First, we "determine whether the city ordinance at issue regulates an activity that can be characterized as a 'municipal affair.' [Citation.] Second, the court 'must satisfy itself that the case presents an actual conflict between [local and state law].' [Citation.] Third, the court must decide whether the state law addresses a matter of 'statewide concern.' [Citation.] Finally, the court must determine whether the law is 'reasonably related to . . . resolution' of that concern [citation] and 'narrowly tailored' to avoid unnecessary interference in local governance [citation]. 'If . . . the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a "municipal affair" pro tanto and the Legislature is not prohibited by article XI, section 5(a) from addressing the statewide dimension by its own tailored enactments.' " (*City of Vista*, at p. 556, quoting *California Fed. Savings*, at pp. 16, 17, 24; accord, *Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, 698–699 (*Anderson*).) In this analysis, " 'the question of statewide concern is the bedrock inquiry through which the conflict between state and

local interests is adjusted.' " (*Anderson*, at p. 699.) "[W]e exercise our independent judgment in interpreting the state law to identify whether it addresses a matter of statewide concern and can be applied constitutionally to the City." (*Id*. at pp. 704–705.)

The City does not defend the court's sweeping rejection of the HAA, limiting its constitutional challenge instead to what it characterizes as CARLA's and the Attorney General's "extreme" interpretation of subdivision (f)(4). Despite the parties' failure to defend the trial court's conclusion that the HAA as a whole is unconstitutional, this was arguably an alternate basis for the trial court's decision so we will consider the constitutionality of the HAA as a whole—its mandate that local governments rely only on objective standards to deny an application and the reasonable person standard of subdivision (f)(4).

As to the first prong of the home rule test, the parties agree that planning and zoning laws are a traditional municipal concern. (*Ruegg*, *supra*, 63 Cal.App.5th at p. 311; *Center for Community Action & Environmental Justice v. City of Moreno Valley* (2018) 26 Cal.App.5th 689, 704–705)

As to the second prong, to the extent City ordinances allow proposed housing developments to be rejected based on standards that are not objective, municipal law appears directly to conflict with the HAA. (See *Ruegg*, *supra*, 63 Cal.App.5th at p. 314; cf. *City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 270–271 [finding conflict where statute directly restricted regulation of city police force].) For purposes of this analysis, we will assume an actual conflict between the HAA and the City's design review standards.

As to the third step, the parties agree that the provision of housing is a matter of statewide concern. The term " 'statewide' refers to all matters of

more than local concern and thus includes matters the impact of which is primarily regional rather than truly statewide." (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 505.) The City argues, however, that subdivision (f)(4) of the HAA does not itself address a matter of statewide concern because California's housing crisis has other causes in addition to local governments denying approval for housing developments—causes including high construction costs, a shortage of construction labor, and delays caused by the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.; CEQA). And, the City contends, CARLA and the Attorney General have not shown that the housing crisis is caused by local governments' actions in denying applications for housing projects. We find the City's argument unpersuasive.

The Legislature has declared the shortfall in housing in California to be a matter of statewide importance (§ 65589.5, subds. (a)(1) & (2), (g)), and in other contexts both our high court and appellate courts have acknowledged the statewide nature of the interest in providing a stock of housing sufficient to meet the needs of all Californians. (See, e.g., *San Jose*, *supra*, at p. 441; *Ruegg*, *supra*, 63 Cal.App.5th at p. 312, *Anderson*, *supra*, 42 Cal.App.5th at pp. 708–709, 711; *Buena Vista Garden Apartments Assn. v. City of San Diego Planning Dept.* (1985) 175 Cal.App.3d 289, 307.) The parties and amici have submitted abundant legislative history and other materials that reinforce the conclusion that a shortage of housing in our state has led to escalating costs that for many have rendered adequate shelter unaffordable.

The City's argument looks past the statewide concern with a shortage of housing to focus instead on the means the HAA employs to address that concern (i.e., limits on local governments' ability to disapprove or restrict projects). The City contends there has been no showing these actions by local

governments are a matter of statewide concern, but the court in *Ruegg* recently rejected a similar argument. A city there argued that the statewide interest in increasing affordable housing does not " 'translate into a statewide interest in eliminating local landmark preservation authority.' " (*Ruegg*, *supra*, 63 Cal.App.5th at p. 313.) Our colleagues rejected this theory as an "inapposite" framing of the issue, holding that a statute that streamlines approval of certain multifamily housing projects with below-market-rate units does not impermissibly interfere with a city's " 'home rule' authority over historic preservation." (*Ruegg*, at pp. 310–315.) That the Legislature could have increased affordable housing without undermining local authority over historical preservation was immaterial: "the constitutionality of [the statute] does not turn on there being a statewide interest in limiting local historical preservation authority but rather on whether the statewide interest in increasing affordable housing sufficiently justifies the legislation's impact on that authority." (*Id.* at p. 313.) Indeed, "historical preservation is precisely the kind of subjective discretionary land use decision the Legislature sought to prevent local government from using to defeat affordable housing development." (*Id*. at p. 315.) Similarly here, we consider not whether there is a statewide interest in limiting local governments' authority to disapprove projects that comply with objective standards, but whether there is a statewide interest in increasing the state's housing supply. As our high court has explained, our inquiry is not whether the Legislature has enacted "prudent public policy" or whether its enactments will be "advisable or effective"; rather, it is whether the problem it addresses "is of sufficient extramural dimension to support legislative measures reasonably related to its resolution." (*California Fed. Savings*, *supra*, 54 Cal.3d at pp. 23–24.)

We have no doubt that this standard is met. The Legislature's findings and the mandates of the HAA itself confirm that the purpose of the statute is to address a matter of statewide concern. When extending the statute to reach charter cities in 1990, the Legislature found that actions and policies of local governments limiting the approval of affordable housing were a partial cause of the "excessive cost of the state's housing supply." (Former § 65589.5, subd. (a)(2); Stats. 1990, ch. 1439, § 1.) In 2001, the Legislature deleted the word "affordable" from this finding, concluding that local governments' actions in limiting the approval of "housing" in general were a partial cause of its excessive cost. (Former § 65589.5, subd. (a)(2), now § 65589.5, subd. (a)(1)(B); Stats. 2001, ch. 237, § 1.) The Legislature reinforced this finding in the 2017 amendments, which declared that the Legislature intended in enacting and expanding the HAA to increase the approval of new housing by curbing local governments' ability to deny or reduce the density of housing projects. (§ 65589.5, subd. (a)(2)(J) & (K); Stats. 2017, ch. 378, § 1.5.) Although we " 'may not simply abdicate to the Legislature' [citation] the determination of statewide concern and the corresponding assignment of power between local and state government," we nevertheless " 'defer[] to legislative estimates regarding the significance of a given problem and the responsive measures that should be taken toward its resolution.' " (*Anderson*, *supra*, 42 Cal.App.5th at pp. 707; see *California Fed. Savings*, *supra*, 54 Cal.3d at p. 24; *Ruegg*, *supra*, 63 Cal.App.5th at p. 312.) The City has done nothing to cast doubt on these legislative findings, which are well supported by case law. The HAA, which has the express purpose of ameliorating the housing crisis and seeks to accomplish this goal by increasing approval of housing developments (§ 65589.5, subd. (a)(2)(K)),

"patently addresses a matter of statewide concern." (See *Ruegg*, *supra*, 63 Cal.App.5th at p. 312.)

In the fourth and final prong of our inquiry, we decide whether the statute is " ' "reasonably related to . . . resolution" ' of the identified statewide concern [citation] and is ' "narrowly tailored" to avoid unnecessary interference in local governance.' " (*Anderson*, *supra*, 42 Cal.App.5th at pp. 716–717.) At the outset, we agree with the Legislature that limiting local governments' ability to deny new development based on subjective criteria is reasonably related to providing additional housing. (§ 65589.5, subds. (a)(1)(B), (a)(2)(J) & (K).) And we also have no doubt that the statute appropriately limits its incursions into municipal authority. (See *Anderson*, at pp. 716–717.) The HAA leaves local governments free to establish and enforce policies and development standards appropriate to local circumstances, as long as those policies and standards are consistent with meeting the jurisdiction's share of the regional housing need and, if used to deny or reduce the density of housing developments, are *objective* so that their application is predictable. (§ 65589.5, subds. (f)(1) & (j).)

The HAA's reach is further narrowed by other provisions. Local governments are not barred from imposing conditions of approval that do *not* reduce density. (§ 65589.5, subd. (j)(1).) And the HAA includes an escape valve that allows municipalities to deny a project that would have an unavoidable adverse impact on health and safety. (§ 65589.5, subd. (j)(1)(A) & (B).) These provisions indicate not only that the HAA is reasonably related to the statewide problem the Legislature sought to redress but also that it " 'limit[s] the incursion into [the] city's municipal interest' " so as to be narrowly tailored for purposes of the home rule analysis. (*Anderson*, *supra*, 42 Cal.App.5th at pp. 716–717.)

The City asserts that subdivision (f)(4) is not narrowly tailored to the extent it is interpreted to allow the local agency's judgment to be replaced with "that of any person who can provide evidence of consistency"; this, the City urges, impinges on the local government's "core functions" of hearing and weighing evidence and deciding by majority vote whether a project is consistent with legal requirements. We disagree that a proper reading of subdivision (f)(4) leads to a conclusion the HAA is not narrowly tailored. The effect of subdivision (f)(4) is simply to hold local governments to a standard of objectivity in their decisionmaking, such that if a *reasonable* person could find a housing development in compliance, it will be so deemed. If a municipality wishes to enforce limitations on housing developments, it must promulgate standards that are not so malleable that reasonable minds could differ on whether they are met. In short, the HAA does not wrest control from local governments so much as require them to proceed by way of clear rules adopted in advance, rather than by ad hoc decisions to accept or reject proposed housing.

In finding the HAA not narrowly tailored, the trial court suggested an appropriate limitation would be to apply the statute only where the administrative record showed objective evidence of bad faith by the public agency. But the parties have made no showing that this state's insufficient supply of housing derives substantially from bad faith actions by cities and counties, and we will not presume that municipalities routinely proceed in bad faith when they apply their development laws and standards. Individual jurisdictions may well make decisions in good faith that nevertheless contribute to the collective shortfall in housing. It is to this collective action problem that the HAA is addressed, and it is because the Legislature concluded that earlier versions of the statute were not having a sufficient

impact that it amended the statute repeatedly. (See, e.g., Stats. 2017, ch. 378, § 1.5.) Given the extent and intractability of the housing shortfall, we see nothing improper in the Legislature addressing it on a statewide basis, without limiting the statute to local agencies that act in bad faith. We reject the trial court's proposed limitation.

B. Delegation of Municipal Functions

California's Constitution prohibits the Legislature from "delegat[ing] to a private person or body power to . . . perform municipal functions." (Cal. Const., Art. XI, § 11, subd. (a).) The City contends, and the trial court apparently agreed, that subdivision (f)(4) violates this prohibition. The City's theory is that subdivision (f)(4) would allow *anyone*—even a private person such as a project proponent—to place into the record evidence indicating a project is consistent with objective standards and thereby force a local agency to approve the project. This, the City argues, would divest local authorities of final decisionmaking control in violation of the prohibition on delegation of municipal functions. (Citing *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 155.)

This argument is unpersuasive because subdivision (f)(4) does not "divest the [City] of its final decisionmaking authority." (*County of Riverside v. Public Employment Relations Bd.* (2016) 246 Cal.App.4th 20, 28; accord, *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 340.) As we have already explained, nothing in the HAA prevents cities from establishing and enforcing objective land use and design standards that are consistent with their other obligations. (See § 65589.5, subds. (f)(1) & (j).) Although subdivision (f)(4) of the HAA lowers the burden to show a project is consistent with applicable objective standards, the statute cedes municipal authority to no private person. (Cf. *County of Riverside v. Superior Court* (2003) 30

Cal.4th 278, 283, 294 [Legislature impermissibly delegated authority to private person when it required local agencies to submit to private arbitration].) A city's governing body retains broad authority, subject to judicial review, to exercise decisionmaking authority: to determine whether there is substantial evidence from which a reasonable person could conclude the project is consistent with the city's applicable objective requirements; to deny or reduce the density of a project that does not meet such standards or that causes an unavoidable adverse impact on public health or safety; and to impose conditions of approval that do not reduce the project's density where applicable objective standards are met. (§ 65589.5, subd. (f)(4) & (j)). Viewing subdivision (f)(4) in the context of the entire HAA, we find no violation of the municipal nondelegation doctrine.

We are untroubled by the City's suggestions that a governing body would be forced to approve a project if a proponent succeeds in "dig[ging] up" "self-serving evidence," regardless of its weight, and that if a single staff member or member of the governing body opines that a project complies with objective standards then the local agency would be compelled to find it so. The usual meaning of "substantial evidence" is "evidence that is 'of ponderable legal significance,' 'reasonable in nature, credible, and of solid value,' and ' "substantial" proof of the essentials which the law requires in a particular case.' " (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1006.) In determining whether evidence is substantial, the test is whether it is " ' "reasonable for a trier of fact to make the ruling in question in light of the whole record." ' " (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992; see Code Civ. Proc., § 1094.5, subd. (c) [in administrative mandamus action, court reviews whole record to determine whether findings are supported by substantial evidence].) And subdivision (f)(4) of the HAA employs the

objective standard that evidence must be such as to allow a *reasonable person* to conclude the project is compliant. (See *Speier v. The Advantage Fund, LLC* (2021) 63 Cal.App.5th 134, 147.) There is thus no basis for concern that subdivision (f)(4) would require project approval based solely on the unsupported opinion of a single person, or on evidence that a reasonable person would not find credible and persuasive.

In short, the City's claim that subdivision (f)(4) impermissibly delegates municipal authority fails because the HAA leaves to the public agency final authority to approve, condition, or deny a project.

C. Due Process

The City also contends that subdivision (f)(4) violates the due process rights of neighboring landowners by depriving them of a meaningful opportunity to be heard before a housing development is approved.

Land use decisions that "substantially affect the property rights of owners of adjoining parcels may constitute deprivations of property for purposes of procedural due process" (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 853), and those landowners are entitled to notice and an opportunity to be heard before a project's approval (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 616; *van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 570). Due process requires an opportunity to be heard " ' " 'at a meaningful time and in a meaningful manner.' " ' " (*Natural Resources Defense Council v. Fish & Game Com.* (1994) 28 Cal.App.4th 1104, 1126 (*NRDC*), citing *Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) However, "action involving only the nondiscretionary application of objective standards" does not entitle neighboring landowners to these protections. (*Horn*, at p. 616.)

The City argues that subdivision (f)(4) renders local government review a useless exercise because if anyone submits evidence that a project is consistent with applicable standards the project is " 'deemed' " consistent and must generally be approved. The City points to *NRDC*, in which one party contended that a substantial evidence standard, while appropriate for judicial review, was inappropriate to the *initial* decision of an agency, because "if the petitioner adduces substantial evidence it wins, no matter how compelling the contrary evidence, [which] is the antithesis of due process." (*NRDC*, *supra*, 28 Cal.App.4th at p. 1126.) *NRDC* is not persuasive because the court merely noted this argument, observing there was no need to address it since the court's interpretation of the relevant statute avoided the issue.[4] (*NRDC*, at p. 1126; Fish & G. Code, § 2074.2.) Moreover, *NRDC* did not consider—as we do here—the proper procedure when the issue is whether *objective* standards are met.

Even assuming due process protections apply to a municipality's determination whether a project complies with objective standards under subdivision (f)(4), we see no violation here. As we have already discussed, the substantial evidence standard requires evidence that is " 'of ponderable legal significance,' 'reasonable in nature, credible, and of solid value' "

---

[4] We note that it is not unheard of for agencies to be required to use a substantial evidence standard in making decisions. CEQA requires the preparation of an environmental impact report if "substantial evidence supports a fair argument" that a proposed project may have a significant effect on the environment, even if there is also substantial evidence it will not. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The City seeks to distinguish this rule as applying only to the initial decision whether to prepare an environmental impact report, not to the final decision whether to approve a project. We do not give undue weight to the CEQA analogy, but it shows that in appropriate circumstances agencies may be required to make decisions on a substantial evidence standard.

(*Conservatorship of O.B.*, *supra*, 9 Cal.5th at p. 1006) in light of the whole record (*In re Yolanda L.*, *supra*, 7 Cal.App.5th at p. 992). Nothing in subdivision (f)(4) prevents project opponents from seeking to demonstrate that the evidence of compliance does not meet this standard. Nor does the statute prevent neighbors from presenting, or the agency from considering, evidence that conditions of approval that do not reduce density could mitigate undesirable effects on neighbors, or that the project would have an unavoidable "specific, adverse impact upon the public health or safety" if approved at the proposed density. (See § 65589.5, subd. (j).) Subdivision (f)(4) may affect which arguments will carry the day, but it does not deprive a project's opponents of a meaningful opportunity to be heard.

We return to the history of the HAA. As the Legislature has steadily strengthened the statute's requirements, it has made increasingly clear that those mandates are to be taken seriously and that local agencies and courts should interpret them with a view to giving "the fullest possible weight to the interest of, and the approval and provision of, housing." (§ 65589.5, subd. (a)(2)(L).) The HAA is today strong medicine precisely because the Legislature has diagnosed a sick patient. We see no inconsistency between the provisions of the HAA and the California Constitution.

VI. Further Issues

In denying the application, the City pointed to no assertedly objective standard that the project did not meet, other than the height Guideline. In the trial court, the City argued as a separate basis for denying the writ that the project violated the City's objective standards for the dimensions of parking spaces. On appeal, the City does not contend we may affirm on this theory. Rather, it argues that if a writ of mandate issues, the City should be

allowed to consider the project's compliance with parking standards on remand.

The parties agree that if we reverse the judgment of the trial court, the appropriate remedy is to direct the trial court to issue a writ of mandate ordering the City to comply with the HAA. Nothing we say is intended to preclude the City from reviewing on remand the project's compliance with objective standards, including parking standards in effect at the time the application was deemed complete. (§ 65589.5, subd. (j)(1).)

DISPOSITION

The judgment of the trial court is reversed. The trial court shall issue a writ of mandate directing the City to (1) vacate its February 5, 2018 action upholding the Planning Commission's decision to deny the application, and (2) reconsider the challenge to the Planning Commission's decision in accordance with the views expressed in this opinion. The trial court may make any other appropriate orders that are consistent with this opinion.

Appellants shall recover their costs on appeal.

TUCHER, J.*

WE CONCUR:

STREETER, Acting P. J.
BROWN, J.

* Presiding Justice of the Court of Appeal, First Appellate District, Division Three, sitting by assignment pursuant to article VI, section 6 of the California Constitution.

Trial Court:	San Mateo County Superior Court
Trial Judge:	Hon. George A. Miram
Counsel for Appellants:	Holland & Knight, Jennifer L. Hernandez, Daniel R. Golub, and Emily M. Lieban
Counsel for Amicus Curiae on behalf of Appellants:	Miller Starr Regalia, Bryan W. Wenter; Paul B. Campos for Building Industry Association – Bay Area, San Francisco Bay Area Planning and Urban Research Association, Bay Area Council, and Housing Action Coalition
Counsel for Amicus Curiae on behalf of Appellants:	Californians for Homeownership: Matthew Gelfand; California Association of Realtors®: June Babiracki Barlow
Counsel for Amicus Curiae on behalf of Appellants:	Reed Smith, Raymond A. Cardozo and Kathryn M. Bayes for Habitat for Humanity Greater San Francisco
Counsel for Amicus Curiae on behalf of Appellants:	Christopher S. Elmendorf, Michelle Wilde Anderson, Anika Singh Lemar, and Dave Owen for Law Professors
Counsel for Respondents:	Goldfarb & Lipman, Dolores Bastian Dalton, Barbara E. Kautz, James T. Diamond, Jr., and Rye P, Murphy; Shawn Mason, City Attorney
Counsel for Amicus Curiae on behalf of Respondents:	Rural County Representatives of California, Arthur J. Wylene; California State Association of Counties, Jennifer B. Henning
Counsel for Amicus Curiae on behalf of Respondents:	Colantuono, Highsmith & Whatley, Andrew L. Jared, and Matthew T. Summers for League of California Cities.

Counsel for Intervener:	Xavier Becerra and Rob Bonta, Attorneys General; Thomas S. Patterson and Daniel A. Olivas, Senior Assistant Attorneys General; Mark R. Beckington and Christina Bull Arndt, Supervising Deputy Attorneys General; and Jonathan M. Eisenberg and David Pai, Deputy Attorneys General

11 SB 35. 40 Main Street Offices v City of Los Altos

Filed
April 27, 2020
Clerk of the Court
Superior Court of CA
County of Santa Clara
19CV349845
By: atheoharis

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

40 MAIN STREET OFFICES, LLC, Petitioner, vs. CITY OF LOS ALTOS, et al., Respondents.	Case No. 19CV349845 (Lead case, consol. with Case No. 19CV350422) ORDER GRANTING CONSOLIDATED PETITIONS FOR WRIT OF MANDATE
CALIFORNIA RENTERS LEGAL ADVOCACY & EDUCATION FUND, et al., Petitioners, vs. CITY OF LOS ALTOS, et al., Respondents.	ORDER ON SUBMITTED MATTER

These consolidated petitions for writ of mandate came on for hearing before the Honorable Helen E. Williams on January 15, 2020, at 9:00 a.m. in Department 10 of the court. Daniel R. Golub and Genna Yarkin of Holland & Knight appeared for petitioner 40 Main Street Offices, LLC (Developer); Emily L. Brough of Zacks, Freedman & Patterson appeared for

petitioners California Renters Legal Advocacy & Education Fund, San Francisco Bay Area Renters Federation, Victoria Fierce, and Sonja Trauss (collectively, Renters); Arthur J. Friedman of Sheppard Mullin Richter & Hampton LLP appeared for respondents the City of Los Altos, the City of Los Altos City Council, and the City of Los Altos Community Development Department (collectively, the City). The matter having been argued and submitted after the filing of post-hearing supplemental briefing, no party having requested a statement of decision under Code of Civil Procedure section 632 and rule 3.1590 of the California Rules of Court in this hearing lasting less than eight hours, and the Court having carefully considered the pleadings, the papers filed by the parties, the matters of which the Court takes judicial notice, the record received into evidence, the arguments of counsel, and the applicable law, Court finds and orders as follows:

I. Statement of the Case

The lead case of these two consolidated actions is one for relief in mandate brought under Code of Civil Procedure sections 1085 and 1094.5 (first–third causes of action), as well as for declaratory relief (fourth cause of action). It is brought by Developer against the City. Developer has been trying to develop a mixed-use building in downtown Los Altos for many years, having previously submitted multiple proposals all subject to discretionary review by the City. Developer primarily alleges in its petition that the City unlawfully rejected its latest proposal submitted under new, streamlined procedures established by Senate Bill 35 (Govt. Code, § 65913.4, hereafter section 65913.4 or SB 35; further unspecified statutory references are to the Govt. Code), remedial legislation enacted to promote the construction of housing within California. Developer further alleges that in rejecting the proposal, the City also violated the state Density Bonus Law (§ 65915) and the Housing Accountability Act (§ 65589.5), the provisions of both of which may be invoked, as they were here, in a development application submitted under SB 35.

Renters separately filed their petition challenging the City's course of conduct with respect to Developers' proposed project (Case No. 19CV350422). They allege their own direct and beneficial interests having been harmed in the City's denial of Developer's application for streamlined approval. This separate action against the City, commenced one day before

Developer's action, has since been consolidated with Developer's action. Renters' petition in mandate is also brought under Code of Civil Procedure sections 1085 and 1094.5, and seeks relief in the first cause of action for the City's alleged violations of SB 35 and the Housing Accountability Act. The second cause of action is for declaratory relief. Thus, Developer's and Renters' claims for relief against the City essentially overlap.

A. Summary of Administrative Record

1. Developer Applies for Streamlined Review

On November 8, 2018, Developer applied for permission to construct a mixed-use building with office space on the ground floor and residential units on the floors above at 40 Main Street in downtown Los Altos. (AR000001–AR000126 [application].) On the application cover sheet—a City form entitled "City of Los Altos General Application"—Developer checked boxes indicating that the "type of review requested" was "Commercial/Multi-Family" and "Use Permit." (AR000004.) The City had no other application form cover sheet specific to a streamlined SB 35 application. In Developer's application, it stated that it sought and qualified for streamlined review of its proposed development under SB 35. (AR000006–AR000017.) Developer's application included a project summary, a discussion of and chart detailing the proposed development's compliance with objective standards, renderings, blueprints, proposed landscaping, a preliminary plan to manage construction, and a title report. (AR000006–AR000126.)

2. The City's Initial Response

On December 7, 2018, the City—acting through Community Development Director Joe Biggs—sent Developer correspondence in which it expressed its refusal to conduct either a further streamlined or standard, discretionary review. (AR000127–AR000149.) The correspondence reflects that the City appeared to treat Developer's single development application as two distinct "applications submitted on November 8, 2018"—one for streamlined review under SB 35 and one for standard, discretionary review—which perceived dual applications purportedly could not be concurrently processed. (AR000129, AR000127.) In this

regard, the City said, "this application results in two applications that have been submitted for this site. One or the other of the projects must be withdrawn." (AR000127.)

As for the City's direct response to the application for streamlined review—a letter that contained within its subject line the reference "SB 35 Determination" and which letter specifically referenced SB 35—the City stated that it had conducted a review, made a decision, and determined that the proposed development did not qualify for streamlined review under section 65913.4. The letter enumerated two reasons for the City's denial decision. First, "the project does not provide the percentage of affordable dwelling units required by the State regulations." (AR000127.) The City cited section 65913.4, subdivisions (a)(4)(A) and (B)(ii) and a document prepared by California's Department of Housing and Community Development (HCD). (AR000127.) The HCD report lists Los Altos as a municipality in which streamlining applications can be submitted for proposed developments with "≥ 50% affordability" due to the failure to meet the [Regional Housing Needs Allocation or Assessment (RHNA), per § 65580 et seq.] for low income households as compared to the "≥ 10% affordability" threshold for streamlining applicable to municipalities that missed their targets for both low *and* moderate income households. (AR000127, citing HCD Determination Summary (Jan. 31, 2018) <https://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary01312018.pdf> [as of Mar. 2, 2020].) Second, the City cited section 65913.4, subdivision (a)(5)—the provision of SB 35 requiring consistency with objective zoning standards and objective design review standards[1]—and stated that the project lacked "the required number of off-street residential and visitor parking spaces"

[1] Under section 65913.4, subdivision (a)(5): " 'objective zoning standards' and 'objective design review standards' mean standards that involve no personal or subjective judgment by a public official and are 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 before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances … ."

and "adequate access/egress to the proposed off-street parking." (AR000127.) The City did not identify what these parking standards were or where they could be located.

The letter concluded by saying, "If you elect to pursue *other* approval/permit avenues for the project that is the subject of this notice, the applications, fees, deposits, studies, and information contained in the attached Notice of Incomplete Application are required to continue an evaluation of the project." (AR000128, italics added.) The letter did not say that Developer's submitted SB 35 application was perceived to be incomplete, or suggest that the City's further review of Developer's SB 35 application was conditioned on receipt of additional specified materials or information. Rather, the letter denied that application for the reasons stated.

As for the purported discretionary application, the City declined to review it on the asserted basis that it was "incomplete." (AR000128.) The City's letter, titled "Notice of Incomplete Application" and which omitted SB 35 in the subject line, listed 24 items that Developer needed to submit before the City would treat the application as complete and consider it on its merits. (AR000129–AR000132.) For example, the City asserted that Developer had not submitted complete documentation to substantiate its density-bonus request. (AR000148.) The City indicated that the additional materials had to be provided within 180 days—by June 6, 2019—or the application would be deemed expired. (AR000129.)

3. Developer Responds

On January 10, 2019, Developer wrote to the City to point out perceived errors in the City's correspondence rejecting the application for streamlined review under SB 35. (AR000150–AR000166.) Developer argued that the City's stated reasons for its decision were facially inadequate and substantively incorrect. (AR000151.) Developer stated that because the City had not "validly" identified a conflict with applicable statutory objective standards and could no longer do so within the statutory SB 35 statutory timeframe, the project was deemed to comply and therefore qualified for streamlined review and permitting. (AR000151.)

In support, as for the City's first stated basis for denial, Developer explained that the City had improperly relied on an outdated HCD determination of the municipalities subject to streamlining. (AR000151.) Developer pointed out that while the City had relied on a January

2018 determination, HCD had updated its determination in June 2018. (AR000151.) The June 2018 determination said that the City's threshold for streamlining is the more inclusive, 10 percent threshold. (AR000151, AR000161.) On this basis, Developer asserted that the City had erroneously determined that it was only subject to the streamlining process for projects with 50 percent as compared to 10 percent affordability. (AR000151–AR000152.)

Next, as for the City's second stated reason for the denial—insufficient parking spaces and "adequate access/egress to the proposed off-street parking"—Developer asserted that the City had failed to identify the objective standards with which the project conflicted; relied in part on a subjective, discretionary standard; and was otherwise incorrect. (AR000152–AR000154.) Developer elaborated that no standard addressing ingress and egress from the parking area was identified in the City's decision and that the adequacy of ingress and egress was not an objective standard that could be evaluated in the course of streamlined review. (AR000154.) Developer also pointed out that section 65913.4, subdivision (d)(2) prohibited the City from requiring more than one parking space per unit of housing. (AR000153.) According to Developer, it had proposed more than adequate parking because it planned to develop 18 parking spaces for only 15 units of housing and was not required to develop additional parking for the offices due to the City's public parking district. (AR000153–AR000154; AR000166 [architect statement on parking compliance, including ADA].)

Developer also asserted that the City had not made the requisite findings for having rejected the project under section 65589.5, the Housing Accountability Act. (AR000155.) Then, Developer remarked that, based on the City's own representations in the incomplete notice, that notice was immaterial to the application for streamlined review and the points it contained solely concerned issues that might be addressed in a standard, discretionary review process. (AR000156–AR000157.) Developer concluded by asserting its expectation that any streamlined public oversight must be completed by February 6, 2019, in accordance with the section 65589.5 90-day deadline.

4. The City Stands Its Ground

On February 6, 2019, the City responded to Developer's letter. (AR000168–AR000172.) The City asserted that it had correctly determined that the project was inconsistent with the streamlining criteria while simultaneously asserting that the application for streamlined review did not have sufficient information to allow the City to fully evaluate the criteria in section 65913.4. (AR000168.) The City then stated that it "*finds and determines that the Project is not eligible for issuance of a streamlined ministerial permit.*" (AR000169.) The City agreed to consider any request that would "*enable a determination of the Project's SB 35 eligibility or otherwise process the Application if and when*" additional information was provided. (AR000169.)

Next, the City responded to some of the specific points raised by Developer. (AR000169.) The City conceded the error in its earlier, first-stated reason for having denied the streamlining application; it acknowledged that under the correct and operative determination from HCD, the affordability threshold for streamlining was 10 percent, not 50 percent. (AR000169.) As for the City's earlier second-stated reason for having rejected the streamlining application, the City turned to the notice of incomplete application instead of the denial letter. (AR000169.) The City concluded that notes 18 and 19 in that notice of incomplete application were sufficient to apprise Developer of the problem with its proposal and the inability of the City to evaluate the proposed parking.[2] (AR000169–AR000170.)

Finally, the City said that because the streamlining application was incomplete, the City was not required to comply with the Housing Accountability Act and also had properly rejected the application based on its inability to evaluate the project's eligibility for a density bonus. (AR000170.)

[2] Notes 18 and 19 do not identify any objective standard or clear inconsistency with such a standard in any event. (AR000131.) Note 18 states that two parking spaces will be affected by the driveway. (AR000131.) Note 19 states that parking circulation is "inadequate" and questions where cars would wait to enter the underground parking garage. (AR000131.)

5. Developer States Intent to Pursue Legal Action

On February 19, 2019, Developer countered the City's response in a letter documenting the problems with and inconsistencies between the City's initial action on December 7, 2018, and how it had attempted to recharacterize that action in the February 6th letter. (AR000172–AR000182.) Developer recounted the history of its attempts to develop the project through the discretionary review process since 2013 and the purpose of section 65913.4, emphasizing the ways in which the statute was designed to remedy precisely the type of agency conduct at issue here. (AR000175–AR000176.) Developer also addressed the specific legal issues raised in the parties' preceding correspondence. (AR000177–AR000181.)

In concluding, Developer observed that the City appeared to be unwilling to follow the law or work with Developer on approving the SB 35 proposal, leaving it with no option other than legal action. (AR000181.) Developer said that it did not appear there was any available administrative remedy, such as an appeal, to be exhausted before commencing suit. (AR000181.) Nevertheless, Developer indicated that it had submitted a claim[3] to the City Clerk under the Government Claims Act (§ 900 et seq.) out of an abundance of caution and invited the City to advise if it concluded that some applicable administrative procedure, in fact, existed that Developer should pursue before initiating legal action. (AR000181.) Developer offered that it remained open to discussing alternatives to litigation but otherwise intended to file suit within 90 days of the City's February 6th letter. (AR000181.)

6. Developer Administratively Appeals

On February 21, 2019, the City informed Developer by email and through written delivery of the same that its SB 35 denial *was* subject to an administrative appeal. (AR001203–AR001206.) The City insisted an administrative appeal was required despite acknowledging that Los Altos Municipal Code section 1.12.020, entitled "No appeal from ministerial acts," provides that appeal procedures do not apply when an act or decision is ministerial. The City informed Developer that if it wished to "challenge the City's decision on this matter, an appeal must be

[3] Developer's claim appears in the record at AR001201–AR001202.

filed by no later than fifteen calendar (15) days from the date of the [February-6] letter, by the close of business 4:30 pm on THURSDAY FEBRUARY 21, 2019." (AR001205.) The City provided Developer with the mandatory application form for the appeal and stated that "[f]ailure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court." (AR001205–AR001207.)

In other words, the City gave Developer less than eight hours' notice of its interpretation of the Los Altos Municipal Code and position that an administrative appeal was required.

That same day, Developer submitted its appeal form along with a statement of the grounds for its appeal and the record on which it was relying (including the correspondence summarized above).[4] (AR001208–AR001210.) In the weeks that followed, Developer frequently corresponded with the City in an effort to ascertain what the process for the appeal would be and when it would be heard. (AR001311–AR001328.)

On March 26, 2019, the City noticed the appeal for a public hearing before the City Council to be held on April 9, 2019.[5] (AR001216.) In correspondence from counsel for the City to Developer the week before the hearing, it was asserted that the appeal was required because the decision that the project was not eligible for streamlined review was not a ministerial act. (AR001306.) Counsel went on to assert that April 9th was the earliest available time that the

---

[4] In Developer's cover letter for its appeal, it maintained that it did not believe there was an avenue for appeal of a ministerial decision but was submitting the appeal to avoid any dispute. (AR001210.)

[5] The City noticed this appeal for public hearing based on a staff report and recommendation from counsel. (AR001238–AR001252 [staff report]; AR001253–AR001257 [presentation from Best Best & Krieger LLP].) The staff report delves into new substantive issues on the SB 35 proposal, such as whether the project satisfies the two-thirds residential-use requirement, that were not raised in the City's December 7, 2018 denial letter. (AR001242; see also AR001260 [summarizing staff's reasons for denial that are purportedly the subject of the appeal].) This seems to be because the City was advised that in determining the appeal, it would conduct a de novo review of whether the project in fact complied with section 65913.4, instead of ascertaining whether the initial denial had been insufficient or invalid such that the application was deemed approved under SB 35. (AR001255.) Developer responded to these new points in correspondence sent in connection with the appeal. (AR001284–AR001300.)

appeal could be heard based on the City Council's schedule and existing obligations. (AR001308.) Counsel also maintained without explanation that the appeal was subject to a public hearing, but that Developer would be allowed to present its case as well. (AR001309.)

On April 9th, Developer presented its appeal to the City Council, which also heard public comment[6] on the matter (including comments from Renters to the effect that the project was deemed approved for streamlined permitting). (AR001231–AR001237; AR001928–AR002047 [hearing transcript].) On April 23, 2019, the City, acting through its City Council, denied the appeal and did so by resolution. (AR002056–AR002078 [City Council minutes, report, and resolution].)

B. Summary of Allegations and Proceedings

Renters and Developer (collectively, petitioners) commenced their respective actions on June 12 and 13, 2019. Their hybrid petitions for writ of mandate and complaints for declaratory relief essentially raise the same claims. They allege that in proceeding as described above in the summary of the administrative record, the City unlawfully denied Developer's proposal in violation of the streamlining statute (SB 35), the Housing Accountability Act (§ 65589.5), and the Density Bonus Law (§ 65915). Based on these allegations, petitioners seek writs of mandate under either Code of Civil Procedure section 1085 or section 1094.5, compelling the City to approve Developer's streamlined application. They also seek a judicial declaration of their entitlement to that approval under Code of Civil Procedure section 1060, along with injunctive relief.[7] The City separately answered both petitions.

On August 28, 2019, the Court consolidated the petitions for all purposes, and designated Developer's action as the lead case. The City then lodged the administrative record with the Court. And, on October 21, 2019, the City lodged a supplement. Petitioners filed a joint opening brief, accompanied by a request for judicial notice, on November 1, 2019. The City opposed the

---

[6] Public comments can be located in the record along with other hearing materials. (AR001333–AR001351, AR001907–AR001922, AR001924–AR001926.)

[7] Although Renters and Developer organized the causes of action in their petitions differently, they seek the same types of relief on the same factual and legal bases.

petition on December 6, 2019, and presented the declaration of Jon Biggs, the City's Director of Community Development. Petitioners then filed a joint reply and request for judicial notice before the hearing scheduled for January 15, 2020. The hearing went forward as scheduled. Upon receipt of post-hearing supplemental briefing ordered by the Court, the matter was submitted.

II. Petitioners' Requests for Judicial Notice

Petitioners jointly request judicial notice of portions of the Los Altos Municipal Code (RJN Ex. K) as well as legislative history materials, namely digests, reports, floor analyses, and amendments to section 65913.4 (RJN Exs. A–J). With their reply, they seek judicial notice of correspondence from HCD in response to their request for assistance. (See Golub Decl., Ex. 1.) For the reasons that follow, petitioners' requests are granted.

A court may take judicial notice of municipal law. (Evid. Code, § 452, subd. (b); *The Kennedy Com. v. City of Huntington Beach* (2017) 16 Cal.App.5th 841, 852 (*Kennedy*).) Thus, the Court takes judicial notice of the Los Altos Municipal Code.

Next, a court may consider legislative history materials as an interpretative aid, but the means of consideration and weight ascribed to these kinds of materials vary. (Cf. *People v. Cruz* (1996) 13 Cal.4th 764, 773, fn. 5 (*Cruz*) with *Cummins, Inc. v. Super. Ct.* (2005) 36 Cal.4th 478, 492, fn. 11.) As for the text of enacted legislation (Assembly Bill 101 and Assembly Bill 1485), including a redline version showing section 65913.4 as amended and in force today, (RJN Exs. C, G–H), the Court takes judicial notice under Evidence Code section 452. While the California Supreme Court has relied on precedent to take judicial notice of other legislative history materials, such as committee reports and bill analyses, some dissenters have aptly observed that such materials do not clearly fall within any enumerated category of Evidence Code sections 451 and 452. (*Cruz*, *supra*, 13 Cal.4th at p. 794 (dis. opn. of Anderson, J.).) Accordingly, here, the legislative reports and analyses are not subject to judicial notice under the Evidence Code. Nevertheless, precedent allows the Court to consider these reports and analyses and to ascribe to them an appropriate weight in light of their authorship and function within the legislative process.

Finally, "[w]here the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7 (*Yamaha*).) "An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to 'make law,' and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Ibid.*) A formal opinion letter or informal correspondence expressing the position of the agency may be presented to a court for consideration under *Yamaha* by way of a request for judicial notice under Evidence Code section 452, subdivision (c). (See generally *Field v. Bowen* (2011) 199 Cal.App.4th 346, 370, fn. 5 [agency-prepared documents come within Evid. Code, 452, subd. (c); see, e.g., *Linda Vista Village San Diego H.O.A., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 186.) Consequently, the Court takes judicial notice of HCD's letter to petitioners.

III. Discussion

The Court must answer two central questions to resolve the petitions. First, did petitioners timely commence their respective actions? Second, do petitioners establish that they are entitled to relief on the merits? The answer to both questions is yes.[8]

---

[8] As noted, both petitions are brought under Code of Civil Procedure sections 1085, traditional mandate, *and* 1094.5, administrative mandate, without specification of which form of mandate may apply to all or each of the discrete causes of action. Likewise, the City takes no position on this question. Each of these statutes, by its terms and as discussed in case law, typically applies in different, specified circumstances or settings. And each typically invokes judicial review through its own nuanced lens or standard. As SB 35 involves an agency's ministerial duty to approve a qualifying development proposal and no administrative or public hearing is contemplated, judicial review of an agency's decision to reject a project for streamlined review and permitting under SB 35 is more likely in traditional mandate under Code of Civil Procedure section 1085. But here, the City insisted that an administrative appeal to the City Council heard through the vehicle of a public hearing was required, which typically leads to judicial review in administrative mandate under Code of Civil Procedure section 1094.5. And the

A. The Action Is Not Time-Barred

The City's primary opposing argument is that petitioners failed to timely file and serve their respective petitions within the 90-day limitations period set forth in section 65009. In advancing this argument, the City asserts that it is not estopped from raising this defense based on its insistence that Developer exhaust its administrative remedies by appealing to the City Council (or, implicitly, that Renters so exhaust by their participation in this same administrative process) before bringing this action. Petitioners argue both assertions are incorrect. And, in supplemental briefing, petitioners contend and the City disputes whether the statute-of-limitations defense is further overcome by the doctrine of equitable tolling. For the following reasons, the Court rejects the City's defense.

As a threshold matter, the City argues that the Court should assess the "gravamen" of the claims and subject all of them to the 90-day limitations period in section 65009, subdivision (c)(1)(E). Petitioners take issue with this approach. (RT at p. 25.) And the Court perceives the City's treatment of all the claims collectively based on their assessed "gravamen" to be imprecise and problematic.

"[A] plaintiff is generally permitted to allege different causes of action—with different statutes of limitations—upon the same underlying facts." (*Thomson v. Canyon* (2011)

Housing Accountability Act, which a development proposal submitted under SB 35 may invoke, specifically references judicial review in administrative mandate under Code of Civil Procedure section 1094.5. (§ 65589.5, subd. (m).) Further, courts have reviewed a challenge to an agency's decision under the Density Bonus Law likewise through administrative mandate. (See, e.g. § 65915, subd. (d)(3); *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 812, 816–817 (*Lagoon Valley*).) The parties appear to proceed here on the assumption that because the overarching relief in mandate sought by petitioners is deemed approval of the development proposal under SB 35, relief under the Housing Accountability Act and the Density Bonus Law is subsumed within that. In any event, both forms of mandate ultimately review for and address an agency's abuse of discretion, which would include a failure to perform a duty compelled by law or a failure to proceed in a manner required by law—the fundamental essence of all the claims here. Because of this, and because the particular form of mandate that is applicable is not articulated or disputed by the parties, the Court proceeds to conduct its judicial review and to adjudicate the action focused on abuse of discretion as so framed and without specifically deciding whether the ultimate relief afforded comes through Code of Civil Procedure section 1085 or section 1094.5.

198 Cal.App.4th 594, 605 (*Thomson*).) "A complaint may allege facts involving several distinct types of harm governed by different statutory periods and, where it does so, one cause of action may survive even if another cause of action with a shorter limitations period is barred." (*Ibid.*) But in doing so, "a plaintiff is not permitted to evade a statute of limitations by artful pleading that labels a cause of action one thing while actually stating another." (*Id.* at p. 606.) "California courts therefore look to the gravamen of the cause of action." (*Ibid.*) " '[T]he nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations under our code.' [Citation.]" (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22–23.)

Here, as is permissible, petitioners allege that one set of facts gives rise to multiple claims for relief based on different statutes. And, in pleading these distinct theories, petitioners do not attempt to artfully mislabel their claims to evade the statute of limitations. They assert that they are independently entitled to relief on all of the pleaded bases. Consequently, contrary to how the City proceeds, this is not a scenario in which it is necessary to drill down to the gravamen of each claim to uncover its true nature. And the City's suggestion that the gravamen of each independent claim is relief under section 65913.4 is not quite accurate. It follows that the City errs in addressing all of the claims collectively as though they are necessarily subject to one statute of limitations in lieu of establishing the limitations period applicable to each claim pleaded.[9]

To illustrate, the Housing Accountability Act contains its own 90-day statute of limitations. (§ 65889.5, subd. (m).) This limitations period runs "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

---

[9] To be clear, the City does not argue that each distinct claim incidentally happens to be subject to the same statute of limitations. Rather, the City asks the Court to treat the different claims as identical and, on that basis, to apply one statute of limitations to all claims.

specified in subparagraph (B) of paragraph (5) of subdivision (h)."[10] (§ 65589.5, subd. (m), citing § 65950 [Permit Streamlining Act].) This particular statute of limitations applies to causes of action based on the Housing Accountability Act.

Next, the Legislature enacted section 65009 because it found "there currently is a housing crisis in California and it is essential to reduce delays and restraints upon expeditiously completing housing projects." (§ 65009, subd. (a)(1).) The statute "is intended 'to provide certainty for property owners and local governments regarding decisions made pursuant to this division' (§ 65009, subd. (a)(3)) and thus to alleviate the 'chilling effect on the confidence with which property owners and local governments can proceed with projects' (*id.*, subd. (a)(2)) created by potential legal challenges to local planning and zoning decisions." (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 765.) "To this end, section 65009 establishes a short statute of limitations, 90 days, applicable to actions challenging several types of local planning and zoning decisions ... ." (*Ibid.*)

The City relies on the 90-day limitations period in section 65009 based on language in subdivision (c)(1)(E), which provides that it applies when a petitioner seeks "[t]o attack, review, set aside, void, or annul any decision on the matters listed in Sections 65901[11] and 65903[12], or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit." Based on the contents of sections 65901 and 65903—section 65009, subdivision (c)(1)(E) is best summarized as applying when a petitioner

---

[10] Section 65889.5, as effective January 1, 2020, contains an outdated reference to subparagraph (B) of former paragraph (5) of subdivision (h) that cites to time standards in section 65950 (the Permit Streamlining Act). Subparagraph (B) and the time standards therein are now codified in paragraph (6) of subdivision (h), not paragraph (5), but the Legislature failed to conform the reference in subdivision (m) upon making this amendment to subdivision (h), which is clearly the result of oversight.

[11] Section 65901 governs hearings on "conditional uses or other permits" as well as zoning variances.

[12] Section 65903 governs appeals of a decision of the board of zoning adjustment or zoning administrator.

challenges (1) the underlying decision of the board of zoning adjustment or zoning administrator on a conditional use permit, other permit, or zoning variance; (2) the outcome of an appeal of such a decision; or (3) the particular terms of a conditional use permit, other permit, or variance (as compared to the ultimate decision to issue or refuse to issue the permit or variance). (See generally *Save Lafayette Trees v. City of Lafayette* (2019) 32 Cal.App.5th 148, 155–159 [discussing scope and construction of section 65009].)

Petitioners argue that, if anything, the 180-day period in subdivision (d)(1) of section 65009 applies because this action meets both of the criteria specified therein, namely:

> "(A) It is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of housing affordable to persons and families with low or moderate incomes, as defined in Section 50079.5 of the Health and Safety Code, or with very low incomes, as defined in Section 50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.
>
> "(B) It is brought with respect to the adoption or revision of a housing element pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3, actions taken pursuant to Section 65863.6, or Chapter 4.2 (commencing with Section 65913), or to challenge the adequacy of [a density bonus] ordinance adopted pursuant to Section 65915.

Petitioners' interpretation of section 65009, subdivision (d)(1) is not entirely persuasive. While the project does seem to encourage housing development within the meaning of section 65009, subdivision (d)(1)(A), it is not especially clear that this proceeding is brought with respect to "actions taken pursuant to Section 65863.6, or Chapter 4.2 (commencing with Section 65913)" within the meaning of section 65009, subdivision (d)(1)(B). This is because this latter subdivision focuses on challenges to legislative actions as compared to ministerial or adjudicatory permitting decisions. The legislative actions enumerated in section 65009, subdivision (d)(1)(B) include the adoption or revision of a housing element, adoption of a zoning ordinance, and the adoption of a density bonus ordinance. (See *Calvert v. County of Yuba* (2006)

145 Cal.App.4th 613, 623.) The only other action identified in that subdivision is an action taken under Chapter 4.2 (commencing with section 65913). Petitioners assume that this reference necessarily encompasses section 65913.4, SB 35, because it is part of Chapter 4.2. But this interpretation does not necessarily appear to be correct under the principle of *noscitur a sociis* that directs interpretation of a term in a list by reference to the other items in that list. (See *Kaatz v. City of Seaside* (2006) 143 Cal.App.4th 13, 40.) Under that principle of interpretation, a court interprets a term more narrowly if an expansive interpretation would make the term markedly dissimilar from the other list items or make the other list items unnecessary or redundant. (*Ibid.*)

Here, interpreting "actions taken pursuant to … Chapter 4.2 (commencing with Section 65913)" as encompassing the decision to ministerially approve a particular project under section 65913.4 would create a marked dissimilarity between that term and the other legislative actions enumerated in section 65009, subdivision (d)(1)(B). Additionally, section 65913.4 is not the only section within Chapter 4.2. Section 65913.1 requires that when zoning land or revising a housing element a city designate sufficient land for residential use. And so, an action taken under section 65913.1 falls within Chapter 4.2 and constitutes a legislative action like the other actions enumerated in section 65009, subdivision (d)(1)(B). Similarly, section 65913.2, also in Chapter 4.2, imposes limitations on the types of legislative actions a city may take when it comes to regulating subdivisions. Thus, it seems the Legislature intended section 65009, subdivision (d)(1)(B) to encompass legislative actions taken under Chapter 4.2, but not necessarily ministerial or adjudicatory decisions. Consequently, petitioners' interpretation of section 65009, subdivision (d)(1)(B) as encompassing streamlined approvals or denials of projects under section 65913.4 is not convincing.

The City's interpretation of section 65009, subdivision (c)(1)(E) is slightly more appealing. While it is true that projects subject to streamlined review do not require conditional use permits, section 65009, subdivision (c)(1)(E), including as incorporated in section 65009, subdivision (c)(1)(F), encompasses a decision on "any other permit." And so, arguably, even when a project is subject to streamlined, nondiscretionary review, there is still a decision as to whether to permit—meaning to allow—the development, which decision may be signified by the

issuance of a document or series of documents denominated as a "permit." And a decision made under section 65913.4 might otherwise qualify within the meaning of section 65009, subdivision (c)(1)(F) as a decision made before the issuance of any other permit.

Petitioners do not convince the Court that *Urban Habitat Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561 (*Urban Habitat*) precludes the application of section 65009 here. First, the facts of that case are distinct because the petitioners there claimed that the City of Pleasanton had failed to update the housing element of its general plan and local development law to meet its RHNA such that an impermissible inconsistency arose over time; in other words, the city had failed to adapt to updated needs and requirements for adequate housing. (*Urban Habitat,* at pp. 1566–1570, 1577.) The issue here is not whether the City failed to bring local law and planning documents into compliance, but rather, whether it took an affirmative action on a specific project that was unlawful. While petitioners characterize this as a failure to comply with mandatory duties, this is not the same type of failure or omission that occurred in *Urban Habitat.* Because that case is circumstantially distinguishable from the case now before this Court, and given the broad interpretation afforded to section 65009 by other courts, petitioners' analogy is not compelling.

Ultimately, even assuming all of petitioners' claims are subject to a 90-day statute of limitations under either section 65009 or, as to the Housing Accountability Act claims, section 65889.5, subdivision (m), they commenced their respective actions with 90 days of the City's decision on the administrative appeal, which process the City insisted, full stop, was required for exhaustion purposes. The City, through its City Council, made that "final" decision on April 23, 2019. (AR002313.) Petitioners filed their petitions in June and served them by July 10th, within 90 days of the April 23rd adopted resolution. Accordingly, each petition in this consolidated action is timely.

The Court accordingly rejects the City's contention that its initial rejection of the streamlining application on December 7, 2018, necessarily accrued a cause of action under SB 35 or triggered the running of the statute of limitations as to any or all claims asserted. Contrary

to what it anticipatorily argues in its opposition, the Court finds that the facts here warrant estoppel of this defense. Equitable tolling applies as well.

Equitable tolling and equitable estoppel are two distinct doctrines. (*Ashou v. Liberty Mutual Fire Ins. Co.* (2006) 138 Cal.App.4th 748, 757–758.)

" 'Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be [*sic*] acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.' [Citations.]" (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1359, quoting *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.) And " '[t]he government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present *and,* in the considered view of a court of equity, the injustice [that] would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy [that] would result from the raising of an estoppel.' [Citation.]" (*Feduniak, supra,* 148 Cal.App.4th at pp. 1359–1360.) "[C]ourts will not hesitate to estop the government from asserting *a procedural barrier*, such as the statute of limitations or a failure to exhaust remedies, as a defense to claims against it, where the government's affirmative conduct caused the claimant's failure to comply with the procedural requirement." (*Id.* at p. 1372.)

While estoppel typically arises from misrepresentations of fact, it may also apply when a municipality or agency does not accurately advise a potential plaintiff about the existence or availability of an administrative remedy, which advice may depend in part on mixed questions of fact and law. (See, e.g., *Shuer v. County of San Diego* (2004) 117 Cal.App.4th 476, 487 (*Shuer*).) For example, when the availability of an administrative remedy is unclear and the administrative regulations are susceptible to different interpretations, a public entity may be estopped from raising the failure to exhaust administrative remedies as a defense. (*Ibid.*)

"The equitable tolling of statutes of limitations is a judicially created, nonstatutory doctrine. [Citations.]" (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th

88, 99 (*McDonald*).) "It is 'designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations—timely notice to the defendant of the plaintiff's claims—has been satisfied.' [Citation.]" (*Ibid.*, quoting *Appalachian Ins. Co. v. McDonnell Douglas Corp.* (1989) 214 Cal.App.3d 1, 38.)

"Where exhaustion of an administrative remedy is mandatory prior to filing suit, equitable tolling is automatic: 'It has long been settled in this and other jurisdictions that whenever the exhaustion of administrative remedies is a prerequisite to the initiation of a civil action, the running of the limitations period is tolled during the time consumed by the administrative proceeding.' [Citations.]" (*McDonald, supra*, 45 Cal.4th at p. 101, quoting *Elkins v. Derby* (1974) 12 Cal.3d 410, 414.) "This rule prevents administrative exhaustion requirements from rendering illusory nonadministrative remedies contingent on exhaustion." (*McDonald, supra*, 45 Cal.4th at p. 101.) In other words, the doctrine of equitable tolling preserves a party's right to judicial review that would otherwise be rendered infeasible due to the consumption of the limitations period by the administrative review process.

The facts here support the application of both equitable tolling and equitable estoppel.

The City mandated an administrative proceeding that consumed the limitations period that it now contends was triggered by the initial denial letter on the streamlined application on December 7, 2018. (AR001205.) But the City emphatically said to Developer that "an appeal must be filed" and that "[f]ailure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court." (AR001205.) The City then insisted on scheduling a public hearing on the administrative appeal before the City Council and delayed in doing so. (AR001318–AR001324.) For mandamus claims brought under Code of Civil Procedure section 1094.5—and for any other claims in light of the emphatic language of the letter—the administrative proceeding was mandatory. This is because a "writ is not available … to intermeddle in the preliminary stages of an administrative planning process … ." (*California High-Speed Rail Authority v. Super. Ct.* (2014) 228 Cal.App.4th 676, 707; see also *California Water Impact Network v. Newhall County Water District* (2008) 161 Cal.App.4th 1464, 1482–1483 [only final decisions subject to review].) And, as petitioners point out, even if they contend

that the City's December 7, 2018 correspondence resulted in their SB 35 application being deemed approved under streamlined review, with the City then insisting instead on an administrative appeal, petitioners could pursue that appeal with the goal that the City Council would not proceed to decide de novo whether the SB 35 application in fact qualified for streamlined review but, rather, to recognize and decide that "deemed" approval of the SB 35 application under section 65913.4, subdivision (b)(2) for objective planning standards had already occurred as a matter of law obviating the need for litigation.

And even treating the administrative proceeding as voluntary, tolling still applies. (*McDonald, supra*, 45 Cal.4th at p. 105.) The Court rejects the City's rather incredible and unsubstantiated claim that Developer's acquiescence under protest means that it did not voluntarily pursue the administrative proceeding. The City fails to justify (through reasoned analysis or authority) the insertion of a scienter requirement into the definition of voluntary in this particular legal and procedural context. Accordingly, whether viewed as mandatory or voluntary in character, the administrative proceeding that occurred here is the type of intervening activity that tolls the limitations period.

Also, petitioners provided sufficient notice of their claims thereby fulfilling the purpose of the statute of limitations before and during the administrative proceeding. The City asserts without authority that Renters' submission of public comments was insufficient to put it on notice of their claims. (See AR001334–AR001338; AR002344–AR002345.) Given the specificity and content of Renters' communications with the City, the Court is not convinced by the City's conclusory and unsubstantiated assertion. And, as a practical matter, it is unclear how Renters could have proceeded without waiting for the disposition of Developer's administrative appeal. Especially given the City's insistence on that appeal, it would result in an unjust and technical forfeiture to allow the City to now disclaim the necessity of this administrative proceeding. Because of the brevity of the 90-day limitations period, the absence of tolling during the administrative proceeding would render judicial review illusory. Equitable tolling is just and warranted under the facts and circumstances presented here. The City's supplemental brief does not persuade the Court to reach a contrary conclusion.

Next, the City anticipatorily argues in opposition to the petitions that it is not equitably estopped from raising the statute of limitations as a defense because estoppel applies when a party misrepresents or conceals facts and not matters of law. (Opp. at p. 19:6–17, citing *Jordan v. City of Sacramento* (2007) 148 Cal.App.4th 1487 (*Jordan*).) While the City's statement of law is not inaccurate on its face, it is incomplete and misleading. And the City's analysis is underdeveloped. Moreover, the City relies exclusively on *Jordan*, which is not analogous.

Here, the City vehemently asserted by letter that an administrative appeal was mandatory and that it would raise the defense of exhaustion of administrative remedies to preclude Developer from seeking judicial review of the City's conduct absent an appeal. The City's representation as to the position it was taking, and would take in any litigation, is a representation of fact. And, although Developer stated its opinion or belief that the City's legal analysis was incorrect, Developer was at the mercy of the City's interpretation of its own municipal code. In other words, the parties differed in their understanding of the law and in their authority to interpret and enforce that law. As in *Shuer*, this type of informational and interpretive asymmetry is sufficient to justify estoppel.

As for the second and fourth elements of estoppel—that the party to be estopped intended that his conduct be acted upon, or that this party so acted such that the other party had a right to believe the conduct was so intended, and that the other party relied on the conduct to his injury—the City's letter informing Developer of the requirement of an administrative appeal contained such emphatic and mandatory language that it is reasonable to conclude the City intended to induce Developer's reliance thereon. And Developer acquiesced to the City's representation to its detriment, pursuing an administrative appeal albeit under protest. When faced with the untenable choice of either suing immediately and facing dismissal for failure to exhaust, or exhausting administrative remedies to preserve its claim of unlawful conduct, it was reasonable for Developer to rely on the City's interpretation of its own code and representation of the exhaustion defense it intended to raise, particularly given the unequivocal and emphatic language the City used to express this position. Further, under these circumstances, before having to initiate litigation, Developer could reasonably so acquiesce to the City's demand in an effort to

get the City Council to recognize the mandatory timelines and requirements of SB 35 and the consequences of its having earlier failed to meet those provisions, and to correct its prior erroneous approach.

Finally, the Court concludes that the injustice that would result in the absence of estoppel is enough to justify application of the doctrine here.

For all of these reasons, the Court rejects the City's statute-of-limitations defense and reaches the merits of petitioners' claims.

B. Petitioners Are Entitled to Relief on the Merits

Petitioners allege that the City's conduct violated three different housing statutes: (1) the streamlining statute (§ 65913.4, SB 35); (2) the Density Bonus Law (§ 65915); and (3) the Housing Accountability Act (§ 65589.5).

1. The City Failed to Comply with Section 65913.4

i. Statutory Background

In 2017, the Legislature passed SB 35 to reform land-use and housing law, including by creating "a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment [ ] numbers."[13] (Sen. Rules Com., Rep. on Sen. Bill No. 35 (2017–2018 Reg. Sess.) May 27, 2017.)

Section 65913.4, subdivision (a) states in relevant part: "A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and not subject to a conditional use permit if the development satisfies all of the [ ] objective planning standards" set forth further in subdivision (a).

---

[13] As part of the housing element of a municipality's general plan, it must calculate its Regional Housing Needs Allocation or Assessment (RHNA), which is the " 'existing and projected need for housing' " in the area for individuals and households of all income levels. (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1186, fn. 8, quoting Gov. Code, § 65583.) If a municipality's present and projected housing needs exceed its housing stock and land available for development, it must work to satisfy its RHNA by increasing the availability of land for housing development by, for example, changing zoning and development restrictions. (Gov. Code, § 65583, subd. (c)(1)(A).)

The objective planning standards that operate as eligibility criteria for streamlined, ministerial review consist of inclusionary and exclusionary criteria. In the abstract, the inclusionary and exclusionary criteria balance the primary policy of expediting housing construction with the competing policy of safe, well-designed construction as embodied in existing law. To illustrate, a proposed development must be "a multifamily housing development that contains two or more residential units" in an urban area that will not displace existing rent-controlled and income-restricted housing. (§ 65913.4, subds. (a)(1)–(2), (a)(7).) A mixed-use development still qualifies if "at least two-thirds of the square footage of the development [are] designated for residential use." (§ 65913.4, subd. (a)(2)(C).) Exclusionary criteria disqualify a development proposed for construction in or on a coastal zone, fire zone, flood plain, earthquake fault zone, hazardous-waste site, wetland, or prime farmland. (§ 65913.4, subd. (a)(6).)

Currently, the statute specifies that when evaluating consistency with the standards above, a development is consistent "if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards."[14] (§ 65913.4, subd. (b)(3).) Unless an agency timely explains to a developer in writing the reasons why the proposed development is not consistent with the eligibility criteria, "the development shall be deemed to satisfy the objective planning standards in subdivision (a)." (§ 65913.4, subds. (b)(1)–(2).) An agency's deadline for notifying a project proponent of ineligibility for streamlined, ministerial review is either 60 or 90 days depending on the size of the proposed development. (§ 65913.4, subds. (b)(1)(A)–(B).)

Proposed developments that qualify for streamlined, ministerial review may still be subject to design review or public oversight with the limitation that this oversight "shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application,

---

[14] Section 65913.4, subdivision (b)(3) became effective January 1, 2020. (Sen. Bill No. 235 (2019–2020 Reg. Sess.) § 5.3; Assem. Bill No. 1485 (2019–2020 Reg. Sess.) § 1.)

and shall be broadly applicable to development within the jurisdiction." (§ 65913.4, subd. (c)(1).) The design review must be completed, if at all, within 90 or 180 days[15] depending on the size of the development and "shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect … ."[16] (§ 65913.4, subd. (c)(1).)

ii. Application

The City's notice of inconsistency here, its SB 35 denial letter of December 7, 2018, was neither code-compliant nor supported by substantial evidence.

Section 65913.4 subdivision (b)(1) provides: "If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards … ." The Court concludes here that the City failed to comply with this notice requirement

---

[15] This means that for a smaller development, the deadline for notice of ineligibility is 60 days (§ 65913.4, subd. (b)(1)(A)) and an agency may take an additional 30 days to complete design review or public oversight for a total of 90 days (§ 65913.4, subd. (c)(1)). For a larger development, the deadline for notice of ineligibility is 90 days (§ 65913.4, subd. (b)(1)(B)) and an agency may take an additional 90 days to complete design review or public oversight for a total of 180 days (§ 65913.4, subd. (c)(2)).

[16] Notably, while section 65913.4, subdivision (c) gives localities additional time to review objective design standards, the Legislature also enumerates compliance with "objective design review standards" as an objective planning standard—an eligibility criterion—in subdivision (a)(5). There does not appear to be a substantive distinction between these two terms. The descriptions in subdivisions (a)(5) and (c) of what design standards may be applied are so similar that they suggest the terms are equivalent. The statutory framing of design standards as both eligibility criteria and criteria capable of review during the extended timeframe for public oversight is problematic because of the distinct deadlines for making those distinct determinations. Treating compliance with objective design standards as an objective planning standard under subdivision (a) arguably renders as surplusage the later deadline for design review in subdivision (c)(1). Courts typically avoid interpreting statutes in such a manner. (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22.) Ultimately, the Court need not resolve this ambiguity based on the particular record and arguments advanced here. The City did not comply by either deadline and does not ask for additional time to conduct public oversight in its supplemental brief on the scope of relief that is warranted.

because the City did not adequately identify objective standards and provide an explanation of inconsistencies supported by substantial evidence in its SB 35 denial letter.

First, the City did not adequately identify applicable objective standards with which the project did not comply. The City conceded its initial error in asserting that a higher percentage of affordable units was required; it had relied on an outdated and incorrect HCD determination. (AR000169.) Thus, it is undisputed that the first bullet point in the City's denial letter was based on an incorrect and inapplicable standard.

As for the other two bullet points, the City did not adequately identify the standards or code provisions it was referring to or relying on. It concluded the project lacked "the required number of off-street residential and visitor parking spaces" and "adequate access/egress to the proposed off-street parking." (AR000127.) But it is not apparent from this vague statement just what those purported standards are or where they can be located. Thus, the City did not adequately identify the parking standards it was relying on. And notwithstanding the opacity and ambiguity of the City's statement, it is apparent that it was not relying on permissible, objective standards for parking. First, section 65913.4, subdivision (d)(2) states that "the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." (§ 65913.4, subd. (d)(2).) And for projects meeting certain criteria—such as projects within one-half mile of transit—no parking requirements may be imposed. (§ 65913.4, subd. (d)(1).) Consequently, the City not only failed to identify the purported parking requirement but also failed to account for the prohibitions in section 65913.4, subdivision (d) as well. Moreover, the City has yet to identify any evidence in the record to support the conclusion that it could require more parking based on the location and characteristics of the project here.

As for ingress and egress, "adequacy" is not an objective standard that may be applied to streamlined projects. Objective standards are those "that involve no personal or subjective judgment by a public official and are 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 before submittal." (§ 65913.4, subd. (a)(5).) What qualifies as

adequate—in the absence of an identifiable standard or definition—is simply a matter of personal or subjective judgment. To date, the City has not identified a uniformly verifiable, knowable standard for adequate ingress and egress. Accordingly, it impermissibly relied on a subjective standard in its denial letter.

What's more, there is no explanation in the denial letter about how the proposal was inconsistent with the unspecified standards applied by the City. For example, the City did not explain that the project provided only X number of parking spaces when the required number was Y. So, the City's denial letter was not code-compliant in this regard as well.

The City does not present a convincing argument to support a contrary conclusion. In the City's papers, it does not clearly and directly counter petitioners' supporting points. For example, the City does not argue that it adequately identified all of the objective standards set forth in its denial letter or that all of the standards it identified qualified as objective standards permissibly applied in the course of streamlined review. And the City does not explain how its cursory reference to such standards qualified as "an explanation for the reason or reasons the development conflicts with that standard or standards." (§ 65913.4, subd. (b)(1).)[17] Instead, the City argues the denial letter, when read in conjunction with the incomplete notice, put Developer on sufficient notice so as to somehow satisfy section 65913.4. This argument lacks merit.

The first problem with the City's contention is that it relies on an unspecified standard for the sufficiency of notice in lieu of the standard spelled out by the Legislature in section 65913.4, subdivision (b)(1). Although not clearly articulated by the City, it seems to invoke the concept of notice in the context of the constitutional minimum for procedural due process. (See generally *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1275–1280.) But the issue here is not whether the City met the constitutional minimum. The issue is whether it complied with the applicable statutory requirements.

---

[17] Section 65913.4 does not merely require a statement of reasons for denying an application for streamlined review. Rather, it imposes the more specific requirement of an explanation of how the proposed development conflicts with the objective standards that the municipality identifies.

The City does not advance a persuasive argument for disregarding the specific statutory requirements for notice. While it purports to invoke a principle of statutory construction that places substance over form, it is not necessary to rely on, and the City does not fairly interpret and rely on, that principle. (See generally *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1332 [discussing scope and limitations of concept of substantial compliance].) In actuality, the City urges a complete disregard for the language of the statute in a vacuum and without regard for the statute's purpose. In other words, the City disregards the form and the substance of the statute. The language the City asks the Court to ignore—what it suggests is a mere formality—is in fact the specific procedure at the heart of the statute that effectuates its purpose. In the absence of deemed compliance under section 65913.4, subdivision (b), the statute would operate as a mere suggestion without an enforcement mechanism. And, because section 65913.4, subdivision (b) is consistent with and effectuates the purpose of the statute, there is no inconsistency between that "form" and the substance of the statute necessitating a reconciliation of those concepts under the canon invoked by the City. The City's argument in this regard is questionable and its reliance on *County of Kern v. TCEF, Inc.* (2016) 246 Cal.App.4th 301 is misplaced. The Court applies the requirements for a notice of inconsistency that are plainly spelled out in the statute, not an amorphous due process standard that would do violence to its very language and purpose.

The second problem with the City's argument is that it relies on an implausible and unreasonable interpretation of the record. The City states that its incomplete notice and denial letter provide sufficient documentation when read together. But the terms of these documents do not support such a construction. The City explicitly stated that it was proceeding as though it had *two* applications submitted by Developer in November 2018. It purported to deny one application and find the other incomplete. The correspondence setting forth those distinct decisions, while issued together, cannot be fairly read and interpreted in the manner the City now urges. The incomplete notice does not purport to specify inconsistencies with objective standards under SB 35; it purports to specify the additional information required before a traditional, *discretionary review* could be commenced. Similarly, the denial letter does not purport to require additional

information so an SB 35 determination could be made; the letter purports to finally reject the streamlining application upon completion of the City's review. And so, the City's own belief that there were two applications and the unequivocal statements in each discrete item of correspondence purporting to separately dispose of each application cannot fairly be read together as one, code-compliant letter documenting inconsistencies with objective standards under section 65913.4, subdivision (b)(1). The City's post-hoc, revisionist interpretation lacks credibility.[18]

The City explicitly represented that it had made a decision to deny the streamlining application. Because of this, it cannot now claim that, in fact, it did not make such a decision and lacked sufficient information to do so, all to avoid the consequences of the inadequate notice of inconsistency it had provided. And, even if it could take this inconsistent position, it fails to substantiate the same. The City cites no authority for the proposition that it may evade the statutory deadlines in section 65913.4 by claiming incompleteness. In actuality, it appears the Legislature enacted section 65913.4, in part, to address the use of such delay tactics under existing law:

> [T]he 1977 Permit Streamlining Act requires public agencies to act fairly and promptly on applications for development permits, including new housing. If they don't, the project is deemed approved. Under the act, public agencies must compile lists of information that applicants must provide and explain the criteria they will use to review permit applications. Public agencies have 30 days to determine whether applications for development projects are complete; failure to act results in an application being "deemed complete." However, local governments may continue to request additional information, potentially extending the time before the application is considered complete, which is the trigger for the approval timeline to commence. This has led to the Permit

---

[18] The Court also finds unpersuasive the City's assertion that Developer somehow created confusion over its application based on the cover sheet it used. (Opp. at p. 9:20–28.) The City had not updated its cover sheet to account for streamlining applications and does not point to any evidence in the record that it had created and made available a separate form or cover sheet for them. Thus, under the circumstances and given the explicit and clear statements in the application itself about the nature of the review Developer was requesting, this assertion and characterization by the City also lacks credibility.

> Streamlining Act to be characterized as a "paper tiger" that rarely results in accelerated development approvals.

(Sen. Gov. & Finance Com., Rep. on Sen. Bill No. 35 (2017–2018 Reg. Sess.) April 26, 2017.) Arguably, if the City had truly lacked sufficient information on which to make an SB 35 determination, it could have endeavored to follow section 65913.4 in stating as much by identifying the objective standards that it was applying and explaining how it could not conclude, or lacked sufficient information to conclude, that the project was consistent with those standards.

Furthermore, the City does not present reasoned analysis to support the conclusion that a reasonable person simply could not find that the project was consistent with objective standards without all of the information set forth in the notice of incomplete application. The bullet points at page 23 of the City's opposition do not cure the gaps in its analysis or appear, on their face, to encompass objective standards.

In sum, the City does not establish that it properly concluded that Developer's application was incomplete as a matter of law or fact (e.g., the contents of the denial letter). The City unequivocally denied the streamlining application and will be held to the reasons articulated in its denial letter.

For all of these reasons, petitioners show and the City does not effectively refute that it did not provide a code-compliant notice of inconsistency. This conclusion is corroborated by the opinion of HCD. (See AR1330; see also Pet. Supp. RJN.) It follows under section 65913.4 that Developer's proposal was deemed to comply with objective standards as a matter of law and irrespective of whether the proposal is consistent with those standards as a matter of fact. The City's points on whether the proposal was, in fact, inconsistent are immaterial, particularly to the extent the City addresses purported inconsistencies other than those identified in the denial letter and within the statutory timeframe for notice.[19] (Opp. at pp. 24:9–27:18.)

---

[19] Because of the essential statutory deadlines in section 65913.4, the Court does not address the City's belated and post-hoc rationales in detail. That said, petitioners present a number of cogent points about the legal and factual illegitimacy of these belated rationales (Pet. Brief at pp. 27:6–33:1), which points the City largely fails to address in opposition (Opp. at pp. 24:21–29:2).

2. Density Bonus Law

"In 1979, the Legislature enacted the density bonus law, section 65915, which aims to address the shortage of affordable housing in California." (*Latinos Unidos del Valle de Napa y Solano v. County of Napa* (2013) 217 Cal.App.4th 1160, 1164 (*Latinos Unidos*).) "Although application of the statute can be complicated, its aim is fairly simple: When a developer agrees to construct a certain percentage of the units in a housing development for low or very low income households, or to construct a senior citizen housing development, the city or county must grant the developer one or more itemized concessions and a 'density bonus,' which allows the developer to increase the density of the development by a certain percentage above the maximum allowable limit under local zoning law." (*Lagoon Valley, supra,* 154 Cal.App.4th at p. 824, citing § 65915, subds. (a), (b).) "In other words, the Density Bonus Law 'reward[s] a developer who agrees to build a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations.' [Citation.]"[20] (*Lagoon Valley, supra,* 154 Cal.App.4th at p. 824.)

"To ensure compliance with section 65915, local governments are required to adopt an ordinance establishing procedures for implementing the directives of the statute." (*Latinos Unidos, supra,* 217 Cal.App.4th at p. 1164, citing § 65915, subd. (a).) The general rule is that a city's density-bonus ordinance must be consistent with the statewide Density Bonus Law and is preempted to the extent it conflicts. (*Lagoon Valley, supra,* 154 Cal.App.4th at p. 830.) That said, while the Density Bonus Law establishes the minimum bonuses and incentives a municipality is required to provide, the law does not preempt a municipality from providing greater bonuses or incentives in its own ordinance. (*Id.* at pp. 825–826.) Additionally, a density-bonus ordinance must establish a procedure and timeline for evaluating density-bonus requests that is consistent with the Density Bonus Law, including by enumerating the documents and

---

[20] In the event of an inconsistency between the maximum density allowed under the zoning ordinance and the general plan, the general plan controls and provides the limit used to calculate (using the specified bonus percentage) the number of bonus units that may be built. (*Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1344–1345 (*Wollmer II*).)

information that must be submitted as part of a complete request. (§ 65915, subds. (a)(2)–(3).) In codifying a transparent and expeditious procedure, a municipality "shall not condition the submission, review, or approval of an application [for a density bonus] on the preparation of an additional report or study that is not otherwise required by state law, including [the Density Bonus Law]." (§ 65915, subd. (a)(2).)

The City's density-bonus ordinance is codified in Los Altos Municipal Code section 14.28.040. Under section 14.28.040, subdivision (C)(1)(a)(i) of the City's code, a development with 10 percent of its units designated for low-income households "shall be granted" a 20 percent density bonus. This density bonus increases by 1.5 percent, up to a maximum of 35 percent, for each additional percentage point of low-income housing provided. So, for example, a development with 11 percent of its units designated for low-income households is entitled to a 21.5 percent density bonus. As relevant here, a development with 20 percent or more units designated for low-income households will be granted the maximum, 35 percent density bonus. That density bonus is calculated as a percent "increase over the otherwise maximum allowable gross residential density … ." (Los Altos Mun. Code, § 14.28.040, subd. (B)(2); see also § 65915, subd. (f).)

A developer may additionally obtain an incentive for designating units for low-income households. (Los Altos Mun. Code, § 14.28.040, subd. (C)(1)(a)(ii).) A developer must be granted one incentive for designating 10 percent of units for low-income households, two incentives for designating 20 percent, and three incentives for designating 30 percent or more. (*Ibid.*; see also § 65915, subd. (d)(2)(A)–(C).) The City has codified "on-menu incentives"—incentives that "would not have a specific adverse impact"—in the density-bonus ordinance. (Los Altos Mun. Code, § 14.28.040, subd. (F).)

A city "shall grant" a bonus or incentive unless it makes written findings supported by substantial evidence that: there will be no identifiable and actual cost reduction to provide for affordable housing costs; there will be a specific, adverse, unmitigable impact on public health and safety, the environment, or registered historic places; or granting the bonus or incentive is contrary to state or federal law. (§ 65915, subd. (d)(1); see also Los Altos Mun. Code,

§ 14.28.040, subd. (F)(3).) And, "[i]n no case may a city … apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by [the Density Bonus Law]." (§ 65915, subd. (e)(1).) A developer may seek a waiver or reduction of such standards that physically impede construction of the development. (*Ibid.*)

"The applicant may initiate judicial proceedings if the city … refuses to grant a requested density bonus, incentive, or concession." (§ 65915, subd. (d)(3).) As noted, this proceeding is ordinarily brought in administrative mandamus. (See, e.g., *Lagoon Valley, supra*, 154 Cal.App.4th at pp. 812, 816–817.) The city "shall bear the burden of proof for the denial of a requested concession or incentive." (§ 65915, subd. (d)(4).) "If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit." (§ 65915, subd. (d)(3).)

In Developer's application (inclusive of its density bonus report), it proposed designating two of eight base units—i.e. 25 percent of the base units—for low-income households. (AR000010, AR000061.) Developer asserted that this level of affordability entitled it to: 1) a 35 percent density bonus; and 2) two concessions, only one of which it sought to use. (AR000010, AR000061.) Developer selected an 11-foot height increase—which is on-menu (Los Altos Mun. Code, § 14.28.040, subd. (F)(1)(d))—as its concession. (AR000010, AR000061.) Based on the bonus and concession, Developer proposed constructing seven additional units. (AR000061).[21] It

---

[21] Consistently with state law, the Los Altos Municipal Code defines a density bonus as an "increase over the otherwise maximum allowable gross residential density … ." (Los Altos Mun. Code, § 14.28.040, subd. (B)(2); see also § 65915, subd. (f).) The maximum allowable density means the density allowed under a local zoning ordinance or general plan, with the maximum density in the general plan controlling in the event of an inconsistency. (§ 65915, subd. (o)(2); see also *Lagoon Valley, supra*, 154 Cal.App.4th at p. 824.) Developer asserts and the City does not seem to dispute that there is no standard for units or intensity (Floor Area Ratio) applicable to buildings, like the proposed development, that are zoned Commercial-Retail Sales/Office-Administrative District (CRS/OAD). (AR000011, AR000062 [Density Bonus Report].) Perhaps there is no standard because housing above the ground floor qualifies as a conditionally-permitted use under Los Altos Municipal Code section 14.54.040 as compared to an office or retail use that is permitted by right under section 14.54.030. In any event, instead of applying the density bonus to the maximum density allowed under the law (either the ordinance

appears the seven units exceed the number authorized by the 35 percent density bonus standing alone, so the parties' dispute seems to hinge on whether the right to an 11-foot height increase necessarily includes the right to include additional housing units in that additional space. (See AR002310–AR002311.)

As a threshold matter, the City's interpretation of the Density Bonus Law is incorrect. The City asserts that any and all concessions, incentives, and waivers must result—collectively—in no more than a 35 percent increase in density. Courts have routinely rejected such an interpretation of the law. The 35 percent bonus authorized under the Density Bonus Law and the City's own ordinance is the mandatory minimum a city must provide; it is not a cap. (*Lagoon Valley*, *supra*, 154 Cal.App.4th at pp. 823–826.) And so, the City was required, at minimum, to provide a 35 percent bonus and any other incentive or concession required by law. Otherwise, to the extent the City believed any additional incentive or concession was discretionary, it was required to inform Developer of this conclusion in a code-compliant manner by making the statutorily-required findings. (See § 65915, subd. (d)(1); see also Los Altos Mun. Code, § 14.28.040, subd. (F)(3).) The City failed to do so here. Instead, the City made a vague statement that "the requested concessions and waivers appear to raise substantial issues concerning public health and safety, including questions regarding" compliance with the Americans With Disabilities Act (42 U.S.C. § 12101 et seq.). (AR002311.) On its face, this statement is so equivocal as to fall short of an affirmative finding. Furthermore, this statement does not identify a specific, adverse, unmitigable impact on public health and safety. Accordingly, this finding is deficient.

To be sure, although the City bears the burden of justifying its density-bonus decision, it does not attempt to justify that decision under an appropriate standard of review and based on the statutory requirements. Its opposition instead focuses on its interpretation of the 35 percent bonus

---

or the general plan), both parties appear, at times, to treat the bonus as applying to the number of base units. (See, e.g., AR002310–AR002311.)

as a cap, which interpretation is contrary to established precedent. Accordingly, petitioners' density-bonus claim is meritorious; the City did not comply with the law.

In reaching this conclusion, the Court notes that it remains unsettled whether the City could attempt to deny the density-bonus request for the first time during the administrative proceeding. This is because section 65913.4 contemplates that a proposal subject to streamlined review may contain bonus units. (§ 63913.4, subd. (a)(2)(C).) Arguably, to determine whether a project with bonus units comports with the objective standards in section 65913.4, a city must determine whether the bonus units are allowable in the course of a streamlined review. In truncating the review process through section 65913.4, the Legislature has not clearly addressed how such changes operate with other housing laws, such as the Density Bonus Law. Ultimately, because even the City's final resolution is deficient, the Court does not and need not resolve this question.

In concluding that the City violated the Density Bonus Law, the Court rejects the City's argument that Developer's application was incomplete or lacked sufficient information to allow it to evaluate the density-bonus request.

"A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section." (§ 65915, subd. (a)(2).) This prohibition does not preclude a municipality from requiring "reasonable documentation to establish eligibility for a requested density bonus … ." (*Ibid.*) But, a municipality "shall … [p]rovide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete." (§ 65915, subd. (a)(3)(B).) "This list shall be consistent with this chapter." (*Ibid.*)

Collectively, these directives and prohibitions establish that a municipality cannot condition consideration and approval of a density-bonus request on information or documents unless it specifies these materials in advance and in conformity with the Density Bonus Law.

Here, Los Altos Municipal Code 14.28.040, subdivision (D) specifies the local forms and other information an applicant must submit with a density-bonus request. That said, with the

exception of several forms, the ordinance broadly requires "reasonable documentation" of certain facts and does not specify particular documents that must be submitted. (Los Altos Mun. Code, § 14.28.040, subd. (D).) In the City's opposition, it offers a conclusory assertion that Developer's application was incomplete. The City does not explain how its application requirements comport with those permitted under the Density Bonus Law. And the City does not attempt to justify the sufficiency of its findings or the evidence on the subject of completeness. This presentation is insufficient to carry the City's burden of establishing that it complied with the law.

Looking to the City's final resolution and the notice of incomplete application referenced therein, and assuming for argument sake that this notice could be considered as part of the City's denial of the streamlined application, the propriety of the City's conduct is not apparent. The "Density Bonus Report Submittal Requirements"—a form that accompanied the notice of incomplete application—indicates that Developer had largely submitted all required information. (AR000147–AR000149.) Based on circling and underlining on the second page of this form, the City seemed to take the position that it needed additional documentation that incentives or concessions would result in cost reductions and that waivers were needed for standards that would physically preclude the concessions or incentives. (AR000148.) Because the Density Bonus Law now puts the onus on a municipality to make a finding to support denial of a density-bonus request, such as a finding that a concession or incentive would not result in cost reductions (§ 65915, subd. (d)(1)(A)), the City's insistence that Developer prove the contrary in the first instance shifts the burden to the applicant in contravention of the statute.[22] And, also, the requested "reasonable documentation" appears to concern matters beyond the eligibility information that can be requested. (§ 65915, subd. (a)(2).) Moreover, Developer asserts that the City is incorrect because Developer did, in fact, submit sufficient information. This assertion is correct. The claim that the City could not determine the allowable base density is not credible

[22] The record reflects that the City sought out a consultant but apparently never hired one or completed the process required to evaluate and make findings sufficient to reject Developer's density-bonus request. (See AR002332–AR002336 [proposed scope of work from Keyser Marston Associates].)

given that density is determined by municipal law. And, as for eligibility, Developer otherwise presented detailed information in its application about its building plans to allow the City to evaluate eligibility for a density-bonus. The City did not rebut this point in its papers or at the hearing. To summarize, even setting aside the City's inadequate argument and analysis on the Density Bonus Law, the record undercuts any claim of incompleteness based on what a city may legally ask for and what Developer, in fact, presented here.

3. Housing Accountability Act

The Housing Accountability Act or "HAA (§ 65589.5), known as the 'anti-NIMBY law,' was designed to limit the ability of local governments to reject or render infeasible housing developments based on their density without a thorough analysis of the 'economic, social, and environmental effects of the action ... .' (§ 65589.5, subd. (b).)" (*Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 938 (*Kalnel Gardens*).) "When a proposed development complies with objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project, or approve it on the condition that it be developed at a lower density, must make written findings based on [a preponderance of the evidence on the record] that the project would have a specific, adverse impact on the public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than disapproval of the project. (§ 65589.5, subd. (j)(1).)"[23] (*Kalnel Gardens, supra*, 3 Cal.App.4th at pp. 938–939.) And, much like the streamlining statute (§ 65913.4), the HAA requires written notice of inconsistency within 30 or 60 days and provides that if an 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." (§ 65589.5, subd. (j)(2).)

---

[23] Until December 31, 2017, section 65889.5 required that an agency's findings be supported only by substantial evidence. Effective January 1, 2018, the findings must be supported by a preponderance of the evidence. (Sen. Bill No. 167 (2017–2018 Reg. Sess.) § 1 [Stats. 2017, ch. 368]; Assem. Bill No. 678 (2017–2018 Reg. Sess.) § 1 [Stats. 2017, ch. 373].)

If an agency fails to comply with the HAA, a developer, prospective resident, or housing organization, such as Renters here, may seek judicial review by filing a petition for writ of administrative mandate. (*Kalnel Gardens, supra*, 3 Cal.App.5th at p. 941, citing § 65589.5, subd. (m).) Under that judicial review, section 65589.5, subdivision (i) explicitly places the burden of proof on the agency 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 with the requirements of subdivision (o)."[24] If an agency "disapproved a project or conditioned its approval in a manner rendering it infeasible" without making the required findings, the court must issue an order or judgment compelling the jurisdiction to comply within 60 days, including by taking action on the development. (§ 65589.5, subd. (k).) "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[25] when it disapproved … the housing development or emergency shelter in violation of this section." (§ 65589.5, subd. (k)(1)(A)(ii).) "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." (§ 65589.5, subd. (k)(1)(A).)

The City here fails to carry its burden of establishing compliance with the HAA. For the reasons articulated above, its claim of incompleteness of Developer's SB 35 application is not persuasive. The City does not provide reasoned legal analysis to support the conclusion that the application was incomplete within the meaning of the HAA. And for the reasons previously articulated with respect to section 65913.4, the City also did not provide a code-compliant notice of inconsistency under section 65589.5. And even in the final resolution adopted by the City

---

[24] This standard is similar to the abuse of discretion standard ordinarily applicable in all manner of administrative mandamus proceedings. (See *Kalnel Gardens, supra*, 3 Cal.App.5th at p. 937, citing Code Civ. Proc., § 1094.5, subd. (b).)

[25] "For purposes of this section, 'bad faith' includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." (§ 65589.5, subd. (l).)

Council, the City did not make statutorily required findings sufficient to reject or require modification of the project under the HAA. Accordingly, the City also does not establish that it complied with the HAA.

In reaching this conclusion, the Court further finds that the City acted in bad faith as defined in the HAA because its denial was entirely without merit. The City's denial letter and the record before the Court do not reflect that the City made a benign error in the course of attempting, in good faith, to follow the law by timely explaining to Developer just how its project conflicted with objective standards in existence at the time or by trying to make findings that resemble what the law requires. Instead, in addition to tactics such as demanding an administrative appeal on less than one day's notice and using strained constructions and textual interpretations to assert that Developer had presented two applications that had to be withdrawn, the City denied the streamlining application with a facially deficient letter and later adopted a resolution enumerating insufficient reasons for the denial. So, in addition to the fact that section 65913.4 warrants a writ directing the City to issue the permit, its conduct justifies the same relief under section 65589.5, subdivision (k)(1)(A) as well.

