LWT

May 6, 2026

VIA E-MAIL cdd@sausalito.gov cc. cityclerk@sausalito.gov

City of Sausalito Community Development Department
City of Sausalito
c/o Community Development Director/Assistant City Manager (bphipps@sausalito.gov
cdd@sausalito.gov)
420 Litho St
Sausalito, CA 94965

Re: 215 Sausalito Boulevard, Sausalito, California — SB 35 Housing Development — Notice of Improper Course of Conduct Under Gov. Code § 65589.5(h)(6)(E)

Dear Community Development Department:

Long Water Trust ("Owner") and Christopher Sullivan ("Applicant") provide this formal notice concerning the proposed SB 35 housing development at 215 Sausalito Boulevard in the City of Sausalito (variously the "Project", or the "Development"). One unit, Unit 2, has been designated as the affordable unit & the applicant committed to record a deed. This notice is given pursuant to Government Code section 65589.5(h)(6)(E). As reflected in Exhibit A, the City's handling of the Project has involved a course of conduct undertaken for an improper purpose in violation of Senate Bill ("SB") 35 and the Housing Accountability Act (Gov. Code, § 65589.5 et seq.) ("HAA"). If the City does not cease that conduct, its continuation will constitute a further violation of the HAA. The Project is also entitled to the protections afforded by Government Code section 65589.5(d)(5).

The Processing Conduct Challenged by This Notice

Exhibit A identifies the specific 38 acts, and positions at issue. Exhibits B through K provide supporting statements from California Attorney General, California Housing and Community Development, and precedent. Taken together, the City's unsupported demands, shifting positions, and inconsistent directives amount to disapproval for purposes of the HAA and improperly interfere with the ministerial processing required for an SB 35 project. (Gov. Code, § 65589.5, subd. (h)(6)(E)(i); Gov. Code, § 65913.4, subd. (c)(1)(C).)

This notice is directed not to an isolated comment or single request, but to the broader pattern of improper processing conduct described in Exhibit A, explained and clarified in the supporting Exhibits, the specific conduct referenced, and the city's repeated failure to issue an approval letter for the development. Unless that conduct is stopped and corrected, the City will remain in violation of the HAA. (Gov. Code, § 65589.5, subd. (h)(6)(E)(v).)

The applicant is entitled to an approval and approval letter forthwith, inter alia, by each and all of:

1. When the development vested it was subject to the Builder's Remedy as the city had an adopted Housing Element but did not have a certified Housing Element at that time

2. The development complies with the General Plan, and the General plan and zoning standards are internally conflictive. The development is consistent with the standards set forth in the general plan. The development is thus deemed consistent with the objective zoning standards. (SB 35)

3. The city – by its own statement (HBR-74) - does not have any objective standards to apply to the streamlined development at the vesting date. Thus – there is nothing for the development to comply with

4. The standards that the city recites are not objective. Because they depend on the exercise of discretion. (Attorney General's letter)

5. The city did not respond in accordance with (c)(1)(c) and thus - in accordance with (c)(2) - the development is deemed to satisfy all objective planning standards by operation of law, irrespective of any factual position. This clause is described by a court as 'the specific procedure at the heart of statute that effectuates its purpose', and to ignore it 'would do violence to its very language and purpose', the court deeming that development thus satisfied the standards – by operation of law.

6. The development benefits from the "baby Builder's Remedy" - it is listed in the city's Housing Element as being housing for moderate income persons and consistent with the Housing Element density - it cannot be denied irrespective of the zoning ordinance

7. Each and every one of the prior submittals is deemed consistent with all objective planning standards for the same reasons – a constellation of 'deemed to satisfy *all* objective planning standards'.

For each and all of 6 reasons the city had an obligation to carry out its ministerial duty to process and approve the development. It must now do so. Even if in the highly unlikely event – hypothetically – one (etc.) of the reasons fails, there are 5 independent and separate reasons that the city must still issue a written approval. The city simply has no plausible, actual or possible defenses.

Even if the city had objective standards applicable to the development (which it has told us it does not) it could not apply them as the development has already been deemed consistent by operation of law. Even if the city did respond timely to the resubmittal - it has no objective standards to apply and thus the development satisfies all standards. And even if the city did both have objective standards *and* provided a timely letter advising which of those standards apply (it has not and did not) it would not stop the development because the development has the benefit of the builder's remedy and the baby builder's remedy.

There are rumors that certain city members believe that the state housing laws are difficult to enforce because they are new – but the city should disenchant itself of that notion - because Ruegg & Ellsworth v City of Berkeley, 40 Main St Offices v City of Los Altos, and CARLA v City of San Mateo (among others) clearly show otherwise. And the Attorney General has already given counsel on the pertinent subjects here to the city's litigation firm Best and Best (attached) – the city doesn't need to inappropriately use our taxpayers' funds to decide that matter a second time.

The applicant can readily select a court (and fact decider) of competent jurisdiction – do not labor under any misconception about that – and, at the city's considerable expense for both the city and the applicant's attorney's costs and fees.

We are entirely sure that the city has way better subjects (and subjects way more important to the city) to be spending meaningful time on, than to attempt to block a compliant residential development application of 3,521 sq ft.

The city must issue an approval letter forthwith

Obligations Triggered by Receipt of This Notice

Receipt of this notice triggers immediate statutory duties. The City must satisfy those duties while continuing to process the Project; **neither this notice, nor any Statute** authorizes the city to stop, or defer SB 35 processing. (Gov. Code, § 65913.4, subd. (c)(1)(C), (c)(2))

- Within five working days after receiving this notice (i.e., by May 13, 2026), the City shall post the notice in full on its internet website, furnish a copy to any person who has requested notice under 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 is located. (Gov. Code, § 65589.5, subd. (h)(6)(E)(ii).). The notice comprises 195 pages and the notice must be posted. THUS - **all 195 pages** – of the notice must be posted – both on the city's website, and, on the county's website (and furnished to any person who has requested notice). In the event that the city does not post all the pages of the one notice, or not provide the notice with all pages to the County for it to post the notice, the city will not have satisfied the requirements of the Housing Accountability Act.

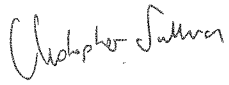
- Then, within between 60 days and no later than 90 days after receipt of this notice (i.e., between July 6, 2026 and August 4, 2026) after considering all objections, comments, evidence, and concerns relating to the Project or this notice, must either issue a written statement that it will immediately stop the challenged conduct or adopt written findings that both (I) articulate an objective basis for each of the individual **38 acts** of challenged conduct, separately & why for each act the challenged course of conduct is necessary and (II) specify with clarity what the applicant must submit or supplement so the City can make a final determination regarding the next necessary approval or [if applicable] set the next hearing date. [These references to further documentation and to a hearing concern discretionary

processing, with projects in front of a commission, so are not directly applicable here, for this SB 35 Project]. (Gov. Code, § 65589.5, subds. (h)(6)(E)(iii)–(iv).)

* * *

We expect the city to comply promptly with these statutory duties. The city is further reminded that an improper disapproval of the Project under the HAA may subject it to a *minimum* fine of $10,000 per unit in the housing development and, depending on the facts, a *minimum* fine of $50,000 per unit if a court finds bad faith. (Gov. Code, § 65589.5, subds. (k)(1)(A)(ii), (k)(1)(B), (l).) Applicant is entitled to recover attorneys' fees and costs. (Gov. Code, § 65589.5, subd. (k)(1)(A)(ii); Gov. Code, § 65914.2, subd. (b)(1).)

The applicant & owner reserve all rights.



Christopher Sullivan
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Exhibits:

A. Challenged Course of Conduct Table
B. City states it has no objective standards
C. City *staff* state it does have objective standards
D. Consistency review must be timely in each and every instance regardless
E. City cannot require information that does not go to a reasonable person assessing compliance with the objective standards
F. City can only apply standards consistent with meeting its RHNA allocation
G. HCD requires city to remove these discretionary determinations
H. Attorney General confirms that a standard that relies on the exercise of discretion cannot be used. City has an absolute requirement to timely document any inconsistencies
I. Housing Elements are in force only after HCD certifies them
J. Timely consistency letter is "the specific procedure is the heart of the Statute that effectuates its purpose"
K. There is no such thing as "sufficiently objective". Only standards that are consistently applied across the jurisdiction can be used by the city.

HBR-74 City of Sausalito Housing Element May 2025:

"The City's Design Review provisions are subjective in nature and demonstrate preferences or characteristics for consideration while allowing discretion and flexibility, and as such, cannot be enforced through a streamlined, ministerial process. Consistent with existing State law, 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. Sausalito is in the process of preparing Objective Design and Development Standards (ODDS) to allow eligible projects to be permitted through a streamlined, ministerial review"

As at May 2025, no Objective Design and Development Standards (ODDS) existed "to allow eligible projects to be permitted through a streamlined, ministerial review" (such is the review applicable here)

Exhibit A

Challenged Course of Conduct

215 Sausalito Blvd, Sausalito, CA 94965

The following conduct has been undertaken by city for an improper purpose, constitutes a disapproval of the application, and must *cease*:

	Cease this conduct/cease attempting to apply:	**City sent/sends documentation which states:**	**Applicant's response & statement**
1.	**Applying non-objective standards to development**	**Floor area standards, and coverage requirements City states development doesn't comply/may not comply with floor area standards, and coverage requirements**	10.56.050. Structures and buildings to be located in the public right-of-way **shall be included in the coverage and FAR calculation** But - 10.56.030 A. Community Development Director. The following encroachments shall be subject to Community Development Director review and recommendation 1. Major landscaping 2. Stairs not on grade; 3. **Driveways**, involving cut or fill of more than six feet ...7. Vehicular traffic safety guardrails deemed necessary by the City Engineer

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			B. Planning Commission. The Planning Commission *shall have the authority* to review and make recommendations on the following type of encroachments: 1. Garages... 3. Building and structures ...7. Retaining walls that exceed six feet in height. The standards for floor area ratio, coverage & impervious are **NON-OBJECTIVE STANDARDS** and thus CANNOT be applied to this SB 35 development as the city attempts to do. Floor area & coverage for this development is a non-objective standard – there is no access to the lot other than through a necessary encroachment including construction/structures in the public right of way, in part because of a steep slope at the Right of Way The city is prohibited, by SB 35, from applying standards the values for which are found from subjective criteria and discretionary processing.

