

October 12, 2023

Lucas Seibert
Community Development Director
City of Ojai
401 South Ventura Street
Ojai, CA 93023
E-Mail: Lucas@Seibert@ojai.ca.gov

Re: SB 330 Preliminary Application (Case No. Misc 23-035)

Dear Mr. Seibert:

This office represents Ojai Cuyama – Church, LLP (the “Applicant”). On June 16, 2023, the Applicant filed a preliminary application pursuant to SB 330 (Government Code Section 65941.1) for a proposed 2,520-unit housing development project (504 units of which would be deed restricted to lower income households) (the “Project”) on a 14.1-acre site consisting of APN 019-0-100-210 in the City of Ojai, California (the “City”). This letter responds to certain statements contained in your letter dated September 13, 2023, which purports to deem the SB 330 preliminary application for the Project (the “Preliminary Application”) incomplete.¹

As an initial matter, we disagree with the City’s conclusion that the Preliminary Application was incomplete. Furthermore, the statutory provisions related to SB 330 preliminary applications do not require or expressly authorize a local agency to deem a preliminary application complete or incomplete, and there is no requirement that an applicant respond to any such determination. Nonetheless, in response to your September 13, 2023 letter and an earlier letter from the City dated July 14, 2023, the Applicant has made certain technical revisions to the Preliminary Application. These revisions relate back to the Preliminary Application filed on June 16, 2023 and do not constitute new applications.

As you know, the Applicant is seeking City approval of the Project pursuant to the provisions of the State Housing Accountability Act (“HAA”) known as the “Builder’s Remedy” (Government Code Section 65589.5(d)(5)). Under the Builder’s Remedy, if a jurisdiction lacks a substantially compliant Housing Element, it cannot use its objective general plan, specific plan or

¹ Additional responses to your September 13, 2023 letter are indicated in the attached annotated version of the letter.

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zoning regulations to deny or render infeasible an affordable housing development project (i.e., a housing development project that provides at least 20 percent of the total units to lower income households, as defined in Section 50079.5 of the Health and Safety Code).

The submittal of a preliminary application vests an applicant's right to develop a housing development project in accordance with the ordinances, policies, and standards in effect at the time of submittal. (Government Code Section 65589.5(o)(1)). At the time the Preliminary Application was filed in this case, the City lacked a substantially compliant Housing Element.² Accordingly, so long as the applicable statutory requirements to maintain vesting are satisfied, the Builder's Remedy will remain available for and applicable to the Project throughout the duration of the Project's application process.

Because the Builder's Remedy applies to the Project, we question the need for a zone change application or a General Plan Amendment application in this case. Nonetheless, the Applicant presently intends to file such applications with the City within 6 months of June 16, 2023. However, the filing of such applications should not be construed as an admission that such applications are required and shall not constitute a waiver of any of Applicant's rights and remedies in this matter, all of which are expressly reserved.

Thank you for your consideration.

Very truly yours,



JOHN M. BOWMAN
Elkins Kalt Weintraub Reuben Gartside LLP

JMB:JMB

² According to a memorandum issued by the California Department of Housing and Community Development ("HCD") dated March 16, 2023, a jurisdiction is not in substantial compliance with State Housing Element Law until the HCD issues a letter finding the jurisdiction's adopted housing element to be in substantial compliance with State Housing Element Law. In this case, the HCD did not deem the City's Housing Element to be in substantial compliance with State Housing Element law until August 10, 2023 – nearly two months *after* the Preliminary Application was filed.

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Cc: Ojai Cuyama – Church, LLP
Via email: henry@hshmanagement.net
gigi@hshmanagement.net
Elevated Entitlements LLC
Via email: Kevin@elvted.com

Attachments:

Annotated Letter from City dated September 13, 2023
Revised Application