C. Scope of Relief

Because the Court concludes that the City violated section 65913.4, the Density Bonus Law, and the HAA, petitioners are entitled to writ relief. Nevertheless, the parties dispute and addressed in supplemental briefing the nature and scope of relief that should be awarded. Petitioners ask the Court to provide relief under all three statutes, while the City argues the Court should solely order relief under section 65913.4 because additional statutory relief is duplicative. While the Court agrees that there is some overlap in the relief afforded by each separately applicable statute and that all three statutes warrant the same substantive outcome—affording relief in mandate—the Court rejects the City's claim that the relief afforded by each statute is entirely duplicative. For example, as the City acknowledges, the Density Bonus Law and HAA authorize an award of attorney fees and costs. Even accepting the City's suggestion that the Court fix the amount of such fees and costs at a later date, this fact does not obviate the need for the Court to rule on these statutory bases as a prerequisite for a later motion for attorney fees

under either statute. Also, the HAA gives the Court continuing jurisdiction over statutory enforcement mechanisms, which may include fines for noncompliance. The additional remedies for enforcing the HAA are not duplicative. And, arguably, the Court must award relief under the HAA now as a prerequisite for any later enforcement measures that may be necessary even accepting, as the City points out, that the time for such enforcement has yet to arrive. Ultimately, the City does not identify any legal basis for refusing to grant relief under all three statutes. For these reasons, the Court accepts petitioners' argument that relief under each statute is warranted.

The Court holds that Developer's project was deemed to comply with applicable standards under SB 35 and that the City must rescind its decision to deny and instead approve and permit the project at the requested density. The parties agree that this directive to rescind the existing decision and permit the project within 60 days, as compared to remanding the matter for further consideration, is the appropriate course of action. (City's Supp. Brief at p. 8.) To the extent petitioners seek relief other than a writ and declaratory judgment, including attorney fees, costs, and additional fines or penalties, the parties agree that such matters will be resolved by post-judgment noticed motion (for attorney fees or to tax costs) and, as for the penalties, further proceedings should they become necessary.

Finally, the Court declines to issue a declaratory judgment. It is true that because declaratory relief is a cumulative remedy "a proper complaint for declaratory relief cannot be dismissed by the trial court because the plaintiff could have filed another form of action." (*Californians for Native Salmon Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1429.) And there is no categorical prohibition on joining a complaint for declaratory relief with a petition for writ of mandate; in appropriate circumstances, this is permissible. (*Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 574.) That said, when challenging an action under Code of Civil Procedure section 1094.5—a decision in a particular instance as compared to a policy or ordinance standing alone—mandamus relief is typically the exclusive remedy and declaratory relief is not additionally available or necessary. (*State of Cal. v. Super. Ct.* (1934) 12 Cal.3d 237, 251–252; see also *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 126–127 [declaratory relief not proper vehicle for challenging denial of building permit].) In actuality, in a

hybrid proceeding, declaratory relief may be sought to test the constitutionality or legality of an ordinance or policy on its face with an accompanying request for a writ of mandate directed to the agency's application of that ordinance or policy to the petitioner in particular. (*Gong, supra,* 250 Cal.App.2d at p. 574.) Here, petitioners do not seek a declaration of the validity of the City's policies, interpretation of the law, or zoning ordinance; rather, they seek a declaratory judgment stating the City must issue the streamlined permit Developer applied for.[26] In other words, they simply seek a duplicative declaration requiring the City to perform its duty and issue the permit. The problem is not simply that the declaratory relief requested is duplicative, but rather, that the relief sought is a proper subject of mandamus and it does not encompass a question of validity or constitutionality that typically warrants additional declaratory relief in a mandamus proceeding. Accordingly, the Court exercises its discretion under Code of Civil Procedure section 1061 and declines to provide declaratory relief that would be duplicative of that already being provided in mandate.

IV. Conclusion

The petitions for writ of mandate are granted, and judgment will be entered consistently with this Order. Petitioners are prevailing parties for purposes of costs of suit under Code of Civil Procedure section 1032, which costs would be claimed post-judgment by timely filed memoranda and which are subject to striking and taxing according to law. The judgment to be entered will direct the issuance of a peremptory writ of mandate commanding the relief contemplated in this Order and consistently with its analysis and conclusions. Counsel for petitioners have already collectively proposed a form of judgment and a form of writ to be issued, which they submitted with their post-hearing briefing. Counsel for petitioners are directed to provide those separate documents to the Court in Word format by email to Department10@scscourt.org within 10 days of service of this Order, with copy to counsel for the City. Counsel for the City is to submit any objections as to the form of the proposed judgment

---

[26] The Court notes that in Petitioners' supplemental brief on the scope of relief and in their proposed judgment, they elaborate on the declaratory relief sought in their pleadings.

and proposed writ within 20 days from service of this Order, with courtesy copy to the Court at the same email address and copy to counsel for petitioners.

IT IS SO ORDERED.

Date: April 24 2020

HELEN E. WILLIAMS
Judge of the Superior Court

12 Analysis of the standard, parallel, playbook law firm processing template used to block and deny applications. Not responsive/specific to actual *facts*

Menlo Park compared San Rafael

Comparative Analysis of Municipal Housing-Application Defense Architecture

Menlo Park / N17 Development - 80 Willow Road | San Rafael / River Landon - Coleman Drive

Common-counsel pattern analysis: Nira F. Doherty / Burke, Williams & Sorensen LLP SBN 254523 12/2007 Ranking: AGGR

Purpose and limits

- This document compares official legal and processing positions advanced by Menlo Park and San Rafael while each city was represented or advised by the same outside municipal-housing counsel. It focuses on recurring methods, not merely on the common result of nonapproval.
- The projects are materially different: N17 proposed a 665-unit mixed-use, mixed-income AB 2011 project; River Landon proposed 29-unit and 14-unit SB 35 projects on six hillside residential lots. The governing statutes, scale, physical conditions, and procedural posture differ.

Executive observation

- The defensible conclusion is qualitative, in this first round: the convergence is concerning. Distinct projects and statutes ordinarily should generate issue-specific analyses. Instead, the same unusual sequence recurs - threshold disqualification, project-boundary manipulation, post-hoc grounds, neutralization of Builder's Remedy and Density Bonus protections, applicant-funded municipal counsel, indemnity or hold-harmless demands, and an H6 response that denies the duty while answering only "as a courtesy."
- The recurrence of the most unusual devices - especially requiring the applicant to finance counsel taking an adverse position and seeking indemnity against housing-law litigation - materially strengthens an inference of a common legal template or institutional defense strategy. It is reasonable to investigate whether that template originated with common counsel or Burke, Williams & Sorensen LLP.
- Engagement letters, billing narratives, invoices, drafts, template forms, internal emails, document metadata, and testimony showing who proposed and approved each device are being collected by JK.

Evidence legend

DIRECT - Established by an official letter, determination, email, or Attorney General notice reviewed here.	**APPLICANT-REPORTED -** Stated by River Landon; supporting invoice, form, or email should be appended before external use.	**INFERENCE -** A comparative conclusion drawn from multiple documented facts; not itself a direct admission.

Comparative table

The sources are keyed at the end of the document.

No. / recurring strategy	Menlo Park / N17 - 80 Willow Road	San Rafael / River Landon - Coleman Drive	Comparative analysis, inference strength, and evidentiary limits
A. Common counsel and threshold disqualification architecture			
1. Common-counsel role and limits	The Attorney General addressed the July 29, 2026 notice to Menlo Park Community Development Director Deanna Chow and to "Nina F. Doherty" of Burke, Williams & Sorensen, identified as Menlo Park City Attorney. The letter records that the Attorney General had recently met with both regarding 80 Willow Road. *Source: M1, p.1; M2/M3 addressee and signature records.*	Doherty was San Rafael outside counsel. River Landon's counsel communicated directly with her about the October 6 determination. City staff later stated that processing and action occurred in consultation with City counsel. The July 1 H6 response copied Doherty and Kevin Siegel as outside counsel. *Source: S1, packet pp.125-126; S2, p.11; staff email re consultation with counsel.*	DIRECT as to common counsel and material legal involvement. This supports comparison of the cities' legal architecture. Review authoring, staff tables, citations, disputed acts. JK analysis in progress. **Evidence status: Direct documentary comparison**
2. Threshold disqualification from the streamlined statute	Menlo Park asserted that the project was not a qualifying "housing development project" because of the hotel component and residential-square-footage calculation. That premise was then used to argue that AB 2011, Builder's Remedy protection, and H6 protections did not apply. The Attorney General rejected the key Builder's Remedy/hotel theory and found the housing-development-project objection was also an impermissible later-added ground. *Source: M1, pp.3-7; M3, pp.1-4.*	San Rafael asserted that the projects were not "multifamily housing developments," relying on a local definition requiring attached units on one parcel or common lot. That premise was used as the master reason SB 35 did not apply and ordinary local controls remained available. This also very briefly asserted – that in their (unsupported opinion) 'not multifamily' by Nira Doherty summer 2025, without any further information. This was as River Landon outside counsel were wrapping up the supposed 'scoping consultation' *Source: S1, Aug.27 determination pp.1-4; S2, pp.1-3.*	STRONG DIRECT PARALLEL. In each matter, a threshold definition was used as a master key to disable the streamlined statute and downstream protections. The precise definition differed because the statutes and projects differed. **Evidence status: Direct documentary comparison**
3. Project-site geometry selected to defeat eligibility	Menlo Park treated the project site as coterminous with the larger legal parcel, importing wetlands and habitat outside the physically disturbed development area and affecting the urban-use analysis. The Attorney General concluded that the statute required review of the actual area physically disturbed. *Source: M1, pp.3, 6-8.*	San Rafael fragmented a unified six-lot, 1.4-acre multifamily project into separate single-family-lot analyses and asked whether any one parcel independently contained enough attached units to be multifamily. *Source: S1, Aug.27 determination pp.1-4; S4, row 1.*	EXCEPTIONALLY STRONG FUNCTIONAL PARALLEL. Menlo Park expanded the unit of analysis; San Rafael fragmented it. The direction was opposite, but the functional selection rule was the same: use the geography that produces ineligibility. (Maybe this is the same as Mayor Colin's '**we** pick the projects'?)/s **Evidence status: Direct documentary comparison**
4. Relabel the same physical feature to produce the needed legal result	Menlo Park maintained that adjoining Timothy Hopkins Creekside Park was not really a park for the urban-use test, describing it instead as open space preserved for environmental value. The Attorney General rejected that characterization. *Source: M1, pp.6-7.*	The San Rafael H6 audit identifies the connecting screen as a "fence" when that label supports a fence inconsistency, while the same physical connection is denied legal significance when River Landon relies on it to establish attachment/multifamily status among other attachments. *Source: S3, Part 1, element re-labelling; Part 2.*	STRONG ANALOGICAL PARALLEL. A physical feature is assigned the legal label that produces disqualification. The San Rafael element-relabeling conclusion is based on the applicant's comparative audit and should be tied to the actual plan sheets when used externally. **Evidence status: Direct plus comparative inference**
5. Restrictive definition supplied or selected after submission	Menlo Park applied the current hotel language and argued that vesting did not protect the project from later state-law definitions. The Attorney General concluded that the City failed to honor the applicant's statutory election among favorable Builder's Remedy provisions. *Source: M1, pp.7-8; M2, pp.3-4.*	San Rafael substituted its local zoning definition of multifamily for the state SB 35 term and later after deadlines post-hoc advanced a common-wall interpretation of "attached," although River Landon contends no timely, adopted external benchmark for common-wall attachment had been identified. *Source: S1, Aug.27/Oct.6 determinations; S3, Items 5 and 11.*	STRONG PARALLEL. Both approaches narrow state-law eligibility through a definition that the applicant says was unavailable, inapplicable, or supplied after the relevant vesting/submittal point. **Evidence status: Direct documentary comparison**
6. Neutralize Builder's Remedy before reaching the merits	Menlo Park argued the hotel component prevented the project from being a housing development project and therefore from receiving Builder's Remedy protection. The Attorney General expressly rejected that position. *Source: M1, pp.7-8; M2, pp.3-4.*	San Rafael asserted that the May 15, 2023 preliminary application expired because the formal SB 35 application was not deemed submitted within 180 days, notwithstanding the intervening scoping process, and then applied later-adopted 2024 standards. River Landon disputes that loss-of-vesting theory. Later, San Rafael confirmed that vesting is May 15, 2023 per Statute. Communication from Nira Doherty. *Source: S1, Aug.27 determination p.1 n.1; TAC allegations.*	**DIRECT CONCEPTUAL PARALLEL**. First remove Builder's Remedy status; then apply standards or procedures that would otherwise be restricted, displaced, or deemed satisfied. **Evidence status: Direct documentary comparison**
7. Apply later, untimely, inapplicable, or entitlement-specific standards	Menlo Park added new grounds involving permitted uses, housing-development status, affordability, parking setbacks, frontage, and other standards after the first determination. The Attorney General concluded that omitted grounds could not later be used. *Source: M1, pp.3-6; N1, pp.2-3.*	San Rafael invoked numerous local standards that River Landon credibly challenges as subjective, post-entitlement, waived, factually untriggered, or attached to entitlements not sought, including fence, subdivision, design-review, and information-demand items. *Source: S4 standard-by-standard audit; S3, Parts 1-2.*	STRONG PARALLEL. The volume of asserted standards creates the appearance of comprehensive noncompliance even where individual grounds are late, waived, discretionary, untriggered, or unrelated to the requested entitlement. **Evidence status: Direct documentary comparison**
8. Recognize Density Bonus relief in theory but keep the underlying inconsistency alive	Menlo Park acknowledged that height, parking-setback, and frontage standards were subject to Density Bonus incentives, concessions, or waivers, yet continued to cite them. The Attorney	San Rafael noted that waivers or concessions had been requested for height, setbacks, natural-state, floor-area, parking, and other standards, but continued listing the underlying provisions as inconsistencies while River Landon says the waiver	NEAR-IDENTICAL PRACTICAL EFFECT. The statutory relief is acknowledged but not allowed to remove the inconsistency; the unresolved underlying standard continues to block approval. **Evidence status: Direct documentary comparison**

No. / recurring strategy	Menlo Park / N17 - 80 Willow Road	San Rafael / River Landon - Coleman Drive	Comparative analysis, inference strength, and evidentiary limits
	General concluded that the height waiver applied and the City could not enforce the restriction to prevent the proposed density. *Source: M1, pp.7-8.*	requests remained undecided and outside the city's 30 day shotclock. *Source: S1, Aug.27/Oct.6 tables; S4 waiver rows.*	
B. Repeated review, shifting grounds, and record construction			
9. Multiple bites at the cherry and post-hoc grounds	Menlo Park issued successive AB 2011 determinations and defended its ability to identify new conflicts in later review. The Attorney General rejected that position and stated that the first determination set the parameters of later review. *Source: M1, pp.3-6; M2, pp.1-3.*	San Rafael relied on the August 27 determination, September 28 'not able to approve', October 6 determination, December 3 supplemental 'denial', March 24 new-application direction, April 17 completeness letter, and July 1 H6 response. The attached/common-wall theory was advanced (the subjective theory on which San Rafael relied) *after* the October 6 determination. *Source: S1, Aug.27-Dec.3 chronology; S2, pp.1-11.*	**ONE OF THE STRONGEST PARALLELS – AND ONE OF THE MOST SIGNIFICANT IN ITS EFFECT**. The applicant answers one ground, yet another determination preserves or adds a different ground, including post-hoc and out of time. Menlo Park's post-hoc practice was expressly rejected by the Attorney General. **Evidence status: Direct documentary comparison**
10. Treat resubmittal as a vehicle to reopen everything or require a restart	Menlo Park repeatedly characterized N17's responses as partial resubmittals, incorporated earlier determinations, applied newly effective laws, and issued another comprehensive determination. *Source: M2, pp.1-3.*	San Rafael treated the March 20 SB 35 resubmittal as requiring a wholly new general application, new checklist materials, new fees, replenishment obligations, an indemnity of the city's actions causing significant damage to the applicant, and a Reimbursement Agreement before it would be considered filed. (In fact also, a new application is impermissible in local law, requiring a 12 month wait window for substantially the same application). No new application was ever required, and no valid completeness assessment (such being subject to overriding SB 35 very substantive narrowing rules) was ever undertaken. *Source: S1, packet p.181; S2, pp.3-6.*	STRONG FUNCTIONAL PARALLEL; SAN RAFAEL IS MORE EXTREME. Menlo kept the review universe open; San Rafael purported to terminate the pending route and compel a restart. **Evidence status: Direct documentary comparison**
11. Convert "insufficient information" into an inconsistency	Menlo Park identified plan inconsistencies and demanded further calculations and a comprehensive plan set. Some of those concerns were concrete, but the Attorney General emphasized that later review could not demand new information omitted from the initial list. *Source: M2, pp.4, 7-8; M1, pp.4-6.*	River Landon's standards audit classifies 36 of 46 rows as information requests rather than actual findings of conflict. The July 1 response itself identifies ten items as based on insufficient information. *Source: S4 audit summary; S3, Part 2 finding 6.*	STRONG PARALLEL WITH A QUALIFICATION. Menlo Park documented some specific numerical discrepancies; San Rafael used information insufficiency much more broadly as the inconsistency itself. **Evidence status: Direct documentary comparison**
12. Use an older, later, or different plan set to preserve the desired conclusion	Menlo Park disclosed that it relied on the October 2025 fuller plan set when it considered the December partial sheets internally inconsistent. Whether that reliance was lawful is disputed, but the source set was identified. *Source: M2, pp.4, 7-8.*	The San Rafael H6 audit finds that eleven rows used the September 6 plan set to defend the August 27 determination, even though those sheets did not exist on August 27. *Source: S3, Part 2 finding 1.*	RELATED BUT NOT EQUIVALENT. Menlo openly relied on an earlier fuller set. San Rafael allegedly used a later plan set retroactively to validate an earlier decision, a materially more serious record problem. **Evidence status: Direct documentary comparison**
13. Selective quotation, half-sentences, and adjacent-question answers	The Menlo H6 response narrows the noticed conduct and uses selective statutory framing, including describing the alleged CEQA/AB 2011 determination as the sole basis of disapproval after *acknowledging* a broader delay-course allegation. *Source: M3, pp.1-6.*	The San Rafael audit documents partial-text objectivity, truncation followed by claimed confusion, column collapse, selective severance, substituted questions, straw-man responses, and quotations used for propositions they do not support. *Source: S3, Part 1, methods 1-18.*	SAME FAMILY OF DEFENSIVE FRAMING; DIFFERENT DEGREE. The line-by-line half-sentence and out-of-context record is much stronger and more extensively documented in San Rafael. Menlo Park has some equivalents. **Evidence status: Direct documentary comparison**
14. Stack alternative holdings so defeating one point changes nothing	Menlo Park argued that the project was not a housing development project; the H6 notice was deficient; the CEQA challenge was untimely; substantial evidence was lacking; the hotel required separate processing; and CEQA could not begin without a deposit. *Source: M3, pp.1-8.*	San Rafael argued that the project was not multifamily; final action had already occurred; the applicant refused to revise; the March 20 materials were not validly submitted; even if reviewed they were incomplete; and alternative statutory paths remained available. None of these are correct, nor according to law. Many shifting and conflicting explanations. *Source: S2, pp.1-11; S3, master-key and alternative holdings.*	NEAR-IDENTICAL DEFENSIVE ARCHITECTURE. Multiple independent disposals insulate the nonapproval result: overturning one asserted ground does not produce approval or even resumed processing. **Evidence status: Direct documentary comparison**
15. Concede isolated errors while preserving the overall denial	Menlo Park later acknowledged that the 2026 site statute appeared to narrow the site and that certain SB 35 wetlands/habitat criteria could be met, yet retained other barriers. *Source: M1, pp.4-8; M2, pp.5-6.*	San Rafael's July 1 response conceded three challenged items but treated two as moot because the application had supposedly been properly denied on other grounds; the underlying record was not fully withdrawn. *Source: S3, Part 2 findings 5-6.*	STRONG PARALLEL. A ground can be conceded without changing the outcome because a stack of alternative grounds remains. The San Rafael "concede-and-moot" device is the clearer documentary example. **Evidence status: Direct documentary comparison**
C. Applicant-funded adverse counsel and indemnity - the most unusual common features			
16. Require the applicant to pay the City's legal counsel taking the adverse housing-law position	The Attorney General found that Menlo Park required N17/Applicant to pay City attorney fees during project review, before filed litigation. The master fee schedule did not disclose hourly project-counsel fees. The AG stated that the fees appeared to support successive determinations under strained	San Rafael's August 27 determination stated that unpaid project-processing fees (that included material sums to Nira Doherty) had to be reimbursed in full. These were challenged by applicant. The March 24, 2026 email required a new deposit, replenishment, and a Reimbursement Agreement before a new application would be	VERY STRONG AND UNUSUAL PARALLEL. Requiring a housing applicant to finance municipal counsel whose work supports denial or nonprocessing is not a generic project fact. Menlo was prelitigation; San Rafael was already litigating. Direct evidence establishes the fee/reimbursement demands; the

No. / recurring strategy	Menlo Park / N17 - 80 Willow Road	San Rafael / River Landon - Coleman Drive	Comparative analysis, inference strength, and evidentiary limits
	interpretations of state law and directed the City to cease the practice. *Source: M1, pp.1, 8-10.*	treated as filed. River Landon reports that City invoices were actually sent and itemized Doherty/Burke Williams legal work adverse to the project; those invoices should be appended. *Source: S1, Aug.27 determination p.2; packet p.181; applicant invoices to be appended.*	specific Doherty invoice line items are APPLICANT-REPORTED until attached. **Evidence status: Direct as noted; applicant-reported details require appended exhibits**
17. Require indemnity, defense, or hold-harmless protection against housing-law litigation	The Attorney General concluded that Menlo Park's fee-shifting/indemnity practice implicated Government Code section 65914.2, which prohibits requiring an applicant to indemnify, defend, or hold harmless the agency regarding claims that the agency violated housing-reform law. The AG characterized the legal work as anticipating litigation and directed the City to stop requiring payment. *Source: M1, pp.1-2, 9-10.*	River Landon reports repeated Summer 2025 demands associated with Doherty/San Rafael that it sign indemnity protection, followed by renewed March/April 2026 demands through the new-application/Reimbursement Agreement materials. The March 24 email directly conditions filing on payment and execution of the Reimbursement Agreement, and the Indemnity *Source: S1, packet p.181; applicant Summer 2025 and Mar./Apr. 2026 forms/emails to be appended.*	VERY STRONG. This is a highly specific risk-transfer device, not an ordinary merits response. Its recurrence in both matters materially increases the inference of a common template. Direct evidence currently establishes the Menlo AG finding and the San Rafael Reimbursement Agreement condition. **Evidence status: Direct as noted; applicant-reported details require appended exhibits**
18. Same cost-shifting device despite opposite litigation posture	Menlo Park's legal-fee and indemnity requirements arose before the applicant filed litigation. The Attorney General nevertheless said the successive determinations had become tantamount to prelawsuit communications **and that the fees appeared to fund legal resistance rather than neutral compliance review**. *Source: M1, pp.9-10.*	San Rafael continued or renewed the fee and indemnity demands after federal litigation began, including invoices for Doherty's work, and the March/April 2026 requirement to sign a Reimbursement Agreement before processing. *Source: S1, packet p.181; applicant invoices/forms to be appended.*	POWERFUL QUALITATIVE INFERENCE. The device cannot readily be explained as ordinary management of a filed case because it appeared prelitigation in Menlo and during litigation in San Rafael. That cross-posture recurrence points away from project-specific necessity and toward a reusable counsel or firm strategy. The city conditions processing on the applicant 'paying for the rod that is for the applicants back – and it's use'. Stronger evidence of government oppression it would be difficult to find. And, before the needed processing continues, sign that the city is not liable for the oppressive beatings. **Evidence status: Direct as noted; applicant-reported details require appended exhibits**
D. H6 response architecture, blame shifting, and routes that preserve nonapproval			
19. Deny that H6 applies, then respond only "as a courtesy"	Menlo Park argued that the project was not a housing development project, the notice was deficient, and H6 did not apply; it nevertheless issued a response "as a courtesy as if it were required." *Source: M3, pp.1-2.*	San Rafael argued that conventional final administrative action had already occurred, so the course-of-conduct H6 provision did not require a response; it nevertheless responded "in an abundance of caution and as a courtesy." *Source: S2, pp.3, 11.*	EXCEPTIONALLY CLOSE WORDING AND STRUCTURE. Deny the legal duty, provide a conditional response, and preserve the argument that no enforceable H6 obligation ever arose. This is one of the strongest common-template indicators, though it does not alone prove common authorship. **Evidence status: Direct documentary comparison**
20. Use CEQA or ordinary review as the fallback after denying ministerial eligibility	Menlo Park said that if AB 2011 did not apply, CEQA review was required, retained an environmental consultant, demanded a $799,951 deposit, and attributed delay to the applicant's nonpayment. *Source: M3, pp.2, 7-9.*	San Rafael's completeness materials demanded a transportation analysis whose guidelines contemplated CEQA conditions or mitigation, while River Landon and CalHDF contended that CEQA did not apply to a qualifying SB 35 ministerial project. San Rafael repeatedly stated make an application under SB684 or SB9. *Source: S1 completeness/H6 materials; CalHDF analysis in packet.*	STRONG FUNCTIONAL PARALLEL. First deny eligibility for the ministerial/CEQA-exempt route; then move the project into a slower, costlier, inappropriate, discretionary or CEQA pathway and/or a start over. **Evidence status: Direct documentary comparison**
21. Shift responsibility for continuing delay to the applicant	Menlo Park blamed the applicant's incomplete/inconsistent materials, deficient H6 notice, and refusal to pay the CEQA deposit. *Source: M3, pp.2-9.*	San Rafael said River Landon definitively refused to modify the project, even though the applicant later submitted a modified March 20 proposal, and repeatedly faulted the applicant for failing to prove consistency or submit more material. *Source: S2, pp.1-3; S1, Mar.20-24 chronology.*	STRONG SHARED DEVICE. Nonapproval is reframed as the applicant's refusal, omission, nonpayment, or procedural error. Whether each assertion is accurate must be tested against the chronology and actual submissions. Said another way – 'ALWAYS blame the victim'. **Evidence status: Direct documentary comparison**
22. Offer a route forward only if the applicant abandons the claimed statutory right	Menlo Park offered to proceed if N17 revised the residential percentage, removed or separately processed the hotel, and funded CEQA. Those instructions depended on the disputed premise that AB 2011 and Builder's Remedy protections were unavailable. *Source: M3, pp.6-9.*	San Rafael directed River Landon to file a wholly new application, losing its vesting, and necessitating a redesign of the project, use a generalized checklist, pay new deposits, execute a Reimbursement Agreement, and place the Density Bonus requests into the new filing, rather than recognize the pending SB 35 resubmittal. *Source: S1, packet p.181; S2, pp.3-6.*	SAME BASIC EFFECT. **The path forward is available only after surrendering the applicant's existing statutory position**, vesting, or deemed-consistency theory. San Rafael's proposed routes were more internally inconsistent. The Government says - 'Drop your defenses, surrender, and we'll take care of you' **Evidence status: Direct documentary comparison**
23. Use a "master-key" premise to avoid independent analysis of multiple issues	The premise **"not a housing development project"!** is used to dispose of Builder's Remedy, H6, CEQA-exemption, and other protections without separately analyzing each. These were categorically rejected by the Attorney General. *Source: M3, pp.1-8.*	The premise **"not multifamily"!** is used throughout the July 1 response to dispose of preemption, parking, H6, Density Bonus, and resubmittal arguments without independent analysis. *Source: S3, methods 23-24; S2 generally.*	STRONG STRUCTURAL PARALLEL. A single gateway conclusion is repeated across unrelated issues, making the entire defense rise or fall on a threshold interpretation the applicant says is untimely or wrong. **Evidence status: Direct documentary comparison**

No. / recurring strategy	Menlo Park / N17 - 80 Willow Road	San Rafael / River Landon - Coleman Drive	Comparative analysis, inference strength, and evidentiary limits
24. Record reconstruction, citation defects, and after-the-fact rationalization	The Menlo materials incorporate prior responses and rely on earlier plan sets, but the reviewed record does not show a citation-error pattern comparable in volume to San Rafael. The Attorney General's principal criticisms were substantive: post-hoc grounds, site definition, Builder's Remedy, Density Bonus, fees, and indemnity. *Source: M1, pp.3-10; M2/M3 generally.*	The San Rafael H6 audit identifies eleven wrong-plan-set uses, twenty-five references to nonexistent sections, two facial date errors, a citation to the wrong document, three conceded findings, and ten items expressly decided on insufficient information. These are learned methods & skills learned and deployed in-house. *Source: S3, Part 2 findings 1-6.*	NOT SYMMETRICAL. The extensive record-defect pattern is a particularly strong San Rafael feature and should not be attributed to Menlo Park without comparable evidence. The broader commonality is after-the-fact preservation of the denial result. **Evidence status: Direct documentary comparison**

Overall comparative conclusion

These are not the same projects. N17's proposal is a 665-unit mixed-use AB 2011 project in Menlo Park. River Landon's proposals are 29-unit and 14-unit SB 35 projects on six hillside residential lots in San Rafael. Their physical facts, statutory criteria, project scale, and litigation posture differ substantially. One would therefore expect materially different, fact-specific municipal analyses.

Instead, the same unusual blocking architecture appears in both matters: define the project out of the streamlined statute; select the project-site geometry that supports ineligibility; neutralize Builder's Remedy and Density Bonus protections; preserve or add grounds after the first determination; shift the project into ordinary or CEQA review; place legal or consultant costs on the applicant; seek indemnity or hold-harmless protection; and answer the H6 notice by denying the duty while responding only as a courtesy.

As a matter of evidentiary inference, the likelihood that this entire collection of uncommon devices arose independently from the different project facts alone is low. The recurrence of applicant-funded adverse counsel and indemnity against housing-law claims is particularly probative because those devices are unusual, specific, and not naturally dictated by either project's physical design.

The common-counsel fact provides a plausible connective explanation. The present record supports a reasonable inference that a common legal template or strategy was used across the two cities. Invoices, engagement letters, billing narratives, drafts, template documents, internal emails, metadata, and testimony are next in the analysis architecture sequence.

Council letter and/or supporting memorandum

The Menlo Park and San Rafael projects are factually and legally different. N17 proposed a 665-unit mixed-use project under AB 2011; River Landon proposed much smaller hillside projects under SB 35. Those differences should have produced different, project-specific analyses. Instead, both cities, while represented or advised by the same outside municipal-housing counsel, advanced a strikingly similar sequence of defenses: threshold disqualification from the streamlined statute, manipulation of the relevant project-site or parcel analysis, denial or neutralization of Builder's Remedy and Density Bonus protections, repeated post-deadline determinations, applicant-funded City legal counsel, indemnity or hold-harmless demands, and an H6 response that first denied any duty to respond and then responded only "as a courtesy."

*The qualitative inference is powerful. The probability that this entire collection of uncommon **devices** arose independently from the different project facts, rather than from a common legal template or strategy, appears very low. The recurrence of requiring the applicant to pay for counsel taking an adverse position and to indemnify the City against housing-law claims is especially concerning. For San Rafael, these demands to applicant were assertive, persistent, repetitive & unrelenting, and taken in context of color of law very concerning. The common-counsel fact therefore warrants continued review and preservation of the invoices, engagement letters, billing narratives, forms, drafts, emails, and metadata showing where the strategy originated. The financial damages that can be caused by these devices is significant (including to municipal tax payer funds).*

Source key

Key	Document	Principal use
M1	California Attorney General, Notice Regarding 80 Willow Road (Gov. Code § 65914.2), July 29, 2026, 10 pages.	Common counsel; post-hoc grounds; project-site definition; Builder's Remedy; Density Bonus; applicant-paid legal fees; indemnity.
M2	City of Menlo Park, AB 2011 Determination in Response to December 24, 2025 Resubmittal, January 22, 2026, 8 pages.	Repeated determinations; not-housing-development premise; plan calculations; continuing review.
M3	City of Menlo Park, Response to Challenged Conduct Letter, February 10, 2026, 9 pages.	H6 no-duty/courtesy architecture; CEQA fallback; four determinations; $799,951 consultant deposit.

Key	Document	Principal use
N1	Allen Matkins, Applicant Response to November 7, 2025 AB 2011 Determination / H6 notice, November 19, 2025, 3 pages.	Identification of new grounds, site/parcel shift, Builder's Remedy, Density Bonus, and stonewalling.
S1	Communications August 2025-July 2026 packet, including August 27 and October 6 determinations, October 22 counsel letter, March 24 email, April 2 H6 notice, and related correspondence.	San Rafael chronology, direct counsel involvement, fee/reimbursement demands, restart requirement, and project-site treatment.
S2	City of San Rafael, Response to Challenged Conduct Letter, July 1, 2026, with attachments, 122 pages.	H6 no-duty/courtesy architecture; threshold multifamily premise; alternative holdings; late explanations.
S3	Comparative Analysis: April 2, 2026 H6 Notice vs. July 1, 2026 San Rafael Response.	Quotation methods, wrong plan sets, citation defects, concessions, and record-level techniques.
S4	Analysis of October 6, 2025 San Rafael Consistency Determination against allowable objective standards.	Standard-by-standard application, information requests, inapplicable entitlements, waivers, and project fragmentation.
A1	River Landon invoices and Summer 2025 / March-April 2026 indemnity materials.	Applicant-reported details. These documents were not independently reproduced in the reviewed attachment set and should be appended before external use.

Routing; Outside Counsel OC, State Bar Complt Doherty 254523 Alleging collusion to Defeat State Laws, Monetary demands for proponent to pay for lawyer unlawful activities under color of law SBC file, Leads to downstream misreps to Court/Court time wasting

13 Analysis of San Rafael formal response to applicant H6 notice 4/2/26 > 7/1/26

235–281 Coleman Drive SB 35 Project. Final administrative action.

Comparative Analysis: April 2, 2026 §65589.5(h)(6)(E) Notice vs. City of San Rafael July 1, 2026 Response to Challenged Conduct Letter, under the HAA.

Documents compared: (1) Cox, Castle & Nicholson LLP letter of April 2, 2026 with Exhibit A, Challenged Course of Conduct Table (25 pages). (2) City of San Rafael letter of July 1, 2026, signed by Micah Hinkle, Director of Community and Economic Development, with Attachment A, "Response to Exhibit A of Challenged Conduct Letter," and Attachments B–E (122 pages total).

Part 1 — Methods of obfuscation: how the response is made to appear compliant

The July 1 response is not, in the main, a document of false quotation. Our Exhibit A text is largely transcribed accurately. The document instead achieves the appearance of a complete, reasoned, good-faith reply through a consistent set of rhetorical and structural techniques. Each is identified per item in Column 5 of the table. The recurring methods are these:

A. Techniques applied to the standard itself

1. Partial-text objectivity — Quote the measurable fragment of a standard and drop the subjective operative words, then declare the remainder objective. At Item 2 the City defends "wall, fence, or screen" as objective terms while silently discarding "from view" — the criterion actually in dispute. At Item 18 it defends the objectivity of "3 feet" and "5 feet" when the disputed word is "should." At Item 16 it defends the objectivity of "15 feet," which was never contested. In each case what remains sounds unimpeachably objective precisely because the contested language has been removed from the quotation.

2. Retroactive re-specification — Announce the governing standard for the first time in the response, then judge the 2025 determinations against it. At Items 2 and 12 contested standards become "a yes-or-no question" for the first time on July 1, 2026. At Item 11 the City concedes its code does not define "low," "medium" or "high density residential" and supplies density ranges in the letter. At Item 17 it announces that a footnote means the greater of two figures. Section 65913.4(a)(5) requires standards to be published and adopted before submission and knowable by applicant and official alike; a standard first written in a response letter cannot have governed the determination it defends.

3. Selective severance of disjunctive text — Where a code phrase offers alternatives, adopt the enforceable half as a "baseline" and demote the other to an "exception." At Item 19, "The same or substantially similar mix of unit size" is reconstructed so that "the same" is a mandatory baseline and "substantially similar" an exception — enforcing the half the City can measure and discarding the half that would defeat the finding.

4. Quotation marks around paraphrase — Item 19 is the clearest instance: the August 27 letter presented two sentences in quotation marks with a pin cite to Resolution 14890. The July 1 response reproduces the actual text of the Resolution, which contains neither sentence, and then explains which phrases the City's versions were "derived" from. Bolding source phrases inside a longer sentence makes reconstruction look like citation.

5. Element re-labelling — The same physical feature is given whichever name generates the needed result. At Item 4 the connecting screen becomes a "fence" to trigger SRMC 14.16.140, while elsewhere the same element is denied the status of an attachment that would make the project multifamily. At Item 2 a screen is said to satisfy 14.25.050; at Item 4 it is a fence subject to a different standard.

B. Techniques applied to the evidence

6. Hedge-then-harden — Lay down qualified observations, then collect them into an unqualified conclusion a few lines later. Item 4: "may be enclosed," "appears," "implying" → "plainly appears to propose fences." Item 8: "Thus, it appears" → "directly contradicts what is actually depicted." The certainty is manufactured by the summary sentence, not supplied by the evidence.

7. Uncertainty laundering — Report the City's own inability to determine something as the applicant's error. Item 7 is the sharpest example: the City writes that two parcels have "no information" on width and that one is measured diagonally so "the actual width is not clear," then concludes our statement is "plainly contradicted." Absence of data is presented as disproof.

8. **Speculation as finding —** Item 15 rests its conclusion on "it appears possible that other spaces are, too" — a hypothesis about undimensioned spaces, offered as the basis for a statutory inconsistency. This inverts §65913.4(c)(3), which asks whether substantial evidence would allow a reasonable person to conclude consistency.

9. **Unfalsifiable objection —** Item 13 objects to "an additional feature that would likely be included" in the height measurement, without naming the feature, locating it on a sheet, or stating the disputed dimension — and closes with "Maybe it's 39'10"; maybe it's taller." Nothing can be submitted that answers this, and it can be re-raised against any resubmittal.

10. **Definitional substitution —** Item 8 silently equates the retained "natural state area" with installed "landscape area," a ten-fold change in the governing figure, introduced by "Thus, it appears" rather than by any cited definition.

11. **Double-track findings —** Charge the item both ways so no submission can clear it. Item 8 holds simultaneously that the plans plainly show 25,362 sq ft of landscaping and that they "do not contain enough detail" to assess compliance. Both cannot be true, and either sustains the finding.

C. Techniques applied to our arguments

12. **Column collapse and erased response fields —** Our three-column Exhibit A was adopted as the skeleton of the City's four-column table — which makes the transpositions visible. At Items 18, 22, 24 and 28 the "Challenged Conduct Letter states" column is left empty. At Item 18 our argument was folded into the City-document column and replaced by the City's paraphrase, so a reader sees only the version the City chose to answer. At Item 11 four distinct arguments are flattened into one run-on paragraph and only the first is addressed. At Item 24 our waiver-delay allegation is relocated into Item 23's column and answered in neither.

13. **Truncate-then-plead-confusion —** Item 5 quotes eight words, swallows roughly ten lines in an ellipsis, and then states that "It is unclear what the Challenged Conduct Letter means." The unclarity is produced by the quotation and then attributed to the writer.

14. **Substituted question —** Answer a question adjacent to the one asked. Item 7 answers about Coleman Drive when we described the private street serving the units. Item 20 answers whether a geotechnical report was required when we said it had already been provided. Item 2 answers whether a wall exists when we asked what "from view" means.

15. **Straw man and reductio —** Item 26 attributes to us the position that "an SB 35 application can never be denied" and refutes that instead of addressing §65913.4(c)(1)(C). Item 18 replaces our charge that the City rewrote "should" as "requires" with a charge that we confused "mandatory" with "objective," and refutes the substitute.

16. **Quotation deployed for a proposition it does not support —** Item 26 quotes our November 8, 2025 meeting note — "I was aware of those [alternative to SB 35] processes, and did not plan to resubmit under those processes" — as proof that the applicant would not revise under SB 35. The City's own bracketed insertion identifies the scope it then disregards.

17. **Burden inversion —** Items 2 and 25 fault us for not pointing to portions of the application proving consistency. Section 65913.4(c)(3) forbids a conflict finding where the application contains substantial evidence; it does not create an applicant duty to re-cite. At Item 25 the assertion that we "do not cite any portion of the application" is refuted by our Exhibit A, which cites A.0.5, A.0.3, A2.2–A3.4 and A.0.2/A.0.3/A.0.8 — and by the City acting on those very citations at Item 14.

18. **Refusal to engage —** Item 19 closes with "baseless and warrants no further response." Item 9 simply stops: the row carries the same furniture as every other — item number, quoted standard, our response, a City paragraph — but nothing in the City paragraph responds to the point. Apparent completeness substitutes for engagement.

D. Techniques applied to the record and the remedy

19. **Concede-and-moot —** Items 1 and 10 concede the legal point and then void it: the item is "moot" because the application "was properly denied on other grounds." The denial is the very act the Notice challenges, and §65589.5(h)(6)(E) requires the City to cease the conduct or make findings — not to rely on the outcome of the conduct to excuse it. Item 1's concession is additionally conditional: "were the Project's application still pending," the City would not enforce. Nothing of record is withdrawn.

20. **"For the first time" framing —** Items 10, 14 and 18 present long-standing objections as newly raised. This does two things at once: it makes the City appear immediately responsive, and it implies the applicant withheld the point. At Items 10 and 18 the framing is refuted by the City's own row, which records the same objection in our October 1, 2025 letter.

21. **Blame-shifted concession —** Item 14 withdraws a finding while explaining the nine-month error as a property of the drawings — "densely packed with information," "a notation in small font." Item 25 places the admission that the City "inadvertently missed something" three times inside a parenthesis within a sentence concluding that "Applicant is solely responsible for any delay."

22. **Reclassification to strip legal effect —** Demands are retitled "courtesy comments" (Items 20, 21) and findings retitled things done "as a courtesy" (Item 22), which converts acts into favors and removes them from review — while they remain inside statutory (c)(1) determinations, contribute to the 60 and 46 inconsistency counts, and are carried into the September 28 and December 3, 2025 denials.

23. **Master-key premise —** The single holding that the Project is not a "multifamily housing development" disposes of Items 5, 6, 21, 26 and 28 outright, conditions Items 11 and 22, and is used in footnote 4 to dispose of CalHDF's comment letter. Where the master key is used, no independent analysis of the item is offered.

24. **Alternative-holdings stacking —** Offer two or more independent disposals so that refuting any one leaves the item closed, and develop none. Item 21: it was only a courtesy, and SB 35 does not apply. Item 28: the case is inapplicable, and in any event we complied.

25. **Deferral chain to nowhere —** Item 23 responds "See Item 24 below." Item 24 responds "See Section I.C of the Response to Challenged Conduct Letter." There is no Section I.C. The density-bonus allegations therefore appear to be answered twice and are answered not at all. More broadly, 25 of the 29 responses open with "See Section I.A / I.B / I.C," none of which exists — the letter's sections are I (Introduction, no subsections), II, III (A and B) and IV.

26. **Non-denial denial and inverted reading —** Item 29 states the City is "unaware of having made such statement," confining its search to written processing documents when the allegation concerns an oral statement, then supplies the same meaning itself in the next sentence. It then reads our allegation of siting bias as a comment that "appears to acknowledge the City's recent housing-related successes" — converting an accusation into a compliment that needs no answer — and meets an AFFH distributional argument with a citywide unit total.

Part 2 — Cross-cutting findings

1. The wrong plan set is used to defend the determination under challenge. The City's own letter states the SB 35 application was deemed submitted as a matter of law on June 30, 2025, and that the August 27, 2025 inconsistency determination issued 58 days later under §65913.4(c)(1)(A). Yet in eleven rows — Items 3, 4, 7, 8, 12, 13, 15, 16, 17, 18 and 19 — the City defends the August 27, 2025 determination using the September 6, 2025 Alternative Project plan set. Those sheets did not exist when that determination was written. Item 4 is the clearest example: our statement that no fences were proposed is answered entirely from Sheet A.0.7 of the September 6 set, and never against the operative June 30, 2025 submittal at all.

2. Twenty-five of the twenty-nine responses cross-reference sections that do not exist. The rows open with "See Section I.A," "See Section I.B," or "See Section I.C of Response to Challenged Conduct Letter." The Response letter has no such sections; the references appear to have been intended for III.A.1, III.A.2 and III.A.3. At Items 23 and 24 this is not cosmetic — the density-bonus allegations are answered *only* by a cross-reference chain terminating in a non-existent Section I.C.

3. Two date errors on the face of the document. Items 12 and 13 both conclude by reference to "the plans submitted on September 6, **2026**." That date post-dates the October 6, 2025 determination those sentences describe, and post-dates the July 1, 2026 letter itself. Item 14, addressing the same plan set, uses 2025.

4. A citation to the wrong document. At Item 19 the City attributes our October 1, 2025 letter to "(October 6, 2025 Inconsistency Determination, p. 51.)"

5. Three findings are conceded — and two are then declared moot by the City's own denial. At Item 1 the City accepts that "adequate ingress and egress" is not an objective standard. At Item 10 it accepts that the subdivision utilities standard does not apply. At Item 14 it accepts that the 8% gradient was on the plans all along and withdraws the finding. Items 1 and 10 are then declared moot. Conduct that the City itself abandons cannot have been "necessary" within the meaning of §(h)(6)(E)(iv)(I).

6. The City itself lists ten items decided on "insufficient information." At Item 25: "As explained in the City's responses to Items 2, 4, 7, 8, 12, 13, 15, 16, 18, and 19 above, the application lacks enough information …" Section 65913.4(c)(3) provides that a local government "shall not determine that a development … is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains substantial evidence." The City's own enumeration is the clearest support in the record for the Notice's central allegation.

Part 3 — How to read the table

Column 1 reproduces what our April 2, 2026 Notice actually says, separating the City document quoted from our response to it. Column 2 sets out how the July 1 table reproduces our text and what the City's response says. Column 3 identifies the difference between the two. Column 4 assesses whether the difference is misquotation, use of the wrong record, non-response, or something else. Column 5 — shaded — names the technique by which the response is made to appear compliant, keyed to the numbered methods in Part 1. Column 6 assesses whether the row supplies the lawful way forward that §65589.5(h)(6)(E)(iv)(II) requires. Shaded item numbers mark rows with a material defect.

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
Applying non-objective standards to development						
1	**City document quoted:** "Refuse collection areas shall be …located in areas convenient to users and collectors. There shall be adequate ingress and egress to all utilities." **Our response:** "These are non-objective standards."	Reproduces both columns verbatim. Accurate transcription. Response: recites SRMC 14.25.050; Aug 27, 2025 said application "did not contain enough information"; recites Oct 1, 2025 letter p.36 and Oct 6, 2025 re-assertion. Then concedes 40 Main Street holds "adequate access/egress" subjective and unenforceable — "The City thanks Applicant for bringing this case to the City's attention." Concludes: "Were the Project's application still pending, the City would not seek to enforce this standard. Since the Project application was properly denied on other grounds … this comment is moot."	No transcription difference. But we raised a legal objection — the standard is not objective. The City answers with procedural history, then concedes and declares the point moot. Nothing in our Notice raised or conceded mootness. See also analysis of the copied non fact driven impermissible specific legal architecture in Willow Park, Menlo Park.	**CONCESSION → MOOTED** Quotation accurate; the defect is disposition, not transcription. The concession is material: the City admits it applied a non-objective standard across two determinations. That admission is the §(h)(6)(E)(i) conduct alleged. Mooting is circular — the City relies on its own denial to excuse the conduct the Notice says produced the denial. The concession is conditional ("were the application still pending"); the Aug 27 and Oct 6 findings stand of record and were never withdrawn. 40 Main Street was decided in 2020 and was put to the City on Oct 1, 2025.	**Concede-and-moot —** yields the legal point but voids the remedy by invoking the City's own denial. **Conditional concession —** "were the application still pending" concedes prospectively only; nothing of record is withdrawn. **Gracious framing —** "The City thanks Applicant for bringing this case to the City's attention" presents a nine-month-old, already-briefed authority as newly supplied, casting the City as responsive.	**NO.** Concedes error, gives no instruction, declares the item moot.
2	**City document quoted:** "Walls, etc. shall be used to screen parking and loading areas from view" **Our response:** "This is a non-objective standard. What percentage of view shall be shielded, and from what angles, from how far upslope?"	Reproduces both columns verbatim. Response: SRMC 14.25.050; insufficient information; Oct 1 p.36; Oct 6 re-assertion. Then reformulates: "To the extent that SRMC Section 14.25.050 requires that a project include a wall, fence, or screen … the inquiry is a yes-or-no question: 'do the plans depict a wall, fence, or screen?' Wall, fence, and screen are each objective terms." Concludes materials insufficient and that we did not "point to any portion of the project application that would constitute substantial evidence."	Our objection is to the words "from view" — the visibility criterion. The City answers a different question — does a wall physically exist — by severing "from view" from the standard it applied. The three questions we posed (percentage, angle, distance upslope) are not addressed at all.	**ANSWERS A DIFFERENT QUESTION** The yes/no reformulation appears for the first time on July 1, 2026. It is not the standard applied on Aug 27 or Oct 6, 2025. §65913.4(a)(5) confines review to standards published and adopted before submission. A standard re-defined in a response letter cannot retroactively validate the determination it defends. Internally inconsistent with Item 4: here a screen satisfies 14.25.050; at Item 4 the same element becomes a "fence" triggering 14.16.140. "Point to any portion … that would constitute substantial evidence" inverts §65913.4(c)(3).	**Partial-text objectivity —** quotes the measurable nouns — wall, fence, screen — and silently drops "from view," the operative subjective criterion. What is left sounds objective because the subjective part has been removed. **Substituted question —** converts "screened from view" into "does a wall exist." **Retroactive re-specification —** the yes/no standard is announced in the response, not in the determination it defends. **Burden inversion —** demands the applicant prove consistency, reversing (c)(3).	**NO.** Never states what depiction would suffice — plan note, elevation, sight-line study, dimension.
Sending documentation / stating inconsistency by alleging standards are applicable that have no connection to the development submittal						
3	**City document quoted:**	Reproduces both columns verbatim.	The City expressly agrees with our factual statement	**CONCEDES PREMISE, KEEPS FINDING WRONG PLAN SET**	**Re-characterized standard —** a permission provision is silently converted into a mandate, so	**NO.**

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
	"Structures may encroach into a required yard with a compensating increase subject to approval by the hearing body" **Our response:** "The applicant did not request any such encroachment"	Response: quotes SRMC 14.12.030.B in full; recites R10 minimums (10' side, 10' rear, 20' front) against proposed ~4' side, ~2.5' rear, 2.5'–9'11" front; "These facts necessarily mean that the Project also inconsistent with Section 14.12.030.B, even if the Project were to receive the permissible encroachment." Adds: "Moreover, as the Challenged Conduct letter notes, Applicant never requested such encroachment in the first place." Then cites Sept 6, 2025 materials (Sheet A.0.2), Oct 1 p.16, Oct 6 re-assertion.	— no encroachment was requested — and keeps the inconsistency anyway. It does so by re-casting 14.12.030.B from a permission provision into a setback-magnitude provision.	If no encroachment is sought, 14.12.030.B — which governs when an encroachment may be allowed — has no application. The operative setback standard is 14.04.030, separately cited at Item 17. Counting the same setback facts under two code sections inflates the 60 / 46 inconsistency totals. The Aug 27, 2025 determination is defended with Sept 6, 2025 plans that did not exist when it was written.	agreeing with us costs the City nothing. **Double-counting —** one set of setback facts is charged under two code sections, inflating the inconsistency count and the apparent gulf between project and code. **Concession as ornament —** "as the Challenged Conduct letter notes" signals responsiveness while the finding survives intact.	Does not say whether anything remains for the applicant to do if 14.12.030.B is inapplicable.
4	**City document quoted:** "Fences located within the front and streetside setbacks may be 4 feet tall etc. The plans do not contain enough detail for the city to determine whether the project complies with the fence standards at this time" **Our response:** "No fences have been proposed"	Reproduces both columns verbatim. Response: Aug 27 cited SRMC 14.16.140, insufficient information. Then: "On September 6, 2025, Applicant submitted revised application materials that depict an area titled 'enclosed trash & recycling area.' (Sheet A.0.7.) It appears such area may be enclosed by a fence. Likewise, Sheet A.0.7 states that 'lot coverage' excludes fences, implying that the proposed Project includes fences." Recites Oct 1 p.32 and Oct 6. Concludes: "the project application plainly appears to propose fences, which Applicant argued join the units together and thereby make the project a 'multifamily' project."	Our statement is a flat factual assertion about the operative submittal. **The City never engages the operative June 30, 2025 submittal. Its entire answer is built from Sept 6, 2025 Alternative Project sheets.** It also converts the connecting screen element into a "fence," which is not what we said and not what the plans show.	**WRONG PLAN SET — LEAD EXAMPLE** (a) The determination defended is Aug 27, 2025, made against the application deemed submitted June 30, 2025. Sheet A.0.7 of the Sept 6 set did not exist on Aug 27. (b) The evidence is inferential and hedged throughout — "may be enclosed," "appears," "implying." A boilerplate lot-coverage note listing categories excluded from coverage is not evidence that any listed category exists in the project. (c) The screen is re-labelled a fence. SRMC 14.16.140 governs fences in front and streetside setbacks; the element we identified is a screen/wall relevant to attachment. The same element cannot be an attachment for one purpose and not the other. (d) "Plainly appears" characterizes the City's own hedged inference as plain.	**Hedge-then-harden —** three hedges — "may be," "appears," "implying" — are laid down and then collected into "plainly appears to propose fences." The certainty is created by the summary, not by the evidence. **Wrong record —** the operative June 30, 2025 set is never examined; the answer is built from a later set. **Element re-labelling —** the screen becomes a fence when the City needs an inconsistency, and stops being an attachment when the City needs the project not to be multifamily. **Negative-definition inference —** a note saying fences don't count toward lot coverage is read as proof that fences exist.	**NO.** Does not say what would resolve it — a note that no fences are proposed, a fence detail, or a dimensioned elevation.
Sending documentation / stating inconsistency that improperly relies on local standards when State standards have preempted those local standards						
5	**City document quoted:** Long passage: the City equates housing types to single-family/multifamily, to zoning classification, to low/medium/high density; claims the development must comply with medium-density / multifamily standards requiring a minimum of 3 attached units; "It provides no explanation of how that would be permitted in a low density residential zone nor how it would be permitted in a single family	Column 2 reproduced. But the response opens: "It is unclear what the Challenged Conduct Letter means by 'the city equates all of these together …' or precisely how Applicant alleges the City has acted improperly in this regard." Then: the argument "relies on the assumption that SB 35 preempts the City's action. As explained above, the Project does not qualify for processing under SB 35. Therefore, SB 35 does not preempt any City action."	The City truncates our sentence with an ellipsis after eight words, then rests on the unclarity of the truncated fragment. Our passage runs roughly ten lines and states a specific consequence the City does not repeat: that it demands compliance with medium-density / 3-attached-unit standards in a low-density single-family	**TRUNCATION → MANUFACTURED AMBIGUITY** Not a misquotation — a truncation that produces the very unclarity the City then relies on to avoid answering. The internal contradiction we identified is never addressed: how a development the City says must satisfy multifamily standards could lawfully be built in a zone where its own code does not permit that use.	**Truncate-then-plead-confusion —** eight words are quoted, an ellipsis swallows the rest, and the resulting fragment is declared unintelligible. The confusion is produced by the quotation, then attributed to the writer. **Master-key premise —** the not-multifamily holding is applied to close the item without engaging its substance.	**NO.**

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
	zone such as the subject lots (such is not permitted under city code)" **Our response:** "State law preempts this in SB 35 which authorizes multifamily housing on any residential land. SB 35 provides for any qualifying multifamily development of 2 or more units on any residentially zoned land."		zone without explaining how that is permissible under its own code which it is referencing.	The substantive answer is wholly derivative of the not-multifamily premise.		
6	**City document quoted:** "Developments must provide two covered parking spaces per unit" **Our response:** "No covered parking is required under State law"	Reproduces both columns verbatim. Entire response: "As explained above, the Project does not qualify for processing under SB 35. Therefore, SB 35 does not preempt the applicable local parking requirements."	No transcription difference. One sentence, wholly derivative of the multifamily premise.	**SINGLE-PREMISE DISPOSAL** Does not address §65913.4(d)(2) (no more than one space per unit) or (d)(1) (no parking requirement within ½ mile of transit), nor whether the covered requirement is severable from the count. Sits against Item 7, where the City simultaneously enforces a requirement for two additional on-site spaces.	**Master-key premise —** one sentence disposes of a substantive preemption argument without touching §65913.4(d). **Selective preemption —** SB 35 is treated as inapplicable when it would limit the City, while local parking rules are enforced throughout.	**NO.**
Sending documentation / stating inconsistency by purporting a standard is not met when the development contains / includes nothing to which that standard applies						
7	**City document quoted:** "Additionally, on streets less than twenty-six feet, a minimum of two additional on-site parking spaces must be provided" **Our response:** "The street is 26' wide, is clearly such and is clearly marked as such"	Reproduces both columns verbatim. Response: Aug 27 cited SRMC 14.12.030; insufficient information. Then, from Sept 6, 2025 materials: Coleman Drive "approximately 18 feet wide in front of two parcels (-47 and -46); varies between 17 feet and 28 feet in front of one parcel (-45); provides no information on the width … in front of two parcels (-49 and -48), and measures the width … diagonally in front of one parcel such that the actual width is not clear (-44). (Sheet A.0.1.)" Notes "Sheet A.0.2 indicates that the private driveway serving the proposed units from Coleman Drive (the street) is 26 feet wide." Concludes our contention "is plainly contradicted by the plans submitted on September 6, 2025."	**Substitution of the subject.** Our statement concerns the street serving the units — the 26-foot private street. The City answers about Coleman Drive, the public frontage, and then declares our statement contradicted.	**WRONG PLAN SET + SUBJECT SWITCHED** (a) Sept 6, 2025 sheets used to defend an Aug 27, 2025 determination. (b) The City's own recitation concedes Sheet A.0.2 shows the private driveway at 26 feet — the street the units front. It never explains why the standard measures Coleman Drive instead. (c) "Plainly contradicted" overstates the City's own description: two parcels have no width information and one is measured diagonally so "the actual width is not clear." That is absence of data, not contradiction.	**Substituted subject —** we describe the private street serving the units; the City measures the public frontage, then reports a mismatch as our error. **Uncertainty laundering —** the City's own words — "no information," "the actual width is not clear" — are converted in the next sentence into "plainly contradicted." Missing data is reported as disproof. **Buried concession —** the sentence confirming the 26-foot private driveway sits mid-paragraph and is never carried into the conclusion.	**PARTIAL.** Identifies one curable item — exact location of spaces relative to units — but does not state it as an instruction.
8	**City document quoted:** "Where the proposed landscape area is equal to or greater than 2,500 sq ft" **Our response:** "Sheet A.0.5. The landscaping is less than 2,500 sq.ft."	Reproduces both columns verbatim. Response: Aug 27 cited SRMC 14.16.370 / Gov. Code 65595(c); insufficient information. From Sept 6, 2025 plans: Sheet A.0.6 shows a "natural state area" of 25,362 sq ft; A.0.5 shows trees in almost all of it; "Thus, it appears that the Project involves approximately 25,362 feet of landscaped area." Our statement "directly contradicts what is	The City equates retained "natural state area" with installed "landscape area." We did not, and the standard does not on its face.	**WRONG PLAN SET + UNSUPPORTED EQUATION** **SELF-CONTRADICTORY CONCLUSION** (a) Sept 6, 2025 plans used against an Aug 27, 2025 determination. (b) The equation of undisturbed natural area with landscape area is a substantive assumption stated as observation ("Thus, it appears").	**Definitional substitution —** "natural state area" is silently equated with "landscape area," a ten-fold change in the governing number, introduced by "Thus, it appears" rather than by any cited definition. **Hedge-then-harden —** an assumption flagged "it appears" becomes, two sentences later, a	**NO.** Implies a landscape documentation package would resolve it but never says so or specifies contents.

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
		actually depicted on the plans." Oct 1 p.34; Oct 6 re-assertion. Closes: "since the plans do not contain enough detail to determine whether the Project complies with this standard, it was proper for the City to determine that the Project is inconsistent."		Water-efficient landscape requirements are generally keyed to new or rehabilitated landscape area. No definition is cited to support the equation. (c) The row concludes on insufficiency after asserting the opposite. The plans cannot both "plainly" show 25,362 sq ft and "not contain enough detail."	"direct contradiction" by the applicant. **Double-track finding —** the item is charged both ways — the plans show too much landscaping, and the plans don't show enough detail — so no answer can clear it.	
9	**City document quoted:** "Section requires driveways serving residential uses with less than 6 vehicle parking spaces to be a min. of 10 feet wide" **Our response:** "The driveway serves 39 parking spaces. The driveway (private street) is 26', and wider in parts"	Reproduces both columns verbatim. Response recites only that Aug 27, 2025 identified SRMC 14.18.140(a) and that the application "did not contain enough information." **The row then stops. No review of any later submittal, no reference to Oct 1 or Oct 6, no conclusion, and no engagement with our point.**	Our response is reproduced and then never answered.	**NO RESPONSE AT ALL** Our point is that the standard applies by its terms only to driveways serving fewer than six spaces; this driveway serves 39. The standard is facially inapplicable — the identical defect the City conceded at Item 10. §65589.5(h)(6)(E)(iii) requires the City to consider and respond to objections; this row does neither. The status of the item after July 1 is undeterminable from the document.	**Silent non-answer —** the row carries the same visual furniture as every other — item number, quoted standard, our response, a City paragraph — so it reads as answered. Only on close reading does it emerge that nothing responds to the point. **Recitation as response —** restating what the Aug 27 letter said is presented as engagement with the objection to what the Aug 27 letter said.	**NO.** Item status unknown.
10	**City document quoted:** "No subdivision of land into two (2) or more lots or parcels for the purpose of development shall be approved unless it is determined that the following utilities and services can be provided" **Our response:** "No subdivision of land into two or more lots is being proposed"	Reproduces both columns verbatim. Response: Aug 27 cited SRMC 15.06.020. Oct 1 pp.58–59 argued unenforceable; "Applicant's legal argument … was not clearly supported by law." Oct 6 re-assertion. Then: "The Challenged Conduct Letter points out for the first time that this standard only applies when a project proposes subdivision of land into two or more parcels. Having considered this additional input, the City has determined that this standard does not apply to the Project." Then moot because denied.	**"For the first time" is contradicted by the City's own row.** The same objection appears in column 2 of the City's own table, and the City records two paragraphs earlier that we raised it in the Oct 1, 2025 letter at pp.58–59.	**CONCESSION → MOOTED** **"FOR THE FIRST TIME" INACCURATE** Second admission that an inapplicable standard was applied and then re-applied across two determinations. Same circular mooting as Item 1: the denial excuses the conduct the Notice says produced the denial.	**"For the first time" framing —** a long-standing objection is presented as newly raised. This does two things at once: it makes the City look immediately responsive, and it implies the applicant withheld the point until now. **Concede-and-moot —** the concession is neutralized by the City's own denial. **Dismissive characterization —** our earlier identical objection is disposed of as "not clearly supported by law" — then adopted.	**NO.**
11	**City document quoted:** Table 1.4 Objective Design Standards adopted March 2024, with the ODS applicability sentence and the SRMC 14.03.030 definitions of "residential, multifamily" (medium/high density, 3+ attached units) and "residential, single-family" (low density, one primary unit). **Our response — four distinct points:** (i) "The development is clearly not in either of those categories."	**Column 2 reproduced. Our four responses are flattened into a single run-on paragraph.** Response opens: "The Objective Design Standards apply to all residential development projects in the City. The Project is a residential development project. Therefore, the Objective Design Standards apply to the Project." Then quotes the SRMC definitions; concedes "The San Rafael Municipal Code does not define the terms 'medium density residential,' 'high	Flattening our four points into one paragraph lets the City answer only the first. **Point (ii) — vesting — is answered not on its merits but by relocating the submittal date to September 6, 2025.**	**THE MOST CONSEQUENTIAL MOVE IN THE TABLE** (a) The opening syllogism is broader than the cited authority. ODS by its own first sentence applies to four defined categories, not to "all residential development projects." (b) The City concedes its code does not define the density terms and supplies an interpretation for the first time in this letter. A non-published, non-adopted interpretation cannot be a standard "published and adopted by ordinance or resolution … before	**Column collapse —** four separate arguments are merged into one paragraph; the City answers the first and the other three disappear. **Broadened premise —** "applies to all residential development projects" replaces the ODS text, which lists four defined categories. The syllogism is valid only because the premise was widened. **Retroactive re-specification —** the density-range interpretation is supplied in this letter, filling a gap	**NO.**

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
	(ii) "Further, the development vested prior to these standards being created" (iii) "The subject lots are not in this zoning." (iv) "This is not applicable to the development"	density residential,' or 'low density residential'"; states "The City interprets those terms to mean the density ranges permitted in R / MR / HR districts" (low 0–8.7 du/ac; medium 8.7–21.78; high up to 43.56). Closes: "The Project submitted on September 6, 2025, after the Objective Design Standards were adopted, proposes 14 units on 1.427 acres at a density of 9.8du/ac. Accordingly, the Project is 'medium-density.'"		submission" under §65913.4(a)(5) and (d)(1). (c) The vesting date under §65913.4(a)(5) is the earlier of application submittal or notice of intent — May 15, 2023. The City concedes exactly this rule at Item 22. (d) At 9.8 du/ac the City calls the Project "medium-density" — its own density definition of "residential, multifamily" — while holding elsewhere that the Project is not a multifamily housing development.	the City concedes exists in its own code. **Date relocation —** analyzing the Sept 6, 2025 submittal produces a date after the March 2024 ODS adoption, disposing of the vesting argument without ever addressing it. **Selective definition —** the density figure that makes the Project "medium-density" is the same figure that would make it multifamily; only the first use is adopted.	
Sending documentation / stating inconsistency by alleging that planning data is not in the development submittal when it is						
12	**City document quoted:** "Plans do not show screening of parking from the street" **Our response:** "The plans clearly show screening of parking from the street."	Reproduces both columns verbatim. Response: Aug 27 cited General Plan Policy CDP-4.9. From Sept 6, 2025 plans: A.0.3 shows "Parking 1" screened by "Cherry Laurel Parking Screening"; "Parking 2," "3," "4," "5" "do not appear to be screened"; "Given the steep slope of the hill, it is not clear from the plans whether such parking areas will be visible from Coleman Drive or not; the required landscaped screening is missing." Oct 1 p.12; City says the inquiry is a yes/no question and objective. Closes: "Because the plans submitted on September 6, 2026 do not depict landscaped screening for Parking areas 2-5 …"	Partial concession — Parking 1 is screened — appears nowhere in the conclusion. The City had said the plans "did not show screening" at all.	**WRONG PLAN SET** **DATE ERROR ON THE FACE OF THE DOCUMENT** (a) Sept 6, 2025 plans used against an Aug 27, 2025 determination. (b) "September 6, 2026" — a date after the July 1, 2026 letter itself. The same error recurs at Item 13. (c) A General Plan policy is applied as an objective planning standard. (d) The City's own sentence concedes the visibility criterion is indeterminate — "it is not clear … whether such parking areas will be visible." That is the non-objectivity we asserted.	**Silent partial concession —** the City confirms Parking 1 is screened — contradicting its own "plans do not show screening" — but never says so, and the conclusion reverts to a global finding. **Retroactive re-specification —** the yes/no reformulation appears here for the first time. **Admitted indeterminacy reused as a finding —** "it is not clear whether such parking areas will be visible" is the applicant's objection, restated by the City and then used against the applicant.	**MARGINAL.** Implies screening at Parking 2–5 but gives no depth, species, height or opacity.
13	**City document quoted:** "Insufficient information has been provided in plans to verify the proposed height" **Our response:** "Heights are clearly shown on A2.2 to A3.4 - 15 sheets comprehensively showing the height as defined by municipal code for every building."	Reproduces both columns verbatim. Response: Aug 27 cited SRMC 14.04.030 (hillside height measured from existing grade to uppermost point). From Sept 6, 2025 plans: elevations "include what appear to be height measurements, but such measurements do not appear to use the method of measurement required." On A.2.2 a "39'-10"" dimension "does not include what appears to be an additional feature that would likely be included … Maybe it's 39'10"; maybe it's taller." On A.2.3, "Maybe it's 35'0"; maybe it's 48'5"; maybe it's taller." Closes on "plans submitted on September 6, 2026."	We say heights are shown per code across 15 sheets. The City says they appear to be shown but may not use the code method — and never identifies what is missing.	**WRONG PLAN SET** **SECOND "SEPTEMBER 6, 2026" DATE ERROR** (a) The "maybe / maybe / maybe" formulation is an express statement of residual doubt. §65913.4(c)(3) asks whether substantial evidence would allow a reasonable person to conclude consistency — not whether all doubt is eliminated. (b) Fifteen dimensioned elevation sheets are on their face substantial evidence. The objection turns on an unnamed "additional feature that would likely be included," without identifying the feature, its sheet location, or the dimension disputed.	**Unfalsifiable objection —** "an additional feature that would likely be included" is never named or located, so it cannot be answered. The item can be re-raised against any resubmittal. **Doubt as disqualification —** "Maybe it's 39'10"; maybe it's taller" substitutes a no-residual-doubt test for the statutory reasonable-person test. **Volume acknowledged, weight withheld —** the City accepts that fifteen dimensioned sheets exist and treats their existence as immaterial without explaining why.	**NO.** No statement of what would resolve it.

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
				(c) The City never states what measurement convention it wants shown.		
14	**City document quoted:** "New streets and driveway grades shall not exceed 18 per cent. The projects plans do not appear to indicate the proposed slope" **Our response:** "A.0.2 site plan very clearly shows the gradient of the street at 8%, as do A.0.3, A.0.8."	Reproduces both columns verbatim. Response: Aug 27 cited SRMC 14.12.030; insufficient information. Oct 1 p.31 argued not objective; "The October 1, 2025 letter did not point to any portion of the development application that contained the required information." Oct 6 re-assertion; "The City acted in good faith." Then: "The Challenged Conduct Letter points for the first time to pages A.0.2, A.0.3, and A.0.8 … the City notes that each of sheets A.0.2, A.0.3, and A.0.8, which are densely packed with information, contain a notation in small font that the private driveway will have an 8% gradient, and no longer considers this item to be an inconsistency."	Third concession — and the only one actually withdrawn rather than declared moot.	**CONCESSION — WITHDRAWN** (a) The information was on the plans throughout. The Aug 27 finding of insufficient information was wrong when made; the Oct 6 re-assertion was wrong again. (b) "Densely packed with information … in small font" attributes the City's review failure to the drawings. Nothing in §65913.4 conditions the substantial-evidence test on font size. (c) Directly supports the Item 25 thesis.	**Blame-shifted concession —** the City withdraws the finding while explaining the error as a property of the drawings — "densely packed," "small font" — rather than of the review. **"For the first time" framing —** the plan sheets were always in the submittal; presenting them as newly pointed out converts a nine-month City error into a recent applicant disclosure. **Good-faith assertion adjacent to admitted error —** "The City acted in good faith" sits in the same paragraph as the withdrawal.	**RESOLVED —**
15	**City document quoted:** "The cover page notes that all spaces are 9 by 19 feet, the application does not contain information to determine where all parking spaces (sic)" **Our response:** "Parking is shown on the parking sheet A.0.3 and is clearly shown as 19' x 9'"	Reproduces both columns verbatim. Response: Aug 27 cited SRMC 14.18.100. From Sept 6, 2025 plans: A.0.3 labels spaces 14 and 30 with 19' and 9'; "Parking space 33 appears nonexistent. Parking space 34 appears to be labeled as only 8'7" wide. No other parking spaces are labelled with dimensions." Closes: "without dimensional information about other spaces, it appears possible that other spaces are, too."	We rely on the cover-page typical-dimension convention. The City requires per-space dimensioning without saying so.	**WRONG PLAN SET** **SPECULATION AS BASIS FOR FINDING** (a) Sept 6, 2025 plans against an Aug 27, 2025 determination. (b) "It appears possible that other spaces are, too" is speculation offered as the basis for a statutory inconsistency finding — the inverse of the (c)(3) test. (c) A typical-dimension note plus a scaled plan is ordinary architectural convention and is substantial evidence. (d) Space 34 at 8'7" is the one concrete verifiable objection in the row — and is not what the conclusion rests on.	**Speculation as finding —** "it appears possible that other spaces are, too" — a hypothesis about undimensioned spaces — carries the conclusion. **Convention disregarded without explanation —** the cover-page typical dimension is treated as absent rather than as evidence, with no reason given. **Strongest point left unused —** the one measurable objection (space 34 at 8'7") is stated but not relied on, so the finding survives even if that space is corrected.	**NEARLY.** "Label each space" is implicit but never stated as an instruction.
16	**City document quoted:** "Lighting for parking areas must be mounted at maximum of 15 feet" **Our response:** "A.0.3 Parking & circulation plan. The plans state 'Parking lighting is mounted at 14' from floor'"	Reproduces both columns verbatim. Response: Aug 27 cited Hillside Design Guidelines §IV.A9. From Sept 6, 2025 plans, three notations — Parking 1 "3' from floor"; Parking 3 "14' from floor"; Parking 4 "Parking at 14' from floor" — and no information for Parking 2 or 5. On Oct 1 p.41: "'15 feet' is uniformly verifiable by reference to an external criterion (e.g., a tape measure), and is a quintessential example of objectivity." Oct 6 re-assertion.	The City's own recitation confirms the compliant notations we cited, and narrows the objection to Parking 2 and 5 — without ever saying the balance is resolved.	**WRONG PLAN SET — BUT A GENUINE GAP** (a) Sept 6, 2025 plans against an Aug 27, 2025 determination. (b) This is a real, specific, curable gap and is the model of what §(h)(6)(E)(iv)(II) requires — yet it is buried in narrative rather than stated as an instruction, and the row still ends in a global inconsistency finding. (c) The tape-measure point answers a question about the number 15 while our objection concerns the	**Silent partial concession —** three of five parking areas are confirmed compliant in the City's own recitation; the conclusion does not reflect it. **Partial-text objectivity —** the City defends the objectivity of "15 feet," which was never in dispute, rather than the enforceability of a Guidelines provision, which was. **Instruction buried in narrative —** the one genuinely curable item in the table is stated as a criticism rather than as a step.	**CLOSEST IN THE TABLE —**

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
				enforceability of a Guidelines provision.		
Sending documentation that misrepresents city municipal code						
17	**City document quoted:** "Side yard setback to be 10 feet and front yard setback to be 20 feet." **Our response:** "In fact municipal code defines the yard requirement as the average on the block. (14.04.030)"	Reproduces both columns verbatim. Response: Aug 27 recited R10 minimums against proposed setbacks; Sept 6 plans did not revise them; Oct 1 p.15 cited the footnote exception. Then: "Applicant's reading of Footnote D (and Footnote A) assumes that the required setback is the lesser of 10 (side) / 20 (front) feet and the average setback on the block. However, the City interprets the code to require a setback of the greater of 10 (side) / 20 (front) feet and the average setback on the block."	The dispute is squarely joined — lesser vs greater — but the City supplies no textual analysis, no history, and no instance of prior application of its reading.	**BARE ASSERTION OF INTERPRETIVE PREFERENCE** Where the same footnote yields two opposed readings and the City's is announced for the first time in a response letter, the standard is not "available and knowable by both the development applicant … and the public official before submittal" — the City's own §65913.4(a)(5) test. The City never states the block-average figure. On its own reading the operative number has still not been disclosed.	**Interpretation by assertion —** "the City interprets" is offered in place of textual analysis, and the reading that resolves against the applicant is adopted without support. **Framing the applicant as assuming —** our reading is described as an assumption; the City's equally unsupported reading is described as interpretation. **Operative figure withheld —** even on the City's own reading, the block-average number governing the design is never computed or disclosed, so the standard cannot be met.	**NO.** The applicant cannot design to a number the City has neither computed nor published.
18	**City document quoted:** "Hillside Design Guidelines state Fences and walls over 3 feet in height that face public streets SHOULD (not shall)" **Our response:** "Definitions in Hillside guidelines – SHOULD (not shall) and where SHOULD is used it states are not mandatory. City rewrites this code in its consistency analysis stating the word is 'requires'. City misstates its own code"	**Merges our column-2 and column-3 text into column 2 and leaves the "Challenged Conduct Letter states" column EMPTY.** Response: Aug 27 cited Guidelines §IV.A7. Oct 1 argued the "Architectural Character" heading made it subjective; City replies "3 feet" and "5 feet" are objective. Then: "The Challenged Conduct Letter claims for the first time that this standard is not applicable … Applicant appears to incorrectly conflate the meaning of the word 'mandatory' with the meaning of the word 'objective.' … the specified standard is a baseline that, if provided, would satisfy the requirement; however, the City could exercise discretion to allow for a deviation from this baseline. Nevertheless, the baseline is still mandatory if no discretionary deviation is permitted."	**Our response column is blank in the City's table.** A reader of the City's document cannot see what we argued. The City then restates our argument in its own words and answers the restatement.	**BLANK RESPONSE COLUMN — STRUCTURALLY THE MOST MISLEADING ROW** (a) "For the first time" is refuted by the City's own row, which records the Oct 1, 2025 letter raising the Guidelines' status. (b) The construction defeats its own purpose: the City concedes it "could exercise discretion to allow for a deviation." A standard subject to City discretion is not objective under §65913.4(a)(5). (c) "The baseline is still mandatory if no discretionary deviation is permitted" is circular: whether a deviation is permitted is itself the discretionary act. (d) The actual allegation — that the City rewrote "should" as "requires" — is never addressed.	**Erased response column —** our argument is deleted from the column reserved for it and the City's paraphrase stands in its place. The reader sees only the version the City chose to answer. **Strawman substitution —** the charge that the City rewrote "should" as "requires" is replaced with a charge that we confused "mandatory" with "objective," and the substitute is refuted instead. **Self-defeating concession buried —** "the City could exercise discretion to allow for a deviation" concedes non-objectivity and is placed mid-sentence, followed by "Nevertheless." **Partial-text objectivity —** defends the numerals "3 feet" and "5 feet" while the disputed word is "should."	**NO.**
19	**City document quoted:** "Res 14890: The affordable housing units shall possess a distribution of bedroom counts proportionate to that of the market-rate units within the residential development project" and "The affordable housing units shall have access to the same amenities and	Reproduces both columns. **Response sets out the actual text of Resolution 14890 §C in full — which does NOT contain either sentence the Aug 27 letter presented in quotation marks.** The City bolds source phrases: the "Type" requirement is derived from "The affordable housing units shall be of	**The City effectively confirms our factual allegation while calling it baseless.** By reproducing the actual resolution text, it demonstrates that the language quoted in the Aug	**STRONGEST ROW FOR THE APPLICANT** (a) The Aug 27 letter presented paraphrase as quotation, in quotation marks, with a pin cite ("Section C(1) of Resolution 14890"). The City's own reproduction establishes the point we made. (b) The "Access" requirement is derived from a sentence whose	**Quotation marks around paraphrase —** language the City wrote was presented in the Aug 27 letter as the text of Resolution 14890, with a pin cite. The response reproduces the real text and thereby proves the charge while denying it. **Selective severance of a disjunctive —** "The same or substantially similar" offers two alternatives; the City	**NO.** Does not state what bedroom mix would satisfy it, or whether an amenity-access covenant would.

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
	common spaces as the market rate units" **Our response:** "This code does not exist. The code in fact states 'Compatibility with the…amenities…of the other developed units'. The city rewrote this code specifically for the consistency notice on the fly to make it objective. Compatible is non-objective. But the code simply doesn't exist. There are many examples of the city making up the code for the consistency letter of October 2025."	a similar mix and type … 1. The same or substantially similar mix of unit size"; the "Access" requirement from "2. Compatibility with the design, materials, amenities, and appearance of the other developed units." Argues: "The word 'the same' is objective, even if 'similar' is not … The 'similar' phrase is an exception to the baseline rule." From Sept 6 plans: 13 market-rate units average 3.85 bedrooms, affordable unit has 2. Closes: our claim "is baseless and warrants no further response." Cites the Oct 1, 2025 letter as "(October 6, 2025 Inconsistency Determination, p. 51.)"	27 letter is not in Resolution 14890.	operative word is "Compatibility." The City converts a compatibility criterion into an access-to-amenities mandate. (c) "The word 'the same' is objective … The 'similar' phrase is an exception" reverses the sentence's grammar. "The same or substantially similar" offers alternatives on its face. **CITATION ERROR** (d) The Oct 1, 2025 letter is cited to the October 6, 2025 Inconsistency Determination, p. 51. (e) "Warrants no further response" is not a permissible disposition under §(h)(6)(E)(iii).	declares the objective half a "baseline" and the subjective half an "exception," enforcing only the half it can measure. **Derivation displayed as authority —** bolding phrases inside a longer sentence is presented as showing where the standard "comes from," which makes reconstruction look like citation. **Refusal to engage —** "baseless and warrants no further response" closes the item rather than answering it.	
Asking for documents that have already been provided						
20	**City document quoted:** "Geotechnical report is required" **Our response:** "Geotechnical report has been provided"	Reproduces both columns verbatim. Response: the Oct 6, 2025 letter contained a "Courtesy Comments" section stating "the following comments do not address consistency with applicable standards"; Courtesy Comment #2 noted a geotechnical report would be required. "The City has never claimed that the Project's application could not be deemed complete or consistent … without the submission of a geotechnical report … The City has not caused any delay or increased cost by providing this courtesy comment."	We said the report	**NON-RESPONSIVE TO THE ALLEGATION** The category is "asking for documents that have already been provided." The City answers about the consequence of the request, not the fact of duplication. If the report was already on file, the courtesy comment was inaccurate regardless of whether it bound the applicant.	**Reclassification to strip effect —** the demand is retitled a "courtesy comment," which converts an act into a favors and removes it from review — while it sits inside a statutory inconsistency determination. **Substituted question —** we said it was already provided; the City answers whether it was required.	N/A
Demanding documents that are CEQA reports						
21	**City document quoted:** "A Transportation Analysis report is required per city Guidelines. Page 1 of these Guidelines describe the report as producing an outcome 'that include[s] conditions of approval and/or mitigation measures under CEQA'" **Our response:** "Requiring this report is prohibited under SB 35."	Reproduces both columns verbatim. Response: same courtesy-comment framing (Courtesy Comment #3). Then: "the Challenged Conduct Letter also claims that a transportation analysis cannot be required for an SB 35 project. As explained above, the Project does not qualify for processing under SB 35."	No transcription difference. Two-step disposal: first "it was only a courtesy," then "and anyway SB 35 does not apply."	**TWO-STEP DISPOSAL** Our specific point — that the City's own Guidelines describe the report as producing CEQA conditions and mitigation, and that §65913.4 exempts qualifying projects from CEQA — is not addressed on its terms. A "courtesy comment" placed inside a statutory (c)(1) determination is not obviously severable from it. The City does not explain how an applicant is to tell which comments carry legal consequence.	**Alternative-holdings stacking —** two independent disposals are offered — it was only a courtesy, and SB 35 doesn't apply — so that refuting either leaves the item closed. Neither is defended in depth. **Reclassification to strip effect —** the "courtesy" label again removes a demand from review without removing it from the determination.	**NO.**
Claiming — directly and indirectly — that the housing development project did not vest on May 15, 2023; and making written statements that adopt, repeat, flow from, or attempt to give effect to that erroneous position						

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
22	**Our citation:** §65913.4(d)(1) — review "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction"	**Column 2 reproduced; the "Challenged Conduct Letter states" column is left EMPTY.** Response: recites the dual SB 330 / SB 35 character of the May 15, 2023 preliminary application. Then: "For SB 35 projects, the standard 180-day deadline does not apply; rather, an SB 35 application is subject only to the objective … standards in effect at the time that an SB 35 notice of intent is submitted …" Explains Aug 27 footnote 1 concluded no vesting on May 15, 2023, and that "The intent of footnote 1 was to indicate, given that the Project did not qualify for processing under SB 35, that if the Project were processed as a standard SB 330 application, the Project would not have vested." Says it identified the March 2024 ODS inconsistencies "as a courtesy … in case Applicant elected to proceed under SB 330."	The City concedes the governing rule we asserted, then makes it wholly conditional on its own eligibility determination.	**RULE CONCEDED, THEN CONDITIONED** (a) The City states the correct rule — vesting at notice of intent, no 180-day limit for SB 35. (b) The vesting question is then made to turn on the multifamily determination, which the City makes unilaterally and which is the subject of the pending federal action. (c) The "courtesy" characterization does not match the operative documents. The March 2024 ODS inconsistencies were listed	**Concede the rule, own the trigger —** the City states our legal rule correctly and then makes its application depend entirely on a determination the City itself controls. The concession costs nothing. **Retrospective intent —** footnote 1 is re-explained as having always meant something conditional and hypothetical, a reading not apparent from the footnote. **Reclassification to strip effect —** findings that were counted, re-asserted and relied on in two denials are retitled a "courtesy."	**NO.**
Ignoring Gov. Code §65905.5(c)(1); issuing inconsistency letters under §65913.4(c)(1)(A) & (C) without first approving density bonus and waivers; alleging inconsistency of items resolved by a bonus and waivers that the City is improperly delaying						
23	**Our statement:** "City raises multiple items (see above) that are subject to the applying of density bonus and waivers and thus its (c)(1) letter in those regards is invalid and not issued consistent with State law." With the full text of §65905.5(c)(1) quoted.	Column reproduced. **Entire response: "See Item 24 below."**	No response given.	**DEFERRED → DEAD END** Item 24 responds only "See Section I.C of the Response to Challenged Conduct Letter" — and the Response letter contains no Section I.C. Its sections are I (Introduction), II (Background), III (with A and B) and IV (Conclusion). Substantively: our allegation is that the (c)(1) letters were invalid	**Deferral chain to nowhere —** Item 23 points to Item 24; Item 24 points to a section that does not exist. The document appears to answer twice and answers not at all. **Apparent completeness —** every row carries a response cell, so the table reads as fully answered; only tracing the references reveals the gap.	**NO.**
24	**City document quoted:** "Example: The General Plan limits height on the site to 30 feet tall. All primary dwellings exceed 30 feet in height." **Our response:** "The applicant had applied for a waiver of this standard, but the city is unreasonably and with no valid reason delaying the issuance of the waiver. The development is entitled to a bonus & waivers under State law."	**Column 2 reproduced. Our response column is EMPTY — the waiver-delay allegation was moved into Item 23's column and does not appear against Item 24.** **Entire response: "See Section I.C of the Response to Challenged Conduct Letter."**	The specific allegation — unreasonable delay in acting on a requested waiver — receives no response anywhere in the table.	**BLANK COLUMN + DEFERRAL + DANGLING CROSS-REFERENCE** Section III.A.3 states the City "did not request that Applicant revise the development application for those items in which applicant sought to utilize SDBL waivers," and that Aug 27 acknowledged 10 waiver requests and Oct 6 acknowledged 5. It nowhere states when, or whether, any waiver was granted or denied. The Project was denied on Dec 3, 2025 with the waivers unacted on.	**Allegation relocation —** our waiver-delay charge is moved out of the row it belongs to and into a neighboring row, then answered in neither. Both rows appear populated. **Cross-reference to unwritten authority —** the only response is a pointer to a section that does not exist. **Silence on the operative fact —** the letter never states whether any waiver was ever decided — the single question the row raises.	**NO.**

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
Stating that "the applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard" when the applicant has submitted plans providing substantial evidence						
25	**City document quoted:** "Repeated continually throughout the purported 'inconsistency' letter" **Our response:** Quotes §65913.4(f)(1) and §65913.4(c)(3) — "The local government shall not determine that a development … is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains substantial evidence …" — and states the submittal contained such evidence.	Reproduces both columns. Response: "The Challenged Conduct Letter claims, in a blanket statement, that the Project application contains substantial evidence … However, the challenged conduct letter does not cite any portion of the application that would allow a reasonable person to make such finding." Then: "As explained in the City's responses to Items 2, 4, 7, 8, 12, 13, 15, 16, 18, and 19 above, the application lacks enough information …" and "invited Applicant to either submit additional information … or point to where in the application such information is available, in case the City inadvertently missed something (such as in Items 1, 10, and 14 above) … Applicant has largely declined … In this regard, Applicant is solely responsible for any delay."	We cite the statute. The City answers with a burden allocation the statute does not contain.	**CONCEDES THE NOTICE'S CENTRAL THESIS** (a) The City itself enumerates ten items resolved on an "insufficient information" basis — the precise practice §65913.4(c)(3) forbids. (b) "Does not cite any portion of the application" is inaccurate on the face of our Exhibit A, which cites sheets throughout: A.0.5 (Item 8); A.0.3 (Items 12, 15, 16); A2.2–A3.4 (Item 13); A.0.2, A.0.3, A.0.8 (Item 14). The City acted on those very citations at Item 14. (c) The City's own parenthetical — "in case the City inadvertently missed something (such as in Items 1, 10, and 14 above)" — is an admission that it did miss things, three times. (d) "Applicant is solely responsible for any delay" is not sustainable alongside three withdrawn findings.	**Burden inversion —** the statute forbids finding conflict where substantial evidence exists; the response asks the applicant to prove consistency and treats failure to re-cite as concession. **"Blanket statement" characterization —** our sheet-specific citations are recast as an unsupported generality, a claim refuted by our own Exhibit A and by the City's action on those very citations at Item 14. **Admission folded into a parenthesis —** the concession that the City missed material three times is placed inside a subordinate clause within a sentence blaming the applicant. **Fault transfer —** "Applicant is solely responsible for any delay" closes the item, immediately after listing ten items the City could not resolve and three it got wrong.	**NO.** This is where instructions belonged. None are given.
Representing that the City can end the processing of an SB 35 project by issuing a denial letter; representing that an applicant cannot resubmit and have processing continued						
26	**Our statement:** Quotes §65913.4(a)(1), (c)(1) and (c)(1)(C) — written documentation "within 30 days of submittal of any development proposal that was resubmitted to address written feedback provided by the local government pursuant to this paragraph" — and argues the Statute provides "the absolute right to resubmit the application," failing which a city could require an applicant to "start at the back of the line again each time the city raised an issue," with loss of vesting.	Column 2 reproduced. Response recites the multifamily premise, then cites our own November 8, 2025 meeting notes p.5: "I [applicant] informed [the City] that I was aware of those [alternative to SB 35] processes, and did not plan to resubmit under those processes." Concludes: "Applicant definitively indicated they will not revise the project to qualify for SB 35 … The City is unaware of, and Applicant has not cited, any law that requires cities to approve or continue processing housing development applications in such circumstances." Letter body adds: "Applicant seems to suggest an SB 35 application can never be denied."	**A different proposition is substituted for ours.** Our contention is a right to resubmit	**QUOTATION USED FOR A PROPOSITION IT DOES NOT SUPPORT** (a) The quoted note, on the City's own rendering, concerns "those [alternative to SB 35] processes." It is not a statement that the applicant would not resubmit under SB 35. (b) §65913.4(c)(1)(C) expressly contemplates resubmittal to address written feedback and starts a new 30-day clock. The City does not address that subdivision anywhere. (c) The March 20, 2026 submittal was met with a completeness rejection on portal grounds — not a (c)(1)(C) response. (d) The reductio in the letter body is a straw man.	**Quotation carrying a proposition it does not support —** a statement about alternative pathways is deployed to prove refusal to revise under SB 35. The City's own bracketed insertion — "[alternative to SB 35]" — shows the scope it then ignores. **Straw man reductio —** "an SB 35 application can never be denied" is not our position; refuting it substitutes for answering (c)(1)(C). **Silence on the controlling provision —** the subdivision that creates the resubmittal right and its 30-day clock is quoted in our column and never addressed in the City's. **Burden of citation reversed —** "Applicant has not cited any law" is said of a provision quoted verbatim in the adjacent cell.	**NO —**
Needlessly raising the cost of obtaining approvals						

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
27	**Our statement:** "The city continually raises subjects in writing that do not conform to State law (see this notice), and that often stop processing of this streamlined ministerial application, & that lead to the applicant engaging in extensive unnecessary work, and work that is not required by state law"	Column reproduced. Response: "This comment appears to summarize Applicant's view of the overall result of the claims Applicant makes in the items above … each the City's actions with which Applicant takes issue conform to state law … Any additional expense that Applicant incurs related to these decisions are completely within Applicant's control."	No transcription difference. Wholly derivative.	**DERIVATIVE** Sits uneasily with the three findings the City withdraws at Items 1, 10 and 14 — each of which generated correspondence and analysis, and none of which the applicant caused.	**Aggregation and dismissal —** the item is recast as a mere summary of other items and disposed of by reference to their disposal. **Fault transfer —** cost is attributed entirely to the applicant's choices, in a document that withdraws three of the City's own findings.	**NO.**
Failing to follow the processes outlined in Gov. Code §65913.4 as described in the case law, including 40 Main Street Offices LLC v. City of Los Altos						
28	**Our statement:** "See attached excerpts from Order Granting Consolidated Petitions for Writ of Mandate, 40 Main Street Offices, LLC v. City of Los Altos, Case No. 19CV349845 (County of Santa Clara, April 24, 2020)." Excerpts attached to the Notice.	**Column 2 reproduced; response column EMPTY.** Response: "the Project does not qualify for processing under SB 35, so the cited case is not applicable." Then distinguishes: in 40 Main Street the city did not cite the standards it applied, whereas "both the August 27, 2025 inconsistency determination and the October 6, 2025 determination specify (with citation) which standards the City is applying," and both "state the standard that applies, the specifications the project proposes, and the reason that the proposed project does not comply."	The attempted distinction is contradicted by the City's own table.	**DISTINCTION REFUTED BY THE CITY'S OWN DOCUMENT** (a) 40 Main Street holds that "adequate" ingress/egress is not an objective standard. The City concedes exactly that at Item 1. (b) 40 Main Street also holds the determination must explain (c) The claim that each determination states "the reason that the proposed project does not comply" is inaccurate as to the ten items the City itself lists at Item 25.	**Distinction on the holding the City fails —** the case is distinguished on citation of standards, while its other holdings — that "adequate" is subjective, and that the reason for conflict must be explained — are the ones the City's own responses violate. **Alternative-holdings stacking —** "not applicable" plus "and in any event we complied," neither developed. **Assertion contradicted internally —** the claim that every determination states the reason for non-compliance is refuted by the ten-item list at Item 25.	N/A
Delaying approval of housing in the residential zones in favor of development more acceptable to residents in the downtown/commercial districts; following a policy of denying housing on the improper basis that residential lots have or may have circulation, access, and slope issues						
29	**City statement quoted:** City advised applicant that "there are issues with these lots." **Our response:** "Housing of all types, including housing with yards, and in all parts of San Rafael, is supported by Affirmatively Furthering Fair Housing requirements and Federal Fair Housing law, No Net Loss law, Housing Crisis Act, Housing Element Law"	Reproduces both columns verbatim. Response: "claims, without citation or further explanation … The City is unaware of having made such statement and has not identified such quotation in any of the documents related to the processing of the Project. To the extent that the quoted phrase represents Applicant's own paraphrasing, the August 27, 2025 and October 6, 2025 inconsistency determinations identify 'issues with the lots' …" Then: "This comment appears to acknowledge the City's recent housing-related successes …"; Downtown Precise Plan; approximately 2,554 units; "All of these developments provide the amount of outdoor space (i.e., yards) that is legally required."	The City denies the statement and then supplies the same meaning itself. **It also reads our allegation of siting bias as praise.**	**NON-DENIAL DENIAL + INVERTED READING** (a) The denial is immediately followed by a re-characterization carrying the identical meaning. The City searched only "documents related to the processing of the Project"; the allegation concerns an oral statement. (b) "This comment appears to acknowledge the City's recent housing-related successes" inverts the plain sense of our text. (c) The AFFH response is a volume statistic. AFFH is a distributional obligation. (d) "All of these developments provide the amount of outdoor space (i.e., yards) that is legally required" answers	**Non-denial denial —** "unaware of having made such statement," with the search confined to written processing documents, followed by a paragraph supplying the same meaning. **Inverted reading —** an allegation of siting bias is recast as acknowledgment of the City's "housing-related successes," converting an accusation into a compliment that requires no answer. **Volume statistic for a legal test —** 2,554 units and a downtown plan are offered against AFFH, which asks about distribution, not totals. **Restating the minimum as the answer —** the "housing with yards" point is met by confirming that developments provide the outdoor space "legally required."	N/A

Item	1. What our April 2, 2026 §65589.5(h)(6)(E) Notice states	2. What the July 1, 2026 City response states we said / its response	3. Differences between what we said and what he says we said	4. Accuracy analysis — misquote, wrong record, or non-response?	5. Method used — the technique by which the response is made to look compliant	6. Lawful way forward given? §(h)(6)(E)(iv)(II)
				our "housing with yards" point by restating the legal minimum.		