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			Struhar. M writing for the Attorney General March 16, 2023 to Mayor of city of Elk Grove (attached) "The city's arguments in the Letter rely on the assumption that this ... 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.**" Emphasis added. See Exhibits. If the city removed the calculation of floor area, lot coverage, and impervious area to that currently include the areas of encroachment into the public right of way, then it would move floor area, lot coverage and impervious area *closer* to being an actual objective standard. See HCD letter Exhibits -**requiring Sausalito to remove these from its standards – the city refused to do so**. Further, re June 3 2025 letter from city regarding providing better detail on impervious and lot coverage values (which had already been provided, and were completely findable by any planner in minutes) and that because they were stated to be not available the application

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			was incomplete, SB 35 prohibits the stopping of an application due to *requests for information that is not necessary to determine if an application is compliant with objective standards* (see code references elsewhere in this document) These zoning values are NOT objective - and despite the written insistence by HCD that they MUST be so. **CEASE applying these discretionarily determined values to the development.**
2.	**Applying non-objective standards to development**	**<u>Impervious surface limits</u>** **Development doesn't/may not comply with impervious surface limits**	10.40.050 C. Limit on.....impervious Surfaces. *All structures which count toward building coverage shall also count as impervious surface.* Impervious surface sq footage cannot be determined through objective standards (See description above on coverage) **CEASE** applying these discretionarily determined standards (and for which the numeric values are impossible to quantify objectively, and in advance) to the development
3.	**Applying non-objective standards to development,**	**<u>Front lot line</u>** (& connected to setbacks). *After applicant has*	1. SB 35. 300 (c)(2) "A locality shall not require a development

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	cease applying standards that are prohibited to be applied by SB 35	*completed design* and made submittal to city, Director wrote documenting *subjective* reasons for why Sausalito Blvd is front lot line, writing, in summary, that Director has chosen the lot line, and stating no objective reason for such. SMC 10.88 "Front property line means the line separating the parcel from the street. In case a lot abuts on more than one street, the parcel owner may elect any street parcel line as the front parcel line; provided, that such choice in the opinion of the Community Development Director will not be injurious to adjacent properties"	proponent to meet any standards for which the locality typically **exercises subjective discretion**, on a case-by-case basis". For the subject lot, the front lot line was suggested (and noted) by the Planning Commission by subjective discretion. Tentative map with only a 5' side yard at the south, and a 15' rear yard at the west AND NO FRONT PROPERTY LINES - was also approved 1/20/2010 by Planning Commission (& with **no front lot line** adjacent to Sausalito Boulevard). Further, in the approval there was **NO** height limit for first 15' from the noted front property line. A front lot line is marked at Marion Avenue in the prior architectural plans (and **NOT** at Sausalito Blvd as the Director after our design was complete insists it be) and approved. The Planning Commission did not apply any setback nor setback height requirements at the noted 'front lot line' - by its subjective

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			discretion. The city cannot apply different standards to this SB 35 development, nor apply <u>any standards</u> where subjective discretion is typically applied - as undeniably evident that it had here, and always is applied in processing development applications in the city. It is completely clear & incontrovertible that the city applies standards regarding designating property lines, and the setbacks required from them, on an entirely discretionary and subjective basis - and thus is and for that very reason **prohibited** from doing so under SB 35. 2. The lot was created, birthed, and approved – see specifically tentative map in the plans - as a lot having one 5' side yard setback, and one 15' rear yard setback (and with NO front lot lines) 3. Govt Code 65913.4 (i)(1) A local government shall not adopt or *impose any requirement*.... that applies to a project solely or

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			partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section [SB 35]" Govt Code 65913.4 (d)(1) "..and shall be broadly applicable to development within the jurisdiction". The non-objective standards that the city attempts to hold the applicant to are – as evidenced – NOT broadly applicable to development within the jurisdiction – in fact, those types of standards are not applicable to the project (and were determined discretionarily and subjectively to approve a prior development for a prior owner at the site). 4. Separately, and as a standalone point - the power to impose a discretionary requirement (in any event) has been removed by the Statute. The requirement the city attempts to impose is subjective – because (interalia) its application depends on the exercise of discretion (see Struhar, and others)

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			5. The subject parcel has a Right of Way/street on two sides. The city defines a corner lot in city code – one rear yard one side yard, no more (and which is explicitly confirmed in the documents creating the lot, including tentative map approved by the city on 1/20/2010, which approval created this lot). Whether the city agrees that it is a corner lot or not, the more important matter is the setbacks from the property lines. The development meets any and all applicable standards for setbacks. 6. Further, and overriding the city statements, the city has not identified/did not identify any city code that specifies that the subject lot is *not* a corner lot. 7. Further, (though the applicant does not need to place reliance on this) - the *street* at Marion Avenue is clearly shown at A1.1. (And – materially – access for automobiles on Marion Ave that would certainly already have been

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			built had the city not *unlawfully* denied the applicant's subdivision completion application in January 2023). 8. The development is subject to Builder's Remedy, where *no standards* other than unmitigable written & available before vesting, Health or Safety standards can be used to not approve the development – none such exist here, and, the city did not and cannot make that finding. And there are significant statutory penalties against a city for asserting that an application is not subject to Builder's Remedy, including applicant's attorney costs and fees. 9. "..deference does not assist the city here because the record does not show a long-standing and consistent interpretation of the Guidelines' requirement ..." CARLA v City of San Mateo 2021 The city's argument (that the applicant must redesign the entire project because

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			the project doesn't meet the setback requirements from a front property line – advised by the Director **AFTER** the design was completed) fail on any one of the points raised above – in fact the city's argument **fails on each and every one** of the 9 rules referenced above. A Sausalito Planning Commissioner – the most experienced Planning Commissioner at that time - said to city staff, from the dais giving feedback – to city staff - on a proposed amendment to the code "we're creating *more* **chaos** in our ordinances and codes"
4.	**Withholding written approval of March 20, 2026 development resubmittal**	**No written approval has been received following March 20, 2026 development resubmittal being deemed compliant by operation of law.**	The city did not provide a consistency nor inconsistency determination by the deadline of April 20, 2026. Therefore, per Govt Code 65913.4 (c)(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).

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			(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." SB 35 changes the completeness question. The issue is not even whether every item on a general discretionary planning checklist has been supplied. The issue is whether the application contains the information needed for a reasonable person to determine consistency with the applicable objective planning standards. And, materials that do not directly pertain to that review, or that relate instead to

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			later engineering, building, utility, encroachment, or post-entitlement permits, are not 'completeness' items for a SB 35 resubmittal. No further documentation was required for a reasonable person to conclude that the development is consistent with the objective planning standards. Including that – as confirmed by the city at HBR-74 Housing Element May 2025 – in the city's own words - "The City's **Design Review provisions are subjective in nature and demonstrate preferences or characteristics for consideration while allowing discretion and flexibility, and as such, cannot be enforced through a streamlined, ministerial process**. Therefore, issue the written approval forthwith.
5.	**Side yard setbacks**	**City states does not comply with side yard setback**	Sausalito code 10.40.90 D "Side Yard Structural Projections. Where a building wall is not parallel to a parcel line, or does not follow a continuous unbroken alignment, a portion of the building wall

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			may project into the required setback provided that: 1. The average depth or width of yard is at least equal to the required depth otherwise required. 2. No more than 50 percent of the building wall encroaches into the required setback. 3. The yard is not less than three feet in depth or width at any point. 4. The proposed side yard projection is subject to review and approval by the Planning Commission as governed by 10.54.050 Design Review Permits" The building wall in the applicant's plans does not follow a continuous unbroken alignment. The lot has two yards – one side yard, and one rear yard. And see sheet A 5.0 All of 1, 2, 3 above are met. The development meets the side yard setback requirement

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			The city **MUST CEASE** alleging that it does not.
6.	**Does not meet rear yard requirement**	Rear yard setback has been exceeded. Rear yard setback is 3.83' but rear yard setback is to be more than or equal to 15'	Rear yard is clearly shown in the submitted plans as equal to or more than 15' - rear yard setback is **42.62'** City must **CEASE** stating that the rear yard setback is exceeded.
7.	**Does not meet various height requirements**	Building height has been exceeded as building height is measured from excavated grade below the building rather than natural grade	Sausalito code 10.40.060 B 1. "Standard Building Height. Building height is the vertical distance from the average level of the natural ground surface *under the building* to the highest point of the building or structure...." and continues **"To determine the height of a building, the highest and lowest points of contact with the *natural grade* are identified and the average of these two elevations is the point from which the permitted maximum height is measured. The highest and lowest points of contact are determined where the maximum vertical projections of the perimeter walls of the building contact the *natural* grade"**

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			The Sausalito code regarding height is internally conflictive - natural ground surface under the building **v.** contact with natural grade. In the first sentence, code states "height is.....distance from the average level of the **natural** ground surface **under the building**" - this is not definitive nor objective because it does not cover instances where a building is placed *below* natural grade i.e. when it is no longer *natural* grade – **excavated grade is not natural grade** in fact the opposite – the city code is thus incorrect and conflictive. (It legislates only for buildings that are at or above natural grade) But as it continues the code defines the rule from where building height is measured (average natural grade) There is a further issue – even if the above were clear, **natural grade itself** is a non-objective standard (height - see other section in this document).

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			The development **complies** with building height, having a height of **32'** – the maximum height per Sausalito code, and, an absolute height from natural grade of **44'3"** (maximum is stated in Sausalito code as 50') The city must **CEASE** writing, and attempting to block the approval of this compliant development, by quoting inapplicable, internally conflicting, non-objective municipal code
8.	**Does not meet various height requirements (contd)**	Building height has been exceeded	10.88 Definitions "Natural grade means the vertical location of the ground surface, also known as the existing grade, as determined by the established ground contours that existed in 1968. When a topographic survey of the site is required, the survey may be compared with the 1968 Photometric Maps of the City of Sausalito as a guide in determining major ground contour modifications" This is a non-objective standard.

