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Via Email to Lucas.seibert@ojai.ca.gov & U.S. Mail

August 2, 2023

Lucas Seibert
Community Development Director
City of Ojai
401 South Ventura Street
Ojai, CA 93023

**RE: 320 Bryant Street, Ojai, CA 93023; SPL Overlay Site #17
SB 35 Application for Development of Affordable Housing
Second Response Letter of Incompleteness, Case No. ZCL 23-051, et al.
Applicant Cabrillo Economic Development Corporation**

Dear Mr. Seibert:

As you know, I represent Cabrillo Economic Development Corporation (CEDC). I have received and reviewed your letter dated July 28, 2023, and addressed to Mr. William Hughes. Frankly, I am amazed at how far afield your letter is from the realities of housing law as it applies to affordable housing projects in this state in general and CEDC's project in particular. Specifically, it appears that the City has totally ignored important state housing laws. In particular, I am referring to both Government Code §65915 (density bonus law), and Government Code § 65913.4 (SB 35).

It is time for the City of Ojai to "wake up and smell the roses." I note that you state on page two of your letter, the following:

"The applicant will either need to apply for the necessary changes to the General Plan and zoning code to accommodate the project, **subject to any applicable state law requirements**, or else adjust the project's scope and scale to meet the objective requirements of the City's General Plan and zoning code, including the specific objective standards for the site under the SPL overlay zone."

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The City must be cognizant of the fact that just as the development is subject to any applicable state law requirements, so too the City is also obligated to respect and comply with applicable state law requirements. That means that the City must evaluate CEDC's SB 35 Application, consistent with the requirements of Government Code Sections 65913.4, and 65915. Let there be no doubt. CEDC will not apply for a General Plan or zoning code amendment because under SB 35, such a procedure is unnecessary and actually contrary to relevant state law. Furthermore, environmental review is not appropriate for this by right development, in accordance with Section 65913.4 (d)(2).¹

As a preliminary matter, I would like to remind you that by letter to you dated September 13, 2022, I put the City on notice that CEDC had filed an SB 330 preliminary application on August 19, 2022, and intended to file an application for streamlined Ministerial Approval Processing, consistent with Government Code § 65913.4 (SB 35).²

As I advised you in September 2022 and again by letter dated April 5, 2023, the purpose of a preliminary application is twofold:

- 1) In accordance with SB 330, completion of the required information and payment of any required permit processing fee freezes fees and development standards as of the filing date, and limits a jurisdiction's ability to disapprove a project that meets current zoning and general plan

¹. Section 65913.4(d)(2) states: "If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be *exempt from the requirements of the California Environmental Quality Act* (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight time lines set forth in paragraph (1). [emphasis added].

². Subsequent to our meeting of September 15, 2022, CEDC decided to redesign the project to allow for greater density, consistent with density bonus law, Government Code § 65915. After the redesign, CEDC filed another SB 330 Preliminary Application on April 7, 2023. The SB 35 application was filed approximately one month later, on May 9, 2023.

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requirements; and

- 2) In accordance with SB 35, a preliminary application serves as the developer's Notice of Intent to submit an application for the Streamlined Ministerial Approval Process pursuant to Government Code § 65913.4, and also triggers the City's obligation to complete the tribal consultation process outlined in Government Code § 65913.4(b).

With respect to the tribal consultation process, I am still waiting to hear back from you in response to the questions posed in my June 14, 2023 letter to you, including:

1. When did the City initiate the tribal consultation process;
2. Whether the City has received any comments from the local Tribal Council; and,
3. If the City has received any comments from the local Tribal Council, that the City inform us of any comments that you have already received or may receive in the future.

To date you have not provided us with any of the requested information. This lack of due diligence on your part leaves CEDC with no choice but to take other measures to initiate contact with the local Tribal Council.

You seem to suggest in your July 28, 2023 letter that because HCD may be poised to certify the City's Housing Element [or that the City's existing Housing Element may already substantially comply with state law], CEDC's

“application cannot proceed under any so-called ‘Builders Remedy’ per Government Code section 65589.5 and instead would need to be processed as a standard land use entitlements application for a proposed project within the SPL overlay, subject to all applicable City requirements.”

This statement is inaccurate on a number of levels, not the least of which is that the so called “builder's remedy” or more accurately “by right development” is not dependent on whether the Housing Element is or is not in compliance with state law. Rather, in accordance with § 65913.4(a)(4)(A) or (B)(I), the “by right” approval process under SB 35 is available to development projects when the City's annual “production report

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reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period."