Part 4 — What kind of document this is

A litigation brief in the form of statutory findings

The letter states that it "serves as the written findings pursuant to Government Code section 65589.5(h)(6)(E)(iv)" while simultaneously denying that any duty to respond exists: "As it is clear that the City took final administrative action, the Housing Accountability Act ('HAA') does not require the City to issue a response to the Challenged Conduct Letter. Nevertheless, the City is providing this response in an abundance of caution and as a courtesy." These are findings in the alternative — claimed for their protective effect while the obligation to make them is disclaimed.

The organizing principle is defense of past acts, not direction of future ones. Section III is headed "THE CITY DID NOT ENGAGE IN A COURSE OF CONDUCT UNDERTAKEN FOR AN IMPROPER PURPOSE." Of eleven pages, the section addressing what the applicant should now do occupies a single short paragraph. Attachment A is organized as a rebuttal of each of our allegations rather than as a resolution of each of the underlying obstacles.

Indicators of drafting and authorship

The document is signed by Micah Hinkle, but the internal evidence does not support attributing the analytical table to him, and it does not identify any other individual with confidence. What it does show:

• The letter body and Attachment A carry **different document control numbers at different revision counts** — 4931-3404-4597 v7 and 4908-8412-7925 v4. They were drafted as separate documents and **never reconciled**.

• The 25 dangling "Section I.A / I.B / I.C" references map cleanly onto III.A.1, III.A.2 and III.A.3, indicating the attachment was written against an earlier draft and the body renumbered without the attachment being updated.

• The PDF records the author as Christina Ratcliffe, produced through Acrobat Sign and created June 30, 2026 — the day before the letter date. This field commonly records whoever assembled the file rather than the drafter.

• The body carries unedited artifacts: an orphan sentence fragment ("…inconsistency determinations. the comments Applicant provided in Exhibit A to the Challenged Conduct Letter."); "in good faith an in accordance"; "incomplete.."; "Attachment 1" in the body against "Attachment A" everywhere else; "California Defense Fund ('HDF')" later becoming CalHDF; "appliable" twice.

The likely explanation is a hybrid document: planning staff supplied the sheet-level observations — no law office writes "Parking space 33 appears nonexistent" or "Space 34 appears to be labeled as only 8'7" wide" — and counsel supplied the legal framing and the disposal premises. That division also accounts for the plan-set problem in Part 2, finding 1: whoever compiled the sheet references worked from the most recent set to hand rather than the legally operative one.

What §65589.5(h)(6)(E)(iv) required, and what was delivered

The provision is conjunctive. Absent a written statement that the City will immediately cease the challenged conduct, it must issue findings doing *both* of the following: (I) articulate an objective basis for why the challenged course of conduct is necessary, and (II) give clear instructions on what the applicant must submit or supplement so the agency can make a final determination on the next necessary approval, or set the date and time of the next hearing.

No statement of cessation is given. On (I), the basis offered is that the determination "was necessary because such determination was required by State law." That is an assertion of legal compulsion, not an objective basis, and it is undercut by the City's own withdrawals at Items 1, 10 and 14.

On (II), the entirety of the instruction is that the applicant "would need to submit a new and complete housing development application via eTrakit" or resubmit the Revised Project through the portal, and that the City "believes there may be multiple pathways" and would evaluate consistency "pursuant to SB 9, SB 684 or other laws, or by submitting a project application that meets the requirements for streamlined ministerial processing of SB 35." That text does not identify which inconsistencies must be cured or how; does not state what would make the project "multifamily" in the City's view —what constitutes attachment; does not state the block-average setback figure it says governs (Item 17); does not state what height documentation it wants (Item 13); does not set any date or time for a meeting nor offer a meeting; and conditions everything on a portal formality that appears nowhere in §65913.4 and which the City bypassed itself when it conducted a "courtesy completeness review" of the March 20, 2026 submittal.

Across all twenty-nine rows the only near-instructions are the lighting notes at Parking 2 and 5 (Item 16) and per-space parking dimensions (Item 15). Neither is stated as an instruction, and neither is identified as sufficient to resolve the item, though the submitted application document do resolve the item.

The through-line is circularity. The remedy the statute contemplates is that the City cease the conduct and open a path. The response instead treats its own denial as having removed the need for either — conceded errors become "moot," the request for a way forward is met with *an invitation to abandon the vested application and begin again under a different statute*, and the refusal to accept and process a resubmittal, which is the conduct at the center of the April 2 Notice, is confirmed rather than cured.

Errors & Omissions Excepted. August 7, 2026

14 City October 6 2025 ‘consistency letter’ compared to the standards that are in fact allowable

Analysis of City of San Rafael October 6, 2025 SB 35 Consistency Determination (Revised)

Against the Ten-Type Non-Objective Standards Classification Table (HAA / SB 35 – Gov. Code §§ 65589.5, 65913.4, 65915; CARLA v. San Mateo; Ruegg & Ellsworth v. Berkeley (2021) 63 Cal.App.5th 277; CA Attorney General Elk Grove Letter, Mar. 16, 2023; 40 Main St. Offices v. Los Altos) – incorporating: (i) state-law deemed-satisfied notes on every information-request finding; (ii) SRMC § 14.12.040 an overriding City Council exception power over all Chapter 14.12 hillside standards; and (iii) NAF ("not applied for") analysis for fences, sub-2,500 sf landscaping, and all Title 15 subdivision standards.

Project: 14-unit multifamily housing development project, 253–281 Coleman Drive / Fair Drive, APNs 011-031-44 through -49 (six-lot, 1.4-acre common project site), PLAN23-067 / PA23-007. Letter: City of San Rafael (M. Kavanaugh-Lynch, Planning Manager) to River Landon LLC, October 6, 2025, responding to September 6, 2025 SB 35 settlement project submittal. Despite San Rafael's desire to 'analyze' each standard, the Development(s) are subject to the Builders Remedy making local General Plan and zoning code legally inapplicable. Government Code section 65589.5 provides deemed compliance with specified objective zoning, subdivision, and design-review standards. 'Attachment 1' references the city attachment to its letter. The standards the city attempt to enforce are inapplicable. Yet –the city attempts to enforce them and documents that the development does not comply as a result of it, and purports to deny the development December 3, 2025 based on those application of those impermissible standards and further purports to terminate the application.

Table A – Standard-by-Standard Classification Analysis

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
ATTACHMENT 1 – PLANNING DIVISION: SB 35 Eligibility, General Plan, and Zoning Code (Tables 1.1–1.2)						
1. SB 35 eligibility – "multifamily housing development" (Gov. Code § 65913.4(a)(1); SRMC § 14.03.030)	Type 4 – No longstanding consistent interpretation; city demands deference; Type 5 – Argument over interpretation / ambiguity	SRMC § 14.03.030 ("Residential, multifamily"): "medium and high density residential development [. . .] containing three (3) or more attached dwelling units in one (1) or more structures located on a single parcel or common lot." The City substitutes its own local zoning definition for the State statutory term in Gov. Code § 65913.4(a)(1) and demands deference to that unique local reading.	N	N/A	Y	Eligibility under SB 35 is governed by State law/HCD interpretation, not the SRMC definition; an "objective planning standard" that is subject to c. The city letter also disaggregates a unified 6-lot, 1.4-acre common project site into single-lot analyses (per CARLA, a contested/non-uniform interpretation), and rejected by State Attorney General for Willow Park project.
2. General Plan – Maximum Height (GP p. 3-25)	Type 10 – Waiver/concession requested; standard cannot be applied (Gov. Code 65915(e)(1))	October 6 letter recitation only: "The General Plan limits height on the site to 30 feet tall." No General Plan text is quoted; only a page citation ("General Plan p. 3-25") is given. See Column 7.	N	Y	Partial	A SDBL waiver was requested to exceed height. Under Gov. Code § 65915(e)(1) a city may not apply any development standard that physically precludes the project at the waived level; listing it as an "inconsistency" after the waiver request is improper (40 Main St. Offices v. Los Altos).
3. General Plan – Parking & Driveways screening (Policy CDP-4.9)	Type 2 – Personal interpretation / subjective judgment	October 6 letter recitation only: "Parking is required to be screened from the street by landscaping." Whether landscaping adequately "screens" parking requires aesthetic judgment that varies from one reviewer to the next (CARLA v. San Mateo).	N	N/A	Partial	CDP-4.9 is a General Plan policy, not a codified objective development standard; adequacy of "screening" is inherently subjective. No GP text quoted.
4. City referenced Single-Family District purpose / land use (SRMC §§ 14.04.010.H, 14.04.020; def. § 14.03.030)	Type 9 – May only be applied to facilitate GP density / RHNA; Type 5 – Argument over interpretation / ambiguity	City referenced SRMC § 14.03.030 ("Residential, single-family"): "low density residential development containing one (1) primary residential 'dwelling unit' for use by a single household on a single parcel." Applied as a use/density restriction to bar additional units, and bar River Landon's development. This is a multifamily development.	N	N/A	Y	City applies single-family density at the parcel level (& zoning) rules for this *multifamily* development in the *single family zones on a project site*. **Remarkably**, it ***also*** attempts to apply its – mutually exclusive to its single-family zoning rules (not specifically General Plan rules) – medium and high density rules to this development which by the city's own zoning code are not applicable to the low density residential zone (requiring 3 units per lot). See Item 1. Contradictory, conflictive, inapplicable **and, 'double applied'** standards in the same 'consistency determination'. By the writing, it blocks SB 35 multifamily development, in these single family zones i.e. our multifamily development. Both analyses are invalid. The city has its cake and eats it – or it certainly tries.

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
						The development complies with GP density, plus SDBL bonus units, per law. SB 35 provides for multifamily developments in any residential zone on a project site. There was never a need to go further than that. Except if you wish to create confusion – which is the city's purpose - and which confusion is time consuming to unravel. Known in the industry as 'the confusion veto'. This is exactly the harassment per HAA that the H(6) notice is designed to STOP. But the city simply continued. Why do we have the highest housing cost in the nation, & the lowest home ownership rate in the nation? Under Gov. Code § 65589.5(f)(1)/(j)(4) standards may be enforced only "to facilitate and accommodate development at the density permitted"; enforcing the one-unit-per-parcel use restriction to prevent density on a 6-lot common site repeats the Elk Grove & Menlo Park violation – in Menlo Park Nira Doherty oversaw a city rework of the project site such that the project did not comply, and then purported to the applicant that as a result the project did not comply. "Specific purposes" sections are not development standards.
5. Setbacks (SRMC § 14.04.030 – Property development standards (R))	Type 10 – Waiver/concession requested; standard cannot be applied (Gov. Code 65915(e)(1))	October 6 letter recitation: R10 requires 10-ft side, 10-ft rear, 20-ft front setbacks (numeric standards recited in letter; code table itself not quoted).	N	Y	Partial	A SDBL waiver was expressly requested for front, side and rear setbacks; per Gov. Code § 65915(e)(1) the standard cannot then be applied to find inconsistency.
6. Height (SRMC § 14.04.030; "Height, hillside" def. § 14.03.030)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days; Type 10 – Waiver/concession requested; standard cannot be applied (Gov. Code 65915(e)(1))	SRMC § 14.03.030: "'Height, hillside' means the height of all structures, fences and walls measured vertically from the existing (e.g., natural) grade to the uppermost point of the roof edge, wall parapet, mansard *or other feature* above the existing grade at any given point." City finding: "The Applicant has not submitted sufficient information to enable the City to analyze this standard."	N	Y	Y	A height waiver was also requested (Type 10), independently barring application of the standard. Height is subject to measurement to 'other feature' which is undefined and not objective. Height in the hillside area is also subject to global override by a body. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
7. Maximum Lot Coverage (SRMC § 14.04.030)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No code text or numeric coverage limit is recited anywhere in the letter. City finding: "The plan set pages that attempt to illustrate lot coverage do not show the lot lines themselves, therefore staff is not able to confirm the summary calculations provided." In fact, the development application is for the project site.	N	Y	N	The applicable coverage percentage is never even stated, so no "careful explanation" of any conflict exists (Ruegg & Ellsworth). City pivots to an analysis of each individual lot, when it is the project site that must be analyzed – as a part of that it picks a sheet where the lot lines are not shown. Then it pivots to the data not being available – of course it wouldn't be (because this is a project site consisting of multiple individual lots) This is a similar strategy to that used by legal adviser to this project Nira Doherty for Menlo Park project – pick a 'view' of the project that helps the city state that the development doesn't comply (and doesn't have to comply), pick whichever inapplicable one doesn't work, and document that, causing momentary confusion possibly, &, which the State AG categorically rejected in Menlo Park in July 2026 to Nira Doherty as a violation of the Housing Accountability Act. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
8. Accessory Dwelling Units (SRMC § 14.16.285(E)(2); Gov. Code § 66323(a)(2))	None of Types 1–10 as written (objective numeric limit) – but misapplied on the facts	"No more than one detached new construction ADU is permitted on lots with an existing or proposed single-family dwelling (see Gov. Code, § 66323, subd. (a)(2) and San Rafael Municipal Code § 14.16.285(E)(2).)"	N	N/A	Y	Internally contradictory: the city letter's own lot-by-lot project description states Lot 011-031-45 "consists of two detached single family dwellings and a detached accessory dwelling unit" — i.e., ONE detached ADU — yet the finding claims "more than one detached new construction ADU on lot 011-031-45." These are **not** single family dwellings, they are units in this multifamily development. Further, the development proposes ADUs in multifamily development, for which the rules are different. No careful explanation was given. (See off the shelf legal template architecture analysis applied to at least two very different developments, Nira Doherty advising on both projects, in different cities)
9. Building Stepback (SRMC § 14.12.030.A)	Type 1 – Discretion (deviation/approval mechanism); Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful	SRMC § 14.12.030.A.1: stepback of at least 5' required beyond 20' wall heights "unless otherwise determined through the environmental and design review permit process." City finding: "The proposed plans do not specify the required stepbacks … it is undetermined whether this exceeds the allowable 25% threshold."	N	Y	Y	The standard contains its own discretionary deviation mechanism (E&DR process); a stepback waiver was also requested (Type 10). Even if this standard were externally benchmarkable, SRMC § 14.12.040 subjects every Ch. 14.12 property development standard to City Council exception on subjective "demonstrably superior" criteria — overriding discretion that renders the entire chapter non-objective (AG Elk

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
	explanation of conflict within 30/60 days; Type 10 – Waiver/concession requested; standard cannot be applied (Gov. Code 65915(e)(1)); Types 1 & 3 additionally via SRMC § 14.12.040 (City Council may except any Ch. 14.12 standard – relief unavailable to ministerial SB 35 applicant)	PLUS SRMC § 14.12.040 – Exceptions to property development standards (overriding discretion over ALL Chapter 14.12 standards): "City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan…" based on criteria including a "demonstrably superior project with greater sensitivity to the natural setting."				Grove, p. 2: a "mechanism to deviate from the development standards" defeats objectivity). *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
10. Building Setbacks – hillside (SRMC § 14.12.030.B)	Type 1 – Discretion (deviation/approval mechanism); Type 3 – Relief available from City Council, Planning Commission, Design Review, city engineer or other city official in discretionary review but denied to SB 35 (Gov. Code 65913.4(i)(1)); Types 1 & 3 additionally via SRMC § 14.12.040 (City Council may except any Ch. 14.12 standard – relief unavailable to ministerial SB 35 applicant)	SRMC § 14.12.030.B: "Structures may encroach into a required yard or setback for a distance of not more than one-half (½) of the required yard or setback provided that the decrease minimizes the impact of hillside development and grading, subject to approval by the hearing body of an environmental and design review permit." PLUS SRMC § 14.12.040 – Exceptions to property development standards (overriding discretion over ALL Chapter 14.12 standards): "City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan…" based on criteria including a "demonstrably superior project with greater sensitivity to the natural setting."	N	Y	Y	The provision is itself a relief mechanism exercisable only through discretionary hearing-body approval; that relief is practically not available because – again - the project is ministerial. Thus, city imposes a higher standard on the SB 35 application (Gov. Code § 65913.4(i)(1)). Also applied lot-by-lot to a unified 6-lot site. Even if this standard were externally benchmarkable, SRMC § 14.12.040 subjects every Ch. 14.12 property development standard to City Council exception on subjective "demonstrably superior" criteria — overriding discretion that renders the entire chapter non-objective (AG Elk Grove, p. 2: a "mechanism to deviate from the development standards" defeats objectivity). SRMC § 14.12.030.B is subject to approval by the hearing body – it is a non-objective standard.
11. Natural State (SRMC § 14.12.030.C)	Type 1 – Discretion (deviation/approval mechanism); Type 3 – Relief available from City Council, Planning Commission, Design Review, city engineer or other city official in discretionary review but denied to SB 35 (Gov. Code 65913.4(i)(1)); Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful	SRMC § 14.12.030.C: 25% of lot area plus average-slope percentage "must remain in its natural state. This standard may be waived or reduced for lots zoned PD (planned district) or developed with clustered development, subject to approval by the hearing body." City finding: "staff is not able to calculate the lot coverage per lot and therefore not able to ascertain consistency." PLUS SRMC § 14.12.040 – Exceptions to property development standards (overriding discretion over ALL Chapter 14.12 standards): "City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan…" based on criteria	N	Y	Y	The code embeds a hearing-body waiver mechanism (discretion); the finding is expressly an inability-to-calculate information request; and a SDBL waiver of the natural-state standard was requested — triple disqualification from application – yet the city purports to enforce it. Even if this standard were externally benchmarkable, SRMC § 14.12.040 subjects every Ch. 14.12 property development standard to City Council exception on subjective "demonstrably superior" criteria — overriding discretion that renders the entire chapter non-objective (AG Elk Grove, p. 2: a "mechanism to deviate from the development standards" defeats objectivity). *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
	explanation of conflict within 30/60 days; Type 10 – Waiver/concession requested; standard cannot be applied (Gov. Code 65915(e)(1)); Types 1 & 3 additionally via SRMC § 14.12.040 (City Council may except any Ch. 14.12 standard – relief unavailable to ministerial SB 35 applicant)	including a "demonstrably superior project with greater sensitivity to the natural setting."				*information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
12. Parking Requirements (SRMC §§ 14.12.030.F; 14.18.040, Table 14.18.040)	Type 1 – Discretion (deviation/approval mechanism); Type 3 – Relief available from City Council, Planning Commission, Design Review, city engineer or other city official in discretionary review but denied to SB 35 (Gov. Code 65913.4(i)(1)); Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days; Types 1 & 3 additionally via SRMC § 14.12.040 (City Council may except any Ch. 14.12 standard – relief unavailable to ministerial SB 35 applicant)	SRMC § 14.12.030.F: two additional on-site spaces required on streets under 26' — "This requirement may be waived or reduced by the hearing body when deemed appropriate or necessary to reduce the need for excessive grading or tree removal…" City finding: "it is not possible to determine based on the plan set provided if each unit has any covered parking." PLUS SRMC § 14.12.040 – Exceptions to property development standards (overriding discretion over ALL Chapter 14.12 standards): "City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan…" based on criteria including a "demonstrably superior project with greater sensitivity to the natural setting."	N	N/A	Y	Standard carries an express hearing-body waiver ("when deemed appropriate" = discretion). Yet – like the other standards it attempts to use, all inapplicable as demonstrated, the city attempts to enforce it and documents that the development does not comply as a result of it – and, even though inapplicable purports to deny and terminate the application because of the *inapplicable* standards. Even if this standard were externally benchmarkable, SRMC § 14.12.040 subjects every Ch. 14.12 property development standard to City Council exception on subjective "demonstrably superior" criteria — overriding discretion that renders the entire chapter non-objective (AG Elk Grove, p. 2: a "mechanism to deviate from the development standards" defeats objectivity). The city also introduces much confusion over which street is being referenced, and ignores the clear allocation of 2 parking units to each unit documented in the Cover Sheet. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
13. Streets and Driveways – grade (SRMC § 14.12.030.H)	Type 1 – Discretion (deviation/approval mechanism); Type 3 – Relief available from City Council, Planning Commission, Design	SRMC § 14.12.030.H: "New street and driveway grades shall not exceed eighteen percent (18%) unless an exception has been granted by the hearing body, and the design has been recommended by the public works director and fire marshal to allow a driveway or street slope up to a maximum twenty-five percent (25%) grade." City finding: plans "do not appear to	N	N/A	Y	18% ceiling is expressly adjustable to 25% by hearing-body exception on staff recommendation — a discretionary mechanism unavailable to a ministerial applicant. Even if this standard were externally benchmarkable, SRMC § 14.12.040 subjects every Ch. 14.12 property development standard to City Council exception on subjective "demonstrably superior"

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
	Review, city engineer or other city official in discretionary review but denied to SB 35 (Gov. Code 65913.4(i)(1)); Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days; Types 1 & 3 additionally via SRMC § 14.12.040 (City Council may except any Ch. 14.12 standard – relief unavailable to ministerial SB 35 applicant)	indicate the proposed slope and therefore consistency cannot be determined at this time." PLUS SRMC § 14.12.040 – Exceptions to property development standards (overriding discretion over ALL Chapter 14.12 standards): "City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan…" based on criteria including a "demonstrably superior project with greater sensitivity to the natural setting."				criteria — overriding discretion that renders the entire chapter non-objective (AG Elk Grove, p. 2: a "mechanism to deviate from the development standards" defeats objectivity). *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
14. Affordable Housing (SRMC § 14.16.030 incorporating Resolution 14890)	Type 2 – Personal interpretation / subjective judgment; Type 5 – Argument over interpretation / ambiguity	SRMC § 14.16.030 (as recited): "residential development projects must provide affordable housing units as described in the policies and procedures specified in the San Rafael City Council's Guidelines for the Administration of the Affordable Housing Trust Fund (Resolution 14890)."	N	N/A	Y	Incorporates by reference uncodified council "policies and procedures"/Guidelines (see rows 36–39) whose operative terms ("comparable," "proportionate") require judgment — too ambiguous to be susceptible of objective interpretation (CARLA). Rather than a careful explanation of consistency, city staff wrote new code for the consistency letter, not proposed or adopted by the city council, and inserted into the consistency letter
15. Fences and Walls (SRMC § 14.16.140)	Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	SRMC § 14.16.140 (as recited): fences in front/streetside setbacks max 4'; fences to 7' in rear/interior side yards; retaining walls to 4' in rear/interior side yards. City finding: "The plans do not contain enough detail for the City to determine whether the Project complies with the fence standards at this time."	N	N/A	Y	**NAF ANALYSIS: No fence entitlement is applied for in this application — no fence approval is proposed or needed as part of the SB 35 submittal. Under Type 6, an inconsistency cannot be founded on a standard governing an entitlement the applicant did not seek; the City's "not enough detail" comment itself confirms no fence approval was requested.** Wall heights are subject to discretionary approval. All hillside standards can be changed and are subject in city code to override and discretionary input and approval. This is not objective. And it subjects – if the city attempts to apply – to different (and higher) standards for this SB 35 development, which is prohibited in State law. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
						the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").
16. Swimming pools / mechanical equipment (SRMC § 14.16.320)	Type 2 – Personal interpretation / subjective judgment; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	SRMC § 14.16.320 (as recited): requires a 3-sided enclosure "or equally effective measure(s)" and sound attenuation "to the maximum extent practicable." City finding: plans "do not contain enough detail to determine whether the Project complies."	N	N/A	Y	"Equally effective" and "maximum extent practicable" require case-by-case judgment (non-objective under CARLA). *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
17. Water-efficient landscape (SRMC § 14.16.370 / MMWD Ordinance)	Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	SRMC § 14.16.370 (as recited): landscapes ≥ 2,500 sf must comply with water-efficient landscape requirements; MMWD Water Conservation Ordinance adopted by reference. City finding: "the City cannot determine at this time whether the Project is consistent with these standards."	N	N/A	Y	**NAF ANALYSIS: The application states the proposed developer-installed landscape area is below the 2,500-sf trigger, so the standard is not triggered and no water-efficient-landscape approval is applied for. The City asserts the application "incorrectly states" non-triggering but supplies no square-footage calculation or finding — converting a non-application into an "inconsistency" without any quantified basis. Under updated Type 6, a standard whose entitlement threshold is not met and not applied for cannot support inconsistency.** *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
18. Parking Space Dimensions (SRMC § 14.18.100)	Type 6 – Request for more information; not a determination of conflict;	No dimensional text quoted. City finding: "While some dimensions are provided, and the cover pages notes that all spaces are 9 feet by 19 feet, the application does not contain enough information to	N	N/A	Partial	Internally inconsistent: the City acknowledges the plans state all spaces are 9′ × 19′ (meeting standard stall dimensions) yet still claims insufficiency — an information request contradicted

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
	Type 7 – No careful explanation of conflict within 30/60 days	determine whether all parking spaces [comply]; additional information is needed to verify compliance."				by the record it recites. City had to make a consistency determination within 60 days – to the city's mind if it did so, it would have to approve the development – which is a primary reason it did not. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
19. Access to Public Right-of-Way (SRMC § 14.18.140(A), (C))	Type 1 – Discretion (deviation/approval mechanism); Type 2 – Personal interpretation / subjective judgment; Type 3 – Relief available from City Council, Planning Commission, Design Review, city engineer or other city official in discretionary review but denied to SB 35 (Gov. Code 65913.4(i)(1)); Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	SRMC § 14.18.140.C: "Driveway Grades. Driveway grades shall be subject to review and determination by the city engineer. Maximum driveway grade typically allowed is eighteen percent (18%)."	N	N/A	Y	"Subject to review and determination by the city engineer" is discretion; "typically allowed" concedes the benchmark is not uniform or unchanging. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
20–21. E&DR Review Criteria – Utility Service; Walls, Fences & Screening (SRMC § 14.25.050) [Parts A & B merged]	Type 1 – Discretion (deviation/approval mechanism); Type 2 – Personal interpretation / subjective judgment; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	SRMC § 14.25.050 (as recited): (Part A – Utility Service) refuse areas "screened and located in areas convenient both to users and to persons who make collections. There shall be adequate ingress and egress to all utilities." (Part B – Walls, Fences & Screening) screening of mechanical equipment "shall be designed as an integrated architectural component of the building and the landscape." City finding (both parts): application "does not contain enough information to allow the City to determine compliance with any of these standards."	N	N/A	Y	Chapter 14.25 is the City's discretionary Environmental & Design Review permit chapter; "convenient," "adequate," and "integrated architectural component" are aesthetic/functional judgments applied through a discretionary permit process. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
						determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").
ATTACHMENT 1 (cont.) – HILLSIDE DESIGN GUIDELINES (Table 1.3)						
22. Hillside Design Guidelines IV.A5 – Street Layout, Driveway & Parking Design	Type 1 – Discretion (deviation/approval mechanism); Type 2 – Personal interpretation / subjective judgment; Type 3 – Relief available from City Council, Planning Commission, Design Review, city engineer or other city official in discretionary review but denied to SB 35 (Gov. Code 65913.4(i)(1)); Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	HDG IV.A5: "Driveway grades up to a maximum of 18% are allowed unless the Design Review Board, Fire Department, and the City Engineer find good cause for exception… parking landings shall be required on all drives over 10%." City finding: "the City cannot currently determine whether the Project is consistent."	N	N/A	Y	The 18% guideline is expandable to 25% on a "good cause" finding by three discretionary bodies — a deviation mechanism that renders it non-objective; guidelines document is largely "should"-based advisory text. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
23. Hillside Design Guidelines IV.A7 – Hillside Architectural Character	Type 2 – Personal interpretation / subjective judgment; Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	HDG IV.A7 (fence buffer, as recited): "fences and walls over 3 feet in height that face public streets [shall] provide a fully landscaped buffer at least 5 feet deep on the street facing side." Section otherwise mandates "semi-rural character," forms "broken" to reflect hillside setting — aesthetic judgments.	N	N/A	Y	"Architectural Character" guidelines are quintessentially subjective (CARLA height-guidelines analysis). NAF ANALYSIS: no fence entitlement is applied for; a street-facing fence-buffer guideline cannot ground inconsistency where no fence approval is sought. All hillside regulations can be overridden by relevant body. The standard – if applicable – would not allow the GP density, as proposed. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
						timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").
24. Hillside Design Guidelines IV.A9 – Site Lighting	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	HDG IV.A9 (as recited): parking-area lighting max mounting height 15'; pedestrian fixtures "should be limited to heights below 8 feet." City finding: "No lighting information is provided and as such, additional information is needed to verify compliance."	N	N/A	Y	Guideline pedestrian-height text is "should" language; lighting fixture specifications are building-permit-level details. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
ATTACHMENT 1 (cont.) – OBJECTIVE DESIGN STANDARDS, Resolution 15280 (Table 1.4)						
25. ODS – Site Planning (Building Orientation)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites: entrances of buildings adjacent to a public street "face the public street or alley." City finding: "The residences appear to face Coleman Drive, but the exact location of individual building entrances is not clearly shown."	N	N/A	N	City's own observation ("residences appear to face Coleman Drive") indicates compliance; the finding is nonetheless framed as insufficiency. No numbered ODS citation — only a URL to a 2024 council agenda-packet PDF. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").* Later, city had to confess these standards produced after vesting, and primarily directed at the downtown rush, are not applicable. This applies to all standards with prefix ODS.
26. ODS – Site Planning (Windows and Privacy)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites the 10-ft window offset / glazing standard relative to existing neighboring bedroom windows. City finding: plans "do not include enough information."	N	N/A	N	Standard depends on measurements to off-site conditions on neighboring private property (facing bedroom windows) — inherently case-by-case; no numbered citation. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
						period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").
27. ODS – Site Planning (Ensure Adequate Screening)	Type 2 – Personal interpretation / subjective judgment; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites: screening "to obscure direct sight lines between private yards" via fence, wall, or hedge 4–6 ft. City finding: "plans do not show if and/or how the project will incorporate screening."	N	N/A	N	"Adequate" screening "to obscure direct sight lines" calls for judgment; no numbered citation. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
28. ODS – Site Planning (Ground Level Utility Location & Screening)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites: utilities in vaults, underground, "or, if not allowed by PG&E, screened and not visible from the public right of way." City finding: "not enough information to determine whether the project includes ground level utilities."	N	N/A	N	Standard is conditional on a third party's (PG&E) determination; the City concedes it does not even know whether such utilities exist. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
29. ODS – Site Planning (Parking Garage screening)	Type 2 – Personal interpretation / subjective judgment; Type 6 – Request for more information; not a	No ODS section number quoted; letter recites: parking visible from ROW "screened by continuous landscaping, or other architectural features." City finding: "not enough information to verify."	N	N/A	N	"Other architectural features" is open-ended/ambiguous; no numbered citation. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
	determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days					*inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").* Later, city had to confess these standards produced after vesting, and primarily directed at the downtown rush, are not applicable. This applies to all standards with prefix ODS. This standard would have the direct effect of blocking access to the parking
30. ODS – Building Design (Trim Requirements)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites the stucco-foam-trim limitation. City finding: "The plans do not include materials information and as such, additional information is needed to verify compliance."	N	N/A	N	No numbered citation; Materials board was provided on multiple occasions. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").* Later, city had to confess these standards produced after vesting, and primarily directed at the downtown rush, are not applicable. This applies to all standards with prefix **ODS** in column 1.
31. ODS – Building Design (Colors and Reflective Materials)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites the 7-part color/reflectivity list (2–4 colors, 70%/30% areas, LRV 20–80%, no fluorescent/metallic paints, roofing finishes, integral stucco color). City finding: "The plans do not include information about colors… needed to verify compliance."	N	N/A	N	Full color, material detail was provided (repeatedly) in the plans. Later, city had to confess these standards produced after vesting, and primarily directed at the downtown rush, are not applicable. This applies to all standards with prefix ODS. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
						information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").
32. ODS – Building Design (Blank Walls)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites: all building walls minimum 15% transparency per floor; "Ground floors without a lobby shall exhibit a variegated façade… no one form represents more than 75% of the surface area." City finding: "not enough information to verify."	N	N/A	N	The "lobby"/variegated-façade text; no numbered citation. Full color & transparency details were provided in the plans *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
33. ODS – Building Design (Rooftop Utility Screening)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites: roof-mounted equipment screened "by a parapet wall, decorative equipment screen, or other architectural treatment," visibility judged from 5' above grade at 200'. City finding: "not enough information to verify."	N	N/A	N	Vesting prior to these standards. "other architectural treatment" is open-ended, despite these being the city's poster child objective standards. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
34. ODS – Open Space & Landscape (Useable Outdoor Space)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful	No ODS section number quoted; letter recites: minimum 100 sf useable open space per dwelling unit plus standards for accessibility, dimensions, balconies, slope, landscaping, amenities. City finding: "not enough information to verify."	N	N/A	N	Attempt to apply post vesting standards – again. Multifamily housing on 6 lots totaling 1.4 acres facially provide far more than 100 sf/unit of outdoor space; no numbered citation.

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
	explanation of conflict within 30/60 days					*STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
35. ODS – Lighting (Light and Glare)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	No ODS section number quoted; letter recites foot-candle minima/maxima, shielding, 5-ft light-trespass limit, 60° angle, ≤4500K. City finding: "No lighting information was provided… not enough information to verify."	N	N/A	N	Attempt to apply post vesting standards – again. City later shifted its explanation to state that it was only 'advisory' in case the applicant wanted to submit a wholly new application. You can't make this stuff up. Lighting fixture specifications are building-permit-level details; no numbered citation. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
ATTACHMENT 2 – HOUSING DIVISION: SRMC § 14.16.030 / Resolution 14890 (Table 2.1)						
36. Affordable unit Size – Resolution 14890 § C(1)	Type 2 – Personal interpretation / subjective judgment; Type 5 – Argument over interpretation / ambiguity	Res. 14890 § C(1) (as recited): affordable units "shall be comparable in size to the market-rate units… 'comparable size' means having habitable square footage proportionate to the range of unit sizes provided for market-rate units." City finding: affordable unit (976 sf) "is significantly smaller than the average size of the market rate units" (2,544 sf).	N	N/A	Y	Misapplied on its own terms: the Guideline benchmarks the "range" of market-rate sizes, and the 976-sf affordable ADU is identical in size to the five market-rate ADUs (976 sf) within that range — the City instead invented an "average" test. "Comparable"/"proportionate" are also uncodified, judgment-laden resolution terms, not objective code standards.
37. Affordable unit Type (bedrooms) – Resolution 14890 § C(1)	Type 2 – Personal interpretation / subjective judgment; Type 5 – Argument over interpretation / ambiguity	Res. 14890 § C(1) (as recited): affordable units "shall possess a distribution of bedroom counts proportionate to that of the market-rate units." City finding: "The average bedroom count for market rate units is 3.85… The affordable unit contains only 2 bedrooms."	N	N/A	Y	Again substitutes an "average" test for the Guideline's "distribution" test; the market-rate mix itself includes 2-bedroom ADUs, so a 2-bedroom affordable unit sits within the distribution. Uncodified, ambiguous resolution language.

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
38. Affordable unit Design & Materials – Resolution 14890 § C(2)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	Res. 14890 § C(2) (as recited): affordable units "shall be of the same design, materials, amenities, quality of finish, and appearance of the other developed units." City finding: "the City cannot determine at this time whether the Project is consistent."	N	N/A	Y	"Quality of finish" and "appearance" also require judgment. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
39. Affordable unit Access to amenities – Resolution 14890 § C(2)	Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	Res. 14890 § C(2) (as recited): affordable units "shall have access to the same amenities and common spaces as the market rate units." City finding: application "does not affirmatively indicate" such access, "so the City cannot determine at this time."	N	N/A	Y	A demand that the applicant "affirmatively indicate" something is a request for more information; the letter simultaneously labels the project "not consistent" while conceding it "cannot determine" — internally contradictory. A dedicated access plan clearly shows access. Pretextual by city. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
ATTACHMENT 3 – FIRE DEPARTMENT (Table 3.1)						
40. Fire Apparatus Access Roads (SRMC Ch. 4; 2022 CFC § 503, App. D; NFPA standards)	Type 7 – No careful explanation of conflict within 30/60 days; Type 6 – Request for more information; not a determination of conflict	No code text quoted at all. Entire City finding: "The current plans do not clearly demonstrate compliance with the provisions of these sections of the code."	N	N/A	N	A single conclusory sentence citing an entire code chapter, a full CFC section, an appendix, and "all applicable National Fire Protection Standards" identifies no specific standard and no specific conflict — the antithesis of the "careful explanation" Ruegg & Ellsworth requires. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
						determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard"). The city did not circulate to all agencies at time of submittal as required by SB 35. Assumedly this is because it considered it a waste of time as it knew it would manufacture ways to deny the application. So why bother with circulating to all required agencies.
41. Fire Flow / Hydrants / Sprinklers (SRMC Ch. 4; 2022 CFC § 507, Apps. BB, C, CC; NFPA standards)	Type 7 – No careful explanation of conflict within 30/60 days; Type 6 – Request for more information; not a determination of conflict	No code text quoted at all. Entire City finding: "The current plans do not clearly demonstrate compliance with the provisions of these sections of the code." Location and specifications of fire hydrants are a downstream requirement, as the Fire Department explains each time it receives such plans.	N	N/A	N	Identical boilerplate to row 40; no standard identified, no conflict explained, no benchmark stated. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").* The city did not circulate to all agencies at time of submittal as required by SB 35. Assumedly this is because it considered it a waste of time as it knew it would manufacture ways to deny the application. So why bother with circulating to all required agencies.
ATTACHMENT 4 – DEPARTMENT OF PUBLIC WORKS: Title 15 Subdivision Ordinance – NO SUBDIVISION APPLIED FOR (Table 4.1)						
42. Utilities and Services (SRMC § 15.06.020)	Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 5 – Argument over interpretation / ambiguity; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful	SRMC § 15.06.020 (quoted in letter): "No subdivision of land into two (2) or more lots or parcels for the purpose of development shall be approved by the city unless it is determined that the following utilities and services can be provided…" (water by MMWD; sewer by SRSD/LGVSD; PG&E; communications).	N	N/A	Y	**NAF ANALYSIS: The applicant is NOT applying for a subdivision — the city letter's own project description states the application "does not appear to propose a subdivision of land." Per updated Type 6, Title 15 subdivision standards attach to an entitlement not applied for and cannot support an inconsistency finding.** *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
	explanation of conflict within 30/60 days					*information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
43. Hillside Streets (SRMC §§ 15.06.050(g), 15.07.030)	Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days; Type 5 – Argument over interpretation / ambiguity	SRMC § 15.06.050(g)/15.07.030 (as quoted): "All new streets in hillside areas shall comply with the requirements of Section 15.07.030… No private street leading to a private driveway on a lot shall exceed a grade of eighteen percent (18%)." City finding: "The plans do not indicate the grade of the private street."	N	N/A	Y	**NAF ANALYSIS: No subdivision is applied for; Title 15 street standards govern streets created through subdivision. The letter also recasts the shared driveway as a "private street" without analysis — an interpretive leap (Type 5).** *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
44. General design conditions for streets – curve radius (SRMC § 15.06.070(e))	Type 1 – Discretion (deviation/approval mechanism); Type 2 – Personal interpretation / subjective judgment; Type 3 – Relief available from City Council, Planning Commission, Design Review, city engineer or other city official in discretionary review but denied to SB 35 (Gov. Code 65913.4(i)(1)); Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful	SRMC § 15.06.070(e) (quoted in letter): "The center line curve radius on all streets and highways shall conform to accepted engineering standards of design and shall be subject to approval by the city engineer."	N	N/A	Y	Textbook non-objective standard: "accepted engineering standards" is an uncodified, moving benchmark requiring professional judgment, and compliance is "subject to approval by the city engineer" — pure discretion. NAF ANALYSIS: Title 15 subdivision standard; no subdivision applied for. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
	explanation of conflict within 30/60 days					
45. Sidewalks and walkways (SRMC § 15.06.080)	Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 5 – Argument over interpretation / ambiguity	SRMC § 15.06.080 (quoted in letter): "Sidewalks and walkways shall be required along both sides of new public or private streets… Sidewalks along streets intended for residential use shall be a minimum of four feet (4') in width. All sidewalks and walkways shall be designed to comply with the requirements of the Americans with Disability Act (ADA)." City finding: "The plans do not depict a sidewalk along either side of the street."	N	N/A	Y	Although the City here recited an objective numeric benchmark (4-ft width, both sides, ADA) and identified an actual conflict, the standard sits in the Subdivision Ordinance and attaches to "new public or private streets" created by subdivision — the project proposes a shared street/driveway on existing lots and land, with no subdivision (per the City's own description). NAF ANALYSIS: per updated Type 6, a Title 15 standard for an entitlement not applied for is inapplicable and cannot support an inconsistency determination; the Project is deemed to satisfy it. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*
46. Grading and drainage (SRMC § 15.06.110)	Type 1 – Discretion (deviation/approval mechanism); Type 3 – Relief available from City Council, Planning Commission, Design Review, city engineer or other city official in discretionary review but denied to SB 35 (Gov. Code 65913.4(i)(1)); Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days	SRMC § 15.06.110 (quoted in letter): "Graded slopes shall not exceed two to one (2:1), unless the city engineer determines that a steeper slope is justified… Retaining walls shall not exceed eight feet (8') in height, unless approved by the Planning Commission." City finding: "Plans lack sufficient information to determine…"	N	N/A	Y	Both prongs carry express discretionary escape valves (city engineer determination; Planning Commission approval) available in discretionary review but withheld here. NAF ANALYSIS: Title 15 subdivision standard; no subdivision applied for. *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*

1. Standard Analyzed in City October 6, 2025 Consistency Letter	2. Actual Standard Classification (per 10-Type Table)	3. Code Recitation – Operative Sentence(s) Incl. Non-Objective / Non-Allowable Language & Exact Code Reference (incl. SRMC § 14.12.040 overriding discretion where applicable)	4. Applicable (External, Uniform, Unchanging Benchmark)? Y/N	5. Waiver Applied For? (Y / N/A)	6. Code Reference Clearly Quoted in Oct. 6 Letter? But not valid in any event	7. Accuracy Notes – Misapplication, NAF (Not Applied For) Analysis & State-Law Deemed-Satisfied Notes
47. Undergrounding of utilities (SRMC § 15.06.130)	Type 6 (NAF) – Entitlement/approval not applied for; standard inapplicable; Type 6 – Request for more information; not a determination of conflict; Type 7 – No careful explanation of conflict within 30/60 days; Type 5 – Argument over interpretation / ambiguity	SRMC § 15.06.130 (quoted in letter): utility distribution facilities "installed and for the purpose of supplying service to a subdivision creating lots for development, shall be placed underground, subject to specified exceptions." City finding: "it is impossible to determine whether the required utilities will be underground."	N	N/A	Y	By its terms applies only to facilities serving "a subdivision creating lots" — none is proposed (NAF); contains unenumerated "specified exceptions." *STATE-LAW NOTE (information request): Gov. Code § 65913.4(c)(1) requires the City to make a consistency or inconsistency DETERMINATION within the 30/60-day statutory period. A request for more information / "insufficient information" statement is "not a determination that the project conflicted" with any standard (CA Attorney General to City of Elk Grove, Mar. 16, 2023, p. 3). Because no inconsistency determination was made as to this standard, none exists — and the Project is DEEMED TO SATISFY this standard by operation of law (Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 318; AG Elk Grove Letter: "City failed to determine in a timely and adequate manner that the Project conflicted … so … Project was deemed to satisfy the standard").*

Table B – Global Analysis: Totals by Standard Classification Category

Category (Global Analysis)	Count	Rows / Notes
Total standards analyzed in the October 6, 2025 letter	**46 rows (47 City entries; § 14.25.050 Parts A & B merged into row 20–21)**	20 Planning (GP + Zoning) · 3 Hillside Design Guidelines · 11 ODS · 4 Housing (Res. 14890) · 2 Fire · 6 Public Works (Title 15)
Type 1 – Standard codified with / exercisable by discretion (deviation, exception, or approval mechanism)	**10**	Rows 9, 10, 11, 12, 13, 19, 20–21, 22, 44, 46 – e.g., "subject to approval by the hearing body," "unless an exception has been granted," "subject to review and determination by the city engineer." ALL Ch. 14.12 rows (9–13) additionally carry SRMC § 14.12.040's **global City Council exception power over every hillside property development standard.**
Type 2 – Requires personal interpretation / subjective judgment	**12**	Rows 3, 14, 16, 19, 20–21, 22, 23, 27, 29, 36, 37, 44 – e.g., "screened," "equally effective," "maximum extent practicable," "comparable," "integrated architectural component," "accepted engineering standards," "demonstrably superior" (§ 14.12.040 criteria)
Type 3 – Relief available from City Council, Planning Commission, Design Review, city engineer or other city official in discretionary review but withheld from SB 35 ministerial applicant (Gov. Code § 65913.4(i)(1))	**9**	Rows 9–13 (via § 14.12.030 mechanisms AND § 14.12.040 City Council exception), 19, 22, 44, 46
Type 4 – No longstanding, consistent interpretation; City demands deference to its unique reading	**1**	Row 1 – local redefinition of "multifamily housing development" under SB 35
Type 5 – Argument over interpretation / ambiguity	**9**	Rows 1, 4, 14, 36, 37, 42, 43, 45, 47 (applicability/interpretation disputes incl. "private street" recharacterization)
Type 6 – Request for more information; not a determination of conflict → DEEMED SATISFIED by operation of law	**36 of 46 (78%)**	Rows 6, 7, 9, 11–13, 15–19, 20–21, 22–24, 25–35 (all 11 ODS rows), 38–41, 42–47. Each such row carries the STATE-LAW NOTE: Gov. Code § 65913.4(c)(1) required a determination; an information request is "not a determination that the project conflicted" (AG Elk Grove p. 3); with no determination made, each standard is deemed satisfied (Ruegg & Ellsworth, 63 Cal.App.5th at 318).
Type 6 (NAF) – Standard attaches to an entitlement NOT APPLIED FOR	**9**	Rows 15 (fences – no fence entitlement sought), 17 (water-efficient landscape – <2,500 sf trigger not met, not applied for), 23 (fence buffer – no fence entitlement), and 42–47 (ALL six Title 15 rows – no subdivision applied for, per the City's own project description: application "does not appear to propose a subdivision of land")
Type 7 – No careful explanation of conflict within statutory 30/60-day period (Ruegg & Ellsworth)	**35**	Same rows as Type 6 except row 45; most extreme: Fire rows 40–41 (one conclusory sentence citing entire code chapters and "all applicable" NFPA standards)
Type 9 – Standard applied to defeat, rather than facilitate, General Plan density / RHNA	**1**	Row 4 (use restriction); applies globally – restrictions enforced to prevent development rather than "facilitate and accommodate" density (Gov. Code § 65589.5(f)(1), (j)(4))
Type 10 – SDBL waiver requested; standard cannot be applied (Gov. Code § 65915(e)(1)). **(This does not detail the waivers applied for prior to the March 20, 2026 re-submittal)**	**5**	Rows 2 (GP height), 5 (setbacks), 6 (height), 9 (stepback), 11 (natural state)
Column 4 = "Y" (external, uniform, unchanging benchmark; outside all 10 types)	**1**	Row 8 only (ADU max, Gov. Code § 66323(a)(2)) – and even it is factually misapplied: the letter's own lot inventory shows ONE detached ADU on Lot 011-031-45, contradicting the finding. Row 45 (sidewalks) reclassified N under updated Type 6 NAF – Title 15 standard for a subdivision never applied for.
Column 4 = "N" (standard falls within one or more of the 10 non-objective / non-allowable types as applied)	**45**	All remaining rows
Waivers applied for (Column 5 = Y)	**At least 5**	Including height, setbacks, height, stepback, natural state – each nonetheless listed as an "inconsistency"
Code reference clearly quoted in letter (Column 6 = Y)	**28**	Operative text quoted or closely recited with section number
Code reference only partially cited (Column 6 = Partial)	**4**	Rows 2, 3, 5, 18 – page/policy cites or paraphrase without operative text

Category (Global Analysis)	Count	Rows / Notes
Code reference not quoted / no numbered citation (Column 6 = N)	**14**	Row 7; all 11 ODS rows (25–35 – no numbered ODS sections, URL-only citation); Fire rows 40–41 (no quoted text)
Rows with identified analytical inaccuracies (Column 7 substantive error noted)	**20+**	Incl. lot-by-lot analysis of unified 6-lot common site (rows 1, 4, 10); Subdivision Ordinance (Title 15) applied though the City itself describes the project as proposing no subdivision (rows 42–47 – NAF); "average" substituted for "range"/"distribution" tests (rows 36–37); finding contradicted by letter's own lot inventory (row 8) or by acknowledged plan data (row 18); fence/landscape standards applied where no such entitlement was sought (rows 15, 17, 23 – NAF)

Note: A single standard may fall within multiple classification types, so type counts exceed the 46-row total. Of the 46 standards analyzed, 36 (78%) rest on "insufficient information" findings. As to each, State law required the City to make a consistency or inconsistency determination within the 30/60-day statutory window (Gov. Code § 65913.4(c)(1)); a request for more information "is not a determination that the project conflicted" with any standard (AG Elk Grove Letter, p. 3). No inconsistency determination therefore exists as to any of those 36 standards, and each is deemed satisfied by operation of law (Ruegg & Ellsworth, 63 Cal.App.5th at 318). Nine of those rows are further inapplicable as NAF — they govern entitlements (fences, water-efficient landscape, and Title 15 subdivision approvals) that the applicant never applied for. Every Chapter 14.12 hillside standard is additionally non-objective under SRMC § 14.12.040, which vests the City Council with exception power over the entire chapter on subjective "demonstrably superior" criteria. The net result: only ONE of 46 standards (Row 8, the state ADU cap) presents an external, uniform, unchanging benchmark applied through an actual conflict determination but is incorrectly stated — and that lone finding is contradicted by the letter's own lot-by-lot project description, and the ADU processing fails to take into account that the application is for multifamily housing. It is possible that the impermissible standards advanced by San Rafael fall into even more *of the categories than the above analysis.*

15 Complaint and Writ, amended and filed August 4, 2026. United States District Court for the Northern District of California, before Honorable Judge Laurel Beeler.

COX, CASTLE & NICHOLSON LLP
Andrew B. Sabey (Bar No. 160416)
Scott B. Birkey (Bar No. 209981)
Eric J. Cohn (Bar No. 324818)
50 California Street, Suite 3200
San Francisco, California 94111-4710
Telephone: (415) 262-5100
Facsimile: (415) 262-5199
Email: asabey@coxcastle.com;
sbirkey@coxcastle.com; ecohn@coxcastle.com

Attorneys for Plaintiff
RIVER LANDON LLC

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RIVER LANDON LLC,

Plaintiff,

v.

MICAH HINKLE, SAN RAFAEL COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR, in his official capacity, MARGARET KAVANAUGH-LYNCH, PLANNING MANAGER OF THE SAN RAFAEL CITY PLANNING DIVISION, in her official capacity, KATE COLIN, MAYOR OF CITY OF SAN RAFAEL, in her official capacity, CITY OF SAN RAFAEL, a municipal corporation; CITY COUNCIL OF THE CITY OF SAN RAFAEL,

Defendants.

Case No. 3:25-cv-04904-LB

THIRD AMENDED COMPLAINT AND PETITION FOR WRIT OF MANDATE (CAL. CODE CIV. PROC. §§ 1085, 1094.5) FOR:

(1) TAKINGS WITHOUT JUST COMPENSATION;
(2) TEMPORARY TAKINGS WITHOUT JUST COMPENSATION;
(3) VIOLATIONS OF FEDERAL AND STATE PROCEDURAL DUE PROCESS;
(4) VIOLATIONS OF FEDERAL AND STATE SUBSTANTIVE DUE PROCESS;
(5) VIOLATION OF GOVERNMENT CODE SECTION 65913.4 (FAILURE TO CARRY OUT MINISTERIAL SCOPING CONSULTATION DUTY);
(6) VIOLATION OF GOVERNMENT CODE SECTION 65913.4 (UNLAWFUL INCONSISTENCY DETERMINATION AND TREATMENT FOR 29-UNIT PROJECT);
(7) VIOLATION OF GOVERNMENT CODE SECTION 65913.4 (UNLAWFUL INCONSISTENCY DETERMINATION AND TREATMENT FOR 14-UNIT PROJECT);
(8) VIOLATION OF GOVERNMENT

CODE SECTION 65913.4 (UNLAWFUL FAILURE TO PROCESS SB 35 PROJECT RESUBMITTAL)
(9) VIOLATIONS OF MANDATORY DUTY(S) UNDER GOVERNMENT CODE SECTION 65913.4;
(10) VIOLATION OF GOVERNMENT CODE SECTION 65589.5 (UNLAWFUL DISAPPROVAL FROM NEVER-ENDING SCOPING CONSULTATION);
(11) VIOLATION OF GOVERNMENT CODE SECTION 65589.5 (SUBSEQUENT UNLAWFUL DISAPPROVAL OF 29-UNIT PROJECT);
(12) VIOLATION OF GOVERNMENT CODE SECTION 65589.5 (UNLAWFUL DISAPPROVAL OF 14-UNIT PROJECT);
(13) VIOLATION OF GOVERNMENT CODE SECTION 65589.5 (UNLAWFUL DISAPPROVAL BY COURSE OF CONDUCT).

(JURY TRIAL DEMANDED)

Plaintiff RIVER LANDON LLC ("Plaintiff" or "River Landon") hereby alleges and complains against Defendants, MICAH P. HINKLE, SAN RAFAEL COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR (the "CED Director"), in his official capacity, MARGARET KAVANAUGH-LYNCH, PLANNING MANAGER OF THE SAN RAFAEL CITY PLANNING DIVISION (the "Planning Manager"), in her official capacity; KATE COLIN, MAYOR OF CITY OF SAN RAFAEL, in her official capacity, CITY OF SAN RAFAEL, and CITY COUNCIL OF THE CITY OF SAN RAFAEL ("City Council" and collectively the "City" or "Defendants"), as follows:

I. INTRODUCTION

1. California has a housing crisis. The California Legislature ("Legislature") has found that "[t]he lack of housing . . . is a critical problem that threatens the economic, environmental, and social quality of life in California."

(Gov. Code, § 65589.5, subd. (a)(1)(A).) This crisis is "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." (*Id.*, subd. (a)(2)(A).)

2. To address the housing crisis, the Legislature has adopted and strengthened state housing law to restrain local agency disapproval of housing development.

3. This case presents a microcosm of the problem the Legislature has sought to remedy. The City's actions, and inactions, regarding Plaintiff's housing development efforts on Plaintiff's real property—consisting of six vacant lots along Coleman Drive in the City with Assessor Parcel Numbers ("APNs") 011-031-44 through and including 011-031-49 (collectively, the "Property")—is an example of how local governments abuse their position to deny new housing under the notion they are "protecting" existing homeowners. The state's housing crisis is the collective result of this political self-preservation, played out again and again across the state.

4. The City, inclusive of the Mayor and City Council, Planning Manager, and CED Director, has refused, through successive and shifting "justifications," to allow housing of any scale on Plaintiff's Property, which land has long been designated by the City for residential use.

5. For over five years, Plaintiff has sought in good faith to develop housing on the Property, submitting multiple housing development project iterations to the City for processing under both local and state housing laws.

6. Plaintiff's unsuccessful housing development efforts of the Property have included proposals for: (a) a two-unit housing development project (the "Two-Unit Project") on a portion of the Property processed under the City's local

controls; (b) a 29-unit housing development project, which included six units for low-income households (the "29-Unit Project") processed under state housing laws, including Senate Bill ("SB") 35 (set forth in California Government Code section 65913.4) and the "Builder's Remedy" (set forth in subdivision (d) of California Government Code section 65589.5); and (3) a reduced density (14-unit) housing development project, inclusive of one unit for low-income households (the "14-Unit Project") submitted at the unit count the City itself identified as potentially acceptable for processing pursuant to the City's Housing Element, SB 35, and the State Density Bonus Law ("SDBL") (set forth in California Government Code section 65915).

7. Through these serial disapprovals over a five-year period, the City has rendered futile any efforts to develop the Property—leaving the Property without any economically viable use. Thus, perpetuating a taking of the Property for which just compensation is required pursuant to the Constitutions of the State of California and the United States of America.

8. Along the way the City has engaged in a pattern of unlawful acts in its "processing" of the 29-Unit Project and 14-Unit Project (as well as the Two-Unit Project). The City perpetuated several violations of state housing law—namely, violations of the City's ministerial obligations under SB 35 and violations of the Housing Accountability Act ("HAA") as set forth in California Government Code section 65589.5, each several times over.

9. The City exploited the mandatory scoping consultation process under SB 35 to impose a never-ending standstill of the 29-Unit Project that served no legitimate government purpose, but rather was intended to thwart Plaintiff's lawful use of the Property. In addition to violating SB 35 and the City's ministerial obligations under the law, this denied Plaintiff any economically viable use of the Property while the City condemned it to endless processing delay, perpetuating a

temporary taking of the Property for which just compensation is required pursuant to the Constitutions of the State of California and the United States of America.

10. More specifically, during the approximately two-year "scoping consultation" standstill, Plaintiff was foreclosed from any economically viable use of the vacant Property. Because Plaintiff had commenced processing the 29-Unit Project under the SB 35 framework, the purpose of which is to avoid the City's adverse exercise of discretion toward development of the Property and to expedite approval of housing, Plaintiff was practically precluded from pursuing any alternative development pathway for the Property while SB 35's streamlined ministerial process remained pending for the 29-Unit Project. No reasonable property owner would simultaneously incur the substantial cost, time, and design burden of pursuing multiple separate entitlement pathways on the same property at the same time, especially while a statutorily streamlined, ministerial process is pending. The City's exploitation of SB 35's scoping consultation process constituted a temporary takings of the Property.

11. The City's review and processing of the 29-Unit Project and 14-Unit Project have been marred by a pattern of unlawful delay, arbitrary conduct, and discriminatory treatment that violates state housing laws and both state and federal constitutional guarantees of due process. Rather than perform its ministerial duties under the law, the City has engaged in obstructionist tactics that serve no legitimate governmental purpose and have denied Petitioner a fair and lawful procedure under the Constitutions of the State of California and the United States of America.

12. By this lawsuit, Plaintiff seeks just compensation and to recover the damages it has incurred as a result of the City's failure to comply with its ministerial obligations and by the City's unlawful, discriminatory, arbitrary, and capricious conduct in its review and processing of the 29-Unit Project and/or 14-Unit Project. If Plaintiff has not already lost the Property as a consequence of

Defendants' actions, Plaintiff also seeks an order compelling the City to process and/or approve the 29-Unit Project and/or 14-Unit Project in accordance with the City's legal obligations and applicable procedural requirements under SB 35 and other state housing laws, including the HAA and SDBL.

II. THE PARTIES

13. Plaintiff is a New Mexico limited liability company, which as an LLC is not required to be registered with the California Secretary of State.

14. Plaintiff is the "proponent" and "applicant," as those terms are used in SB 35 and the HAA, for the 29-Unit Project and 14-Unit Project on the Property.

15. The City of San Rafael is a municipal corporation and charter city, organized and existing under the laws of the state of California, with the capacity to sue and be sued and is charged with complying with its duties under the laws and Constitutions of the State of California and the United States of America.

16. The Planning Manager is a City official responsible for among other things, overseeing the Planning Division with, and its staff-level decisions related to development applications, including applications and notices of intent submitted pursuant to SB 35.

17. The CED Director is a chief administrative officer of the Community & Economic Development department, which houses within it the Planning Division. The CED Director, among other things, has responsibility of overseeing Planning Manager and staff-level decisions on and related to development applications, including applications and notices of intent submitted pursuant to SB 35.

18. The City Council is the duly elected legislative body empowered and obligated to lead the City's decision-making, policymaking and compliance with state and federal laws, as well as implementation of the City's municipal code.

19. The Mayor is the leader of the City Council.

20. The City, inclusive of its Planning Manager, the CED Director, the Mayor, and City Council is subject to the requirements of SB 35 and the HAA, amongst other laws of the state of California and the United States of America and Constitutions of the State of California and the United States of America.

III. JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this action because the complaint presents federal constitutional claims that may be brought in the U.S. District Court in the first instance.

22. Alternatively, this Court has subject matter jurisdiction over this action pursuant to diversity of citizenship of the parties.

23. For purposes of diversity jurisdiction, the citizenship of a limited liability company, such as Plaintiff, is determined by the citizenship of each of its members.

24. The member of Plaintiff and his state of citizenship is as follows: Mountain Investments, a New Mexico business trust 100% owned by Jim Miller, an individual citizen of New Mexico. Jim Miller is also the trustee of Mountain Investments.

25. This Court has personal jurisdiction over the Defendants who are all citizens of California, or creatures of California State Law, and venue is proper in the U.S. District Court for the Northern District because the land and the City are in Marin County, which lies within the Northern District.

26. Plaintiff has exhausted any and all administrative remedies available to Plaintiff to the extent required by law and has performed any and all conditions precedent to filing this action.

IV. BACKGROUND FACTS

A. The Property

27. The Property is approximately 1.4 acres.

28. The Property is vacant.

29. The Property is adjacent to existing residential development to the north, south, east (across Coleman Drive), and west.

30. The Property has, and as relevant hereto, has had a residential designation in the City's General Plan (the "General Plan"). Specifically, the Property has a General Plan designation of "Low Density Residential." The Low Density Residential designation allows a range of 2.2 to 8.7 dwelling units per acre.

31. The Property is, and at all times relevant hereto has been, located within a residential zoning district. Specifically, the Property is within the single-family "R10" zoning district.

32. SB 35 applies to any site that is zoned for residential use and/or has a general plan designation that allows residential use, which includes sites zoned and/or designated for single-family residential use.

33. The Property is located within a "high resource" census tract, as identified by the latest (2025) edition of the "CTAC/HCD Opportunity Map" published by the California Tax Credit Allocation Committee and the Department of Housing and Community Development.

34. The Property is *not* located within a designated, precisely mapped, environmentally sensitive area listed in California Government Code section 65913.4 subdivisions (a)(9)(A)–(C), (H)–(J)—*i.e.*, coastal zone, prime farmland, farmland of statewide importance, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction; wetlands; within a high or very high fire hazard zone; land identified for conservation in certain types of conservation plans; habitat for protected species; or land under conservation easement.

35. The Property is *not* located within other designated, precisely mapped, environmentally sensitive areas, which would require a SB 35 project to meet specified requirements (as specified in California Government Code section

65913.4 subdivisions (a)(9)(D)–(G))—*i.e.*, a hazardous waste site; within a delineated earthquake fault zone; within a special flood hazard area subject to inundation by the 1-percent annual chance flood (100-year flood); or within a regulatory floodway.

B. Plaintiff's Housing Development Efforts of the Property The Two-Unit Project and the City's Hamster Wheel of "Incompleteness" Determinations

36. On October 15, 2020, Plaintiff submitted an application to the City for the Two-Unit Project on a portion of the Property. The Two-Unit Project was consistent with the City's residential designation and zoning for the Property, as well as applicable, objective land use controls that the City was allowed to apply to the Two-Unit Project.

37. On November 20, 2020, the City determined the application for the Two-Unit Project was incomplete[1] and the City could not process the Two-Unit Project until the application was determined to be complete, such as by addressing the incomplete items identified by the City.

38. On February 15, 2021, in response to and having addressed the incomplete items previously identified by the City, Plaintiff re-submitted the Two-Unit Project to the City, for a second time.

39. On March 16, 2021, the City again determined the application for the Two-Unit Project was incomplete. The City included new reasons for the incompleteness determination not previously identified as well as items that had already been addressed by Plaintiff.

40. On June 15, 2021, in response to and having addressed the incomplete

[1] Under the Permit Streamlining Act ("PSA"), the City is required to determine whether a housing development project application is complete within 30 days of receipt of the application. (Cal. Gov. Code, § 65943, subd. (a).) Further, the PSA prevents the City from "moving the goalposts" by limiting subsequent completeness determinations to items previously listed and prohibiting "the [development project] applicant [from being required] to provide any new information that was not stated in the initial list of items that were not complete." (*Id.*)

items previously identified by the City, Plaintiff re-submitted the Two-Unit Project to the City, for a third time.

41. On July 16, 2021, the City again determined the application for the Two-Unit Project was incomplete. The City included new reasons for the incompleteness determination not previously identified.

42. On October 29, 2021, in response to and having addressed the incomplete items previously identified by the City, Plaintiff re-submitted the Two-Unit Project to the City, for a fourth time.

43. Between December 17, 2021 and December 21, 2021, the City again determined the application for the Two-Unit Project was incomplete. The City included new reasons for the incompleteness determination not previously identified as well as items that had already been addressed by Plaintiff.

44. On January 29, 2022, in response to and having addressed the incomplete items previously identified by the City, Plaintiff re-submitted the Two-Unit Project to the City, for a fifth time.

45. On March 25, 2022, the City again determined the application for the Two-Unit Project was incomplete. The City included new reasons for the incompleteness determination not previously identified.

46. On April 8, 2022, in response to and having addressed the incomplete items previously identified by the City, Plaintiff re-submitted the Two-Unit Project to the City, for a sixth time.

47. On May 11, 2022, the City again determined the application for the Two-Unit Project was incomplete. The City included new reasons for the incompleteness determination not previously identified as well as items that had already been addressed by Plaintiff.

48. On July 27, 2022, in response to and having addressed the incomplete items previously identified by the City, Plaintiff re-submitted the Two-Unit Project

to the City, for a seventh time—expressly indicating to the City that "surely this MUST now be complete."

49. On August 25, 2022, the City again determined the application for the Two-Unit Project was incomplete. The City included new reasons for the incompleteness determination not previously identified as well as items that had already been addressed by Plaintiff.

50. On September 12, 2022, in response to and having addressed the incomplete items previously identified by the City, Plaintiff re-submitted the Two-Unit Project to the City, for an eighth time.

51. On or around October 11, 2022, the City *finally* determined the application for the Two-Unit Project was complete. However, three weeks or so later in several communication, the City advised Plaintiff to withdraw the Two-Unit Project application and to proceed instead under an alternative state housing law entitlement pathway, citing "neighborhood opposition" and the City's view that such an approach would better shield the Two-Unit Project from third party criticism.

52. Because proceeding under the alternative state housing law would have required a new design, substantial additional cost, and not allowed Plaintiff to achieve its distinct investment backed expectations for the Property (given the myriad requirements and limitations of that state housing law), after already two years of delay without much progress, Plaintiff could not pursue the project.

53. The City's handling of the Two-Unit Project reflected a consistent City objective of avoiding residential use on the Property.

The 29-Unit (SB 35) Project and the Never-Ending SB 35 "Scoping Consultation"

54. Having incurred significant expense and delay without progress, Plaintiff proposed the 29-Unit Project on the Property, inclusive of 11 accessory

dwelling units and six units of which were designated for low-income households.

55. On May 15, 2023, the City received an SB 35 "notice of intent" for the 29-Unit Project (the "Notice of Intent") in the form of an SB 330 preliminary application.

56. The Notice of Intent included all of the information required by SB 35 for an SB 35 notice of intent.

57. At the time of receipt, the City's Housing Element had not been found by the California Department of Housing and Community Development ("HCD") to be in substantial compliance with California State Housing Element Law. This placed the City squarely within the scope of the "Builder's Remedy" at the time the 29-Unit Project was submitted to the City, and thereby vested Plaintiff's rights to the Builder's Remedy for the 29-Unit Project.

58. On or around June 14, 2023, the City confirmed to Plaintiff that the Notice of Intent was complete, and Plaintiff had obtained vested rights to the 29-Unit Project as of May 15, 2023.

59. The receipt of the Notice of Intent also commenced the City's statutory SB 35 "scoping consultation" requirements.

60. On June 13, 2023, the City purportedly provided notice of the Notice of Intent to California Native American tribes that are traditionally and culturally affiliated with the geographic area of the Property.

61. The notice purportedly included an invitation to engage in a scoping consultation in accordance with SB 35.

62. On June 22, 2023, Federated Indians of Graton Rancheria ("FIGR") accepted the scoping consultation invitation.

63. On July 14, 2023, the City communicated to Plaintiff that FIGR had accepted the scoping consultation invitation. As part of that communication, the City informed Plaintiff that it had provided the Notice of Intent, 29-Unit Project

plans, and a geotechnical study for the Property to FIGR. The City further communicated that FIGR would like to receive any cultural resource assessments or other assessments that have been completed on all or part of the 29-Unit Project's "potential area of project effect" ("APE").

64. In July 2023, Plaintiff facilitated efforts for the City to commence the scoping consultation process with FIGR. Plaintiff connected the City with specialized archaeological consultants (the "Archeologists") who were approved by FIGR to assist FIGR in preparing assessments for the 29-Unit Project's APE.

65. Plaintiff is informed and believes and, on that basis, alleges that on August 14, 2023, the City met with FIGR to discuss the 29-Unit Project for the first time.

66. At the August 14, 2023 meeting, FIGR confirmed that it would proceed with the Archaeologists, identified by Plaintiff, for the 29-Unit Project's SB 35 scoping consultation purposes.

67. On September 8, 2023, the Archeologists completed an archeological survey report for the Property (the "Archeological Survey").

68. The Archeological Survey included a records search of all reports and resources within ¼-miles of the Property and surrounding lands (the "Project Area"), a review of applicable maps and ethnographic literature, outreach to Native American tribes, a geoarchaeological assessment of the Project Area which identified that the Project Area was "on a landform considered to be of low sensitivity for buried sites" and "on a prominent, exposed slope in a developed residential neighborhood" and as such "the potential for encountering subsurface archeological deposits is considered low," an archeological field survey of the Project Area conducted by the Archeologists and cultural monitor for FIGR on September 7, 2023. Based thereon, the Archeological Survey concluded that "No cultural resources were identified within the Project Area as a result of the record

search, literature review, Native American outreach, or archaeological field survey. [¶] As designed, the project will not cause a substantial adverse change in the significance of a Tribal cultural resource…."

69. The Archeologists thereafter transmitted the Archaeological Survey to FIGR.

70. On November 9, 2023, Plaintiff submitted a complete formal application to the City for the 29-Unit Project (the "29-Unit Formal Application").

71. The City accepted the 29-Unit Formal Application for processing, including by accepting, on or around November 8, 2023, Plaintiff's payment of the 29-Unit Formal Application fees. Beyond accepting the 29-Unit Formal Application, the City failed to provide any response to Plaintiff that the 29-Unit Formal Application was incomplete or inconsistent. Nor did the City provide any notice to Plaintiff, around that time, that the 29-Unit Formal Application was not deemed submitted.

72. On November 20, 2023, Plaintiff discussed with the City the scheduling of a meeting between the City and FIGR to complete the scoping consultation given the Archaeological Survey conclusion of no tribal cultural resources at the Property.

73. Over the course of roughly four months, the City repeatedly claimed it was meeting with the tribal representatives but in fact no such records of meetings about the 29-Unit Project (as opposed to other matters in the City) exist or reflect any active "scoping consultation" as envisioned by SB 35. To the contrary, nothing discernible was accomplished. In reality, the City did nothing more than repeatedly schedule meetings (often after months of delay) with no agenda. Plaintiff continued to seek the conclusion of the scoping consultation process, but the City failed and refused.

74. On March 6, 2024, the City communicated to Plaintiff that FIGR has

"requested some additional analysis for the project site" and the "City will need to accommodate this request."

75. On March 12, 2024, Plaintiff contacted HCD, in its role of enforcing State housing laws against cities, and ensuring cities are accountable under the HAA, seeking its assistance for such, and to gain assistance to communicate to the City that the period for the purported scoping consultation was over and to start processing the Plaintiff's 29-Unit (SB 35) Project. On March 19, 2024, HCD opened a matter for evaluation.

76. On March 13, 2024, Plaintiff again communicated to the City that the time for the scoping consultation to be completed is well overdue, inquired how the City's actions in the scoping consultation have been meaningful and timely, and explained that Plaintiff was confused by the statement that some additional analysis was required when the "scoping consultation" had been underway for an extensive amount of time already.

77. On March 29, 2024, the City responded to Plaintiff that it had met with FIGR on August 3, 2023, January 3, 2024, and February 27, 2024, regarding the 29-Unit Project and in effort to complete the scoping consultation. The City informed Plaintiff that FIGR was requesting an extension of the ¼-mile radius conducted for the records search in the Archeological Survey to ½-mile. The City further informed Plaintiff that it would be following up with FIGR that same day on March 29, 2024, and will be scheduling a meeting with FIGR in early April 2024. The Plaintiff inquired of the Archaeologists as to the nature of this request, and the founder of the Archaeologists, Alex DeGeorgey, responded that it was strange because a ½ mile radius is only ever used for larger uniquely Federal development projects.

78. On April 5, 2024, the Archeologists completed the additional records search with an extended ½-mile radius for previous studies and one-mile radius for

known resources, as requested by FIGR, for the Property (the "Additional Records Search"). The Additional Records Search stated, amongst other things, that "[t]here are no cultural resources documented within the Project Area."

79. The Additional Records Search was submitted to FIGR.

80. On April 5, 2024, the founder of the tribe's approved Archeologists, Alex DeGeorgey, wrote to the Plaintiff and stated that the 29-Unit Project *will not affect cultural resources.*

81. On April 9, 2024, the Additional Records Search was provided to the City along with a request from Plaintiff to complete the scoping consultation by April 19, 2024.

82. On May 9, 2024, FIGR's Tribal Chairman communicated directly face to face four times to Plaintiff that it was the City, and not FIGR, holding up the 29-Unit Project.

83. On May 29, 2024, Plaintiff communicated its understanding that the City had not met with FIGR regarding the scoping consultation since February 2024.

84. On May 29, 2024, Plaintiff also submitted a slightly amended application. The City accepted the amended 29-Unit Project application for processing. Beyond accepting the amended 29-Unit Project application, the City – again - failed to provide any response to Plaintiff that the amended 29-Unit Project application was incomplete or inconsistent.

85. On June 12, 2024, the City communicated to Plaintiff that the 29-Unit Project's scoping "consultation process is not over as of this date."

86. On June 13, 2024, the City communicated to Plaintiff that the City had met with FIGR on June 6, 2024, and that there has been agreement between the City and FIGR to proactively set up a standing monthly meeting "to establish a predictable pattern in which we will continue to meet and consult with the goal of

moving to a conclusion of the consultation process."

87. During early July 2024 the Plaintiff had repeated its insistence to meet to resolve the scoping consultation. On July 9, 2024, the Planning Manager did not take the required steps to conclude the consultation despite the absence of any justification to further extend the process.

88. On July 25, 2024, Plaintiff met with the City, specifically the Planning Manager and CED Director, to discuss the 29-Unit Project and the scoping consultation. At that meeting, amongst other things:

a. The CED Director stated that FIGR has not informed the City that there are cultural resources at the Property.

b. The CED Director stated to the Plaintiff that he had asked FIGR what their areas of concern are, asked that he have clarity, asked if there is anything else FIGR is looking for. The CED Director stated that FIGR did not state there are resources on the Property, and that he's waiting for a response from them.

c. The Plaintiff asked, "*what* tribal cultural resources or potential tribal resources are under discussion"? The Planning Manager's only response was "we are awaiting additional comments from them."

d. Plaintiff informed the City that FIGR's Tribal Chairman had communicated to Plaintiff that it was the City, and not FIGR, holding up the 29-Unit Project.

e. The Plaintiff asked why the City had approved only *one* single family home in the prior year, despite the City receiving large numbers of applications for single family home construction. The Planning Manager responded solely that the City doesn't build housing.

89. Around this time, Plaintiff obtained and reviewed the (official) Annual Production Report of housing in City of San Rafael for 2023. This Annual Production Report for 2023 stated that the City had approved 162 condominiums but one single family home - despite the single-family zoned areas in the City being orders of magnitude larger than the small downtown area where the condominiums were approved.

90. On August 8, 2024, counsel for Plaintiff sent a letter to the City informing the City that it "has failed to carry out its ministerial duty to engage in a meaningful and timely scoping consultation process, and is instead weaponizing the consultation requirement to thwart this desperately needed housing project." A true and correct copy of this letter is attached hereto as **Exhibit A**.

91. On October 4, 2024, outside counsel for the City responded to the August 8, 2024 letter disputing the contentions raised in that letter. The October 4, 2024 letter stated that the City has a follow-up meeting scheduled with FIGR for October 11, 2024 to continue the consultation.

92. On November 21, 2024, then-counsel for the Plaintiff and the City met by telephone, and counsel for the Plaintiff asked specifically for the City to put in writing its determination regarding the presence of any resources or state that it has not made a determination. The City refused.

93. On December 11, 2024, the Plaintiff met with a HCD Housing Policy Analyst and Housing Accountability Manager, that had been tasked to investigate the conduct of representatives of the City. The HCD representatives offered their assessment that this was indeed a "version of SB 35 blocking."

94. On January 24, 2025, the city provided to the Plaintiff's representative, in response to a California Public Records Act request multiple emails sent to FIGR by the City over the period from June 2023 to January 2025.

95. Just five days later, on January 29, 2025, the Archeologists contacted

Plaintiff and informed Plaintiff that FIGR had requested a canine survey be conducted. Alex DeGeorgey archeologist wrote "Understandably this is unexpected, asking for more cultural resources and a seeming endless process with FIGR." After almost two years of delay of the 29-Unit Project, Plaintiff was unwilling to conduct the canine survey without any assurance from the City and FIGR that doing so would conclude the otherwise endless scoping consultation.

96. While communications with the City in the recent prior period had been managed by HCD and attorney Brian O'Neill, on March 12, 2025, Plaintiff communicated to the City that Plaintiff has not heard from the City about the scoping consultation for several months—and that it was Plaintiff's position that there was no scoping consultation being performed in violation of the City's ministerial duty to do so under SB 35.

97. On March 13, 2025, the City communicated to Plaintiff that it would respond next week with a status update. The City did not in fact provide any update the following week or even the following month. Plaintiff insisted that the City conclude the purported scoping consultation.

98. On May 9, 2025, the City sent a letter to FIGR purporting to document that the City and FIGR had conducted numerous meetings and/or calls related to the scoping consultation. A true and correct copy of this letter is attached hereto as **Exhibit B**.

99. Plaintiff is informed and believes and, on that basis alleges, that the listed meetings and/or calls were not dedicated to Plaintiff's 29-Unit Project, but rather a series of unrelated developments in the City's downtown. The public records the City has produced in response to Plaintiff's California Public Record Act requests evidence no such series of meetings regarding the Property.

100. The May 9, 2025 letter the City sent to FIGR provided:

> The City is however, concerned that the consultation process has not been "timely" as required by SB 35.

> Throughout the meetings and ongoing consultation process which began in May of 2023, FIGR has not informed the City that a potential tribal cultural resource would be affected by the proposed development or that an enforceable agreement could not be documented between FIGR and the City regarding methods, measures, and conditions for treatment of any tribal cultural resource treatment.
>
> The September 2023 cultural resources study conducted by Alta on the project site and shared by FIGR with the City, did not reveal the presence or likelihood of any tribal cultural resources. Nevertheless, the City acknowledges that FIGR may still determine that a potential tribal cultural resource would be affected by the proposed development. If FIGR intends to make this determination, we ask that FIGR please inform the City of this fact within two weeks of the date of this letter. We also request that FIGR inform the City whether FIGR believes that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present can be reached.

101. Around this time, Plaintiff obtained and reviewed the official Annual Production Report of housing in City of San Rafael for calendar year 2024. This Annual Production Report for 2024 stated that the City had approved 204 condominiums but zero single family homes - despite the single-family zoned areas being orders of magnitude larger than the small downtown area where the condominiums were approved.

102. On May 15, 2025, counsel for Plaintiff sent a letter to the City stating that the City has been well-advised of its failure to carry out its ministerial scoping consultation duty under SB 35—and that the City's disregard for its ministerial duties under the law have consequences. A true and correct copy of this letter is attached hereto as **Exhibit C**.

103. On May 28, 2025, the City informed Plaintiff, upon Plaintiff's prompting, that FIGR responded that it would like to meet with the City.

Litigation Prompts the City to Quickly Document an Enforceable Agreement with FIGR and Process the 29-Unit Project, Only for the City to Further Violate Its SB 35 Obligations

104. The City's inaction forced Plaintiff to file the original action.

105. At the time of Plaintiff's filing of the initial Complaint for Damages and Petition for Writ of Mandate in this action, on June 10, 2025, the City continued the purported, endless and undocumented scoping consultation the real purpose of which appears to have been to avoid processing Plaintiff's 29-Unit (SB 35) Project, which should have been approved long ago and fully processed under the accelerated, ministerial timeline envisioned by SB 35.

106. Under SB 35, "a scoping consultation shall be deemed to be concluded if … [t]he parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present." (Cal. Gov. Code, § 65913.4, subd. (b)(2)(D).)

107. Within a mere 20 days of Plaintiff's filing this action, on June 30, 2025, the City, FIGR, and Plaintiff had documented an enforceable agreement to address and protect cultural and tribal cultural resources, if any, located at the Property (the "Enforceable Agreement"). The City's manufacturing of a two-year delay and then entering into the Enforceable Agreement within just three weeks of being sued is an abuse of governmental power that violates Plaintiff's Constitutional rights.

108. Plaintiff is informed and believes that it was never invited to participate in the scoping consultation before filing this action. The City identified no affected tribal cultural resource nor potential tribal cultural resource and produced no documented, project-specific consultation record sufficient to justify the delay, despite two investigations finding none; its execution of the Enforceable Agreement within 20 days after suit was filed further shows that the preceding delay was unnecessary.

109. The City acknowledged the 29-Unit (SB 35) Project was deemed

submitted upon documentation of the Enforceable Agreement on June 30, 2025.

110. Notwithstanding there are no provisions in SB 35 that allow a local government to review an SB 35 application for completeness, on July 23, 2025, the City determined the 29-Unit (SB 35) Project was "incomplete."

111. On August 27, 2025, the City issued a letter to Plaintiff determining that the 29-Unit Project was inconsistent with City standards as well as State law, and as such the City cannot approve the 29-Unit Project. The City claimed this inconsistency determination was made in compliance with the requirements of SB 35, but, in fact, it violates SB 35. The 29-Unit Project was consistent with the standards and requirements that the City was allowed to apply to the 29-Unit Project, as controlled by SB 35 and other state housing laws.

112. On September 28, 2025, the City issued a subsequent letter to Plaintiff confirming its disapproval of the 29-Unit Project, stating:

> On August 27, 2025, the City issued written correspondence identifying inconsistencies with objective City zoning, subdivision and design review standards as well as State laws, including SB 35. This letter confirms that the [29-Unit Project] development application cannot be approved for the preceding reasons, and the City therefore has no duty and declines to approve the [29-Unit Project] application pursuant to Government Code section 65913.4(d)(1)(A).

The August 27, 2025 letter relied on subjective, inapplicable, post-entitlement, or waived provisions rather than identifying and explaining an actual conflict with an applicable objective planning standard.