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			The city (as California Housing and Community Development Department has also written) must CEASE using inapplicable standards to attempt to condition the development. The submitted development complies with building height - having a height of **32'** – the maximum height per Sausalito code, and, an absolute height from natural grade of **44'3"** (maximum absolute height per Sausalito code as 50')
9.	**Sending purported consistency determinations under Govt 65913.4 (c) that do not meet the requirements of SB 35 and do not explain where the development diverges from objective standards**		City did not send compliant consistency determinations under Govt Code 65913.4 (c)(1) nor (c)(1)(C). The applicant is owed approval for each event where city did not send compliant consistency determinations. Send an approval for March 20, 2026 submittal.
10.	**Relying incorrectly on one sentence in an HCD email post-hoc regarding 'objective standards' (which appears to re-state city of Sausalito's question in any event)**		Unlike discretionary processing, where many inputs can be taken in to aid processing, SB 35 cabins the consistency and inconsistency determination process to an exact time schedule (and instigates penalties against the local government if these are ignored)

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			Any raising of objective standards with which the development was purportedly not compliant was not fulfilled by the city - in relation to the sentence (which specifies no standards) that the Director now Assistant City Manager quotes from one sentence in one email from HCD/submittal. A consistency letter explaining how a development is not consistent with each objective standard, and an explanation in each case, must be provided by the *city* timely). In any event, later on, HCD analyzed that the development was subject to Builder's Remedy. It is clear that the development submitted February 15, 2023 vested when the city was prohibited by the Housing Accountability Act from applying any standard other than health and safety
11.	**References to height limited to 32' within 15 feet of the property line,** as measured from the centerline of the paved portion of the road opposite the	Measurement of Height. All portions of a building (including any portion of a floor, chimney or other appurtenance) shall be limited to 32 feet in height within the first 15 feet from the property line, as measured from the centerline of the paved	The lot was approved as a corner lot by city resolution number 2010-04. The tentative map has (only) one side yard (5'), and one rear yard (15'). This is consistent with Sausalito code 10.88 *"Property Lines* means the recorded

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	midpoint of the front parcel line.	portion of the road opposite the midpoint of the front parcel line.	boundaries of a lot of record, as follows:...3. "Side Property Lines" are recorded lot boundaries that are neither front nor rear property lines, which extend between front and rear property lines. **On a corner lot, there will be one side parcel line and one rear property line." End** No front parcel line is referenced in the definition of corner lot. **Even if** there were an objective definition of a corner lot in Sausalito code (which there is not) and it's four (plus) property lines & types, the standards could not be applied as the city promotes because SB 35 300 (c)(2) "A locality shall not require a development proponent to meet any standards for which the locality typically **exercises subjective discretion**, on a case-by-case basis". The city typically exercises subjective discretion for the identification of property line categorizations and discretionary set back distances, **and did so for a design review permit for this particular lot, prior to the owner purchasing this lot**. The city approved 35.5' height at 4' inside the property line

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			(on this lot) from the east property line (inside the lot) on 1/20/2010 as compared to 15' apparently stated in Sausalito code, and based on **Marion Avenue** being the front parcel line and in *discretionary* review. There is no external uniform benchmark for what a corner lot is, nor any other objective standards on this subject and the existence and use of an *external* benchmark would be the necessary starting point of applying the standard (see other disqualifying issues concerning this standard). Further, the city Director insists that *he* choose the front lot line discretionarily by subjective standards – and AFTER the time consuming and costly design has been completed. The process the city uses leads to a lack of resolution and a lack of approval. The point of *actual* objective standards is to create certainty ex ante for the applicant and thus increase housing production.

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			The sole definition concerning a corner lot is 10.88 Definitions "**On a corner lot, there will be one side parcel line and one rear property line"** is objective. It is to that definition that the applicant (of course) *must, and did, defer to.* See other sections also as to this subject And the city waives this requirement in discretionary processing. **CEASE writing** and applying this non-objective, non-applicable standard to this development
12.	**City states has long standing objective standards**	City staff state that city has longstanding objective standards	**In fact** the city fully understands that it's standards are not objective – the zoning code was created over a multi decade period during which the housing approval regime was desired by the city to be, and is, entirely, distinctly, intentionally discretionary and subjective – and was and is. This was the code regime when the applicant vested. The city has confirmed the subjectivity (and thus inapplicability) of its code on many separate occasions over the relevant period - on Jan 12, 2023 the city published

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			a document stating "Many of the City's subjective review criteria which regulate building design...cannot easily be quantified to become objective standards" (see other references) Yet it is **exactly those same <u>standards</u>** that the city staff unremittingly attempts to burden the applicant with (that they are those standards is clear from this notice), staff even writing that the reason the development cannot be approved is because the city has long standing objective standards including height, floor area, coverage and so on. The city must **cease** doing so and process the development with only actual objective standards - which always have an external ***<u>uniform</u>*** (& absolutely unchanging) benchmark (the development is in fact subject to the baby Builder's Remedy and Builder's Remedy at all times). The city has made a definitive statement, in its May 2025 Housing Element, HBR-74

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			stating unequivocally that its standards are NOT objective: "The City's **Design Review provisions are subjective in nature and demonstrate preferences or characteristics for consideration while allowing discretion and flexibility, and as such, cannot be enforced through a streamlined, ministerial process**. Consistent with existing State law, 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. Sausalito is in the process of preparing Objective Design and Development Standards (ODDS) to allow eligible projects to be permitted through a streamlined, ministerial review" (Housing Element downloaded from city website January 29, 2026 11.20am) Staff in the Planning department must **CEASE REPRESENTING – ORALLY AND IN WRITING - THAT STANDARDS THAT CAN ONLY BE APPLIED BY THE**

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			EXERCISE OF DISCRETION ARE OBJECTIVE STANDARDS THAT ARE APPLIED TO THIS DEVELOPMENT. The city must cease attempting to impose double or triple standards that address the same subject but are conflictive *between themselves* (see for example height), and state *different* rules for the same standard within city code. It appears the city is nervous that other applicants will discover that the greatest majority of the city standards are not objective - and that thus the city will have to approve yet more housing development projects which - given it is a negative growth city is assumedly against its wishes - thus the city has attempted to disguise subjective standards and pretend that the standards are objective. But a standard is either objective, or it is not. The city is attempting to have the applicant – rather than the city - 'pay the price' for these city problems – which are entirely of its own making (and NOT the

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			applicants), and defer the approval letter, perhaps until the city has undertaken the enormous task of creating internally consistent & objective design standards, (which also don't downzone) when at which point the city will be 'back in control'. It seems the city considers itself in a weak position - and is flailing around. City staff must **CEASE** writing, inter alia in a spam like fashion, that this development cannot be approved because it doesn't meet (subjective) standards, stop applying personal or subjective judgment (and without regard to whether individuals in the city have a personal opinion that the project is 'not a good idea') & ministerially approve the development.
13.	City staff maintain that the city has long standing objective standards contd		Other representatives of the city – City Council members, Planning Commissioners, and city documents such as May 2025 Housing Element, such documents representing the cornerstones of the city's housing policy state categorically that the city does not have standards that are objective.

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			City staff must provide a reasoned analysis (and not just a throwaway sentence or two), anchored in fact and objectivity, that explains how each of the key zoning controls (see below) is objective and not found through the exercise of discretion as dictated by the ordinances, and is referenceable to an external unchanging and uniform benchmark (**and**, a reasoned analysis, that none of the other deemed compliants and conformant plan conditions outlined in detail in this document apply): Height, Floor Area, Floor Area Ratio, Setbacks, Impervious area, Coverage area, & Density Even if, by a miracle – staff could make this reasoned explanation - it is irrelevant, as the written approval needs to be made by the city on numerous other & independent bases outlined in this cease a course of conduct notice regardless of whether any quoted standards are objective.

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14.	Cease blocking the development		Since the city has no objective design standards by its own admission (at least not at any relevant time November 2022 – December 2025, and continuing beyond as the developments vested **prior**) the city has no path to block the development. It is simple logic that if a reasonable person on substantial evidence can consider the development conformant – because there are no objective standards - the city **MUST MINISTERIALLY APPROVE** the development. This is the status – in the city's own words. **Issue a written approval letter for the March 20, 2026 development resubmittal**
15.	City staff maintain that a development can be made on this odd shaped steeply sloped lot by simply applying the city's standards and that a home/(s) can be designed that meets all the city standards.		Govt Code 65913.4 (a)(5)(B) "In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if

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	(Despite many public statements being made by city officials above the staff level to the contrary – "not all our lots are a square and on flat land" "how do we deal with the hillside lots – answer "some very complicated new code"(which has not been written) The city design review standards are replete with mutual inconsistencies (in the past, these were simply resolved eventually by discretionary decisions from the dais). One of the planning commissioners described these inconsistencies as 'chaos in the code'		the development is consistent with the standards set forth in the general plan" As described in this notice, the zoning & design review standards fail due to multiple internal conflicts that exist for key zoning data – including measurement of height, designation of yards. **And while <u>not being obligated to do so</u>, the applicant has, to address the city's stated concerns, ensured that the development conforms to the General Plan (and its elements), being:-** **Height – 32'** **Floor Area – 3,521 sq ft** **Lot coverage 2%** **Impervious area 56%** **Setbacks – side 5', and rear 15'** **Dual family, w/ADU** The applicants' development – despite it not having to do so, and the applicant making significant concessions to the size of the development - IS A GENERAL PLAN COMPLIANT project.

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			The city must now step up and do the correct thing **The city must issue an approval forthwith**
16.	**Sending documentation/stating an application incomplete by alleging that planning data is not in the development submittal when it is**	The city writes to request clarifications regarding where steps lead and what function they serve City sends documentation stating that interior volumes above a specified height shall be counted 1.5 times and implying that the city has recalculated floor area	The plans clearly show where steps lead and what function they serve The correct calculations were made for floor area regarding this point and were submitted/resubmitted
17.	**Stating or implying that the development is not subject to the Builder's Remedy**		The development application was submitted on February 15, 2023 & March 29, 2023, when the city did not have a housing element certified by California Housing and Community Development Department. Thus, the development is subject to the Builder's Remedy. The city has not followed Statute requiring the city to process the development as a Builder's Remedy project

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			The development is subject to the provisions of Govt Code 65589.5 (d)(5) - codified as the Builder's Remedy. As the city could not and cannot make a finding that there are unmitigable known before vesting written Health or Safety standards that cannot be met by the development, the city must approve the development forthwith. If it does not approve the development, it is subject to (inter alia) penalties, fines, and applicant's attorney's fees and costs under the statutory scheme for Builder's Remedy. **And**, the development even complies with the General Plan – height, setbacks, floor area, impervious area, & lot coverage. **Issue a ministerial approval for the March 20, 2026 development forthwith**
18.	**Writing that the city has always had a continuously compliant Housing Element during the relevant period (February 15, 2023)**	Phipps "There has not been such a time where the City did not have a certified housing element" and "HCD.. further reiterated that the City has been in substantial compliance with housing element law since adoption of its original sixth cycle housing element in 2023"	This statement is completely untethered from the facts. The 1st 6th cycle Housing Element was compliant from April 28, 2023 (not from February 1, 2023). The development should have been approved, and is entitled to approval now.