Specifically, pursuant to HCD's two most recent SB 35 Statewide Determination Summaries, findings were made by HCD that the City of Ojai has made insufficient progress toward its Above Moderate income RHNA based on its annual production reports (APRs) for the years 2021 and 2022, and thus the City is subject to the streamlined ministerial approval process for proposed developments with at least 10% affordability.³

Furthermore, the so called "builder's remedy", which apparently is a theory pressed by certain developers, is not found in Section 65589.5, so I am not quite sure of the purpose for such a reference in your letter. With respect to Housing Element Law, I do note that Government Code § 65583.2 references § 65589.5(f) [which allows a local jurisdiction to "require the housing development project to comply with objective, quantifiable, written development standards, conditions and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584"]. Those same standards apply under § 65913.4(a)(5) as well.

For your information, the "so called builder's remedy", or more accurately referred to as "By-Right" development, is actually part of the provisions of SB 35, i.e. Government Code § 65913.4. [see subdivision (a)].

When all is said and done, the fact is that the City must process this development ministerially, and as such the application is not subject to environmental review under CEQA.⁴ As a "by right" development, the City cannot require the developer to secure a

³. I note that the City of Ojai is listed as jurisdiction # 154 on HCD's SB 35 Summary for the 2021 APRs, and as jurisdiction # 146 on HCD's SB 35 Summary for the 2022 APRs.

⁴. Government Code § 65583.2(I) provides:

"For purposes of this section and Section 65583, the phrase "use by right" shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of Division 13

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conditional use permit or other discretionary approval, and further, the City lacks any discretion to deny the application, as long as the development complies with Government Code § 65913.4 (b) and satisfies the objective planning standards set forth in subdivision (a).

For the record, the development does not involve a subdivision of a parcel, is not subject to the Subdivision Map Act, and the development will receive financing or funding by means of a low-income housing tax credit and/or other sources of public funding, and will be subject to the requirement that prevailing wages be paid [Section 65913.4(a)(8)(A)].

With respect to the seven "Project Plans Incomplete Items" that are listed on pages three and four of your letter, please understand that although CEDC is not required to respond to new items, consistent with Government Code § 65943(a), CEDC is willing to reasonably cooperate with the City as appropriate and responds to each of the individual items as follows:

1. Title Sheet T1.01 will be edited to reflect that the project contains fifty units, including 49 units affordable to lower income households and one manager's unit.
2. The plans will include call-outs for the height of all proposed fencing onsite.
3. The plans will include a call-out for the proposed height of the buildings that will read "Allowed Height per Govt. Code § 65915(d)(2)(D)".
4. We agree that the "Will-Serve" letter and other needed verification for utility services, will be included as a condition of approval.
5. We will make a good faith effort to comply with the applicable Code sections. However, recognizing that some of the fences or walls are part of an integrated retaining wall, in the event that the plans are not able to meet

(commencing with Section 21000) of the Public Resources Code."

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the Code, we will use a concession, under density bonus law and consistent with HCD Guidelines, the project should be considered "consistent with the City's objective standards." [See HCD's Streamlined Ministerial Approval Process Guidelines, Article III, Section 300(c)(3), p. 9]

6. This item is somewhat unintelligible as it references "the exterior portions of the hotel site." That said, we note that this language is the same as was contained in item number 11 of the City's first Incomplete Letter. In response to that item, the light fixture height information was added to all the lighting sheets [LT.00, 01, 02, 03]. That information was provided in a box at the top of the page. It is possible that the City simply did not notice that information. Thus, I would ask you to review these plan sheets. I am confident that you will find what you are looking for. After review, please indicate whether those changes are acceptable, and if not, please advise as to where on the plans you would like that information.
7. The reference to "Brand Street" on page 2 of Mr. Winslow's report dated May 3, 2023, will be changed to "Bryant Street." The request for a "site plan and/or technical study(s), catalog cut sheets and other visuals to demonstrate compliance with" the NPDES, and preliminary visuals within the project plans are new requests and thus, are not appropriate requests to be entertained at this time, consistent with Government Code § 65943(a). Furthermore, Mr. Winslow's report documents that the project site qualifies as "Technically infeasible" for the reasons explained in the report, and the report explains how the project will address water quality compliance. The City should acknowledge that the project has provided proof of exemption or if the City would prefer, verification of the exemption by the County of Ventura can be included as a condition of approval.

In closing I would like to remind the City that the clock is running with respect to the City's processing of this application. According to the statute this application should be approved on or before August 9, 2023. I direct your attention to Government Code § 65913.4(d)(1)(A), which requires:

1. If the City wishes to conduct any design review or public oversight of the development, it must be completed within 90 days of submittal of the development to the

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local government pursuant to this section [See subdivision (d)(1)(A)].

2. Any "design review or public 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, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed, and if the development is consistent with all objective standards, the local government shall approve the development" within the time line set forth in subdivision (d)(1)(A), "and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect." [See subdivision (d)(1)].