The 14-Unit (SB 35) Project Submitted at the Unit Count the City Itself Identified as Potentially Acceptable, Yet Still Disapproved

113. In August 2025, the City and Plaintiff discussed a housing development project at a unit count of 14 units, which unit count the City itself identified and communicated to Plaintiff as acceptable for processing in accordance with the City's Housing Element and pursuant to SB 35 and SDBL.

114. Thereafter, to address the City's expressed concerns (even if not meritorious) regarding the 29-Unit Project, Plaintiff expended the time and resources necessary to reconfigure its plans and submitted the 14-Unit (SB 35) Project, which consisted of 14 housing units, inclusive of six accessory dwelling units and one unit for low-income households, together with related landscaping, amenities, an internal roadway, and parking.

115. On October 1, 2025, Plaintiff, through its counsel, sent a letter to the City regarding the 14-Unit Project. This letter was sent to help the City's review of the 14-Unit Project in accordance with state law.

116. On October 6, 2025, the City issued a letter to Plaintiff determining that the 14-Unit Project was inconsistent with City standards as well as State law, and as such the City cannot approve the 14-Unit Project. This letter largely repeated the "inconsistencies" identified in the August 27, 2025 letter for the 29-Unit Project. The City claimed this inconsistency determination was made in compliance with the requirements of SB 35, but, in fact, it was a violation of SB 35. The 14-Unit Project was consistent with the standards and requirements that the City was allowed to apply to the 14-Unit Project, as controlled by SB 35 and other state housing laws.

117. On October 20, 2025, Plaintiff, through its counsel, notified the City that the City has made it clear that any entitlement efforts by Plaintiff are futile—and, as such, Plaintiff would no longer continue with any informal communications or tinkering with project elements. That communication stated:

> The City's August 27, 2025, letter regarding the original 29-unit project, and the City's October 6, 2025, letter regarding the reduced density 14-unit project, which we had understood the City would process for approval as a good faith effort toward settlement, do not demonstrate the City's willingness to take seriously its obligations under either SB 35 or the Housing Accountability Act to properly process entitlement applications for ***any*** residential development on the Coleman site.

The October 6, 2025 letter repeatedly stated that information was insufficient or that consistency could not be determined, rather than identifying and explaining an actual conflict with an applicable objective standard; it also omitted the attached-unit theory first raised on December 3, 2025 after the 60-day period expired.

118. It appears that the Defendants rely on their inability to precisely define the term "multifamily" as used in SB 35 as a basis to *deny* the consistency of the current project even though their inability to define the term to their satisfaction actually means they must *approve* the project. State law mandates that local agencies interpret the law in favor of housing and that the law must be interpreted in favor of the reasonable understanding of the project applicant. Furthermore, the City's published eligibility criteria for use of SB 35 makes clear that the "multifamily" criterion is satisfied by "verifying the development contains at least two or more net new residential units." SB 35's purpose is to ensure applicants can readily determine compliance through knowable and verifiable requirements.

C. Exhaustion of Administrative Remedies

119. Plaintiff has exhausted any and all administrative remedies available to Plaintiff to the extent required by law.

120. In addition, and alternatively, Plaintiff alleges it would be futile, under the circumstances, to require Plaintiff to engage in the administrative process because the City has created an endless loop process, and it is the *process itself that presents the basis of the claim*. The City's practice has been to hide behind an alleged ongoing process as a means of staving off Plaintiff's ability to proceed with the SB 35 ministerial approval. Through delay tactics over the course of more than two and one-half years the City has already communicated a final decision on the matter, which is that it will take whatever steps are necessary to continue to deny Plaintiff the ability to pursue the ministerial SB 35 process by misusing the scoping consultation step as a condition precedent to actually processing the application.

121. This futility was corroborated by the City's subsequent conduct after this litigation began.

D. HCD's SB 35 Guidelines Have Been Repealed, Plaintiff's 29-Unit Project and 14-Unit Project are Attached, Multifamily Housing for Purposes of SB 35

122. SB 35 provides that HCD "may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section."

123. To help jurisdictions implement SB 35, HCD issued Streamlined Ministerial Approval Process Guidelines" ("Original Guidelines") on November 29, 2018.

124. The term "multifamily" is not defined in SB 35. However, in the Original Guidelines, HCD defined "multifamily" to mean: "a housing development with two or more attached residential units. The definition does not include accessory dwelling units unless the project is for new construction of a single-family home with an attached accessory dwelling units in a zone that allows for multifamily. Please note, accessory dwelling units have a separate permitting process pursuant to Government Code section 65852.2."

125. Following issuance of the Original Guidelines, the Legislature amended SB 35 to add a command to SB 35, at what is now subdivision (u) of SB 35, which provides that it "is the policy of the state that [SB 35] be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply."

126. Further, strengthening, or at least reinforcing, this legislative proclamation that SB 35 be liberally construed to promote housing, the Legislature subsequently added a "reasonable person" mandate to SB 35, at what is now subdivision (c)(3), which provides that for "purposes of [SB 35], a development is

consistent with the objective planning standards specified in subdivision (a) [which includes "the development is a multifamily housing development that contains two or more residential units" standard] if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. …"

127. HCD did update the Original Guidelines (the "SB 35 Guidelines") on March 30, 2021—*i.e.*, after the abovementioned provisions were added to SB 35. The definition of "multifamily" in the SB 35 Guidelines has been carried over in substantially identical form from the Original Guidelines—deleting only a single word ("an") from the definition. HCD does not appear to have considered how the Legislature's pro-housing interpretive mandates impacted HCD's prior construction of the term "multifamily."

128. In addition to the "interpretive gloss" to the text of SB 35 discussed above, Section 101(c) of the SB 35 Guidelines provides that "It is the intent of the Legislature to provide reforms and incentives to facilitate and expedite the construction of affordable housing. Therefore, these Guidelines shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of increasing housing supply."

129. Both the 29-Unit Project and the 14-Unit Project have "attached residential units" for purposes of HCD's "multifamily" definition.

130. Nothing in SB 35 or HCD's now-repealed SB 35 Guidelines mandates or even hints at the conclusion that "attached" means common walls or a single apartment-type building. "Attached" is undefined and subject to reasonable interpretation consistent with the overall intent of SB 35.

131. While the 29-Unit Project does not include housing with common or shared walls, the 29-Unit Project has attached residential units through the following common and shared structural, access, and amenity elements:

a. Single Subterranean Foundation. All 29 units of the 29-Unit Project are attached by a single subterranean foundation of reinforced concrete and steel that runs beneath the entire development and literally cements the units together. This is not a collection of independent foundations serving individual units, it is one integrated foundation system common to the entire 29-Unit Project.

b. Shared Walkways, Ramps, and Entrances. Nearly all units are attached to at least one other unit through a common or shared uncovered walkway, ramp, and/or entrance that is shared by two or more units.

c. Shared Private Driveway. A shared private driveway traverses the entire Property, attaching all of the units to one another by means of ingress and egress.

d. Community Pool. The 29-Unit Project includes a common pool shared by all units, attaching all of the units in terms of amenity access.

132. While the 14-Unit Project does not include housing with common or shared walls, the 14-Unit Project has attached residential units because the 14-Unit Project is organized into three buildings, each of which is a physically integrated structure as follows:

a. Building One. Building One contains six housing units. All six units share a common single foundation, with common parking at the lowest level of the structure. Two common elevators serve the building, with one elevator serving four units and the other elevator serving the other two units. A common or shared uncovered walkway serves four units and another a common or shared uncovered walkway serves the other two units. Each unit in the building is attached to the unit next to it by continuous steel screening, running to the top of the building's third floor, which protects occupants from direct sun at the center and rear of the building.

b. Building Two. Building Two contains six housing units as well

as a shared community pool and event space (accessible to all units in the 14-Unit Project). All six units share a common single foundation, with common parking at the lowest level of the structure. A single elevator serves the entire building with the exception of one unit. A single fire stair provides shared egress for the entire building. A common or shared uncovered walkway serves the entire building with the exception of one unit. Each unit in the building is attached to the unit next to it by continuous steel screening, running to the top of the building's third floor, which protects occupants from direct sun at the center and rear of the building.

c. Building Three. Building Three contains two housing units. The two units share a common single foundation, with common parking at the highest level of the structure. A single elevator serves both units. A common or shared uncovered walkway serves both units. The two units are attached by continuous steel screening, running to the top of the building's third floor, which protects occupants from direct sun at the center and rear of the building.

d. Attachment Across All Three Buildings. In addition, a shared private driveway traverses the entire Property, attaching all of the units to one another by means of ingress and egress. Likewise, the 14-Unit Project includes a shared community pool and event space shared by all units, attaching all of the units in terms of amenity access.

133. In any event, Section 101(d) of the SB 35 Guidelines provides that "These Guidelines shall remain in effect until January 1, 2026, and as of that date are repealed." Accordingly, as of January 1, 2026, "multifamily" is no longer a defined term under the SB 35 Guidelines. In the absence of any such definition, SB 35's interpretive principles—favoring housing production and with a reasonable person standard for determining consistency with SB 35's objective planning standards—necessarily guides the "multifamily" analysis.

134. The City never cited to the SB 35 Guidelines definition of

"multifamily" in its August 27, 2025 letter disapproving the 29-Unit Project or in its October 6, 2025 letter disapproving the 14-Unit Project.

135. A reasonable person could conclude that the 29-Unit Project satisfies the "multifamily housing development that contains two or more residential units" criterion of SB 35 (*i.e.*, subdivision (a)(1) of Government Code section 65913.4) due to the 29-Unit Project characteristics stated above and/or because each of the six parcels that comprises the Property contains more than one housing unit.

136. A reasonable person could conclude that the 14-Unit Project satisfies the "multifamily housing development that contains two or more residential units" criterion of SB 35 (*i.e.*, subdivision (a)(1) of Government Code section 65913.4) due to the 14-Unit Project characteristics stated above and/or because each of the six parcels that comprises the Property contains more than one housing unit.

E. Plaintiff Resubmits the 14-Unit Project with Indisputably Attached Units and the City Refuses to Process the Resubmittal in Accordance with SB 35

137. On October 22, 2025, counsel for Plaintiff sent a letter to the City explaining that the City already had everything it needed to approve the 14-Unit Project. The letter explained why the inconsistency items identified in the City's October 6, 2025 inconsistency letter were improper. Plaintiff insisted that the City process the 14-Unit Project in accordance with SB 35.

138. On November 13, 2025, the Planning Manager extended an invitation to Plaintiff to meet with the City because as the Planning Manager stated "[w]e think that there may be ways to modify the plans and move the project forward."

139. On November 18, 2025, Plaintiff met with the City, specifically the Planning Manager and CED Director, to discuss the 14-Unit Project.

140. At that meeting, the parties discussed the objective meaning of the term "attached." The City stated that it would respond to Plaintiff at a later date

regarding the objective definition of "attached."

141. Also at that meeting, the City identified other state housing reform laws that the City suggested could potentially be viable pathways for housing on the Property. Plaintiff informed the City that it had no interest in pursuing these potentially alternative entitlement pathways, as Plaintiff had already invested years and substantial resources in the SB 35 process, held vested rights under SB 35 and otherwise, and the 14-Unit Project already qualified for ministerial approval under SB 35, whereas choosing a new pathway carried new risks and required new processes potentially including CEQA compliance, which would empower the City to reject the Project.

142. The City did not respond to Plaintiff with the promised objective definition of "attached." Rather, on December 3, 2025, the City issued a letter to Plaintiff offering yet "another explanation" for why the 14-Unit Project does not satisfy the SB 35 "multifamily housing development that contains two or more residential units" criterion. This time the City invoked the definition of "multifamily" in the SB 35 Guidelines and asserted that the units did not satisfy the "attached" requirement within that definition because "each [unit] is a wholly independent, stand-alone structure" and "[n]one of the dwelling are physically adjoined, connected, or otherwise integrated with any other dwelling."

143. The City's December 3, 2025 letter stated that the "Project is hereby denied based on the inconsistencies identified in the October 6, 2025 correspondence."

144. On March 20, 2026, in a continued good-faith effort to obtain approval through the statutory SB 35 process and to address the City's stated feedback (even if the feedback was untimely and not meritorious), Plaintiff resubmitted a modified version of the 14-Unit Project in accordance with subdivision (c)(1)(C) of SB 35 (the "Resubmitted 14-Unit Project").

145. The Resubmitted 14-Unit Project shows residential units that are attached by the City's expressed interpretation (i.e., sharing common walls above ground). A true and correct copy of the submitted site plan and floor plans for the Resubmitted 14-Unit Project are attached hereto as **Exhibit D**.

146. As the City received the Resubmitted 14-Unit Project on March 20, 2026, pursuant to SB 35, the City was required to determine whether the Resubmitted 14-Unit Project was inconsistent "with any of the objective planning standards" and "provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards" by April 19, 2026 (*i.e.*, within 30 days of resubmittal).

147. The City did not do so. Rather, on March 24, 2026, the City sent an e-mail correspondence to Plaintiff that the City had denied the 14-Unit Project on December 3, 2025 and that, therefore, Plaintiff would need to submit a new application in order for the City to initiate review of the Resubmitted 14-Unit Project.

148. On April 2, 2026, counsel for Plaintiff sent written notice to the City pursuant to subdivision (h)(6)(E) of the HAA of the City's course of conduct undertaken for an improper purpose in the City's processing of Plaintiff's SB 35 project (the "Challenged Course of Conduct Notice"). A true and correct copy of the Course of Conduct Notice is attached hereto as **Exhibit E**.

149. The Challenged Course of Conduct Notice informed the City that the "City's latest position that it will not accept or process a re-submittal from [Plaintiff]—despite SB 35 expressly contemplating and requiring an opportunity for applicants to respond to, revise, and address prior feedback from the City—constitutes disapproval for purposes of the HAA" and that if not remedied it would be yet another violation of the HAA.

150. The Challenged Course of Conduct Notice also detailed other actionable conduct, including that City's application of non-objective standards to the project, the City's issuance of documentation that misstates and misrepresents Plaintiff's submittals and ignores information that Plaintiff had already provided to the City, the City's reliance on local standards preempted by state law, the city's misrepresentation of its own local code, the City's demands for CEQA documentation even though SB 35 projects are exempt from CEQA, the City's improper claim that the project's vested rights have expired, the City's refusal to process density bonuses and waivers under the State Density Bonus Law, and the City's general SB 35 processing violations.

151. On April 17, 2026, the City issued a purported "incompleteness" determination pursuant to the Permit Streamlining Act (specifically Government Code section 65943(a)) for the Resubmitted 14-Unit Project (the "April 17 2026 Incompleteness Determination"). A true and correct copy of the April 17, 2026 Incompleteness Determination is attached hereto as **Exhibit F**.

152. Although the City acknowledges that it received the March 20, 2026 resubmittal, which was clearly identified as a resubmittal, the City failed to conduct the plan-specific consistency determination required by Government Code section 65913.4 (c)(1)(c). Neither the March 24 email nor the April 17 letter identified an applicable objective planning standard and explained how the Resubmitted 14-Unit Project conflicted with that standard, as was its ministerial obligation to do.

153. On April 28, 2026, the California Housing Defense Fund ("CalHDF")—a non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels—submitted a letter to the City regarding Plaintiff's SB 35 project (the "CalHDF Letter"). A true and correct copy of the CalHDF Letter is attached hereto as **Exhibit G**.

154. The CalHDF Letter independently documented the City's unlawful

processing of Plaintiff's SB 35 project.

155. The CalHDF Letter further explained that, because the City refused to process the Resubmitted 14-Unit Project pursuant to Section (c)(1)(C) of 65913.4, and thus failed to conduct a consistency review within 30 days as required by SB 35, the Resubmitted 14-Unit Project is deemed consistent with SB 35's objective planning standards—and, thus, "nothing further remains for the City to do but approve the project."

156. On July 1, 2026, the City issued its written response to the Course of Conduct Notice ("City Course of Conduct Response"). The City Course of Conduct Response also responded to the CalHDF Letter. A true and correct copy of the City Course of Conduct Response is attached hereto as **Exhibit H**. In the City Course of Conduct Response, the City admitted that a SB 35 project was vested against changes in local standards and requirements beyond those in place as of May 15, 2023, which was the date the City received the Notice of Intent. At that time, the City's housing element had not been found by HCD to be in substantial compliance with California State Housing Element Law, which placed the City squarely within the scope of the Builder's Remedy and vested Plaintiff's rights to the Builder's Remedy for the SB 35 project. Given the vested Builder's Remedy status, the City's reliance on local zoning, subdivision, and design review standards as grounds for inconsistency is legally unavailable, rendering the City's consistency analysis under those standards immaterial.

V. FIRST CLAIM FOR RELIEF

(Regulatory Takings – 42 U.S.C. § 1983; U.S. Const. amend XIV, § 1; Cal. Civ. Proc. Code § 1085; Cal. Const. Art. 1, § 19 – Against All Defendants)

157. Plaintiff hereby re-alleges Paragraphs 1 through 156, inclusive, which are incorporated herein by reference.

158. Plaintiff restates this Complete Regulatory Takings First Claim for Relief without change from Plaintiff's First Amended Petition, except for the addition of this Paragraph and updated paragraph references in the above Paragraph not intended to be substantive, to preserve this Claim for potential appellate review.

159. The United States Constitution requires just compensation be paid when private property is taken by the government.

160. The California Constitution requires just compensation be paid when private property is taken by the government.

161. Defendants' actions (including inactions) on the Two-Unit Project, 29-Unit Project, and 14-Unit Project demonstrate that the City would not approve any development or economically viable use of the Property.

162. With any efforts to develop the Property rendered futile, Defendants' actions (including inactions) have deprived Plaintiff of all economically viable use of the Property.

163. Plaintiff is entitled to just compensation for Defendants' taking of the Property in an amount that exceeds the jurisdictional minimum of this Court.

VI. SECOND CLAIM FOR RELIEF

(Temporary Regulatory Takings – 42 U.S.C. § 1983; U.S. Const. amend XIV, § 1; Cal. Civ. Proc. Code § 1085; Cal. Const. Art. 1, § 19 – Against All Defendants)

164. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, Paragraphs 54 through 112, inclusive, and Paragraphs 119 through 156, inclusive, which are incorporated herein by reference.

165. Plaintiff restates this Temporary Regulatory Takings Second Claim for Relief without change from Plaintiff's Second Amended Petition, except for the addition of this Paragraph and updated paragraph references in the above Paragraph not intended to be substantive, to preserve this Claim for potential appellate review.

166. The U.S. Constitution requires just compensation be paid when private property is taken, even temporarily, by the government.

167. The California Constitution requires just compensation be paid when private property is taken, even temporarily, by the government.

168. Defendants prolonged and unreasonable never-ending scoping consultation process for the 29-Unit Project, and the unreasonable and extraordinary delay therefrom in an effort to thwart Plaintiff's lawful ability to use the Property, amounts to a temporary taking of the Property.

169. The never-ending scoping consultation process for the 29-Unit Project has effectively prevented Plaintiff from using its Property.

170. SB 35 imposes a prescribed streamlined, ministerial approval process as set forth in Government Code section 65913.4.

171. SB 35 imposes strict processing timeframes and requirements on local governments.

172. Pursuant to SB 35, if an SB 35 project contains 150 or fewer housing units, a local government must determine whether an application is consistent with "objective planning standards specified in subdivision (a)" of Government Code section 65913.4 within 60 days of submittal of the application.

173. Pursuant to SB 35, if an SB 35 project contains 150 or fewer housing units, a local government can conduct design review only within 90 days of submittal of the application.

174. Pursuant to SB 35, a local government must provide notice with an invitation to engage in a scoping consultation to California Native American tribes within 30 days after SB 35 project applicant submits a notice of intent.

175. Pursuant to SB 35, a Tribe has only 30 days to accept the scoping consultation invitation.

176. Pursuant to SB 35, a local government is required to commence the

scoping consultation within 30 days of receiving a response from a Tribe accepting the invitation to engage in the scoping consultation.

177. The City does not have discretion to circumvent the abovementioned prescribed SB 35 timeframes.

178. SB 35 defines "scoping" as "the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code." (Gov. Code, § 65913.4, subd. (b)(7)(B), emphasis added.)

179. SB 35 defines "consultation" as "the meaningful and **timely** process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" prepared by the Office of Planning and Research." (Gov. Code, § 65913.4, subd. (b)(7)(A), emphasis added.)

180. The mandatory duty to engage in a scoping consultation must be conducted early in the process and must be a meaningful and **timely** effort to identify a project's potential impacts to tribal cultural resources. The City did none of that. Rather than fulfill its ministerial duty, the City dragged the purported

scoping consultation along for approximately two years in an effort to thwart the further mandatory processing of the 29-Unit Project, and in all that time the City has not identified any tribal cultural resource to protect.

181. Indeed, the City exploited the SB 35 scoping consultation process for over two years while FIGR's own Tribal Chairman confirmed the delay was the City's choice.

182. The City entered into the Enforceable Agreement within 20 days of this lawsuit being filed, confirming that the prior delay was not a good faith regulatory measure, but rather a deliberate abuse of the mandatory scoping consultation to obstruct the 29-Unit Project that City had no legitimate basis to not process.

183. During the approximately two-year "scoping consultation" standstill, Plaintiff was effectively foreclosed from any economically viable use of the vacant Property. Because Plaintiff had already commenced processing the 29-Unit Project under the SB 35 framework, Plaintiff was practically precluded from pursuing any alternative development project or entitlement of the Property while SB 35's streamlined ministerial process remained pending for the 29-Unit Project. No reasonable property owner would simultaneously incur the substantial cost, time, and design burden of pursuing multiple separate entitlement pathways on the same property at the same time, especially while a statutorily streamlined, ministerial process is pending. Plaintiff is not required to pursue multiple simultaneous entitlement applications at great cost in order to mitigate a temporary takings claim. The City's exploitation of SB 35's scoping consultation process has thus constituted a temporary takings of the Property.

184. The duration of the temporary deprivation must be assessed in the context of SB 35's statutory framework. SB 35 prescribes a process measured in days—30 days for Tribal notification, 30 days for Tribal acceptance, 30 days for the

City to commence the scoping consultation, 60 days for the City's consistency determination, 90 days for the City to conduct design review. In the context of a statute designed to ensure a streamlined process measured in days—not years—a delay of approximately two years (730 days) during the "scoping consultation" represents an extraordinary and significant period of time.

185. Plaintiff is entitled to just compensation for Defendants' taking of the Property in an amount that exceeds the jurisdictional minimum of this Court. As stated in Plaintiff's letter to the City on May 15, 2025, Plaintiff's damages were accruing on a monthly basis. Given strong rises in property values and rental rates, Plaintiff has estimated damages now accruing at a rate of over $642,000.00 per month.

VII. THIRD CLAIM FOR RELIEF

(Violation of Procedural Due Process – 42 U.S.C. § 1983; U.S. Const. amend XIV, § 1; Cal. Civ. Proc. Code § 1085; Cal. Const. Art. 1, § 7(a) – Against All Defendants)

186. Plaintiff hereby re-alleges Paragraphs 1 through 156, inclusive, which are incorporated herein by reference.

187. Plaintiff restates this Violation of Procedural Due Process Third Claim for Relief without change from Plaintiff's First Amended Petition, except for the addition of this Paragraph and updated paragraph references in the above Paragraph not intended to be substantive, to preserve this Claim for potential appellate review.

188. Through the purported scoping consultation process, Defendants acted under color of state law and deprived Plaintiff of its procedural due process rights as secured by the Fourteenth Amendment of the United States Constitution.

189. The purported scoping consultation process has deprived Plaintiff of a protected property interest in that Plaintiff had a clear expectation deriving from SB 35 in the benefit of Defendants engaging in a scoping consultation as prescribed in

SB 35, timely leading the scoping consultation to conclusion, and not unduly delaying the further mandatory processing of the 29-Unit Project.

190. The purported scoping consultation process has deprived Plaintiff of a protected property interest in Plaintiff's by-right use and development of the Property in accordance with SB 35.

191. The purported scoping consultation process has deprived Plaintiff of its procedural due process rights as secured by article I, section 7(a) of the California Constitution.

192. Through the purported SB 35 inconsistency determination for the 29-Unit Project, Defendants acted under color of state law and deprived Plaintiff of its procedural due process rights as secured by the Fourteenth Amendment of the United States Constitution.

193. The purported SB 35 inconsistency determination for the 29-Unit Project has deprived Plaintiff of a protected property interest in Plaintiff's by-right use and development of the Property in accordance with SB 35.

194. The purported SB 35 inconsistency determination for the 29-Unit Project has deprived Plaintiff of its procedural due process rights as secured by article I, section 7(a) of the California Constitution.

195. Through the purported SB 35 inconsistency determination for the 14-Unit Project, Defendants acted under color of state law and deprived Plaintiff of its procedural due process rights as secured by the Fourteenth Amendment of the United States Constitution.

196. The purported SB 35 inconsistency determination for the 14-Unit Project has deprived Plaintiff of a protected property interest in Plaintiff's by-right use and development of the Property in accordance with SB 35.

197. The purported SB 35 inconsistency determination for the 14-Unit Project has deprived Plaintiff of its procedural due process rights as secured by

article I, section 7(a) of the California Constitution.

198. Defendants failed to afford Plaintiff adequate due process of law before or after depriving Plaintiff of its protected property interests. Defendants have provided no procedural avenue of relief to Plaintiff to enforce its protected property interests short of litigation.

199. As a direct and proximate result of the Defendants' actions, Plaintiff has suffered substantial damages in excess of the jurisdictional minimum of this Court. As stated in Plaintiff's letter to the City on May 15, 2025, Plaintiff's damages were accruing on a monthly basis. Given strong rises in property values and rental rates, Plaintiff has estimated damages now accruing at a rate of over $642,000.00 per month.

VIII. FOURTH CLAIM FOR RELIEF

(Violation of Substantive Due Process – 42 U.S.C. § 1983; U.S. Const. amend XIV, § 1; Cal. Civ. Proc. Code § 1085; Cal. Const. Art. 1, § 7(a) – Against All Defendants)

200. Plaintiff hereby re-alleges Paragraphs 1 through 156, inclusive, which are incorporated herein by reference.

201. Plaintiff restates this Violation of Substantive Due Process Fourth Claim for Relief without change from Plaintiff's Second Amended Petition, except for the addition of this Paragraph and updated paragraph references in the above Paragraph not intended to be substantive, to preserve this Claim for potential appellate review

202. Through the purported scoping consultation process, Defendants acted under color of state law and deprived Plaintiff of its substantive due process rights as secured by the Fourteenth Amendment of the United States Constitution.

203. The purported scoping consultation process has deprived Plaintiff of a protected property interest in that Plaintiff had a clear expectation deriving from SB

35 in the benefit of Defendants engaging in a scoping consultation as prescribed in SB 35, timely leading the scoping consultation to conclusion, and not unduly delaying the further mandatory processing of the 29-Unit Project.

204. The purported scoping consultation process has deprived Plaintiff of a protected property interest in Plaintiff's by-right use and development of the Property in accordance with SB 35.

205. The purported scoping consultation process has deprived Plaintiff of its substantive due process rights as secured by article I, section 7(a) of the California Constitution.

206. Plaintiff worked in good faith with Defendants, including through the use of the Archaeologists and the Archaeological Survey, to establish that there is no potential impacts to cultural resources from the 29-Unit Project.

207. Nonetheless, Defendants violated the law through the never-ending scoping consultation process, which was arbitrary and unreasonable, and having no substantial relation to the public health, safety, morals, or general welfare.

208. Defendants by way of the purported scoping consultation process has engaged in obstructionist tactics that serve no legitimate governmental purpose.

209. Indeed, FIGR's own Tribal Chairman confirmed the scoping consultation delay was the City's choice and the City entering into the Enforceable Agreement within 20 days of this lawsuit being filed, confirms that the scoping consultation delay was not a good faith regulatory measure, but rather a deliberate abuse of the mandatory scoping consultation to obstruct the 29-Unit Project that the City had no legitimate basis to not process.

210. The Enforceable Agreement ultimately executed by FIGR and City was an "off-the-shelf" agreement FIGR had previously agreed to in other contexts and would have been available to the City at the outset had it actually sought to conclude the consultation and process Plaintiff's application.

211. The arbitrary or conscience-shocking nature of the City's conduct must be assessed in the context of SB 35's statutory framework. SB 35 prescribes a process measured in days—30 days for Tribal notification, 30 days for Tribal acceptance, 30 days for the City to commence the scoping consultation, 60 days for the City's consistency determination, 90 days for the City to conduct design review. In the context of a statute designed to ensure a streamlined process measured in days—not years—a delay of approximately two years during the "scoping consultation" represents an extraordinary and significant period of time.

212. Through the purported SB 35 inconsistency determination for the 29-Unit Project, Defendants acted under color of state law and deprived Plaintiff of its substantive due process rights as secured by the Fourteenth Amendment of the United States Constitution.

213. The purported SB 35 inconsistency determination for the 29-Unit Project has deprived Plaintiff of a protected property interest in Plaintiff's by-right use and development of the Property in accordance with SB 35.

214. The purported SB 35 inconsistency determination for the 29-Unit Project has deprived Plaintiff of its substantive due process rights as secured by article I, section 7(a) of the California Constitution.

215. Defendants violated the law through the SB 35 inconsistency determination for the 29-Unit Project, which was arbitrary and unreasonable, and having no substantial relation to the public health safety, morals, or general welfare.

216. Through the purported SB 35 inconsistency determination for the 14-Unit Project, Defendants acted under color of state law and deprived Plaintiff of its substantive due process rights as secured by the Fourteenth Amendment of the United States Constitution.

217. The purported SB 35 inconsistency determination for the 14-Unit Project has deprived Plaintiff of a protected property interest in Plaintiff's by-right

use and development of the Property in accordance with SB 35.

218. The purported SB 35 inconsistency determination for the 14-Unit Project has deprived Plaintiff of its substantive due process rights as secured by article I, section 7(a) of the California Constitution.

219. Defendants violated the law through the SB 35 inconsistency determination for the 14-Unit Project, which was arbitrary and unreasonable, and having no substantial relation to the public health safety, morals, or general welfare.

220. As a direct and proximate result of the Defendants' actions, Plaintiff has suffered substantial damages in excess of the jurisdictional minimum of this Court. As stated in Plaintiff's letter to the City on May 15, 2025, Plaintiff's damages were accruing on a monthly basis. Given strong rises in property values and rental rates, Plaintiff has estimated damages now accruing at a rate of over $642,000.00 per month.

IX. FIFTH CLAIM FOR RELIEF

(Violation of Cal. Gov. Code § 65913.4 – Failure to Carry Out Ministerial Scoping Consultation Duty; Cal. Civ. Proc. Code § 1085 – Against the City)

221. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, Paragraphs 54 through 112, inclusive, and Paragraphs 119 through 136, inclusive, which are incorporated herein by reference.

222. SB 35 imposes a prescribed streamlined, ministerial approval process as set forth in Government Code section 65913.4.

223. Since its adoption in 2017, the Legislature has further amended and strengthened SB 35 to better fulfill its purposes of facilitating and expediting the construction of more housing. (*See* Gov. Code, § 65582.1; Gov. Code, § 65913.4, subd. (u) ["[i]t 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, increased housing supply"].)

224. SB 35 imposes strict processing timeframes and requirements on local governments.

225. Pursuant to SB 35, if an SB 35 project contains 150 or fewer housing units, a local government must determine whether an application is consistent with "objective planning standards specified in subdivision (a)" of Government Code section 65913.4 within 60 days of submittal of the application.

226. Pursuant to SB 35, if an SB 35 project contains 150 or fewer housing units, a local government can conduct design review only within 90 days of submittal of the application.

227. Pursuant to SB 35, a local government must provide notice with an invitation to engage in a scoping consultation to California Native American tribes within 30 days after SB 35 project applicant submits a notice of intent.

228. Pursuant to SB 35, a Tribe has only 30 days to accept the scoping consultation invitation.

229. Pursuant to SB 35, a local government is required to commence the scoping consultation within 30 days of receiving a response from a Tribe accepting the invitation to engage in the scoping consultation.

230. The City does not have discretion to circumvent the abovementioned prescribed SB 35 timeframes.

231. SB 35 defines "scoping" as "the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code." (Gov. Code, § 65913.4, subd. (b)(7)(B),

emphasis added.)

232. SB 35 defines "consultation" as "the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" prepared by the Office of Planning and Research." (Gov. Code, § 65913.4, subd. (b)(7)(A), emphasis added.)

233. The City has a ministerial duty to engage in a scoping consultation (as defined in SB 35).

234. The City failed to proceed in a manner required by law when they violated this ministerial duty to engage in a scoping consultation.

235. The City failed to comply with its ministerial duty to commence the scoping consultation within 30 days of receiving a response from FIGR that it had accepted the invitation to engage in a scoping consultation.

236. The mandatory duty to engage in a scoping consultation must be conducted early in the process and must be a meaningful and timely effort to identify a project's potential impacts to tribal cultural resources. The City has done none of that. Rather than fulfill its ministerial duty, the City has dragged the purported scoping consultation along for approximately two years in an effort to thwart the further mandatory processing of the 29-Unit Project, and in all that time the City has not identified any tribal cultural resource to protect.

237. Plaintiff is beneficially interested in the subject of this petition for writ

of mandate ("Petition") and has no plain, speedy, or adequate remedy in the ordinary course of law, unless this Court grants the requested Petition.

238. For the foregoing reasons, the City has failed to proceed in accordance with the law, and Plaintiff is entitled to issuance of the writ.

X. SIXTH CLAIM FOR RELIEF

(Second Violation of Cal. Gov. Code § 65913.4 – Unlawful Inconsistency Determination and Treatment for 29-Unit Project; Cal. Civ. Proc. Code § 1085 – Against the City)

239. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, and Paragraphs 54 through 136, inclusive, which are incorporated herein by reference.

240. SB 35 imposes a prescribed streamlined, ministerial approval process as set forth in Government Code section 65913.4.

241. SB 35 imposes strict processing timeframes and requirements on local governments.

242. Pursuant to SB 35, if an SB 35 project contains 150 or fewer housing units, a local government must determine whether an application is consistent with "objective planning standards specified in subdivision (a)" of Government Code section 65913.4 ("objective planning standards") within 60 days of submittal of the application.

243. If, within the above-mentioned 60-day period, the local government determines an SB 35 project is inconsistent "with any of the objective planning standards," the local government "shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards."

244. If the local government fails to provide this required documentation, "the development shall be deemed to satisfy the objective planning standards."

245. Pursuant to SB 35, the local government shall approve the development if it is deemed consistent with the objective planning standards and/or if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

246. This reasonable person standard is intentionally deferential to housing development, and in line with the legislative proclamation that it "is the policy of the state that [SB 35] be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." (Cal. Gov. Code, § 65913.4, subd. (u).)

247. All told, if there is a plausible view of whether a project is in compliance with an "objective planning standard," then the project must be deemed consistent with that standard for SB 35 purposes. (*Cf. California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 844–845.)

248. SB 35 also confines a local government's review and documentation requests to only that which are necessary to arrive at a reasonable person conclusion of consistency with SB 35 requirements. (Cal. Gov. Code, § 65913.4, subds. (c)(3), (f).)

249. A local government cannot impose any requirement on an SB 35 project solely or partially on the basis that the project is being processed under SB 35. (Cal. Gov. Code, § 65913.4, subd. (i)(1).)

250. These limitations under SB 35 are not incidental—they reflect the Legislature's deliberate effort to prevent agencies (such as the City) from obstructing housing development projects that advance resolution of the statewide housing crisis.

251. The City does not have discretion to circumvent the abovementioned requirements, obligations, and limitations imposed on the City pursuant to SB 35.

252. The City has a ministerial duty to approve the 29-Unit Project.

253. The City failed to comply with its ministerial duty to approve the 29-Unit Project because (a) there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards and/or (b) the 29-Unit Project is deemed (pursuant to SB 35) to satisfy the objective planning standards.

254. The City failed to proceed in a manner required by law when they violated this ministerial duty to approve the 29-Unit Project.

255. The City failed to proceed in the manner required by law when it imposed requirements on Plaintiff and the 29-Unit Project that are unauthorized under SB 35.

256. Plaintiff is beneficially interested in the subject of this Petition and has no plain, speedy, or adequate remedy in the ordinary course of law, unless this Court grants the requested Petition.

257. For the foregoing reasons, the City has failed to proceed in accordance with the law, and Plaintiff is entitled to issuance of the writ.

XI. SEVENTH CLAIM FOR RELIEF

(Third Violation of Cal. Gov. Code § 65913.4 – Unlawful Inconsistency Determination and Treatment for 14-Unit Project; Cal. Civ. Proc. Code § 1085 – Against the City)

258. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, and Paragraphs 54 through 136, inclusive, which are incorporated herein by reference.

259. SB 35 imposes a prescribed streamlined, ministerial approval process as set forth in Government Code section 65913.4.

260. SB 35 imposes strict processing timeframes and requirements on local governments.

261. Pursuant to SB 35, if an SB 35 project contains 150 or fewer housing

units, a local government must determine whether an application is consistent with "objective planning standards" within 60 days of submittal of the application.

262. Pursuant to SB 35, if a development proposal is submitted to address feedback provided by the local government, a local government must determine whether that proposal is consistent with "objective planning standards" within 30 days of submittal of the proposal.

263. If, within the above-mentioned periods, the local government determines an SB 35 project is inconsistent "with any of the objective planning standards," the local government "shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards."

264. If the local government fails to provide this required documentation, "the development shall be deemed to satisfy the objective planning standards."

265. Pursuant to SB 35, the local government shall approve the development if it is deemed consistent with the objective planning standards and/or if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

266. This reasonable person standard is intentionally deferential to housing development, and in line with the legislative proclamation that it "is the policy of the state that [SB 35] be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." (Cal. Gov. Code, § 65913.4, subd. (u).)

267. All told, if there is a plausible view of whether a project is in compliance with an "objective planning standard," then the project must be deemed consistent with that standard for SB 35 purposes. (*Cf. California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 844–

845.)

268. SB 35 also confines a local government's review and documentation requests to only that which are necessary to arrive at a reasonable person conclusion of consistency with SB 35 requirements. (Cal. Gov. Code, § 65913.4, subds. (c)(3), (f).)

269. A local government cannot impose any requirement on an SB 35 project solely or partially on the basis that the project is being processed under SB 35. (Cal. Gov. Code, § 65913.4, subd. (i)(1).)

270. These limitations under SB 35 are not incidental—they reflect the Legislature's deliberate effort to prevent agencies (such as the City) from obstructing housing development projects that advance resolution of the statewide housing crisis.

271. The City does not have discretion to circumvent the abovementioned requirements, obligations, and limitations imposed on the City pursuant to SB 35.

272. The City has a ministerial duty to approve the 14-Unit Project.

273. The City failed to comply with its ministerial duty to approve the 14-Unit Project because (a) there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards and/or (b) the 14-Unit Project is deemed (pursuant to SB 35) to satisfy the objective planning standards.

274. The City failed to proceed in a manner required by law when it violated this ministerial duty to approve the 14-Unit Project. Accordingly, the October 6 letter did not constitute the written documentation required by section 65913.4(c)(1).

275. The City failed to proceed in the manner required by law when it imposed requirements on Plaintiff and the 14-Unit Project that are unauthorized under SB 35.

276. Plaintiff is beneficially interested in the subject of this Petition and has no plain, speedy, or adequate remedy in the ordinary course of law, unless this Court grants the requested Petition.

277. For the foregoing reasons, the City has failed to proceed in accordance with the law, and Plaintiff is entitled to issuance of the writ.

XII. EIGHTH CLAIM FOR RELIEF

(Fourth Violation of Cal. Gov. Code § 65913.4(c)(1)(C) – Unlawful Failure to Process and Approve the (Resubmitted 14-Unit Project; Cal. Civ. Proc. Code § 1085 – Against the City)

278. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, Paragraphs 54 through 156, inclusive, which are incorporated herein by reference.

279. SB 35 imposes a prescribed streamlined, ministerial approval process as set forth in Government Code section 65913.4. The April 17 completeness review was not the consistency determination required by section 65913.4(c)(1)(c).

280. SB 35 imposes strict timeframes and requirements on local governments.

281. Pursuant to SB 35, if a local government determines that an SB 35 project is inconsistent with SB 35's objective planning standards, the development proponent may resubmit a modified development proposal, and the local government must complete its consistency review of the resubmittal within 30 days of the resubmittal. (Cal. Gov. Code, § 65913.4, subd. (c)(1)(C).)

282. If, within the above-mentioned 30-day period, the local government determines the resubmitted proposal is inconsistent "with any of the objective planning standards," the local government "shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards." (Cal. Gov. Code, § 65913.4, subd.

(c)(1).)

283. If the local government fails to provide the required documentation, "the development shall be deemed to satisfy the objective planning standards." (Cal. Gov. Code, § 65913.4, subd. (c)(2).)

284. Pursuant to SB 35, the local government shall approve the development if it is deemed consistent with the objective planning standards and/or if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

285. The City does not have discretion to circumvent the abovementioned requirements, obligations, and limitations imposed on the City pursuant to SB 35.

286. The City has a ministerial duty to process the Resubmitted 14-Unit Project in accordance with SB 35, including to complete its consistency review within 30 days of the March 20, 2026 resubmittal.

287. The City failed to comply with, and failed to proceed in the manner required by law with respect to, that ministerial duty. Rather than complete the required consistency review of the Resubmitted 14-Unit Project within 30 days, the City refused to process the Resubmitted 14-Unit Project.

288. Because the City failed to provide the required documentation of any inconsistency with the objective planning standards within 30 days of the March 20, 2026 resubmittal, the Resubmitted 14-Unit Project is deemed—pursuant to SB 35—to satisfy SB 35's objective planning standards.

289. Substantial evidence would allow a reasonable person to conclude that the Resubmitted 14-Unit Project—with its unquestionably attached residential units—is consistent with SB 35's objective planning standards, including the "multifamily housing development that contains two or more residential units" criterion.

290. The City accordingly has a ministerial duty to approve the

Resubmitted 14-Unit Project and the City failed to proceed in a manner required by law when it violated this ministerial duty to approve the Resubmitted 14-Unit Project.

291. Plaintiff is beneficially interested in the subject of this Petition and has no plain, speedy, or adequate remedy in the ordinary course of law, unless this Court grants the requested Petition.

292. For the foregoing reasons, the City has failed to proceed in accordance with the law, and Plaintiff is entitled to issuance of the writ.

XIII. NINTH CLAIM FOR RELIEF

(Breach of Mandatory Duty(s) Imposed by Enactment – Gov. Code § 815.6 – Against All Defendants)

293. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, Paragraphs 54 through 156, inclusive, and Paragraphs 221 through 292, inclusive, which are incorporated herein by reference.

294. Plaintiff has complied with the applicable requirements of Government Code sections 810 et seq. (*i.e.*, the "Government Claims Act"). On December 6, 2024 and December 9, 2024, Plaintiff submitted a required claim (the "Claim") to the City, in a timely manner—because the Claim, which stated that Plaintiff suffered and was continuing to suffer damages from the City's failure to comply with its ministerial duties under SB 35, was presented within the allowed time after accrual. (Gov. Code, § 911.2, subd. (a).) The City denied the Claim. (Gov. Code, § 912.4, subds. (a)–(c).) The filing of this action is timely. (Gov. Code, § 945.6, subd. (a)(2).)

295. Pursuant to Government Code § 815.6, "[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity

establishes that it exercised reasonable diligence to discharge the duty."

296. SB 35 imposes a prescribed scoping consultation on the City that must be followed once a Tribe accepts a local government's invitation to engage in a scoping consultation.

297. SB 35 mandates that the City approve the 29-Unit Project.

298. SB 35 mandates that the City approve the 14-Unit Project.

299. SB 35 mandates that the City approve the Resubmitted 14-Unit Project.

300. As a proximate result of the Defendants failure to follow its mandatory duty(s) under SB 35, Plaintiff has suffered damages in excess of the jurisdictional minimum of this Court. Section 65913.4's mandatory duties protect housing proponents from prolonged processing delay, needless carrying and professional costs, loss of use, and impairment of vested rights; the City's breaches proximately caused Plaintiff those injuries.

301. As stated in Plaintiff's letter to the City on May 15, 2025, Plaintiff's damages were accruing on a monthly basis. Given strong rises in property values and rental rates, Plaintiff has estimated damages now accruing at a rate of over $642,000.00 per month.

302. Defendants' prolonged violation of Plaintiff's rights has caused Plaintiff to suffer consequential damages including the risk of entire loss of the Property due to the inability to maintain the assemblage of parcels for the 29-Unit Project or the 14-Unit Project at which point the Plaintiff would suffer a total loss.

XIV. TENTH CLAIM FOR RELIEF

(Violation of Gov. Code § 65589.5; Cal. Civ. Proc. Code § 1094.5 – Against the City)

303. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, Paragraphs 54 through 112, inclusive, Paragraphs 119 through 136, inclusive, and

Paragraphs 221 through 238, inclusive, which are incorporated herein by reference.

304. The 29-Unit Project is a "housing development project" as that term is used in the HAA because the 29-Unit Project consists of residential units only.

305. Plaintiff, as the 29-Unit Project applicant, may bring an action to enforce the HAA.

306. Government Code section 65589.5 (the "HAA") subdivision (h)(6) lists a non-exclusive list of ways a local agency can "disapprove the housing development project."

307. A "disapprov[al] of the housing development project" under the HAA includes a local agency's obstructionist tactics to a proposed housing development project that effectively disapproves the proposed housing development project.

308. The City's never-ending scoping consultation to thwart the further mandatory processing of the 29-Unit Project has effectively disapproved the 29-Unit Project and constitutes a "disapprov[al] of the housing development project" under the HAA.

309. Having failed to make the requisite findings under the HAA needed to disapprove the 29-Unit Project, supported by a preponderance of the evidence on the record, the City's disapproval of the 29-Unit Project violated the HAA.

310. Pursuant to Government Code section 65589.6, the City bears "the burden of proof that its decision [to disapprove the 29-Unit Project] has conformed to all of the conditions specified in Section 65589.5."

311. The City has not met its burden of proof to disapprove the 29-Unit Project.

312. Pursuant to Government Code section 65589.5, subdivision (k)(1)(A)(ii), "[t]he 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 [] in violation of this section."

313. The City acted in "bad faith" in disapproving the 29-Unit Project when it was repeatedly made aware of its review and processing obligations under SB 35, but failed to comply with those obligations.

314. Because the City acted in "bad faith" when it disapproved the 29-Unit Project, pursuant to Government Code section 65589.5, subdivision (k)(1)(A)(ii), Plaintiff is entitled to an order or judgment directing the City to approve the 29-Unit Project. The City's own acknowledgments and completion of the Enforceable Agreement within 20 days after suit support the inference that the prolonged course of conduct was pretextual and intended to cause unnecessary delay.

315. A party that successfully enforces the HAA is entitled to attorneys' fees and costs of suit.

XV. ELEVENTH CLAIM FOR RELIEF

(Second Violation of Gov. Code § 65589.5; Cal. Civ. Proc. Code § 1094.5 – Against the City)

316. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, and Paragraphs 54 through 136, inclusive, and Paragraphs 239 through 257, inclusive, which are incorporated herein by reference.

317. The 29-Unit Project is a "housing development project" as that term is used in the HAA because the 29-Unit Project consists of residential units only.

318. Plaintiff, as the 29-Unit Project applicant, may bring an action to enforce the HAA.

319. Government Code section 65589.5 (the "HAA") subdivision (h)(6) lists a non-exclusive list of ways a local agency can "disapprove the housing development project."

320. The HAA states that a local agency "disapprove[s] the housing development project" if the local agency "[v]otes or takes final administrative

action 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."

321. The HAA states that a local agency "disapprove[s] the housing development project" if the local agency "adopt[s] or impose[s] any requirement, process, practice, or procedure or undertake any course of conduct, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is a builder's remedy project."

322. The HAA states that a local agency "disapprove[s] the housing development project" if the local agency "[m]akes a written determination that a preliminary application described in subdivision (a) of Section 65941.1 has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1."

323. The City has disapproved the 29-Unit Project, including (a) by its purported SB 35 inconsistency determination for the 29-Unit Project, (b) by disparately treating the 29-Unit Project because it is a SB 35 project and/or subject to the builder's remedy; and/or (c) because the City has stated in writing that the 29-Unit Project has lost its vested rights.

324. Having failed to make the requisite findings under the HAA needed to disapprove the 29-Unit Project, supported by a preponderance of the evidence on the record, the City's disapproval of the 29-Unit Project violated the HAA.

325. Pursuant to Government Code section 65589.6, the City bears "the burden of proof that its decision [to disapprove the 29-Unit Project] has conformed to all of the conditions specified in Section 65589.5."

326. The City has not met its burden of proof to disapprove the 29-Unit Project.

327. Pursuant to Government Code section 65589.5, subdivision (k)(1)(A)(ii), "[t]he 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 [] in violation of this section."

328. The City acted in "bad faith" in disapproving the 29-Unit Project when it was repeatedly made aware of its review and processing obligations under SB 35, but failed to comply with those obligations.

329. Because the City acted in "bad faith" when it disapproved the 29-Unit Project, pursuant to Government Code section 65589.5, subdivision (k)(1)(A)(ii), Plaintiff is entitled to an order or judgment directing the City to approve the 29-Unit Project. The City's continued reliance on subjective, inapplicable, preempted, factually satisfied, or waived standards, together with materially different grounds supplied after the statutory period, further supports bad faith.

330. A party that successfully enforces the HAA is entitled to attorneys' fees and costs of suit.

331. "If a court has previously found that the local agency violated [the HAA] within the same planning period, the court shall multiply the [otherwise required HAA] fines by an additional factor for each previous violation." (Gov. Code, § 65589.5, subd. (l).)

XVI. TWELFTH CLAIM FOR RELIEF

(Third Violation of Gov. Code § 65589.5; Cal. Civ. Proc. Code § 1094.5 – Against the City)

332. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, and Paragraphs 54 through 136, inclusive, and Paragraphs 258 through 277, which are incorporated herein by reference.

333. The 14-Unit Project is a "housing development project" as that term is

used in the HAA because the 14-Unit Project consists of residential units only.

334. Plaintiff, as the 14-Unit Project applicant, may bring an action to enforce the HAA.

335. Government Code section 65589.5 (the "HAA") subdivision (h)(6) lists a non-exclusive list of ways a local agency can "disapprove the housing development project."

336. The HAA states that a local agency "disapprove[s] the housing development project" if the local agency "[v]otes or takes final administrative action 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."

337. The HAA states that a local agency "disapprove[s] the housing development project" if the local agency "adopt[s] or impose[s] any requirement, process, practice, or procedure or undertake any course of conduct, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is a builder's remedy project."

338. The HAA states that a local agency "disapprove[s] the housing development project" if the local agency "[m]akes a written determination that a preliminary application described in subdivision (a) of Section 65941.1 has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1."

339. The City has disapproved the 14-Unit Project, including (a) by its purported SB 35 inconsistency determination for the 14-Unit Project, and/or (b) because the City has stated in writing that the 14-Unit Project has lost its vested rights.

340. Having failed to make the requisite findings under the HAA needed to

disapprove the 14-Unit Project, supported by a preponderance of the evidence on the record, the City's disapproval of the 14-Unit Project violated the HAA.

341. Pursuant to Government Code section 65589.6, the City bears "the burden of proof that its decision [to disapprove the 14-Unit Project] has conformed to all of the conditions specified in Section 65589.5."

342. The City has not met its burden of proof to disapprove the 14-Unit Project.

343. Pursuant to Government Code section 65589.5, subdivision (k)(1)(A)(ii), "[t]he 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 [] in violation of this section."

344. The City acted in "bad faith" in disapproving the 14-Unit Project when it was repeatedly made aware of its review and processing obligations under SB 35, but failed to comply with those obligations.

345. Because the City acted in "bad faith" when it disapproved the 14-Unit Project, pursuant to Government Code section 65589.5, subdivision (k)(1)(A)(ii), Plaintiff is entitled to an order or judgment directing the City to approve the 14-Unit Project. The City's first use of the attached-unit theory after the statutory period after promising an objective definition and consideration of modifications further supports pretext and unnecessary delay.

346. A party that successfully enforces the HAA is entitled to attorneys' fees and costs of suit.

347. "If a court has previously found that the local agency violated [the HAA] within the same planning period, the court shall multiply the [otherwise required HAA] fines by an additional factor for each previous violation." (Gov. Code, § 65589.5, subd. (l).)

XVII. THIRTEENTH CLAIM FOR RELIEF

(Fourth Violation of Gov. Code § 65589.5; Cal. Civ. Proc. Code § 1094.5 – Against the City)

348. Plaintiff hereby re-alleges Paragraphs 1 through 35, inclusive, and Paragraphs 54 through 156, inclusive, and Paragraphs 278 through 292, which are incorporated herein by reference.

349. The Resubmitted 14-Unit Project is a "housing development project" as that term is used in the HAA because it consists of residential units only.

350. Plaintiff, as the Resubmitted 14-Unit Project applicant, may bring an action to enforce the HAA.

351. Government Code section 65589.5 (the "HAA") subdivision (h)(6) lists a non-exclusive list of ways a local agency can "disapprove the housing development project."

352. The HAA states that a local agency "disapprove[s] the housing development project" when the local agency "[f]ails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action" if certain conditions are met. (Cal. Gov. Code, § 65589.5, subd. (h)(6)(E).)

353. On April 2, 2026, Plaintiff sent City the Challenged Course of Conduct Notice providing written notice of the City's course of conduct undertaken for an improper purpose in the City's processing of Plaintiff's SB 35 project. The course of conduct at issue relates back to the inception of the SB 35 process at issue.

354. The City publicly posted the Challenged Course of Conduct Notice and, thereafter, CalHDF submitted the CalHDF Letter to the City independently documenting the City's ongoing unlawful processing conduct.

355. The City was required to consider all objections, comments, evidence, and concerns about the project or the applicant's written notice and then issue a written statement that it will immediately cease the challenged conduct or issue written findings that comply with both of the following requirements: (I) The findings articulate an objective basis for why the challenged course of conduct is necessary and (II) The findings provide clear instructions on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing. (Cal Gov. Code, § 65589.5, subd. (h)(6)(E)(iii)–(iv).)

356. The City did not issue a written statement that it will immediately cease the challenged conduct, including that the City would accept and process the Resubmitted 14-Unit Project in accordance with SB 35, or any of the SB 35 submittals.

357. Instead, on July 1, 2026, the City issued the City Course of Conduct Response, which fails to comply with the applicable findings requirements, including because the City Course of Conduct Response does not articulate an objective basis for why the City will not accept and process the Resubmitted 14-Unit Project in accordance with SB 35.

358. Having failed to cease the challenged course of conduct in the Course of Conduct Notice, and having failed to issue compliant written findings, the City has disapproved the Resubmitted 14-Unit Project within the meaning of the HAA. The response also failed to provide clear, lawful and usable instructions because it relied on unavailable submission mechanisms and an inapplicable completeness process. The July 1 'findings' constitute the final administrative action for adjudicating whether the challenged course of conduct constitutes disapproval.

359. The City bears the burden of establishing that its course of conduct does not constitute a disapproval of the Resubmitted 14-Unit Project. (Cal. Gov.

Code, § 65589.5, subd. (h)(6)(E)(v)(I).) The City has not met this burden. By continuing the challenged conduct and failing to issue compliant findings, the City triggered the burden-shifting rule in Government Code section 65589.5 (h)(6)(E)(v)(I).

360. Pursuant to Government Code section 65589.6, the City bears "the burden of proof that its decision [to disapprove the Resubmitted 14-Unit Project] has conformed to all of the conditions specified in Section 65589.5." The City has not met this burden.

361. "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 [] in violation of [the HAA]."

362. The City acted in "bad faith" when it disapproved the Resubmitted 14-Unit Project by way of its course of conduct undertaken for an improper purpose, including because the City was repeatedly made aware of its review and processing obligations under SB 35 and the HAA—including through the Course of Conduct Notice and the CalHDF Letter—but still failed to comply with those obligations.

363. Because the City acted in "bad faith" when it disapproved the Resubmitted 14-Unit Project, Plaintiff is entitled to an order or judgment directing the City to approve the Resubmitted 14-Unit Project.

364. A party that successfully enforces the HAA is entitled to attorneys' fees and costs of suit.

365. "If a court has previously found that the local agency violated [the HAA] within the same planning period, the court shall multiply the [otherwise required HAA] fines by an additional factor for each previous violation." (Cal. Gov. Code, § 65589.5, subd. (l).)

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

On the First Claim for Relief (Takings)

1. For a determination that Defendants have taken Plaintiff's property;

2. For a determination of the amount of just compensation that Plaintiff is entitled;

3. For prejudgment interest thereon.

On the Second Claim for Relief (Temporary Takings)

4. For a determination that Defendants have taken Plaintiff's property;

5. For a determination of the amount of just compensation that Plaintiff is entitled;

6. For prejudgment interest thereon.

On the Third Claim for Relief (Procedural Due Process)

7. For damages in an amount to be proven at the time of trial;

8. For prejudgment interest thereon.

On the Fourth Claim for Relief (Substantive Due Process)

9. For damages in an amount to be proven at the time of trial;

10. For prejudgment interest thereon.

On the Fifth Claim for Relief (Violation of SB 35)

11. For a peremptory writ of mandamus directing the City to comply with SB 35, including, but not limited to, an order compelling the City to timely complete the processing of the 29-Unit Project in accordance with the process and requirements imposed by SB 35.

On the Sixth Claim for Relief (Second Violation of SB 35)

12. For a peremptory writ of mandamus directing the City to comply with SB 35, including, but not limited to, an order compelling the City to approve the

29-Unit Project in accordance with the process and requirements imposed by SB 35.

On the Seventh Claim for Relief (Third Violation of SB 35)

13. For a peremptory writ of mandamus directing the City to comply with SB 35, including, but not limited to, an order compelling the City to approve the 14-Unit Project in accordance with the process and requirements imposed by SB 35.

On the Eighth Claim for Relief (Fourth Violation of SB 35)

14. For a peremptory writ of mandamus directing the City to comply with SB 35, including, but not limited to, an order compelling the City to approve the Resubmitted 14-Unit Project in accordance with the process and requirements imposed by SB 35.

On the Ninth Claim for Relief (Breach of Mandatory Duty(s))

15. For damages in an amount to be proven at the time of trial;

16. For prejudgment interest thereon.

On the Tenth Claim for Relief (Violation of HAA)

17. For a peremptory writ of mandamus directing the City to comply with the HAA, including, but not limited to, an order or judgment compelling the City to approve the 29-Unit Project.

On the Eleventh Claim for Relief (Second Violation of HAA)

18. For a peremptory writ of mandamus directing the City to comply with the HAA, including, but not limited to, an order or judgment compelling the City to approve the 29-Unit Project.

On the Twelfth Claim for Relief (Third Violation of HAA)

19. For a peremptory writ of mandamus directing the City to comply with the HAA, including, but not limited to, an order or judgment compelling the City to approve the 14-Unit Project.

On the Thirteenth Claim for Relief (Fourth Violation of HAA)

20. For a peremptory writ of mandamus directing the City to comply with the HAA, including, but not limited to, an order or judgment compelling the City to approve the Resubmitted 14-Unit Project.

On All Claims for Relief

21. For attorneys' fees as provided by law, including, but not limited to, California Government Code section 65589.5 and California Government Code section 65914.2(b)(1);

22. For costs of suit and litigation expenses as provided by law; and

23. For such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial in this action.

Dated: August 4, 2026

COX, CASTLE & NICHOLSON LLP

By: _____

Andrew B. Sabey
Scott B. Birkey
Eric J. Cohn
Attorneys for Plaintiff
River Landon LLC

VERIFICATION

I, Carmen Vila declare:

I am authorized to make this verification on River Landon LLC's behalf. I have read the foregoing THIRD AMENDED COMPLAINT AND PETITION FOR WRIT OF MANDATE, and know its contents. I am informed and believe, and on that ground allege, that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 4, 2026.



Carmen Vila

EXHIBIT A

PATTERSON & O'NEILL, PC

235 Montgomery Street, Suite 950
San Francisco, CA 94104
Telephone: (415) 907-9110
Facsimile: (415) 907-7704
www.pattersononeill.com

August 8, 2024

VIA E-MAIL

Margaret Kavanaugh-Lynch
Planning Manager
1400 Fifth Avenue, Top Floor
San Rafael, CA 94901

Re: SB 35 Housing Development Project Application
Coleman Drive in San Rafael, APNs 011-031-44 though -49

Dear Ms. Kavanaugh-Lynch:

Our office represents the applicant for a housing development project on six vacant lots along Coleman Drive in San Rafael, APNs 011-031-44 though -49. The proposed housing development project includes 18 dwelling units and 11 accessory dwelling units, with six of the units proposed to be restricted as affordable for low-income households and including teachers.

Our client proposed this multi-unit housing development project pursuant the state Streamlined Ministerial Approval Process, commonly referred to as SB 35 (Gov. Code § 65913.4), the Housing Accountability Act (Gov. Code § 65589.5), and the Permit Streamlining Act (Gov. Code § 65943.) A notice of intent in the form of a preliminary application for the project was submitted and accepted as complete on May 15, 2023. As you are aware, once a notice of intent has been submitted, SB 35 requires a local government to engage in a scoping consultation with any California Native American tribe that is traditionally and culturally affiliated with the geographic area before a development application for ministerial processing can be accepted. (Gov. Code § 65913.4(b)(1)(A)(ii).)

To date, the City has failed to carry out its ministerial duty to engage in a meaningful and timely scoping consultation process, and is instead weaponizing the consultation requirement to delay this desperately needed housing project. The Applicant has gone above and beyond what is legally required to move the consultation process forward by providing the City with incontrovertible evidence that no tribal cultural resources are present at the project site. As explained in more detail below, the City has failed in its duty to timely engage in a scoping consultation and, because there is no evidence that the project has the potential to affect any tribal cultural resources, the City is required to ministerially process the project application.

Scoping Consultation Requirements

A local government is required to provide notice with an invitation to engage in a scoping consultation to the tribes within 30 days after the preliminary application is submitted and local tribes have 30 days to accept the invitation. (Gov. Code § 65913.4(b)(1)(A)(ii)-(iii).) A local government is then required to engage in the consultation within 30 days after receiving a notice accepting the invitation. (*Id.*) Thus, in total a local agency is required to complete the consultation process within 90 days.

SB 35 defines "consultation" as "the *meaningful and timely* process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement." (Gov. Code § 65913.4(b)(7).) A local government is required to utilize the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" ("Consultation Guidelines"). (*Id.*) The term "scoping" means early discussions or investigations between the local government and California Native American tribe regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code. (*Id.*)

The City Has Failed to Engage in a Meaningful and Timely Consultation Process

The Federated Indians of Graton Rancheria ("FIGR") accepted the City's consultation invitation on June 22, 2023 – more than a year ago. Despite the requirement that a local government engage in scoping within 30 days, the City did not meet with FIGR for nearly two months. Neither party identified any tribal cultural resources that may be impacted by the project at that initial meeting, and instead FIGR requested that the applicant complete an archeological survey and report to determine if any cultural resources exist. We note that in the Consultation Guidelines, potential tribal resources are supposed to be identified *by the local government* from record searches through the Native American Heritage Commission and California Historic Resources Information System, or from the tribe itself. Nothing requires a project applicant to fund an independent survey and report to identify potential resources.

Nonetheless, the Applicant cooperated with FIGR's request and commissioned an archeological survey (attended by FIGR Cultural Monitor Owen Knight) and report that was forwarded to FIGR on November 15, 2023. That survey and report confirmed that no tribal cultural resources would be impacted by the project, and that due to the landform and existing surrounding development the potential for encountering any type of subsurface archaeological deposits at the site was low.

Despite these conclusive findings, the City did not meet to discuss the report with FIGR for nearly two months, and then again two months after that, only to then request that the radius of the record search be expanded – despite the fact that any tribal resources beyond a quarter mile from the project site would have no potential to be impacted by this modest residential development. A supplemental report was provided on April 5, 2024, once again confirming no

potential impacts to tribal resources. The City waited another three and a half months to meet with FIGR to discuss this four-page addendum to the report.

More than a year has gone by and the City has done nothing to move the consultation process forward. The City failed to conduct its own record search, failed to make a determination whether any tribal cultural resources would be affected by the development, and failed to propose any agreement to avoid or address any potential impacts. In short, nothing the City has done over the last year can be considered a meaningful or timely consultation process. Rather, the City appears to be utilizing the scoping consultation process requirement as a method to delay the proposed project and deny the applicant its rights to ministerial processing under SB 35.

There is No Evidence of Potential Impacts to Tribal Cultural Resources

The term "tribal cultural resources" are defined as either 1) sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are included or determined to be eligible for inclusion in the California Register of Historical Resources or are included in a local register of historical resources, or 2) a resource *determined by the lead agency*, in its discretion and *supported by substantial evidence*, to be significant pursuant to the established criteria for inclusion the California Register of Historical Resources. (Pub. Res. Code § 21074.) If no potential tribal cultural resources would be affected by a proposed development, the City is required to process the application pursuant to SB 35's streamlined, ministerial approval process. (Gov. Code § 65913.4(b)(2).)

As explained above, the applicant retained one of FIGR's preferred archeological consultants to conduct an extensive record search, outreach to tribal organizations, and a field survey to determine whether any tribal cultural resources would be impacted by the project. The report confirmed that there are no records of any documented tribal cultural resources that would be impacted, and due to the results of the field survey, in addition to location and landform of the project site, that there is no evidence that any subsurface tribal cultural resources would be impacted by the project. Not only is there no substantial evidence that any tribal cultural resources would be impacted by the project, but there is not even a scintilla of evidence of any potential impacts to tribal resources.

As noted above, the term "scoping" means discussions regarding the potential effects a proposed development could have on a potential tribal cultural resource. When there is no potential for such effects, there is nothing left for the City to discuss, and the scoping consultation must end. If the City has determined that there are potential tribal cultural resources would be affected by the project, and can support that determination with substantial evidence, the City must do so. If the City cannot, the City is obligated to ministerially process the project application. In short, the City has a clear obligation to make a determination regarding whether tribal resources would be impacted. The City cannot drag its feet under the guise of 'consultation' without making this basic, initial determination regarding whether any further discussions are necessary.

The California Department of Housing and Community Development has asked to meet to discuss concerns regarding the City's implementation of its Affirmatively Furthering Fair Housing obligations, the lack of housing approvals outside of the downtown area, and the delays in carrying out the City's Housing Element programs. The City's response to this letter will inform that discussion.

Conclusion

The applicant has gone above and beyond to work cooperatively with the City to ensure that no tribal resources will be impacted by the project. The applicant has afforded the City more than enough time to discuss these issues with FIGR, yet the City has failed to complete even the basic step of determining whether the project would have any impacts. This clearly demonstrates that the City is not utilizing the scoping consultation requirement to engage in a meaningful and timely process as intended, but instead the City is weaponizing this procedural requirement as a means to disapprove much needed housing.

Because there is no potential for tribal cultural resources to be affected by this development, the City must process the application pursuant to SB 35's streamlined, ministerial approval process. (Gov. Code § 65913.4(b)(2).) If the City fails to confirm within the next 10 days that it will now process the SB 35 application, our client may be left with no choice but to seek judicial review of the City's failure to carry out its ministerial duties under SB 35. We must note that the City is not immune from liability for damages caused by its negligent failure to carry out a mandatory duty imposed by state law. (Gov. Code § 815.6.) Courts have found that when a public official fails to carry out a ministerial duty, those officials can be held liable for any damages caused by that failure. (*See Morris v. County of Marin* (1977) 18 Cal.3d 901, 917.) We urge the City to adhere to its ministerial duty under SB 35, and process the application as required by law.

Very truly yours,

PATTERSON & O'NEILL, PC



Brian O'Neill

CC (via email): Robert Epstein, City Attorney
Kate Colin, City Mayor
Jon Haveman, Vice-Chair of Planning Commission
Micah Hinkle, Community & Economic Development Director

EXHIBIT B

Sent Via Electronic Mail

May 9, 2025

Federated Indians of the Graton Rancheria
bmcquillen@gratonrancheria.com

Dear Buffy McQuillen:

RE: PLAN23-067 – Coleman SB 35 Project

I am writing regarding the SB 35 housing development project currently proposed in the City on Coleman Drive. The City very much appreciates the ongoing dialogue that we have had with you and other members of the FIGR.

As you know, SB 35 requires the City, upon receipt of notice of an SB 35 development application to engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, of the proposed development.

Looking back on our records, City staff have had meetings and/or calls with the representatives of the FIGR regarding this project on the following dates:

June 22, 2023	December 13, 2023	May 14, 2024
July 14, 2023	January 3, 2024	May 21, 2024
July 20, 2023	February 2, 2024	June 6, 2024
August 3, 2023	February 12, 2024	July 14, 2024
November 14, 2023	February 27, 2024	August 9, 2024
November 20, 2023	March 29, 2024	October 11, 2024
December 12, 2023	April 9, 2024	March 18, 2025

February 12, 2025 February 12, 2025 April 9, 2025

January 8, 2025 March 12, 2025

Again, we very much appreciate and value your time in meeting with City representatives on these various occasions. We believe these meetings have adhered to SB 35's requirements that the consultation process involve the meaningful process of seeking, discussing and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement.

The City is however, concerned that the consultation process has not been "timely" as required by SB 35. Throughout the meetings and ongoing consultation process which began in May of 2023, FIGR has not informed the City that a potential tribal cultural resource would be affected by the proposed development or that an enforceable agreement could not be documented between FIGR and the City regarding methods, measures, and conditions for treatment of any tribal cultural resource treatment.

The September 2023 cultural resources study conducted by Alta on the project site and shared by FIGR with the City, did not reveal the presence or likelihood of any tribal cultural resources. Nevertheless, the City acknowledges that FIGR may still determine that a potential tribal cultural resource would be affected by the proposed development. If FIGR intends to make this determination, we ask that FIGR please inform the City of this fact within two weeks of the date of this letter. We also request that FIGR inform the City whether FIGR believes that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present can be reached.

Please let me know if you have any questions, and as always, I am available to meet and speak with you about any issues related to this project.

Sincerely,

Micah Hinkle

Micah Hinkle
Community and Economic Development Director

EXHIBIT C

COX CASTLE

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111-4710
P: 415.262.5100 **F**: 415.262.5199

Andrew B. Sabey
415.262.5103
asabey@coxcastle.com

May 15, 2025

Mayor Kate Colin (*kate.colin@cityofsanrafael.org*)
Vice Mayor Maribeth Bushey (*maribeth.bushey@cityofsanrafael.org*)
Councilmember Maika Llorens Gulati (*maika@cityofsanrafael.org*)
Councilmember Eli Hill (*eli.hill@cityofsanrafael.org*)
Councilmember Rachel Kertz (*rachel.kertz@cityofsanrafael.org*)
City of San Rafael
c/o City Clerk Lindsay Lara (*city.clerk@cityofsanrafael.org*)
1400 Fifth Avenue, Room 203
San Rafael, CA 94901

Re: Next Steps for the City and the 253–281 Coleman Drive SB 35 Project

Dear Mayor Colin and Members of the City Council:

We represent River Landon LLC ("Applicant") in connection with its housing development efforts at 253–281 Coleman Drive (the "Property")[1] in the City of San Rafael (the "City"). Despite the Applicant's continued efforts to advance a housing development project on the Property, the City has illegally refused to process the application. The current application for a 29-unit housing development project proposed pursuant to Senate Bill 35 (the "Project") has been pending in the City for two full years with no discernible progress.

California has a housing crisis. Marin County is among the least affordable areas of the State. The City's actions contribute directly to the ongoing crisis. The Legislature has been increasingly active in its efforts to demand that local agencies process and approve desperately needed housing. SB 35 was enacted to provide a streamlined, ministerial approval process—with approval or denial of a SB 35 project like this one needing to occur within 90 calendar days of submittal of the application. (Gov. Code, § 65913.4(d)(1).) SB 35 does not allow for indefinite delay or procedural gamesmanship, yet this is precisely what the City appears to have engaged in for the Project with its use of the ministerial SB 35 scoping consultation for the Project as a pretext to thwart the Project.

The City has been well-advised of its failure to carry out its ministerial scoping consultation duty under SB 35. In August 2024, the Applicant made clear that the City's handling of the consultation process was not only legally unsound, but also financially reckless. (*See* **Exhibit A** [August 8, 2024 Letter to City Planning Manager documenting that the City has failed to engage in a meaningful and timely consultation process, there is no evidence of

[1] The Property consists of six Assessor Parcel Numbers ("APNs")—011-031-44 through and including 011-031-49.

potential impacts to Tribal cultural resources, and that the City is not immune for liability for damages caused by its negligent failure to carry out this mandatory duty].)

Nearly a full year later, the Applicant is stuck in what is now a *two-year* "consultation period" for a 1.4-acre infill property with not a scintilla of evidence of any potential impact to tribal cultural resources. Based on an extensive record search, outreach to Tribal organizations, and multiple field surveys, nothing has been identified that would even suggest a risk of impact. In the face of that record, the City's unlawful and negligent failure to carry out its ministerial scoping consultation duty persists.

The City's recent letter (attached hereto as **Exhibit B**) purporting to have conducted numerous meetings with the Federated Indians of the Graton Rancheria ("FIGR") *about the Project*[2] belies the facts. The facts, obtained from Public Records Act requests, show that there has only been sparse communication with FIGR about the Project separated by many months of utter silence. There is no evidence whatsoever that the City and FIGR have substantially engaged in any SB 35 scoping consultation, despite the City's documented requests including in Spring 2024. While the Applicant appreciates that the City wrote a letter to FIGR with a purported deadline, the substance of the letter actually undermines the process by suggesting a robust consultation when there has been next to none, and certainly nothing that comes close to complying with the letter and spirit of SB 35. The City's letter does nothing to change the fundamental reality that the City has failed and continues to fail to discharge its ministerial duties under SB 35. The only solution is for the City to commence SB 35 processing immediately.

The City's disregard for its ministerial duties under state law has consequences. **In the form of damages**—as the City's obstruction and disregard for its ministerial duties under SB 35 has caused significant financial damage to Applicant. This damage continues to accumulate at the rate ***of approximately $338,330 per month*** in lost rental profit and lost capital appreciation. Moreover, if the City's delays continue, and the Applicant's investors are forced to withdraw the Project completely, the resulting damages ***could quickly escalate to approximately $56.47 million*** based on the net present value of the Project.

Compounding the matter for the City, **Applicant would be entitled to attorneys' fees and costs of suit** were it to prevail in litigation against the City pursuant to both the Housing Accountability Act ("HAA")[3] and regulatory takings and civil rights laws. (Gov. Code, §

---

[2] We do not doubt the meetings listed in the letter transpired. We do doubt that "meaningful" discussion about the Property, Project, and its potential impacts to Tribal cultural resources transpired. (*See* Gov. Code, § 65913.4(b)(7)(A) [definition of "consultation"].) Even assuming all of those meetings were about the Property, Project, and its potential impacts to Tribal cultural resources, it defies reason that a SB 35 scoping consultation would take 26 meetings for any property, let alone one that is an infill site that is only 1.4 acres in size.

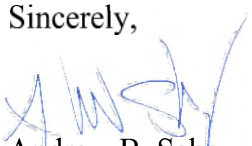
[3] Case law is clear that a single action can violate both SB 35 and the HAA. (*See Ruegg & Ellsworth v. City of Berkeley* (2023) 89 Cal.App.5th 258, 261.) That is the case here.

65589.5(k)(1)(A)(ii); Code of Civ. Proc., § 1036; 42 U.S.C., § 1988.) The City could also be subject to a ***minimum*** **fine in the amount of $290,000**, which *minimum* amount **can reach $1.45 million** if a court finds the City has acted in bad faith. (Gov. Code, § 65589.5(k)(1)(B), (l); *see also* SB 1037[4], effective January 1, 2025 [creating new legal remedies, inclusive of penalties in the range of $10,000 to $50,000 per month, in actions brought to enforce any state law that requires a local government to ministerially approve any planning or permitting application related to a housing development project, which includes SB 35].)

The financial recklessness Applicant warned the City about in August 2024, and again in December 2024 when Applicant submitted a "Government Claim" form to the City owing to the damage caused by City's failure to discharge its ministerial SB 35 scoping consultation duties, has now reached a crossroads. Despite the continued delays and damages, Applicant remains committed to bringing the Project and its much-needed housing to the City[5]. Applicant also understands its rights and will not hesitate to enforce those rights through legal action, if necessary. Accordingly, we urge the City to recognize its legal responsibilities and respond accordingly by processing in good faith the SB 35 Project.

We appreciate the City's attention to this matter.

Sincerely,



Andrew B. Sabey

cc: Robert Epstein, City Attorney (*rob.epstein@cityofsanrafael.org*)
Nira Doherty, Burke Williams & Sorensen (*ndoherty@bwslaw.com*)

---

[4] Available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB1037. Further, to the extent the City has not already seen the California Department of Justice Office of the Attorney General Legal Alert (No. OAG 2025-002, dated May 15, 2025) on the new civil penalties authorized by SB 1037, even though the Alert was directed to the City among all other cities and counties in the state, we include the Alert here as well. (*See* https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20-%20SB%201037.pdf.)

[5] To this effect, we note that housing laws are evolving rapidly—and new statutory regimes, including SB 9/450, SB 684/1123 (as well as Applicant's fully vested "builder's remedy" project application for the Property) will further limit the City's ability to obstruct housing on the Property. The City's continued resistance to the Project would likely only increase the City's potential financial exposure.

EXHIBIT A

PATTERSON & O'NEILL, PC

235 Montgomery Street, Suite 950
San Francisco, CA 94104
Telephone: (415) 907-9110
Facsimile: (415) 907-7704
www.pattersononeill.com

August 8, 2024

VIA E-MAIL

Margaret Kavanaugh-Lynch
Planning Manager
1400 Fifth Avenue, Top Floor
San Rafael, CA 94901

Re: SB 35 Housing Development Project Application
Coleman Drive in San Rafael, APNs 011-031-44 though -49

Dear Ms. Kavanaugh-Lynch:

Our office represents the applicant for a housing development project on six vacant lots along Coleman Drive in San Rafael, APNs 011-031-44 though -49. The proposed housing development project includes 18 dwelling units and 11 accessory dwelling units, with six of the units proposed to be restricted as affordable for low-income households and including teachers.

Our client proposed this multi-unit housing development project pursuant the state Streamlined Ministerial Approval Process, commonly referred to as SB 35 (Gov. Code § 65913.4), the Housing Accountability Act (Gov. Code § 65589.5), and the Permit Streamlining Act (Gov. Code § 65943.) A notice of intent in the form of a preliminary application for the project was submitted and accepted as complete on May 15, 2023. As you are aware, once a notice of intent has been submitted, SB 35 requires a local government to engage in a scoping consultation with any California Native American tribe that is traditionally and culturally affiliated with the geographic area before a development application for ministerial processing can be accepted. (Gov. Code § 65913.4(b)(1)(A)(ii).)

To date, the City has failed to carry out its ministerial duty to engage in a meaningful and timely scoping consultation process, and is instead weaponizing the consultation requirement to delay this desperately needed housing project. The Applicant has gone above and beyond what is legally required to move the consultation process forward by providing the City with incontrovertible evidence that no tribal cultural resources are present at the project site. As explained in more detail below, the City has failed in its duty to timely engage in a scoping consultation and, because there is no evidence that the project has the potential to affect any tribal cultural resources, the City is required to ministerially process the project application.

Scoping Consultation Requirements

A local government is required to provide notice with an invitation to engage in a scoping consultation to the tribes within 30 days after the preliminary application is submitted and local tribes have 30 days to accept the invitation. (Gov. Code § 65913.4(b)(1)(A)(ii)-(iii).) A local government is then required to engage in the consultation within 30 days after receiving a notice accepting the invitation. (*Id.*) Thus, in total a local agency is required to complete the consultation process within 90 days.

SB 35 defines "consultation" as "the *meaningful and timely* process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement." (Gov. Code § 65913.4(b)(7).) A local government is required to utilize the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" ("Consultation Guidelines"). (*Id.*) The term "scoping" means early discussions or investigations between the local government and California Native American tribe regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code. (*Id.*)

The City Has Failed to Engage in a Meaningful and Timely Consultation Process

The Federated Indians of Graton Rancheria ("FIGR") accepted the City's consultation invitation on June 22, 2023 – more than a year ago. Despite the requirement that a local government engage in scoping within 30 days, the City did not meet with FIGR for nearly two months. Neither party identified any tribal cultural resources that may be impacted by the project at that initial meeting, and instead FIGR requested that the applicant complete an archeological survey and report to determine if any cultural resources exist. We note that in the Consultation Guidelines, potential tribal resources are supposed to be identified *by the local government* from record searches through the Native American Heritage Commission and California Historic Resources Information System, or from the tribe itself. Nothing requires a project applicant to fund an independent survey and report to identify potential resources.

Nonetheless, the Applicant cooperated with FIGR's request and commissioned an archeological survey (attended by FIGR Cultural Monitor Owen Knight) and report that was forwarded to FIGR on November 15, 2023. That survey and report confirmed that no tribal cultural resources would be impacted by the project, and that due to the landform and existing surrounding development the potential for encountering any type of subsurface archaeological deposits at the site was low.

Despite these conclusive findings, the City did not meet to discuss the report with FIGR for nearly two months, and then again two months after that, only to then request that the radius of the record search be expanded – despite the fact that any tribal resources beyond a quarter mile from the project site would have no potential to be impacted by this modest residential development. A supplemental report was provided on April 5, 2024, once again confirming no

potential impacts to tribal resources. The City waited another three and a half months to meet with FIGR to discuss this four-page addendum to the report.

More than a year has gone by and the City has done nothing to move the consultation process forward. The City failed to conduct its own record search, failed to make a determination whether any tribal cultural resources would be affected by the development, and failed to propose any agreement to avoid or address any potential impacts. In short, nothing the City has done over the last year can be considered a meaningful or timely consultation process. Rather, the City appears to be utilizing the scoping consultation process requirement as a method to delay the proposed project and deny the applicant its rights to ministerial processing under SB 35.

There is No Evidence of Potential Impacts to Tribal Cultural Resources

The term "tribal cultural resources" are defined as either 1) sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are included or determined to be eligible for inclusion in the California Register of Historical Resources or are included in a local register of historical resources, or 2) a resource *determined by the lead agency*, in its discretion and *supported by substantial evidence*, to be significant pursuant to the established criteria for inclusion the California Register of Historical Resources. (Pub. Res. Code § 21074.) If no potential tribal cultural resources would be affected by a proposed development, the City is required to process the application pursuant to SB 35's streamlined, ministerial approval process. (Gov. Code § 65913.4(b)(2).)

As explained above, the applicant retained one of FIGR's preferred archeological consultants to conduct an extensive record search, outreach to tribal organizations, and a field survey to determine whether any tribal cultural resources would be impacted by the project. The report confirmed that there are no records of any documented tribal cultural resources that would be impacted, and due to the results of the field survey, in addition to location and landform of the project site, that there is no evidence that any subsurface tribal cultural resources would be impacted by the project. Not only is there no substantial evidence that any tribal cultural resources would be impacted by the project, but there is not even a scintilla of evidence of any potential impacts to tribal resources.

As noted above, the term "scoping" means discussions regarding the potential effects a proposed development could have on a potential tribal cultural resource. When there is no potential for such effects, there is nothing left for the City to discuss, and the scoping consultation must end. If the City has determined that there are potential tribal cultural resources would be affected by the project, and can support that determination with substantial evidence, the City must do so. If the City cannot, the City is obligated to ministerially process the project application. In short, the City has a clear obligation to make a determination regarding whether tribal resources would be impacted. The City cannot drag its feet under the guise of 'consultation' without making this basic, initial determination regarding whether any further discussions are necessary.

The California Department of Housing and Community Development has asked to meet to discuss concerns regarding the City's implementation of its Affirmatively Furthering Fair Housing obligations, the lack of housing approvals outside of the downtown area, and the delays in carrying out the City's Housing Element programs. The City's response to this letter will inform that discussion.

Conclusion

The applicant has gone above and beyond to work cooperatively with the City to ensure that no tribal resources will be impacted by the project. The applicant has afforded the City more than enough time to discuss these issues with FIGR, yet the City has failed to complete even the basic step of determining whether the project would have any impacts. This clearly demonstrates that the City is not utilizing the scoping consultation requirement to engage in a meaningful and timely process as intended, but instead the City is weaponizing this procedural requirement as a means to disapprove much needed housing.

Because there is no potential for tribal cultural resources to be affected by this development, the City must process the application pursuant to SB 35's streamlined, ministerial approval process. (Gov. Code § 65913.4(b)(2).) If the City fails to confirm within the next 10 days that it will now process the SB 35 application, our client may be left with no choice but to seek judicial review of the City's failure to carry out its ministerial duties under SB 35. We must note that the City is not immune from liability for damages caused by its negligent failure to carry out a mandatory duty imposed by state law. (Gov. Code § 815.6.) Courts have found that when a public official fails to carry out a ministerial duty, those officials can be held liable for any damages caused by that failure. (*See Morris v. County of Marin* (1977) 18 Cal.3d 901, 917.) We urge the City to adhere to its ministerial duty under SB 35, and process the application as required by law.

Very truly yours,

PATTERSON & O'NEILL, PC



Brian O'Neill

CC (via email): Robert Epstein, City Attorney
Kate Colin, City Mayor
Jon Haveman, Vice-Chair of Planning Commission
Micah Hinkle, Community & Economic Development Director

EXHIBIT B

Sent Via Electronic Mail

May 9, 2025

Federated Indians of the Graton Rancheria
bmcquillen@gratonrancheria.com

Dear Buffy McQuillen:

RE: PLAN23-067 – Coleman SB 35 Project

I am writing regarding the SB 35 housing development project currently proposed in the City on Coleman Drive. The City very much appreciates the ongoing dialogue that we have had with you and other members of the FIGR.

As you know, SB 35 requires the City, upon receipt of notice of an SB 35 development application to engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, of the proposed development.

Looking back on our records, City staff have had meetings and/or calls with the representatives of the FIGR regarding this project on the following dates:

June 22, 2023	December 13, 2023	May 14, 2024
July 14, 2023	January 3, 2024	May 21, 2024
July 20, 2023	February 2, 2024	June 6, 2024
August 3, 2023	February 12, 2024	July 14, 2024
November 14, 2023	February 27, 2024	August 9, 2024
November 20, 2023	March 29, 2024	October 11, 2024
December 12, 2023	April 9, 2024	March 18, 2025

February 12, 2025 February 12, 2025 April 9, 2025

January 8, 2025 March 12, 2025

Again, we very much appreciate and value your time in meeting with City representatives on these various occasions. We believe these meetings have adhered to SB 35's requirements that the consultation process involve the meaningful process of seeking, discussing and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement.

The City is however, concerned that the consultation process has not been "timely" as required by SB 35. Throughout the meetings and ongoing consultation process which began in May of 2023, FIGR has not informed the City that a potential tribal cultural resource would be affected by the proposed development or that an enforceable agreement could not be documented between FIGR and the City regarding methods, measures, and conditions for treatment of any tribal cultural resource treatment.

The September 2023 cultural resources study conducted by Alta on the project site and shared by FIGR with the City, did not reveal the presence or likelihood of any tribal cultural resources. Nevertheless, the City acknowledges that FIGR may still determine that a potential tribal cultural resource would be affected by the proposed development. If FIGR intends to make this determination, we ask that FIGR please inform the City of this fact within two weeks of the date of this letter. We also request that FIGR inform the City whether FIGR believes that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present can be reached.

Please let me know if you have any questions, and as always, I am available to meet and speak with you about any issues related to this project.