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		(Adoption was January 30, 2023)	The Director (now Assistant City Manager) appears to make statements in an attempt to defeat State law – making out that the development was/is not subject to the Builder's remedy. His statements – again - are untethered from fact. The city's misrepresentations must CEASE, **and the development must be approved, in writing.** The applicant/owner has had one continuous application since February 15, 2023. Further, the applicant has submitted Government Claims timely, preserving its rights while the city has been processing multiple resubmittals of the development. Sausalito Planning Commission did not review the development Feb 14, 2024 for consistency with objective standards – it reviewed the development against wholly SUBJECTIVE standards. The city did not correct the process and set a new meeting as required under Correct & Cure, to undertake this duty. The city did

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			not respond at all to the resubmittal made on May 24, 2024 (thus deeming the development consistent – see SB 35 Guidelines on resubmittals being allowed) No new submittal/application was required in December 2024 - the scoping consultation had already concluded, no substantial change in the environment had occurred at the site which would be what requires a new scoping consult – the city was simply (and is simply) trying to defeat the application approval by gamesmanship, delays, obfuscations and intentional misinterpretations of city code – nothing more, and nothing less. And, upon a review of the whole record (per Housing Accountability Act) on the processing of this development, the city's non-compliant conduct (and at times egregious conduct) is very clear, and, it is clear from the whole record that the **development must be approved**.
19.	**Following stated city policy of 'slow growth', rather than following State and local law, including the Housing Accountability Act**	Some City Council members, who have been in offices in the city for more than 20 years state publicly that it is a 'slow growth' city 'this is how we decided to describe it' (In	Regardless of the policy of the city, City must follow the law, Director carry out his ministerial duty, and approve the compliant development

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		fact, the city has lost housing on a net basis over the last 20 years)	
20.	**Failing to carry out mandatory ministerial duty**	City did not send approval letters on multiple occasions – including December 2023 (submittal October 2023), July 2024 (resubmittal May 2024), February 2025 (resubmittal December 2024), July 2025 (started processing May 2025) and April 2026 (started processing March 2026)	City must follow the law, Director carry out his ministerial duty, and approve this compliant development forthwith The development, under the provisions of SB 35, the streamlined ministerial processing statutory scheme, has been deemed compliant by operation of law no less **than 5 times**. **Send an approval letter forthwith**
21.	**City staff making statements, and writing to applicant using these statements, and to block the processing (example 'we have long standing objective standards such as FAR, height, coverage, setbacks") which are diametrically opposed to the facts, and contradicting statements made by Council and Commission members**	Cease making these representations which are untethered from the facts	Objective standards (such as they purportedly exist) by which the project/development is assessed are those in place on February 15, **2023** (& modified by Govt Code 65589.5(d)(5) A)Junius, Planning Commissioner and actively practicing land use lawyer, 3/29/2023 addressing Brown (responsible for objective standards) "you look at the Objective Design standards... what was that game..Sim City, right? Well, we don't live in Sim City, we live in a very, you known, hilly, slopey, curvy streets, every lot's not a square, right? So, so in some respects, there – I think there's going to be

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			a lot. I think ...one of the things the staff is going to have to address almost immediately is what happens when **somebody tries to apply the objective standards, and their lot doesn't fit (unclear) 17 of them, right**?" Discussion followed. Brown: "So it doesn't take the place of this you, uh, large and probably complicated hillside ordinance that the city council has called for in your General Plan, but it does get you partway there at least" The hillside ordinance **has not been created.** b) 12/13/2023 Keller, Planning Commissioner "And, and for two and a half years, we've been requesting, you know, uh, funding for an initiative for the city to update all of our ordinances and codes, because some of these are, are, you know, very long in the tooth, you know, back to the 80s and 90s. And so they're not even, you know, uh, truthfully applicable or enforceable anymore" " Um, we have a lot of ordinances that, you know, um, you know are a little bit nonsensical or out of date. So look, I-I've

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			made my motion clear" Junius response "I think, I actually feel pretty bad for what the applicant has had to go through" c) Junius 7/7/2021 "So it's just a bit of a you know manpower issue grinding through the code and, and creating um, a framework to present you know, ultimately a new ordinance to the city council to adopt some, **you know, real objective standards** that comprehensively deal with the Code issues that's the bigger piece" This code has not been produced, and certainly not prior to the vesting of the development. The standards referred to did not change through the entire operative period (February 2023, December 2024 etc) The city's own Planning Commissioner, most qualified to opine as he is a land use lawyer in active practice in new State laws in the region, states that the standards are not real objective standards. That is an inflection point and moment. But it doesn't stop there – on it goes:

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			d) 1/22/2024 Sobieski, Mayor addressing an applicant/project (including but not limited to specifically *side yard setback standards*) "I understand some of where the frustration and the anger comes from. It's a kind of maddening process not to have the ability to have some guidance on what's an approved design or approvable design uh, where I'm still, if I were the applicant, I'd be a little confused as to what the process is. Uh, **I'd be very confused** and frustrated.... leads to a kind of corrosion where there's a sort of controversy veto, that if uh, if uh, I can gum up the works because of t-this". The **MAYOR** of Sausalito states – I'd be very confused and frustrated. The **MAYOR**. e) **Cox, responding to that position iterated in** d): "I did wanna address the mayor's comment about how does an applicant know what to do? How do they know what's gonna pass or not pass? And that is one of the reasons we are working **feverishly** on our objective design standards so that it will be much more clear to all of our applicants, what does it

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			mean?... And so... we started this process.... to attempt to turn our standards, *make our standards more objective* and less subjective so that applicants are not in the dark about what will likely be approved or not. They can have a whole lot more certainty. And we're finally um, in the final stages five years later of uh, being provided with some objective design review standards to review. And so I regret that this applicant was not um, availed of those updated standards to **provide more certainty about what would be um, acceptable or not."** The standards Cox refers to are the standards that the city attempts to block our SB 35 application with. It is these very same subjective standards that Cox refers to that city staff are unapologetically attempting to hold this streamlined, objective standards ONLY development to. **The Mayor of Sausalito himself is very confused by the city's standards!**

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			This must CEASE. The city must carry out its simple ministerial duty and issue the long, long overdue approval letter forthwith for this development.
22.	**Claiming – both directly and indirectly that the housing development project did not vest on February 15, 2023 & March 29, 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 February 15, 2023 and March 29, 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" SB 35 gives no ability for a city to simply deny an SB 35 project, close it out, completely ignore a valid correct & cure, and demand a new application (and with a new vesting date). Irrespective of what the city tried to impose on the applicant September – December 2024 – that a 'new application' had to be submitted following the city's unlawful behavior (though this was specifically contrary to

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			the explicit provisions in the SB 35 published Guidelines), this development is the same development/application that was submitted February 15, 2023. The city's unlawful acts in purporting that the Planning Commission reviewed the development for objective standards on February 14, 2024 which it DID NOT DO (it reviewed the development against wholly subjective standards), in no way excuses it from its obligations under SB 35 to approve the development. (The development has been resubmitted a number of times during the period, under the Statutory scheme) Administrative prevention doctrine determines that a party cannot benefit from its own wrong. It was the city (and not the applicant – in fact the applicant vociferously objected) that chose at that time not to continue processing the development – and that position was not in compliance with the law. When the applicant made changes to the development, SB 35 301(a)(3) applies..

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			"does not preclude the development proponent from correcting any deficiencies and resubmitting an application for streamlined review" March 2021 – or, simply resubmitting the development in response to the city writing under (c)(1) and (c)(1)(C). And in any event, the development is conformant with all city objective standards **AND** is conformant with the General Plan. **Issue the approval letter**
23.	**Requesting additional & superfluous information that is not required, and using such request to (attempt to) stop processing the application**	"Demonstrate that the existing site drainage system is in good condition" (– but this is a vacant lot) "please darken the outline of oval space covering the exterior deck on west side of the primary structure and show how that level interacts with the steel beams" "clarify where... the steps are leading" Provide "pedestrian pathways"	These are NOT the standards by which SB 35 developments are reviewed by a local government: Govt Code 65913.4 (f) (1) Govt shall not require "Studies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards applicable to the development" Govt Code 65913.4 (c)(3) "For purposes of this section, a development is consistent with the objective planning

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		The city continually raises minutiae and irrelevant points The city writes letters stating that they will not process the SB 35 development because application materials are not included	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"*** The developments submitted contained substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. The city – the Director or equivalent position - must now ministerially approve the development
24.	**The city sends letter requesting unnecessary information before processing –** including construction management plans, work with affected utility companies as "part of		See exhibit May 4, 2026 letter applicant to city. The review process is ministerial, cannot be blocked on the basis that application materials have not been submitted (see code citations), and shifted to a

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	the application's completeness review", applicant shall demonstrate existing site drainage system is in good condition (as part of completeness review)		reasonable person standard based on substantial evidence of consistency or inconsistency with objective standards that have external uniform benchmarks. **Issue the approval letter**
25.	**Representing that the city can end the processing of an SB 35 project by alleging non-consistency & then purporting to deny the project and demanding the applicant start over with an original application (including after the 60 day (c)(1) period).** **Representing that an applicant cannot resubmit and processing be continued**		Govt Code 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** and the applicant has an absolute right to resubmit. The city had no authorization to require that an applicant 'start again from the beginning' of the process- nor be subject to changed or significantly changed city planning standards since the applicant

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			designed the development and submitted its SB 35 application. By way of this section, the Statute provides (and the Legislature definitively intended) 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 etc., whereas SB 35 has been passed into law to *reduce* the time that housing developments are to be approved. (Stated Legislative intent) The city had no authority from the Statute to request that the applicant submit a new application in December 2024. As the applicant stated at the time and states now, the process of SB 35 for this development has been a single process, one continuous application since February 15, 2023.