In accordance with the statute it appears that the City will have to forego any design review or public oversight in order to comply with the statutory time line for approval.

Also, as you should be aware, this 100% affordable housing development, is clearly protected under Government Code § 65589.5, which provides in subdivision (j)(3):

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

You allege on page 2 of your letter that the "proposed project is inconsistent with the objective standards of the SPL overlay zoning district, including density..., parking... height... and number of stories..." However, I already explained how CEDC's project is totally consistent with these standards. Please refer to my June 14, 2023 letter to you (at pages 2 - 5), wherein I specifically addressed how each of these items is specifically authorized, consistent with state density bonus law. The City is duty bound to interpret its standards, consistent with state law.

This mandate in the Housing Accountability Act effectively bars the City from demanding that the project seek a general plan amendment or zone change. Furthermore, although the City may require the proposed housing development project to comply with

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the objective standards and criteria of the zoning which is consistent with the general plan, these standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the development project [See § 65589.5(j)(4)]. The City's general plan, zoning and development standards must all be read consistent with state density bonus law.

Furthermore, this affordable housing project is protected under the Housing Accountability Act, and thus, can only be denied for one of the five specific reasons set forth in subdivision (d) of that Act. Even in the event it were to be determined that the Project was inconsistent with both the City's general plan and its zoning ordinance, the Project still could not be denied, in light of the fact that the Project is located on a site (site # 17) listed in the City's Housing Element Inventory as a site suitable for lower income housing. [See Govt. Code § 65589.5(d)(5)(A)].

I am available to discuss this matter with you and your attorney, if you so desire. However, I would like to direct your attention to § 65913.4 (c)(1), which calls for the City to approve this development because it is consistent with the objective planning standards specified in subdivision (a). Specifically, I refer you to subdivision (a)(5), which addresses the impact of any additional density or concessions or incentives, and states as follows:

"The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is 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, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier. For purposes of this paragraph, "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. 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

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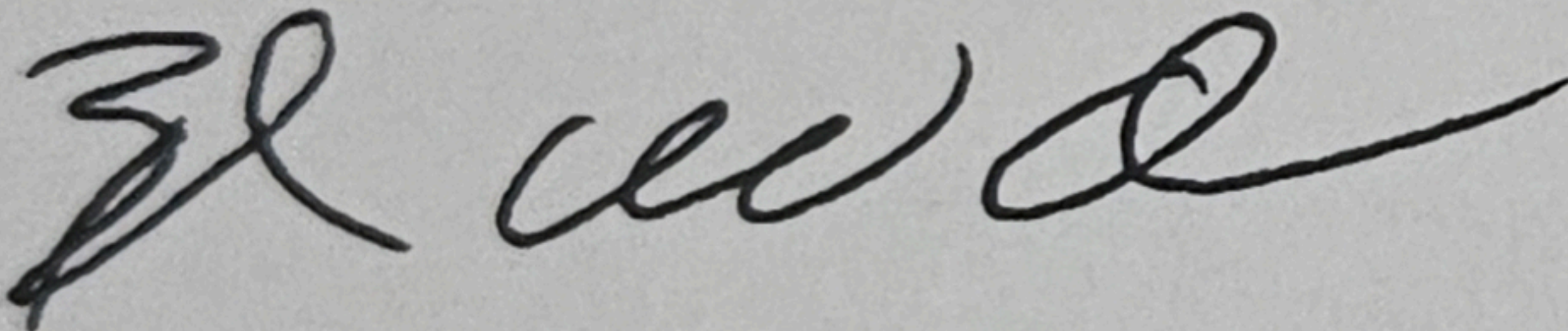
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overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances."

I realize that SB 35, can seem complicated to the untrained eye. Thus, for your convenience and edification, I am attaching by email a pdf copy of HCD's "Updated Streamlined Ministerial Approval Process, Government Code Section 65913.4 Guidelines, March 30, 2021."

Thank you for your prompt attention to this matter.

Sincerely,



Barbara Macri-Ortiz

cc: Sent via email to:

Margarita H. de Escontrias, CEDC Chief Executive Officer
Victoria Brady, CEDC, Chief Financial Officer
William Hughes, CEDC Real Estate Development Director
Bronson Viscarra, CEDC, Project Manager II
Mary Dochterman, Land Use Planning & Affordable Housing Consultant
Frank Thompson, Frank Thompson Housing Consultants
Maura Macaluso, Associate Planner, City of Ojai
Matthew Thomas Summers, Esq., Attorney for the City of Ojai
Jessica Evans, AICP, Senior Housing Policy Specialist, HAU, HCD
Paul McDougall, Manager, Housing Policy, HCD

Enclosure: Sent via email only: Streamlined Ministerial Approval Process,
Government Code § 65913.4 Guidelines, March 30,
2021