Sincerely,

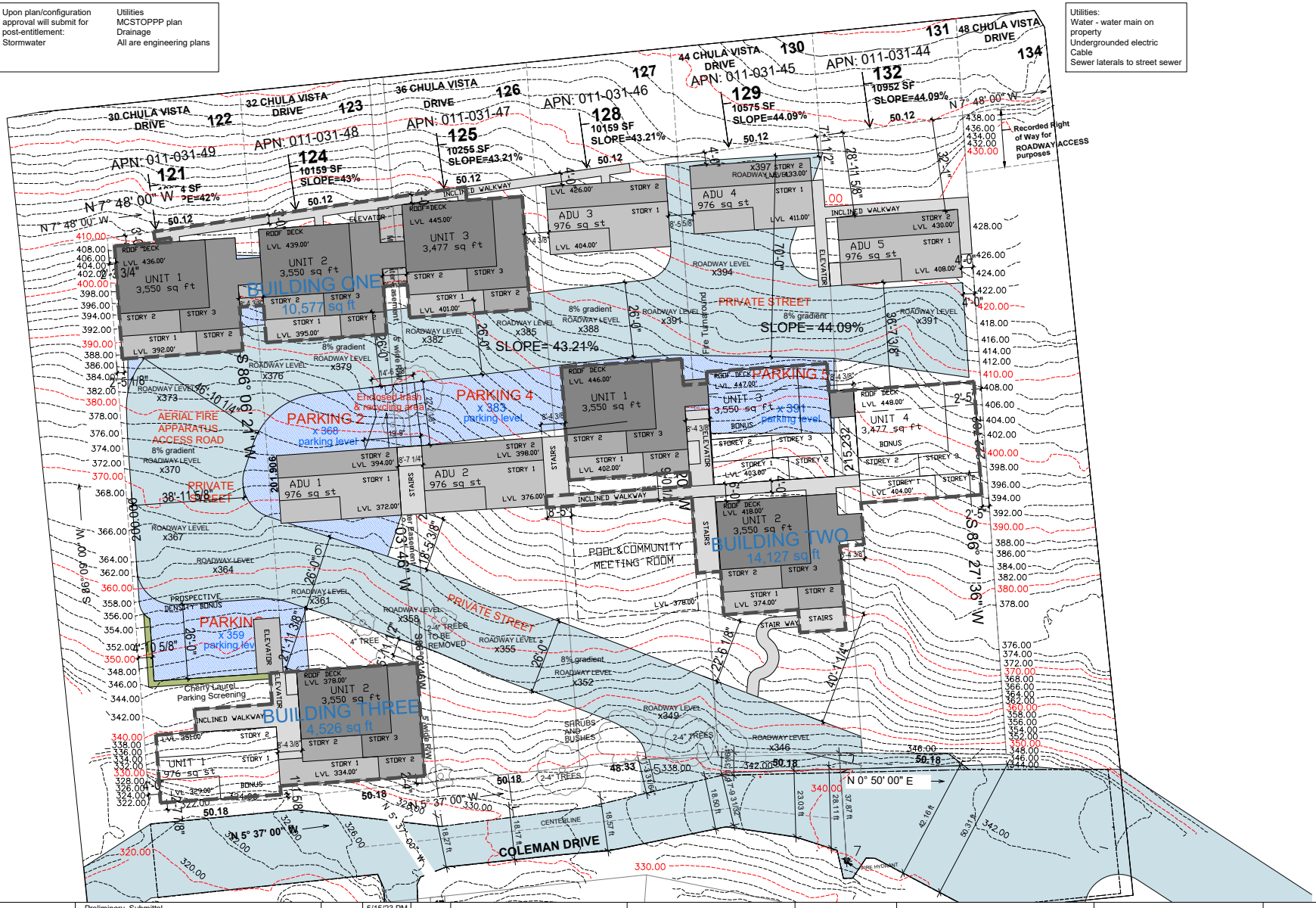
Micah Hinkle

Micah Hinkle
Community and Economic Development Director

EXHIBIT D

Upon plan/configuration approval will submit for post-entitlement:	Utilities MCSTOPPP plan Drainage All are engineering plans
Stormwater	

Utilities:
Water - water main on property
Undergrounded electric
Cable
Sewer laterals to street sewer



Applicant:	Description	Rev.	Date	Issued
River Landon LLC	Preliminary Submittal		5/15/23 PM	
	Full application		11/9/23	
	Small changes, clarifications to 11/9/23 Submittal		5/28/24	
	Submittal HAA SB 35 DBL Settlement application (distinct from standard HAA application made)		9/05/25	
	Submittal HAA SB 35 DBL Settlement application (distinct from standard HAA application made)		3/18/26	

These plans and designs are property and copyright of their respective owners. Not to be copied nor disseminated except for the express purpose for which they are provided. Use of the plans/designs is acknowledgement of these rights.

Housing Development with Affordable Component

APNs:
011-031-44, 011-031-45, 011-031-46, 011-031-47, 011-031-48, 011-031-49

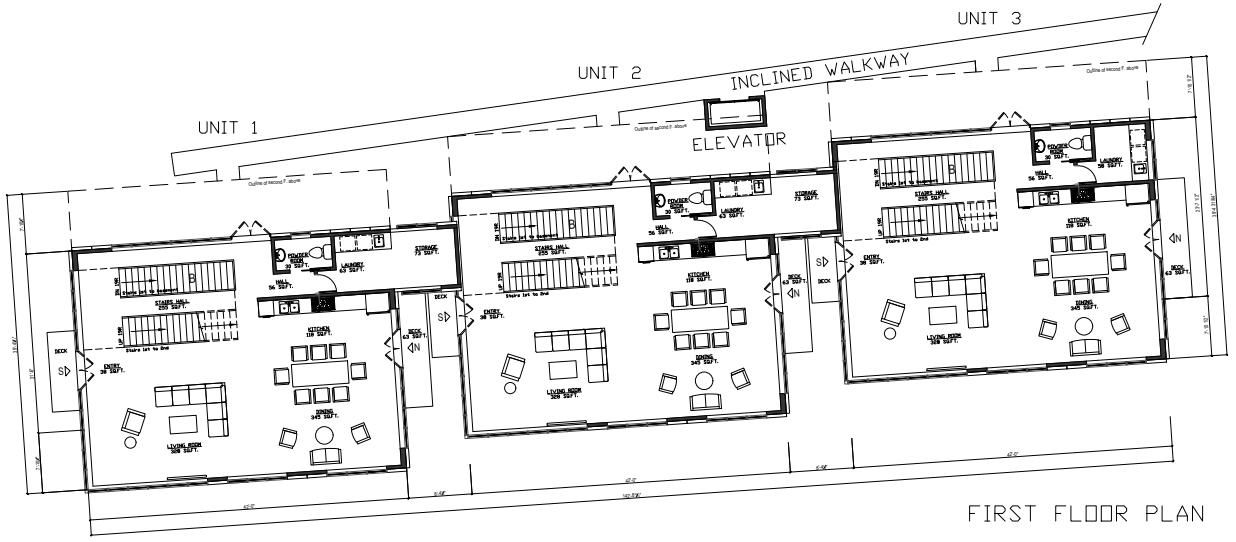
Address:
Coleman Drive,
San Rafael, CA

Drg. Title
SITE PLAN

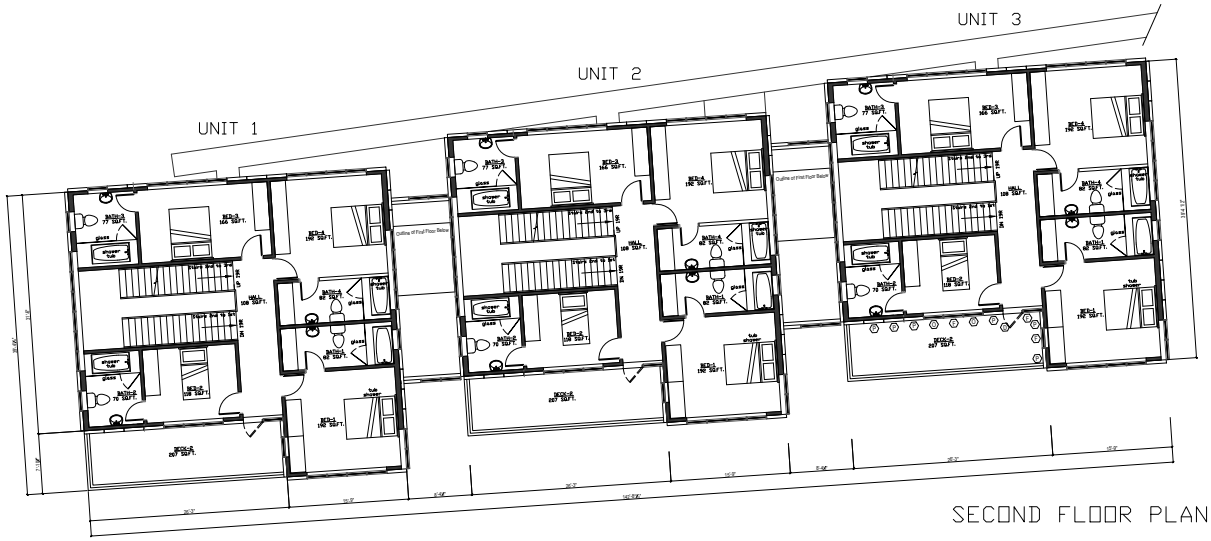
Date 3/18/26
Scale 1/32"=1'

Drg. No.
A.0.2
11 x 17

BUILDING ONE



FIRST FLOOR PLAN



SECOND FLOOR PLAN

North

BUILDING - ONE	
Unit Name	sq ft
Unit 1 - Building One	3,550
Unit 2 - Building One	3,550
Unit 3 - Building One	3,477
TOTAL	10,577

Sprinklered as may be required/required by Fire Code

Applicant:
River Landon LLC

These plans and designs are property and copyright of their respective owners. Not to be copied nor disseminated except for the express purpose for which they are provided. Use of the plans/designs is acknowledgement of these rights.

Description	Rev.	Date	Issued
Preliminary Submittal		5/15/23 PM	
Full application		11/9/23	
Small changes, clarifications to 11/9/23 Submittal		5/28/24	
Submittal HAA SB 35 DBL Settlement application (distinct from standard HAA application made)		9/05/25	
Submittal HAA SB 35 DBL Settlement application (distinct from standard HAA application made)		3/18/26	

Housing Development with Affordable Component

APNs:
011-031-44, 011-031-45,
011-031-46, 011-031-47,
011-031-48, 011-031-49

Address:
Coleman Drive,
San Rafael, CA

Drg. Title
BUILDING ONE
FLOOR PLAN

Date 3/18/26
Scale 1/8"=1'

Drg. No.
A.1.1
11 x 17

EXHIBIT E

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111-4710
P: 415.262.5100 **F**: 415.262.5199

Andrew B. Sabey
415.262.5103
asabey@coxcastle.com

April 2, 2026

VIA E-MAIL @ *community.development@cityofsanrafael.org*

City of San Rafael Planning Division
City of San Rafael
c/o Planning Manager Kavanaugh-Lynch (*Margaret.Kavanaugh-Lynch@cityofsanrafael.org*)
1400 Fifth Avenue, Top Floor
San Rafael, CA 94901

Re: Challenged "Course of Conduct Undertaken for an Improper Purpose" Notice (Gov. Code § 65589.5(h)(6)(E)) Regarding 235–281 Coleman Drive SB 35 Project

Dear Planning Division:

We represent River Landon LLC ("Applicant") in connection with its housing development project utilizing Senate Bill ("SB") 35 (the "Project") at 253–281 Coleman Drive (the "Property") in the City of San Rafael (the "City"). The purpose of this letter is to provide written notice to the City regarding its engagement in a "course of conduct undertaken for an improper purpose" in its ongoing violations of SB 35 and the Housing Accountability Act (Gov. Code, § 65589.5, et seq.) ("HAA") in its processing of the Project. Should the City fail to cease this course of conduct, then it will have further violated the HAA. (Gov. Code, § 65589.5, subd. (h)(6)(E).) The Project is subject to these HAA protections, as well as protections afforded by Section 65589.5(d)(5) of the Government Code.

1. Challenged Conduct and Why It Constitutes Disapproval

As detailed in **Exhibit A**, the City has engaged in conduct for an improper purpose. The City's legally and factually unsupported, inconsistent, and shifting demands, including the City's latest position that it will not accept or process a re-submittal from Applicant—despite SB 35 expressly contemplating and requiring an opportunity for applicants to respond to, revise, and address prior feedback from the City—constitutes disapproval for purposes of the HAA. (Gov. Code, § 65589.5, subd. (h)(6)(E)(i); Gov. Code, § 65913.4(c)(1)(C).)

The City's improper conduct, if not remedied, is yet another violation of the HAA[1]. (Gov. Code, § 65589.5, subd. (h)(6)(E)(v).)

[1] Applicant currently has litigation pending against the City for its multiple violations of the HAA, SB 35, as well as other state law and federal Constitutional claims arising from Applicant's efforts to develop the

2. City Actions for Compliance with the HAA

The City's improper processing conduct violates the HAA. The City must take immediate action in response to this written notice, including:

- Within five working days of receiving this written notice (*i.e.*, by April 9, 2026), the City ***must*** (I) post this notice on its internet website, (II) provide a copy of the notice to any person who has made a written request for notices pursuant to subdivision (f) of Section 21167 of the Public Resources Code, and (III) file the notice with the county clerk of each county[2] in which the Project will be located. (Gov. Code, § 65589.5, subd. (h)(6)(E)(ii).) All pages of the notice (all 25 pages) must be included when the City posts the notice, provides the notice to any person who has made a written request, and files the notice with the county clerk.

- Within between 60 and 90 days of receiving this written notice, the City must consider all objections, comments, evidence, and concerns about the Project or this written notice and then issue a *written* statement that it will *immediately cease* the abovementioned challenged conduct or issue written findings that comply with both of the following requirements: (I) an objective basis for why the challenged course of conduct is *necessary* and (II) *clear instructions* on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing [the latter of which is inapplicable to the SB 35 Project]. (Gov. Code, § 65589.5, subds. (h)(6)(E)(iii)–(iv).) **Importantly, the City *must* continue to process the Project despite this notice**. (Gov. Code, § 65913.4, subd. (c)(1)(C).)

* * *

We look forward to the City's timely compliance with the abovementioned requirements of the HAA. We remind the City that an improper disapproval of the Project under the HAA could subject the City to a *minimum* fine in the amount of $10,000 per unit in the housing development, which amount, depending on the facts, can reach a minimum of $50,000 per housing unit if a court finds the City acted in bad faith. (Gov. Code, § 65589.5, subds. (k)(1)(A)(ii), (k)(1)(B), (l).) Further, Applicant would be entitled to attorneys' fees and costs of suit. (Gov. Code, § 65589.5, subd. (k)(1)(A)(ii); Gov. Code, § 65914.2, subd. (b)(1).)

Property. (*See River Landon LLC v. Hinkle et al*, U.S. District Court for the Northern District of California Case No. 3:25-cv-04904-LB.)

[2] In turn, the county clerk shall post the notice and make it available for public inspection in the manner set forth in subdivision (c) of Section 21152 of the Public Resources Code. (Gov. Code, § 65589.5, subd. (h)(6)(E)(ii).)

Sincerely,

Cox, Castle & Nicholson LLP

Andrew B. Sabey

cc: Andrea Visveshwara, City Attorney
Kevin Siegel, Burke, Williams & Sorensen, LLP
Nira Doherty, Burke, Williams & Sorensen, LLP

Exhibits:
A. Challenged Course of Conduct Table

Exhibit A

Challenged Course of Conduct

The following conduct has been undertaken by the City for an improper purpose:

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
	Applying non-objective standards to development	Refuse collection areas shall be …located in areas convenient to users and collectors. There shall be adequate ingress and egress to all utilities.	These are non-objective standards.
		Walls, etc. shall be used to screen parking and loading areas from view	This is a non-objective standard. What percentage of view shall be shielded, and from what angles, from how far upslope?
	Sending documentation/stating inconsistency by alleging standards are applicable that have no connection to the development submittal	Structures may encroach into a required yard with a compensating increase subject to approval by the hearing body	The applicant did not request any such encroachment

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		Fences located within the front and streetside setbacks may be 4 feet tall etc. The plans do not contain enough detail for the city to determine whether the project complies with the fence standards at this time	No fences have been proposed
	Sending documentation/stating inconsistency that improperly relies on local standards when State standards have preempted those local standards	The city equates all of these together - housing types to single family/multifamily to a zoning classification – single family to low density, multifamily to medium/high density zones. The city claims that the development must comply with medium density residential development/multifamily developments of a minimum of 3 attached units. It provides no explanation of how that would be permitted in a low density residential zone nor how it would be permitted	State law preempts this in SB 35 which authorizes multifamily housing on *any* residential land. SB 35 provides for any qualifying multifamily development of 2 or more units on any residentially zoned land.

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		in a single family zone such as the subject lots (such is not permitted under city code)	
		Developments must provide two covered parking spaces per unit	No covered parking is required under State law
	Sending documentation /stating inconsistency by purporting a standard is not met when the development contains/includes nothing to which that standard applies	Additionally, on streets less than twenty-six feet, a minimum of two additional on-site parking spaces must be provided	The street is 26' wide, is clearly such and is clearly marked as such
		Where the proposed landscape area is equal to or greater than 2,500 sq ft	Sheet A.0.5. The landscaping is less than 2,500 sq.ft.
		Section requires driveways serving residential uses with less than 6 vehicle parking spaces to be a min. of 10 feet wide	The driveway serves 39 parking spaces. The driveway (private street) is 26', and wider in parts
		No subdivision of land into two (2) or more lots or parcels for the purpose of development shall be approved unless it is determined that the following utilities and services can be provided	No subdivision of land into two or more lots is being proposed

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		Table 1.4 Objective Design Standards adopted March 2024. First sentence of the standards. "These standards apply to all "residential multifamily" "residential single-family"..development.., all of which are terms defined in SRMC section 14.03.030": 14.03.030: ""Residential, multifamily means medium and high density residential development,.... containing three (3) or more attached dwelling units.." – a zoning designation for land zoned medium and high density per the zoning ordinance and General Plan. Residential single family means low density residential development	The development is clearly not in either of those categories. Further, the development vested prior to these standards being created The subject lots *are not in this zoning*. This is not applicable to the development

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		containing one (1) primary residential dwelling unit for use by a single household on a single parcel	
	Sending documentation/stating inconsistency by alleging that planning data is not in the development submittal when it is	Plans do not show screening of parking from the street	The plans clearly show screening of parking from the street.
		Insufficient information has been provided in plans to verify the proposed height	Heights are clearly shown on A2.2 to A3.4 - 15 sheets comprehensively showing the height as defined by municipal code for every building.
		New streets and driveway grades shall not exceed 18 per cent. The projects plans do not appear to indicate the proposed slope	A.0.2 site plan very clearly shows the gradient of the street at 8%, as do A.0.3, A.0.8.
		The cover page notes that all spaces are 9 by 19 feet, the application does not contain information to determine where all parking spaces (sic)	Parking is shown on the parking sheet A.0.3 and is clearly shown as 19' x 9'
		Lighting for parking areas must be mounted at maximum of 15 feet	A.0.3 Parking & circulation plan. The plans state "Parking lighting is mounted at 14' from floor"

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
	Sending documentation that misrepresents city municipal code	Side yard setback to be 10 feet and front yard setback to be 20 feet.	*In fact* municipal code defines the yard requirement as the average on the block. (14.04.030)
		Hillside Design Guidelines state Fences and walls over 3 feet in height that face public streets SHOULD (not shall) Definitions in Hillside guidelines – SHOULD (not shall) and where SHOULD is used it states are not mandatory. City *rewrites* this code in its consistency analysis stating the word is "requires"	City misstates its own code
		Res 14890: The affordable housing units shall possess a distribution of bedroom counts proportionate to that of the market-rate units within the residential development project "The affordable housing units shall have access to the same amenities and	This code *does not exist* The code *in fact* states "Compatibility with the…amenities…of the

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		common spaces as the market rate units"	other developed units". The city rewrote this code specifically for the consistency notice on the fly to make it objective. Compatible is non-objective. But the code simply doesn't exist There are many examples of the city making up the code for the consistency letter of October 2025. Yes – just inventing municipal code, to delay this compliant application.
	Asking for documents that have already been provided	Geotechnical report is required	Geotechnical report has been provided
	Demanding documents that are CEQA reports	A Transportation Analysis report is required per city Guidelines.	Page 1 of these Guidelines describe the report as producing an outcome "that include[s] conditions of approval and/or mitigation measures under CEQA" Requiring this report is prohibited under SB 35.

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
	Claiming – both directly and indirectly – that the housing development project did not vest on May 15, 2023. **Making written statements that adopt, repeat, flow from, or attempt to give effect to the City's erroneous position that the housing development project did not vest on May 15, 2023**		Definitive codification of **specifically SB 35 vesting**: Govt Code 65913.4(d) (1) review "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction **before submission of a development application**, and shall be broadly applicable to development within the jurisdiction"
	Ignoring Govt Code 65905.5 (c)(1)	City raises multiple items (see above) that are subject to the applying of density bonus and waivers and thus its (c)(1) letter in those regards is invalid and not issued consistent with State law.	"The receipt of a density bonus including any incentives, concessions, or waivers pursuant to Section 65915 shall not constitute a valid basis on which to find that a proposed housing development project is inconsistent, not in

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.
	Issuing inconsistency letters under 65913.4 (c) (A) & (C) without first approving density bonus and waivers & incorporating their effect into 65913.4 (c) communications	Example The General Plan limits height on the site to 30 feet tall. All primary dwellings exceed 30 feet in height.	
	Sending documentation alleging inconsistency of items that are resolved by issuance of a bonus & waivers, which bonus & waivers are being improperly delayed by the city		The applicant had applied for a waiver of this standard, but the city is unreasonably and with no valid reason delaying the issuance of the waiver The development is entitled to a bonus & waivers under State law.

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
	Stating "the applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard" because the applicant has submitted plans that provide substantial evidence	Repeated continually throughout the purported 'inconsistency' letter	This is NOT the standard by which SB 35 developments are reviewed by a local government: Govt Code 65913.4 (f) (1). "..shall not require studies nor information that do not pertain directly to determining whether the development is consistent with *objective* planning standards" Govt Code 65913.4 (c)(3) "For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. The local government shall not

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			determine that a development… *is in conflict with the objective planning standards on the basis that application materials are not included*, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards" The development submitted contained substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.
	Representing that the city can end the processing of an SB 35 project by issuing a denial letter (and after the 60 day (c)(1) period). **Representing that an applicant cannot resubmit and processing be continued**		Govt Code 65913.4 (a) "…. satisfies all of the **following objective planning standards:** (1) The development is a multifamily housing

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			development that contains two or more residential units..."etc. Then, 65913.4(c)(1) ....Upon a determination that a development submitted pursuant to this section is in conflict with any of the objective planning standards **specified in subdivision (a)**, the local government staff or relevant local planning and permitting department that made the determination shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards.

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			65913.4 (c)(1)(C) [shall provide written documentation] "within 30 days of submittal of any development proposal that was resubmitted to address written feedback provided by the local government pursuant to this paragraph" The city has no authorization to require that an applicant 'start again from the beginning"- nor be subject to changed or significantly changed city planning standards since the applicant designed the development and submitted its SB 35 application. By way of this section, the Statute provides (and the Legislature definitively intended for) the absolute right to resubmit the application. If this were not

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			so, a city could simply require that an applicant start at the back of the line again each time the city raised an issue – and the city could start its incomplete all over again, creating very extensive delays, and, restart its 'scoping consultation process' all over again, and as importantly the development would lose its vesting, and the development be subjected to significant amendment by the applicant if new applicable standards had been created by the local government in the interim.
	Needlessly raising the cost of obtaining approvals	The city continually raises subjects in writing that do not conform to State law (see this notice), and that often stop processing of this streamlined ministerial application, & that lead to the applicant engaging in	

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
		extensive unnecessary work, and work that is not required by state law	
	Failing to follow the processes outlined in Govt Code 65913.4 as described in the case law, including 40 Main Street Offices LLC v. City of Los Altos		See attached excerpts from Order Granting Consolidated Petitions for Writ of Mandate, *40 Main Street Offices, LLC v. City of Los Altos*, Case No. 19CV349845 (County of Santa Clara, April 24, 2020).
	Delaying approval of housing in the residential zones in favor of development more acceptable in general to residents of the City in the downtown/commercial districts. **Following a policy of denying housing on the improper basis that residential lots have or may have circulation, access, and slope issues.**	City advised applicant that "there are issues with these lots."	Housing of all types, including housing with yards, and in all parts of San Rafael, is supported by Affirmatively Furthering Fair Housing requirements and Federal Fair Housing law, No Net Loss law, Housing Crisis Act, Housing Element Law

It should be noted that it is the applicant's position that the development is subject to Gov't Code Section 65589.5(d)(5).

Excerpts from

Order Granting Consolidated Petitions for Writ of Mandate

***40 Main Street Offices, LLC v. City of Los Altos*,**

Case No. 19CV349845 (County of Santa Clara, April 24, 2020)

get the City Council to recognize the mandatory timelines and requirements of SB 35 and the consequences of its having earlier failed to meet those provisions, and to correct its prior erroneous approach.

Finally, the Court concludes that the injustice that would result in the absence of estoppel is enough to justify application of the doctrine here.

For all of these reasons, the Court rejects the City's statute-of-limitations defense and reaches the merits of petitioners' claims.

B. Petitioners Are Entitled to Relief on the Merits

Petitioners allege that the City's conduct violated three different housing statutes: (1) the streamlining statute (§ 65913.4, SB 35); (2) the Density Bonus Law (§ 65915); and (3) the Housing Accountability Act (§ 65589.5).

1. The City Failed to Comply with Section 65913.4

i. Statutory Background

In 2017, the Legislature passed SB 35 to reform land-use and housing law, including by creating "a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment [ ] numbers."[13] (Sen. Rules Com., Rep. on Sen. Bill No. 35 (2017–2018 Reg. Sess.) May 27, 2017.)

Section 65913.4, subdivision (a) states in relevant part: "A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and not subject to a conditional use permit if the development satisfies all of the [ ] objective planning standards" set forth further in subdivision (a).

---

[13] As part of the housing element of a municipality's general plan, it must calculate its Regional Housing Needs Allocation or Assessment (RHNA), which is the " 'existing and projected need for housing' " in the area for individuals and households of all income levels. (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1186, fn. 8, quoting Gov. Code, § 65583.) If a municipality's present and projected housing needs exceed its housing stock and land available for development, it must work to satisfy its RHNA by increasing the availability of land for housing development by, for example, changing zoning and development restrictions. (Gov. Code, § 65583, subd. (c)(1)(A).)

The objective planning standards that operate as eligibility criteria for streamlined, ministerial review consist of inclusionary and exclusionary criteria. In the abstract, the inclusionary and exclusionary criteria balance the primary policy of expediting housing construction with the competing policy of safe, well-designed construction as embodied in existing law. To illustrate, a proposed development must be "a multifamily housing development that contains two or more residential units" in an urban area that will not displace existing rent-controlled and income-restricted housing. (§ 65913.4, subds. (a)(1)–(2), (a)(7).) A mixed-use development still qualifies if "at least two-thirds of the square footage of the development [are] designated for residential use." (§ 65913.4, subd. (a)(2)(C).) Exclusionary criteria disqualify a development proposed for construction in or on a coastal zone, fire zone, flood plain, earthquake fault zone, hazardous-waste site, wetland, or prime farmland. (§ 65913.4, subd. (a)(6).)

Currently, the statute specifies that when evaluating consistency with the standards above, a development is consistent "if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards."[14] (§ 65913.4, subd. (b)(3).) Unless an agency timely explains to a developer in writing the reasons why the proposed development is not consistent with the eligibility criteria, "the development shall be deemed to satisfy the objective planning standards in subdivision (a)." (§ 65913.4, subds. (b)(1)–(2).) An agency's deadline for notifying a project proponent of ineligibility for streamlined, ministerial review is either 60 or 90 days depending on the size of the proposed development. (§ 65913.4, subds. (b)(1)(A)–(B).)

Proposed developments that qualify for streamlined, ministerial review may still be subject to design review or public oversight with the limitation that this oversight "shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application,

[14] Section 65913.4, subdivision (b)(3) became effective January 1, 2020. (Sen. Bill No. 235 (2019–2020 Reg. Sess.) § 5.3; Assem. Bill No. 1485 (2019–2020 Reg. Sess.) § 1.)

and shall be broadly applicable to development within the jurisdiction." (§ 65913.4, subd. (c)(1).) The design review must be completed, if at all, within 90 or 180 days[15] depending on the size of the development and "shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect … ."[16] (§ 65913.4, subd. (c)(1).)

ii. Application

The City's notice of inconsistency here, its SB 35 denial letter of December 7, 2018, was neither code-compliant nor supported by substantial evidence.

Section 65913.4 subdivision (b)(1) provides: "If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards … ." The Court concludes here that the City failed to comply with this notice requirement

---

[15] This means that for a smaller development, the deadline for notice of ineligibility is 60 days (§ 65913.4, subd. (b)(1)(A)) and an agency may take an additional 30 days to complete design review or public oversight for a total of 90 days (§ 65913.4, subd. (c)(1)). For a larger development, the deadline for notice of ineligibility is 90 days (§ 65913.4, subd. (b)(1)(B)) and an agency may take an additional 90 days to complete design review or public oversight for a total of 180 days (§ 65913.4, subd. (c)(2)).

[16] Notably, while section 65913.4, subdivision (c) gives localities additional time to review objective design standards, the Legislature also enumerates compliance with "objective design review standards" as an objective planning standard—an eligibility criterion—in subdivision (a)(5). There does not appear to be a substantive distinction between these two terms. The descriptions in subdivisions (a)(5) and (c) of what design standards may be applied are so similar that they suggest the terms are equivalent. The statutory framing of design standards as both eligibility criteria and criteria capable of review during the extended timeframe for public oversight is problematic because of the distinct deadlines for making those distinct determinations. Treating compliance with objective design standards as an objective planning standard under subdivision (a) arguably renders as surplusage the later deadline for design review in subdivision (c)(1). Courts typically avoid interpreting statutes in such a manner. (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22.) Ultimately, the Court need not resolve this ambiguity based on the particular record and arguments advanced here. The City did not comply by either deadline and does not ask for additional time to conduct public oversight in its supplemental brief on the scope of relief that is warranted.

because the City did not adequately identify objective standards and provide an explanation of inconsistencies supported by substantial evidence in its SB 35 denial letter.

First, the City did not adequately identify applicable objective standards with which the project did not comply. The City conceded its initial error in asserting that a higher percentage of affordable units was required; it had relied on an outdated and incorrect HCD determination. (AR000169.) Thus, it is undisputed that the first bullet point in the City's denial letter was based on an incorrect and inapplicable standard.

As for the other two bullet points, the City did not adequately identify the standards or code provisions it was referring to or relying on. It concluded the project lacked "the required number of off-street residential and visitor parking spaces" and "adequate access/egress to the proposed off-street parking." (AR000127.) But it is not apparent from this vague statement just what those purported standards are or where they can be located. Thus, the City did not adequately identify the parking standards it was relying on. And notwithstanding the opacity and ambiguity of the City's statement, it is apparent that it was not relying on permissible, objective standards for parking. First, section 65913.4, subdivision (d)(2) states that "the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." (§ 65913.4, subd. (d)(2).) And for projects meeting certain criteria—such as projects within one-half mile of transit—no parking requirements may be imposed. (§ 65913.4, subd. (d)(1).) Consequently, the City not only failed to identify the purported parking requirement but also failed to account for the prohibitions in section 65913.4, subdivision (d) as well. Moreover, the City has yet to identify any evidence in the record to support the conclusion that it could require more parking based on the location and characteristics of the project here.

As for ingress and egress, "adequacy" is not an objective standard that may be applied to streamlined projects. Objective standards are those "that involve no personal or subjective judgment by a public official and are 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 before submittal." (§ 65913.4, subd. (a)(5).) What qualifies as

adequate—in the absence of an identifiable standard or definition—is simply a matter of personal or subjective judgment. To date, the City has not identified a uniformly verifiable, knowable standard for adequate ingress and egress. Accordingly, it impermissibly relied on a subjective standard in its denial letter.

What's more, there is no explanation in the denial letter about how the proposal was inconsistent with the unspecified standards applied by the City. For example, the City did not explain that the project provided only X number of parking spaces when the required number was Y. So, the City's denial letter was not code-compliant in this regard as well.

The City does not present a convincing argument to support a contrary conclusion. In the City's papers, it does not clearly and directly counter petitioners' supporting points. For example, the City does not argue that it adequately identified all of the objective standards set forth in its denial letter or that all of the standards it identified qualified as objective standards permissibly applied in the course of streamlined review. And the City does not explain how its cursory reference to such standards qualified as "an explanation for the reason or reasons the development conflicts with that standard or standards." (§ 65913.4, subd. (b)(1).)[17] Instead, the City argues the denial letter, when read in conjunction with the incomplete notice, put Developer on sufficient notice so as to somehow satisfy section 65913.4. This argument lacks merit.

The first problem with the City's contention is that it relies on an unspecified standard for the sufficiency of notice in lieu of the standard spelled out by the Legislature in section 65913.4, subdivision (b)(1). Although not clearly articulated by the City, it seems to invoke the concept of notice in the context of the constitutional minimum for procedural due process. (See generally *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1275–1280.) But the issue here is not whether the City met the constitutional minimum. The issue is whether it complied with the applicable statutory requirements.

---

[17] Section 65913.4 does not merely require a statement of reasons for denying an application for streamlined review. Rather, it imposes the more specific requirement of an explanation of how the proposed development conflicts with the objective standards that the municipality identifies.

The City does not advance a persuasive argument for disregarding the specific statutory requirements for notice. While it purports to invoke a principle of statutory construction that places substance over form, it is not necessary to rely on, and the City does not fairly interpret and rely on, that principle. (See generally *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1332 [discussing scope and limitations of concept of substantial compliance].) In actuality, the City urges a complete disregard for the language of the statute in a vacuum and without regard for the statute's purpose. In other words, the City disregards the form and the substance of the statute. The language the City asks the Court to ignore—what it suggests is a mere formality—is in fact the specific procedure at the heart of the statute that effectuates its purpose. In the absence of deemed compliance under section 65913.4, subdivision (b), the statute would operate as a mere suggestion without an enforcement mechanism. And, because section 65913.4, subdivision (b) is consistent with and effectuates the purpose of the statute, there is no inconsistency between that "form" and the substance of the statute necessitating a reconciliation of those concepts under the canon invoked by the City. The City's argument in this regard is questionable and its reliance on *County of Kern v. TCEF, Inc.* (2016) 246 Cal.App.4th 301 is misplaced. The Court applies the requirements for a notice of inconsistency that are plainly spelled out in the statute, not an amorphous due process standard that would do violence to its very language and purpose.

The second problem with the City's argument is that it relies on an implausible and unreasonable interpretation of the record. The City states that its incomplete notice and denial letter provide sufficient documentation when read together. But the terms of these documents do not support such a construction. The City explicitly stated that it was proceeding as though it had *two* applications submitted by Developer in November 2018. It purported to deny one application and find the other incomplete. The correspondence setting forth those distinct decisions, while issued together, cannot be fairly read and interpreted in the manner the City now urges. The incomplete notice does not purport to specify inconsistencies with objective standards under SB 35; it purports to specify the additional information required before a traditional, *discretionary review* could be commenced. Similarly, the denial letter does not purport to require additional

EXHIBIT F

April 17, 2026

Chris Sullivan
River Landon LLC
PO Box 29281
San Francisco, CA 94129
Modconstruct1@gmail.com

Dear Mr. Chris Sullivan:

The City of San Rafael has received Development Application submitted on March 20, 2026 and proposing an 9-Unit Residential Development with 3 Accessory Dwelling Units (ADUs) located on Coleman and Fair Drive, APNs: 011-031-44, 45, 46, 47, 48, & 49, in the R10 Single-family Residential Zoning District (hereinafter the "Project.").

Although no development fees have been submitted and therefore the Project has not yet been formally submitted, as a courtesy the City is providing a completeness review within the first thirty days. (Gov. Code § 65943(a).) The City finds that the application is incomplete. Please provide the following information in order to complete your application:

Completeness Comments

1.A - Application Form Section 1.A of the General Planning Permit Application Submittal Requirements (Attachment 1) requires a property owner signature on the General Application.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete.	This form was not submitted as part of the application.	Submit a fully completed General Application Form and agree to pay

Kate Colin, **Mayor** • Eli Hill, **Vice Mayor** • Maribeth Bushey, **Councilmember** • Rachel Kertz, **Councilmember** • Maika Llorens Gulati, **Councilmember**

☐		fees, see Attachment 2.

1.C – Fees Section 1.C of the General Planning Permit Application Submittal Requirements requires submission of all fees that are relevant to a particular development application.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	No fees have been submitted for this project. Please identify the entitlements you are submitting for, (e.g. SB35, Environmental Design Review Subdivision Map) and submit fees as shown on Master Fee Sheet	Submit appropriate fees for project.

1.D – Cost Recovery Agreement. A cost recovery agreement is required for application types that are identified in the Fee Schedule as deposit-based fees. Section 1.D of the General Planning Permit Application Submittal Requirements requires submission of all fees that are relevant to a particular development application.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	No Cost Recovery Agreement has been submitted.	Submit Cost Recovery Agreement

1.E – Preliminary Title Report Section 1.E of the General Planning Permit Application Submittal Requirements requires submission of a Preliminary Title Report. The report shall be no more than three months old and at a minimum shall include the current ownership of the property. It shall also show active hyperlinks for all referenced documents in the Report and it must be issued by a Title Company.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**

This item is incomplete. ☐	No Preliminary Title Report was submitted as part of the Application.	Submit Preliminary Title Report.

2.A – Project Narrative Section 2.A of the General Planning Permit Application Submittal Requirements requires submission of a written project narrative that describes the proposed project.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	No Project Narrative was submitted as part of the Application.	Submit Project Narrative including: 1. All proposed grading and excavating, including estimated cubic feet of soil to be added or removed from the site. 2.Existing and proposed legal lots of record included in the project site. 3. Number of lots and the approximate size of each one. 4. Existing natural features, including trees and creeks. 5. All phases of the proposed development, including number and size of new

		buildings and/or additions.

2.D – Site Photographs Section 2.D of the General Planning Permit Application Submittal Requirements requires submission of an adequate number of photos to show entire project site and all adjacent buildings for context. Where possible, take wide-angle shots showing project site and adjacent buildings together.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	The Application does not include the required photos.	Submit photographs of the project site, including 1. the APN of each photo and photo captions. 2. A map or diagram indicating location of photos.

2.F – Findings of Approval Section 2.F of the General Planning Permit Application Submittal Requirements requires submission of a list of requested planning entitlements and explain how the proposed project satisfies the findings required by the San Rafael Municipal Code for each entitlement.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	As stated earlier, it is not clear what entitlements are being requested. If this Application includes an application for an Environmental and Design Review Permit, include an explanation of how the Project satisfies the findings required by San Rafael Municipal Code Section 14.25.090.	Submit an explanation of how the Project satisfies the required findings.

3.A – Cover Sheet Section 3.A of the General Planning Permit Application Submittal Requirements require submission of cover sheet with specific items listed.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	While a Cover Sheet was submitted, a number of required items were not included. The list that needs to be added is found in the next column, Action Required to Complete Application.	Revise Cover Sheet to include: 1. Zoning district. 2. Size of property including gross and net lot area. 3. Square footage of all proposed buildings. 4. Parking analysis for building use and zoning district with code requirements and proposed spaces. 5. Percent of lot area for each of the following: landscaping, impervious surfaces, common open space, and private usable space.

		6. Lot coverage calculations, percent of net lot area covered by buildings. 7. Whether the project is in a Flood Zone. 8. Whether the project is in a Fire Zone. 9. Contact data. Name, address, and phone number of the property owner, applicant, architect, engineer, and/or surveyor. 10. Legend describing all symbols, notations, and abbreviations. 11. Construction Type.

3.B, 3.C – Existing Site Plan, Proposed Site Plan Section 3.B and 3.C of the General Planning Permit Application Submittal Requirements require submission of an existing site plan and a proposed site plan that depict property lines and lot dimensions		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**

This item is <u>incomplete</u>. ☐	While a site plan is included in the application, numerous items requested in the General Planning Permit Application Submittal Requirements are not shown. The list that needs to be added is found in the next column, Action Required to Complete Application	Submit a proposed site plan that includes all the additional items listed below. 1. Site plans shall be drawn to 1”=10’ or 1/8”=1’ scale. 2. Indicate the footprints and use of all proposed structures and buildings, including any structures proposed to be removed. Clearly identify which improvements are new, existing to remain, or existing to be removed. The minimum setbacks from the exterior walls of all buildings to all property lines and access easements must be dimensioned. 3. Plans for retaining walls shall indicate the top and bottom of wall elevations. The footprint and height of any existing or proposed

		structure on adjacent properties must be required to be provided. 4. Clearly indicate required and proposed setbacks for zoning district. 5. Proposed Site Conditions - show any proposed building envelope expansion, roadway and frontage improvements, parking modifications, outdoor improvements, accessory structures, replacement or expansion of exterior decks, fences and retaining walls, hillside natural state, tree and vegetation removal or addition, pools/spas, A/C units/generators, any other mechanical equipment, and any other proposed site features.

		6. Adjacent Properties - include primary buildings, accessory structures, and uses on parcels adjacent to the subject property. 7. The location of identification signs, propane tanks, trash enclosures, exterior lighting fixtures, mailboxes, fencing, paths and walkways, retaining walls, bicycle racks, and other features that affect the exterior appearance and use of the property. 8. The location of any proposed swimming pool equipment, air conditioners, generators, or other noise generators, must be indicated, and specifications including the size, height, and anticipated noise levels noted.

3.D – Elevations. Provide elevations of each existing and proposed building(s) included in the project. Section 3.D of the General Planning Permit Application Submittal Requirements requires submission of proposed elevations for each new building.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	While building elevations are included in the plan set, numerous items requested in the General Planning Permit Application Submittal Requirements are not shown. The list that needs to be added is found in the next column, Action Required to Complete Application.	Submit revised elevations that include the following items: 1. Proposed Elevations shall include for each proposed building: a. Proposed elevations of all sides of the building(s). b. Building sections showing wall, eaves, roof height(s) and roof slope(s). c. One set of building elevations colored to the proposed scheme for the project. d. Location, dimension and style of doors, windows, chimneys, stairs, bays, and all

		major architectural features. (make, model of pre-made features eg. Cut or specification sheets shall be required, see material board, below). 2. Height of each proposed building – based on the project location, as defined in SRMC Section 14.03.030 – Definitions- "Height, hillside" –the site is located in the Hillside Overlay Zone. 3. Cross section of roof-mounted screening. Topography with existing and proposed grades accurately represented to show building height to indicate relationship of building to the site and

		adjacent properties. 4. Location and type of building-mounted exterior lighting. Include specification sheets. See Exterior Lighting, below. 5. Notations identifying the exterior materials and finishes on elevations including colors, types, manufacturers. 6. Provide enlarged details for entry features and any special architectural features.

3.F – Roof Plans

Section 3.F of the General Planning Permit Application Submittal Requirements requires submission of a roof plan for each proposed building. Each roof plan shall include adjacent property lines, outline of building footprint, direction and slope of drainage, location of drainage collectors, labeled rooftop structures including vents, equipment, screening, access, material, ridge elevations, roof levels and slopes.

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	While roof plans are submitted, numerous items requested in the General Planning Permit Application Submittal Requirements are not shown. The list that needs to be	Submit revised roof plans that include all items listed in 3.F, including:

	added is found in the next column, Action Required to Complete Application.	1. Adjacent property lines, outline of building footprint. 2. Location of drainage collectors, labeled rooftop structures including vents, equipment, screening, access, material, ridge elevations, roof levels and slopes.

3.G – Exterior Lighting Plans

Section 3.G of the General Planning Permit Application Submittal Requirements requires a site plan noting the location of all outdoor lighting fixtures within the project site. Details describing the type and height of all light fixtures within all outdoor areas shall be included as well as the make, model of pre-made features e.g. cut or specification sheet for each style of light fixture proposed.

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	No Exterior Lighting Plan was submitted in the application.	Submit Exterior Lighting Plan with all the required information included.

3.H – Preliminary Landscape Plans

Section 3.H of the General Planning Permit Application Submittal Requirements requires a Preliminary Landscape Plan for residential projects of three or more dwelling units, as well as any other project that is subject to the Water Efficient Landscaping Ordinance. Scale of drawing at 1" = 20' and North arrow, including an Engineer's Scale and a Scale Bar.

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	While a landscaping plan was submitted, numerous items requested in the General Planning Permit Application Submittal Requirements are not shown. The list that needs to be added is found in the next column, Action Required to Complete Application.	Submit revised Preliminary Landscape Plans that include all items listed in 3.H, including: 1. Proposed trees, shrubs, shrub groupings, lawn, groundcover areas, existing trees and plant materials to be saved. 2. Stormwater treatment areas. 3. Special paving, hardscape, and cut sheet and specifications of site furnishings. 4. Size, species, and spacing of street trees. 5. Landscape legend with a list of plant materials (in Latin and common name), plant sizes and spacing. 6. Size, species, trunk location, and canopy of

		all existing trees (6 inch diameter or larger) on site and adjacent properties that could be affected by the project. Identify trees to remain and to be removed. 7. Estimated representation of plant materials within three years. 8. Color representation of proposed landscaping. 9. Lighting Plan, showing location and type of exterior lighting both fixed to building and freestanding, and any lights for circulation, security, landscaping, building accent or other purpose. Lighting shall be dark sky compliant, with shields so that adjacent properties are not impacted.

		10. Location and screening of all above-grade utilities and bio-swales or other stormwater treatment areas with 1:10 scale cross sections showing the planting within the bio-swales and screening of utilities. 11. Enlarged details (minimum of 1:10 scale) for focal points and accent areas, i.e. courtyards, entry features, landscape walls, or special areas. 12. Location and details of all hardscapes including specifications of walls, fences, paving, decorative planters, trellises, arbors, and other landscape features. 13. Statement noting that the Water Efficient Landscape Ordinance (WELO)

		standards will be adhered to when applicable. 14. Show line of sight triangle for all intersections and driveways. 15. Provide a written Vegetation Management Plan (VMP). Refer to City of San Rafael Ordinance1856.

3.I – Sections and Profiles

Section 3.I of the General Planning Permit Application Submittal Requirements requires at least two cross sections at 1/4" = 1' scale, to illustrate building and floor area details, grading, etc. Include references on relevant site, floor, and/or elevation drawings. The drawings should show ceiling heights of each floor (including basements and attics), first story finished floor elevation, and the existing and proposed grade of the property. The set should include at least one transverse section and one longitudinal section. At least one of the sections should go through the highest point of the building. If any area could appear from the elevations to include "non-standard" FAL/FAR area (such as large attic areas), provide additional sections though that area to clarify.

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	Although one section and profile was provided, a set for each of the buildings in the specific location was not provided. The list that needs to be added is found in the next column, Action Required to Complete Application.	Submit sections and profiles for each building in their proposed location. These drawings should include: 1.At least two cross sections at 1/4" = 1' scale, to illustrate building and floor area details,

		grading, etc. Include references on relevant site, floor, and/or elevation drawings. The drawings should show ceiling heights of each floor (including basements and attics), first story finished floor elevation and the existing and proposed grade of the property. The set should include at least one transverse section and one longitudinal section for each building. At least one of the sections should go through the highest point of the building. If any area could appear from the elevations to include "non-standard" FAL/FAR area (such as large attic areas), provide additional sections though that area to clarify.

3.J – Preliminary Grading Plans

Section 3.J of the General Planning Permit Application Submittal Requirements requires Preliminary Grading Plan. For projects involving the cut and fill of soil, provide to-scale plans graphically identifying areas of cut, areas of fill, and total cut/fill amounts, retaining walls and heights, locations of significant trees and driplines. Existing and proposed contour lines shall be indicated with existing contours indicated with a solid line, contours to be eliminated with a dash line and new contour lines with a bold solid line, at intervals as follows:

SLOPE INTERVAL	Under 5% 2’	5-20% 5’	Over 20% 10’

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	No Preliminary Grading Plan was submitted in the application.	Submit a Preliminary Grading Plan with all the required information included.

3.K – Boundary Survey

Section 3.K of the General Planning Permit Application Submittal Requirements requires submission of a boundary survey for construction of any new main building or for any construction located within four feet of a property line. The survey must meet the following requirements:

1. Wet-stamped, signed by a licensed surveyor or appropriately licensed civil engineer
2. Minimum scale of 1/10” = 1’.
3. All property lines, curb and sidewalk, spot elevations, existing structures, building dimensions, and setbacks to all property lines.
4. For projects in the Hillside Overlay, survey must be no more than five years old and must show contour lines with minimum 5-foot intervals.

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	The Application contains various pages that could serve as a boundary survey, but none is labeled as such and each one is more than five years in age.	Submit a boundary survey that contains all the required elements and meets the age restriction specified.

3.L – Colors and Materials Board

Section 3.L of the General Planning Permit Application Submittal Requirements requires a Colors and Materials Board. Actual materials and color sample chips of major exterior materials, (elevations, roof, trim, etc) on a board no larger than 11” x 17” with labels for each material(s), and project name on board. Complete details, including dimensions, materials, and colors for all proposed retaining walls and fencing shall also be submitted.

Kate Colin, **Mayor** • Eli Hill, **Vice Mayor** • Maribeth Bushey, **Councilmember** • Rachel Kertz, **Councilmember** • Maika Llorens Gulati, **Councilmember**

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	While the application includes references to materials and colors, not Color and Material Board was submitted	Submit a Color and Material Board that contains all the required elements.

4.A – Housing Affordability Statement Section 4.A of the General Planning Permit Application Submittal Requirements requires a Housing Affordability Statement for developments of two or greater residential units.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	While the application refers to below market rate housing, it does not provide the required details.	Submit a statement that contains: A statement is required describing the following: 1. How the project complies with the City's Affordable Housing Requirements Affordable Housing Requirements 2. Level of affordability that will be provided and/or amount of in lieu fee that will be paid. 3. Number and proposed location of any affordable units provided 4. Size and amenities (bedrooms, bathrooms, parking

		facilities) of any affordable units

4.C – Housing Affordability Statement

Section 4.C of the General Planning Permit Application Submittal Requirements requires a Density Bonus Analysis. Required for projects requesting a density bonus pursuant to Government Code Section 65915 and City Council Resolution No. 14891. Submit the following information: 1. A written statement that includes the following information: a. Number of "base project" units b. Number and percent of affordable units on site and level of affordability c. Percent density bonus requested and allowed pursuant to Government Code Section 65915 d. Any requested waivers or modifications of development standards necessary to physically accommodate "density bonus" units (e.g., increased height, reduced setbacks or parking, etc.) e. If the project is requesting any incentive or concession, describe each incentive or concession being requested in addition to (or instead of) waivers or modifications necessary to accommodate density bonus f. Parking ratio requested pursuant to Government Code §65915(p). 2. Plans showing a "base project" that complies with all applicable Zoning Ordinance requirements, without any waivers or modification to development standards.

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	As stated earlier, it is not clear what entitlements are being requested though there are references to waivers and concessions on the cover page. If the project is pursuing an Environmental Design Review with a state density bonus requested, all of the information must be submitted that is listed above.	Identify the correct entitlement and submit a statement that contains all the required elements.

5.A/5.B – Property Line Modifications

Sections 5.B and 5.B of the General Planning Permit Application Submittal Requirements requires the following:

A. Subdivision and Tentative Maps. Any request to divide real property into five (5) or more lots (Major Subdivision) requires the filing of a Tentative Map application with the Department of Community and Economic Development. The application must be filed by the subdivider, the property owner of record, or a representative of the property owner and must include the following information (filed concurrently with any additional required entitlement requests). See requirements for Subdivision and Tentative Parcel Map applications here:

Subdivision Submittal Requirements - San Rafael

B. Lot Line Adjustment and Merger. Any request to adjust or consolidate a lot line(s) between or among four (4) or fewer existing, legal and adjacent record lots of land (aka, parcels or lots) shall require the filing of an application with the Department of Community Development. The application shall be filed by the property owner(s) or representatives of the property owner(s). See requirements for Lot Line Adjustment and Merger applications here: Lot Line Adjustment and Consolidation - San Rafael

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	As stated earlier, it is not clear what entitlements are being requested. If the project includes the subdivision of the lot, a Tentative Map application is needed. If the project is proposing to merge up to four of the lots, a Lot Line Adjustment and Merger is needed.	Identify the correct entitlement or Map application and submit a statement that contains all the required elements.

6.C – Preliminary Drainage Plan

Section 6.C of the General Planning Permit Application Submittal Requirements requires the following:

Preliminary Drainage Plan. A preliminary drainage plan, prepared by a qualified civil engineer, hydrologist, architect or landscape architect, shall be prepared for all development projects greater than three dwelling units and all non-residential development projects. This plan shall show existing and proposed drainage for the site, structures, driveway and other improvements must be submitted. The plan must indicate the direction, path, and method of water dispersal for existing and proposed drainage channels or facilities. The drainage plan must indicate existing and proposed areas of impervious surfaces. Hydrologic calculations may be required to determine whether there would be any additional surface run-off resulting from the development. The drainage plan shall be drawn at the same scale as the site plan.

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	No Preliminary Drainage Plan has been provided	Submit a Preliminary Drainage Plan that contains all the required elements.

6.D– Fire Emergency Vehicle Access Plan

Section 6.D of the General Planning Permit Application Submittal Requirements requires the following:

Fire Emergency Vehicle Access Plan. A fire apparatus access plan shall be prepared for all development projects greater than three dwelling units and all non-residential development projects. Fire apparatus plan shall show the location the following: 1. Designated fire apparatus access roads. 2. Red curbs and no parking fire lane signs. 3. Fire hydrants. 4. Fire Department Connection (FDC). 5. Double detector check valve. 6. Street address sign. 7. Recessed Knox Box 8. Fire Alarm annunciator panel. 9. NFPA 704 placards. 10. Provide a note on the plan, as follows: The designated fire apparatus access roads and fire hydrant shall be installed and approved by the Fire Prevention Bureau prior construction of the building.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is <u>incomplete</u>. ☐	While a Preliminary Fire Plan was provided, numerous items requested in the General Planning Permit Application Submittal Requirements are not shown. The list that needs to be added is found in the next column, Action Required to Complete Application.	The following items are needed: 1. Location of Red curbs and no parking fire lane signs. 2. Fire Department Connection (FDC). 3. Double detector check valve. 4. Street address sign. 5. Recessed Knox Box 6. Fire Alarm annunciator panel. 7. NFPA 704 placards. 8. Provide a note on the plan, as follows: The designated fire apparatus access roads and fire hydrant

		shall be installed and approved by the Fire Prevention Bureau prior construction of the building.

6.I – Stormwater Section 6.I of the General Planning Permit Application Submittal Requirements requires submission of specified stormwater-related documents for certain projects. Construction projects that include the alteration of land shall be required to comply with all regional stormwater management regulations. If required, they shall include a Stormwater Pollution Prevention Plan (SWPP) and Erosion Sediment Control Plan (ESCP), which shall be prepared by a registered civil engineer, architect, or landscape architect. For detailed guidance on how to prepare these plans, please visit the "Resources and Stormwater Best Management Practices for Construction Projects at www.mcstoppp.org, under the "Construction Projects" section. Templates for these plans are available on the website as well. A preliminary Operations and Maintenance Plan for the Stormwater Control Plan shall also be required.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	The project includes more than 5,000 square feet of total impervious area replacement and creation and therefore is considered a regulated project according to BASMAA standards. In accordance with BASMAA and Marin County Stormwater Pollution Prevention Program (MCSTOPPP) requirements, the following documents and information must be submitted: a. Provide a Stormwater Control Plan narrative report, prepared per the template format provided	Submit the required documents and information.

	as Appendix D in the BASMAA Post-Construction Manual. b. In accordance with Section E.12.e of the NPDES MS4 permit Non-LID Facilities need to show equivalent effectiveness to bioretention areas in the following areas: i. Equal or greater amount of runoff infiltrated or evapotranspired. ii. Equal or lower pollutant concentrations in runoff that is discharged after biotreatment iii. Equal or greater protection against shock loadings and spills iv. Equal or greater accessibility and ease of inspection and maintenance Please note that the City uses BASMAA standards, not C.3. Please update references as needed. The Stormwater Control Plan must include as an attachment a letter from the manufacturer stating the manufacturer has reviewed the Plan, the proposed device meets these technical criteria, and the manufacturer will provide a warranty for two years following activation of the facility Refer to the *Technical Criteria for Non-LID Treatment Facilities* handout found on the MCSTOPPP website: https://mcstoppp.org/2020/03/new-and-redevelopment/ More information and templates are available from the MCSTOPPP	

	website. See tools and guidance, and post-construction requirements at: https://mcstoppp.org/2020/03/new-and-redevelopment/	

6.J – Transportation Impact Analysis

Section 6.J of the General Planning Permit Application Submittal Requirements require submission of a transportation impact analysis for projects that propose new residential units and are requesting a parking modification, to demonstrate consistency with the General Plan or the Congestions Management Plan, as a CEQA compliance requirement, or as otherwise deemed necessary by the Traffic Engineer. More information can be found here. The project is required to provide a transportation analysis report in accordance with the San Rafael Transportation Analysis Guidelines, February 2022. Prior to conducting the transportation analysis, the applicant shall provide the scope of work for the transportation analysis to the Department of Public Works for approval. The applicant shall also provide a completed TA Assessment Form, available as Attachment B to the San Rafael Transportation Analysis Guidelines, when providing the scope of work for review.

Completeness Review	Consideration Factors and Notes	Action Required to Complete Application
This item is incomplete. ☐	The Project proposes to add residential units and also appears to be requesting parking modifications; however a Traffic Impact Analysis was not submitted with the Application.	Submit a Transportation Impact Analysis.

6.K – Trash and Recycling Plan

Section 6.K of the General Planning Permit Application Submittal Requirements requires the following:

This plan shall be prepared for all development projects greater than three dwelling units. They shall include 1. A written description of all waste streams and proposed enclosures, staging areas and corresponding project plans and elevations. 2. A site plan, floor plan and elevations for all trash and recycling enclosures, staging areas, and internal collection room details, shown in plan and elevation view. Details must be shown that provide clear and complete design information. Plan view details shall illustrate sufficient access, circulation and function for both residents/employees and service providers. All dimensions must be shown, including the widths of the pedestrian entrance and service gates, all proposed containers labeling their intended usage and capacity (i.e. “3 cubic yard recycle” or : “2 cubic yard trash”) and all functional components such as drains, bollards, wheel stops, curbs and ramps

shall be included. 3. Elevation view details shall show proposed materials and colors, label all design components, and provide any other specifications for all components. Elevations shall also describe wall and gate construction including recessed and projected material patterns, base and top treatments and other design features. Include labeling, detail enlargements and cross sections if needed to adequately describe the depth of materials and construction intent. 4. The access route for trash and recycling haulers to service the development shall be labeled showing all forward and reversing operations. For areas where the hauling path requires the hauler to manually maneuver containers because the truck access point is separated from the storage location, the hauling path shall also be depicted and labeled.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	No Trash and Recycling Plan has been provided	Submit a Trash and Recycling Plan that contains all the required elements.

6.L – Preliminary Utilities Plan Section 6.L of the General Planning Permit Application Submittal Requirements requires the following: Preliminary Utilities Plan. This plan shall be prepared for all development projects greater than three dwelling units and all non-residential development projects. It shall include the location of all public and private utility connections and methods of extension (overhead or underground) must be indicated. The size and capacity of the utilities shall be labeled.		
Completeness Review	**Consideration Factors and Notes**	**Action Required to Complete Application**
This item is incomplete. ☐	No Preliminary Drainage Plan has been provided	Submit a Preliminary Drainage Plan that contains all the required elements.

Should you have any questions please do not hesitate to contact me at 415-485-3095 or Margaret.kavanaugh-lynch@cityofsanrafael.org

Sincerely,
Margaret Kavanaugh-Lynch

Margaret Kavanaugh-Lynch
Planning Manager

Attachment 1: GENERAL PLANNING APPLICATION

Attachment 2: GENERAL PLANNING PERMIT APPLICATION SUBMITTAL REQUIREMENTS

SAN RAFAEL
THE CITY WITH A MISSION
PLANNING DIVISION

General Planning Permit Application Submittal Requirements

General Planning Application Submittal Requirements are listed below. All documents, reports and plans must be provided in digital format (pdf). Files cannot exceed 100 MB.

Section 1 – General Requirements- ALL PROJECTS SHALL SUBMIT ITEMS A THROUGH G

A. **General Application.** Property owner signature is required.

B. **Development Permit Application and Agreement to Pay Fees.** A completed Development Permit application and agreement to pay fees shall be submitted prior to or concurrently with submittal of a General Application and other required application materials.

C. **Fees.** A planner will review your online submittal and assess the appropriate processing fees. An invoice will be emailed to the applicant with instructions to pay through the online application portal. **The application will not be deemed officially submitted until the required payment is received**. See Fee Schedule online.

D. **Cost Recovery Agreement.** A cost recovery agreement is required for application types that are identified in the Fee Schedule as deposit-based fees.

Note: The applicant is responsible for the cost recovery of the total number of hours for City of San Rafael staff, consultants, and legal team to review an application. Additional time will be charged per staff hour worked as necessary, plus any costs for outside consultant peer reviews as noted on the City's Fee Schedule. The applicant shall be required to replenish funds as necessary and any unused fees will be refunded.

E. **Preliminary Title Report**. The report shall be no more than three months old and at a minimum shall include the current ownership of the property. It shall also show active hyperlinks for all referenced documents in the Report and it must be issued by a Title Company.

F. **Project Narrative**. Submit a written project narrative that describes the proposed project. See Section 2 below for detailed requirements.

G. **Project Plans.** For projects involving new construction, or physical modifications to existing structures or landscaping, submit one electronic plan set, as detailed in Section 3 below.

Section 2 – Project Narrative

Submit a written project narrative that describes the proposed project. This narrative shall include the following details, as applicable:

A. **Proposed Project.**

1. All proposed demolition, including proposed removal of dwelling units, if applicable.
2. All proposed grading and excavating, including estimated cubic feet of soil to be added or removed from the site.
3. Existing and proposed legal lots of record included in the project site.
4. Number of lots and the approximate size of each one.
5. Description of existing development, including list of existing buildings and their approximate size,

height, and use.
6. Existing parking.
7. Existing natural features, including trees and creeks.
8. All phases of the proposed development, including number and size of new buildings and/or additions.
9. A letter that completely describes the proposed project, use, or business. Please include all appropriate information for the project, including:
   - Type of business or use. For interim use, specify duration of use.
   - Accessory uses: Will any additional uses or activities be conducted along with the primary use (e.g., catering in association with a restaurant)?
   - If there will be multiple uses or activities, indicate the proportion of the site and building(s) that will be dedicated to each use or activity.
10. Days and hours of operation.
11. Outdoor uses: Will any aspect of the business be conducted outside of the building (e.g., storage, sales, special events, customer seating)?
12. Number of individuals (e.g., employees, clients, customers, spectators, teachers, students) anticipated to be at the site at peak times.
13. Traffic: How many vehicles will come to the site per day? What is the primary mode of travel (e.g. automobile, transit, bicycling, walking) people will use to get there?
14. Circulation: How will vehicles, bikes, and pedestrians enter, exit, and move around the site?
15. Parking: How many parking spaces are available on the site to serve the use? If located in a shopping center, how many spaces will be available for this particular business?
16. Hazardous materials: Will hazardous materials be stored or used in conjunction with the business?
17. Alcohol: If a business is proposed, will it include the sale of alcohol? If so, include the type of license to be requested from the Department of Alcoholic Beverage Control (ABC).
18. Cannabis: If a business is proposed, will it include cannabis in any form? If so, please include the type of license to be requested from the Bureau of Cannabis Control, CDFA's Cal Cannabis Cultivation Licensing, and/or CDPH's Manufactured Cannabis Safety Branch.
19. If a business is proposed, will it include live entertainment: (e.g., live bands, karaoke)? If so, what are the plans for:
    - Controlling projected sound levels in decibels and any soundproofing or noise mitigation measures
    - Proposed site maintenance and/or safety (e.g., trash clean-up)

B. **Exterior Modifications.** Provide a description of proposed exterior modifications including:
1. Any proposed changes to the exterior of all buildings included in the project. (The plans may indicate elevations to match existing colors and materials, if applicable).
2. Signage. Existing and proposed exterior signage if applicable for the project. Please indicate if site is part of a Sign Program.

C. **Inventory of Existing and Proposed Uses.** For Use Permits on multi-tenant sites, provide an inventory of all business uses on site, with square footage.

D. **Site Photographs.** Provide an adequate number of photos to show entire project site and all adjacent buildings for context. Where possible, take wide-angle shots showing project site and adjacent buildings together.
1. Photos of the existing building and site, including photo captions.
2. Photos of the adjacent buildings on the block face on both sites of the street, including the address of each photo and photo captions.
3. Map or diagram indicating location of photos.

E. **Vicinity Map.** Mark the site location and surrounding features, topography, vegetation, existing improvements, and prominent public viewpoints and view sheds (if applicable).

F. **Findings of Approval.** Include a list of requested planning entitlements and explain how the proposed project satisfies the findings required by the San Rafael Municipal Code for each entitlement. See below for a list of the most common findings. The entire Zoning Code is found here if you need to reference additional entitlements. If an application includes a request for Reasonable Accommodation(s) per SRMC Chapter 14.26, explain which elements of the standard entitlement findings need not be made and why.

Administrative Use Permit	Exception
Use Permit	Environmental and Design Review Permit
Variance	Hillside Exception

Section 3 – Project Plans, Boundary Surveys and Material Sample Boards

All plan sheets must be fully dimensioned. They must also provide a graphic and written scale of 1/8" or 1/4" or 1/20" as appropriate unless otherwise stated below. The plan set shall include:

A. **Cover Sheet.**

1. A vicinity map that clearly shows the subject property and surrounding roads.
2. Project Data Table containing:
   - General Plan designation and Zoning district.
   - Size of property including gross and net lot area.
   - Adjacent land uses.
   - Square footage of all existing buildings.
   - Square footage of all proposed buildings.
   - Parking analysis for building use and zoning district with code requirements and proposed spaces.
   - Percent of lot area for each of the following: landscaping, impervious surfaces, common open space, and private usable space.
   - Lot coverage calculations, percent of net lot area covered by buildings.
   - Whether the project is in a Flood Zone.
   - Whether the project is in a Fire Zone.
3. Contact data. Name, address, and phone number of the property owner, applicant, architect, engineer, and/or surveyor.
4. Sheet index.
5. Name of person preparing plans.
6. Dates of preparation and revisions.
7. Project Address and Assessor Parcel Number(s)
8. North arrow.
9. Legend describing all symbols, notations, and abbreviations.
10. Construction Type.

B. **Existing Site Plan.** An existing site plan shall be submitted that contains the information listed below.

1. Property lines and lot dimensions. If a boundary survey is required, the property lines shall be consistent with the boundary survey.
2. Setbacks – note required setbacks for zoning district.
3. Existing Site Conditions - show existing building and site conditions, including site slope(s), property lines, easements, adjacent street names, roadway and frontage improvements, parking conditions, outdoor improvements, accessory structures, exterior decks, fences and retaining walls, hillside natural state, significant trees and vegetation, pools/spas, A/C units/generators, any other mechanical equipment, and any other existing site features.

4. All natural features must be shown, such as rock outcrops, ridgelines, wetlands, creeks (flow line and top of bank), ponds, water bodies, natural habitat areas and all existing significant vegetation.
5. The trunk location, dripline, and common and scientific names of all existing trees on the subject property with a 6-inch or greater trunk diameter measured at a height of 4.5 feet above grade. Any trees proposed for removal must be indicated.
6. Areas of geological instability shall be identified, including faults and landslides.
7. Adjacent Properties - include primary buildings, accessory structures, and uses on parcels adjacent to the subject property.

C. **Proposed Site Plan.** Submit a proposed site plan containing the information listed below. Site plans shall be drawn to 1"=10' or 1/8"=1' scale.

1. Property lines and lot dimensions. If a boundary survey is required, the property lines shall be consistent with the boundary survey.
2. Indicate the footprints and use of all proposed structures and buildings, including any structures proposed to be removed. Clearly identify which improvements are new, existing to remain, or existing to be removed. The minimum setbacks from the exterior walls of all buildings to all property lines and access easements must be dimensioned.
3. For projects that involve additions, the additional building area shall be shaded and walls to be demolished shall be dashed. Areas proposed for demolition shall be hatched.
4. Plans for retaining walls shall indicate the top and bottom of wall elevations. The footprint and height of any existing or proposed structure on adjacent properties must be required to be provided.
5. Setbacks – Clearly indicate required and proposed setbacks for zoning district.
6. Proposed Site Conditions - show any proposed building envelope expansion, roadway and frontage improvements, parking modifications, outdoor improvements, accessory structures, replacement or expansion of exterior decks, fences and retaining walls, hillside natural state, tree and vegetation removal or addition, pools/spas, A/C units/generators, any other mechanical equipment, and any other proposed site features.
7. Adjacent Properties - include primary buildings, accessory structures, and uses on parcels adjacent to the subject property.
8. The location of identification signs, propane tanks, trash enclosures, exterior lighting fixtures, mailboxes, fencing, paths and walkways, retaining walls, bicycle racks, and other features that affect the exterior appearance and use of the property.
9. The location of any proposed swimming pool equipment, air conditioners, generators, or other noise generators, must be indicated, and specifications including the size, height, and anticipated noise levels noted.

D. **Elevations.** Provide elevations of each existing and proposed building(s) included in the project.

1. Existing Elevations - include all sides of structure(s) and existing features (including windows, doors, and decks.) with height and length measurements. Photos may be used in lieu of the items above, subject to the approval of the Director.
2. Proposed Elevations shall include for each proposed building:
   - Proposed elevations of all sides of the building(s).
   - Building sections showing wall, eaves, roof height(s) and roof slope(s).
   - One set of building elevations colored to the proposed scheme for the project.
   - Location, dimension and style of doors, windows, chimneys, stairs, bays, and all major architectural features. (make, model of pre-made features eg. Cut or specification sheets

shall be required, see material board, below).

- Height of each proposed building – based on the project location, as defined in SRMC Section 14.03.030 – Definitions:
  - "Height, non-hillside" if the project is not subject to the Hillside Overlay Zone or located in the Downtown Precise Plan Area;
  - "Height, hillside" – if the site is located in the Hillside Overlay Zone;
  - "Height, downtown mixed use district" if the project is located in the in the Downtown Precise Plan Area.
- Cross section of roof-mounted screening.
- Topography with existing and proposed grades accurately represented to show building height to indicate relationship of building to the site and adjacent properties.
- Location and type of building-mounted exterior lighting. Include specification sheets. See Exterior Lighting, below.
- Notations identifying the exterior materials and finishes on elevations including colors, types, manufacturers.
- Provide enlarged details for entry features and any special architectural features.

E. **Floor Plan.** Provide floor plans that show all existing and proposed spaces. The floor plan shall include the square footage calculations of the proposed use(s). Floor plan(s) must show the following:

1. All floors, including mezzanines, basements, and attics.
2. Overall building dimensions to exterior walls and interior dimensions of all rooms.
3. Use of all rooms (existing and proposed), per the California Building Code.
4. Location and dimensions of windows, doors, equipment rooms.
5. Trash/Recycling and Green Waste room(s) pursuant to Public Works Department requirements and as noted in section M, below.
6. Long-Term Bicycle parking, showing location of lockers or racks suitable for secure locks and For changes to existing buildings, provide separate plans for existing and proposed conditions, or if changes are limited, use dashed lines for demolished features and solid lines for new features.
7. All plumbing fixture types/units and locations in both existing and proposed floor plans.

F. **Roof Plan.** Provide a roof plan for each proposed building. Each roof plan shall include adjacent property lines, outline of building footprint, direction and slope of drainage, location of drainage collectors, labeled rooftop structures including vents, equipment, screening, access, material, ridge elevations, roof levels and slopes.

G. **Exterior Lighting Plan.** Provide a site plan noting the location of all outdoor lighting fixtures within the project site. Details describing the type and height of all light fixtures within all outdoor areas shall be included as well as the make, model of pre-made features e.g. cut or specification sheet for each style of light fixture proposed.

H. **Preliminary Landscape Plan.** Required for residential projects of three or more dwelling units and non-residential projects that are making changes to landscaping/parking areas, as well as any other project that is subject to the Water Efficient Landscaping Ordinance. Scale of drawing at 1" = 20' and North arrow, including an Engineer's Scale and a Scale Bar. The Plans shall include:

1. Proposed trees, shrubs, shrub groupings, lawn, groundcover areas, existing trees and plant materials to be saved, stormwater treatment areas, special paving, hardscape, and cut sheet and specifications of site furnishings.
2. Size, species, and spacing of street trees.
3. Landscape legend with a list of plant materials (in Latin and common name), plant sizes and
4. spacing.
5. Size, species, trunk location, and canopy of all existing trees (6 inch diameter or larger) on site and adjacent properties that could be affected by the project. Identify trees to remain and to be

removed.

6. Estimated representation of plant materials within three years.
7. Color representation of proposed landscaping.
8. Lighting Plan, showing location and type of exterior lighting both fixed to building and freestanding, and any lights for circulation, security, landscaping, building accent or other purpose. Lighting shall be dark sky compliant, with shields so that adjacent properties are not impacted.
9. Location and screening of all above-grade utilities and bio-swales or other stormwater treatment areas with 1:10 scale cross sections showing the planting within the bio-swales and screening of utilities.
10. Enlarged details (minimum of 1:10 scale) for focal points and accent areas, i.e. courtyards, entry features, landscape walls, or special areas.
11. Location and details of all hardscapes including specifications of walls, fences, paving, decorative planters, trellises, arbors, and other landscape features.
12. Statement noting that the Water Efficient Landscape Ordinance (WELO) standards will be adhered to when applicable.
13. Show line of sight triangle for all intersections and driveways.
14. Provide a written Vegetation Management Plan (VMP). Refer to City of San Rafael Ordinance1856.

I. **Sections and Profiles.** Provide at least two cross sections at 1/4" = 1' scale, to illustrate building and floor area details, grading, etc. Include references on relevant site, floor, and/or elevation drawings. The drawings should show ceiling heights of each floor (including basements and attics), first story finished floor elevation, base flood elevation (if applicable), and the existing and proposed grade of the property. The set should include at least one transverse section and one longitudinal section. At least one of the sections should go through the highest point of the building. If any area could appear from the elevations to include "non-standard" FAL/FAR area (such as large attic areas), provide additional sections though that area to clarify.

J. **Preliminary Grading Plan.** For projects involving the cut and fill of soil, provide to-scale plans graphically identifying areas of cut, areas of fill, and total cut/fill amounts, retaining walls and heights, locations of significant trees and driplines.

Existing and proposed contour lines shall be indicated with existing contours indicated with a solid line, contours to be eliminated with a dash line and new contour lines with a bold solid line, at intervals as follows:

SLOPE	Under 5%	5-20%	Over 20%
INTERVAL	2'	5'	10'

K. **Boundary Survey.** Required for construction of any new main building or for any construction located within four feet of a property line. The survey must meet the following requirements:

1. Wet-stamped, signed by a licensed CA surveyor or appropriately licensed civil engineer
2. Minimum scale of 1/10" = 1'.
3. All property lines, curb and sidewalk, spot elevations, existing structures, building dimensions, and setbacks to all property lines.
4. For projects in the Hillside Overlay, survey must be no more than five years old and must show contour lines with minimum 5-foot intervals.

L. **Colors and Materials Board.** Actual materials and color sample chips of major exterior materials, (elevations, roof, trim, etc) on a board no larger than 11" x 17" with labels for each material(s), and project name on board. Complete details, including dimensions, materials, and colors for all proposed retaining walls and fencing shall also be submitted. This may be omitted if the plans may indicate elevations to match existing colors and materials on additions, only.

Section 4 – Additional Requirements for Projects Subject to Affordable Housing Requirements

A. **Housing Affordability Statement.** For developments of two or greater residential units, provide a statement describing the following:

1. How the project complies with the City's Affordable Housing Requirements Affordable Housing Requirements
2. Level of affordability that will be provided and/or amount of in lieu fee that will be paid. For Projects of greater than 15 units, provide a statement declaring if project will use Primary and Secondary Requirements
3. Number and proposed location of any affordable units provided
4. Size and amenities (bedrooms, bathrooms, parking facilities) of any affordable units

B. **Housing Demolition/Government Code §66300(d) Compliance.** For new housing developments that propose the demolition of any residential dwelling unit, provide a statement that includes the following:

1. Number of existing and proposed residential dwelling units, and maximum number of dwelling units on the site within five years of the date of application submittal if different than existing
2. Number of existing units that are currently occupied and income level of occupant household, if known
3. Number of residential dwelling units proposed to be demolished
4. Number of residential dwelling units proposed to be demolished that are protected. "Protected units" means any of the following:
    a. Residential dwelling units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.
    b. Residential dwelling units that are or were subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years.
    c. Residential dwelling units that are or were rented by lower or very low-income households within the past five years.
    d. Residential dwelling units that were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) within the past 10 years.
5. Number of units to be demolished for which the applicant does not have and cannot obtain information that the occupants are above the lower income level.

C. **Density Bonus Analysis**. Required for projects requesting a density bonus pursuant to Government Code Section 65915 and City Council Resolution No. 14891. Submit the following information:

1. A written statement that includes the following information:
    a. Number of "base project" units
    b. Number and percent of affordable units on site and level of affordability
    c. Percent density bonus requested and allowed pursuant to Government Code Section 65915
    d. Any requested waivers or modifications of development standards necessary to physically accommodate "density bonus" units (e.g., increased height, reduced setbacks or parking, etc.)
    e. If the project is requesting any incentive or concession, describe each incentive or concession being requested in addition to (or instead of) waivers or modifications necessary to accommodate density bonus
    f. Parking ratio requested pursuant to Government Code §65915(p).
2. Plans showing a "base project" that complies with all applicable Zoning Ordinance requirements, without any waivers or modification to development standards.

Section 5 – Property Line Modifications

A. **Subdivision and Tentative Maps**. Any request to divide real property into four (4) or fewer lots (Minor Subdivision) requires the filing of a Parcel Map application, and any request to divide real property into five (5) or more lots (Major Subdivision) requires the filing of a Tentative Map application with the Department of Community and Economic Development. The application must be filed by the subdivider, the property owner of record, or a representative of the property owner and must include the following information (filed concurrently with any additional required entitlement requests). See requirements for Subdivision and Tentative Parcel Map applications here:

Subdivision Submittal Requirements - San Rafael

B. **Lot Line Adjustment and Merger.** Any request to adjust or consolidate a lot line(s) between or among four (4) or fewer existing, legal and adjacent record lots of land (aka, parcels or lots) shall require the filing of an application with the Department of Community Development. The application shall be filed by the property owner(s) or representatives of the property owner(s). See requirements for Lot Line Adjustment and Merger applications here:

Lot Line Adjustment and Consolidation - San Rafael

Section 6 – Additional Items

A. **Arborist Report.** Projects involving any construction activity (including excavation, trenching, demolition, paving, storage of materials, and parking of vehicles) within the drip line of a significant tree shall be required to submit a report by a certified arborist assessing the project's impacts on the affected tree(s) (tree may be located either on- or off-site) and recommending preservation measures both during and after construction.

B. **Historic Resource Evaluation.** If a project is proposed on any state, federal or local landmarked property, a historic resource evaluation shall be requested to evaluate the proposed project in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The evaluation must be prepared by a qualified historian, architectural historian or historic architect according to the Secretary of the Interior Professional Qualifications Standards.

C. **Preliminary Drainage Plan.** A preliminary drainage plan, prepared by a qualified civil engineer, hydrologist, architect or landscape architect, shall be prepared for all development projects greater than three dwelling units and all non-residential development projects. This plan shall show existing and proposed drainage for the site, structures, driveway and other improvements must be submitted. The plan must indicate the direction, path, and method of water dispersal for existing and proposed drainage channels or facilities. The drainage plan must indicate existing and proposed areas of impervious surfaces.

Hydrologic calculations may be required to determine whether there would be any additional surface run-off resulting from the development. The drainage plan shall be drawn at the same scale as the site plan.

D. **Fire Emergency Vehicle Access Plan.** A fire apparatus access plan shall be prepared for all development projects greater than three dwelling units and all non-residential development projects.

Fire apparatus plan shall show the location the following:

1. Designated fire apparatus access roads.
2. Red curbs and no parking fire lane signs.

3. Fire hydrants.
4. Fire Department Connection (FDC).
5. Double detector check valve.
6. Street address sign.
7. Recessed Knox Box
8. Fire Alarm annunciator panel.
9. NFPA 704 placards.
10. Provide a note on the plan, as follows: The designated fire apparatus access roads and fire hydrant shall be installed and approved by the Fire Prevention Bureau prior construction of the building.

E. **Flood Elevation Certificate.** This Certificate is required for all projects taking place in a Federal Emergency Management Agency (FEMA)-designated flood zone. Any proposed construction within a flood zone must comply with FEMA and City floodproofing regulations. Additional information on these requirements is available on the Public Works web site.

F. **Geotechnical/Soils Report.** Applications for master plan zoning, subdivision, use permit/grading permit, design review, or conditional certificates of compliance require geotechnical studies. If the site is rated 3 or 4 (most hazardous) on the General Plan Geoseismic or Slope Stability Maps, a Geotechnical Investigation Report will be required for projects to be deemed complete. If the site is rated 1 or 2, a preliminary Geologic Report will be required. A Geotechnical Investigation may also be required on a more stable site if the use is a defined "critical use" or if the site is downslope of possible debris flow avalanche areas. Additionally, for use permits, subdivisions except lot line adjustments, design review permits and master plan zonings located on artificial fill or on land which has been used by businesses, the preliminary Geotechnical Report shall include a preliminary hazardous materials evaluation. If the preliminary evaluation identifies evidence of hazardous materials, a Hazardous Waste Investigation Report will be required. To determine slope stability of the project site, see Appendix F: Geotechnical Review Requirements.

G. **Preliminary Grading Plan.** A preliminary grading plan that indicates existing and proposed contours across the building site, existing and proposed lot slope, and the limits of grading shall be prepared for all development projects greater than three dwelling units and all non-residential development projects. Existing contours shall be shown with light lines and proposed contours shall be shown with darker lines. The amount of proposed excavation and fill in cubic yards and the location of proposed deposition and borrow sites for each major element of the project must be indicated as well as the total area of disturbance proposed for the project and the limits of grading. The grading plan shall be drawn at the same scale as the site plan. The total amount of offhaul shall be identified in cubic yards

H. **Photometric Study.** All projects involving the installation of new or modified lighting may be required to submit a photometric study to show that proposed/installed lighting complies with the required Light and Glare standards pursuant to SRMC §14.16.227.

I. **Stormwater.** Construction projects that include the alteration of land shall be required to comply with all regional stormwater management regulations. If required, they shall include a Stormwater Pollution Prevention Plan (SWPP) and Erosion Sediment Control Plan (ESCP), which shall be prepared by a registered civil engineer, architect, or landscape architect. For detailed guidance on how to prepare these plans, please visit the “Resources and Stormwater Best Management Practices for Construction Projects at www.mcstoppp.org, under the “Construction Projects” section. Templates for these plans are available on the website as well. A preliminary Operations and Maintenance Plan for the Stormwater Control Plan shall also be required.

J. **Transportation Impact Analysis.** Projects that propose net new commercial square footage and/or residential units, that are requesting a parking modification shall be required to submit a Transportation Impact Analysis (TIA) to demonstrate consistency with the General Plan or the Congestions Management Plan, as a CEQA compliance requirement, or as otherwise deemed necessary by the

Traffic Engineer. More information can be found on line in the City of San Rafael Transportation Impact Analysis Guidelines

K. **Trash and Recycling Plan.** This plan shall be prepared for all development projects greater than three dwelling units and all non-residential development projects. They shall include

1. A written description of all waste streams and proposed enclosures, staging areas and corresponding project plans and elevations.
2. A site plan, floor plan and elevations for all trash and recycling enclosures, staging areas, and internal collection room details, shown in plan and elevation view. Details must be shown that provide clear and complete design information. Plan view details shall illustrate sufficient access, circulation and function for both residents/employees and service providers. All dimensions must be shown, including the widths of the pedestrian entrance and service gates, all proposed containers labeling their intended usage and capacity (i.e. “3 cubic yard recycle” or : “2 cubic yard trash”) and all functional components such as drains, bollards, wheel stops, curbs and ramps shall be included.
3. Elevation view details shall show proposed materials and colors, label all design components, and provide any other specifications for all components. Elevations shall also describe wall and gate construction including recessed and projected material patterns, base and top treatments and other design features. Include labeling, detail enlargements and cross sections if needed to adequately describe the depth of materials and construction intent.
4. The access route for trash and recycling haulers to service the development shall be labeled showing all forward and reversing operations. For areas where the hauling path requires the hauler to manually maneuver containers because the truck access point is separated from the storage location, the hauling path shall also be depicted and labeled.

L. **Preliminary Utilities Plan.** This plan shall be prepared for all development projects greater than three dwelling units and all non-residential development projects. It shall include the location of all public and private utility connections and methods of extension (overhead or underground) must be indicated. The size and capacity of the utilities shall be labeled.

M. **Wildland Urban Interface Technical Evaluation.** If project site is located in a wildland urban interface, a wildland urban interface fire technical evaluation shall be required to determine the scope of vegetation management required to ensure the safety of the proposed construction as well as surrounding properties and evacuation routes.

N. **Project Noticing Board**. A public hearing notification sign shall be required for the following applications: planned developments, rezonings and general plan amendments involving a land use change, tentative maps, variances, use permits involving new construction and environmental and design review permits when development is proposed on a vacant lot or when additional building area is proposed on an existing developed property. For these project types, the applicant shall install a 24” x 36” project noticing board made from a weather durable material (e.g. corrugated plastic) on site, visible to passersby, at each frontage. Use the following to assist in creation of the noticing board:

- Project Noticing Board Instructions
- Project Noticing Board Template - fillable

Note: City staff will prepare a Public Hearing Notice and send the document via email to the applicants. Applicants shall be required to attach the Notice to the Project Noticing Board in the designated UPCOMING PUBLIC HEARING block. Applicants shall be required to submit photo evidence of posting on the subject property to city staff a minimum of 15 days prior to the public hearing. Projects may be continued to a later hearing if evidence of posting is not received. The text of the public hearing notice must be legible in the photo.

SAN RAFAEL
THE CITY WITH A MISSION

GENERAL PLANNING APPLICATION

APPLICATION FOR

- ☐ Certificate of Compliance
- ☐ Pre-Application/Concept Design Review
- ☐ Design Review
- ☐ Development Agreement
- ☐ Environmental Review
- ☐ Exception
- ☐ General Plan Amendment
- ☐ Lot Line Adjustment
- ☐ Subdivision/Tent. Map
- ☐ Sign Program/Amendment
- ☐ Sign Review
- ☐ Use Permit
- ☐ Variance
- ☐ Zone Change/Planned Dev
- ☐ Other

REVIEW/HEARING BODIES

- ☐ Design Review Board
- ☐ Staff/Administration
- ☐ Zoning Administrator
- ☐ City Council
- ☐ Planning Commission

APPLICATION FOR

STREET ADDRESS:	ASSESSOR'S PARCEL NO(S):
EXISTING ZONING:	GENERAL PLAN DESIGNATION:
PRESENT USE OF PROPERTY:	SIZE OF PROPERTY:

APPLICANT INFORMATION

PROPERTY OWNER NAME:	TELEPHONE/FAX:
ADDRESS:	EMAIL:
CITY/ZIP:	
AUTHORIZED AGENT/APPLICANT NAME:	TELEPHONE/FAX:
ADDRESS:	EMAIL:
CITY/ZIP:	
CONTACT (if different from above):	TELEPHONE/ EMAIL:

DETAILED DESCRIPTION OF PROJECT

DO NOT WRITE BELOW THIS LINE: See Conditions of Application on Reverse

FILL OUT UPON RECEIPT

APPLICATION DATE: _____
RECEIVED BY: _____
FEES: $ _____
STAFF PERSON: _____
COMPLETENESS DATE: _____
CEQA ASSMT: _____
DATE: _____

ACTION BY:

STAFF: _____ DATE: _____
ZA: _____ DATE: _____
PC: _____ DATE: _____
CC: _____ DATE: _____
CDD: _____ DATE: _____

Project No(s).

CONDITIONS OF APPLICATION

1) All materials submitted in conjunction with this form shall be considered a part of this application.

2) This application will not be considered filed and processing may not be initiated until the Planning Division determines that the submittal is complete with all necessary information and is "accepted as complete." The City will notify the applicant of all application deficiencies no later than 30 days following application submittal.

3) The property owner authorizes the listed authorized agent(s)/contact(s) to appear before the City Council, Planning Commission, Design Review Board and Zoning Administrator and to file applications, plans, and other information on the owner's behalf.

4) The Owner shall inform the Planning Division in writing of any changes.

5) **INDEMNIFICATION:** As a condition of this application, applicant agrees to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnities"), the purpose of which is to attack, set aside, void or annul the approval of this application or the adoption of any environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the indemnities, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnities.

In the event that any claim, action or proceeding as described above is brought, the City shall promptly notify the applicant of any such claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. In the event the applicant is required to defend the City in connection with any said claim, action or proceeding, the City shall retain the right to (1) approve the counsel to so defend the City, (2) approve all significant decisions concerning the manner in which the defense is conducted, and (3) approve any and all settlements, which approval shall not be unreasonably withheld. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, provided that if the City chooses to have counsel of its own to defend any claim, action or proceeding where applicant already has retained counsel to defend the City in such matters, the fees and the expenses of the counsel selected by the City shall be paid by the City.

6) **ATTORNEY'S EXPENSES COST REIMBURSEMENT:** As a condition of this application, applicant agrees to be responsible for the payment of all City Attorney expenses and costs, both for City staff attorneys and outside attorney consultants retained by the City, associated with the reviewing, process and implementing of the land use approval and related conditions of such approval. City Attorney expenses shall be based on the rates established from time to time by the City Finance Director to cover staff attorney salaries, benefits, and overhead, plus the actual fees and expenses of any attorney consultants retained by the City. Applicant shall reimburse City for City Attorney expenses and costs within 30 days following billing or same by the City.

7) **RECOVERY OF ATTORNEY'S FEES BY PREVAILING PARTY:** In any action brought to enforce the applicant's obligations, including the Indemnification and Attorneys' Expenses Cost Reimbursement conditions set forth above, the prevailing party shall be entitled to an award of reasonable litigation costs, including attorneys' fees and costs.

8) **COST BASED FEE SYSTEM** (not applicable to flat fee applications): Applicant agrees to pay to the City all incurred costs, both direct and indirect, including State-mandated costs, associated with review and processing of the accompanying application for land use approval(s), even if the application is withdrawn or not approved.

Reimbursable costs include all staff and overhead costs as established in the City's adopted Cost Recovery Fee Program Master Fee Schedule, as well as the cost of required professional consultants to assist in environmental, engineering or legal review.

If expenditures exceed 75% of the deposit amount required by the Cost Recovery Fee Program, additional deposits will be requested. Applicant understands and agrees that nonpayment of deposit requests within the time period specified in the request shall be deemed a withdrawal of the application. Any unexpended funds will be refunded by the City after completion of application processing.

I have read and agree with all of the above. I declare under penalty of perjury that the information contained in this application is true and correct to the best of my knowledge.