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			SB 35 301 (a)(3) "does not preclude the development proponent from correcting any deficiencies and resubmitting an application for streamlined review" March, 2021 **This development was submitted on February 15, 2023 as is only subject to the objective standards in ordinances in place at that time (and as modified by Govt Code 65589.5 (d)(5) and other related provisions of Builder's Remedy)**
26.	**Making <u>unsupported</u> statements about key zoning values in the application, square footage values, state that values exceed standards, and that are impossible for the applicant to replicate, and that are accompanied with no explanation whatsoever of how the city computes them**	Calculation of floor area is purported to be 4,030 sq ft (rather than the applicant's lower number)	**No explanation whatsoever is provided** IF the city actually considered that the floor area, or other zoning values have been exceeded it must "provide the development proponent written documentation of which standard or standards the development conflicts with, **and *<u>an explanation</u>* for the reason or reasons the development conflicts with that standard**.." Govt Code 65913.4 (c)(1) Explain is "to make known, to make plain or understandable, to give the reason for or cause of, to show the logical

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			development or relationships of". Merriam-Webster. Letters that the city has sent alleging inconsistency do not meet this standard. They do not explain the reasons. SB 35 specifically provides that when a (proper) inconsistency letter has not been sent, and within the timeline, the development is deemed compliant with all the city's standards. The city hasn't even begun, hasn't even come close to fulfilling that requirement. The city knows that if it actually did that exercise, it would have to forthwith approve the development. **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.) Kline,**

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			as found *against* the errant City of Berkeley, directly across the water from Sausalito. (The city had speciously requested further information to assess whether the development met objective design standards) **Further – (as the city knows) the development IS compliant with the city's objective standards.** **Issue the approval letter**
27.	**Requesting information that is for downstream/post entitlement permits**	The city writes to request detail on proposed site drainage to the termination point, construction staging areas, & other post-entitlement matters. Despite not being required, the applicant has submitted a comprehensive civil engineering plan	Govt Code 65913.4 (f) "Notwithstanding any law, a local government **shall not require** any of the following prior to approving a development that meets the requirements of this section: (2) (A) Compliance with any standards necessary to receive a post entitlement permit" The civil engineering plan, which includes comprehensive detail on the proposed retaining walls, site access, access, and

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		incorporating utility planning, site access, site access retaining walls, site retaining wall detail, & grades etc., <u>on multiple prior occasions</u> Requesting structural data on the proposed structure	other customary details was first provided in October 2022, and on multiple occasions since then. It has only had completely inconsequential, and immaterial very small tweaks since then. This is a downstream requirement
28.	**Representing that a city checklist form was in place at the time of resubmittal, and that all items on this form that was <u>not in effect</u> at the time of resubmittal – the city represents - is the controlling list**	Applicant marked a check list form, which had the description: A TOPOGRAPHIC AND BOUNDARY SURVEY that is sealed/wet stamped and signed by a licensed surveyor or qualified registered civil engineer (a qualified registered civil engineer is someone who was licensed prior to 1982 with a license number no higher than 33965) **<u>may</u>** <u>be required</u> by City staff (emphasis the City's) Marked as N/A THEN (and he referring to the same development) Mandich of city staff sent a spurious email insisting that a	The applicant has provided on prior occasions a complete survey of the lot (though it was not obligated to do so) In any event, such a "wet stamped ..survey" is not mandated by the checklist, and is (in the context) not required to determine whether the development complies with objective standards. Further, height is not in fact an objective standard in this city's code, and neither is

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		new (non applicable) checklist be followed with – very interestingly - an *altered* description: "A TOPOGRAPHIC AND BOUNDARY SURVEY that is sealed/wet stamped and signed by a licensed surveyor or qualified registered civil engineer (a qualified registered civil engineer is someone who was licensed prior to 1982 with a license number no higher than 33965)." June 3, 2025. With the underlined word <u>may</u> being removed by city staff. And – **and this is one of the important parts** - citing that until this is provided the application is 'incomplete' (thus attempting to stop the processing of this streamlined ministerial approval application AGAIN)	measurement of height (see city's attempt to base height on an adjusted excavated grade) City staff need to stop this gamesmanship and obfuscation **and send a written approval letter**.
	City staff wrote to applicant insisting that an 'Encroachment <u>Agreement</u>' be submitted and until then, the application was incomplete	Request for an 'Encroachment <u>Agreement</u>'	The city needs to stop this pretextual blocking of processing. The applicant -as the city well knows – does not have an 'encroachment agreement' as the city has unlawfully refused to issue an encroachment permit to date.

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	City staff wrote to applicant insisting that a title deed with easements be submitted and until then, the application was incomplete		The applicant has provided a title report to the city. The city well knows that there are no easements across the lot, including that the city itself created this new lot (and the city did not perform its duty in requiring that in the event that any were needed in the future, future easements be executed and recorded across the two lots that were created from the lot being split) There is more than adequate availability of space for all lots in the area to be served by the rights of way, and homes are directly next to those rights of way. (And, the city has prior processed this SB 35 application **without** these further documents) The city must cease requesting documents that are not required for SB 35 processing.
	City wrote to applicant saying it cannot process the		A grading plan has been provided to the city on multiple occasions. As a grading plan is for downstream, postentitlement

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	application as it does not have a grading plan		processing, it cannot insist on such a plan. In any event a grading plan has been provided to the city on multiple occasions. **The city must stop pretextually blocking the issuance of an approval letter**
29.	**Naming the project a 'special project'**	City has published on its website that this is a '**special project**' – for approximately a year.	City ignored a cease and desist letter requiring it to take down that designation City is targeting the applicant and project, in part because it is a ministerial by-right project, which the city has no discretionary control over (except through published in advance reasonable objective standards), and city is incorrectly applying processes & standards specifically because it is an SB 35 project. This is *not* a *special* project. City must cease this conduct and take down that notice on the city's permitting look up.

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			This is simply a streamlined ministerially processed and approved under state housing reform laws.
30.	**City has refused to process the approval for the necessary encroachment work for access to the project site**	City states that a driveway(/street) is an accessory structure and requires a principal use.	A driveway/street in the public right of way is NOT an accessory structure. The city has had this application from November 2022, and it has been submitted to the city on multiple occasions since, and is an implicit part of the SB 35 application. The *same* driveway/street was submitted on February 15, 2023 as part of its SB 35 submittal. The city is unreasonably delaying approval of the work necessary in the right of way. Govt Code 65913.4 (i)(3)(C)(ii) - regarding application for a public improvement. Govt shall not (ii) "Unreasonably delay in its consideration, review, or approval of the application". The city must write a letter of approval for the improvements proposed in the right of way, and forthwith.
31.	**ADU**	The city requires a complete ADU application, then it changes its mind for a subsequent resubmittal and does NOT want a complete ADU	The city appears to be changing its review method on the fly to slow down or stop the SB 35 processing.

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
		application, then, it requires an ADU application etc. etc. etc.	SB 35 development needs to be processed and approved The development was processed without an ADU application prior. The manner in which the city processes ADU applications combined with material new construction is wholly undocumented, discretionary, subjective, and has been and is proactively used by the city to frustrate development applications. The city record is replete with other recent examples of such that are frankly disturbing. The city has failed, despite its obligation to do so, per Section 300(b) (section numbering has had changes as Guidelines have been updated), requiring 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(q), and relevant objective

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			standards to be used to evaluate the application" It's commitment – twice – in the Housing Elements – to do the same, with the most recent published commitment date in 2024 - was broken by the city. **Issue the written approval for the SB 35 development**
32.	**Retaliation**	Matthew Mandich & Brandon Phipps are intentionally obstructing the processing of this compliant SB 35 application	The applicant is being retaliated against because inter alia a) the applicant complained to California Housing and Community Development (HCD) about the city's unlawful actions and lack of compliance in not taking the actions required in the city's Housing Element and asked HCD to thus decertify the element b) because the applicant is using a ministerial non-discretionary process c) the city is offended that it has – at this time at least – lost its power to deny a development and it does not like the state housing reform laws in this regard (in fact, all it needs to do is create a set of objective design standards – that are

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			clean and without internal conflict - and it regains control) **STOP retaliating** against the applicant and issue an approval, to which the applicant is entitled as a Protected Property interest
33.	**A City official states from the dais that subjective standards can be applied if *created* before 2019, but not subjective standards created from 2019**		The City Council member misstates the law. IN FACT, from 2018 subjective standards **WHENEVER** they were created cannot be used to condition or deny housing developments City staff appear to be trying to follow this statement in their constant, endless processing loop using subjective standards
34.	**Needlessly raising the cost of obtaining approvals**	The city continually raises subjects in writing that do not conform to State law including the Housing Accountability Act (see the detail in this notice), and that often 'stop' processing of this streamlined ministerial application at the city	These subjects raised lead to the applicant engaging in extensive unnecessary work, and work that is not required by state law

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
35.	**Cease delaying and blocking the processing of this housing development application by alleging that standards must be applied to the development**		The development has the benefit of the "baby builder's remedy", codified at Govt Code 65589.5 (d)(5)(A) "(A) This paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed on a site, including a candidate site for rezoning, that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element if the housing development project is consistent with the density specified in the housing element, even though the housing development project was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation on the date the application was deemed complete" P. 185 HBR-129 May 2025 Housing Element, quote "215 Sausalito Blvd, 065-263-10. A Preliminary SB 330 application has been submitted for a 3-unit project,

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			including .... **1 moderate income (deed-restricted) unit**, on this vacant, 0.12-acre site. The required entitlements are approval of the SB 330 application and building permit". Thus the city has identified the site as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element P. 347 Housing Element. States that 215 Sausalito Blvd is R-2-2.5 P.110 Housing Element Medium High Density Residential (MHR) = ***Two-Family*** Residential (R-2-2.5). The development is two family residential. The application meets the simple tests of both the Housing Element density requirement, and, the requirement to be identified in the Housing Element as suitable or available for moderate-income households. If it is the position of the city that the development application does NOT meet

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			the objective standards, the city has to issue a written approval ANYWAY because the development application is subject to the "baby Builder's Remedy" (& under SB 35) **The city cannot apply any standards to the development (other than findings of unmitigable health and safety). The city must issue a written approval for the housing development forthwith**
36.	**Failing to follow the processes outlined in Govt Code 65913.4. These are also described in the case law, including 40 Main Street Offices LLC v. City of Los Altos**		See Exhibit A – 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). Judge H. Williams The development there was approved as the city had failed to issue a consistency/inconsistency letter under Govt Code 65913.4 (c)(1) ((b) at the time of the order, same clause later updated to (c))

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			The court stated that (c)(1) is the specific procedure at the heart of statute that effectuates its purpose
37.	**Harassment of applicant**	The conduct described in this notice	The conduct of the city, over the last 3 ½ years, constitutes **harassment** under Govt Code 65589.5 (h)(6)(e). City is required to **STOP this harassment** of the applicant forthwith
38.	**City states – regarding December 5 2024 resubmittal - that under city code 10.50.170 incomplete applications in excess of 120 days are considered withdrawn**		The city, by its letter of April 17, 2026 accedes the point that the application is not withdrawn. Cease alleging that the application has been withdrawn. The resubmittal made December 5, 2024 was not incomplete. Govt Code 65913.4 (f) (1) Govt shall not require "Studies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards applicable to the development". Govt Code 65913.4 (f) "Notwithstanding any law, a local government **shall not require** any of the following prior to approving a

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			development that meets the requirements of this section: (2)(A):- Compliance with any standards necessary to receive a post entitlement permit" State law preempts local code, an unchallengeable constitutional principle. The city must **cease** attempting to send the applicant around an endless closed loop – applicant submits, city sends documents that submittal resubmittal not compliant with state law, city demands applicant start back at the beginning of the process, rinse, repeat, rinse repeat. The explicit provisions of SB 35 (and the official Guidelines) contemplate that gamesmanship - and are codified to defeat it. Further, SB 35 provides an absolute right to resubmit based on city's written feedback, at any time, and without time limitation. Govt Code 65913.4 (c)(1)(C). This overrides city code.

	Cease this conduct/cease attempting to apply:	City sent/sends documentation which states:	Applicant's response & statement
			See California's Attorney General's letter stating – "[the city] requested more information about whether the Project...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.... **the Project was deemed to satisfy the standard"** The resubmittal December 5, 2024 was complete - and was deemed compliant by operation of law by/in July 2025. Further – putting aside operation of law - the development IS in any event compliant with any standards that the city may have that are objective at development submittal dates (interalia) February 2023, March 2023, May 2024, December 2024, May 2025, and March 2026.

For the avoidance of ANY doubt, it is the applicant's position that the development is subject to the provisions of 65589.5(d)(5)

EXHIBIT B

City of Sausalito Housing Element May 2025

City confirms it has no objective standards but is in the process of addressing that & preparing them

that may constitute a household. With implementation of Program 16, the City's definition of household will therefore not be a constraint to housing for persons with disabilities.

Streamlined Review and Objective Design Standards

California legislation has been adopted to address the housing shortage within the State, requiring a streamlined, ministerial process for specific residential developments. SB 35 (Government Code Section 65913.4), which went into effect on January 1, 2018, was part of a comprehensive package aimed at addressing the State's housing shortage and high costs. SB 35 requires the availability of a streamlined, ministerial approval process for developments located in jurisdictions that have not yet made sufficient progress towards their required allocation of the regional housing need. For a project to be eligible for streamlining pursuant to SB 35 it must:

- Contain at least two multi-family units;
- Be located on an eligible site in an urbanized area or urban cluster;
- Comply with residential or mixed use General Plan and Zoning provisions;
- Provide a specified level of affordability; and
- Comply with other requirements, such as locational and/or demolition restrictions.

A streamlined, ministerial review per State legislation requires projects to be reviewed against existing objective standards, rather than through a discretionary entitlement process, in specified timeframes. Residential development that is a permitted use by right is not required to go through a discretionary process. However, there is potential for mixed use projects to be eligible for the streamlining provisions of SB 35 that require a degree of discretionary review under current zoning requirements, such as a CUP for certain mixed use projects in the CR, CC, and CN zoning districts or project's requiring Design Review. The City's Design Review provisions are subjective in nature and demonstrate preferences or characteristics for consideration while allowing discretion and flexibility, and as such, cannot be enforced through a streamlined, ministerial process. Consistent with existing State law, 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.

Sausalito is in the process of preparing Objective Design and Development Standards (ODDS) to allow eligible projects to be permitted through a streamlined, ministerial review. A streamlined, ministerial review removes multiple constraints to residential development including financial, time, and environmental constraints. Program 16 (Zoning Code Amendments – Housing Constraints Program) in the Housing Plan provides for revisions to the Zoning Ordinance to identify a streamlined, ministerial approval process and adoption of the ODDS for eligible projects per Government Code Section 65913.4. Program 19 specifies that ODDS will be adopted to address multi-unit residential, mixed use, and single family residential projects to ensure consistent and objective review of residential development.

It is noted that until the ODDS are adopted, projects may submit an application for streamlined by-right review under State law and the only standards that the City may apply to such projects are

EXHIBIT C

City *staff* contradicting all other statements, representing it does have objective standards – blocks the application - but every other member of the city states it doesn't have objective standards

Subject: RE: 215 Sausalito Blvd - Notice of Incomplete Application
From: Matthew Mandich <mmandich@sausalito.gov>
Date: 12/12/23, 2:42 PM
To: Long Water Trust <longwatertrust@gmail.com>
CC: Brandon Phipps <bphipps@sausalito.gov>, Sergio Rudin <sergio.rudin@bbklaw.com>

Mr. Sullivan,

The City has longstanding objective development standards in its municipal code - e.g. height limit, required setbacks, building coverage limits, floor area ratio limits, impervious surface limits etc. These objective standards exist in the municipal code, have been identified and collated in Resolution 6059, and have been communicated to you on numerous occasions and in several formal letters.

We are awaiting a resubmission that complies with our objective development standards. Once submitted it will be processed ministerially.

Very best,

Matthew Mandich
Associate City Planner
City of Sausalito | Community Development Department
420 Litho Street, Sausalito, CA 94965
CDD: 415-289-4100 |Direct: 415-289-4135

EXHIBIT D

HCD technical assistance

Consistency review must timely in any and every circumstance

Zoning data table provides the data required a reasonable person to assess consistency

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

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

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
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(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

EXHIBIT E

Letter from applicant to city addressing that it requested information that is not required for the reasonable person determination standard

Long Water Trust

May 4, 2026

To: Community Development Department

City of Sausalito,

420 Litho St

Sausalito, CA 94965

Dear Community Development Department

215 Sausalito Blvd, Sausalito - 'completeness'

We are in receipt of the City's April 17, 2026 'notice of incomplete' following our March 20, 2026 resubmittal under Government Code section 65913.4(c)(1)(C). That resubmittal responded to the City's June 3, 2025 communication. This letter addresses only the completeness subject.

Our March 20, 2026 resubmittal was complete for SB 35 review. The items identified in the April 17 letter were already provided, are not required under the applicable vested submittal materials, not required under SB 35 for consistency review, or relate to later permitting and implementation rather than SB 35 consistency, and are not required for a reasonable person to determine whether the development meets the objective planning standards.

Completeness under SB 35

Our March 20, 2026 resubmittal provided the substantial evidence needed for the City to review the development for consistency under SB 35. The plans include the information needed to review height, setbacks, lot coverage, floor area, floor area ratio, access, fire access, impervious surface, lot size, metes and bounds, elevations, all other relevant physical features of the proposed development, and all required zoning data (and

containing exactly the same level of detail as when the city had processed prior iterations of the development under SB 35 for consistency with objective standards)

SB 35 changes the completeness question. The issue is not whether every item on a general discretionary planning checklist has been supplied. The issue is whether the application contains the information needed for a reasonable person to determine consistency with the applicable objective planning standards. And, materials that do not directly pertain to that review, or that relate instead to later engineering, building, utility, encroachment, or post-entitlement permits, are *not* 'completeness' items for a SB 35 resubmittal.

The city's April 17, 2026 letter only identifies items that are either already in the City's possession, not required under the applicable vested materials, not required for SB 35 consistency review, and relevant only to later permit processing. Those items do not make the March 20, 2026 resubmittal incomplete for purposes of SB 35 consistency and inconsistency review.

The code references explaining this completeness framework are set out at the end of this letter.

ADU

The City does not require a separate ADU application to process this SB 35 application. In October 2023, the City processed this same SB 35 development, which included an ADU, without requiring a separate ADU application. At that time, the City stated that it would not process an ADU application because a primary use had not yet been established. No new ordinance, published processing requirement, or applicable checklist requirement has been identified that changes that completeness position for this vested application.

The city did not identify any ordinance or published processing requirement, applicable to this SB 35 submittal, that requires a separate ADU application as a *completeness item*.

'Encroachment Agreement'

The City letter of April 17, 2026 states that a checkbox 'encroachment agreement' must be checked. For reasons outlined below, this is not required nor is it a 'completeness' requirement.

This development vested on February 15, 2023, with further resubmittals including on December 5, 2024. The fees requested are not applicable - these new fees requested were passed by ordinance much later - effective July 1, 2025, more than two years after vesting. That data is readily ascertainable from the fee schedules of the city. (This is not about the money - it is about process)

Further, the process for obtaining a permit for undertaking works in the public right of way is laid out by the city in SMC 10.54, and 10.54.040 (& subject to the provisions of SB 35). Upon approval - this results in an approval of the encroachment *permit* (not 'Encroachment *Agreement*'). This *permit* is a prerequisite (according to Sausalito code) for an encroachment *agreement*. The term encroachment agreement is used extensively in Sausalito municipal code to refer to café seating, signage in the public right of way downtown & including similar preexisting uses & in similar circumstances. And for construction related matters, after the issuance of the planning *approval* - per SMC 10.56.110 "Prior to any construction and improvement within public lands or rights-of-way, an encroachment *agreement* must be issued by the Engineering Division on forms furnished by the City Engineer". The encroachment *agreement* is plainly a downstream requirement beyond the planning permit - the submitted development includes all detail required to review the driveway/street for a planning *permit* (or 'encroachment *permit*') - as in fact it has done for the same driveway/street since November 2022.

Title Report

A title report has already been provided. And, the data per Sausalito checklist for title report has been provided. Long Water Trust is the vestee, and the metes and bounds are clearly described on multiple pages of the plans. Sausalito (itself) created this lot by Resolution of the Planning Commission - and is more than familiar with its mapped boundaries.

The form submitted in the applicant's resubmittal on December 5, 2024 reads

"TITLE REPORT: verifying the description and vestees (not required if use is to be conducted in existing structure and no structural changes are proposed, otherwise, this report is required)"

But, Sausalito presented a *new* form in April 17, 2026 with *new* requirements – the new form added verbiage regarding encumbrances and exceptions etc. which the city now cites as being required for this resubmittal - but importantly this is not the form at February 15, 2023. It is not possible to ascertain when this form came into existence – the form being undated – but it is inapplicable to this development. Only forms (and such relevant parts of a checklist, & further subject to the preemptive mandates of SB 35) that are in place at the time of vesting are to be used.

Further, the city failed to identify the objective standards in the city code that necessitate the provision of this data.

Survey

The checklist states that survey MAY be required. The applicant has provided a survey on multiple occasions prior. Further, the city passed a Resolution creating this lot based on the survey. It approved the tentative map based on the survey, and then approved a final map based on survey, which was signed and sealed by the city engineer – based on the survey.

Electrical undergrounding

The March 20, 2026 site plan states: "Electrical service undergrounded." That supplies the relevant planning-level information.

To the extent utility-company coordination, or utility construction plans are later required, those are implementation materials. They are not completeness items for the SB 35 planning resubmittal.

Site drainage/Site plan

Site drainage is shown in the civil engineering materials already provided (though it was not required). The applicant has submitted civil plans addressing drainage for this small site on multiple occasions.