Property Owner:_____ **Dated:**_____

Authorized Agent/Applicant:_____ **Dated:**_____

EXHIBIT G

CAL HDF

Apr 28, 2026

City of San Rafael

1400 Fifth Avenue
San Rafael, CA 94901

Re: Housing Development Project at 235-281 Coleman Drive

To: Kate.Colin@CityOfSanRafael.org; Maika@CityOfSanRafael.org; Eli.Hill@CityOfSanRafael.org; Maribeth.Bushey@CityOfSanRafael.org; rachel.kertz@cityofsanrafael.org

Cc: Rob.Epstein@CityOfSanRafael.org; Paul.Navazio@CityOfSanRafael.org; community.development@cityofsanrafael.org; city.clerk@cityofsanrafael.org

To the City of San Rafael:

The California Housing Defense Fund ("CalHDF") submits this letter regarding the proposed housing development project at 235-281 Coleman Drive ("Project"). CalHDF submits this comment during the 60-90 day window following the City's required posting of the Housing Accountability Act ("HAA") course of conduct notice (Gov. Code § 65589.5, subd. (h)(6)(E)(ii)), to document the City's ongoing unlawful processing conduct and to notify City of CalHDF's intention to pursue litigation if the City does not cease this conduct and properly process the Project. CalHDF also writes more generally concerning the City's legal obligations with respect to the project application.

Legal Background

The HAA provides the Project legal protections. It requires approval of zoning- and general plan-compliant housing development projects unless findings can be made regarding specific, objective, written health and safety hazards. (Gov. Code, § 65589.5, subds. (d), (j).) Slow-walking an application, i.e., any "course of conduct undertaken for an improper purpose" that effectively blocks or delays a project, constitutes an illegal disapproval under the HAA, even without a formal denial. (*Id.* at subd. (h)(6)(E).) If the City is found to have violated the HAA, organizations like CalHDF have standing to pursue litigation and are entitled to recover attorney's fees, as are applicants. (*Id.* at subd. (k)(1)(A)(ii); Gov. Code § 65914.2, subd. (b)(1).) Additionally, courts may also impose fines for improper disapproval at

$10,000 per unit and $50,000 per unit if the City has been found to act in bad faith. (Gov. Code, § 65589.5, subds. (k)(1)(A)(ii), (k)(1)(B), (*l*).)

SB 35, enacted in 2017 to address California's severe and ongoing housing crisis, establishes a streamlined, ministerial review process for qualifying multifamily housing projects, requiring local governments to approve eligible developments within 60 to 90 days based solely on objective planning standards. (Gov. Code, § 65913.4.) The statute deliberately removes local discretion to disapprove or even delay projects and eliminates local review under the California Environmental Quality Act ("CEQA"). (*Ibid.*; see also *1000 Friends Protecting Historic Benicia v. City of Benicia* (Jan. 16, 2026, No. A172005) 2026 Cal. App. Unpub. LEXIS 289[1].)

The local government must approve an SB 35 application so long as "substantial evidence ... would allow a reasonable person to conclude that the development" meets SB 35's criteria. (*Id.* at subd. (c)(3).) In its review, the agency "shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects." (Gov. Code § 65913.4, subd. (c)(1).) Thus, SB 35 leaves the local government no discretion to disapprove eligible projects or even delay their approval. (See generally Gov. Code, § 65913.4; see also *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117 [holding ministerial actions leave no room for government agency to exercise discretion].) If an applicant receives an inconsistency notice from the local agency, the applicant may resubmit the application at any time; the agency then has 30 days to respond to the resubmittal. (*Id.* at subd. (c)(1)(C).) Additionally, SB 35 projects are entitled to density bonuses and waivers under the Density Bonus Law ("DBL") (Gov. Code § 65915), i.e., the grant of a density bonus cannot be a basis for finding inconsistency (Gov. Code § 65905.5, subd. (c)(1)).

Crucially, SB 35's approval process leaves no room for the local government to review the application under CEQA (See Gov. Code, § 65913.4), which does not apply to ministerial projects, only to discretionary projects. (Pub. Resources Code, § 21080, subd. (b)(1); 14 C.C.R. § 15268, subd. (a); see also California Department of Housing and Community Development, Updated Streamlined Ministerial Approval Process, Government Code section 65913.4 Guidelines, at p. 12, available at https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update- final.pdf; *1000 Friends Protecting Historic Benicia v. City of Benicia* (Jan. 16, 2026, No. A172005) 2026 Cal. App. Unpub. LEXIS 289.) SB 35 also states explicitly that SB 35 applications do not constitute a "project" for purposes of CEQA. (Gov. Code, § 65913.4, subd. (o).) Consequently, SB 35 applications, which must be processed ministerially, do not trigger any duties under CEQA.

Therefore, if an SB 35 application meets SB 35's criteria, the local government must approve it within the statute's accelerated timeline without further process. This was the intention of the Legislature when it enacted SB 35 and related housing laws, "to facilitate and expedite

[1] A copy of the opinion is attached for reference.

the construction of affordable housing" (Gov. Code, § 65582.1) and attack "[l]engthy permitting processes and approval times" for housing projects. (Stats. 2019, ch. 654, § 2(a)(10).)

If a local government does not respond to an SB 35 application or resubmission within the statutory timeframes, the project is deemed consistent with all applicable planning standards. (Gov. Code, § 65913.4, subd. (c)(2).) The HAA provides a further backstop on this point: if the local government does not provide the applicant a written determination of any points on which the proposed project does not comply with local standards within 30 days of the date the application is complete (60 days for large projects), then "the housing development project shall be deemed consistent, compliant, and in conformity with" all local standards. (Gov. Code, § 65589.5, subd. (j)(2).)

Factual Background

Applicant River Landon LLC submitted an SB 35 application for a multifamily housing project at 235-281 Coleman Drive ("Project"), a residentially zoned site. The Project contained 29 units, including 11 accessory dwelling units ("ADUs') and six low-income units. Thereafter, on May 15, 2023, the City received an SB 35 "notice of intent" for the Project (the "Notice of Intent") in the form of an SB 330 preliminary application. The Notice of Intent included all of the information required by SB 35 for an SB 35 notice of intent.

At the time of receipt, the City's Housing Element had not been found by the California Department of Housing and Community Development ("HCD") to be in substantial compliance with California State Housing Element Law. This placed the City squarely within the scope of the "Builder's Remedy" at the time the Project was submitted to the City, and thereby vested Plaintiff's rights to the Builder's Remedy for the Project[2]. On or around June 14, 2023, the City confirmed to Plaintiff that the Notice of Intent was complete, and Plaintiff had obtained vested rights to the Project as of May 15, 2023, locking in the objective standards in effect at that time. (Gov. Code § 65913.4, subd. (a)(5).) The Project was also protected under the HAA because it was consistent with the City's objective zoning standards (except to the extent density bonus waivers apply). (Gov. Code § 65589.5, subd. (d)(5).)

After the City's scoping consultation standstill and inconsistency determination, the applicant reduced the project to 14 units, including 6 ADUs and one low-income unit, at a unit count the City itself had identified as acceptable; the City then issued another

[2] Although this letter focuses on the City's duties under other provisions of state law, CalHDF notes that the project's eligibility for the builder's remedy (Gov. Code, § 65589.5, subds. (d)(5), (d)(6)) constitutes another reason why the City is obliged to process and approve the project: the builder's remedy bars the City from disapproving the project based on inconsistencies with the City's local code.

inconsistency determination recycling the same objections as the previous inconsistency determination.

Despite pursuing litigation, the Applicant has continued to resubmit materials to the City in a good-faith effort to obtain approval through the statutory SB 35 process. The City has continued to slow-walk those resubmittals as described below.

The City's Conduct Violates the HAA

As detailed below, the City has engaged in conduct for an improper purpose under Government Code § 65589.5, subd. (h)(6)(E). The City's legally and factually unsupported, inconsistent, and shifting demands, including the City's latest position that it will not accept or process a resubmittal from the Applicant, despite SB 35's expressly contemplating and requiring an opportunity for applicants to respond to, revise, and address prior feedback from the City, constitute disapproval under the HAA. (*Id.* at subd. (h)(6)(E)(i); Gov. Code, § 65913.4(c)(1)(C).) The City's improper conduct, if not remedied, is a violation of the HAA. (Gov. Code, § 65589.5, subd. (h)(6)(E)(v).)

Thus, the Applicant has submitted written notice of the City's improper course of conduct, and, within between 60 and 90 days of receiving such written notice, the City must consider all objections, comments, evidence, and concerns, about the Project or the Applicant's notice, including this letter, and then issue a written statement that it will immediately cease the challenged conduct or issue written findings that provide: (I) an objective basis for why the challenged course of conduct is necessary and (II) clear instructions on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing [the latter of which is inapplicable to the SB 35 Project]. (Gov. Code, § 65589.5, subds. (h)(6)(E)(iii)–(iv).) Importantly, the City must continue to process the Project during the pendency of the Applicant's notice. (Gov. Code, § 65913.4, subd. (c)(1)(C).)

The following categories of conduct, detailed in the applicant's course of conduct notice (Exhibit 1) and its attached Exhibit A, constitute a "course of conduct undertaken for an improper purpose" within the meaning of Gov. Code § 65589.5, subd. (h)(6)(E). Each category independently violates the HAA and/or SB 35.

1. The City has applied non-objective standards to the Project. The HAA prohibits disapproval of applications on the basis of non-objective standards. (Gov. Code. § 65589.5, subd. (d).) SB 35 is even more explicit: review "shall be objective and be strictly focused" on objective criteria. (Gov. Code § 65913.4, subd. (c)(1).) Objective standards are those "that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion." (*Id.* at subd. (a)(5).) According to Exhibit A of the Applicant's

written notice, the City requires refuse collection areas to be "located in areas convenient to users and collectors," which is not an objective standard. Neither is "adequate ingress and egress to all utilities." Similarly, the use of "[w]alls, etc... to screen parking and loading areas from view" cannot be evaluated by an objective standard. (Cf. *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 840 [requiring a "transition or step in height" is not an objective standard].) Thus, the City must withdraw all inconsistency findings based on non-objective standards.

2. The City has sent the Applicant documents that misstate and misrepresent the Applicant's submittals and ignore information that the Applicant has already included in their submittals, constituting a delay tactic and improper course of conduct under Government Code § 65589.5, subd. (h)(6)(E). Examples include claiming that Applicant's plans do not show screening of parking from the street, that Applicant provided insufficient information to verify height, that the plans don't show the slope of the driveway, that claimed parking space dimensions were not identifiable, and that parking lot lighting height was unspecified—all contradicted by Applicant's plans. These misrepresentations burden the applicant with unnecessary responses, drawn-out timelines, and increased uncertainty and cost of the approval process in violation of the HAA's anti-delay provisions.

3. The City has applied standards that are preempted by state law. SB 35 preempts local standards that conflict with state housing law. (Gov. Code § 65913.4, subd. (a); § 65589.5, subd. (d).) SB 35 prohibits local governments from imposing parking requirements exceeding one space per unit for qualifying streamlined developments and, in some cases, e.g., proximity to transit, bars parking requirements altogether. (Gov. Code § 65913.4, subd. (e).) The City demanded two covered spaces per unit, a requirement the state has preempted. Additionally, the City is attempting to apply objective design standards applicable to "medium" or "high density" residential zones and to "multifamily" zones as defined under its municipal code. These classifications do not apply to this site. SB 35 authorizes multifamily housing on any residentially zoned land and limits review to standards applicable to the Project as submitted. Therefore, the City cannot import zoning standards from inapplicable classifications. (*Id.* at subds. (a)(5), (c)(1).) Finally, the City has attempted to apply objective design standards adopted in March 2024, which came after the Project's May 2023 vesting date. Standards adopted after submittal and vesting cannot be applied to the Project. (*Id.* at subd. (a)(5).)

4. The City has misrepresented its own municipal code, characterizing a "should" provision in its Hillside Design Guidelines as a mandatory "shall" requirement and citing an affordable housing distribution requirement from Resolution 14890 using language that does not appear in the actual resolution; the City appears to have

rewritten the code in its consistency analysis. This conduct, i.e., misrepresenting binding legal standards to manufacture grounds for delay, is precisely the kind of bad-faith course of conduct the legislature intended to prevent when it enacted the HAA. If proven at trial, it supports a finding of bad faith and the $50,000-per-unit minimum penalty. (Gov. Code § 65589.5, subd. (k)(1)(B).)

5. The City has demanded CEQA documents from the Applicant. However, SB 35 projects are exempt from CEQA. (Gov. Code § 65913.4, subd. (o); *1000 Friends Protecting Historic Benicia v. City of Benicia* (Jan. 16, 2026, No. A172005) 2026 Cal. App. Unpub. LEXIS 289 [attached as Exhibit 2].) CEQA does not apply to the ministerial determination of whether a project qualifies for streamlined review. The City has demanded a Transportation Analysis Report that, by its own guidelines, produces "conditions of approval and/or mitigation measures under CEQA." Requiring this report is expressly prohibited by SB 35. (Gov. Code § 65913.4, subds. (f)(1), (o).) The City also cannot require any studies or information that "do not pertain directly to determining whether the development is consistent with objective planning standards." (*Id.* at subd. (f)(1).)

6. The City has improperly claimed that the Project's vesting rights have expired. The Project vested under SB 35 on May 15, 2023, when the Notice of Intent was submitted. (*Id.* at subd. (a)(5).) Vesting locks in the objective planning standards in effect at the time of submittal, thus the City cannot apply subsequently adopted standards. Furthermore, the HAA independently protects vesting: Government Code § 65589.5, subd. (j) prohibits the City from relying on post-submittal changes to zoning or general plan to disapprove the project; Government Code § 65589.5, subd. (o) further protects the project's entitlements once the HAA is triggered.[3] Here, the City has made written statements that adopt the erroneous position that vesting did not occur. Any attempt by the City to require the applicant to "start again from the beginning" under new standards, or to treat the vesting date as other than May 15, 2023, is unlawful.

7. The City has refused to process density bonuses and waivers under the DBL, to which the Project is entitled. (Gov. Code § 65915.) The DBL imposes a mandatory duty on the City to grant a density bonus when an applicant meets the eligibility criteria and imposes on the City the burden of proof to deny any waiver or incentive. (*Id.* at subds. (b)(1), (d)(1), (e)(1).) The grant of a density bonus cannot be used as a basis to find the project inconsistent with applicable zoning or planning standards. (Gov. Code § 65905.5, subd. (c)(1); § 65589.5, subd. (j)(3); § 65913.4, subd. (a)(5).) The City has unreasonably delayed the processing of the applicant's density bonus and waiver requests, and has continued to cite height and other standards as bases for inconsistency even though those standards are subject to waivers.

[3] The HAA's vesting provisions also protect the project's right to proceed under the builder's remedy.

8. The City has misunderstood the rules for review of SB 35 applications. As stated above, under Government Code § 65913.4, subd. (c)(3), a project is consistent with objective planning standards if "there is substantial evidence that would allow a reasonable person to conclude that the development is consistent." This is a generous standard for applicants. The City may not find a project inconsistent on the ground that the application materials do not include certain information, if the application meets this "substantial evidence" standard. (*Ibid.*) The Applicant's submittals contain substantial evidence of consistency across all material standards, and the City's repeated demands for additional information, despite the plans' already containing the relevant information, are a misapplication of the legal standard and an unlawful delay tactic.

9. The City has ignored SB 35 deadlines and refused to accept resubmittals. SB 35 requires the City to respond to a resubmittal within 30 days. (Gov. Code § 65913.4, subd. (c)(1)(C).) Not only has the City missed or ignored this deadline, but it has also represented that it will not accept or process further resubmittals from the Applicant. SB 35 expressly contemplates and requires that applicants have the opportunity to respond to, revise, and resubmit at any time after the City rejects a prior submittal. (*Ibid.*) The City's refusal to accept resubmittals constitutes a constructive disapproval of the project under the HAA. (Gov. Code § 65589.5, subd. (h)(6)(E)(i).) As stated above, the City also has no authority to require the Applicant to "start again from the beginning," reset the scoping or consultation process, or subject the application to newly adopted standards. To do so would violate the letter and intent of SB 35's streamlined approval process.

The City's Conduct Violates Its Duty to Affirmatively Further Fair Housing

California law imposes on local governments the duty to "affirmatively further fair housing" ("AFFH") (Gov. Code § 8899.50 et seq.) This entails not just refraining from overt discrimination but also proactively addressing historic patterns of segregation. San Rafael is a high-resource, predominantly white, high-income community with a documented history of residential segregation. Housing of all types, including multifamily housing in single-family and low-density neighborhoods, is affirmatively supported by AFFH requirements and federal Fair Housing law. (42 U.S.C. § 3608.) The City's failure to produce its share of affordable and multifamily housing, as exhibited by its attempts to obstruct this Project through subjective and pretextual criteria, perpetuates those patterns.

Thanks to the City's Refusal to Process the Applicant's Resubmittals, the Project Is Now Deemed Consistent with All Local Standards as a Matter of Law

As explained earlier in this letter, both the HAA and SB 35 impose consequences on the City if it fails to evaluate an applicant's submittal for consistency with local standards within a

specific timeframe. For SB 35 resubmittals after an initial application and initial inconsistency letter, the timeframe is 30 days. (Gov. Code, § 65913.4, subd. (c)(1)(C).) For purposes of the HAA, the timeframe for projects of 150 units or fewer is also 30 days. (Gov. Code, § 65589.5, subd. (j)(2).) In either case, if the City does not provide a consistency evaluation within 30 days, the project is "deemed consistent, compliant, and in conformity with" all local standards. (*Id.* at subd. (j)(2)(B); see also § 65913.4, subd. (c)(2) ["If the local government[] ... fails to provide the required documentation [within 30 days] the development shall be deemed to satisfy the objective planning standards"].)

Here, the Applicant resubmitted application materials on March 20, 2026. The City responded with an "incompleteness determination" but did not review the materials for consistency with local standards. The City's actions suggest it believes that Government Code section 65943 is the only governing statute in this circumstance, but the City is mistaken. Whether 65943 applies, other statutes, including the HAA and SB 35, also govern the City's conduct in this case. Those statutes require the City to have issued a consistency review within 30 days of March 20, 2026, and the City's failure to do so means the project is now deemed consistent with all local standards as a matter of law. The California Supreme Court has explained that the term "deemed" creates a rule of substantive law by establishing the legal equivalent of a particular fact or scenario. (*People v. McCall* (2004) 32 Cal.4th 175, 188.)

As the project is now consistent with all local standards and not subject to CEQA, nothing further remains for the City to do but approve the project. If it fails to do this, CalHDF will file a lawsuit to compel the City to uphold its legal duties.

♦ ♦ ♦

The City's conduct, as documented in the Applicant's course of conduct notice, constitutes a systematic and bad-faith course of conduct undertaken for the improper purpose of blocking or delaying a lawful SB 35 and HAA-protected housing project. The City must immediately cease all challenged conduct, accept and process the Applicant's resubmittals in compliance with SB 35's deadlines, and issue its density bonus and waiver determinations without further delay. CalHDF urges the City to issue written findings within the 60-90 day window that acknowledge these violations and commit to full statutory compliance. Finally, CalHDF reiterates that at this point, no further review of the project is necessary: the project complies with local standards and is not subject to CEQA. All that remains is for the City to approve the project. If the City persists in refusing to do this, CalHDF will pursue all available remedies under the HAA, SB 35, the DBL, and applicable fair housing laws, including seeking civil penalties (minimum $10,000–$50,000 per unit), injunctive relief, and attorney's fees.

CalHDF is a 501(c)(3) non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,



Dylan Casey
CalHDF Executive Director

Exhibit 1

COX CASTLE NICHOLSON

Exhibit 1

04/03/2026

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111-4710
P: 415.262.5100 **F**: 415.262.5199

Andrew B. Sabey
415.262.5103
asabey@coxcastle.com

April 2, 2026

VIA E-MAIL @ *community.development@cityofsanrafael.org*

City of San Rafael Planning Division
City of San Rafael
c/o Planning Manager Kavanaugh-Lynch (*Margaret.Kavanaugh-Lynch@cityofsanrafael.org*)
1400 Fifth Avenue, Top Floor
San Rafael, CA 94901

Re: Challenged "Course of Conduct Undertaken for an Improper Purpose" Notice (Gov. Code § 65589.5(h)(6)(E)) Regarding 235–281 Coleman Drive SB 35 Project

Dear Planning Division:

We represent River Landon LLC ("Applicant") in connection with its housing development project utilizing Senate Bill ("SB") 35 (the "Project") at 253–281 Coleman Drive (the "Property") in the City of San Rafael (the "City"). The purpose of this letter is to provide written notice to the City regarding its engagement in a "course of conduct undertaken for an improper purpose" in its ongoing violations of SB 35 and the Housing Accountability Act (Gov. Code, § 65589.5, et seq.) ("HAA") in its processing of the Project. Should the City fail to cease this course of conduct, then it will have further violated the HAA. (Gov. Code, § 65589.5, subd. (h)(6)(E).) The Project is subject to these HAA protections, as well as protections afforded by Section 65589.5(d)(5) of the Government Code.

1. Challenged Conduct and Why It Constitutes Disapproval

As detailed in **Exhibit A**, the City has engaged in conduct for an improper purpose. The City's legally and factually unsupported, inconsistent, and shifting demands, including the City's latest position that it will not accept or process a re-submittal from Applicant—despite SB 35 expressly contemplating and requiring an opportunity for applicants to respond to, revise, and address prior feedback from the City—constitutes disapproval for purposes of the HAA. (Gov. Code, § 65589.5, subd. (h)(6)(E)(i); Gov. Code, § 65913.4(c)(1)(C).)

The City's improper conduct, if not remedied, is yet another violation of the HAA[1]. (Gov. Code, § 65589.5, subd. (h)(6)(E)(v).)

[1] Applicant currently has litigation pending against the City for its multiple violations of the HAA, SB 35, as well as other state law and federal Constitutional claims arising from Applicant's efforts to develop the

2. City Actions for Compliance with the HAA

The City's improper processing conduct violates the HAA. The City must take immediate action in response to this written notice, including:

- Within five working days of receiving this written notice (*i.e.*, by April 9, 2026), the City ***must*** (I) post this notice on its internet website, (II) provide a copy of the notice to any person who has made a written request for notices pursuant to subdivision (f) of Section 21167 of the Public Resources Code, and (III) file the notice with the county clerk of each county[2] in which the Project will be located. (Gov. Code, § 65589.5, subd. (h)(6)(E)(ii).) All pages of the notice (all 25 pages) must be included when the City posts the notice, provides the notice to any person who has made a written request, and files the notice with the county clerk.

- Within between 60 and 90 days of receiving this written notice, the City must consider all objections, comments, evidence, and concerns about the Project or this written notice and then issue a *written* statement that it will *immediately cease* the abovementioned challenged conduct or issue written findings that comply with both of the following requirements: (I) an objective basis for why the challenged course of conduct is *necessary* and (II) *clear instructions* on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing [the latter of which is inapplicable to the SB 35 Project]. (Gov. Code, § 65589.5, subds. (h)(6)(E)(iii)–(iv).) **Importantly, the City *must* continue to process the Project despite this notice**. (Gov. Code, § 65913.4, subd. (c)(1)(C).)

* * *

We look forward to the City's timely compliance with the abovementioned requirements of the HAA. We remind the City that an improper disapproval of the Project under the HAA could subject the City to a *minimum* fine in the amount of $10,000 per unit in the housing development, which amount, depending on the facts, can reach a minimum of $50,000 per housing unit if a court finds the City acted in bad faith. (Gov. Code, § 65589.5, subds. (k)(1)(A)(ii), (k)(1)(B), (l).) Further, Applicant would be entitled to attorneys' fees and costs of suit. (Gov. Code, § 65589.5, subd. (k)(1)(A)(ii); Gov. Code, § 65914.2, subd. (b)(1).)

Property. (*See River Landon LLC v. Hinkle et al*, U.S. District Court for the Northern District of California Case No. 3:25-cv-04904-LB.)

[2] In turn, the county clerk shall post the notice and make it available for public inspection in the manner set forth in subdivision (c) of Section 21152 of the Public Resources Code. (Gov. Code, § 65589.5, subd. (h)(6)(E)(ii).)

Sincerely,

Cox, Castle & Nicholson LLP

Andrew B. Sabey

cc: Andrea Visveshwara, City Attorney
Kevin Siegel, Burke, Williams & Sorensen, LLP
Nira Doherty, Burke, Williams & Sorensen, LLP

Exhibits:
A. Challenged Course of Conduct Table

Exhibit A

Challenged Course of Conduct

The following conduct has been undertaken by the City for an improper purpose:

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
	Applying non-objective standards to development	Refuse collection areas shall be …located in areas convenient to users and collectors. There shall be adequate ingress and egress to all utilities.	These are non-objective standards.
		Walls, etc. shall be used to screen parking and loading areas from view	This is a non-objective standard. What percentage of view shall be shielded, and from what angles, from how far upslope?
	Sending documentation/stating inconsistency by alleging standards are applicable that have no connection to the development submittal	Structures may encroach into a required yard with a compensating increase subject to approval by the hearing body	The applicant did not request any such encroachment

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		Fences located within the front and streetside setbacks may be 4 feet tall etc. The plans do not contain enough detail for the city to determine whether the project complies with the fence standards at this time	No fences have been proposed
	Sending documentation/stating inconsistency that improperly relies on local standards when State standards have preempted those local standards	The city equates all of these together - housing types to single family/multifamily to a zoning classification – single family to low density, multifamily to medium/high density zones. The city claims that the development must comply with medium density residential development/multifamily developments of a minimum of 3 attached units. It provides no explanation of how that would be permitted in a low density residential zone nor how it would be permitted	State law preempts this in SB 35 which authorizes multifamily housing on *any* residential land. SB 35 provides for any qualifying multifamily development of 2 or more units on any residentially zoned land.

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		in a single family zone such as the subject lots (such is not permitted under city code)	
		Developments must provide two covered parking spaces per unit	No covered parking is required under State law
	Sending documentation /stating inconsistency by purporting a standard is not met when the development contains/includes nothing to which that standard applies	Additionally, on streets less than twenty-six feet, a minimum of two additional on-site parking spaces must be provided	The street is 26' wide, is clearly such and is clearly marked as such
		Where the proposed landscape area is equal to or greater than 2,500 sq ft	Sheet A.0.5. The landscaping is less than 2,500 sq.ft.
		Section requires driveways serving residential uses with less than 6 vehicle parking spaces to be a min. of 10 feet wide	The driveway serves 39 parking spaces. The driveway (private street) is 26', and wider in parts
		No subdivision of land into two (2) or more lots or parcels for the purpose of development shall be approved unless it is determined that the following utilities and services can be provided	No subdivision of land into two or more lots is being proposed

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		Table 1.4 Objective Design Standards adopted March 2024. First sentence of the standards. "These standards apply to all "residential multifamily" "residential single-family"..development.., all of which are terms defined in SRMC section 14.03.030": 14.03.030: ""Residential, multifamily means medium and high density residential development,.... containing three (3) or more attached dwelling units.." – a zoning designation for land zoned medium and high density per the zoning ordinance and General Plan. Residential single family means low density residential development	The development is clearly not in either of those categories. Further, the development vested prior to these standards being created The subject lots *are not in this zoning*. This is not applicable to the development

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
		containing one (1) primary residential dwelling unit for use by a single household on a single parcel	
	Sending documentation/stating inconsistency by alleging that planning data is not in the development submittal when it is	Plans do not show screening of parking from the street	The plans clearly show screening of parking from the street.
		Insufficient information has been provided in plans to verify the proposed height	Heights are clearly shown on A2.2 to A3.4 - 15 sheets comprehensively showing the height as defined by municipal code for every building.
		New streets and driveway grades shall not exceed 18 per cent. The projects plans do not appear to indicate the proposed slope	A.0.2 site plan very clearly shows the gradient of the street at 8%, as do A.0.3, A.0.8.
		The cover page notes that all spaces are 9 by 19 feet, the application does not contain information to determine where all parking spaces (sic)	Parking is shown on the parking sheet A.0.3 and is clearly shown as 19' x 9'
		Lighting for parking areas must be mounted at maximum of 15 feet	A.0.3 Parking & circulation plan. The plans state "Parking lighting is mounted at 14' from floor"

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
	Sending documentation that misrepresents city municipal code	Side yard setback to be 10 feet and front yard setback to be 20 feet.	*In fact* municipal code defines the yard requirement as the average on the block. (14.04.030)
		Hillside Design Guidelines state Fences and walls over 3 feet in height that face public streets SHOULD (not shall) Definitions in Hillside guidelines – SHOULD (not shall) and where SHOULD is used it states are not mandatory. City *rewrites* this code in its consistency analysis stating the word is "requires"	City misstates its own code
		Res 14890: The affordable housing units shall possess a distribution of bedroom counts proportionate to that of the market-rate units within the residential development project "The affordable housing units shall have access to the same amenities and	This code *does not exist* The code *in fact* states "Compatibility with the…amenities…of the

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
		common spaces as the market rate units"	other developed units". The city rewrote this code specifically for the consistency notice on the fly to make it objective. Compatible is non-objective. But the code simply doesn't exist There are many examples of the city making up the code for the consistency letter of October 2025. Yes – just inventing municipal code, to delay this compliant application.
	Asking for documents that have already been provided	Geotechnical report is required	Geotechnical report has been provided
	Demanding documents that are CEQA reports	A Transportation Analysis report is required per city Guidelines.	Page 1 of these Guidelines describe the report as producing an outcome "that include[s] conditions of approval and/or mitigation measures under CEQA" Requiring this report is prohibited under SB 35.

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
	Claiming – both directly and indirectly – that the housing development project did not vest on May 15, 2023. **Making written statements that adopt, repeat, flow from, or attempt to give effect to the City's erroneous position that the housing development project did not vest on May 15, 2023**		Definitive codification of **specifically SB 35 vesting**: Govt Code 65913.4(d) (1) review "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction **before submission of a development application**, and shall be broadly applicable to development within the jurisdiction"
	Ignoring Govt Code 65905.5 (c)(1)	City raises multiple items (see above) that are subject to the applying of density bonus and waivers and thus its (c)(1) letter in those regards is invalid and not issued consistent with State law.	"The receipt of a density bonus including any incentives, concessions, or waivers pursuant to Section 65915 shall not constitute a valid basis on which to find that a proposed housing development project is inconsistent, not in

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.
	Issuing inconsistency letters under 65913.4 (c) (A) & (C) without first approving density bonus and waivers & incorporating their effect into 65913.4 (c) communications	Example The General Plan limits height on the site to 30 feet tall. All primary dwellings exceed 30 feet in height.	
	Sending documentation alleging inconsistency of items that are resolved by issuance of a bonus & waivers, which bonus & waivers are being improperly delayed by the city		The applicant had applied for a waiver of this standard, but the city is unreasonably and with no valid reason delaying the issuance of the waiver The development is entitled to a bonus & waivers under State law.

	Challenged conduct:	**City sent/sends documentation which states:**	**Applicant's response**
	Stating "the applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard" because the applicant has submitted plans that provide substantial evidence	Repeated continually throughout the purported 'inconsistency' letter	This is NOT the standard by which SB 35 developments are reviewed by a local government: Govt Code 65913.4 (f) (1). "..shall not require studies nor information that do not pertain directly to determining whether the development is consistent with *objective* planning standards" Govt Code 65913.4 (c)(3) "For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. The local government shall not

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			determine that a development… *is in conflict with the objective planning standards on the basis that application materials are not included*, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards" The development submitted contained substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.
	Representing that the city can end the processing of an SB 35 project by issuing a denial letter (and after the 60 day (c)(1) period). **Representing that an applicant cannot resubmit and processing be continued**		Govt Code 65913.4 (a) "…. satisfies all of the **following objective planning standards:** (1) The development is a multifamily housing

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			development that contains two or more residential units..."etc. Then, 65913.4(c)(1) ....Upon a determination that a development submitted pursuant to this section is in conflict with any of the objective planning standards **specified in subdivision (a)**, the local government staff or relevant local planning and permitting department that made the determination shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards.

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			65913.4 (c)(1)(C) [shall provide written documentation] "within 30 days of submittal of any development proposal that was resubmitted to address written feedback provided by the local government pursuant to this paragraph" The city has no authorization to require that an applicant 'start again from the beginning"- nor be subject to changed or significantly changed city planning standards since the applicant designed the development and submitted its SB 35 application. By way of this section, the Statute provides (and the Legislature definitively intended for) the absolute right to resubmit the application. If this were not

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
			so, a city could simply require that an applicant start at the back of the line again each time the city raised an issue – and the city could start its incomplete all over again, creating very extensive delays, and, restart its 'scoping consultation process' all over again, and as importantly the development would lose its vesting, and the development be subjected to significant amendment by the applicant if new applicable standards had been created by the local government in the interim.
	Needlessly raising the cost of obtaining approvals	The city continually raises subjects in writing that do not conform to State law (see this notice), and that often stop processing of this streamlined ministerial application, & that lead to the applicant engaging in	

	Challenged conduct:	City sent/sends documentation which states:	Applicant's response
		extensive unnecessary work, and work that is not required by state law	
	Failing to follow the processes outlined in Govt Code 65913.4 as described in the case law, including 40 Main Street Offices LLC v. City of Los Altos		See attached excerpts from Order Granting Consolidated Petitions for Writ of Mandate, *40 Main Street Offices, LLC v. City of Los Altos*, Case No. 19CV349845 (County of Santa Clara, April 24, 2020).
	Delaying approval of housing in the residential zones in favor of development more acceptable in general to residents of the City in the downtown/commercial districts. **Following a policy of denying housing on the improper basis that residential lots have or may have circulation, access, and slope issues.**	City advised applicant that "there are issues with these lots."	Housing of all types, including housing with yards, and in all parts of San Rafael, is supported by Affirmatively Furthering Fair Housing requirements and Federal Fair Housing law, No Net Loss law, Housing Crisis Act, Housing Element Law

It should be noted that it is the applicant's position that the development is subject to Gov't Code Section 65589.5(d)(5).

Excerpts from

Order Granting Consolidated Petitions for Writ of Mandate

***40 Main Street Offices, LLC v. City of Los Altos*,**

Case No. 19CV349845 (County of Santa Clara, April 24, 2020)

get the City Council to recognize the mandatory timelines and requirements of SB 35 and the consequences of its having earlier failed to meet those provisions, and to correct its prior erroneous approach.

Finally, the Court concludes that the injustice that would result in the absence of estoppel is enough to justify application of the doctrine here.

For all of these reasons, the Court rejects the City's statute-of-limitations defense and reaches the merits of petitioners' claims.

B. Petitioners Are Entitled to Relief on the Merits

Petitioners allege that the City's conduct violated three different housing statutes: (1) the streamlining statute (§ 65913.4, SB 35); (2) the Density Bonus Law (§ 65915); and (3) the Housing Accountability Act (§ 65589.5).

1. The City Failed to Comply with Section 65913.4

i. Statutory Background

In 2017, the Legislature passed SB 35 to reform land-use and housing law, including by creating "a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment [ ] numbers."[13] (Sen. Rules Com., Rep. on Sen. Bill No. 35 (2017–2018 Reg. Sess.) May 27, 2017.)

Section 65913.4, subdivision (a) states in relevant part: "A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and not subject to a conditional use permit if the development satisfies all of the [ ] objective planning standards" set forth further in subdivision (a).

---

[13] As part of the housing element of a municipality's general plan, it must calculate its Regional Housing Needs Allocation or Assessment (RHNA), which is the " 'existing and projected need for housing' " in the area for individuals and households of all income levels. (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1186, fn. 8, quoting Gov. Code, § 65583.) If a municipality's present and projected housing needs exceed its housing stock and land available for development, it must work to satisfy its RHNA by increasing the availability of land for housing development by, for example, changing zoning and development restrictions. (Gov. Code, § 65583, subd. (c)(1)(A).)

The objective planning standards that operate as eligibility criteria for streamlined, ministerial review consist of inclusionary and exclusionary criteria. In the abstract, the inclusionary and exclusionary criteria balance the primary policy of expediting housing construction with the competing policy of safe, well-designed construction as embodied in existing law. To illustrate, a proposed development must be "a multifamily housing development that contains two or more residential units" in an urban area that will not displace existing rent-controlled and income-restricted housing. (§ 65913.4, subds. (a)(1)–(2), (a)(7).) A mixed-use development still qualifies if "at least two-thirds of the square footage of the development [are] designated for residential use." (§ 65913.4, subd. (a)(2)(C).) Exclusionary criteria disqualify a development proposed for construction in or on a coastal zone, fire zone, flood plain, earthquake fault zone, hazardous-waste site, wetland, or prime farmland. (§ 65913.4, subd. (a)(6).)

Currently, the statute specifies that when evaluating consistency with the standards above, a development is consistent "if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards."[14] (§ 65913.4, subd. (b)(3).) Unless an agency timely explains to a developer in writing the reasons why the proposed development is not consistent with the eligibility criteria, "the development shall be deemed to satisfy the objective planning standards in subdivision (a)." (§ 65913.4, subds. (b)(1)–(2).) An agency's deadline for notifying a project proponent of ineligibility for streamlined, ministerial review is either 60 or 90 days depending on the size of the proposed development. (§ 65913.4, subds. (b)(1)(A)–(B).)

Proposed developments that qualify for streamlined, ministerial review may still be subject to design review or public oversight with the limitation that this oversight "shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application,

[14] Section 65913.4, subdivision (b)(3) became effective January 1, 2020. (Sen. Bill No. 235 (2019–2020 Reg. Sess.) § 5.3; Assem. Bill No. 1485 (2019–2020 Reg. Sess.) § 1.)

and shall be broadly applicable to development within the jurisdiction." (§ 65913.4, subd. (c)(1).) The design review must be completed, if at all, within 90 or 180 days[15] depending on the size of the development and "shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect … ."[16] (§ 65913.4, subd. (c)(1).)

ii. Application

The City's notice of inconsistency here, its SB 35 denial letter of December 7, 2018, was neither code-compliant nor supported by substantial evidence.

Section 65913.4 subdivision (b)(1) provides: "If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards … ." The Court concludes here that the City failed to comply with this notice requirement

---

[15] This means that for a smaller development, the deadline for notice of ineligibility is 60 days (§ 65913.4, subd. (b)(1)(A)) and an agency may take an additional 30 days to complete design review or public oversight for a total of 90 days (§ 65913.4, subd. (c)(1)). For a larger development, the deadline for notice of ineligibility is 90 days (§ 65913.4, subd. (b)(1)(B)) and an agency may take an additional 90 days to complete design review or public oversight for a total of 180 days (§ 65913.4, subd. (c)(2)).

[16] Notably, while section 65913.4, subdivision (c) gives localities additional time to review objective design standards, the Legislature also enumerates compliance with "objective design review standards" as an objective planning standard—an eligibility criterion—in subdivision (a)(5). There does not appear to be a substantive distinction between these two terms. The descriptions in subdivisions (a)(5) and (c) of what design standards may be applied are so similar that they suggest the terms are equivalent. The statutory framing of design standards as both eligibility criteria and criteria capable of review during the extended timeframe for public oversight is problematic because of the distinct deadlines for making those distinct determinations. Treating compliance with objective design standards as an objective planning standard under subdivision (a) arguably renders as surplusage the later deadline for design review in subdivision (c)(1). Courts typically avoid interpreting statutes in such a manner. (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22.) Ultimately, the Court need not resolve this ambiguity based on the particular record and arguments advanced here. The City did not comply by either deadline and does not ask for additional time to conduct public oversight in its supplemental brief on the scope of relief that is warranted.

because the City did not adequately identify objective standards and provide an explanation of inconsistencies supported by substantial evidence in its SB 35 denial letter.

First, the City did not adequately identify applicable objective standards with which the project did not comply. The City conceded its initial error in asserting that a higher percentage of affordable units was required; it had relied on an outdated and incorrect HCD determination. (AR000169.) Thus, it is undisputed that the first bullet point in the City's denial letter was based on an incorrect and inapplicable standard.

As for the other two bullet points, the City did not adequately identify the standards or code provisions it was referring to or relying on. It concluded the project lacked "the required number of off-street residential and visitor parking spaces" and "adequate access/egress to the proposed off-street parking." (AR000127.) But it is not apparent from this vague statement just what those purported standards are or where they can be located. Thus, the City did not adequately identify the parking standards it was relying on. And notwithstanding the opacity and ambiguity of the City's statement, it is apparent that it was not relying on permissible, objective standards for parking. First, section 65913.4, subdivision (d)(2) states that "the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit." (§ 65913.4, subd. (d)(2).) And for projects meeting certain criteria—such as projects within one-half mile of transit—no parking requirements may be imposed. (§ 65913.4, subd. (d)(1).) Consequently, the City not only failed to identify the purported parking requirement but also failed to account for the prohibitions in section 65913.4, subdivision (d) as well. Moreover, the City has yet to identify any evidence in the record to support the conclusion that it could require more parking based on the location and characteristics of the project here.

As for ingress and egress, "adequacy" is not an objective standard that may be applied to streamlined projects. Objective standards are those "that involve no personal or subjective judgment by a public official and are 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 before submittal." (§ 65913.4, subd. (a)(5).) What qualifies as

adequate—in the absence of an identifiable standard or definition—is simply a matter of personal or subjective judgment. To date, the City has not identified a uniformly verifiable, knowable standard for adequate ingress and egress. Accordingly, it impermissibly relied on a subjective standard in its denial letter.

What's more, there is no explanation in the denial letter about how the proposal was inconsistent with the unspecified standards applied by the City. For example, the City did not explain that the project provided only X number of parking spaces when the required number was Y. So, the City's denial letter was not code-compliant in this regard as well.

The City does not present a convincing argument to support a contrary conclusion. In the City's papers, it does not clearly and directly counter petitioners' supporting points. For example, the City does not argue that it adequately identified all of the objective standards set forth in its denial letter or that all of the standards it identified qualified as objective standards permissibly applied in the course of streamlined review. And the City does not explain how its cursory reference to such standards qualified as "an explanation for the reason or reasons the development conflicts with that standard or standards." (§ 65913.4, subd. (b)(1).)[17] Instead, the City argues the denial letter, when read in conjunction with the incomplete notice, put Developer on sufficient notice so as to somehow satisfy section 65913.4. This argument lacks merit.

The first problem with the City's contention is that it relies on an unspecified standard for the sufficiency of notice in lieu of the standard spelled out by the Legislature in section 65913.4, subdivision (b)(1). Although not clearly articulated by the City, it seems to invoke the concept of notice in the context of the constitutional minimum for procedural due process. (See generally *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1275–1280.) But the issue here is not whether the City met the constitutional minimum. The issue is whether it complied with the applicable statutory requirements.

---

[17] Section 65913.4 does not merely require a statement of reasons for denying an application for streamlined review. Rather, it imposes the more specific requirement of an explanation of how the proposed development conflicts with the objective standards that the municipality identifies.

The City does not advance a persuasive argument for disregarding the specific statutory requirements for notice. While it purports to invoke a principle of statutory construction that places substance over form, it is not necessary to rely on, and the City does not fairly interpret and rely on, that principle. (See generally *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1332 [discussing scope and limitations of concept of substantial compliance].) In actuality, the City urges a complete disregard for the language of the statute in a vacuum and without regard for the statute's purpose. In other words, the City disregards the form and the substance of the statute. The language the City asks the Court to ignore—what it suggests is a mere formality—is in fact the specific procedure at the heart of the statute that effectuates its purpose. In the absence of deemed compliance under section 65913.4, subdivision (b), the statute would operate as a mere suggestion without an enforcement mechanism. And, because section 65913.4, subdivision (b) is consistent with and effectuates the purpose of the statute, there is no inconsistency between that "form" and the substance of the statute necessitating a reconciliation of those concepts under the canon invoked by the City. The City's argument in this regard is questionable and its reliance on *County of Kern v. TCEF, Inc.* (2016) 246 Cal.App.4th 301 is misplaced. The Court applies the requirements for a notice of inconsistency that are plainly spelled out in the statute, not an amorphous due process standard that would do violence to its very language and purpose.

The second problem with the City's argument is that it relies on an implausible and unreasonable interpretation of the record. The City states that its incomplete notice and denial letter provide sufficient documentation when read together. But the terms of these documents do not support such a construction. The City explicitly stated that it was proceeding as though it had *two* applications submitted by Developer in November 2018. It purported to deny one application and find the other incomplete. The correspondence setting forth those distinct decisions, while issued together, cannot be fairly read and interpreted in the manner the City now urges. The incomplete notice does not purport to specify inconsistencies with objective standards under SB 35; it purports to specify the additional information required before a traditional, *discretionary review* could be commenced. Similarly, the denial letter does not purport to require additional

Exhibit 2

Court of Appeal First Appellate District
Charles D. Johnson, Clerk/Executive Officer
Electronically FILED on 1/16/2026 by G. King, Deputy Clerk

Exhibit 2

Filed 1/16/26

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

1000 FRIENDS PROTECTING HISTORIC BENICIA, Plaintiff and Appellant, v. CITY OF BENICIA, Defendant and Respondent; KEITH ROGAL et al., Real Parties in Interest and Respondents.	A172005 (Solano County Super. Ct. No. FCS059252)

In August 2022, the City of Benicia (City) approved two housing developments pursuant to Government Code section 65913.4, which sets forth a streamlined ministerial review process for qualifying multifamily housing projects. (*Id.*, subds. (a), (u); undesignated statutory references are to this code.) A determination that a development application "is subject to the streamlined ministerial approval process" is "not a 'project' as defined" under the California Environmental Quality Act (CEQA). (§ 65913.4, subd. (o).) 1000 Friends Protecting Historic Benicia (1000 Friends) — a nonprofit corporation formed in November 2022 and consisting of City

residents — filed a petition for a writ of mandate to set aside the approvals. It argued the projects do not qualify for review under section 65913.4 and the City thus violated CEQA by failing to prepare or review environmental review documents for the projects. The trial court rejected these arguments. We do too and affirm.

BACKGROUND

The City contains remnants of the "U.S. Benicia Arsenal," originally used as a military reserve in the 1800s. It was later named the Benicia Arsenal Historic District (Arsenal District), listed in the National Register of Historic Places, and designated as a California state historical landmark. The Arsenal District is comprised of three clusters of historic buildings. One is the Officers' Row, which consists of several buildings — such as a fortress overlooking the Carquinez Strait, a commander's residence, and three additional officers' residences — in a straight line along Jefferson Street. It also contains a former parade ground, described as open space, and stairways.

In 2017, the Legislature enacted Senate Bill No. 35 (2017–2018 Reg. Sess.), authorizing applicants who propose multifamily housing development that satisfies certain planning objectives to pursue a ministerial approval process and excusing them from a seeking a conditional use permit — a permit using zoning and planning principles but for which approval is discretionary. (Stats. 2017, ch. 366, § 3, eff. Jan. 1, 2018; § 65913.4, subd. (a); *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 85.) As relevant here, such a development must be in a locality that has failed to provide its share of the regional housing needs by income category. (§ 65913.4, subd. (a)(4)(A)(i)(I).) The development also must be, among other things, a multifamily housing development containing

at least two units with a certain percentage of low-income units; sited in urbanized area zones or designated by the general plan for residential or mixed use. (*Id.*, subds. (a)(1)–(5).) Development on certain sites is further restricted. For example, development may not be located on a site that requires the demolition of a historic structure, or on wetlands or habitat for protected species. (*Id.*, subds. (a)(6)(C), (J), (a)(7)(C).) The determination that an application for a development "is subject to the streamlined ministerial approval process" is "not a 'project' as defined" under CEQA — a statutory scheme requiring public agencies to refrain from approving development projects with significant effects on the environment, i.e., substantial or potentially substantial, adverse change in the environment. (§ 65913.4, subd. (o); Pub. Resources Code, §§ 21000, subd. (g), 21080, subds. (a)–(d); Cal. Code Regs., tit. 14, § 15382.)

The City passed a resolution acknowledging its insufficient progress toward satisfying the need for moderate-income regional housing. It approved use of the ministerial approval process for proposed developments with at least 10 percent affordability. In January 2021, real parties in interest Gina Cooper and Orchard Crossing, Inc. (collectively, Orchard Crossing) submitted a notice of intent and, several months later, a development application under section 65913.4 to construct the Park Road project. The project includes a 14-unit apartment complex comprised of two, two-story buildings with a mix of two- and three-bedroom units. Three of the units would be deed restricted to low-income housing. The proposed development site is a vacant parcel in the northwest corner of Park Road and Jefferson Street, located within the Officers' Row.

Initially, the City determined the Park Road project was inconsistent with section 65913.4 eligibility requirements, including objective zoning,

subdivision, and design standards. Orchard Crossing submitted an updated plan with minor changes to correct those deficiencies. After reviewing the revised plans, the City deemed them consistent with all objective standards. It issued a permit under section 65913.4, finding the Park Road project was exempt from CEQA.

In November 2021, real parties in interest Keith Rogal and Rogal & Associates (Rogal) submitted a development application for the Jefferson Ridge project — 121 condominium units within three-story town house-style buildings in eight clusters, and one 2,000 square foot commercial building. Of those units, 10 percent would be deed restricted for very low- and low-income households. The City initially determined the project was inconsistent with certain objective planning standards, but it later approved the permit under section 65913.4 and found the project exempt under CEQA.

1000 Friends notified the City of its intent to appeal the approval of both projects to the city council under Public Resources Code section 21151 — the provision governing appeals of the adoption of a negative declaration or determination that a project is exempt from CEQA. But the City explained the projects were approved under section 65913.4, which does not permit any additional time for appeals, and, in any event, the time for the City to consider a potential appeal had already passed. 1000 Friends petitioned for a writ of mandate under Code of Civil Procedure section 1094.5, alleging the City violated CEQA by approving the projects. It also argued that a determination that a project is not subject to CEQA may be appealed to the agency's elected decision-making body. (Pub. Resources Code, § 21151, subd. (c).) Finally, it alleged the projects would result in the demolition of historic structures within the Arsenal District, were sited on wetlands and habitats

suitable for protected species, and did not comply with applicable municipal code requirements, thus failing to satisfy criteria for ministerial processing.

The trial court denied the petition. It concluded CEQA administrative appeal procedures in Public Resources Code section 21151 do not apply to the ministerial approval of projects, such as those under section 65913.4. It further concluded neither project requires the demolition of a historic structure and there was no substantial evidence of any wetland, protected species, or likelihood of any habitat for protected species currently existing at the proposed sites.

DISCUSSION

1000 Friends challenges the denial of its writ petition and argues that the Jefferson Ridge and Park Road projects do not qualify for streamlined ministerial review under section 65913.4. We are unpersuaded.

The Legislature has determined California faces a housing affordability crisis driven by a lack of housing as a result of the "underproduction of housing of all types." (§§ 65584.08, subd. (a)(1), 65589.5, subd. (a)(2)(A).) There is a "severe shortage of affordable housing, especially for persons and families of low and moderate income." (§ 65913, subd. (a).) Each locality must adopt a comprehensive, long-term general plan, including a "housing element" to address housing needs. (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 444.) To encourage the development of new housing, the Legislature sought to "[e]xpedite the local and state residential development process." (§ 65913, subd. (a)(1).) It enacted Senate Bill No. 35 to facilitate the construction of new housing subject to a "streamlined, ministerial approval process," "not subject to a conditional use permit" if it satisfies statutorily enumerated objective planning standards. (§ 65913.4, subd. (a); Stats. 2017, ch. 366, § 3, eff. Jan. 1, 2018.)

Among those objective planning standards, the development must be "a multifamily housing development that contains two or more residential units." (§ 65913.4, subd. (a)(1).) It must be located on a site "zoned for residential use or residential mixed-use development," or "has a general plan designation that allows residential use or a mix of residential and nonresidential uses," with at "least two-thirds of the square footage of the development . . . designated for residential use." (*Id.*, subd. (a)(2)(C).) In addition, the development must be "consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section." (*Id.*, subd. (a)(5).) The local government "shall approve the development" if the planning director or equivalent position "determines that a development submitted pursuant to this section is consistent with [these] objective planning standards." (*Id.*, subds. (c)(1), (d)(1).)

We review the City's decisions approving the developments under the traditional mandamus provisions in Code of Civil Procedure section 1085. The City's determination does not involve any "personal or subjective judgment by a public official," and the standards are "uniformly verifiable by reference to an external and uniform benchmark." (§ 65913.4, subd. (a)(5).) Development applicants and public officials both know the objective standards. (*Ibid.*) Local government *must* approve a development if it is "consistent with the objective planning standards" — that is, "there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." (*Id.*, subds. (c)(1), (3).) There does not appear to be any " 'discretion in the determination of facts . . . vested in' " the government. (*Citizens for East*

Shore Parks v. State Lands Com. (2011) 202 Cal.App.4th 549, 571.) Thus, a decision approving the projects under section 65913.4 is a quasi-legislative determination reviewable under the more deferential traditional mandamus standard in Code of Civil Procedure section 1085, not Code of Civil Procedure section 1094.5 as 1000 Friends insists. (*San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 667; *Citizens for East Shore Parks*, at p. 571.) Its petition does not challenge the results of an administrative hearing for which Code of Civil Procedure section 1094.5 would apply. (*Danser v. Public Employees' Retirement System* (2015) 240 Cal.App.4th 885, 890; Code Civ. Proc., § 1094.5, subd. (a) [administrative mandamus only governs judicial review after an administrative order "made as the result of a proceeding in which by law a hearing is required to be given"].) We cannot identify — and 1000 Friends fails to cite — any provision that requires the City to have an administrative hearing before approving the project under section 65913.4.

Traditional mandamus under Code of Civil Procedure section 1085 requires the petitioner to demonstrate the agency's decision was arbitrary, capricious, or lacking in evidentiary support, or that the agency failed to follow procedures or give required notices, a deferential standard of review. (*San Francisco Fire Fighters Local 798 v. City and County of San Francisco*, *supra*, 38 Cal.4th at pp. 667–668; *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 298 (*Ruegg*).) On appeal, the standard of review is the same as the one employed by the trial court — whether the City abused its discretion by approving the projects under section 65913.4. (*Ruegg*, at p. 298.) Issues of law are reviewed de novo. (*Citizens for East Shore Parks v. State Lands Com.*, *supra*, 202 Cal.App.4th at p. 573 [noting no distinction between the standards of review on issues of law in either traditional

mandamus and administrative mandamus proceedings under Code Civ. Proc., § 1094.5 since both "embrace review for legal error, including procedural irregularity"].) And where a petitioner's challenge in a mandamus action "rests on claimed insufficiency of the evidence," we do "not have the power to judge the intrinsic value of the evidence or to weigh it." (*Better Alternatives for Neighborhoods v. Heyman* (1989) 212 Cal.App.3d 663, 672.) "Instead, review is limited to determining whether substantial evidence supports the administrative body's findings." (*Ibid.*)

I.

Proposed projects are not entitled to approval under section 65913.4 if they "would require the demolition of a historic structure that was placed on a national, state, or local historic register." (§ 65913.4, subd. (a)(7)(C).) 1000 Friends argues the projects violate this criterion. Relying on various historic preservation laws, it contends the definition of "historic structure" includes "historic districts." It notes the Arsenal District is listed on the National Register of Historic Places and the State Office of Historic Preservation, and the Officers' Row satisfies various state and federal preservation laws' definition of "historic structure or district." On that basis, it argues both are protected "historic districts." Because the proposed projects would require building *within* these districts — 1000 Friends reasons — the projects would "demolish the connective structure" of the districts by breaking up and destroying their linkage and visible context. As a result, the projects are not entitled to ministerial review. After independently reviewing this issue of statutory interpretation, and giving the statute's words their ordinary meaning, we disagree. (*Ruegg*, *supra*, 63 Cal.App.5th at p. 301.)

Section 65913.4 does not define the term "structure." The lack of a statutory definition indicates the Legislature intended to give that term its

plain and commonsense meaning. (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083.) "To determine the common meaning, a court typically looks to dictionaries." (*Consumer Advocacy Group, Inc. v. Exxon Mobil Corp.* (2002) 104 Cal.App.4th 438, 444.) Black's Law Dictionary defines "structure" as "[a]ny construction, production, or piece of work artificially built up or composed of parts purposefully joined together." (Black's Law Dict. (12th ed. 2024).) Another definition is "something (such as a building) that is constructed." (Merriam-Webster Dict. Online (2026) <https://www.merriam-webster.com/dictionary/structure> [as of Jan. 16, 2026].) So defined, the statute prohibits demolition of an individual construction.

Thus, the Arsenal District — an area 1000 Friends identifies as consisting "of multiple interrelated buildings" and structures that functioned as an interconnected whole — is not a "structure." As it concedes, the district is comprised of a *collection* of structures, including several buildings that were formerly officers' quarters. That the buildings within the Arsenal District have a "*pattern of organization*" or a "clear relationship" with each other does not render the buildings "joined together" under the Black's Law Dictionary definition, as it insists. (Italics added.) More importantly, it concedes the projects would not require the demolition of *any* historic building. That the Arsenal District itself has been placed on the National Register of Historic Places is irrelevant. "[S]tructure[s]," not districts, are entitled to protection from demolition under section 65913.4. (*Id.*, subd. (a)(7)(C).) Nor are the stairways within the Arsenal District structures protected under section 65913.4 — they do not appear on any historical register. (*Ruegg*, *supra*, 63 Cal.App.5th at p. 306 ["The section 65913.4, subdivision (a)(7)(C) exception is for a 'structure' placed on a historical

register, not for a site where a structure once existed"].) Likewise, the Officers' Row consists of a collection of "individual buildings," the former parade ground, and land that 1000 Friends identifies as "open space" that was "never developed."[1] The area itself is not an "historic structure" within the meaning of section 65913.4.

Relying on definitions in historical preservation statutes, 1000 Friends urges us to broadly define "historic structure" to include historic districts and interrelated sites. (E.g., Health & Saf. Code, § 18955 [defining "qualified historical building or structure" as "any structure or property, collection of structures, and their related sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction"]; Pub. Resources Code, § 5024, subd. (h) [defining "structure" under the state-owned historical resources list as "an immovable work constructed by man having interrelated parts in a definite pattern of organization and used to shelter or promote a form of human activity and which constitutes an historical resource"].) Specifically, it argues the state historical building code protects " 'qualified historical building[s] or structure[s]' " that exist on a variety of places such as "historical or architecturally significant sites, places, historic districts, or landmarks." (Health & Saf. Code, § 18955.) A "historic district" is "a definable unified geographic entity that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development." (Pub. Resources Code,

[1] 1000 Friends also contends that connecting sidewalks and a portion of a tennis court are part of this historic district. We see nothing in the record — and 1000 Friends fails to identify anything — to support this assertion.

§ 5020.1; see also 36 C.F.R. § 60.3 [historic district is "a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history"].) Based on the protections the Legislature afforded historic districts, 1000 Friends argues it must have intended section 65913.4's protection of "historic structure[s]" to encompass "historic districts."

Reliance on preservation statutes to define the term "structure" is misplaced. (*Ruegg*, 63 Cal.App.5th at pp. 303–304.) These statutes "highlight the importance state and local government has attached to historical preservation," affording "protection to historical and cultural resources." (*Ibid.*; Health & Saf. Code, § 18953 [State Historical Building Code provides "means for the preservation of the historical value of qualified historical buildings or structures"].) Section 65913.4, however, "is not a historical preservation statute." (*Ruegg*, at p. 303.) Rather, it is intended "to expedite approval of affordable housing developments." (*Ruegg*, at p. 304.) The "historic structure exception in section 65913.4 indicates the Legislature did not intend to require ministerial approval of affordable housing projects at the expense of all historical preservation." (*Ibid.*) It is limited, and "cautions against giving that exception its broadest possible meaning." (*Ibid.*) Thus, we will not construe the term "historic structure" in section 65913.4 to include "historic district."

This reading comports with the statute's purpose and "is consistent with other provisions." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Interpreting the term "historic structure" narrowly obeys the Legislature's stated intention that section 65913.4 "be interpreted and implemented in a

manner to afford the fullest possible weight to the interest of, and the approval and provision of, . . . housing." (§ 65913.4, subd. (u).) Further, subdivision (e)(1)(B) expressly limits parking requirements for section 65913.4 developments in a "historic district." (§ 65913.4, subd. (e)(1)(B) [local government "shall not impose automobile parking standards for a streamlined development that was approved" when the "development is located within an architecturally and historically significant *historic district*" (italics added)].) Reading the statute as a whole, section 65913.4 contemplates streamlined approval of developments located in historic districts. (*Lungren*, at p. 735 [statute's "words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible"].) It simply prohibits the demolition of any historic structure, if any, in the historic district. Defining "structure" as "district" would render subdivision (e)(1)(B) superfluous. (*Young v. McCoy* (2007) 147 Cal.App.4th 1078, 1083 [courts must avoid statutory interpretations that render any part of a statute as superfluous].)

Because 1000 Friends's argument fails at the first hurdle — the Arsenal District and Officers' Row are not historic structures — we do not address its argument that the projects would demolish these districts by destroying the linkage and visible context, and block views between buildings.

II.

The City determined the National Wetlands Inventory does not identify any wetlands within the boundaries of the proposed Jefferson Ridge project. It also determined the Jefferson Ridge and Park Road projects were proposed on sites surrounded by development and that had been previously developed — they were not located on sites containing a protected species

habitat. 1000 Friends contends there is unrefuted evidence of wetlands on the Jefferson Ridge project site and biological resources in both the proposed project areas — section 65913.4 prohibits development on such areas. Thus, it argues the City abused its discretion by approving the projects. We disagree. 1000 Friends has not demonstrated " 'there is no possible substantial evidence whatsoever to support' " the City's findings. (*Alameda Health System v. Alameda County Employees' Retirement Assn.* (2024) 100 Cal.App.5th 1159, 1177–1178.)

First, proposed developments are eligible for ministerial review if the "development is not located on a site" that is "[w]etlands, as defined in the United States Fish and Wildlife Service Manual." (§ 65913.4, subd. (a)(6)(C).) That manual defines wetlands as "lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water." (U.S. FWS (1993) Wetlands Classification System, § 2.5 (A), at <https://www.fws.gov/policy-library/660fw2> [as of Jan. 16, 2026].) Specifically, wetlands must have one or more of the following three attributes: "(1) at least periodically, the land supports predominantly hydrophytes (plants specifically adapted to live in wetlands); (2) the substrate is predominantly undrained hydric (wetland) soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year." (*Ibid.*)

None of those attributes apply to the proposed Jefferson Ridge site. According to an environmental site assessment regarding the topographic, geologic, and hydrogeologic characteristics of Jefferson Ridge — located north of Adams Street and east of Park Road — the "property is located in one of [the City's] small urban watersheds," a "region draining into a body of water." Two sections of the site contain well-drained soil, consisting primarily of clay

loam and weathered bedrock. The third section contains silty clay with a low filtration rate. Although the report notes one section of the property has hydrologic soils of the type associated with high water tables, we do not interpret this — nor does 1000 Friends argue — as equivalent to the substrate being nonsoil and saturated with, or covered by, water so as to demonstrate the presence of wetlands.

Moreover, the report did not indicate the site contained land supporting predominately plants adapted to live in wetlands. Instead, it "is dominated by a single vegetation community; ruderal vegetation." Far from supporting wetland plants, the property site "has been subject to annual vegetation clearing to reduce fire hazards." And while the assessment identified several areas of wetlands listed on the National Wetlands Inventory — one along the northern border of the project site that 1000 Friends concedes is within one-half mile north of the project site and large numbers of wetlands far south in the Carquinez Strait — none of them are *within* the proposed development site. A stormwater control plan for the Jefferson Ridge project confirmed there are no existing wetlands from which the project site must have setbacks. Substantial evidence supports the City's finding the Jefferson Ridge project is not located on a site that is wetlands.

Citing an alleged 2007 draft environmental impact report (EIR) by the City for a proposed "Lower Arsenal" mixed-used specific plan, 1000 Friends insists the Jefferson Ridge site contains seasonal wetlands. This argument — based on a narrow portion of the record — ignores the standard of review. We do not overturn decisions supported by substantial evidence "merely because a contrary finding would have been equally or more reasonable." (*Ogundare v. Department of Industrial Relations* (2013) 214 Cal.App.4th 822, 829–830.) More importantly, its argument

misrepresents the record. Rather than citing an EIR, 1000 Friends cites a 2022 letter from a City resident on behalf of the Benicia Arsenal Park Task Force and Benicia Arsenal Defense — in opposition to the Jefferson Ridge project — that simply describes the alleged draft report for a specific plan that the City never adopted. Critically, the record does not contain the draft EIR. And 1000 Friends fails to identify any draft report specifically addressing the Jefferson Ridge project — the project at issue here. Nor did it request judicial notice of the draft EIR. So we do not consider it. (*Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632 ["As a general rule, documents not before the trial court cannot be included as part of the record on appeal and thus must be disregarded as beyond the scope of appellate review"].)

Moreover, substantial evidence supports the City's finding that neither project site is a "[h]abitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by" the federal Endangered Species Act of 1973, the California Endangered Species Act, "or the Native Plant Protection Act." (§ 65913.4, subd. (a)(6)(J); 16 U.S.C. § 1531 et seq. [Endangered Species Act]; Fish & G. Code, §§ 1900 et seq. [Native Plant Protection Act], 2050 et seq. [California Endangered Species Act].) A 2013 biological assessment performed by an environmental consultant reviewed records maintained by the California Natural Diversity Database of the Department of Fish and Wildlife, mapping prepared by the U.S. Fish and Wildlife service, and additional available background information. Among other things, it assessed the area within the City limits for special status plant and animal species. A map identified special status plant species and the likelihood of their occurrence within the area, not simply the small

coastal shoreline, as 1000 Friends contends. Notably, no protected species were found in the area of either project site. Although the map identifies the habitat of the Carquinez Goldenbush — deemed a rare and endangered plant by the California Native Plant Society's Rare Plant Inventory— as having the greatest likelihood of occurrence within the project sites, the assessment found there was no likelihood of the species occurrence on the site. Indeed, there was no suitable habitat for that plant species within the City limits. The assessment explained that "[p]ast development has eliminated suitable habitat for special-status species in upland areas," i.e., the areas for the proposed projects.

1000 Friends asserts the map demonstrates the Suisun song sparrow — identified as a special concern species by the Department of Fish and Wildlife — is potentially present on both project sites. We see no such indication. The report explained the sparrow was found in Southampton Bay and Suisun Marsh, not the project sites. Specifically, the marshland and exposed shoreline provided a suitable habitat for various special status plants and bird species. To the extent 1000 Friends again relies on the 2022 project opposition letter referencing a 2007 draft EIR to argue there is the potential for special status plant and animal species to occur, we disregard this reference for the same reasons previously set forth. And in any event, this alleged evidence does not indicate any protected species were located on either site, only that they had the potential to occur. In sum, we find the City's conclusion the project sites are not habitats for protected species is supported by substantial evidence. (*Better Alternatives for Neighborhoods v. Heyman*, *supra*, 212 Cal.App.3d at pp. 672–673.) Consequently, its decision approving the projects was not an abuse of discretion. (*Ibid.*)

III.

Section 65913.4 requires developments be consistent with objective zoning standards, objective subdivision standards, and objective design review standards — "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion" such as those in overlay zones, specific plans, and inclusionary zoning ordinances — in effect at the time the development is submitted to the local government, or at the time a notice of intent is submitted, whichever occurs earlier. (*Id.*, subd. (a)(5).) The statute requires a local agency to approve a proposed development if it is "consistent with the objective planning standards" — that is, if "there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." (*Id.*, subds. (c)(1), (3).) 1000 Friends contends both projects are inconsistent with the objective planning and zoning requirements embodied in the Benicia Municipal Code and Arsenal Historic Conservation Plan (Conservation Plan). Thus, the City abused its discretion by approving the projects for streamlined review. We disagree.

The Benicia Municipal Code specifies that commercial office districts are intended to "[p]rovide opportunities for residential development" on commercial development sites or "separate sites in certain commercial districts." (Benicia Mun. Code, § 17.28.010, subd. (A)(6).) They further "[e]nsure the provision of adequate off-street parking and loading facilities." (*Id.*, subd. (A)(7).) But those districts are subject to certain land use regulations, including not permitting residential uses on the ground level. (*Id.*, § 17.28.020.) 1000 Friends argues Jefferson Ridge — a proposed development of 121 condominium units within three-story buildings with off-

street parking, a multifamily residential use in a commercial office zoning district — violates Benicia Municipal Code provisions prohibiting ground-level residential development in commercial districts. Citing to nothing in the record, 1000 Friends argues the private, attached garages on the ground level of these condominiums are for residential use since they will be used for storage and weight training, in addition to parking. And even if some of the ground-level garage space is used for parking, it is nonetheless part of the private multifamily residential use.

No. Like statutes, we independently review municipal ordinances. (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434.) But we defer to the City's interpretation of its own ordinance " 'unless it is clearly erroneous or unauthorized.' " (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193 [describing standard for deference to an agency's interpretation of its own regulations].) We afford greater deference to an agency's interpretation where, as here, " 'the agency has expertise and technical knowledge,' " regarding zoning requirements " 'especially where the legal text to be interpreted is . . . entwined with issues of fact, policy, and discretion.' " (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.) The " 'agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' " (*Ibid.*) Deference is also appropriate if there are indications "the agency's interpretation is likely to be correct." (*Id.* at pp. 12–13.)

In 2005, the City interpreted parking as an accessory use and therefore authorized in a commercial zoning district despite placement on the ground level. (Benicia Mun. Code, § 17.28.020 [identifying "[a]ccessory use[]" as "use classifications permitted on the site of a permitted use, but requiring a use

permit on the site of a conditional use" in commercial office districts].) Deference to this interpretation is appropriate. The restrictions on residential uses in commercial districts are intertwined with issues of " 'fact, policy, and discretion' " regarding zoning ordinances and the impact to those areas. (*Yamaha Corp. of America v. State Bd. of Equalization*, *supra*, 19 Cal.4th at p. 12.) "Moreover, the City is familiar with the rationale for the ordinance, is responsible for its implementation, and has special knowledge about the 'practical implications' of possible interpretations." (*Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 896, fn. omitted.) There are also "indications of careful consideration by senior agency officials" regarding this interpretation. (*Yamaha*, at p. 13.) The city council adopted this interpretation after considering an appeal involving, in part, the development of proposed construction of residential units with garages on the ground level in a commercial district. It was not an interpretation contained in " 'an advice letter prepared by a single staff member.' " (*Ibid.*) Nor is there any indication in the record that the City has vacillated on this interpretation — it is the same interpretation the City proffers here on whether parking in a garage attached to a residential unit is appropriate under commercial zoning district regulations. (*Ibid.*) Accordingly, Jefferson Ridge's proposed garages on the ground level do not violate the City's objective standards.

Next, 1000 Friends contends both projects are inconsistent with objective standards for preserving historic sight lines. According to the Conservation Plan, a view corridor is a cone of vision originating from a specific point along a roadway. Sight lines are narrow corridors defined by a straight line originating from a specific point and terminating at a given feature or building. The plan adopted policies to "[m]aintain designated sight

lines to landmark building," and where "view corridors are indicated, it is important to maintain a direct sight line to all landmark structures and important natural features which fall within the view angle." (Italics omitted.) The policies expressly authorize new development within designated view corridors, noting simply that it "should be of a scale that will not overpower or dominate views of landmarks." (Italics omitted.)

In addition, the Conservation Plan identifies special review areas, which includes the National Register of Historic Places — "four distinct historic districts of national significance" listed on the National Register in 1976. The special review areas were designated "to ensure that the landscape features, views and physical settings of historic buildings" are "maintained to the maximum extent feasible." According to the Conservation Plan, communities that receive federal assistance must "consider the effects of projects on these districts." Relevant here, the plan identifies "[s]ignificant view corridors and sight lines . . . found both within the Arsenal and from point outside." Among them are view 6 — a sight line from Jefferson Street at "Business Park Entry Road" to the former Guardhouse and water beyond. It further identifies the Arsenal District as a "National Register Historic District."

The City determined Jefferson Ridge and Park Road were consistent with these standards. Rogal performed a visual impact study of Jefferson Ridge based on coordinates provided by the objective standards in the Conservation Plan. A photo simulation of several views of Jefferson Ridge — superimposing the proposed development as seen from the precise vantage points identified in the Conservation Plan — reflect that the proposed development maintained direct sight lines to landmark buildings. For example, the shop buildings and Martinez hills beyond remain viewable from

view 5 in the Conservation Plan. The Commandant's Quarters, Clocktower Building, and Promontory — all identified within the view 10 in the Conservation Plan — likewise remain visible. The photo simulation similarly depicts the Guardhouse within the view corridor from view 6 in the Conservation Plan. (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 247.) "This evidence is more than adequate to support the City's conclusion—indeed, any reasonable person's conclusion—that the project[s]" comply with objective standards in the Conservation Plan. (*Save Livermore Downtown v. City of Livermore* (2022) 87 Cal.App.5th 1116, 1127.)

1000 Friends's arguments disputing this conclusion fail to persuade. First, it argues Jefferson Ridge would block all views of the water beyond the Guardhouse. This ignores the standard of review. It is difficult to identify the natural features present in the Conservation Plan pictures taken from those vantage points, and we do not resolve conflicts in the evidence as we lack the power " 'to judge the intrinsic value of the evidence or to weigh it.' " (*California Oak Foundation v. Regents of University of California*, *supra*, 188 Cal.App.4th at p. 247; *Perry v. Stuart* (2025) 111 Cal.App.5th 472, 500.) Moreover, in these circumstances, we implement section 65913.4 "in a manner to afford the fullest possible weight to" the "approval and provision of, increased housing supply." (§ 65913.4, subd. (u).)

Second, citing only a map identifying special review areas and an illustration of views from historic buildings, 1000 Friends asserts "both developments will disrupt the current views and sight lines within the Special Review Areas district boundaries denoted in Figure 7" of the Conservation Plan. As a preliminary matter, we question whether this standard — "maximum extent feasible" — is objective, as it appears to

"inherently require personal interpretation and subjective judgment." (*Save Livermore Downtown v. City of Livermore*, *supra*, 87 Cal.App.5th at p. 1128.) More importantly, leaving aside 1000 Friends's failure to compare those illustrations to the views resulting from proposed projects, nothing in the Conservation Plan *prohibits* disrupting current views and sight lines. Its purpose is to ensure "that the landscape features, views and physical settings of historic buildings" are "maintained to the maximum extent feasible." 1000 Friends's conclusory statement fails to demonstrate the projects do not satisfy this requirement.

Finally, we do not consider 1000 Friends's assertion that the developers made no effort to assess the impacts of the proposed developments on the distinct historic districts as required under the Conservation Plan — an argument it forfeited on appeal by failing to raise it below. (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 676.) In any event, it concedes the requirement to consider project impacts is ambiguous. We cannot discern — and 1000 Friends fails to explain — how this requirement is an "objective standard" that proposed developments must satisfy. (*Save Livermore Downtown v. City of Livermore*, *supra*, 87 Cal.App.5th at p. 1128.)

In sum, there was substantial evidence that would allow a reasonable person to conclude the developments are consistent with objective planning standards, and the City's determinations were not entirely lacking in evidentiary support. (§ 65913.4, subd. (c)(3).) Given this conclusion, we will not vacate the trial court's order denying the petition for a writ of mandate. (*Ruegg*, *supra*, 63 Cal.App.5th at p. 298.) Nor need we address 1000 Friends's argument that the City violated CEQA by failing to prepare an EIR

prior to approving the developments. The projects were properly approved under section 65913.4.

IV.

1000 Friends contends it was entitled to but denied the right to appeal the City's decisions approving the projects to a local governing body under Public Resources Code section 21151. Under that provision, if "a nonelected decisionmaking body of a local lead agency" determines that "project is not subject to [CEQA]," that "determination may be appealed to the agency's elected decisionmaking body." (Pub. Resources Code, § 21151, subd. (c).) Having independently reviewed this issue of law, we disagree.

Section 65913.4 expressly provides that a "determination of whether an application for a development is subject to the streamlined ministerial approval process" is "not a 'project' as defined" under CEQA. (§ 65913.4, subd. (o); Pub. Resources Code, § 21065 [defining "[p]roject" under CEQA, in part, as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment"].) CEQA further provides that it "does not apply" to "[m]inisterial projects proposed to be carried out or approved by public agencies." (Pub. Resources Code, § 21080, subd. (b); *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1421.) Ministerial projects involve "only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." (Cal. Code Regs., tit. 14, § 15369; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117.) As 1000 Friends concedes, a proposed development's eligibility for ministerial review under section 65913.4 is based on "a long list of objective standards." Harmonizing these statutes is thus unnecessary because there is

no inconsistency between the two. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955.) Under both section 65913.4 and CEQA, Public Resources Code section 21151 — part of CEQA — does not apply to the determination that a development is subject to the section 65913.4 approval process at issue here.

This reading comports with the legislative history of section 65913.4. (*Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 920 [examining the legislative history " 'to confirm our plain-meaning construction of [the] statutory language' "].)[2] Senate Bill No. 765 (2017–2018 Reg. Sess.) amended that provision to ensure "that an application for an SB 35 development is not a 'project' as defined in CEQA and therefore shall not trigger a CEQA review." (Sen. Rules Com., Off. of Sen. Floor Analyses, Sen. Bill No. 765 (2017–2018 Reg. Sess.) Stats. 2018, ch. 840, § 2, Aug. 31, 2018, p. 6.) Guidelines promulgated by the Department of Housing and Community Development — noting that CEQA does not apply to the "determination of whether an application for a development is subject to the Streamlined Ministerial Approval Process" — confirms our reading. (§ 65913.4, subds. (m)(3) [" 'Department' means the Department of Housing and Community Development"], (n) ["The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or

---

[2] During the briefing of this appeal, Rogal asked us to take judicial notice of the petition for peremptory writ of mandate and legislative history of Senate Bill Number 35. We deferred ruling on this unopposed motion, which we now deny as unnecessary. The petition is available in the appellate record, and motions for judicial notice of published legislative history are unnecessary. (*Wittenburg v. Beachwalk Homeowners Assn.* (2013) 217 Cal.App.4th 654, 665, fn. 4.) " 'Citation to the material is sufficient.' " (*Ibid.*)

clarify the terms, references, or standards set forth in this section"]; *Western Oil & Gas Assn. v. Air Resources Board* (1984) 37 Cal.3d 502, 520 ["contemporaneous construction of a statute by an administrative agency charged with its enforcement, the [agency's] view is entitled to great weight"].) 1000 Friends's assertion that a determination a proposed development qualifies "for ministerial review is precisely the type of determination made subject to" an appeal under Public Resources Code section 21151 has no merit. The Legislature expressly placed that determination beyond the purview of CEQA and its administrative appeal provision.

None of 1000 Friends's cited authorities alter this conclusion. Notably, *McCorkle Eastside Neighborhood Group v. City of St. Helena*, *supra*, 31 Cal.App.5th at page 80 addressed an administrative appeal from a determination that a proposed project fell within an infill exemption under CEQA guidelines and was thus exempt from CEQA review. (*McCorkle*, at pp. 86, 91–92.) There was no determination that project opponents were entitled to an appeal under Public Resources Code section 21151. Rather, the court noted the opponents appealed the planning commission's decision regarding the CEQA exemption, as well as the demolition and design review permit approvals as appealable to the city council under various provisions of the city's municipal code. (*McCorkle*, at p. 87, fn. 2.) In *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, which addressed issues related the Housing Accountability Act, the court determined an " 'action involving only the nondiscretionary application of objective standards' does not entitle neighboring landowners" to the traditional due process protections of notice and opportunity to be heard before a project's approval. (*California*

Renters, at p. 853.)

We reject 1000 Friends's additional argument that, in the absence of administrative rather than judicial review, the governing body would be "compelled to approve a development project based solely on unsupported consistency findings or the discretion of its planning director or equivalent." Like the court in *California Renters*, we "are untroubled by" its suggestion that if a "member of the governing body opines that a project complies with objective standards then the local agency would be compelled to find it so." (*California Renters Legal Advocacy & Education Fund v. City of San Mateo*, *supra*, 68 Cal.App.5th at p. 852.) As 1000 Friends acknowledges, section 65913.4 requires consistency determinations to be supported by substantial evidence. (§ 65913.4, subds. (c)(1), (3).) Substantial evidence is evidence that is " ' "reasonable in nature, credible, and of solid value" and " 'substantial' proof of the essentials which the law requires in a particular case." ' " (*California Renters*, at p. 852.) Section 65913.4 further applies an objective standard — that "there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." (§ 65913.4, subds. (c)(1), (3); *California Renters*, at p. 852.) "There is thus no basis for concern that section [65913.4] would require project approval based solely on the unsupported opinion of a single person, or on evidence that a reasonable person would not find credible and persuasive." (*California Renters*, at p. 852.)

DISPOSITION

The judgment is affirmed. The City and real parties in interest are entitled to their costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

RODRÍGUEZ, J.

WE CONCUR:

FUJISAKI, Acting P. J.

PETROU, J.

A172005; *1000 Friends Protecting Historic Benicia v. City of Benicia*

EXHIBIT H

July 1, 2026

Chris Sullivan
River Landon LLC
PO Box 29281
San Francisco, CA 94129
Via Email: modconstruct1@gmail.com

Electronic Mail Delivery Only

Re: Coleman Drive Residential Project – Response to Challenged Conduct Letter

Dear Mr. Sullivan,

The purpose of this letter is to respond to the Notice of Course of Conduct delivered to the City on April 2, 2026 ("Challenged Conduct Letter"). Pursuant to Government Code section 65589.5(h)(6)(E)(ii), the City posted it and during that time period, received a comment on April 28, 2026, from the California Defense Fund ("HDF"). This letter also addresses concerns raised by HDF's letter.

I. INTRODUCTION

The Challenged Conduct Letter asserts that the City engaged in a "course of conduct undertaken for an improper purpose" in processing the Project application and thereby violated SB 35 (Gov. Code § 65913.4) and the Housing Accountability Act (Gov. Code § 65589.5) ("HAA"). As detailed in this "Response to Challenged Conduct Letter" and in Attachment 1 hereto, the City acted in good faith and in accordance with state law in processing the Project applications. The assertions in the Challenged Conduct Letter are baseless; none of the City's actions constitute "disapprov[al] [of] the housing development project" as defined by Section 65589.5(h)(6)(E).

As discussed further below, the City provided timely responses to each Project submittal. After correctly determining that the Project did not meet the statutory criteria to qualify for processing under SB 35, the City attempted to work with Applicant to process and potentially approve the Project under alternative legal pathways. After two rounds of consistency review and multiple meetings between Applicant and City staff, Applicant informed the City that it would not revise the Project application to qualify for SB 35 or

any other potential approval pathway. Given the lack of any possible path to legally approve the Project application pursuant to SB 35, the City properly denied the application on December 3, 2025.[1]

II. BACKGROUND

On May 15, 2023, River Landon LLC ("Applicant") submitted an SB 330 preliminary application for a 29-unit housing development project (the "Project") located on vacant lots with Assessor's Parcel Numbers ("APN") 011-031-44, 45, 46, 47, 48, & 49 ("Project Site") on Coleman Drive in the City of San Rafael ("City"). On November 9, 2023, Applicant submitted application materials invoking Government Code Section 65913.4 et seq. ("SB 35"). The City engaged in tribal consultation consistent with the requirements of SB 35. On June 30, 2025, the City, Applicant, and the Federated Indians of Graton Rancheria ("FIGR") entered into an enforceable agreement, and on the same date the development application on file with the City was deemed "submitted" as a matter of law. (Gov. Code § 65913.4, subds. (b)(1)(A)(i) and (b)(1)(A)(ii) [tribal consultation must occur *before* submission of an SB 35 application], and subd. (b)(2)(D)(i) [execution of an enforceable agreement concludes tribal consultation].)

The City timely and properly determined that the 29-unit Project application did not qualify for ministerial approval under SB 35. By letter dated August 27, 2025, attached hereto as **Attachment B**, the City timely and properly identified Project inconsistencies with objective planning standards, in accordance with subdivision (c)(1)(A) of Government Code section 65913.4. Applicant definitively refused to modify the Project so that it could be approved under SB 35, or other authority. By letter dated September 28, 2025, attached hereto as **Attachment C**, the City timely notified Applicant that it disapproved the Project because it was not a multifamily housing development eligible for ministerial approval pursuant to SB 35. (Government Code section 65913.4(d) allows for a 90 day review period for determinations where design review may apply, which it does, pursuant to Section 14.165.245 of the San Rafael Municipal Code.

Meanwhile, Applicant submitted application-related documents proposing a 14-unit project ("Alternative Project"), which the City determined also did not qualify for ministerial approval under SB 35 because it was not a multifamily housing development project. This determination was communicated by letters dated October 6 (attached hereto as **Attachment D**) and December 3, 2025 (attached hereto as **Attachment E**) , the latter of which stated, inter alia:

> As set forth in the City's October 6, 2025 correspondence, which is attached hereto, the Project remains inconsistent with multiple City objective zoning standards, objective subdivision standards, and objective design review standards. Additionally, the Project is

[1] While the City properly denied the application, there are several potential successful pathways the applicant could pursue towards an approval of a housing project, as the City has consistently explained, such as SB 9 of 2021 (ministerial approval process for lot splits and qualified single-family home projects).

> inconsistent with provisions of State law. The Project is hereby denied based on the inconsistencies identified in the October 6, 2025 correspondence.
>
> * * *
>
> The Project is ineligible for the streamlined ministerial approval process set forth in Government Code section 65913.4 et seq. ("SB 35") because the project is not a "multifamily housing development." (Gov. Code § 65913.4(a)(1); see also HCD Guidelines § 102(p).)

On March 20, 2026, Applicant attempted to submit the third iteration of the project, which appears to the City to consist of a 9-unit Residential Development with 3 accessory dwelling units ("Revised Project"). Although the Revised Project was not formally submitted to the City – it was submitted via email to a City employee, instead of through the City's application portal – the City nonetheless conducted a courtesy completeness review. In a letter dated April 17, 2026, the City notified the Applicant that the March 20, 2026 email submission was incomplete..

III. THE CITY DID NOT ENGAGE IN A COURSE OF CONDUCT UNDERTAKEN FOR AN IMPROPER PURPOSE.

On April 2, 2026, Applicant submitted the Challenged Conduct Letter alleging the City had "disapprove[d] the housing development project," as that term is defined in Government Code Section 65589.5(h)(6), by engaging in "a course of conduct [. . .] for an improper purpose [. . .] that effectively disapproves the proposed housing development without taking final administrative action." (Gov. Code 65589.5(h)(6)(E).) The Challenged Conduct Letter ignores the fact that the City took final administrative actions on September 28 and December 3, 2025 to deny the Project and Alternative Project, thereby "disapprov[ing] the housing development project" as defined by Government Code Section 65589.5(h)(6)(A).

As it is clear that the City took final administrative action, the Housing Accountability Act ("HAA") does not require the City to issue a response to the Challenged Conduct Letter. Nevertheless, the City is providing this response in an abundance of caution and as a courtesy.

The City complied with the procedures established in Government Code section 65589.5(h)(6)(E), including as discussed below:

- Within five working days of receiving the Challenged Conduct Letter, the City posted the required notice on the City's internet website, provided a copy of the notice to any person who had made a written request for notices, and filed the notice with the county clerk. (See Gov. Code § 65589.5(h)(6)(E)(ii).) The Challenged Conduct Letter and notices were available for at least 60 days prior to this determination.

- After posting the notice, the City received public comments regarding the Project. The City has considered all objections, comments, evidence, and concerns about the Project and the Challenged Conduct Letter. (See Gov. Code § 65589.5(h)(6)(E)(iii).)
- This letter serves as the written findings pursuant to Government Code section 65589.5(h)(6)(E)(iv), that (I) articulate an objective basis for why the challenged course of conduct is necessary and (II) provide clear instructions on what must be submitted or supplemented so that the City can make a final determination regarding the next necessary approval.

A. The City's Challenged Course of Conduct was Necessary (Gov. Code § 65589.5(h)(6)(E)(iv)(I))

The City finds that its course of conduct does not constitute a disapproval without final administrative action and that the challenged course of conduct was necessary.

The bases of the alleged Project disapproval identified in the Challenged Conduct Letter fall into three main categories: (1) the City did not comply with SB 35 and HAA provisions regarding consistency determinations; (2) the City improperly determined that the Project is ineligible for processing under SB 35; and (3) the City did not comply with the State Density Bonus Law ("SDBL"). For the reasons described herein and in Attachment 1, none of the alleged bases has merit.

1. The City Complied with SB 35 and HAA Provisions Regarding Consistency Determinations

(a) The City's Consistency Reviews Were Timely

At all points during the processing of the application for approval of the Project and Alternative Project, the City timely issued the determinations required by various state housing laws and complied with all provisions of such laws. Per SB 330, an applicant for a housing development project may submit a preliminary application by submitting the information specified in Government Code section 65941.1. State law does not require cities to issue any determination in response to receipt of a preliminary application. (Gov. Code § 65941.1(e)(3); see Gov. Code § 65941.1.) Within 180 days of submitting a preliminary application, an applicant must submit a full development application in order to "perfect" the vesting of a complete preliminary application. (Gov. Code § 65941.1(e)(1).) If an applicant invokes SB 35, a city must engage in specified tribal consultation procedures. (Gov. Code § 65913.4(b).) An SB 35 development application is deemed submitted only after the tribal consultation process concludes. (Gov. Code § 65913.4, subds. (b)(1)(A)(i) and (b)(1)(A)(ii) [tribal consultation must occur *before* submission of an SB 35 application], and subd. (b)(2)(D)(i) [execution of an enforceable agreement concludes tribal consultation].) Once an SB 35 development application is submitted, a city has 60 days (for projects of less than 150 units) to determine whether the proposed housing development project is in conflict with any of the objective planning standards specified in SB 35, including whether the proposed project is in conflict with local objective development standards. (Gov. Code § 65913.4(c)(1)(A).) If the city

determines that a development application is inconsistent with the requirements of SB 35, the applicant may resubmit the development application, at which point a new 30-day consistency determination period begins. (Gov. Code § 65913.4(c)(1)(C).)