Walls and fences are clearly shown on the resubmitted site plan A1.1. Access is clearly shown. There is no requirement for a construction management plan for a planning permit review. Landscaping plans showing lighting have already been provided.

To the extent further drainage & construction management plans are required for engineering, building, or construction review, those are later permit materials. They are not missing 'completeness' items for the SB 35 resubmittal.

Elevations

A full set of elevations were (again) provided to the city in the resubmittal on March 20, 2026. There is no objective standard, & neither one that is uniformly applied throughout the city, that can be applied to the development that necessitates a height restriction from 'centerline of street' – and the city has simply applied subjective determinations for setbacks project by project. There were two meetings held, including with the city attorney, on this subject during which the applicant demonstrated this point clearly and definitively (though the applicant had no burden to do so).

Grading plan

Grading plans are post entitlement requirements, and for permits issued by building departments (not planning departments). And, the applicant has provided a grading plan on multiple occasions, and since November 2022 in fact, and the grading plan has remained very very substantively the same during that entire period.

Further, the city processed earlier plan sets with (only) the same comprehensive zoning data items provided, from October 2023.

Establishment of city's streamlined ministerial process requirements

Further, and of great significance in this matter, the city *still* lacks the streamlined ministerial process & procedures guide for use by SB 35 applicants – despite its promises to produce it that it made in January, 2023, and did not do so, and its most recent commitment & promise in its 2nd version of its Housing Element, at Page reference H-31 "By no later than December 2024, develop procedures to address the streamlining requirements of SB 35 and similar state laws" which was also completely ignored by the city. (ODDS published December 2025 are proposed development *standards - not procedures*). The complete lack of these procedures is construed against the city, it cannot benefit from its failure, and cannot rely on its own failure to act as a basis for asserting incompleteness. As just one example – this set of procedures could have documented what ADU application requirements actually are for an SB 35 permit. This point is in addition to the separate completeness points raised by us above, each of which independently clearly demonstrate the conclusion that the March 20, 2026 resubmittal was complete for SB 35 consistency review.

The resubmittal, made on March 20, 2026 – under SB 35 – Government Code 65913.4 - fulfilled all conditions for the city to be able to determine whether the development is consistent with the objective planning standards. And - in any event - the development is subject to the Housing Accountability Act provisions, as enumerated at Government Code 65589.5 (c) & (d).

For the reasons above, the March 20, 2026 resubmittal provided the information needed for SB 35 consistency review. The items listed in the April 17, 2026 letter are not missing completeness items. They are either already supplied, not required under the applicable vested materials, not required under SB 35, or related to later permit processing.

Chris Sullivan

For Long Water Trust

(415) 754-8009 longwatertrust@gmail.com

Code references

Government Code 65913.4(f)(1):

"A local government shall not require any of the following prior to approving a development that meets the requirements of this section: (1) Studies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards applicable to the development."

Government Code 65913.4(f)(2):

"A local government shall not require any of the following prior to approving a development that meets the requirements of this section: ... (2)(A) Compliance with any standards necessary to receive a postentitlement permit."

Because compliance with standards necessary to receive a postentitlement permit is not required at this stage, those materials that do not directly pertain to determining whether the development is consistent with objective planning standards for SB 35 consistency review do not constitute incompleteness.

Government 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, including an application for a modification under subdivision (h), 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."

Government Code 65589.5(o)(1):

A housing development project is subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.

Government Code 65589.5(o)(4):

"Ordinances, policies, and standards" includes general plan, zoning, design review standards, subdivision standards, and any other rules, regulations, requirements, and policies of a local agency, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

Government Code 65913.4(d)(1):

Design review must be objective and 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 before submission of the development application.

EXHIBIT F

HCD letter to Sausalito

Implement Program 19 for streamlined processing

Can only apply standards consistent with meeting jurisdictions share of RHNA

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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April 5, 2024

Chris Zapata, City Manager
City of Sausalito
420 Lithho Street
Sausalito, CA 94965

Dear Chris Zapata:

RE: 6th Cycle Housing Element Program 19 (Objective Design and Development Standards) – Letter of Inquiry and Technical Assistance

The California Department of Housing and Community Development (HCD) is writing to inquire about the implementation of the City of Sausalito (City) 6th Cycle Housing Element Program 19. As you are aware, the City adopted timelines for Program 19, Bullet 1 and Bullet 4 implementation of streamlining procedures and Objective Design and Development Standards (ODDS) by November 2023 and January 2024, respectively. Noted in HCD's April 28, 2023 letter finding the City's housing element substantially complied with State Housing Element Law[1], the City must timely and effectively implement all programs, including Program 19. HCD is aware that the City has yet to adopt and implement this program.

HCD requests that the City provide a specific timeline for implementation of Program 19, Bullets 1 and 4 by Monday, May 6, 2024, along with the requested information detailed under "Conclusion and Next Steps" below.

Housing Element and Program 19

The City's Regional Housing Needs Allocation (RHNA) approach shown in the Housing Element, Table 1 (RHNA Sites Strategy)[2], indicates that Opportunity Sites are anticipated to provide 647 units (71 percent) of the City's total capacity to accommodate new housing units in its 6th Cycle. To permit the capacities shown for the Opportunity Sites, the City is required to amend its land use, density, and zoning development standards. In addition, the City is required to address and remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing[3].

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[1] Gov. Code, § 65580 et seq.
[2] January 30, 2023. City of Sausalito Adopted 6th Cycle Housing Element, p. 11. https://www.sausalito.gov/home/showpublisheddocument/32446/638188850327870000
[3] Gov. Code § 65583, subd. (c)(3)

As identified in the housing element, the lack of certainty in the permitting process as well as subjective standards of review pose constraints to the development of housing in the City. Accordingly, Housing Element Program 19 (Development Review Procedures) commits the City to adopt ODDS that would accommodate the maximum densities proposed to meet its RHNA and streamline the approval process for housing developments.

- **Bullet 1 of Program 19** outlines a plan to: (1) Develop streamlining procedures for multifamily and mixed-use development projects that are required to be allowed by-right under state law; and (2) Develop ODDS that include objective findings for floor area ratio, unit size, height, setbacks, parking requirements, and provide flexibility with the design of building types and units to accommodate irregular lots and steep slopes. Bullet 1 was committed to be implemented no later than November 2023.
- **Bullet 4 of Program 19** commits the City to complete a review of the decision timelines of all discretionary applications for a new residential unit or remodel of a residential unit processed since 2015 within one year of housing element adoption (January 2024), and to revise permit processing procedures within three months (April 2024) if the decision timelines do not conform to the Permit Streamlining Act (PSA). This task is to be facilitated by Bullet 3 of Program 19, in which the City establishes a permit tracking database that includes application timeline and workflow information.

ODDS and Potential Inconsistency with Housing Element Law and Housing Crisis Act

On March 7, 2024, HCD advised the City in an email to Director Brandon Phipps that the Housing Crisis Act (HCA) prohibits a local agency from enacting a development policy, standard, or condition that would reduce residential development capacity individually or cumulatively without concurrently increasing residential intensity elsewhere (See Enclosure, email to Director Brandon Phipps).[4] In adoption of the ODDS, the City must demonstrate that the resulting form-based code does not reduce a site's residential development capacity, including—but not limited to—reduced height, density, floor area ratio, or lot coverage, nor create new or increased requirements for open space, lot size, setbacks, or frontage. Subsequently on March 19, 2024, the City Council received a presentation and provided direction to staff on the 152-page draft Sausalito Municipal Code (SMC) Title 10A: Objective Design and Development Standards.

HCD continues to have significant concerns about the City's proposed ODDS, its ability to facilitate and not constrain a development from achieving maximum allowable density, and compliance with the HCA.

[4] Gov. Code, § 66300, subd. (b)(1)(A).

- **Average Unit Size.** The proposed zoning standards assume average unit sizes of 600 square feet to "determine the *minimum development standards* necessary to achieve the pre-determined unit counts from the adopted Housing Element" and "achieve the adopted *maximum unit counts* for many of the parcels" [emphasis added].[5] Government Code section 65583.2, subdivision (c), requires local governments to calculate the projected residential development capacity of the sites identified in the housing element that can be realistically achieved. Please be advised that by assuming an average unit size that is inconsistent with typical local unit mix and unit sizes, the City's proposed ODDS would result in a constrained zoning envelope that does not achieve the realistic capacities proposed in the City's housing element, and thereby jeopardizes the City's housing element compliance. Furthermore, the City cannot assume that projects will utilize State Density Bonus waivers and concessions; the underlying (base) density must be appropriate to accommodate the RHNA.[6]
- **Building Stories and Height Limits.** At the City Council study session on March 19, 2024, the City's consultant presented slides on the necessary number of stories to achieve the unit count for each Opportunity Site, as well as a sampling of the relationship in other jurisdictions between zoned maximum density and height limits.[7] Despite calculation using a minimal 600 square foot average unit size, several of the housing element opportunity sites require up to five stories to achieve the assumed unit capacity whereas the proposed objective standards limit buildings to four stories on housing opportunity sites. In addition, the table comparing maximum densities and height limits makes clear that the City's proposed zoning is an outlier among neighboring jurisdictions. Please be advised that, prior to adoption, the City would be required to demonstrate the zoning appropriateness of pairing a maximum density of 70 units per acre with a height limit of 45 feet and 4 stories by providing information gathered from recent residential projects, including affordable housing.
- **View Preservation and Architectural Design Standards.** While regulations for view preservation and architectural design standards were not proposed in the March 19, 2024 staff presentation, HCD is aware that the City Council requested staff to further analyze and consider incorporation of these standards, including considerations for reducing number of stories and requiring flat roofs. Please be advised that the City would be required to demonstrate that the resulting view preservation and architectural design standards do not reduce the intensity of land use, including its height and floor area ratio.

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[5] March 19, 2024. Sausalito City Council Agenda Item 5.A. Staff Report, p. 9. https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2503141/Staff_Report.pdf

[6] June 10, 2020. HCD Housing Element Sites Inventory Guidebook, p. 14. https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf

[7] March 19, 2024. Sausalito City Council Agenda Item 5.A. Attachment 5 – Presentation, slides 25-26. https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2503148/Attachment_5_-_Presentation.pdf

Under Housing Element Program 10 (Affordable Housing Development Assistance), the City commits to establishing financial and regulatory incentives by July 2024. The incentives include reduced development standards to accommodate maximum permitted densities. Instead, the City's proposed ODDS introduce new design standards that limit building types, maximum building sizes and dimensions, and parking locations, while also increasing the number of prescriptive requirements such as streetscape frontage standards, pedestrian access paths, and eligibility for attached wing structures.