The City complied with all of the statutory deadlines.

Applicant submitted a preliminary application for the Project on May 15, 2023. The Project application was deemed submitted on June 30, 2025 upon the execution of an enforceable agreement between the City, Applicant, and FIGR. On August 27, 2025, 58 days after the June 30, 2025 submission of the Project application, the City timely issued a written determination that the proposed Project was inconsistent with the objective planning standards specified in SB 35, including written documentation of which standards the Project conflicted with and an explanation of the reasons the Project conflicted with such standards. (Gov. Code § 65913.4(c)(1)(A).) By letter dated September 28, 2025, the City timely notified Applicant that it disapproved the Project because it was not subject to ministerial approval pursuant to SB 35, in accordance with the 90-day deadline of subdivision (d) of Government Code section 65913.4.

On September 6, 2025, Applicant submitted application materials for the Alternative Project. On October 6, 2025, 30 days after the September 6, 2025 resubmission, the City timely issued a written determination the Alternative Project proposal continued to be inconsistent with the objective planning standards specified in SB 35 and the City's municipal code, in accordance with the requirements of SB 35. (Gov. Code § 65913.4(c)(1)(C).) By letter dated December 3, 2025, the City timely notified Applicant that it disapproved the Alternative Project because it was not subject to ministerial approval pursuant to SB 35, in accordance with the 90-day deadline of subdivision (d) of Government Code section 65913.4.

Instead of formally submitting a new development application for a new project, on March 20, 2026, Applicant emailed a revised plan set to City staff for the Revised Project. Although the Revised Project was not formally or properly submitted to the City via eTrakit, the City's online development application portal,[2] out of an abundance of caution and as a courtesy, the City evaluated the revised plan set for completeness. In a letter dated April 17, 2026, the City notified the Applicant that the March 20, 2026 email submission was incomplete.

[2] All development application materials must be submitted via the City's eTrakit portal. *See* https://epermits.cityofsanrafael.org/ETRAKIT3/Search/permit.aspx. Applicant had indeed previously submitted plans and development application materials via eTrakit, and for unknown reasons did not do so for the Revised Project.

(b) The City Completed Its Consistency Reviews for the Project and Alternative Project In Good Faith and in Accordance with State Law

The Challenged Conduct Letter claims that the City's August 27, 2025 and October 6, 2025 determinations that the proposed Project and Alternative Project, respectively, were inconsistent with SB 35 and specified local objective development standards were improper for the reasons described in Exhibit A to the Challenged Conduct Letter.

An SB 35 consistency determination analyzes whether a project "is in conflict with any of the objective planning standards specified in subdivision (a) [of SB 35]," including local objective development standards. (Gov. Code § 65913.4(c)(1).) If a city identifies any conflicts, the city "shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards." An SB 35 project is subject only to the objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development application is submitted to the local government pursuant to this section, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier. (Gov. Code § 65913.4(a)(5).) Moreover, SB 35 limits cities' discretion to impose any development standards that are not "objective," meaning that they "involve no personal or subjective judgment by a public official and are 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 before submittal." (Gov. Code § 65913.4(a)(5).) The receipt of a density bonus, incentive, concession, or waiver, pursuant to the SDBL does not constitute a valid basis on which to find a project inconsistent with applicable objective standards. (Gov. Code §§ 65589.5(j)(3), 65905.5(c)(1).)

The August 27, 2025 inconsistency determination identified sixty (60) aspects in which the Project was inconsistent with SB 35 and applicable objective standards. The October 6, 2025 inconsistency determination identified forty-six (46) aspects in which the Alternative Project submitted on September 6, 2025 was inconsistent with SB 35 and applicable objective standards. The Challenged Conduct Letter appears to take issue with some, but not all, of the City's comments in each of these inconsistency determinations. Attachment 1 to this letter addresses each of Applicant's assertions regarding these inconsistency determinations. the comments Applicant provided in Exhibit A to the Challenged Conduct Letter. For the reasons explained in Attachment 1, the City completed its consistency review in good faith an in accordance with state law.

2. The City Properly Determined the Project and Alternative Project were Ineligible for Processing under SB 35

The Challenged Conduct Letter asserts that the City is committing "ongoing violations of SB 35" and Exhibit A to the Challenged Conduct Letter lists various alleged violations of SB 35.

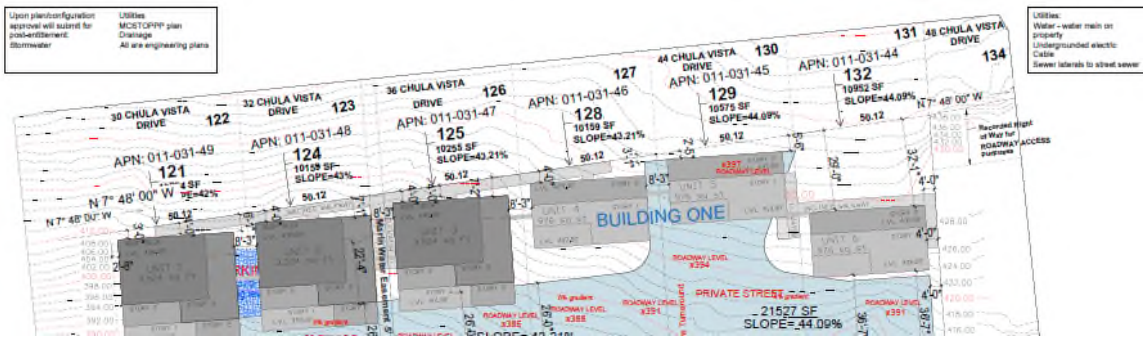
SB 35, codified at Government Code section 65913.4, requires that cities follow specified ministerial processing procedures for projects meeting specified criteria. For a project to qualify for ministerial processing under SB 35, the project must be "a multifamily housing development that contains two or more residential units." (Gov. Code 65913.4(a)(1).) SB 35 does not define "multifamily," but HCD[3] has defined "multifamily" for purposes of SB 35:

> "Multifamily" means a housing development with two or more attached residential units. This includes mixed-use projects as stated in Section 400(a). The definition does not include accessory dwelling units unless the project is for new construction of a single family home with attached accessory dwelling units. Please note, accessory dwelling units have a separate permitting process pursuant to Government Code section 65852.2 [repealed; *see instead* Cal. Gov't Code § 66310 *et seq.*, including § 66313].

(HCD Guidelines § 102(p).) This is consistent with other definitions of "multifamily" housing in California law. (E.g., Gov. Code §§ 65863.4(d), 65852.25(h), 12955.1.1; Health & Saf. Code §§ 51603(b)(9), 17929(b)(4).) The Project and Alternative did not propose housing with attached units; rather, the Project and the Alternative Project proposed to develop multiple detached single-family homes and ADUs. Thus, neither project is a "multifamily housing development" project.

Immediately below is a portion of the Site Plan Applicant submitted with its Alternative Project submittal, which shows unattached single-family homes on separate lots (or parcels):

[3] SB 35 provides that HCD "may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section." (Gov. Code § 65913.4(n).) The Guidelines have technically sunsetted (as HCD set them to expire on January 1, 2026, which was SB 35's sunset date, and has yet to take action since the Legislature extended SB 35's sunset date. But the Guidelines interpretative value is unaffected by their having technically sunsetted, including because they were in effect at all relevant times and HCD has not disavowed or otherwise acted to suggest they have lost any interpretive value.



Further, in both the August 27, 2025 and October 6, 2025 inconsistency determinations, the City explained that the Project and Alternative Project do not qualify for processing under SB 35 because the proposed projects were not multifamily housing developments. (S*ee,* August 27, 2025 inconsistency determination, p. 4; October 6, 2025 inconsistency determination, p. 3.) Acting in good faith and to encourage the development of housing, the City also explained to Applicant in a November 8, 2025 meeting between Applicant's representative Chris Sullivan and City staff that while the proposed project does not qualify for processing or approval under SB 35, there are other paths through which housing could potentially be approved on the site. (Applicant's Notes from November 8, 2025 meeting with City staff, p. 5; December 3, 2025 denial letter, p. 3.) Applicant declined to pursue any other legal paths for developing housing on the Project site. (Applicant's Notes from November 8, 2025 meeting with City staff, p. 5 ["I [applicant] informed [the City] that I was aware of those [alternative to SB 35] processes, and did not plan to resubmit under those processes."] Applicant also indicated they would not revise the project to qualify for SB 35. Accordingly, there being no legal pathway to approve the Alternative Project as proposed, the City denied the Alternative Project on December 3, 2025.

Applicant claims that the City violated SB 35 and/or the HAA by "[r]epresenting that the [C]ity can end the processing of an SB 35 project by issuing a denial letter." (Challenged Conduct Letter, Exhibit A, Item 26.) Taking this argument to its logical conclusion, Applicant seems to suggest an SB 35 application can never be denied, and that a city must indefinitely hold open an SB 35 application until it can be approved. Such a reading of SB 35 would mean the only way to close an SB 35 application is to approve it. Applicant does not cite, and the City is unaware of, any authority to support such assertion and reading of State law. Rather, courts have described SB 35 as "restricting" or "limiting," but not completely eliminating, cities' ability to deny housing development applications. (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 839; *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 299.) Additionally, the language of SB 35 itself makes clear that a city may indeed deny an SB 35 application where the requirements for approval have not been met. (See Gov. Code § 65913.4(a)(6)(G), (a)(6)(H).) Thus, as here, when a housing development application does not qualify for approval under SB 35 and an applicant does not revise the development application, it is proper and required that the city deny the application.

The City's determination that the Project is ineligible for SB 35 was necessary because such determination was required by State law.[4] (E.g., Gov. Code § 65913.4(c)(1).) Because such determination was not made for an improper purpose, the City did not improperly "disapprove the [Project]" as defined by Section 65589.5(h)(6)(E). Rather, the City properly "disapprove[d] the [Project]" as defined by Section 65589.5(h)(6)(A) by issuing the December 3, 2025 denial letter. Such denial was proper because the Project does not qualify for approval under SB 35 and Applicant indicated they would not revise the Project application such that it could be approved.

3. The City Complied with the State Density Bonus Law

The Challenged Conduct Letter implies that the City violated state laws regarding the receipt of waivers, incentives, and concessions under the State Density Bonus Law by not approving the requested waivers, incentives, and concessions some time before issuing a final decision on the Project application. (Challenged Conduct Letter, Exhibit A, Item 24.) The Challenged Conduct Letter misstates the requirements of state law.

Neither the State Density Bonus Law ("SDBL," Gov. Code § 65915) nor any other state law requires a city to ignore the fact that a project is, *in fact*, inconsistent with applicable standards. Rather, state law requires that cities treat projects as consistent with applicable standards *as a matter of law* for the purposes of deciding whether to approve or deny a proposed project if such inconsistency is resolved by the receipt of a waiver, incentive, or concession under the SDBL. (E.g., Gov. Code §§ 65905.5(c)(1); 65589.5(j)(3).) In other words, state law limits a city's ability to deny a project even though the project is, *in fact*, inconsistent with applicable standards, if such inconsistency is subject to a SDBL waiver, incentive, or concession.

Moreover, nothing in the SDBL or any other state law requires a city to approve or deny requested SDBL waivers, incentives, and concessions at any time before a project is considered and approved. Moreover, where local laws require that a particular staff position or legislative body hear and approve or deny an application for a development project, it would be improper and inconsistent with such local laws for a non-decision making body or person to approve or deny requested waivers, incentives or concessions. Additionally, neither the SDBL nor any other state law specifies a deadline by which an applicant's SDBL waiver, incentive, and concessions requests become fixed. As a matter of practice, applicants routinely modify their SDBL waiver, incentive, and concession requests until even the day that a city decides whether to approve or deny a project. Accordingly, it is critical and required that cities approve or deny SDBL waivers,

[4] Several of the comments from a letter dated April 28, 2026 from CalHDF are premised on the Project and the Alternative Project being eligible for approval under SB 35. Based on the analysis contained herein, those comments are inapplicable because the Project and Alternative Project are not eligible for SB 35 as discussed herein. The remainder of the comments submitted by CalHDF are duplicative to the comments raised by the Applicant in the attachment to its Notice of Conduct Letter, and to which the City addresses in Attachment 1 to this letter.

incentives, and concessions concurrently with the final decision on a development project.

The HAA strongly incentivizes these processing practices. The HAA requires that cities identify any inconsistencies between a proposed project and any applicable plan, program, policy, ordinance, standard, requirement, or other similar provision within 30 or 60 days of the date that the development application is deemed complete, depending on the number of units. (Gov. Code § 65589.5(j)(2)(A).) If a city does not identify an inconsistency *in fact* with a particular standard before the applicable deadline, the proposed project is deemed consistent with such standard *as a matter of law*. (Gov. Code § 65589.5(j)(2)(B).) Combined with the fact that an applicant may modify its SDBL wavier, incentive, and concession requests at any time before a project is approved, a city must identify inconsistencies *in fact* – even when the City recognizes that an SDBL waiver, incentive, or concession may ultimately require a finding of consistency as a matter *of law* – in order to preserve the city's right to enforce such standard if the applicant later revises its SDBL request.

Here, the August 27, 2025 inconsistency determination for the Project identified sixty (60) aspects in which the Project was inconsistent with SB 35 and applicable objective standards. For ten (10) inconsistencies, the City identified and acknowledged that the applicant had requested a waiver pursuant to the SDBL. The October 6, 2025 inconsistency determination for the Alternative Project identified forty-six (46) remaining aspects in which the Alternative Project was inconsistent with SB 35 and applicable objective standards. For five (5) inconsistencies, the City identified and acknowledged that the applicant had requested a waiver pursuant to the SDBL. The City did not request that Applicant revise the development application for those items in which applicant sought to utilize SDBL waivers, incentives or concessions. The City recognized that pursuant to Government Code section 65589.5(j)(3), projects features which were inconsistent with applicable City development standards would not be considered inconsistent as a matter of law if the requested waivers, incentives or concessions were later approved. (Gov. Code § 65589.5(j)(3).)

The City acted properly in identifying the Project's inconsistencies *in fact* with applicable standards, while noting that Applicant had requested SDBL waivers, incentives, or concessions from specified standards. Because both inconsistency determinations identified inconsistencies for which no SDBL waiver, incentive or concession was requested, it was proper for the City to determine that the Project was inconsistent with applicable standards, both *in fact* and *as a matter of law*.

B. Next Steps for the City to Make a Final Determination Regarding any Next Necessary Approval (Gov. Code § 65589.5(h)(6)(E)(iv)(II))

As explained above, the City timely and properly denied the application for approval of the Project and Alternative Project.

In order to secure an approval to develop housing on the Project Site, Applicant would need to submit a new and complete housing development application via eTrakit or

submit the Revised Project via eTrakit including all aspects which were previously identified by the City as incomplete. As the City has previously indicated, the City believes there may be multiple pathways to securing approvals for housing development on the Project Site. The City specifically communicated to the Applicant that it would work with the Applicant to evaluate consistency of the proposed project pursuant to SB 9, SB 684 or other laws, or by submitting a project application that meets the requirements for streamlined ministerial processing of SB 35.

IV. CONCLUSION

The City did not "disapprove [a] housing development project" as defined by Section 65589.5(h)(6)(E) by undertaking a course of conduct for an improper purpose that *effectively* disapproves the proposed housing development without taking final administrative action. Rather, the City properly "disapprove[d] the [Project]" as defined by Section 65589.5(h)(6)(A) by taking final administrative action, as required by SB 35. As established above, the City acted lawfully, in compliance with all applicable law.

Should you have any questions, please contact me at micah.hinkle@cityofsanrafael.org

Sincerely,

Micah Hinkle

Micah Hinkle
Director, Community and Economic Development Department

Attachments:

Attachment A: Responses to Exhibit A of Challenged Conduct Letter
Attachment B: August 27, 2025 City inconsistency determination on Project
Attachment C: September 28, 2025 City denial of Project
Attachment D: October 6, 2025 City inconsistency determination on Alternative Project
Attachment E: December 3, 2025 denial of Alternative Project

cc:
Scott Birkey and Andrew Sabey, Attorneys for Applicant
asabey@coxcastle.com, sbirkey@coxcastle.com
Margaret Kavanaugh-Lynch, Planning Manager
margaret.kavanaugh-lynch@cityofsanrafael.org
Andrea Visveshwara, Assistant City Attorney
andrea.visveshwara@cityofsanrafael.org
Nira Doherty and Kevin Siegel, Outside Counsel
ndoherty@bwslaw.com, ksiegel@bwslaw.com

Attachment A

Response to Exhibit A of Challenged Conduct Letter

The following table reflects the alleged challenged conduct contained in Exhibit A to the Challenged Conduct Letter, adding the City's response to each alleged violation of law.

Alleged challenged conduct:	Applicant alleges City sent/sends documentation that states:	Challenged Conduct Letter states:	City's response
Applying non-objective standards to development			
1	Refuse collection areas shall be …located in areas convenient to users and collectors. There shall be adequate ingress and egress to all utilities.	These are non-objective standards.	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified this standard from SRMC Section 14.25.050 and noted that the application for the proposed Project did not contain enough information to enable the City to analyze consistency with this standard; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 14.) On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary argued that this standard was not objective and therefore not enforceable. (October 1, 2025 Letter, p. 36.) On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 9.) The Challenged Conduct Letter provides an excerpt from *40 Main Street Offices,*

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 234 of 344

			LLC v. City of Los Altos in which the court states that a standard that requires "adequate access/egress" is subjective and therefore unenforceable. The City thanks Applicant for bringing this case to the City's attention. Were the Project's application still pending, the City would not seek to enforce this standard. Since the Project application was properly denied on other grounds (e.g., because the Project does not qualify for SB 35), this comment is moot.
2	Walls, etc. shall be used to screen parking and loading areas from view	This is a non-objective standard. What percentage of view shall be shielded, and from what angles, from how far upslope?	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified this standard from SRMC Section 14.25.050 and noted that the application for the proposed Project did not contain enough information to enable the City to analyze consistency with this standard; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 14.) On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary argued that the terms "from view," "integrated architectural component, and "incorporated into the overall project design" are subjective terms and therefore not enforceable. (October 1, 2025 Letter, p. 36.) On October 6, 2025, the City issued an inconsistency determination that once

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 235 of 344

			again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 9.) To the extent that SRMC Section 14.25.050 requires that a project include a wall, fence, or screen between parking and loading areas and other areas; between refuse collection areas and other areas; and between mechanical equipment and other areas, the inquiry is a yes-or-no question: "do the plans depict a wall, fence, or screen?" Wall, fence, and screen are each objective terms. Thus, in this regard, this standard is enforceable. As noted in the August 27, 2025 and October 6, 2025 inconsistency determinations, the application materials do not contain enough information to enable the City to determine whether the Project includes the required walls, fences, or screens. Neither Applicant's October 1, 2025 correspondence, the Challenged Conduct Letter, or any other submission from Applicant point to any portion of the project application that would constitute substantial evidence of compliance with this standard. Thus, it was proper for the City to determine that the Project is inconsistent with this standard.
Sending documentation/stating inconsistency by alleging standards are applicable that have no connection to the development submittal			
3	Structures may encroach into a required yard with a compensating increase subject to approval by the hearing body	The applicant did not request any such encroachment.	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified the following standard from SRMC Section 14.12.030.B: "Structures

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 236 of 344

			may encroach into a required yard or setback for a distance of not more than one-half (½) of the required yard or setback [. . .] subject to approval by the hearing body of an environmental and design review permit. If such a reduction is granted, a compensating increase in setback is required in the opposing setback, i.e., a five-foot reduction in a front yard setback would increase the rear yard setback by five feet (5').” The inconsistency determination also noted that the setbacks shown on the plans do not meet this standard on any parcel. Referencing SRMC Section 14.04.030, the August 27, 2025 inconsistency determination pointed out that the in the R10 district, the minimum side yard setback is 10 feet, the minimum rear setback is 10 feet, and the minimum front setback is 20 feet, yet the Project proposed development with side yard setbacks of approximately 4 feet on all lots, rear setbacks of approximately 2.5 feet on all lots, and front setbacks of between 2.5 feet and 9 feet 11 inches on all lots. These facts necessarily mean that the Project also inconsistent with Section 14.12.030.B, even if the Project were to receive the permissible encroachment into half of the setback area. Moreover, as the Challenged Conduct letter notes, Applicant never requested such encroachment in the first place. Therefore, the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 10.)

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 237 of 344

			On September 6, 2025, Applicant submitted revised application materials that did not resolve this inconsistency. (See Sheet A.0.2.) On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary did not directly address whether the Project complied with the required setbacks, instead noting that even if the Project did not comply with the required setback, Applicant had not yet requested, but could request, a waiver from this standard under the State Density Bonus Law. (October 1, 2025 Letter, p. 16.) On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 7.) Because Applicant had not revised the application to comply with this standard, it was proper for the City to once again identify this as an inconsistency. Likewise, since Applicant had not requested a wavier of this standard using the SDBL, the October 6, 2025 consistency determination did not note that any SDBL waiver request had been made regarding this standard.
4	Fences located within the front and streetside setbacks may be 4 feet tall etc. The plans do not contain enough detail for the city to determine whether the project complies with the fence standards at this time	No fences have been proposed	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified this standard from SRMC Section 14.16.140 and noted that the application for the proposed Project did not contain enough information to enable the City to analyze consistency with this

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 238 of 344

			standard; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 14.) On September 6, 2025, Applicant submitted revised application materials that depict an area titled "enclosed trash & recycling area." (Sheet A.0.7.) It appears such area may be enclosed by a fence. Likewise, Sheet A.0.7 states that "lot coverage" excludes fences, implying that the proposed Project includes fences. On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary questioned why the City had identified SRMC Section 14.16.140 as an applicable standard, stating that "there are no fences proposed as part of the Project." (October 1, 2025 Letter, p. 32.) On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 8.) Despite Applicant's statements in the October 1, 2025 letter and in the Challenged Conduct Letter that "no fences have been proposed," the project application plainly appears to propose fences, which Applicant argued join the units together and thereby make the project a "multifamily" project. Thus, it was proper for the City to identify this standard as applicable to the Project. Since none of the application materials contain enough information to enable the City to determine whether the Project is consistent with this standard, it

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 239 of 344

			was proper for the City to determine that the Project is inconsistent with this standard.
Sending documentation/stating inconsistency that improperly relies on local standards when State standards have preempted those local standards			
5	The city equates all of these together - housing types to single family/multifamily to a zoning classification – single family to low density, multifamily to medium/high density zones. The city claims that the development must comply with medium density residential development/multifamily developments of a minimum of 3 attached units. It provides no explanation of how that would be permitted in a low density residential zone nor how it would be permitted in a single family zone such as the subject lots (such is not permitted under city code)	State law preempts this in SB 35 which authorizes multifamily housing on any residential land. SB 35 provides for any qualifying multifamily development of 2 or more units on any residentially zoned land.	See Section I.B of Response to Challenged Conduct Letter. It is unclear what the Challenged Conduct Letter means by "the city equates all of these together …" or precisely how Applicant alleges the City has acted improperly in this regard. In any case, it appears that such argument relies on the assumption that SB 35 preempts the City's action. As explained above, the Project does not qualify for processing under SB 35. Therefore, SB 35 does not preempt any City action.
6	Developments must provide two covered parking spaces per unit	No covered parking is required under State law	See Section I.B of Response to Challenged Conduct Letter. As explained above, the Project does not qualify for processing under SB 35. Therefore, SB 35 does not preempt the applicable local parking requirements.
Sending documentation /stating inconsistency by purporting a standard is not met when the development contains/includes nothing to which that standard applies			
7	Additionally, on streets less than twenty-six feet, a minimum of two additional on-site parking spaces must be provided	The street is 26' wide, is clearly such and is clearly marked as such	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that SRMC Section 14.12.030 requires that units located on streets less than twenty-six feet wide must provide two additional on-site parking spaces (not on the driveway apron) compared to what

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 240 of 344

			would otherwise be required. The City noted that the application for the proposed Project did not contain enough information to enable the City to analyze consistency with this standard; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 11.) On September 6, 2025, Applicant submitted revised application materials that depict Coleman Drive, with measurements indicating that the street is approximately 18 feet wide in front of two parcels (-47 and -46); varies between 17 feet and 28 feet in front of one parcel (-45); provides no information on the width of Coleman Drive in front of two parcels (-49 and -48), and measures the width of Coleman Drive diagonally in front of one parcel such that the actual width is not clear (-44). (Sheet A.0.1.) Sheet A.0.2 indicates that the private driveway serving the proposed units from Coleman Drive (the street) is 26 feet wide. The plans do not indicate the exact location of spaces related to the dwelling units. On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 8.) Applicant's contention that Coleman Drive is 26 feet wide is plainly contradicted by the plans submitted on September 6, 2025. Thus, it was proper for the City to determine that this standard is appliable to the Project. Moreover, since the plans do not indicate the exact location of the spaces related to

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 241 of 344

			the units, it is not possible for the City to determine whether the additional (2 extra space) parking requirements are met, and it was therefore proper for the City to determine that the Project is inconsistent with this standard.
8	Where the proposed landscape area is equal to or greater than 2,500 sq ft	Sheet A.0.5. The landscaping is less than 2,500 sq.ft.	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that SRMC Section 14.16.370 requires water-efficient landscapes in accordance with Government Code Section 65595(c). The City noted that the application for the proposed Project did not contain enough information to enable the City to analyze consistency with this standard; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 13.) On September 6, 2025, Applicant submitted revised plans. Sheet A.0.6 of the plans depict an area titled "natural state area" that constitutes 25,362 square feet of six parcels on which the Project is located. Sheet A.0.5 of the plans indicate that trees will be planted in almost all portions of the "natural state area." Thus, it appears that the Project involves approximately 25,362 feet of landscaped area. The statement on page A.0.5 that "the landscaping is less than 2,500 square feet" directly contradicts what is actually depicted on the plans. On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary claimed

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 242 of 344

			that landscaping was less than 2,500 square feet, again contradicting what the plans actually depict. (October 1, 2025 Letter, p. 34.) Accordingly, on October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 8-9.) Applicant's contention that the Project involves less than 2,500 square feet of landscaped area is plainly contradicted by the plans submitted on September 6, 2025. Thus, it was proper for the City to determine that the water-efficient landscaping standard is appliable to the Project. Moreover, since the plans do not contain enough detail to determine whether the Project complies with this standard, it was proper for the City to determine that the Project is inconsistent with this standard.
9	Section requires driveways serving residential uses with less than 6 vehicle parking spaces to be a min. of 10 feet wide	The driveway serves 39 parking spaces. The driveway (private street) is 26', and wider in parts	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that SRMC Section 14.18.140(a) requires driveways serving residential uses with less than 6 vehicle parking spaces to be a minimum of 10 feet wide The City noted that the application for the proposed Project did not contain enough information to enable the City to analyze consistency with this standard; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 13.)

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 243 of 344

10	No subdivision of land into two (2) or more lots or parcels for the purpose of development shall be approved unless it is determined that the following utilities and services can be provided	No subdivision of land into two or more lots is being proposed.	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that SRMC Section 15.06.020 requires a project to be served by water, wastewater and sewage, gas and electric, and communication services. The City noted that the Project did not appear to be served by the required utilities; therefore, therefore the letter stated that the Project was inconsistent with this standard. (August 27, 2025 Inconsistency Determination, p. 22.) On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary claimed that this requirement was not enforceable. (October 1, 2025 Letter, p. 58-59.) On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 18.) Applicant's legal argument in the October 1, 2025 letter was not clearly supported by law, and applicant had not revised the Project plans to indicate that the Project would comply with this standard. Accordingly, the City acted in good faith in identifying this as an inconsistency in its October 6, 2025 letter. The Challenged Conduct Letter points out for the first time that this standard only applies when a project proposes subdivision of land into two or more

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 244 of 344

			parcels. Having considered this additional input, the City has determined that this standard does not apply to the Project. Were the Project's application still pending, the City would not seek to apply this standard. Since the Project application was properly denied on other grounds (i.e., because the Project does not qualify for SB 35), this comment is moot.
11	Table 1.4 Objective Design Standards adopted March 2024. First sentence of the standards. "These standards apply to all "residential multifamily" "residential single-family"..development.., all of which are terms defined in SRMC section 14.03.030": 14.03.030: ""Residential, multifamily means medium and high density residential development,…. containing three (3) or more attached dwelling units.." – a zoning designation for land zoned medium and high density per the zoning ordinance and General Plan. Residential single family means low density residential development containing one (1) primary residential dwelling unit for use by a single household on a single parcel	The development is clearly not in either of those categories. Further, the development vested prior to these standards being created The subject lots are not in this zoning. This is not applicable to the development	The Objective Design Standards apply to all residential development projects in the City. The Project is a residential development project. Therefore, the Objective Design Standards apply to the Project. Accordingly, it was proper for the City to identify the Objective Design Standards as applicable to the Project and for the City to identify inconsistencies between the Project and the Objective Design Standards. See also response to Item 22 below. The Objective Design Standards apply to all "residential multifamily," "residential single-family," "residential duplex," and residential development as part of a "mixed-use project," all of which are terms defined in SRMC Section 14.03.030. (ODDS, p. 1.) "Residential, multifamily" means medium and high density residential development, including a "transitional housing development" or "supportive housing" as defined under State Health and Safety Code Section 50675.2 (and

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 245 of 344

			subsequent amendments), containing three (3) or more attached dwelling units in one (1) or more structures located on a single parcel or common lot. (SRMC Section 14.03.030.) "Residential, single-family" means low density residential development containing one (1) primary residential "dwelling unit" for use by a single household on a single parcel. This definition includes use of a single-family dwelling and/or accessory dwelling unit as a household for "transitional housing" or "supportive housing" as defined under the California Health and Safety Code. (SRMC Section 14.03.030.) The San Rafael Municipal Code does not define the terms "medium density residential," "high density residential," or "low density residential." The City interprets those terms to mean the density ranges permitted in R (low density), MR (medium density), and HR (high density) residential districts. The City does <u>not</u> interpret those terms to require that buildings be located in any particular zoning district. In other words, low-density means between 0 du/ac and 8.7 du/ac; medium-density means between 8.7 du/ac and 21.78 du/ac; and high-density means up to 43.56 du/ac. (See SRMC Section 14.02.030(B).) The Project submitted on September 6, 2025, after the Objective Design Standards were adopted, proposes 14 units on 1.427 acres at a density of 9.8du/ac. Accordingly, the Project is "medium-density."
Sending documentation/stating inconsistency by alleging that planning data is not in the development submittal when it is			

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 246 of 344

12	Plans do not show screening of parking from the street	The plans clearly show screening of parking from the street.	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that General Plan Policy CDP-4.9, which requires parking to be screened from the street by landscaping, applies to the Project. The City noted that the application for the proposed Project did not show screening of parking; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 5.) On September 6, 2025, Applicant submitted revised application materials. Page A.0.3 depicts the area called "Parking 1" screened from Coleman Drive by a green area that is labeled "Cherry Laurel Parking Screening." The areas labeled "Parking 2," "Parking 3," "Parking 4," and "Parking 5" do not appear to be screened from Coleman Drive. Given the steep slope of the hill, it is not clear from the plans whether such parking areas will be visible from Coleman Drive or not; the required landscaped screening is missing. On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary claimed that this requirement was not objective. (October 1, 2025 Letter, p. 12.) To the extent that General Plan Policy CDP-4.9 requires that a project include a landscaped screening between parking and the street, the inquiry is a yes-or-no

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 247 of 344

			question: “do the plans depict landscaped screening?” Thus, in this regard, this standard is objective and enforceable. On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 4.) Because the plans submitted on September 6, 2026 do not depict landscaped screening for Parking areas 2-5, it was proper for the City to determine that the Project is inconsistent with this standard.
13	Insufficient information has been provided in plans to verify the proposed height	Heights are clearly shown on A2.2 to A3.4 - 15 sheets comprehensively showing the height as defined by municipal code for every building.	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified the maximum height requirement contained in SRMC Section 14.04.030. The City explained that in hillside zoning districts, height is measured vertically from the existing grade to the uppermost point on the roof edge, wall parapet, mansard or other feature above the existing grade at any point. The City noted that the application for the proposed Project did not provide sufficient information to enable the City to determine the height of the proposed buildings; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 7.) On September 6, 2025, Applicant submitted revised application materials. Pages A2.2 through A3.4 – 15 depict elevations that include what appear to be height measurements, but such measurements do not appear to use the

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 248 of 344

			method of measurement required by SRMC Section 14.04.030. For example, on sheet A.2.2, a measurement labeled 39'-10" appears to measure the distance from existing grade to the top of gray, blue, and beige portions of the building, but does not include what appears to be an additional feature that would likely be included in the height measurement. It is therefore not possible to determine from Sheet A.2.2 the height of the depicted building. Maybe it's 39'10"; maybe it's taller. As another example, on sheet A.2.3, a measurement labeled 48'-5" appears to measure the distance from a number of feet below approximately the center point of the building to the top of the gray, blue, and beige portions of the building, but does not include what appears to be an additional feature that would likely be included in the height measurement. It is therefore not possible to determine from Sheet A.2.3 the height of the depicted building. Maybe it's 35'0"; maybe it's 48'5"; maybe it's taller. These same types of issues are present on each of Pages A2.2 through A3.4 – 15. On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 4.) Because the plans submitted on September 6, 2026 do not contain enough information to allow the City to determine whether the Project is consistent with the applicable height standards, it was proper for the City to determine that the Project is inconsistent with this standard.

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 249 of 344

14	New streets and driveway grades shall not exceed 18 per cent. The projects plans do not appear to indicate the proposed slope	A.0.2 site plan very clearly shows the gradient of the street at 8%, as do A.0.3, A.0.8.	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that SRMC Section 14.12.030 requires a that new streets and driveway grades not exceed 18 percent. (August 27, 2025 Inconsistency Determination, p. 12.) The City noted that the application for the proposed Project did not provide sufficient information to enable the City to determine whether the Project complied with this standard; therefore the letter stated that the Project was not consistent with this standard. On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary claimed that this requirement was not objective because an exception could be granted. (October 1, 2025 Letter, p. 31.) Such argument misinterprets the meaning of an "objective" standard; in any case, the Challenged Conduct Letter does not repeat such claim. The October 1, 2025 letter did not point to any portion of the development application that contained the required information. On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 18.) The City acted in good faith in identifying this as an inconsistency in its October 6, 2025 letter.

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 250 of 344

			The Challenged Conduct Letter points for the first time to pages A.0.2, A.0.3, and A.0.8 of the plans submitted on September 6, 2025. Having considered this additional input, the City notes that each of sheets A.0.2, A.0.3, and A.0.8, which are densely packed with information, contain a notation in small font that the private driveway will have an 8% gradient, and no longer considers this item to be an inconsistency.
15	The cover page notes that all spaces are 9 by 19 feet, the application does not contain information to determine where all parking spaces (sic)	Parking is shown on the parking sheet A.0.3 and is clearly shown as 19' x 9'	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that SRMC Section 14.18.100 requires specified dimensions (19’ x 9’) for parking spaces. The City noted that while the application for the proposed Project provided dimensional information for some parking spaces, it did not contain enough information to enable the City to analyze consistency of each parking space with this standard; therefore the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 13.) On September 6, 2025, Applicant submitted revised plans. Sheet A.0.3 of the plans label parking spaces 14 and 30 with the notations 19’ and 9’. Parking space 33 appears nonexistent. Parking space 34 appears to be labeled as only 8’7” wide. No other parking spaces are labelled with dimensions. Therefore, it is impossible to determine whether any spaces other than 14 and 30 meet the 19’ x 9’ dimensional requirements.

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 251 of 344

			On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary claimed that "all parking is clearly 9' x 19' and in compliance with this provision." (October 1, 2025 Letter, p. 35.) The Challenged Conduct Letter claims that Sheet A.0.3 proves such statement. Accordingly, on October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 9.) Contrary to Applicant's assertion that the plans provide the required information, the only spaces that are "clearly" 9' x 19' are spaces 14 and 30. Space 34 appears to be smaller, and without dimensional information about other spaces, it appears possible that other spaces are, too. Thus, it was proper for the City to determine that the plans do not contain enough detail to determine whether the Project complies with this standard, and for the City to therefore determine that the Project is inconsistent with this standard.
16	Lighting for parking areas must be mounted at maximum of 15 feet	A.0.3 Parking & circulation plan. The plans state "Parking lighting is mounted at 14' from floor"	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that Section IV.A9 of the Hillside Design Guidelines require that any overhead lighting for residential parking areas be mounted at a maximum of 15 feet. The City noted that the application for the proposed Project did not contain enough information to enable the City to analyze with this standard; therefore the letter stated that the Project

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 252 of 344

			was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 15.) On September 6, 2025, Applicant submitted revised plans. Sheet A.0.3 of the plans contain three relevant notations: a notation near Parking 1 that says "Parking lighting at 3' from floor"; a notation near Parking 3 that says "Parking lighting at 14' from floor"; and a notation near Parking 4 that a says "Parking at 14' from floor." The plans do not contain any information about the height of lighting at Parking 2 or Parking 5. On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary appears to claim that "mounted at a maximum of 15 feet" is not an objective standard. (October 1, 2025 Letter, p. 41.) "15 feet" is uniformly verifiable by reference to an external criterion (e.g., a tape measure), and is a quintessential example of objectivity. On October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 10.) Contrary to Applicant's assertion that the plans provide the required information, the plans only contain information about lighting mounting height for Parking 1, 3, and 4; the information is missing for Parking 2 and 5. Thus, it was proper for the City to determine that the plans do not contain enough detail to determine

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 253 of 344

			whether the Project complies with this standard, and for the City to therefore determine that the Project is inconsistent with this standard.
Sending documentation that misrepresents city municipal code			
17	Side yard setback to be 10 feet and front yard setback to be 20 feet.	In fact municipal code defines the yard requirement as the average on the block. (14.04.030)	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that SRMC Section 14.04.030 requires a minimum side yard setback of 10 feet and a minimum front yard setback of 20 feet in the R10 zone. The City noted that all lots propose development with side yard setbacks of approximately 4 feet and all lots propose development with front yard setbacks of approximately 2.5 to 9 feet 11 inches. Therefore, the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 7.) On September 6, 2025, Applicant submitted revised plans that did not revise the proposed setbacks. On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary states that footnote to the table in SRMC Section 14.04.030 creates an exception to these setback standards, and instead sets the required front and side setbacks as the average side and front setbacks of improved lots within the same district on both sides of the street for the length of the block. (October 1, 2025 Letter, p. 15.) Applicant's reading of Footnote D (and

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 254 of 344

			Footnote A) assumes that the required setback is the *lesser* of 10 (side) / 20 (front) feet and the average setback on the block. However, the City interprets the code to require a setback of the *greater* of 10 (side) / 20 (front) feet and the average setback on the block. Accordingly, on October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 5.) Because the plans demonstrate that the Project does not comply with the required setback, it was proper for the City to determine that the Project is inconsistent with this standard.
18	Hillside Design Guidelines state Fences and walls over 3 feet in height that face public streets SHOULD (not shall) Definitions in Hillside guidelines – SHOULD (not shall) and where SHOULD is used it states are not mandatory. City rewrites this code in its consistency analysis stating the word is "requires" City misstates its own code		See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that Section IV.A7 of the Hillside Design Guidelines require that fences and walls over 3 feet in height facing a public street provide a fully landscaped buffer at least 5 feet deep. The City noted the application provided no information about proposed fences or walls; therefore, the letter stated that the Project was not consistent with this standard. (August 27, 2025 Inconsistency Determination, p. 15.) On September 6, 2025, Applicant submitted revised plans that did not provide additional information about fences or walls. On October 1, 2025, Applicant's attorney submitted commentary on the

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 255 of 344

			August 27, 2025 inconsistency determination. Such commentary argues that the requirement is not objective because it is contained in a section of the Hillside Design Guidelines titled "Architectural Character," and that the word "character" is subjective. Such argument ignores the fact that "3 feet" and "5 feet" are quintessentially objective terms. Likewise, to the extent this standard requires landscaping, the inquiry is an objective yes-or-no question: "do the plans include landscaping?" Accordingly, on October 6, 2025, the City issued an inconsistency determination that once again identified this inconsistency. (October 6, 2025 Inconsistency Determination, p. 39-40.) Because the plans still do not provide additional information about fences or walls, it was proper for the City to determine that the Project is inconsistent with this standard. The Challenged Conduct Letter claims for the first time that this standard is not applicable because the Hillside Design Guidelines state, "Fences and walls over 3 feet in height that face public streets should provide a fully landscaped buffer at least 5 feet deep on the street facing side of the fence or wall" (Hillside Guidelines Section IV.A7.5.) Applicant claims that the word "should" is not mandatory. Applicant appears to incorrectly conflate the meaning of the word "mandatory" with the meaning of the word "objective." The guidelines specify that the word "shall" is used to express what is mandatory, while the word "should" is used to express "what is

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 256 of 344

			acceptable to satisfy" the required standard. In other words, when the guidelines state that a project "shall" do something, there is no other option. When the guidelines state that a project "should" do something, the specified standard is a baseline that, if provided, would satisfy the requirement; however, the City could exercise discretion to allow for a deviation from this baseline. Nevertheless, the baseline is still *mandatory* if no discretionary deviation is permitted. If the baseline standard is *objective*, state law permits the City to enforce it. Here, the specified baseline is a 5-foot deep landscaped buffer between any fence or wall over 3 feet in height and any public street. As explained above, this baseline standard is objective. Accordingly, was proper for the City to apply and identify an inconsistency with this standard.
19	Res 14890: The affordable housing units shall possess a distribution of bedroom counts proportionate to that of the market-rate units within the residential development project "The affordable housing units shall have access to the same amenities and common spaces as the market rate units"	This code does not exist The code in fact states "Compatibility with the…amenities…of the other developed units". The city rewrote this code specifically for the consistency notice on the fly to make it objective. Compatible is non-objective. But the code simply doesn't exist There are many examples of the city making up the code for the consistency letter of October 2025. Yes – just inventing municipal code, to delay this compliant application.	See Section I.A of Response to Challenged Conduct Letter. On August 27, 2025, the City issued an inconsistency determination that identified that SRMC Section 14.16.030 and City Council Resolution 14890 require, among other requirements, the following: (1) "Type. The affordable housing units shall possess a distribution of bedroom counts proportionate to that of the market-rate units within the residential development project. (Section C(1) of Resolution 14890)" (August 27, 2025 Inconsistency Determination, p. 19.) (2) "Access. The affordable housing units shall have access to the

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 257 of 344

			same amenities and common spaces as the market rate units. (Section C(2) of Resolution 14890)" (August 27, 2025 Inconsistency Determination, p. 19.) The City noted the application provided no information to show compliance with these standards; therefore, the letter stated that the Project was not consistent with these standards. (August 27, 2025 Inconsistency Determination, p. 15.) On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary claims that the standards stated above "simply [do not] exist." (October 6, 2025 Inconsistency Determination, p. 51.) The exact language of Resolution 14890 is: "C. Location and Type of Affordable Housing Units. Affordable housing units shall be dispersed throughout the residential development project. Units may be clustered within the residential project when the city determines that such clustering furthers affordable housing opportunities. The affordable housing units shall be of a similar mix and type to that of the residential development project as a whole, including, but not limited to: 1. The same or substantially similar mix of unit size (e.g., number of bedrooms, square footage); 2. Compatibility with the design, materials, amenities, and appearance of the other developed units."

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 258 of 344

			This language imposes several distinct development standards, including the Type and Access requirements identified above. The Type requirement identified as (1) above comes from the following language in bold: "C. Location and Type of Affordable Housing Units. Affordable housing units shall be dispersed throughout the residential development project. Units may be clustered within the residential project when the city determines that such clustering furthers affordable housing opportunities. **The affordable housing units shall be of a similar mix and type to that of the residential development project as a whole**, **including**, but not limited to: 1. **The same** or substantially similar **mix of unit size** (e.g., **number of bedrooms**, square footage); 2. Compatibility with the design, materials, amenities, and appearance of the other developed units." The Access requirement identified as (2) above comes from the following language in bold: "C. Location and Type of Affordable Housing Units. Affordable housing units shall be dispersed throughout the residential development project. Units may be clustered within the residential project when the city determines that such clustering furthers affordable housing opportunities. **The affordable housing units shall be** of a similar mix

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 259 of 344

			and type to that of the residential development project as a whole, including, but not limited to: 1. **The same** or substantially similar mix of unit size (e.g., number of bedrooms, square footage); 2. Compatibility with the design, **materials, amenities, and appearance of the other developed units**." Objective standards are enforceable; subjective standards are not. The word "the same" is objective, even if "similar" is not. As a baseline requirement, affordable housing units must be provided in the same mix of unit size, in terms of number of bedrooms, as the market-rate units in the development. The "similar" phrase is an exception to the baseline rule. The City can enforce the "same"ness requirement because it is objective. On September 6, 2025, Applicant submitted revised plans with additional information about the bedroom counts of the 13 market-rate units compared to the single affordable unit. The average bedroom count for market rate units is 3.85 bedrooms per unit, while the affordable unit contains only 2 bedrooms. Likewise, the application does not indicate whether the affordable unit will have access to the same amenities (e.g. the pool) and common spaces that the market rate units will have access to. Accordingly, on October 6, 2025, the City issued an inconsistency determination that once again identified these inconsistencies. (October 6, 2025 Inconsistency Determination, p. 14-15.)

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 260 of 344

			Because the plans do not demonstrate that the Project complies with the Type and Access requirements of Resolution 14890, it was proper for the City to determine that the Project is inconsistent with these standards. As to the Challenged Conduct Letter's claim that "[t]here are many examples of the [C]ity making up the code for the consistency letter of October 2025," Applicant cites no examples to support this claim other than the Type and Access requirements specified above. Such claim is baseless and warrants no further response.
Asking for documents that have already been provided			
20	Geotechnical report is required	Geotechnical report has been provided	See Section I.A of Response to Challenged Conduct Letter. On October 6, 2025, the City issued an inconsistency determination that included a section labeled "Courtesy Comments," which specified that "the following comments do not address consistency with applicable standards [. . .] the City is providing these additional comments to you as a courtesy." (October 6, 2025 Inconsistency Determination, p. 20.) Courtesy Comment #2 noted that a geotechnical report would be required. The City has never claimed that the Project's application could not be deemed complete or consistent with applicable standards, or that the application could not be approved, without the submission of a geotechnical report. The purpose of the City's comment, as indicated in the October 6, 2025 letter, was as a courtesy only. The

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 261 of 344

			City has not caused any delay or increased cost by providing this courtesy comment.
Demanding documents that are CEQA reports			
21	A Transportation Analysis report is required per city Guidelines. Page 1 of these Guidelines describe the report as producing an outcome "that include[s] conditions of approval and/or mitigation measures under CEQA"	Requiring this report is prohibited under SB 35.	See Sections I.A and I.B of Response to Challenged Conduct Letter. On October 6, 2025, the City issued an inconsistency determination that included a section labeled "Courtesy Comments," which specified that "the following comments do not address consistency with applicable standards [. . .] the City is providing these additional comments to you as a courtesy." (October 6, 2025 Inconsistency Determination, p. 20.) Courtesy Comment #3 noted that a transportation analysis would be required. The City has never claimed that the Project's application could not be deemed complete or consistent with applicable standards, or that the application could not be approved, without the submission of a transportation analysis. The purpose of the City's comment, as indicated in the October 6, 2025 letter, was as a courtesy only. The City has not caused any delay or increased cost by providing this courtesy comment. Notwithstanding the above, the Challenged Conduct Letter also claims that a transportation analysis cannot be required for an SB 35 project. As explained above, the Project does not qualify for processing under SB 35. Therefore, SB 35 would not prohibit the

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 262 of 344

			City from requiring a transportation analysis in connection with the Project.
Claiming – both directly and indirectly – that the housing development project did not vest on May 15, 2023. Making written statements that adopt, repeat, flow from, or attempt to give effect to the City's erroneous position that the housing development project did not vest on May 15, 2023			
22	Definitive codification of specifically SB 35 vesting: Govt Code 65913.4(d)(1) review "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction"		On May 15, 2023, Applicant submitted a preliminary application for a housing development project located on the Project Site. The preliminary application purported to be both an SB 330 preliminary application (i.e., for a housing development project under any potential approval path) and an SB 35 notice of intent (i.e., particular to a housing development project proceeding under SB 35). For non-SB 35 projects, an applicant for a housing development project must submit a housing development application for the project in question within 180 days of the submission of a preliminary application in order for the preliminary application to have the effect of vesting development standards as of the date of the submission of the preliminary application. (Gov. Code § 65941.1(e)(1).) For SB 35 projects, the standard 180-day deadline does not apply; rather, an SB 35 application is subject only to the objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that an SB 35 notice of intent is submitted, regardless of the length of time between submission of the notice of intent and submission of the SB 35 development application. (Gov. Code § 65913.4(a)(5).)

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 263 of 344

			When a housing development application does not qualify for a particular approval pathway (e.g., SB 35), applicants often request that cities instead process the application under a different approval pathway (e.g., SB 330.) The August 27, 2025 inconsistency determination notes that the Project does not comply with SB 35 and notes that no development application was submitted within 180 days of the submission of the preliminary application. (August 27, 2025 inconsistency determination, p. 1.) Thus, footnote 1 on the first page of the August 27, 2025 inconsistency determination concluded that the Project did not vest the standards in place on May 15, 2023. The intent of footnote 1 was to indicate, given that the Project did not qualify for processing under SB 35, that if the Project were processed as a standard SB 330 application, the Project would not have vested the standards in place on May 15, 2023. Accordingly, as a courtesy to Applicant, the City identified inconsistencies between the Project and the Objective Design Standards adopted in March 2024, in case Applicant elected to proceed under SB 330. On October 1, 2025, Applicant's attorney submitted commentary on the August 27, 2025 inconsistency determination. Such commentary correctly noted that "the City acknowledges that," if eligible for processing under SB 35, the Project would be "subject to only applicable rules as of May 15, 2023." (October 1, 2025 letter, p. 42.) The City agreed, and

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 264 of 344

			continues to agree, that a project that qualifies for ministerial processing and approval under SB 35 may be subject only to the applicable regulations in effect on the date that the notice of intent was submitted. (Gov. Code § 65913.4(a)(5).) However, as explained in the August 27, 2025 inconsistency determination, the Project would not vest standards as of May 15, 2023 if processed outside the context of SB 35. The October 6, 2025 inconsistency determination once again identified that the Project did not qualify for processing under SB 35. (October 6, 2025 inconsistency determination, p. 3.) Accordingly, the Project did not vest the development standards in effect on May 15, 2023. As a courtesy, the City once again identified inconsistencies between the Project and the Objective Design Standards adopted in March 2024, in case Applicant elected to proceed under SB 330.
Ignoring Govt Code 65905.5 (c)(1)			
23	City raises multiple items (see above) that are subject to the applying of density bonus and waivers and thus its (c)(1) letter in those regards is invalid and not issued consistent with State law.	"The receipt of a density bonus including any incentives, concessions, or waivers pursuant to Section 65915 shall not constitute a valid basis on which to find that 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. The applicant had applied for a waiver of this standard, but the city is unreasonably and with no valid reason delaying the issuance of the	See Item 24 below.

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 265 of 344

		waiver The development is entitled to a bonus & waivers under State law.	
Issuing inconsistency letters under 65913.4 (c) (A) & (C) without first approving density bonus and waivers & incorporating their effect into 65913.4 (c) communications; Sending documentation alleging inconsistency of items that are resolved by issuance of a bonus & waivers, which bonus & waivers are being improperly delayed by the city			
24	Example The General Plan limits height on the site to 30 feet tall. All primary dwellings exceed 30 feet in height.		See Section I.C of the Response to Challenged Conduct Letter.
Stating "the applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard" because the applicant has submitted plans that provide substantial evidence			
25	Repeated continually throughout the purported 'inconsistency' letter	This is NOT the standard by which SB 35 developments are reviewed by a local government: Govt Code 65913.4 (f) (1). "..shall not require studies nor information that do not pertain directly to determining whether the development is consistent with objective planning standards" Govt Code 65913.4 (c)(3) "For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. The local government shall not determine that a development… is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards" The development submitted contained substantial evidence that would allow	See Section I.A of Response to Challenged Conduct Letter. The Challenged Conduct Letter claims, in a blanket statement, that the Project application contains substantial evidence to allow a reasonable person to conclude that the application is consistent with applicable objective standards. However, the challenged conduct letter does not cite any portion of the application that would allow a reasonable person to make such finding. As explained in the City's responses to Items 2, 4, 7, 8, 12, 13, 15, 16, 18, and 19 above, the application lacks enough information to allow a reasonable person to conclude that the Project is consistent with the applicable objective planning standards identified in the August 27, 2025 and October 6, 2025 inconsistency determinations. The City has carefully reviewed all the materials that Applicant has submitted, identified where more information is needed to determine consistency, and invited Applicant to either submit additional information to

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 266 of 344

		a reasonable person to conclude that the development is consistent with the objective planning standards.	allow the City to make such finding, or point to where in the application such information is available, in case the City inadvertently missed something (such as in Items 1, 10, and 14 above). The City has acted in good faith during every step of processing the Project application. In response to the City's invitations, Applicant has largely declined to provide the information required for the City to make a consistency determination. In this regard, Applicant is solely responsible for any delay in receiving a consistency determination for the Project.
Representing that the city can end the processing of an SB 35 project by issuing a denial letter (and after the 60 day (c)(1) period). Representing that an applicant cannot resubmit and processing be continued			
26	Govt Code 65913.4 (a) "…. satisfies all of the following objective planning standards: (1) The development is a multifamily housing development that contains two or more residential units…" etc. Then, 65913.4(c)(1) ….Upon a determination that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), the local government staff or relevant local planning and permitting department that made the determination shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards. 65913.4 (c)(1)(C) [shall provide written documentation] "within 30 days of submittal of any development proposal that was resubmitted to address written		See Section I.B of Response to Challenged Conduct Letter. SB 35, codified at Gov. Code § 65913.4, requires that cities follow specified ministerial processing procedures for projects meeting specified criteria. For SB 35 to apply in the first place, a project must be "a multifamily housing development that contains two or more residential units." (Gov. Code § 65913.4(a)(1).) The City explained to Applicant on numerous occasions that the Project does not qualify for processing under SB 35 because it is not a multifamily housing development. (E.g., August 27, 2025 inconsistency determination, p. 4; October 6, 2025 inconsistency determination, p. 3; Applicant's Notes from November 8, 2025 meeting with City staff, p. 4.) Acting in good faith and to encourage the development of housing, the City also explained to

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 267 of 344

	feedback provided by the local government pursuant to this paragraph" The city has no authorization to require that an applicant 'start again from the beginning"- nor be subject to changed or significantly changed city planning standards since the applicant designed the development and submitted its SB 35 application. By way of this section, the Statute provides (and the Legislature definitively intended for) the absolute right to resubmit the application. If this were not so, a city could simply require that an applicant start at the back of the line again each time the city raised an issue – and the city could start its incomplete all over again, creating very extensive delays, and, restart its 'scoping consultation process' all over again, and as importantly the development would lose its vesting, and the development be subjected to significant amendment by the applicant if new applicable standards had been created by the local government in the interim.		Applicant that while the proposed project does not qualify for processing or approval under SB 35, there are other paths through which housing could be approved on the site. (Applicant's Notes from November 8, 2025 meeting with City staff, p. 5; December 3, 2025 denial letter, p. 3.) Applicant declined either modify the Project to comply with SB 35 or to pursue any other legal paths for developing housing on the Project site. (Applicant's Notes from November 8, 2025 meeting with City staff, p. 5 ["I [applicant] informed [the City] that I was aware of those [alternative to SB 35] processes, and did not plan to resubmit under those processes."] Because the proposed Project does not qualify for SB 35, Applicant definitively indicated they will not revise the project to qualify for SB 35, and Applicant definitively indicated they will not pursue any other legal pathway for the approval of housing on the Project site, it was proper for the City to deny the Project application on December 3, 2025. The City is unaware of, and Applicant has not cited, any law that requires cities to approve or continue processing housing development applications in such circumstances.
Needlessly raising the cost of obtaining approvals			
27	The city continually raises subjects in writing that do not conform to State law (see this notice), and that often stop processing of this streamlined ministerial application, & that lead to the applicant engaging in extensive unnecessary work, and work that is not required by state law		See Section I.B of Response to Challenged Conduct Letter. This comment appears to summarize Applicant's view of the overall result of the claims Applicant makes in the items above.

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 268 of 344

			As explained above, each the City's actions with which Applicant takes issue conform to state law. Applicant has declined to revise the Project application to qualify for processing under SB 35 or to pursue other available legal avenues through which a housing development could be approved on the Project site. Any additional expense that Applicant incurs related to these decisions are completely within Applicant's control.
Failing to follow the processes outlined in Govt Code 65913.4 as described in the case law, including 40 Main Street Offices LLC v. City of Los Altos			
28	See attached excerpts from Order Granting Consolidated Petitions for Writ of Mandate, 40 Main Street Offices, LLC v. City of Los Altos, Case No. 19CV349845 (County of Santa Clara, April 24, 2020).		See Section I.B of Response to Challenged Conduct Letter. As explained above, the Project does not qualify for processing under SB 35, so the cited case is not applicable. Nevertheless, the City has complied with all its legal obligations in processing the Project application, consistent with the excerpts of the Order in *40 Main Street* attached to the Challenged Conduct Letter. For example, in that case, the court found that the city had not issued an inconsistency determination that complied with the law because the determination did not cite the standards that it was purportedly applying. Here, in contrast, both the August 27, 2025 inconsistency determination and the October 6, 2025 determination specify (with citation) which standards the City is applying. In *40 Main Street*, the court also found that the city's inconsistency determination was inadequate because it did not explain how the project was inconsistent with an applicable standard. Here, in contrast, both the August 27, 2025 inconsistency determination and the

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 269 of 344

			October 6, 2025 determination state the standard that applies, the specifications the project proposes, and the reason that the proposed project does not comply with the applicable standard. Accordingly, the City has complied with all applicable legal obligations in processing the Project application.
Delaying approval of housing in the residential zones in favor of development more acceptable in general to residents of the City in the downtown/commercial districts. Following a policy of denying housing on the improper basis that residential lots have or may have circulation, access, and slope issues.			
29	City advised applicant that "there are issues with these lots."	Housing of all types, including housing with yards, and in all parts of San Rafael, is supported by Affirmatively Furthering Fair Housing requirements and Federal Fair Housing law, No Net Loss law, Housing Crisis Act, Housing Element Law	The Challenged Conduct Letter claims, without citation or further explanation, that the City has advised Applicant that "there are issues with these lots." The City is unaware of having made such statement and has not identified such quotation in any of the documents related to the processing of the Project. To the extent that the quoted phrase represents Applicant's own paraphrasing, the August 27, 2025 and October 6, 2025 inconsistency determinations identify "issues with the lots" in that there are inconsistencies between the proposed development on each lot and the objective standards that apply to development on each lot. This comment appears to acknowledge the City's recent housing-related successes related to incentivizing and approving housing development projects in the City, including through the adoption of the Downtown Precise Plan and recent approval of entitlements for projects that would provide approximately 2,554 units of housing in San Rafael area in the near future. These successes demonstrate the City's

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 270 of 344

			commitment to approving housing development projects in order to meet and exceed its RHNA. The City is well aware of its duties and obligations under the Housing Crisis Act and Housing Element Law (including the various no-net-loss rules), of its duty to Affirmatively Further Fair Housing under California law, and of its duties under the federal Fair Housing Act. The City's Major Planning Projects webpage contains an interactive map that shows that the City is reviewing or has approved major housing developments in a variety of locations across the City, not just in downtown/commercial districts. All of these developments provide the amount of outdoor space (i.e., yards) that is legally required. The claim that the City has followed "a policy of denying housing on the improper basis that residential lots have or may have circulation, access, and slope issues" is contradicted by the City's overwhelming pattern of approving housing development projects throughout the City.
It should be noted that it is the applicant's position that the development is subject to Gov't Code Section 65589.5(d)(5).			
			This comment does not allege any improper action or violation of state law by the City. No further response is required.

Case 3:25-cv-04904-LB Document 60 Filed 08/04/26 Page 271 of 344

Attachment B: August 27, 2025 City inconsistency determination on Project

August 27, 2025

Chris Sullivan
River Landon LLC
PO Box 29281
San Francisco, CA 94129
Modconstruct1@gmail.com

Dear Mr. Chris Sullivan:

On May 29, 2024 you submitted a development application (a modified version of application materials submitted on November 9, 2023), pursuant to Government Code Section 65913.4 et seq. ("SB35") (PLAN23-067; PA23-007) (the "Development Application") to the City of San Rafael (City) for a proposed housing development project consisting of 18 primary dwelling units and 11 detached accessory dwelling units on six vacant lots in the City of San Rafael at Assessor's Parcel Number (APN) 011-031-44, 45, 46, 47, 48, & 49 (the "Project").

The City has analyzed the Development Application, pursuant to Government Code section 65913.4(c)(1),[1] for consistency with objective planning standards specified in Government Code section 65913.4(a), including but not limited to City objective zoning standards, objective subdivision standards, and objective design review standards in effect on the date of submittal of the Development Application.

Project Description

The project proposes the construction of 18 primary dwelling units and 11 detached accessory dwelling units on six (6) lots identified as Assessor's Parcel Numbers APNs: 011-031-44, 45, 46, 47, 48, & 49. The application does not appear to propose a subdivision of land but proposes to construct multiple single family residences and detached ADUs on each lot. The project also includes the construction of a driveway across all parcels of various widths (21 feet six inches to 53 feet- eight inches) as well as a secondary access and hammerhead serving the upper units.

[1] This determination has been issued within 60 days of September 30, 2025 pursuant to Government Code section 65913.4(c)(1)(A). Note that because the Application invokes and is filed as an SB 35 development application, the Application may only be deemed submitted as of execution of the AB 168 Enforceable Agreement on June 30, 2025, and was thus not submitted within 180 days of the May 15, 2023 preliminary application. As such, the preliminary application expired and confers no vesting of standards in place at the time of submittal of the preliminary application. All standards identified in this letter, with the exception of the Objective Design Standards set forth in Section 5, were in effect on May 15, 2023 and have not changed or been modified since then. The Objective Design Standards were adopted by the City Council on March 18, 2024.

The project site is comprised of six (6) vacant lots identified as Assessor's Parcel Numbers APNs: 011-031-44, 45, 46, 47, 48, & 49. The project site totals 61,844 sf (1.4 acres) and is designated Low Density Residential by the City of San Rafael General Plan and is zoned R10 with a potential Hillside Overlay. The proposed project is subject to standards in the Hillside Development Overlay District as all six lots have an average slope of over 25 percent (Chapter 14.12.020; Section 14.16.200).

Consistency Review

This consistency review has been conducted based on application materials submitted to date. If the proposed Project, application materials for the Project, or proposal on the Project Site are modified, these changes may result in updates to the City's consistency review determinations and may trigger additional review pursuant to Government Code section 65913.4 subds. (a) and (c)(1)(C).

This consistency determination does not analyze the Project's consistency with post-entitlement permit requirements, including but not limited to standards and regulations applicable to any and all building permits (including but not limited to demolition, grading, foundation, and/or vertical infrastructure building permits). Prior to the issuance of any building permit, the Project must comply with all Sanitary District, Fire Department, Marin Municipal Water Distrct, utility companies', and other relevant local/State/federal agencies' regulations that are directly applicable to the project.

Additionally, as the City has previously notified you, you have failed to reimburse the City for fees related to the processing of the Development Application. These fees must be paid in full.

Determination of Inconsistency.

The Project is inconsistent with multiple City objective zoning standards, objective subdivision standards, and objective design review standards. Additionally, the Project is inconsistent with provisions of State law. These inconsistencies are detailed in this letter. **Because the Project is inconsistent with City standards as well as State law, the City cannot approve the Project as proposed**. However, you are free to resubmit a modified development application, including modified plans and/or additional requests for waivers and/or incentives/concessions under State Density Bonus Laws ("SDBL"). Should you choose to do so, the City will review your resubmitted development application pursuant to Government Code section 65913.4(c)(1) within the timelines set forth in section 65913.4(c)(1)(C).

Should you have any questions, please contact me at Margaret.kavanaugh-lynch@cityofsanrafael.org.

Thank you,

Margaret Kavanaugh-Lynch

Planning Manager
City of San Rafael

Kate Colin, **Mayor** • Maribeth Bushey, **Vice Mayor** • Rachel Kertz, **Councilmember** • Maika Llorens Gulati, **Councilmember** • Eli Hill, **Councilmember**

ATTACHMENTS

1. Planning Division Consistency Review Comments
2. Housing Division Consistency Review Comments
3. Fire Department Consistency Review Comments
4. Department of Public Works Consistency Review Comments

Attachment 1: Planning Division Consistency Determinations

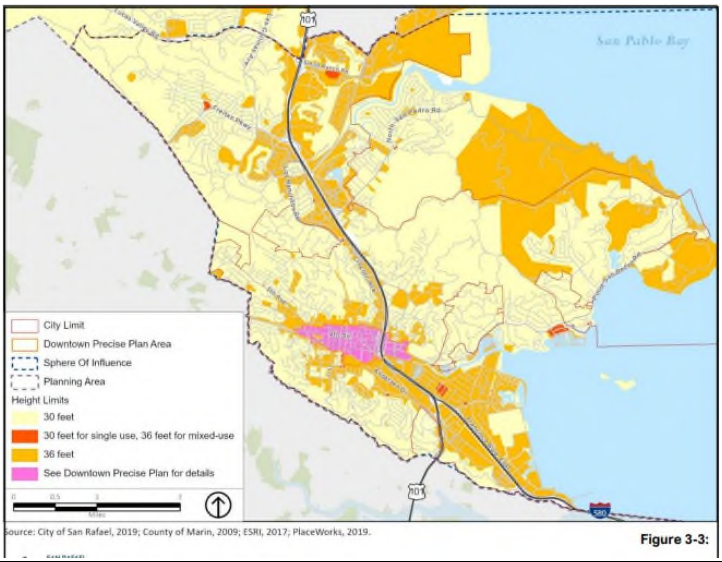
1. Inconsistency with Government Code 65913.4(a).

The Project is ineligible for the streamlined ministerial approval process set forth in Government Code section 65913.4 et seq. ("SB 35") because the project is not a "multifamily housing development" (see Gov. Code § 65913.4(a)(1).) Pursuant to San Rafael Municipal Code section 14.03.030 – Definitions, multifamily residential development means "medium and high density residential development containing three (3) or more attached dwelling units in one (1) or more structures located on a single parcel or common lot." The Project proposes multiple, detached, independent single family dwellings per single family lot and does not constitute a multifamily housing development pursuant to either SB 35 or the San Rafael Municipal Code.

2. Inconsistency with City of San Rafael General Plan

The Project site and each parcel within the Project site has a General Plan designation of Low Density Residential. The Project is inconsistent with various Low Density Residential development standards.

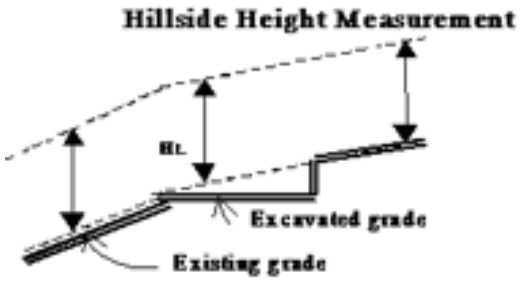
Table 1.1 City of San Rafael General Plan	
Low Density Residential Density (General Plan p 3-6;3-10)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard. Applicant has incorrectly calculated density therefore, the project is not consistent with density standards.	Established density standards for the Low Density Residential land use designation are 2.2 to 8.7 units/net acre. Per the City of San Rafael General Plan, density is expressed as the number of housing units permitted on each net acre of land (this is also referred to as "net density.") A net acre of land excludes public and private streets, easements, and areas that are considered "unbuildable" due to natural constraints such as wetlands and steep slopes. Areas that are used for facilities serving residents of the development (including recreational features such as swimming pools and private playgrounds) driveways and accessways, parking lots, and parcels developed with housing are considered "developable" and are included in net acreage and the net density calculation (General Plan Page 3-6). The applicant has calculated the base density using gross density and has not excluded easements and other undevelopable areas. While it is unclear from the application materials what the net acreage of the site is (after excluding roadways, easements, and undevelopable steep slopes), the net density would be even greater than the gross density, which already exceeds the permissible net density. The City needs calculations of net density in order to verify the base project; however, given that gross densities are typically 20 to 30 percent lower than net densities, the proposed density for the base project likely exceeds the density standard established by the General Plan. The City is unable to analyze consistency with net density at this time and needs more information, including a Preliminary Title Report, that includes easement information. Please provide calculations for

	areas of public and private streets, and estimated area of unbuildable land, including land within the creek and drainage setbacks, and areas of geologic instability.
Maximum Height - (General Plan p. 3-25)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation. While a waiver pursuant to the SDBL, has been sought to exceed height standards, it does not appear height standards would physically preclude the construction of the Project at the proposed density (see Gov. Code § 65915(e)(1).)	The General Plan limits height on the site to 30 feet tall. All primary dwellings exceed 30 feet in height.  Figure 3-3:
Parking and Driveways (General Plan Policy CDP-4.9)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation.	Parking is required to be screened from the street by landscaping. Plans do not show screening of parking.

3. Inconsistency with City of San Rafael Zoning Code (Title 14)

The project site is zoned R10 with a potential Hillside Overlay. The proposed project is subject to standards in the Hillside Development Overlay District as all existing lots have an average slope exceeding 25 percent, with existing average slopes ranging from 44.5 to 47.3 percent (SRMC Chapter 14.12.020 and SRMC Section 14.16.200). The Project is not consistent with several standards contained in the City of San Rafael Zoning Code.

Table 1.2	
Base District Regulations (Chapter 14.04)	
Single-Family Residential District Purpose (Section 14.04.010.H - Specific purposes)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation. A waiver pursuant to the SDBL, has been sought to exceed the maximum "unit count."	The R-10 single-family zoning district allows for detached single-family residential developments, which by definition means "low density residential development containing **one (1)** primary residential "dwelling unit" for use by a single household on a single parcel." (SRMC § 14.03.030). The project proposes to construct three (3) single family residences and additional ADUs on each lot. Because the Proposes multiple single family dwellings per lot, the Project is inconsistent with this standard. Additionally, the Project proposes residential uses that are not allowed uses per Table 14.04.020. Per Table 14.04.020, uses that are not included in the land use table are not allowed. SRMC Section 14.030.030 (Definitions): "Residential, single-family" means low density residential development containing one (1) primary residential "dwelling unit" for use by a single household on a single parcel. This definition includes use of a single-family dwelling and/or accessory dwelling unit as a household for "transitional housing" or "supportive housing" as defined under the California Health and Safety Code. "Residential, duplex" means one (1) structure on a single lot containing two (2) dwelling units, each of which is functionally separate from the other. This definition includes use of a duplex unit(s) as a household for "transitional housing" and "supportive housing" as defined under the State Health and Safety Code. "Residential, multifamily" means medium and high density residential development, including a "transitional housing development" or "supportive housing" as defined under State Health and Safety Code Section 50675.2 (and subsequent amendments), containing three (3) or more attached dwelling units in one (1) or more structures located

	on a single parcel or common lot.
Density (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation.	The R10 zoning district allows a maximum of 1 unit per 10,000 sf. The project proposes 3 units per 10,000 sf and therefore exceeds this standard.
Setbacks (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation. However, an incentive/concession pursuant to the SDBL, has been sought to exceed this standard.	The R10 zoning district requires a minimum side yard setback of 10 feet. All lots propose development with side yard setbacks of approximately 4 feet. The R10 zoning district requires a minimum rear yard setback of 10 feet. All lots have rear yard setbacks of approximately 2.5 feet. The R10 zoning district requires a minimum front yard setback of 20 feet. All lots propose development with front yard setbacks of approximately 2.5 to 9 feet 11 inches.
Height (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard. While a waiver pursuant to the SDBL, has been sought to exceed height standards, it does not appear height standards would physically preclude the construction of the Project at the proposed density (see Gov. Code § 65915(e)(1).)	The R 10 zoning district requires a maximum height of 30 feet tall. (General Plan p. 3-25.) All primary units appear to exceed 30 feet in height, although insufficient information has been provided in plans to verify the proposed height using the formula required for lots in the Hillside Overlay District, "Hillside Lots". SRMC Section 14.03.030 (Definitions) defines height as: "Height, hillside" means the height of all structures, fences and walls measured vertically from the existing (e.g., natural) grade to the uppermost point of the roof edge, wall parapet, mansard or other feature above the existing grade at any given point. See illustration below.  **Height of Proposed Structures.**

<table>
<tr><td></td><td></td></tr>
<tr><td colspan="2">Maximum Lot Coverage (14.04.030 - Property development standards (R))</td></tr>
<tr><td>Consistency Review</td><td>Consideration Factors and Notes</td></tr>
<tr><td>The Project consistent with this development regulation. However, an incentive/concession pursuant to the SDBL, has been sought to exceed this standard.</td><td>Maximum lot coverage for the R10 zoning district is 40 percent of the size of the lot, which varies for each lot. Lot coverage is defined as:

"Lot coverage" means that portion of the lot covered by buildings, including stairways; covered walkways; covered patios; covered parking structures; covered decks or uncovered decks over thirty inches (30") in height; and detached recreational and storage structures that are greater than one hundred (120) square feet in size. Lot coverage excludes residential fences, ground level landscaped areas, walkways and paved areas, uncovered patios and decks thirty inches (30") or less in height, uncovered recreational and uncovered parking and driveway areas, detached garden sheds, tool sheds, playhouses and similar detached accessory structures that do not require a building permit and are not greater than one hundred twenty (120) square feet in size and no taller than eight feet (8') in height, and portions of structures that are located below grade.

Maximum Lot Coverage and Upper Story
<table>
<tr><th>APN</th><th>LOT SF[1]</th><th>Max Lot Coverage</th><th>Proposed Coverage[1]</th></tr>
<tr><td>011-031-44</td><td>10,952</td><td>4,380.8</td><td>5498</td></tr>
<tr><td>011-031-45</td><td>10,575</td><td>4,230</td><td>5498</td></tr>
<tr><td>011-031-46</td><td>10,159</td><td>4,063.6</td><td>5498</td></tr>
<tr><td>011-031-47</td><td>10,255</td><td>4,102</td><td>5498</td></tr>
<tr><td>011-031-48</td><td>10,159</td><td>4,063</td><td>5498</td></tr>
<tr><td>011-031-49</td><td>10,064</td><td>4,025.6</td><td>5498</td></tr>
</table></td></tr>
<tr><td colspan="2">Maximum Upper Story (14.04.030 - Property development standards (R))</td></tr>
<tr><td>Consistency Review</td><td>Consideration Factors and Notes</td></tr>
</table>

<table>
<tr><td>The Project is not consistent with this development regulation.</td><td>The maximum size of upper story development in the R10 zoning district is limited to 75 percent of the lot coverage standard.

<table><tr><th>APN</th><th>LOT SF</th><th>Max Upper Story</th><th>Proposed Upper Story</th></tr><tr><td>011-031-44</td><td>10,952</td><td>3,285.6</td><td>5,853</td></tr><tr><td>011-031-45</td><td>10,575</td><td>3,172</td><td>5,853</td></tr><tr><td>011-031-46</td><td>10,159</td><td>3,047.72</td><td>5,853</td></tr><tr><td>011-031-47</td><td>10,255</td><td>3,076.5</td><td>5,853</td></tr><tr><td>011-031-48</td><td>10,159</td><td>3,047.72</td><td>5,853</td></tr><tr><td>011-031-49</td><td>10,064</td><td>3,019.2</td><td>5,853</td></tr></table></td></tr>
<tr><td colspan="2">Accessory Dwelling Units (14.16.285)</td></tr>
<tr><td>Consistency Review</td><td>Consideration Factors and Notes</td></tr>
<tr><td>The Project is not consistent with this development regulation.</td><td>No more than one detached new construction ADU is permitted on lots with an existing or proposed single-family dwelling (see Gov. Code, § 66323, subd. (a)(2) and San Rafael Municipal Code § 14.16.285(E)(2).) The Project proposes more than one detached new construction ADU on five of the six existing lots and is therefore inconsistent with both San Rafael and State laws regarding the maximum number of detached ADUs.</td></tr>
</table>

<table>
<tr><th colspan="2">Hillside Development Overlay District (Chapter 14.12)</th></tr>
<tr><th colspan="2">Building Stepback - 14.12.030 - Property development standards (-H)</th></tr>
<tr><td>Consistency Review</td><td>Consideration Factors and Notes</td></tr>
<tr><td>The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.</td><td>Per San Rafael Municipal Code Section 14.12.030:

On non-downhill slope, walls facing front and side property lines shall have a twenty-foot (20′) height limit measured from existing grade shall be observed within all areas within fifteen feet (15′) of the maximum building envelope limit. To allow for design flexibility on non-downhill slopes, an encroachment into the street front, street side and interior side stepback is permitted along twenty-five percent (25%) of the building length.

The proposed plans do not specify the required stepbacks, making it unclear whether compliance can be confirmed without supporting calculations. Certain portions of the proposed residence appear to exceed the stepback requirement; however, it is undetermined whether this exceeds the allowable 25% threshold.</td></tr>
<tr><th colspan="2">Building Setbacks 14.12.030 - Property development standards (-H)</th></tr>
<tr><td>Consistency Review</td><td>Consideration Factors and Notes</td></tr>
<tr><td>The Project is not consistent with this standard. However, an incentive/concession pursuant to the SDBL, has been sought to exceed this standard.</td><td>Structures may encroach into a required yard or setback for a distance of not more than one-half (½) of the required yard or setback provided that the decrease minimizes the impact of hillside development and grading, subject to approval by the hearing body of an environmental and design review permit. If such a reduction is granted, a compensating increase in setback is required in the opposing setback, i.e., a five-foot reduction in a front yard setback would increase the rear yard setback by five feet (5').. The setbacks shown on the plans illustrate that this development standard is not met on any parcel.</td></tr>
<tr><th colspan="2">Natural State - 14.12.030 - Property development standards (-H)</th></tr>
<tr><td>Consistency Review</td><td>Consideration Factors and Notes</td></tr>
<tr><td>The Project is not consistent with this standard. However, a waiver pursuant to the SDBL, has been sought to exceed this standard.</td><td>Natural state" means all portions of lots that remain undeveloped and undisturbed. Grading, excavating, filling and/or the construction roadways, driveways, parking areas and structures are prohibited. All six lots exceed natural state requirements. The proposed plans do not accurately illustrate the required and proposed natural state requirements; however, estimates using only the estimated lot coverage by the City of San Rafael indicate all lots exceed this standard.

Average Slope and Natural State Requirements
<table>
<tr><th>APN</th><th>Size</th><th>AVERAGE SLOPE%</th><th>MIN NATURAL STATE REQUIREMENT</th><th>PROPOSED NATURAL STATE</th></tr>
<tr><td>011-031-44</td><td>10,952sf</td><td>44.09</td><td>69.09%</td><td>5498sq.ft of lot coverage= 50.20%
49.8% Natural State</td></tr>
</table></td></tr>
</table>

	011-031-45	10,575 sf	44.09	69.09%	5498sq.ft of lot coverage= 51.99 = **48.01% Natural State**
	011-031-46	10,159 sf	43.21	68.21%	5,498sq.ft of lot coverage= 54.12% **48.88% Natural State**
	011-031-47	10,255 sf	43.21	68.21%	5,498sq.ft of lot coverage=54.12% **48.88% Natural State**
	011-031-48	10,159 sf	43.00	68%	5,498sq.ft of lot coverage= 54.12% **45.88% Natural State**
	011-031-49	10,064 sf	42.00	67%	5,498sq.ft of lot coverage= 54.63% **45.37% Natural State**

Gross Building Square Footage - 14.12.030 - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard. A waiver pursuant to the SDBL, has been sought to exceed "Floor Area" standards.	The maximum permitted gross building square footage of all structures (including garages and accessory structures over 120 sf is limited to 2,500 sf plus 10 percent of the lot area, with the maximum gross square footage set at 6,500 sf. All lots exceed this standard.

Parking Requirements - 14.12.030 - Property development standards (-H) and Parking Requirements - Section 14.18.040	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard. A waiver or incentive/concession pursuant to the SDBL, has been sought to exceed "parking spaces" standards. However, the Development	Single-family residential developments must provide two covered spaces per unit. (SRMC Table 14.18.040.) Additionally, on streets less than twenty-six feet (26') wide, a minimum of two (2) additional on-site parking spaces must be provided (not on the driveway apron). (SRMC Ch. 14.12.030(F).) Department of Public Works and the Fire Department have indicated that additional information is required to determine if the proposed roads comply with both Fire and Building code. As the floor plans for the primary structure are not specific to each proposed location, it is not possible to determine based on the plan set provided if each unit has any covered parking. Further, the parking plans provided are not sufficient to determine the exact location of the spaces related to the dwelling units, so it is not possible to determine if the additional uncovered parking requirements are met for each site.

Application does not identify whether a waiver or an incentive/concession will be sought for this standard.	
Streets and Driveways - 14.12.030 - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	New streets and driveway grades shall not exceed 18 percent unless an exception has been granted by the hearing body and the design has been recommended by the public works director and fire marshal to allow a driveway or street slope up to a maximum 25 percent. The project plans do not appear to indicate the proposed slope and therefore consistency cannot be determined at this time.
Site and Use Regulations (Chapter 14.16)	
Affordable Housing - Section 14.16.030	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Pursuant to San Rafael Municipal Code Section 14.16.030, residential development projects must provide affordable housing units as described in the policies and procedures specified in the San Rafael City Council's Guidelines for the Administration of the Affordable Housing Trust Fund (Resolution 14890). Affordable housing units must be dispersed throughout the residential development project and must be of a similar mix and type to that of the residential development project as a whole, including, but not limited to (1) the same or substantially similar mix of unit size (e.g., number of bedrooms, square footage) and (2) compatible with the design, materials, amenities, and appearance of the other developed units. (Resolution 14890, Section C.) The Project does not clearly detail how it would meet the City's affordable housing requirements and consistency cannot be determined at this time.
Fences and Walls Section 14.16.140	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Fences located within the front and streetside setbacks may be 4 feet tall while fences not exceeding seven feet (7') in height may be located within the required rear yard or interior side yard. Retaining walls not exceeding a height of four feet (4') in height may be located within the required rear yard and interior side yard. (SRMC Ch. 14.16.140.) Compliance with fence standards cannot be determined at this time.
Swimming pools, hot tubs, and other mechanical equipment Section 14.16.320	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to	If a pump or filter or any similar mechanical equipment, including new but not limited to transformers for electric vehicle charging stations and wind energy systems, is located within fifteen feet (15') of any bedroom window on an adjacent lot, a three (3) sided solid enclosure with baffles

enable the City to analyze this standard; therefore the Project is not consistent with this standard.	to screen the equipment from the bedroom, or equally effective measure(s), shall be provided to reduce noise impact. Sound attenuation shall be provided around mechanical equipment to ensure that any mechanical noise that is perceptible at the property line (and generally measured in direct line of sight of the equipment) is attenuated to the maximum extent practicable and that daytime/nighttime thresholds established under SRMC Table 8.13-1 for the applicable zoning district are not exceeded.
Water-efficient landscape Section 14.16.370	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Landscape and irrigation improvements are required to comply with water-efficient landscape requirements and to monitor water usage for irrigation, as mandated under California Government Code Section 65595(c). For the purpose of administering this state mandate, the City of San Rafael hereby adopts by reference, the Marin Municipal Water District (MMWD) Ordinance (Water Conservation), as adopted and periodically amended. The Project does not clearly detail how it would meet these requirements and consistency cannot be determined at this time.
Parking Space Dimensions - Section 14.18.100	
Consideration Factors and Notes	
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard. A waiver or incentive/concession pursuant to the SDBL, has been sought to exceed “parking spaces” standards. However, the Development Application does not identify whether a waiver or an incentive/concession will be sought for this standard.	This section specifies parking space dimensions for standard and compact parking stalls. While some dimensions are provided, additional information is needed to verify compliance.
Access to the Public Right-of-Way - Section 14.18.140	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to	Subsection (A) of this section requires driveways serving residential uses with less than 6 vehicle parking spaces to be a minimum of 10 feet wide. Subsection (C) of this section specifies that driveway grades are subject

enable the City to analyze this standard; therefore the Project is not consistent with this standard.	to review and determination by the city engineer, noting that the maximum driveway grade typically allowed is eighteen percent (18%*). While some dimensions are provided, additional information is needed to verify compliance. * This standard is further refined in the Hillside Development Section, noted above.
Environmental and Design Review Permits (Chapter 14.25)	
Review Criteria – Section 14.25.050	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	**Utility Service.** Utility connections shall be installed underground. Proposed method of sanitary sewage disposal for all buildings shall be indicated. Refuse collection areas shall be screened and located in areas convenient both to users and to persons who make collections. There shall be adequate ingress and egress to all utilities. (Note: Recycling facilities must meet Standard of Resolution 93-57.) Additional information is needed to verify compliance.
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	**Walls, Fences, and Screening.** Walls, fences and screening shall be used to screen parking and loading areas, refuse collection areas and mechanical equipment from view. Screening of mechanical equipment shall be designed as an integrated architectural component of the building and the landscape. Utility meters and transformers shall be incorporated into the overall project design. Additional information is needed to verify compliance.

4. City of San Rafael Hillside Design Guidelines

Because the proposed project is subject to the Hillside Development Overlay District of the SRMC, it is also subject to the Design Guidelines Applicable to All Hillside Residential Development Projects. Table 1.3 below evaluates the Project for consistency with the Hillside Design Guidelines.

Table 1.3	
Design Guidelines Applicable to All Hillside Residential Development Projects	
IV.A2. Preservation of Significant Trees	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines defines significant trees as “any tree which is in good health and form and is more than 12 inches in diameter as measured 4 feet-6 inches above the root crown” and “any tree of the Quercus (OAK) genus which is in good health and form and is more than 6 inches in diameter as measured 4 feet-6 inches above the root crown." When a significant tree is removed, it shall be replaced at a ratio of 3 new trees for every tree removed at a minimum size of 15 gallon. The plans do not clearly indicate the location, type, proposed removal, or

	proposed replanting of trees as a result of the proposed project and as such, additional information is needed to verify compliance with this objective design standard.
IV.A5. Street Layout, Driveway and Parking Design	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines establishes that driveway grades may be a maximum of 18%. This section of the Design Guidelines also requires that parking landings shall be required on all driveways over 10% grade. While some dimensions are provided, additional information is needed to verify consistency with this standard.
IV.A7. Hillside Architectural Character	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines establishes that fences and walls over 3 feet in height facing a public street provide a fully landscaped buffer at least 5 feet deep. Additionally, this section establishes that retaining walls associated with lots are limited to: • 4 feet in height for retaining walls upslope from the structure • 3 feet in height for retaining walls downslope from the structure • 3 feet in height for terraced retaining walls • 4 feet for freestanding walls along the front yard • 4 feet for walls at the base of slopes along roadways There is no information about proposed fences or walls and as such, additional information is needed to verify compliance.
IV. A9. Site Lighting	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines establishes that any overhead lighting for residential parking areas must be mounted at a maximum of 15 feet, and lighting for pedestrian areas must be 8 feet or less. No lighting information is provided and as such, additional information is needed to verify compliance.

5. City of San Rafael Objective Design Standards (ODS)

The San Rafael Objective Standards apply to all residential projects. Table 1.4 evaluates the Project for consistency with the ODS and includes additional consideration factors and notes for context.

Table 1.4
Objective Design Standards

1. Site Planning and Layout (Building Orientation)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires buildings adjacent to a public street or alley to design primary building entrances to face the public street or alley. There is not enough information provided to verify if primary building entrances are designed to face Coleman Drive, a public street. The residences appear to face Coleman Drive, but the exact location of individual building entrances is not clearly shown on the Plans. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Windows and Privacy)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires windows that are within 10 feet vertically or horizontally of facing residential bedroom windows or private open space of existing residences to have an opaque or translucent glazing at or below 5 feet above finished floor or be offset a minimum of 5 feet horizontally (as measured by nearest edge of existing facing window). The project is abutting existing residential development to the north, south, and west. The plans do not include enough information to determine whether new residences are within 10 feet vertically or horizontally of facing residential bedroom windows or private open space of existing residences. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Ensure Adequate Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires screening between new residential development and adjacent existing residential uses to obscure direct sight lines between private yards. Such screening shall consist of a continuous view-obscuring wood fence, masonry wall, or an irrigated and maintained evergreen hedge, not less than four feet in height, and not more than six feet in height, which may be broken only for access driveways and walkways. The width of screens consisting of evergreen hedges shall be at least 40% of their height. The project is adjacent to existing residential uses. The plans do not show if and/or how the project will incorporate screening between the proposed and existing residences. This section of the ODS also requires trash and refuse collection and disposal facilities to be enclosed by a solid fence or hedge that is no lower than the facilities themselves, and requires these facilities to be covered. The plans do not provide details regarding the location of refuse bins. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Ground Level Utility Location and Utility Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not	This section of the ODS requires back flow preventers, transformers,

submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	and other utilities to be out of sight either in sidewalk vaults or screened from view with either architecture or landscaping. Utility transformers or boxes are required to be underground or, if not allowed by PG&E, screened and not visible from the public right of way. There is not enough information to determine whether the project includes ground level utilities. If the project includes and/or requires such utilities, the location shall be shown on a utility plan and shall demonstrate screening in compliance with this standard.
1. Site Planning and Layout (Parking Garage)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires any parking visible from the public right-of-way to be screened by continuous landscaping, or other architectural features. There is not enough information to verify whether parking will be screened by continuous landscaping or other architectural features.
2. Building Design and Architecture (Trim Requirements)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	The section of the ODS requires stucco foam trim to be limited to one element of trim detail and shall not be used as the sole trim molding material. The plans do not include materials information and as such, additional information is needed to verify compliance.
2. Building Design and Architecture (Colors and Reflective Materials)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS sets forth the following related to colors and materials: 1. Facades shall include between 2 and 4 colors. One color shall be the 'main color' and be used on no less than 70% of the non- glazed area of a building's façade. The other colors shall be defined each as an 'accent color' each of which shall not be used on more than 30% of the non-glazed area of a building's façade 2. Buildings shall include the same colors and materials on all elevations. At least one accent color is required to appear on all elevations. 3. "Gloss" paint finishes shall not be used for a building's main color but may be used for accent colors and on trim. The highest sheen that may be used for a main color is semi-gloss. 4. The main color shall have a light reflective value of between 20% and 80%. Trim and accent colors may use colors of any light reflective value. 5. Fluorescent, iridescent, or metallic paints are prohibited. 6. Metal seam or other metal roofing, if used, shall be anodized, fluoro-coated, or painted with a non-gloss and non-glare finish. Copper and lead roofs shall be natural or pre-oxidized. 7. Any colors used on stucco walls shall be incorporated into the stucco mixture as an integral color.

	The plans do not include colors and materials information and as such, additional information is needed to verify compliance.
2. Building Design and Architecture (Blank Walls)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires All building walls to have a minimum 15% transparency on each floor. Ground floors without a lobby shall exhibit a variegated façade with changes in transparencies and materials so that no one form represents more than 75% of the surface area. The plans do not include enough information to verify consistency with this standard.
2. Building Design and Architecture (Rooftop Utility Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires all mechanical equipment to be screened and shall not project above its enclosure. Roof-mounted mechanical equipment shall be screened from public view by a parapet wall, decorative equipment screen, or other architectural treatment. The point of view for determining visibility shall be five feet above grade at a distance of 200 feet from any point of the structure at ground level. Additional information regarding the location and screening of utility equipment is needed to verify consistency with this standard.
3. Open Space and Landscape (Useable Outdoor Space)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires the project to provide a minimum of 100 square feet of useable open space per dwelling unit and specifies objective standards related to accessibility, unit assignment, dimensions, balconies, slope, landscaping, and amenities of these useable open space areas. Additional information regarding useable open spaces is needed to verify consistency with this standard.
4. Lighting (Light and Glare)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires exterior lights to have a minimum ground level illumination of 1 foot-candle at doorways and entryways. Elsewhere, exterior lights are required to have a maximum ground level illumination of ½ foot-candle. Additionally, this section requires all lighting sources to be shielded from view from the public right of way and from neighboring properties and specifies that exterior lights: • shall produce no indirect light extending 5 ft. beyond a property line • shall not be placed higher than the height of the principal structure. • shall have a maximum angle of direct illumination of 60 degrees if placed more than 6 ft high. • shall be rated for 4500 Kelvins or fewer. No lighting information was provided and as such, additional information is needed to verify consistency with this standard.

Attachment 2: Housing Division Consistency Review Comments

Table 2.1 below evaluates the Project for consistency with the City's affordable housing requirements (SRMC Section 14.16.030 and Resolution 14890) and includes additional consideration factors and notes for context.

Table 2.1	
SRMC Section 14.16.030 and City Council Resolution 14890	
Location. Affordable housing units shall be dispersed throughout the residential development project. Units may be clustered within the residential project when the city determines that such clustering furthers affordable housing opportunities and where such clustering is consistent with Federal and State fair housing laws. (Section C of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	No information or material was submitted to show compliance with Section C of Resolution 14890. Because the plans submitted do not show the location of the affordable units, consistency cannot be confirmed.
Size. The affordable housing units shall be comparable in size to the market-rate units within the residential development project, as measured by net habitable square footage. For purposes of this provision, "comparable size" means having habitable square footage proportionate to the range of unit sizes provided for market-rate units in the project. (Section C(1) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	No information or material was submitted to show compliance with Section C(1) of Resolution 14890. Because the submittal does not indicate which units are affordable units, consistency cannot be confirmed.
Type. The affordable housing units shall possess a distribution of bedroom counts proportionate to that of the market-rate units within the residential development project. (Section C(1) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this	No information or material was submitted to show compliance with Section C(1) of Resolution 14890. Because the submittal does not

standard; therefore the Project is not consistent with this standard.	indicate which units are affordable units, consistency cannot be confirmed.
Design and Materials. The exterior and interior design of the affordable housing units shall be of the same design, materials, amenities, quality of finish, and appearance of the other developed units. (Section C(2) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	No information or material was submitted to show compliance with Section C(2) of Resolution 14890, so consistency cannot be confirmed.
Access. The affordable housing units shall have access to the same amenities and common spaces as the market rate units. (Section C(2) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	No information or material was submitted to show compliance with Section C(2) of Resolution 14890, so consistency cannot be confirmed.
Tenure. The affordable housing units shall have the same tenure mix (e.g., rental or ownership) as the residential development project as a whole. If the Developer offers some or all market-rate units for sale, an equivalent proportion of affordable housing units shall also be offered for sale.	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	No information or material was submitted to show compliance with Section C of Resolution 14890, so consistency cannot be confirmed.

Attachment 3: Fire Department Consistency Review Comments

Table 5.1	
Fire Regulations	
Fire Apparatus Access Roads – SRMC Chapter 4. 2022 California Fire Code Section 503, Appendix D, and all applicable National Fire Protection Standards.	
Consistency Review	Consideration Factors and Notes
The project is not consistent with this development regulation.	The current plans do not clearly demonstrate compliance with the provisions of these sections of the code.
Fire Flow for Fire Hydrants and fire sprinkler systems - SRMC Chapter 4. 2022 California Fire Code sections 507, Appendix BB, Appendix C, Appendix CC, and all applicable National Fire Protection Association standards.	
Consistency Review	Consideration Factors and Notes
The project is not consistent with this development regulation.	The current plans do not clearly demonstrate compliance with the provisions of these sections of the code.

Attachment 4: Department of Public Works Review Comments

Chapter 15.06.020 - Utilities and Services	
Consistency Review	**Consideration Factors and Notes**
The project is inconsistent with this standard.	The Project does not appear to be served by the following utilities: water, wastewater and sewage, gas and electric, communication services.

Section 15.06.050(h) – Street classification requirements	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard.	The plans do not show that the private street meets all public street standards for road pavement and right of way width.

9.30.151 - Land development standards for permanent stormwater controls for new and redevelopments.

Where required by the Phase II Stormwater Permit Provision E.12, or where required by the nature and extent of a proposed project and where deemed appropriate by the agency, every applicant shall develop, submit and implement a Stormwater Control Plan (SCP) as described in the section.

Consistency Review	**Consideration Factors and Notes**	**Requested / Recommended Action**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard.	This project creates or replace more than 5,000 square feet of impervious area and therefore will be considered a regulated project. A stormwater control plan is required by the Phase II Stormwater Permit Provision E.12.	Prepare a storm water control plan in accordance with section 9.30.151 of the municipal code.

Section 15.06.050(g) – Hillside Streets	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	The plans show a new street transversing the 6 Project parcels. There is no indication whether this street is public or private. Therefore, the Project is inconsistent with standards required for streets development in hillside areas where property slopes are over 25% and standards that all new streets in hillside areas comply with Section 15.07.030.

Section 15.06.070 - General design conditions for streets	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	The plans show a new street traversing the 6 Project parcels so it is subject the general design conditions for streets. There is insufficient grade and curve radius data to verify consistency with this section.

Section 15.06.080 - Sidewalks and walkways	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	The plans show a new street traversing the 6 Project parcels. There is insufficient information to determine if there is a sidewalk or walkway incorporated into the roadway to determine consistency with this standard.

Section 15.06.080 - Sidewalks and walkways	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	The plans show a new street traversing the 6 Project parcels. There is insufficient information to determine if there is a sidewalk or walkway incorporated into the roadway to determine consistency with this standard.

Section 15.06.080 - Sidewalks and walkways	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	The plans show a new street traversing the 6 Project parcels. There is insufficient information to determine if there is a sidewalk or walkway incorporated into the roadway to determine consistency with this standard.

Section 15.06.110 - Grading and drainage

Consistency Review	Consideration Factors and Notes
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	Plans lack sufficient grading information to determine if grading slopes do not exceed 2:1 or how tall any proposed retaining walls are.

Section 15.06.120 - Fire protection measures	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	The plans lack sufficient information to conclude that fire hydrant requirements are met.

Section 15.06.130 - Undergrounding of utilities	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	The plans do not clearly show the proposed utilities serving the project.

Section 15.07.020 - Lot design standards	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is inconsistent with this standard	The project is developing on hillside lots with slopes over 25%. The lots do not appear to meet the average lot width requirements provided in section 15.07.020B.

Section 14.18.130 - Parking facility dimensions and design	
Consistency Review	**Consideration Factors and Notes**

The Development Application contains insufficient information to analyze consistency with this standard and therefore additional information is required.	The plans do not clearly dimension the on-site roadway, which also serves as a drive aisle for parked vehicles to backup.

The following additional courtesy comments are provided:

1. While this determination does not analyze consistency with post-entitlement requirements such as the California Building Code, as stated previously, no building permits will be issued if the Project is inconsistent with such post-entitlement standards and requirements. Please be advised of the following:
   a. The 2022 California Residential Code (CRC) **SECTION R311- MEANS OF EGRESS** applies:
      i. **R311.1 Means of egress**. Dwellings shall be provided with a means of egress in accordance with this section. The means of egress shall provide a continuous and unobstructed path of vertical and horizontal egress travel from all portions of the dwelling to the required egress door without requiring travel through a garage. **The required egress door shall open directly into a public right of way or to a yard or court that opens to a public way.**
   b. The 2022 California Building Code (CBC) **SECTION 1029 - EGRESS COURTS** applies:
      i. **1029.2 Width or capacity.** The required capacity of egress courts shall be determined as specified in Section 1005.1, but the minimum width shall be not less than 44 inches (1118mm), except as specified herein. **Egress courts serving Group R-3 and U occupancies shall not be less than 36 inches (914mm) in width.** The required capacity and width of egress courts shall be unobstructed to a height of 7 feet (2134mm). The width of the egress court shall be not less than the required capacity.

   The following frontage/off-site improvements may be required to comply with post-entitlement building, fire, and other standards:

      a. Upgrade Coleman Drive roadway width along project frontage.

      b. Extend new curb and gutter along the project frontage to match existing curb and gutter ending near the proposed driveway approach. Include a minimum 2' wide shoulder width from the toe of the hill or wall to the back of the new curb.

      c. Install a culvert or concrete valley gutter at the driveway approach to allow uphill water on the roadside to travel past the driveway approach.

      d. Remove and replace the existing sand bag retaining wall along the project frontage with a new wall to support the proposed driveway and improvements.

      e. Install underground storm drain piping and catch basins as necessary to convey uphill water to the existing catch basin at the toe of Parcel 011-

031-049 (south-east project limit). Consider installing a catch basin on the uphill side of the new common driveway approach to limit water conveyed across the driveway approach.

f. Pavement restoration along project frontage. Asphalt grind and overlay shall have a minimum thickness of 2 inches.

2. Mass grading and earthwork operations shall occur between April 15 and October 15 unless approved otherwise by DPW.

3. A construction management plan should be submitted for City review prior to issuance of building permit. The project site is on a steep slope with minimal level area for set up and storage, construction staging will be required to be onsite unless negotiated otherwise with DPW.

4. An encroachment permit and grading permit will be required from the DPW prior to construction.

September 28, 2025

River Landon LLC
Glass Homes
PO Box 29281
San Francisco, CA 94129
Via Email: modconstruct1@gmail.com

Dear Sir,

As you know, the original development application for the above referenced project was deemed submitted on June 30, 2025. On August 27, 2025, the City issued written correspondence identifying inconsistencies with objective City zoning, subdivision and design review standards as well as State laws, including SB 35. This letter confirms that the original development application cannot be approved for the preceding reasons, and the City therefore has no duty and declines to approve the original development application pursuant to Government Code section 65913.4(d)(1)(A).

On September 6, 2025 you resubmitted a revised development application. This letter further confirms that the City continues to process the revised development application and is reviewing the resubmittal pursuant to Government Code section 65913.4(c)(1). The City will provide a response on the resubmittal no later than October 6, 2026, pursuant to Government Code section 65913.4(c)(1)(C).

Sincerely,

Margaret Kavanaugh-Lynch

Margaret Kavanaugh-Lynch
Planning Manager

Kate Colin, **Mayor** • Maribeth Bushey, **Vice Mayor** • Eli Hill, **Councilmember** • Rachel Kertz, **Councilmember** • Maika Llorens Gulati, **Councilmember**

Attachment D: October 6, 2025 City inconsistency determination on Alternative Project

October 6, 2025

Chris Sullivan
River Landon LLC
PO Box 29281
San Francisco, CA 94129
Modconstruct1@gmail.com

Dear Mr. Chris Sullivan:

The City of San Rafael has received your revised SB 35 Development Application submitted on September 6, 2025 (PLAN23-067, PA23-007) and proposing an 8-Unit Residential Development with 6 Accessory Dwelling Units (ADUs) located on Coleman and Fair Drive, APNs: 011-031-44, 45, 46, 47, 48, & 49, in the R10 Single-family Residential Zoning District (hereinafter the "Project.").

The City has analyzed the Development Application, pursuant to Government Code section 65913.4(c)(1), for consistency with objective planning standards specified in Government Code section 65913.4(a), including but not limited to City objective zoning standards, objective subdivision standards, and objective design review standards in effect on the date of submittal of the Development Application.

Project Description

The project proposes the construction of an 8-Unit Residential Development with 6 Accessory Dwelling Units (ADUs) on six (6) lots identified as Assessor's Parcel Numbers APNs: 011-031-44, 45, 46, 47, 48, & 49. The application does not appear to propose a subdivision of land but proposes to construct a mix of single detached family residences and detached ADUs on each lot. The project also includes the construction of a driveway across all parcels of various widths (26 feet to 46 feet- ten inches) as well as two hammerheads.

The project site is comprised of six (6) vacant lots identified as Assessor's Parcel Numbers APNs: 011-031-44, 45, 46, 47, 48, & 49. The project site totals 61,844 sf (1.4 acres) and is designated Low Density Residential by the City of San Rafael General Plan and is zoned R10 with a potential Hillside Overlay. The proposed project is subject to standards in the Hillside Development Overlay District as all six lots have an average slope of over 25 percent (Chapter 14.12.020; Section 14.16.200).

Consistency Review

This consistency review has been conducted based on application materials submitted on September 6, 2025. If the proposed Project, application materials for the Project, or proposal on the Project site are modified, these changes may result in updates to the City's consistency review determinations and may trigger additional review pursuant to Government Code section 65913.4 subds. (a) and (c)(1)(C).

This consistency determination does not analyze the Project's consistency with post-entitlement permit requirements, including but not limited to standards and regulations applicable to any and all building permits (including but not limited to demolition, grading, foundation, and/or vertical infrastructure building permits). Prior to the issuance of any building permit, the Project must comply with all Sanitary District, Fire Department, Marin Municipal Water District, utility companies', and other relevant local/State/federal agencies' regulations that are directly applicable to the project.

Additionally, as the City has previously notified you, you have failed to reimburse the City for fees related to the processing of the Development Application. These fees must be paid in full.

Determination of Inconsistency.

The Project is inconsistent with multiple City objective zoning standards, objective subdivision standards, and objective design review standards. Additionally, the Project is inconsistent with provisions of State law. These inconsistencies are detailed in this letter. **Because the Project is inconsistent with City standards as well as State law, the City cannot approve the Project as proposed**. However, you are free to resubmit a modified development application, including modified plans and/or additional requests for waivers and/or incentives/concessions under State Density Bonus Laws ("SDBL"). Should you choose to do so, the City will review your resubmitted development application pursuant to Government Code section 65913.4(c)(1) within the timelines set forth in section 65913.4(c)(1)(C).

Should you have any questions, please contact me at Margaret.kavanaugh-lynch@cityofsanrafael.org.

Thank you,

Margaret Kavanaugh-Lynch

Planning Manager
City of San Rafael

ATTACHMENTS

1. Planning Division Consistency Review Comments
2. Housing Division Consistency Review Comments
3. Fire Department Consistency Review Comments
4. Department of Public Works Consistency Review Comments
5. Courtesy Comments

Attachment 1: Planning Division Consistency Determinations

1. Inconsistency with Government Code 65913.4(a).

The Project is ineligible for the streamlined ministerial approval process set forth in Government Code section 65913.4 et seq. ("SB 35") because the project is not a "multifamily housing development" (see Gov. Code § 65913.4(a)(1).) Pursuant to San Rafael Municipal Code ("SRMC") section 14.03.030 – Definitions, multifamily residential development means "medium and high density residential development [. . .] containing three (3) or more attached dwelling units in one (1) or more structures located on a single parcel or common lot." (SRMC § 14.03.030, "Residential, multifamily.")

Staff notes that the project consists of detached single family dwellings that share a "silver metal screen" that runs between adjacent detached single family dwellings on adjacent, separate lots. The "silver metal screen" is a "fence," as defined by the San Rafael Municipal Code. (SRMC § 14.30.030, "Fence".) This fence that crosses property lines is also used to connect detached accessory dwelling units. This configuration does meet the definition of attached dwelling units on a common parcel or lot pursuant to either SB 35 or the San Rafael Municipal Code.

Instead, the Project contains six lots and each are described separately below:

Lot 011-031-49 consists of a single family dwelling and a detached accessory dwelling unit.

Lot 011-031-48 consists of two detached single family dwellings and a detached accessory dwelling unit.

Lot 011-031-47 consists of a single family dwelling and a detached accessory dwelling unit.

Lot 011-031-46 consists of a single family dwelling and a detached accessory dwelling unit, along with an accessory structure with a pool house.

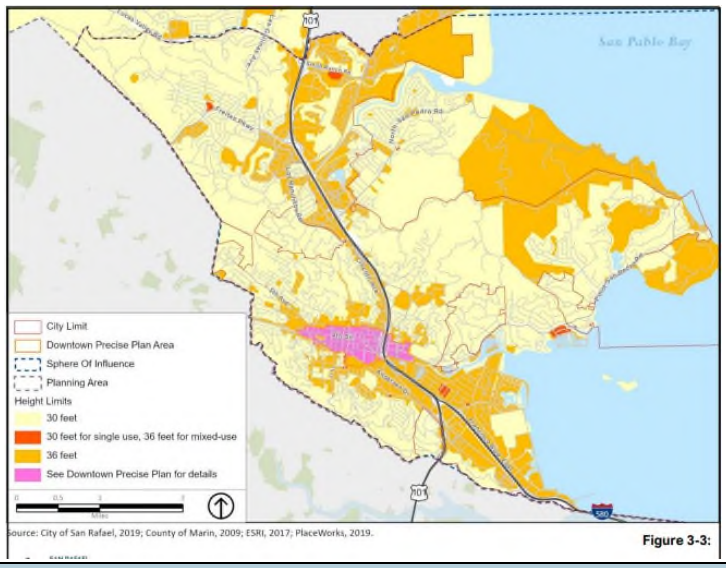
Lot 011-031-45 consists of two detached single family dwellings and a detached accessory dwelling unit.

Lot 011-031-44 consists of a single family dwelling and a detached accessory dwelling unit.

No single parcel contains three or more attached dwelling units, so no parcel contains "multifamily housing."

2. Inconsistency with City of San Rafael General Plan

The Project site and each parcel within the Project site has a General Plan designation of Low Density Residential. The Project is inconsistent with various Low Density Residential development standards.

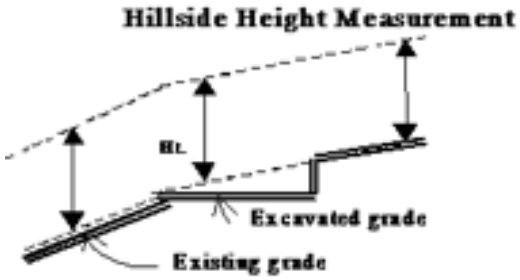
Table 1.1 City of San Rafael General Plan	
Maximum Height - (General Plan p. 3-25)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation. A waiver pursuant to the SDBL has been sought to exceed height standards.	The General Plan limits height on the site to 30 feet tall. All primary dwellings exceed 30 feet in height.  Figure 3-3:
Parking and Driveways (General Plan Policy CDP-4.9)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation.	Parking is required to be screened from the street by landscaping. Plans do not show screening of parking.

3. Inconsistency with City of San Rafael Zoning Code (Title 14)

The project site is zoned R10 with a Hillside Overlay. The proposed project is subject to standards in the Hillside Development Overlay District as all existing lots have an average slope exceeding 25 percent, with existing average slopes ranging from 44.5 to 47.3 percent (SRMC Chapter 14.12.020 and SRMC Section 14.16.200). The Project is not consistent with several standards contained in the City of San Rafael Zoning Code.

Table 1.2

Base District Regulations (Chapter 14.04)	
Single-Family Residential District Purpose (Section 14.04.010.H - Specific purposes; 14.04.020 – Land Use Regulations)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation.	The R-10 single-family zoning district allows for detached single-family residential uses. (SRMC Ch. 14.04.020.) Single-family residential use is defined as "low density residential development containing **one (1)** primary residential 'dwelling unit' for use by a single household on a single parcel." (SRMC § 14.03.030, "Residential, single-family.") The project proposes to construct two (2) primary dwelling units on lot 011-031-45 and lot 011-031-48. Because the Project proposes multiple primary dwelling units on two lots, the Project is inconsistent with this standard. The type of housing proposed (i.e. two primary dwelling units on a single lot) is only allowed in combination with an SB 9 application.
Setbacks (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation. A waiver pursuant to the SDBL has been sought to exceed rear, side, and front setback standards.	The R10 zoning district requires a minimum side yard setback of 10 feet. All lots propose development with side yard setbacks of approximately 4 feet. The R10 zoning district requires a minimum rear yard setback of 10 feet. All lots have rear yard setbacks of approximately 4 feet for the primary dwellings. The R10 zoning district requires a minimum front yard setback of 20 feet. While some of the lots propose development with front yard setbacks of greater than 20 feet, lot 011-031-48 has a front setback of approximately 2.5 feet for a primary dwelling unit.
Height (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard. A waiver pursuant to the SDBL has been sought to exceed height standards.	The R 10 zoning district requires a maximum height of 30 feet tall. (General Plan p. 3-25.) All primary units appear to exceed 30 feet in height, although insufficient information has been provided in plans to verify the proposed height using the formula required for lots in the Hillside Overlay District, "Hillside Lots". SRMC Section 14.03.030 (Definitions) defines height as: "Height, hillside" means the height of all structures, fences and walls measured vertically from the existing (e.g., natural)

	grade to the uppermost point of the roof edge, wall parapet, mansard or other feature above the existing grade at any given point. See illustration below.  **Height of Proposed Structures.**
Maximum Lot Coverage (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	The plan set pages that attempt to illustrate lot coverage do not show the lot lines themselves, therefore staff is not able to confirm the summary calculations provided.
Accessory Dwelling Units (14.16.285)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation.	No more than one detached new construction ADU is permitted on lots with an existing or proposed single-family dwelling (see Gov. Code, § 66323, subd. (a)(2) and San Rafael Municipal Code § 14.16.285(E)(2).) The Project proposes more than one detached new construction ADU on lot 011-031-45 and is therefore inconsistent with both the San Rafael Municipal Code and State laws regarding the maximum number of detached ADUs.
Hillside Development Overlay District (Chapter 14.12)	
Building Stepback - 14.12.030.A - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard. A	Per San Rafael Municipal Code Section 14.12.030: On non-downhill slope, walls facing front and side property lines shall have a twenty-foot (20′) height limit measured from existing grade shall be observed within all areas within fifteen feet (15′) of the maximum building envelope limit. To allow for design flexibility on non-downhill slopes, an encroachment into the street front,

waiver pursuant to the SDBL has been sought to exceed the stepback standards.	street side and interior side stepback is permitted along twenty-five percent (25%) of the building length. The proposed plans do not specify the required stepbacks, making it unclear whether compliance can be confirmed without supporting calculations. Certain portions of the proposed residence appear to exceed the stepback requirement; however, it is undetermined whether this exceeds the allowable 25% threshold.
Building Setbacks - 14.12.030.B - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard.	Structures may encroach into a required yard or setback for a distance of not more than one-half (½) of the required yard or setback provided that the decrease minimizes the impact of hillside development and grading, subject to approval by the hearing body of an environmental and design review permit. If such a reduction is granted, a compensating increase in setback is required in the opposing setback, i.e., a five-foot reduction in a front yard setback would increase the rear yard setback by five feet (5'). The setbacks shown on the plans illustrate that this development standard is not met on any parcel.
Natural State - 14.12.030.C - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard. A waiver pursuant to the SDBL has been sought to exceed this standard.	A minimum area of twenty-five percent (25%) of the lot area plus the percentage figure of average slope must remain in its natural state. "Natural state" means all portions of lots that remain undeveloped and undisturbed. Grading, excavating, filling and/or the construction roadways, driveways, parking areas and structures are prohibited. Here, with average slopes ranging from 44.5 to 47.3 percent, lots must maintain a minimum natural state area of 69.5 to 72.3 percent. The proposed plans do not accurately illustrate the required and proposed natural state requirements; further as the lot lines were removed from the plan set pages that attempt to illustrate the lot coverage, staff is not able to calculate the lot coverage per lot and therefore not able to ascertain consistency with this development standard.

Parking Requirements - 14.12.030 - Property development standards (-H) and Parking Requirements - Section 14.18.040	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Single-family residential developments must provide two covered parking spaces per unit. (SRMC Table 14.18.040.) Additionally, on streets less than twenty-six feet (26') wide, a minimum of two (2) additional on-site parking spaces must be provided (not on the driveway apron). (SRMC Ch. 14.12.030(F).) As the floor plans for the primary structure are not specific to each proposed location, it is not possible to determine based on the plan set provided if each unit has any covered parking. Further, the parking plans provided are not sufficient to determine the exact location of the

	spaces related to the dwelling units, so it is not possible to determine if the additional uncovered parking requirements are met for each site.
Streets and Driveways - 14.12.030 - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	New streets and driveway grades shall not exceed 18 percent unless an exception has been granted by the hearing body and the design has been recommended by the public works director and fire marshal to allow a driveway or street slope up to a maximum 25 percent. The project plans do not appear to indicate the proposed slope and therefore consistency cannot be determined at this time.
Site and Use Regulations (Chapter 14.16)	
Affordable Housing - Section 14.16.030	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard.	Pursuant to San Rafael Municipal Code Section 14.16.030, residential development projects must provide affordable housing units as described in the policies and procedures specified in the San Rafael City Council's Guidelines for the Administration of the Affordable Housing Trust Fund (Resolution 14890). See Table 2.1 below for analysis regarding consistency with such Guidelines.
Fences and Walls Section - 14.16.140	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Fences located within the front and streetside setbacks may be 4 feet tall while fences not exceeding seven feet (7') in height may be located within the required rear yard or interior side yard. Retaining walls not exceeding a height of four feet (4') in height may be located within the required rear yard and interior side yard. (SRMC Ch. 14.16.140.) The plans do not contain enough detail for the City to determine whether the Project complies with the fence standards at this time.
Swimming pools, hot tubs, and other mechanical equipment - Section 14.16.320	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	If a pump or filter or any similar mechanical equipment, including new but not limited to transformers for electric vehicle charging stations and wind energy systems, is located within fifteen feet (15') of any bedroom window on an adjacent lot, a three (3) sided solid enclosure with baffles to screen the equipment from the bedroom, or equally effective measure(s), shall be provided to reduce noise impact. Sound attenuation shall be provided around mechanical equipment to ensure that any mechanical noise that is perceptible at the property line (and generally measured in direct line of sight of the equipment) is attenuated to the maximum extent practicable and that daytime/nighttime thresholds established under SRMC Table 8.13-1 for the applicable zoning district are not exceeded. The plans indicate that the Project will include a pool, but do not contain enough detail to determine whether the Project complies with this standard.
Water-efficient landscape Section 14.16.370	
Consistency Review	Consideration Factors and Notes

The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Any project that proposes new or rehabilitated landscapes which are developer-installed in single-family residential and all other residential developments, regardless of size, where the proposed landscape area is equal to or greater than two thousand five hundred (2,500) square feet must comply with water-efficient landscape requirements and monitor water usage for irrigation. The City has adopted by reference the standards contained in the Marin Municipal Water District (MMWD) Ordinance (Water Conservation). The Project application incorrectly states that these standards are not triggered. Further, the application does not clearly detail how it would meet these requirements, so the City cannot determine at this time whether the Project is consistent with these standards.
Parking Space Dimensions - Section 14.18.100	
Consideration Factors and Notes	
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section specifies parking space dimensions for standard and compact parking stalls. While some dimensions are provided, and the cover pages notes that all spaces are 9 feet by 19 feet, the application does not contain enough information to determine whether all parking spaces additional information is needed to verify compliance.
Access to the Public Right-of-Way - Section 14.18.140	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Subsection (A) of this section requires driveways serving residential uses with less than 6 vehicle parking spaces to be a minimum of 10 feet wide. Subsection (C) of this section specifies that driveway grades are subject to review and determination by the city engineer, noting that the maximum driveway grade typically allowed is eighteen percent (18%*). The plans do not contain enough information to determine whether the Project complies with these standards.
Environmental and Design Review Permits (Chapter 14.25)	
Review Criteria – Section 14.25.050	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	**Utility Service.** Utility connections shall be installed underground. Proposed method of sanitary sewage disposal for all buildings shall be indicated. Refuse collection areas shall be screened and located in areas convenient both to users and to persons who make collections. There shall be adequate ingress and egress to all utilities. (Note: Recycling facilities must meet Standard of Resolution 93-57.) The application does not contain enough information to allow the City to determine compliance with any of these standards.
The Applicant has not submitted sufficient information to enable the City to analyze this	**Walls, Fences, and Screening.** Walls, fences and screening shall be used to screen parking and loading areas, refuse collection areas and mechanical equipment from view. Screening of mechanical equipment shall be designed as an integrated architectural component of the

standard; therefore the Project is not consistent with this standard.	building and the landscape. Utility meters and transformers shall be incorporated into the overall project design. The application does not contain enough information to allow the City to determine compliance with any of these standards

4. City of San Rafael Hillside Design Guidelines

Because the proposed project is subject to the Hillside Development Overlay District of the SRMC, it is also subject to the Design Guidelines Applicable to All Hillside Residential Development Projects[1]. Table 1.3 below evaluates the Project for consistency with the Hillside Design Guidelines.

Table 1.3

Design Guidelines Applicable to All Hillside Residential Development Projects	
IV.A5. Street Layout, Driveway and Parking Design	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines establishes that driveway grades may be a maximum of 18%. This section of the Design Guidelines also requires that parking landings shall be required on all driveways over 10% grade. The application does not specify the grade of every driveway and every parking landing, so the City cannot currently determine whether the Project is consistent with this standard.
IV.A7. Hillside Architectural Character	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines requires fences and walls over 3 feet in height that face public streets to provide a fully landscaped buffer at least 5 feet deep on the street facing side of the fence or wall. The cover page notes that there are fences included in the project that are “2' - 14' (with a small number outliers upwards of 16')”, but the plans do not indicate whether the required 5-foot landscaped buffer will be provided. Additional information is needed to verify compliance with this standard.
IV. A9. Site Lighting	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines establishes that any overhead lighting for residential parking areas must be mounted at a maximum of 15 feet, and lighting for pedestrian areas must be 8 feet or less. No lighting information is provided and as such, additional information is needed to verify compliance.

[1] Available at https://www.cityofsanrafael.org/documents/hillside-design-guidelines-hillside-residential-development-projects/

5. City of San Rafael Objective Design Standards (ODS)

On March 18, 2024, the San Rafael City Council adopted Resolution 15280, adopting objective design standards for residential developments.[2] The San Rafael Objective Design Standards ("ODS") apply to all residential projects. Table 1.4 evaluates the Project for consistency with the ODS and includes additional consideration factors and notes for context.

Table 1.4	
Objective Design Standards	
1. Site Planning and Layout (Building Orientation)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires buildings adjacent to a public street or alley to design primary building entrances to face the public street or alley. There is not enough information provided to verify if primary building entrances are designed to face Coleman Drive, a public street. The residences appear to face Coleman Drive, but the exact location of individual building entrances is not clearly shown on the Plans. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Windows and Privacy)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires windows that are within 10 feet vertically or horizontally of facing residential bedroom windows or private open space of existing residences to have an opaque or translucent glazing at or below 5 feet above finished floor or be offset a minimum of 5 feet horizontally (as measured by nearest edge of existing facing window). The project is abutting existing residential development to the north, south, and west. The plans do not include enough information to determine whether new residences are within 10 feet vertically or horizontally of facing residential bedroom windows or private open space of existing residences. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Ensure Adequate Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires screening between new residential development and adjacent existing residential uses to obscure direct sight lines between private yards. Such screening shall consist of a continuous view-obscuring wood fence, masonry wall, or an irrigated and maintained evergreen hedge, not less than four feet in height, and not more than six feet in height, which may be broken only for access driveways and walkways. The width of screens consisting of evergreen hedges shall be at least 40% of their height. The project is adjacent to

[2] The Objective Design Standards can be found starting at page 37 of this PDF document: https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2024/03/CC-SA-Agenda-Packet-2024-03-18.pdf

	existing residential uses. The plans do not show if and/or how the project will incorporate screening between the proposed and existing residences. This section of the ODS also requires trash and refuse collection and disposal facilities to be enclosed by a solid fence or hedge that is no lower than the facilities themselves, and requires these facilities to be covered. The plans do not provide details regarding the location of refuse bins. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Ground Level Utility Location and Utility Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires back flow preventers, transformers, and other utilities to be out of sight either in sidewalk vaults or screened from view with either architecture or landscaping. Utility transformers or boxes are required to be underground or, if not allowed by PG&E, screened and not visible from the public right of way. There is not enough information to determine whether the project includes ground level utilities. If the project includes and/or requires such utilities, the location shall be shown on a utility plan and shall demonstrate screening in compliance with this standard.
1. Site Planning and Layout (Parking Garage)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires any parking visible from the public right-of-way to be screened by continuous landscaping, or other architectural features. There is not enough information to verify whether parking will be screened by continuous landscaping or other architectural features.
2. Building Design and Architecture (Trim Requirements)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	The section of the ODS requires stucco foam trim to be limited to one element of trim detail and shall not be used as the sole trim molding material. The plans do not include materials information and as such, additional information is needed to verify compliance.
2. Building Design and Architecture (Colors and Reflective Materials)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent	This section of the ODS sets forth the following related to colors and materials: 1. Facades shall include between 2 and 4 colors. One color shall be the 'main color' and be used on no less than 70% of the non-glazed area of a building's façade. The other colors shall be defined each as an 'accent color' each of which shall not be used

with this standard.	on more than 30% of the non-glazed area of a building's façade 2. Buildings shall include the same colors and materials on all elevations. At least one accent color is required to appear on all elevations. 3. "Gloss" paint finishes shall not be used for a building's main color but may be used for accent colors and on trim. The highest sheen that may be used for a main color is semi-gloss. 4. The main color shall have a light reflective value of between 20% and 80%. Trim and accent colors may use colors of any light reflective value. 5. Fluorescent, iridescent, or metallic paints are prohibited. 6. Metal seam or other metal roofing, if used, shall be anodized, fluoro-coated, or painted with a non-gloss and non-glare finish. Copper and lead roofs shall be natural or pre-oxidized. 7. Any colors used on stucco walls shall be incorporated into the stucco mixture as an integral color. The plans do not include information about colors or the level of information regarding materials that is needed to verify compliance with these standards.
2. Building Design and Architecture (Blank Walls)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires all building walls to have a minimum 15% transparency on each floor. Ground floors without a lobby shall exhibit a variegated façade with changes in transparencies and materials so that no one form represents more than 75% of the surface area. The plans do not include enough information to verify consistency with this standard.
2. Building Design and Architecture (Rooftop Utility Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires all mechanical equipment to be screened and shall not project above its enclosure. Roof-mounted mechanical equipment shall be screened from public view by a parapet wall, decorative equipment screen, or other architectural treatment. The point of view for determining visibility shall be five feet above grade at a distance of 200 feet from any point of the structure at ground level. The plans do not include enough information to verify consistency with this standard.
3. Open Space and Landscape (Useable Outdoor Space)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires the project to provide a minimum of 100 square feet of useable open space per dwelling unit and specifies objective standards related to accessibility, unit assignment, dimensions, balconies, slope, landscaping, and amenities of these useable open space areas. The plans do not include enough information to verify consistency with this standard.
4. Lighting (Light and Glare)	
Consistency Review	Consideration Factors and Notes

The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires exterior lights to have a minimum ground level illumination of 1 foot-candle at doorways and entryways. Elsewhere, exterior lights are required to have a maximum ground level illumination of ½ foot-candle. Additionally, this section requires all lighting sources to be shielded from view from the public right of way and from neighboring properties and specifies that exterior lights: • shall produce no indirect light extending 5 ft. beyond a property line • shall not be placed higher than the height of the principal structure. • shall have a maximum angle of direct illumination of 60 degrees if placed more than 6 ft high. • shall be rated for 4500 Kelvins or fewer. No lighting information was provided. The plans do not include enough information to verify consistency with this standard.

Attachment 2: Housing Division Consistency Review Comments

Table 2.1 below evaluates the Project for consistency with the City's affordable housing requirements (SRMC Section 14.16.030 and Resolution 14890) and includes additional consideration factors and notes for context.

Table 2.1	
SRMC Section 14.16.030 and City Council Resolution 14890	
Size. The affordable housing units shall be comparable in size to the market-rate units within the residential development project, as measured by net habitable square footage. For purposes of this provision, "comparable size" means having habitable square footage proportionate to the range of unit sizes provided for market-rate units in the project. (Section C(1) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard.	The application indicates that one ADU (building 2, unit 1) would be an affordable unit. The average size of market rate units is 2,544 square feet ((8*3,52 + 5*976)/13). At 976 square feet, the affordable unit is significantly smaller than the average size of the market rate units.
Type. The affordable housing units shall possess a distribution of bedroom counts proportionate to that of the market-rate units within the residential development project. (Section C(1) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard.	The average bedroom count for market rate units is 3.85 bedrooms per unit ((5*8+2*10)/13). The affordable unit contains only 2 bedrooms.
Design and Materials. The exterior and interior design of the affordable housing units shall be of the same design, materials, amenities, quality of finish, and appearance of the other developed units. (Section C(2) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	The application does not contain information regarding the materials, amenities, quality of finish, and appearance of the exterior and interior for each of the units, so the City cannot determine at this time whether the Project is consistent with this standard.
Access. The affordable housing units shall have access to the same amenities and common spaces as the market rate units. (Section C(2) of Resolution 14890)	

Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard	The application does not affirmatively indicate that the affordable housing unit will have access to the same amenities (e.g., the pool) and common spaces that the market rate units will have access to, so the City cannot determine at this time whether the Project is consistent with this standard.

Attachment 3: Fire Department Consistency Review Comments

Table 3.1	
Fire Regulations	
Fire Apparatus Access Roads – SRMC Chapter 4. 2022 California Fire Code Section 503, Appendix D, and all applicable National Fire Protection Standards.	
Consistency Review	Consideration Factors and Notes
The project is not consistent with this development regulation.	The current plans do not clearly demonstrate compliance with the provisions of these sections of the code.
Fire Flow for Fire Hydrants and fire sprinkler systems - SRMC Chapter 4. 2022 California Fire Code sections 507, Appendix BB, Appendix C, Appendix CC, and all applicable National Fire Protection Association standards.	
Consistency Review	Consideration Factors and Notes
The project is not consistent with this development regulation.	The current plans do not clearly demonstrate compliance with the provisions of these sections of the code.

Attachment 4: Department of Public Works Review Comments

Table 4.1	
Chapter 15.06.020 - Utilities and Services No subdivision of land into two (2) or more lots or parcels for the purpose of development shall be approved by the city unless it is determined that the following utilities and services can be provided: (a) Water Service. Domestic water service for all new lots or parcels shall be provided by the Marin municipal water district (MMWD). (b) Wastewater and Sewage Disposal. Wastewater and sewage disposal for all new lots or parcels shall be provided by either the San Rafael sanitation district or the Las Gallinas Valley sanitary district, depending upon the property location. The creation of an individual on-site septic system intended to serve a new lot or parcel shall be prohibited. (c) Gas and Electric Service. Gas and electric service for all new lots or parcels shall be provided by the Pacific Gas & Electric Company (PG & E). (d) Communication Services. Telephone and cable television service shall be available to all new lots or parcels.	
Consistency Review	**Consideration Factors and Notes**
The project is inconsistent with this standard.	The plans do not indicate that the Project will be served by any of the following utilities: water, wastewater and sewage, gas and electric, communication services.
Section 15.06.050(g) – Hillside Streets; 15.07.030 - Street, driveway and parking standards. All new streets in hillside areas shall comply with the requirements of Section 15.07.030 (Standards for Hillside Subdivisions) of this title. No private street leading to a private driveway on a lot shall exceed a grade of eighteen percent (18%).	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is not consistent with this standard.	The plans show a new private street transversing the 6 Project parcels. The plans do not indicate the grade of the private street.
Section 15.06.070(e) - General design conditions for streets Curve radius. The center line curve radius on all streets and highways shall conform to accepted engineering standards of design and shall be subject to approval by the city engineer.	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information	The plans show a new street traversing the 6 Project parcels so it is subject the general design conditions for streets. There is

to analyze consistency with this standard and therefore the Project is not consistent with this standard	insufficient curve radius data to verify consistency with this section.

Section 15.06.080 - Sidewalks and walkways

Sidewalks and walkways shall be required along both sides of new public or private streets and incorporated into the right-of-way width requirements specified in Section 15.06.050 of this chapter. Sidewalks along streets intended for residential use shall be a minimum of four feet (4') in width. All sidewalks and walkways shall be designed to comply with the requirements of the Americans with Disability Act (ADA).

Consistency Review	Consideration Factors and Notes
The Project is inconsistent with this standard.	The plans show a new street traversing the 6 Project parcels. The plans do not depict a sidewalk along either side of the street.

Section 15.06.110 - Grading and drainage

Graded slopes shall not exceed two to one (2:1), unless the city engineer determines that a steeper slope is justified to minimize the amount of grading or to reduce potential tree removal and, where it is determined that the soil and geologic conditions are suitable for and capable of accommodating a steeper slope.

Retaining walls shall not exceed eight feet (8') in height, unless approved by the Planning Commission.

Consistency Review	Consideration Factors and Notes
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is not consistent with this standard	Plans lack sufficient information to determine if whether grading slopes exceed 2:1 or how tall any proposed retaining walls are.

Section 15.06.130 - Undergrounding of utilities

All utility distribution facilities, including but not limited to electric (carrying normal voltage of less than thirty-five thousand (35,000) volts), gas, communication and cable television lines, installed and for the purpose of supplying service to a subdivision creating lots for development, shall be placed underground, subject to specified exceptions.

Consistency Review	Consideration Factors and Notes
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is not consistent with this standard	The plans do not clearly show the proposed utilities serving the project. Therefore, it is impossible to determine whether the required utilities will be underground, as required.

Attachment 5: Courtesy Comments

The following comments do not address consistency with applicable standards, so they were not included in the tables above. However, the City is providing these additional comments to you as a courtesy. Please note the following:

Department of Public Works

1. Per San Rafael Municipal Code Section **9.30.151, w**here required by the Phase II Stormwater Permit Provision E.12, or where required by the nature and extent of a proposed project and where deemed appropriate by the agency, every applicant shall develop, submit and implement a Stormwater Control Plan (SCP) as described in the section. The Project creates more than 5,000 square feet of impervious area and therefore will be considered a regulated project. You will therefore be required to submit a stormwater control plan.

2. Per San Rafael Municipal Code Section 14.16.170, development applications require geotechnical reports consistent with the geotechnical matrix in the general plan appendices to assess such hazards as potential seismic hazards, liquefaction, landsliding, mudsliding, erosion, sedimentation and settlement and hazardous soils conditions to determine the optimum location for structures, to advise of special structural requirements and to evaluate the feasibility and desirability of a proposed facility in a specific location. In accordance with Section S-2 (Geotechnical Review) and Appendix F of the San Rafael General Plan, you will be required to submit a geotechnical investigation report.

3. The project is required to provide a transportation analysis report in accordance with the San Rafael Transportation Analysis Guidelines[3], February 2022. Prior to conducting the transportation analysis, the applicant shall provide the scope of work for the transportation analysis to the Department of Public Works for approval. The applicant shall also provide a completed TA Assessment Form, available as Attachment B to the San Rafael Transportation Analysis Guidelines, when providing the scope of work for review.

4. The 2022 California Residential Code (CRC) **SECTION R311- MEANS OF EGRESS** applies:
    a. **R311.1 Means of egress**. Dwellings shall be provided with a means of egress in accordance with this section. The means of egress shall provide a continuous and unobstructed path of vertical and horizontal egress travel from all portions of the dwelling to the required egress door without requiring travel through a garage. **The required egress door shall open directly into a public right of way or to a yard or court that opens to a public way.**

5. The 2022 California Building Code (CBC) **SECTION 1029 - EGRESS COURTS** applies:
    a. **1029.2 Width or capacity.** The required capacity of egress courts shall be determined as specified in Section 1005.1, but the minimum width shall be not less than 44 inches (1118mm), except as specified herein.

[3] Available at https://www.cityofsanrafael.org/documents/sanrafael-ta-guidelines-feb-2022/

Egress courts serving Group R-3 and U occupancies shall not be less than 36 inches (914mm) in width. The required capacity and width of egress courts shall be unobstructed to a height of 7 feet (2134mm). The width of the egress court shall be not less than the required capacity.

6. The following frontage/off-site improvements may be required to comply with post-entitlement building, fire, and other standards:

    a. Upgrade Coleman Drive roadway width along project frontage.

    b. Extend new curb and gutter along the project frontage to match existing curb and gutter ending near the proposed driveway approach. Include a minimum 2' wide shoulder width from the toe of the hill or wall to the back of the new curb.

    c. Install a culvert or concrete valley gutter at the driveway approach to allow uphill water on the roadside to travel past the driveway approach.

    d. Remove and replace the existing sand bag retaining wall along the project frontage with a new wall to support the proposed driveway and improvements.

    e. Install underground storm drain piping and catch basins as necessary to convey uphill water to the existing catch basin at the toe of Parcel 011-031-049 (south-east project limit). Consider installing a catch basin on the uphill side of the new common driveway approach to limit water conveyed across the driveway approach.

    f. Pavement restoration along project frontage. Asphalt grind and overlay shall have a minimum thickness of 2 inches.

7. Mass grading and earthwork operations shall occur between April 15 and October 15 unless approved otherwise by DPW.

8. A construction management plan should be submitted for City review prior to issuance of building permit. The project site is on a steep slope with minimal level area for set up and storage, construction staging will be required to be onsite unless negotiated otherwise with DPW.

9. An encroachment permit and grading permit will be required from the DPW prior to construction.

San Rafael Sanitation District

1. There is currently no public sewer main in Colemen Drive fronting the property. A new sewer main extension will be required from the proposed development to the end of the existing public sewer on the south side of the property at 241 Coleman Drive.

Attachment E: December 3, 2025 denial of Alternative Project

December 3, 2025

Chris Sullivan
River Landon LLC
PO Box 29281
San Francisco, CA 94129
Modconstruct1@gmail.com

Dear Mr. Chris Sullivan:

The City of San Rafael has received your revised SB 35 Development Application submitted on September 6, 2025 (PLAN23-067, PA23-007) and proposing an 8-Unit Residential Development with 6 Accessory Dwelling Units (ADUs) located on Coleman and Fair Drive, APNs: 011-031-44, 45, 46, 47, 48, & 49, in the R10 Single-family Residential Zoning District (hereinafter the "Project.").

The City has analyzed the Development Application, pursuant to Government Code section 65913.4(c)(1), for consistency with objective planning standards specified in Government Code section 65913.4(a), including but not limited to City objective zoning standards, objective subdivision standards, and objective design review standards in effect on the date of submittal of the Development Application. Although we met with you on November 10 at city offices and attempted to discuss options that would help your project to be consistent and therefore able to be approved, you stated at the meeting that you were not interested in revising the project.

As set forth in the City's October 6, 2025 correspondence, which is attached hereto, the Project remains inconsistent with multiple City objective zoning standards, objective subdivision standards, and objective design review standards. Additionally, the Project is inconsistent with provisions of State law. The Project is hereby denied based on the inconsistencies identified in the October 6, 2025 correspondence. In particular, we provide another explanation below, regarding why the Project cannot be processed pursuant to SB 35 because it is not a "multifamily housing development."

The City would like to work with you to revise your application in a manner that it can be processed and approved. This would include identifying available concessions/incentives and waivers pursuant to the State Density Bonus Law which would enable the project to exceed or deviate from objective development standards.

1. Inconsistency with Government Code 65913.4(a).

The Project is ineligible for the streamlined ministerial approval process set forth in Government Code section 65913.4 et seq. ("SB 35") because the project is not a "multifamily housing development." (Gov. Code § 65913.4(a)(1); see also HCD Guidelines § 102(p).)

SB 35 allows a development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process of SB 35 if the development satisfies certain objective development enumerated in SB 35 (see Gov. Code § 65913.4(a).) The first such standard listed in SB 35 is: "[T]he development is a multifamily housing development that contains two or more residential units."

SB 35 specifically vests HCD with the authority to " review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in [SB 35]." (Gov. Code § 65913.4(n).)

HCD's SB 35 Guidelines define "multifamily" as follows: "'Multifamily' means a housing development with two or more attached residential units. This includes mixed-use projects as stated in Section 400(a). The definition does not include accessory dwelling units unless the project is for new construction of a single family home with attached accessory dwelling units. Please note, accessory dwelling units have a separate permitting process pursuant to Government Code section 65852.2."[1]

While neither SB 35 nor HCD's SB 35 Guidelines specifically define "attached," the common meaning of that term is to be physically adjoined, or as defined by Mariam Webster Dictionary, to be "connected or joined to something."

The Project consists of eight (8) single family dwellings and six (6) ADUs, each of which is a wholly independent, stand-alone structure. None of the dwellings are physically adjoined, connected, or otherwise integrated with any other dwelling. Each unit is constructed with four separate and distinct exterior walls and maintains its own structural envelope. No dwelling shares any wall, roof, ceiling, floor assembly, or other load-bearing or non-load-bearing building component with another dwelling. Accordingly, all eight (8) single family dwellings and six (6) ADUs are properly characterized as detached single-family residences and detached ADUs.

In addition to the Project not being a "multifamily housing development" under State law, the Project is also not a "multifamily housing development" under San Rafael law.[2]

Pursuant to San Rafael Municipal Code ("SRMC") section 14.03.030 – Definitions, multifamily residential development means "medium and high density residential development [. . .] containing three (3) or more attached dwelling units in one (1) or more structures located on a single parcel or common lot." (SRMC § 14.03.030, "Residential, multifamily.")

---

[1] See HCD SB 35 Guidelines, section 102(p) (https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update-final.pdf)

[2] We note that SB 35 indeed gives certain deference to a local jurisdiction's identification of local multifamily zoning criteria, and SB 35 does not expressly preclude the City from relying, in part, on its own definition and/or classification of "multifamily housing," in determining whether a proposed SB 35 project is indeed a "multifamily" project. See, e.g. Gov. Code § 65913.4(a)(6)(A)(iv), and (e)(1).

Staff notes that the project consists of detached single family dwellings that share a “silver metal screen” that runs between adjacent detached single family dwellings on adjacent, separate lots. The “silver metal screen” is a “fence,” as defined by the San Rafael Municipal Code. (SRMC § 14.30.030, “Fence”.) This fence that crosses property lines is also used to connect detached accessory dwelling units. This configuration does meet the definition of attached dwelling units on a common parcel or lot pursuant to either SB 35 or the San Rafael Municipal Code.

Instead, the Project contains six lots and each are described separately below:

Lot 011-031-49 consists of a single family dwelling and a detached accessory dwelling unit.

Lot 011-031-48 consists of two detached single family dwellings and a detached accessory dwelling unit.

Lot 011-031-47 consists of a single family dwelling and a detached accessory dwelling unit.

Lot 011-031-46 consists of a single family dwelling and a detached accessory dwelling unit, along with an accessory structure with a pool house.

Lot 011-031-45 consists of two detached single family dwellings and a detached accessory dwelling unit.

Lot 011-031-44 consists of a single family dwelling and a detached accessory dwelling unit.

No single parcel contains three or more attached dwelling units, so no parcel contains “multifamily housing.”

As we discussed when we met on November 18, 2025, we believe there is a viable path forward to project approval under SB 9 and/or SB 684 and we would encourage you to consider these paths forward, with certain project modifications. As I mentioned, we would be happy to work with you to review a revised application to conform to the requirements of SB 9 and/or SB 684 in order to move the project forward in a timely manner and pursuant to ministerial review.

Should you have any questions, please contact me at Margaret.kavanaugh-lynch@cityofsanrafael.org.

Thank you,

Margaret Kavanaugh-Lynch

Planning Manager
City of San Rafael

Attachment
October 6, 2025, Correspondence-City of San Rafael

October 6, 2025

Chris Sullivan
River Landon LLC
PO Box 29281
San Francisco, CA 94129
Modconstruct1@gmail.com

Dear Mr. Chris Sullivan:

The City of San Rafael has received your revised SB 35 Development Application submitted on September 6, 2025 (PLAN23-067, PA23-007) and proposing an 8-Unit Residential Development with 6 Accessory Dwelling Units (ADUs) located on Coleman and Fair Drive, APNs: 011-031-44, 45, 46, 47, 48, & 49, in the R10 Single-family Residential Zoning District (hereinafter the "Project.").

The City has analyzed the Development Application, pursuant to Government Code section 65913.4(c)(1), for consistency with objective planning standards specified in Government Code section 65913.4(a), including but not limited to City objective zoning standards, objective subdivision standards, and objective design review standards in effect on the date of submittal of the Development Application.

Project Description

The project proposes the construction of an 8-Unit Residential Development with 6 Accessory Dwelling Units (ADUs) on six (6) lots identified as Assessor's Parcel Numbers APNs: 011-031-44, 45, 46, 47, 48, & 49. The application does not appear to propose a subdivision of land but proposes to construct a mix of single detached family residences and detached ADUs on each lot. The project also includes the construction of a driveway across all parcels of various widths (26 feet to 46 feet- ten inches) as well as two hammerheads.

The project site is comprised of six (6) vacant lots identified as Assessor's Parcel Numbers APNs: 011-031-44, 45, 46, 47, 48, & 49. The project site totals 61,844 sf (1.4 acres) and is designated Low Density Residential by the City of San Rafael General Plan and is zoned R10 with a potential Hillside Overlay. The proposed project is subject to standards in the Hillside Development Overlay District as all six lots have an average slope of over 25 percent (Chapter 14.12.020; Section 14.16.200).

Consistency Review

This consistency review has been conducted based on application materials submitted on September 6, 2025. If the proposed Project, application materials for the Project, or proposal on the Project site are modified, these changes may result in updates to the City's consistency review determinations and may trigger additional review pursuant to Government Code section 65913.4 subds. (a) and (c)(1)(C).

This consistency determination does not analyze the Project's consistency with post-entitlement permit requirements, including but not limited to standards and regulations applicable to any and all building permits (including but not limited to demolition, grading, foundation, and/or vertical infrastructure building permits). Prior to the issuance of any building permit, the Project must comply with all Sanitary District, Fire Department, Marin Municipal Water District, utility companies', and other relevant local/State/federal agencies' regulations that are directly applicable to the project.

Additionally, as the City has previously notified you, you have failed to reimburse the City for fees related to the processing of the Development Application. These fees must be paid in full.

Determination of Inconsistency.

The Project is inconsistent with multiple City objective zoning standards, objective subdivision standards, and objective design review standards. Additionally, the Project is inconsistent with provisions of State law. These inconsistencies are detailed in this letter. **Because the Project is inconsistent with City standards as well as State law, the City cannot approve the Project as proposed**. However, you are free to resubmit a modified development application, including modified plans and/or additional requests for waivers and/or incentives/concessions under State Density Bonus Laws ("SDBL"). Should you choose to do so, the City will review your resubmitted development application pursuant to Government Code section 65913.4(c)(1) within the timelines set forth in section 65913.4(c)(1)(C).

Should you have any questions, please contact me at Margaret.kavanaugh-lynch@cityofsanrafael.org.

Thank you,

Margaret Kavanaugh-Lynch

Planning Manager
City of San Rafael

ATTACHMENTS

1. Planning Division Consistency Review Comments
2. Housing Division Consistency Review Comments
3. Fire Department Consistency Review Comments
4. Department of Public Works Consistency Review Comments
5. Courtesy Comments

Attachment 1: Planning Division Consistency Determinations

1. Inconsistency with Government Code 65913.4(a).

The Project is ineligible for the streamlined ministerial approval process set forth in Government Code section 65913.4 et seq. ("SB 35") because the project is not a "multifamily housing development" (see Gov. Code § 65913.4(a)(1).) Pursuant to San Rafael Municipal Code ("SRMC") section 14.03.030 – Definitions, multifamily residential development means "medium and high density residential development [. . .] containing three (3) or more attached dwelling units in one (1) or more structures located on a single parcel or common lot." (SRMC § 14.03.030, "Residential, multifamily.")

Staff notes that the project consists of detached single family dwellings that share a "silver metal screen" that runs between adjacent detached single family dwellings on adjacent, separate lots. The "silver metal screen" is a "fence," as defined by the San Rafael Municipal Code. (SRMC § 14.30.030, "Fence".) This fence that crosses property lines is also used to connect detached accessory dwelling units. This configuration does meet the definition of attached dwelling units on a common parcel or lot pursuant to either SB 35 or the San Rafael Municipal Code.

Instead, the Project contains six lots and each are described separately below:

Lot 011-031-49 consists of a single family dwelling and a detached accessory dwelling unit.

Lot 011-031-48 consists of two detached single family dwellings and a detached accessory dwelling unit.

Lot 011-031-47 consists of a single family dwelling and a detached accessory dwelling unit.

Lot 011-031-46 consists of a single family dwelling and a detached accessory dwelling unit, along with an accessory structure with a pool house.

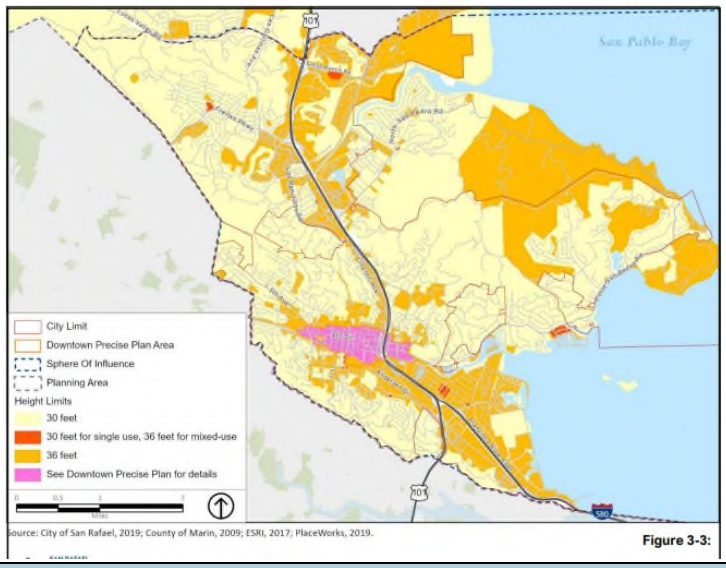
Lot 011-031-45 consists of two detached single family dwellings and a detached accessory dwelling unit.

Lot 011-031-44 consists of a single family dwelling and a detached accessory dwelling unit.

No single parcel contains three or more attached dwelling units, so no parcel contains "multifamily housing."

2. Inconsistency with City of San Rafael General Plan

The Project site and each parcel within the Project site has a General Plan designation of Low Density Residential. The Project is inconsistent with various Low Density Residential development standards.

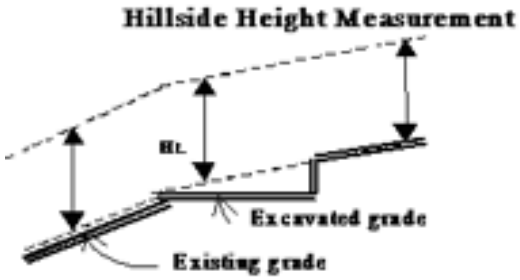
Table 1.1 City of San Rafael General Plan	
Maximum Height - (General Plan p. 3-25)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation. A waiver pursuant to the SDBL has been sought to exceed height standards.	The General Plan limits height on the site to 30 feet tall. All primary dwellings exceed 30 feet in height.  Figure 3-3:
Parking and Driveways (General Plan Policy CDP-4.9)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation.	Parking is required to be screened from the street by landscaping. Plans do not show screening of parking.

3. Inconsistency with City of San Rafael Zoning Code (Title 14)

The project site is zoned R10 with a Hillside Overlay. The proposed project is subject to standards in the Hillside Development Overlay District as all existing lots have an average slope exceeding 25 percent, with existing average slopes ranging from 44.5 to 47.3 percent (SRMC Chapter 14.12.020 and SRMC Section 14.16.200). The Project is not consistent with several standards contained in the City of San Rafael Zoning Code.

Table 1.2

Base District Regulations (Chapter 14.04)	
Single-Family Residential District Purpose (Section 14.04.010.H - Specific purposes; 14.04.020 – Land Use Regulations)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation.	The R-10 single-family zoning district allows for detached single-family residential uses. (SRMC Ch. 14.04.020.) Single-family residential use is defined as "low density residential development containing **one (1)** primary residential 'dwelling unit' for use by a single household on a single parcel." (SRMC § 14.03.030, "Residential, single-family.") The project proposes to construct two (2) primary dwelling units on lot 011-031-45 and lot 011-031-48. Because the Project proposes multiple primary dwelling units on two lots, the Project is inconsistent with this standard. The type of housing proposed (i.e. two primary dwelling units on a single lot) is only allowed in combination with an SB 9 application.
Setbacks (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation. A waiver pursuant to the SDBL has been sought to exceed rear, side, and front setback standards.	The R10 zoning district requires a minimum side yard setback of 10 feet. All lots propose development with side yard setbacks of approximately 4 feet. The R10 zoning district requires a minimum rear yard setback of 10 feet. All lots have rear yard setbacks of approximately 4 feet for the primary dwellings. The R10 zoning district requires a minimum front yard setback of 20 feet. While some of the lots propose development with front yard setbacks of greater than 20 feet, lot 011-031-48 has a front setback of approximately 2.5 feet for a primary dwelling unit.
Height (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard. A waiver pursuant to the SDBL has been sought to exceed height standards.	The R 10 zoning district requires a maximum height of 30 feet tall. (General Plan p. 3-25.) All primary units appear to exceed 30 feet in height, although insufficient information has been provided in plans to verify the proposed height using the formula required for lots in the Hillside Overlay District, "Hillside Lots". SRMC Section 14.03.030 (Definitions) defines height as: "Height, hillside" means the height of all structures, fences and walls measured vertically from the existing (e.g., natural)

	grade to the uppermost point of the roof edge, wall parapet, mansard or other feature above the existing grade at any given point. See illustration below.  **Height of Proposed Structures.**
Maximum Lot Coverage (14.04.030 - Property development standards (R))	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	The plan set pages that attempt to illustrate lot coverage do not show the lot lines themselves, therefore staff is not able to confirm the summary calculations provided.
Accessory Dwelling Units (14.16.285)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this development regulation.	No more than one detached new construction ADU is permitted on lots with an existing or proposed single-family dwelling (see Gov. Code, § 66323, subd. (a)(2) and San Rafael Municipal Code § 14.16.285(E)(2).) The Project proposes more than one detached new construction ADU on lot 011-031-45 and is therefore inconsistent with both the San Rafael Municipal Code and State laws regarding the maximum number of detached ADUs.
Hillside Development Overlay District (Chapter 14.12)	
Building Stepback - 14.12.030.A - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard. A	Per San Rafael Municipal Code Section 14.12.030: On non-downhill slope, walls facing front and side property lines shall have a twenty-foot (20′) height limit measured from existing grade shall be observed within all areas within fifteen feet (15′) of the maximum building envelope limit. To allow for design flexibility on non-downhill slopes, an encroachment into the street front,

waiver pursuant to the SDBL has been sought to exceed the stepback standards.	street side and interior side stepback is permitted along twenty-five percent (25%) of the building length. The proposed plans do not specify the required stepbacks, making it unclear whether compliance can be confirmed without supporting calculations. Certain portions of the proposed residence appear to exceed the stepback requirement; however, it is undetermined whether this exceeds the allowable 25% threshold.
Building Setbacks - 14.12.030.B - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard.	Structures may encroach into a required yard or setback for a distance of not more than one-half (½) of the required yard or setback provided that the decrease minimizes the impact of hillside development and grading, subject to approval by the hearing body of an environmental and design review permit. If such a reduction is granted, a compensating increase in setback is required in the opposing setback, i.e., a five-foot reduction in a front yard setback would increase the rear yard setback by five feet (5'). The setbacks shown on the plans illustrate that this development standard is not met on any parcel.
Natural State - 14.12.030.C - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard. A waiver pursuant to the SDBL has been sought to exceed this standard.	A minimum area of twenty-five percent (25%) of the lot area plus the percentage figure of average slope must remain in its natural state. "Natural state" means all portions of lots that remain undeveloped and undisturbed. Grading, excavating, filling and/or the construction roadways, driveways, parking areas and structures are prohibited. Here, with average slopes ranging from 44.5 to 47.3 percent, lots must maintain a minimum natural state area of 69.5 to 72.3 percent. The proposed plans do not accurately illustrate the required and proposed natural state requirements; further as the lot lines were removed from the plan set pages that attempt to illustrate the lot coverage, staff is not able to calculate the lot coverage per lot and therefore not able to ascertain consistency with this development standard.

Parking Requirements - 14.12.030 - Property development standards (-H) and Parking Requirements - Section 14.18.040	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Single-family residential developments must provide two covered parking spaces per unit. (SRMC Table 14.18.040.) Additionally, on streets less than twenty-six feet (26') wide, a minimum of two (2) additional on-site parking spaces must be provided (not on the driveway apron). (SRMC Ch. 14.12.030(F).) As the floor plans for the primary structure are not specific to each proposed location, it is not possible to determine based on the plan set provided if each unit has any covered parking. Further, the parking plans provided are not sufficient to determine the exact location of the

	spaces related to the dwelling units, so it is not possible to determine if the additional uncovered parking requirements are met for each site.
Streets and Driveways - 14.12.030 - Property development standards (-H)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	New streets and driveway grades shall not exceed 18 percent unless an exception has been granted by the hearing body and the design has been recommended by the public works director and fire marshal to allow a driveway or street slope up to a maximum 25 percent. The project plans do not appear to indicate the proposed slope and therefore consistency cannot be determined at this time.
Site and Use Regulations (Chapter 14.16)	
Affordable Housing - Section 14.16.030	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard.	Pursuant to San Rafael Municipal Code Section 14.16.030, residential development projects must provide affordable housing units as described in the policies and procedures specified in the San Rafael City Council's Guidelines for the Administration of the Affordable Housing Trust Fund (Resolution 14890). See Table 2.1 below for analysis regarding consistency with such Guidelines.
Fences and Walls Section - 14.16.140	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Fences located within the front and streetside setbacks may be 4 feet tall while fences not exceeding seven feet (7') in height may be located within the required rear yard or interior side yard. Retaining walls not exceeding a height of four feet (4') in height may be located within the required rear yard and interior side yard. (SRMC Ch. 14.16.140.) The plans do not contain enough detail for the City to determine whether the Project complies with the fence standards at this time.
Swimming pools, hot tubs, and other mechanical equipment - Section 14.16.320	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	If a pump or filter or any similar mechanical equipment, including new but not limited to transformers for electric vehicle charging stations and wind energy systems, is located within fifteen feet (15') of any bedroom window on an adjacent lot, a three (3) sided solid enclosure with baffles to screen the equipment from the bedroom, or equally effective measure(s), shall be provided to reduce noise impact. Sound attenuation shall be provided around mechanical equipment to ensure that any mechanical noise that is perceptible at the property line (and generally measured in direct line of sight of the equipment) is attenuated to the maximum extent practicable and that daytime/nighttime thresholds established under SRMC Table 8.13-1 for the applicable zoning district are not exceeded. The plans indicate that the Project will include a pool, but do not contain enough detail to determine whether the Project complies with this standard.
Water-efficient landscape Section 14.16.370	
Consistency Review	Consideration Factors and Notes

The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Any project that proposes new or rehabilitated landscapes which are developer-installed in single-family residential and all other residential developments, regardless of size, where the proposed landscape area is equal to or greater than two thousand five hundred (2,500) square feet must comply with water-efficient landscape requirements and monitor water usage for irrigation. The City has adopted by reference the standards contained in the Marin Municipal Water District (MMWD) Ordinance (Water Conservation). The Project application incorrectly states that these standards are not triggered. Further, the application does not clearly detail how it would meet these requirements, so the City cannot determine at this time whether the Project is consistent with these standards.
Parking Space Dimensions - Section 14.18.100	
Consideration Factors and Notes	
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section specifies parking space dimensions for standard and compact parking stalls. While some dimensions are provided, and the cover pages notes that all spaces are 9 feet by 19 feet, the application does not contain enough information to determine whether all parking spaces additional information is needed to verify compliance.
Access to the Public Right-of-Way - Section 14.18.140	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	Subsection (A) of this section requires driveways serving residential uses with less than 6 vehicle parking spaces to be a minimum of 10 feet wide. Subsection (C) of this section specifies that driveway grades are subject to review and determination by the city engineer, noting that the maximum driveway grade typically allowed is eighteen percent (18%*). The plans do not contain enough information to determine whether the Project complies with these standards.
Environmental and Design Review Permits (Chapter 14.25)	
Review Criteria – Section 14.25.050	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	**Utility Service.** Utility connections shall be installed underground. Proposed method of sanitary sewage disposal for all buildings shall be indicated. Refuse collection areas shall be screened and located in areas convenient both to users and to persons who make collections. There shall be adequate ingress and egress to all utilities. (Note: Recycling facilities must meet Standard of Resolution 93-57.) The application does not contain enough information to allow the City to determine compliance with any of these standards.
The Applicant has not submitted sufficient information to enable the City to analyze this	**Walls, Fences, and Screening.** Walls, fences and screening shall be used to screen parking and loading areas, refuse collection areas and mechanical equipment from view. Screening of mechanical equipment shall be designed as an integrated architectural component of the

standard; therefore the Project is not consistent with this standard.	building and the landscape. Utility meters and transformers shall be incorporated into the overall project design. The application does not contain enough information to allow the City to determine compliance with any of these standards

4. City of San Rafael Hillside Design Guidelines

Because the proposed project is subject to the Hillside Development Overlay District of the SRMC, it is also subject to the Design Guidelines Applicable to All Hillside Residential Development Projects[1]. Table 1.3 below evaluates the Project for consistency with the Hillside Design Guidelines.

Table 1.3

Design Guidelines Applicable to All Hillside Residential Development Projects	
IV.A5. Street Layout, Driveway and Parking Design	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines establishes that driveway grades may be a maximum of 18%. This section of the Design Guidelines also requires that parking landings shall be required on all driveways over 10% grade. The application does not specify the grade of every driveway and every parking landing, so the City cannot currently determine whether the Project is consistent with this standard.
IV.A7. Hillside Architectural Character	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines requires fences and walls over 3 feet in height that face public streets to provide a fully landscaped buffer at least 5 feet deep on the street facing side of the fence or wall. The cover page notes that there are fences included in the project that are “2' - 14' (with a small number outliers upwards of 16')”, but the plans do not indicate whether the required 5-foot landscaped buffer will be provided. Additional information is needed to verify compliance with this standard.
IV. A9. Site Lighting	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the Design Guidelines establishes that any overhead lighting for residential parking areas must be mounted at a maximum of 15 feet, and lighting for pedestrian areas must be 8 feet or less. No lighting information is provided and as such, additional information is needed to verify compliance.

[1] Available at https://www.cityofsanrafael.org/documents/hillside-design-guidelines-hillside-residential-development-projects/

5. City of San Rafael Objective Design Standards (ODS)

On March 18, 2024, the San Rafael City Council adopted Resolution 15280, adopting objective design standards for residential developments.[2] The San Rafael Objective Design Standards ("ODS") apply to all residential projects. Table 1.4 evaluates the Project for consistency with the ODS and includes additional consideration factors and notes for context.

Table 1.4	
Objective Design Standards	
1. Site Planning and Layout (Building Orientation)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires buildings adjacent to a public street or alley to design primary building entrances to face the public street or alley. There is not enough information provided to verify if primary building entrances are designed to face Coleman Drive, a public street. The residences appear to face Coleman Drive, but the exact location of individual building entrances is not clearly shown on the Plans. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Windows and Privacy)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires windows that are within 10 feet vertically or horizontally of facing residential bedroom windows or private open space of existing residences to have an opaque or translucent glazing at or below 5 feet above finished floor or be offset a minimum of 5 feet horizontally (as measured by nearest edge of existing facing window). The project is abutting existing residential development to the north, south, and west. The plans do not include enough information to determine whether new residences are within 10 feet vertically or horizontally of facing residential bedroom windows or private open space of existing residences. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Ensure Adequate Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires screening between new residential development and adjacent existing residential uses to obscure direct sight lines between private yards. Such screening shall consist of a continuous view-obscuring wood fence, masonry wall, or an irrigated and maintained evergreen hedge, not less than four feet in height, and not more than six feet in height, which may be broken only for access driveways and walkways. The width of screens consisting of evergreen hedges shall be at least 40% of their height. The project is adjacent to

[2] The Objective Design Standards can be found starting at page 37 of this PDF document: https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2024/03/CC-SA-Agenda-Packet-2024-03-18.pdf

	existing residential uses. The plans do not show if and/or how the project will incorporate screening between the proposed and existing residences. This section of the ODS also requires trash and refuse collection and disposal facilities to be enclosed by a solid fence or hedge that is no lower than the facilities themselves, and requires these facilities to be covered. The plans do not provide details regarding the location of refuse bins. As such, compliance with this ODS cannot be verified.
1. Site Planning and Layout (Ground Level Utility Location and Utility Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires back flow preventers, transformers, and other utilities to be out of sight either in sidewalk vaults or screened from view with either architecture or landscaping. Utility transformers or boxes are required to be underground or, if not allowed by PG&E, screened and not visible from the public right of way. There is not enough information to determine whether the project includes ground level utilities. If the project includes and/or requires such utilities, the location shall be shown on a utility plan and shall demonstrate screening in compliance with this standard.
1. Site Planning and Layout (Parking Garage)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires any parking visible from the public right-of-way to be screened by continuous landscaping, or other architectural features. There is not enough information to verify whether parking will be screened by continuous landscaping or other architectural features.
2. Building Design and Architecture (Trim Requirements)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	The section of the ODS requires stucco foam trim to be limited to one element of trim detail and shall not be used as the sole trim molding material. The plans do not include materials information and as such, additional information is needed to verify compliance.
2. Building Design and Architecture (Colors and Reflective Materials)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent	This section of the ODS sets forth the following related to colors and materials: 1. Facades shall include between 2 and 4 colors. One color shall be the 'main color' and be used on no less than 70% of the non-glazed area of a building's façade. The other colors shall be defined each as an 'accent color' each of which shall not be used

with this standard.	on more than 30% of the non-glazed area of a building's façade 2. Buildings shall include the same colors and materials on all elevations. At least one accent color is required to appear on all elevations. 3. "Gloss" paint finishes shall not be used for a building's main color but may be used for accent colors and on trim. The highest sheen that may be used for a main color is semi-gloss. 4. The main color shall have a light reflective value of between 20% and 80%. Trim and accent colors may use colors of any light reflective value. 5. Fluorescent, iridescent, or metallic paints are prohibited. 6. Metal seam or other metal roofing, if used, shall be anodized, fluoro-coated, or painted with a non-gloss and non-glare finish. Copper and lead roofs shall be natural or pre-oxidized. 7. Any colors used on stucco walls shall be incorporated into the stucco mixture as an integral color. The plans do not include information about colors or the level of information regarding materials that is needed to verify compliance with these standards.
2. Building Design and Architecture (Blank Walls)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires all building walls to have a minimum 15% transparency on each floor. Ground floors without a lobby shall exhibit a variegated façade with changes in transparencies and materials so that no one form represents more than 75% of the surface area. The plans do not include enough information to verify consistency with this standard.
2. Building Design and Architecture (Rooftop Utility Screening)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires all mechanical equipment to be screened and shall not project above its enclosure. Roof-mounted mechanical equipment shall be screened from public view by a parapet wall, decorative equipment screen, or other architectural treatment. The point of view for determining visibility shall be five feet above grade at a distance of 200 feet from any point of the structure at ground level. The plans do not include enough information to verify consistency with this standard.
3. Open Space and Landscape (Useable Outdoor Space)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires the project to provide a minimum of 100 square feet of useable open space per dwelling unit and specifies objective standards related to accessibility, unit assignment, dimensions, balconies, slope, landscaping, and amenities of these useable open space areas. The plans do not include enough information to verify consistency with this standard.
4. Lighting (Light and Glare)	
Consistency Review	Consideration Factors and Notes

The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	This section of the ODS requires exterior lights to have a minimum ground level illumination of 1 foot-candle at doorways and entryways. Elsewhere, exterior lights are required to have a maximum ground level illumination of ½ foot-candle. Additionally, this section requires all lighting sources to be shielded from view from the public right of way and from neighboring properties and specifies that exterior lights: • shall produce no indirect light extending 5 ft. beyond a property line • shall not be placed higher than the height of the principal structure. • shall have a maximum angle of direct illumination of 60 degrees if placed more than 6 ft high. • shall be rated for 4500 Kelvins or fewer. No lighting information was provided. The plans do not include enough information to verify consistency with this standard.

Attachment 2: Housing Division Consistency Review Comments

Table 2.1 below evaluates the Project for consistency with the City's affordable housing requirements (SRMC Section 14.16.030 and Resolution 14890) and includes additional consideration factors and notes for context.

Table 2.1	
SRMC Section 14.16.030 and City Council Resolution 14890	
Size. The affordable housing units shall be comparable in size to the market-rate units within the residential development project, as measured by net habitable square footage. For purposes of this provision, "comparable size" means having habitable square footage proportionate to the range of unit sizes provided for market-rate units in the project. (Section C(1) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard.	The application indicates that one ADU (building 2, unit 1) would be an affordable unit. The average size of market rate units is 2,544 square feet ((8*3,52 + 5*976)/13). At 976 square feet, the affordable unit is significantly smaller than the average size of the market rate units.
Type. The affordable housing units shall possess a distribution of bedroom counts proportionate to that of the market-rate units within the residential development project. (Section C(1) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard.	The average bedroom count for market rate units is 3.85 bedrooms per unit ((5*8+2*10)/13). The affordable unit contains only 2 bedrooms.
Design and Materials. The exterior and interior design of the affordable housing units shall be of the same design, materials, amenities, quality of finish, and appearance of the other developed units. (Section C(2) of Resolution 14890)	
Consistency Review	Consideration Factors and Notes
The Applicant has not submitted sufficient information to enable the City to analyze this standard; therefore the Project is not consistent with this standard.	The application does not contain information regarding the materials, amenities, quality of finish, and appearance of the exterior and interior for each of the units, so the City cannot determine at this time whether the Project is consistent with this standard.
Access. The affordable housing units shall have access to the same amenities and common spaces as the market rate units. (Section C(2) of Resolution 14890)	

Consistency Review	Consideration Factors and Notes
The Project is not consistent with this standard	The application does not affirmatively indicate that the affordable housing unit will have access to the same amenities (e.g., the pool) and common spaces that the market rate units will have access to, so the City cannot determine at this time whether the Project is consistent with this standard.

Attachment 3: Fire Department Consistency Review Comments

Table 3.1	
Fire Regulations	
Fire Apparatus Access Roads – SRMC Chapter 4. 2022 California Fire Code Section 503, Appendix D, and all applicable National Fire Protection Standards.	
Consistency Review	Consideration Factors and Notes
The project is not consistent with this development regulation.	The current plans do not clearly demonstrate compliance with the provisions of these sections of the code.
Fire Flow for Fire Hydrants and fire sprinkler systems - SRMC Chapter 4. 2022 California Fire Code sections 507, Appendix BB, Appendix C, Appendix CC, and all applicable National Fire Protection Association standards.	
Consistency Review	Consideration Factors and Notes
The project is not consistent with this development regulation.	The current plans do not clearly demonstrate compliance with the provisions of these sections of the code.

Attachment 4: Department of Public Works Review Comments

Table 4.1	
Chapter 15.06.020 - Utilities and Services No subdivision of land into two (2) or more lots or parcels for the purpose of development shall be approved by the city unless it is determined that the following utilities and services can be provided: (a) Water Service. Domestic water service for all new lots or parcels shall be provided by the Marin municipal water district (MMWD). (b) Wastewater and Sewage Disposal. Wastewater and sewage disposal for all new lots or parcels shall be provided by either the San Rafael sanitation district or the Las Gallinas Valley sanitary district, depending upon the property location. The creation of an individual on-site septic system intended to serve a new lot or parcel shall be prohibited. (c) Gas and Electric Service. Gas and electric service for all new lots or parcels shall be provided by the Pacific Gas & Electric Company (PG & E). (d) Communication Services. Telephone and cable television service shall be available to all new lots or parcels.	
Consistency Review	**Consideration Factors and Notes**
The project is inconsistent with this standard.	The plans do not indicate that the Project will be served by any of the following utilities: water, wastewater and sewage, gas and electric, communication services.
Section 15.06.050(g) – Hillside Streets; 15.07.030 - Street, driveway and parking standards. All new streets in hillside areas shall comply with the requirements of Section 15.07.030 (Standards for Hillside Subdivisions) of this title. No private street leading to a private driveway on a lot shall exceed a grade of eighteen percent (18%).	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is not consistent with this standard.	The plans show a new private street transversing the 6 Project parcels. The plans do not indicate the grade of the private street.
Section 15.06.070(e) - General design conditions for streets Curve radius. The center line curve radius on all streets and highways shall conform to accepted engineering standards of design and shall be subject to approval by the city engineer.	
Consistency Review	**Consideration Factors and Notes**
The Development Application contains insufficient information	The plans show a new street traversing the 6 Project parcels so it is subject the general design conditions for streets. There is

to analyze consistency with this standard and therefore the Project is not consistent with this standard	insufficient curve radius data to verify consistency with this section.

Section 15.06.080 - Sidewalks and walkways

Sidewalks and walkways shall be required along both sides of new public or private streets and incorporated into the right-of-way width requirements specified in Section 15.06.050 of this chapter. Sidewalks along streets intended for residential use shall be a minimum of four feet (4') in width. All sidewalks and walkways shall be designed to comply with the requirements of the Americans with Disability Act (ADA).

Consistency Review	Consideration Factors and Notes
The Project is inconsistent with this standard.	The plans show a new street traversing the 6 Project parcels. The plans do not depict a sidewalk along either side of the street.

Section 15.06.110 - Grading and drainage

Graded slopes shall not exceed two to one (2:1), unless the city engineer determines that a steeper slope is justified to minimize the amount of grading or to reduce potential tree removal and, where it is determined that the soil and geologic conditions are suitable for and capable of accommodating a steeper slope.

Retaining walls shall not exceed eight feet (8') in height, unless approved by the Planning Commission.

Consistency Review	Consideration Factors and Notes
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is not consistent with this standard	Plans lack sufficient information to determine if whether grading slopes exceed 2:1 or how tall any proposed retaining walls are.

Section 15.06.130 - Undergrounding of utilities

All utility distribution facilities, including but not limited to electric (carrying normal voltage of less than thirty-five thousand (35,000) volts), gas, communication and cable television lines, installed and for the purpose of supplying service to a subdivision creating lots for development, shall be placed underground, subject to specified exceptions.

Consistency Review	Consideration Factors and Notes
The Development Application contains insufficient information to analyze consistency with this standard and therefore the Project is not consistent with this standard	The plans do not clearly show the proposed utilities serving the project. Therefore, it is impossible to determine whether the required utilities will be underground, as required.

Attachment 5: Courtesy Comments

The following comments do not address consistency with applicable standards, so they were not included in the tables above. However, the City is providing these additional comments to you as a courtesy. Please note the following:

Department of Public Works

1. Per San Rafael Municipal Code Section **9.30.151, w**here required by the Phase II Stormwater Permit Provision E.12, or where required by the nature and extent of a proposed project and where deemed appropriate by the agency, every applicant shall develop, submit and implement a Stormwater Control Plan (SCP) as described in the section. The Project creates more than 5,000 square feet of impervious area and therefore will be considered a regulated project. You will therefore be required to submit a stormwater control plan.

2. Per San Rafael Municipal Code Section 14.16.170, development applications require geotechnical reports consistent with the geotechnical matrix in the general plan appendices to assess such hazards as potential seismic hazards, liquefaction, landsliding, mudsliding, erosion, sedimentation and settlement and hazardous soils conditions to determine the optimum location for structures, to advise of special structural requirements and to evaluate the feasibility and desirability of a proposed facility in a specific location. In accordance with Section S-2 (Geotechnical Review) and Appendix F of the San Rafael General Plan, you will be required to submit a geotechnical investigation report.

3. The project is required to provide a transportation analysis report in accordance with the San Rafael Transportation Analysis Guidelines[3], February 2022. Prior to conducting the transportation analysis, the applicant shall provide the scope of work for the transportation analysis to the Department of Public Works for approval. The applicant shall also provide a completed TA Assessment Form, available as Attachment B to the San Rafael Transportation Analysis Guidelines, when providing the scope of work for review.

4. The 2022 California Residential Code (CRC) **SECTION R311- MEANS OF EGRESS** applies:
    a. **R311.1 Means of egress**. Dwellings shall be provided with a means of egress in accordance with this section. The means of egress shall provide a continuous and unobstructed path of vertical and horizontal egress travel from all portions of the dwelling to the required egress door without requiring travel through a garage. **The required egress door shall open directly into a public right of way or to a yard or court that opens to a public way.**

5. The 2022 California Building Code (CBC) **SECTION 1029 - EGRESS COURTS** applies:
    a. **1029.2 Width or capacity.** The required capacity of egress courts shall be determined as specified in Section 1005.1, but the minimum width shall be not less than 44 inches (1118mm), except as specified herein.

[3] Available at https://www.cityofsanrafael.org/documents/sanrafael-ta-guidelines-feb-2022/

Egress courts serving Group R-3 and U occupancies shall not be less than 36 inches (914mm) in width. The required capacity and width of egress courts shall be unobstructed to a height of 7 feet (2134mm). The width of the egress court shall be not less than the required capacity.

6. The following frontage/off-site improvements may be required to comply with post-entitlement building, fire, and other standards:

    a. Upgrade Coleman Drive roadway width along project frontage.

    b. Extend new curb and gutter along the project frontage to match existing curb and gutter ending near the proposed driveway approach. Include a minimum 2' wide shoulder width from the toe of the hill or wall to the back of the new curb.

    c. Install a culvert or concrete valley gutter at the driveway approach to allow uphill water on the roadside to travel past the driveway approach.

    d. Remove and replace the existing sand bag retaining wall along the project frontage with a new wall to support the proposed driveway and improvements.

    e. Install underground storm drain piping and catch basins as necessary to convey uphill water to the existing catch basin at the toe of Parcel 011-031-049 (south-east project limit). Consider installing a catch basin on the uphill side of the new common driveway approach to limit water conveyed across the driveway approach.

    f. Pavement restoration along project frontage. Asphalt grind and overlay shall have a minimum thickness of 2 inches.

7. Mass grading and earthwork operations shall occur between April 15 and October 15 unless approved otherwise by DPW.

8. A construction management plan should be submitted for City review prior to issuance of building permit. The project site is on a steep slope with minimal level area for set up and storage, construction staging will be required to be onsite unless negotiated otherwise with DPW.

9. An encroachment permit and grading permit will be required from the DPW prior to construction.

San Rafael Sanitation District

1. There is currently no public sewer main in Colemen Drive fronting the property. A new sewer main extension will be required from the proposed development to the end of the existing public sewer on the south side of the property at 241 Coleman Drive.

Coleman Letter w Attachments AG

Final Audit Report 2026-06-30

Created:	2026-06-30
By:	Ariel Gutierrez (ariel.gutierrez@cityofsanrafael.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA0S-GGMyrLL5QqtztPTbjKsj6bttBrYaL

"Coleman Letter w Attachments AG" History

Document created by Ariel Gutierrez (ariel.gutierrez@cityofsanrafael.org)
2026-06-30 - 11:30:55 PM GMT- IP address: 199.88.113.8

Document emailed to Micah Hinkle (micah.hinkle@cityofsanrafael.org) for signature
2026-06-30 - 11:31:45 PM GMT

Email viewed by Micah Hinkle (micah.hinkle@cityofsanrafael.org)
2026-06-30 - 11:44:01 PM GMT- IP address: 104.47.65.254

Document e-signed by Micah Hinkle (micah.hinkle@cityofsanrafael.org)
Signature Date: 2026-06-30 - 11:50:40 PM GMT - Time Source: server- IP address: 199.88.113.8 - Signature Appearance Selected: IMAGE

Agreement completed.
2026-06-30 - 11:50:40 PM GMT