Implementing the ODDS and form-based code as currently proposed may constitute a violation of the HCA, if the added regulations individually or cumulatively reduce residential development capacity below what was otherwise applicable on January 1, 2018. In addition, the cumulative application of these standards could constrain or inhibit a housing development project from achieving maximum densities which would undermine the purpose of Program 19 to address and remove governmental constraints.

ODDS and Housing Accountability Act

Under the Housing Accountability Act (HAA), a city may be able to deny a proposed housing development project if the project does not meet objective development standards. However, the City can only apply objective development standards appropriate to, and consistent with, meeting the jurisdiction's share of the RHNA.[8] In addition, the development standards, conditions, and policies shall be applied in a manner to facilitate and accommodate development at the density permitted on the site and proposed by the development.

As a result, in the future, if the City denies a project on the basis of the non-conformance with objective development standards but those standards are found to not facilitate the development of a project within the allowable densities or are inconsistent with the City's ability to meet the RHNA, then the City could violate the HAA.

ODDS and Affirmatively Furthering Fair Housing (AFFH)

Jurisdictions in California have obligations to AFFH, including a duty to "overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity base on protected characteristics."[9] HCD has concerns about the inconsistency between the City's proposed ODDS and form-based code with the City's housing element AFFH commitments (Goal H-4) to promote equal housing for all residents.

- **Policy H-4.4 Female-Headed Households with Children and Large Family Housing.** The City has a policy to support families and single heads of household with children by encouraging the development of larger rental and ownership housing units for families with children. In order to conform with the proposed minimal zoning envelope and produce the maximal units anticipated in

[8] Gov. Code, § 65589.5, subd. (f),
[9] Gov. Code, § 8899.50, subd. (a)(1)

the housing element, the City's proposed ODDS may actually discourage the development of larger rental and ownership housing units.

- **Program 22. Affirmatively Further Fair Housing.** The City commits to providing a range of housing types at prices suitable for lower-income households. However, the proposed ODDS equate a smaller average unit size with higher affordability, which assumes that lower-income households would occupy smaller units. This rationale runs counter to the City's AFFH goals to offer a range of affordable housing types.

Development Review Procedures and the Permit Streamlining Act (PSA)

As the City notes in its adopted housing element, the current design review process includes subjective terminology and may constitute a constraint to development.[10] Program 19, Bullet 1 includes development of streamlining procedures for multifamily and mixed-use development projects that are required to be allowed by-right under state law. HCD is concerned that the proposed SMC Section 10.A.07.020 Application Procedures merely refers to administrative processes that are already in place in SMC Title 10, Division IV (Permit Procedures) and Division V (Zoning Administration) [11] and does not create streamlining procedures for development projects that must be approved ministerially or by-right.

In addition, Bullet 4 of Program 19 commits the City to complete a review of the decision timelines of all discretionary applications for a new residential unit or remodel of a residential unit processed since 2015 and to revise permit processing procedures if the decision timelines do not conform to the PSA. HCD requests that the City provide an update on the status of this program bullet. HCD notes that Program 10 also includes a commitment by July 2024 for expedited processing of projects with 20 percent or more of units affordable to very low- or low-income households or for special needs households.

Consequences of Failure to Implement Program 19

HCD has enforcement authority over the HCA, AFFH, PSA, and State Housing Element Law, among other state laws. HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivisions (i) or (j), including issuance of written findings (Corrective Action Letter) and revocation of HCD's finding of housing element compliance. Various consequences may apply if the City does not have a housing element in compliance with State Housing Element Law, including ineligibility or delay in receiving certain state funds, referral to the California Office of the Attorney General, court-imposed financial penalties, the loss of local land use authority to a court-appointed agent, and the application of the "builder's remedy."[12]

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[10] January 30, 2023. City of Sausalito Adopted 6th Cycle Housing Element, p. 90.
[11] February 7, 2024. Sausalito City Council Agenda Item 5.A. Attachment 1 – Draft ODDS (Title 10A), p. 129. https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2503143/Attachment_1_-_Draft_ODDS__Title_10A_.pdf
[12] Gov. Code, §§ 65585, subds. (j), (l)(1), (i), 65589.5, subd. (d)(5).

Conclusion and Next Steps

The City has until May 6, 2024 to provide a written response to this Letter, including a specific timeline with public hearing dates to implement Program 19, Bullet 1 and Bullet 4. For HCD to evaluate the proposed ODDS and recent processing procedure timelines, the City's written response must contain a list of all *submitted* housing project applications containing a total of two or more units since January 1, 2015. Please include the following information for each project on the list:

1. Project address(es) and assessor parcel number (APN),
2. Date of application submittal,
3. Date of project entitlement, if applicable,
4. Total number of housing units listed in project application,
5. Total number of accessory dwelling units, if applicable,
6. Percentage of affordable units proposed,
7. Tenure of proposed housing project (for-sale or for rent),
8. Proposed project density (units per acre),
9. Proposed average unit size (total gross square footage divided by total number of units listed in project application), and
10. Proposed project maximum height (measured from grade to top of roof).

HCD looks forward to receiving your written response to this inquiry. If you have any questions or would like to discuss the content of this letter, please contact Grace Wu at Grace.Wu@hcd.ca.gov.

Sincerely,

Melinda Coy
Proactive Housing Accountability Chief
Division of Housing Policy Development

ENCLOSURE

March 7, 2024. HCD email to Director Brandon Phipps.

EXHIBIT G

HCD communication to Sausalito

requiring it remove discretionary determinations for standards. It did not.

From:	Wu, Grace@HCD
To:	Brandon Phipps
Cc:	Coy, Melinda@HCD; Sergio Rudin; Matthew Mandich
Subject:	Technical Assistance - 215 Sausalito (HAU 720)
Date:	Thursday, March 7, 2024 9:23:00 AM

Dear Brandon Phipps,

The California Department of Housing and Community Development (HCD) Housing Accountability Unit (HAU) received a request for technical assistance from Chris Sullivan of Long Water Trust (Requestor) regarding the application of state streamlined ministerial approval law (Government Code §§ 65913—65914.5) and Housing Element Law (Government Code §§ 65580—65589.11) for the proposed housing project to be located at 215 Sausalito Blvd. (HAU Case No. 720). HCD staff met with the Requestor on February 13, 2024, and with City staff on February 28, 2024. This email provides technical assistance for the benefit of both the City of Sausalito (City) and the Requestor.

HCD understands the application proposes a development project containing two units and one accessory dwelling unit (ADU) on a vacant lot. The project application was filed under state streamlined ministerial approval law. One of the three proposed units is to be deed-restricted for a moderate income household, although the precise unit is unspecified. On February 7, 2024, the Requestor reached out to HCD for technical assistance. On February 14, 2024, the City's Planning Commission conducted a design review hearing and denied the project on the sole basis that the project did not meet all the City's applicable objective standards.

Issue 1 – Objective Standards. The City's zoning code contains objective standards, and the proposed project does not comply with all applicable objective standards. However, the City must ensure that any measurement or determination of an objective standard does not involve personal or subjective judgement by a public official.

To be eligible for streamlined, ministerial approval under Government Code §§ 65913 – 65914.5, the project 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 (Gov. Code, § 65913.4, subd. (a)(5).) In 2021, the City adopted Resolution 6059 and its Exhibit A, identifying pre-existing applicable objective design and development standards for the review of qualifying streamlined and ministerial projects. The project at 215 Sausalito was reviewed for consistency with applicable objective standards for R-2-2.5 zoning and found to be inconsistent with the objective standards by exceeding lot coverage, impervious surface, height, and floor area ratio, and is located within the minimum north side and rear setback area.

However, Exhibit A of Resolution 6059 fails to exclude a number of subsections within the Sausalito Municipal Code (SMC) that may require discretionary interpretation for the basis of measuring and determining objective standards. City staff confirmed that the proposed project did not involve any encroachments, the only viable front property line was Sausalito Blvd., and height was verified solely based on the applicant's elevation plans so that no potentially discretionary interpretations were applied to the project. Nevertheless, HCD advises that any discretionary approvals as they relate to defining and measuring objective standards shall be explicitly excluded in Exhibit A, including:

- SMC 10.40.120(A)(l) Driveway Design – Design Review approval.
- SMC 10.56.030 Encroachment - Design Review approval.
- SMC 10.40.060(C)(1)(c) Height Requirements (Sloped and Level Parcels, Uphill) - Design Review approval.
- SMC 10.88.040 "Property Lines" - Community Development Director opinion.
- SMC 10.88.040 "Natural Grade" – *May* be compared with 1968 Photometric Maps.

Issue 2 – Public Oversight. A local jurisdiction may conduct design review by a board or commission for a streamlined, ministerial application, but the review is strictly based on objective criteria. Any action by a legislative body, including approval of a ministerial project, is subject to the Brown Act and requires notice and opportunity for public comment (Gov. Code, §§ 54950 – 54963).

Senate Bill (SB) 423 amended Government Code Section 65913.4, subdivision (d)(1) to remove the phrase "public oversight" so that the paragraph now starts with: *"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 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."*

By removing the term "public oversight," SB 423 prohibits any public meeting where there is no action being taken on the project, such as a City Council study session or a public workshop. The Sausalito planning commission may conduct design review based on objective criteria and, as a legislative body, is subject to the Brown Act for noticing requirements and for providing opportunity to hear public comment prior to taking action.

Issue 3 – Housing Element Implementation. The City has not met its timeline for Program 19, Bullet 1 implementation of Objective Design and Development Standards (ODDS) for streamlined projects. HCD advises that the City ensure that the ODDS does not result in net loss of residential capacity or other infractions of the Housing Crisis Act of 2019 (HCA).

On April 28, 2023, HCD found the City's housing element in substantial compliance with State Housing Element Law. HCD based its compliance findings on, among other measures, a commitment to implement Program 19 Development Review Procedures in accordance with Government Code section 65583, subdivision (c). However, the City has failed to develop procedures for streamlined approval and adopt ODDs for by-right multi-family residential and mixed use development by November 2023 as indicated in its Housing Element.

HCD understands that the City has released a Draft Environmental Impact Report (Draft EIR) according to CEQA requirements to evaluate the potential environmental impacts associated with the implementation of several Housing Element Programs, including Program 19 and the proposed ODDS as they apply to Housing Opportunity Sites Overlay districts. HCD will closely monitor future actions and milestones.

Please be advised that the HCA prohibits a local agency from enacting a development policy, standard, or condition that would reduce residential development capacity individually or cumulatively without concurrently increasing residential intensity elsewhere. (Gov. Code, § 66300, subd. (b)(1)(A).) In adoption of the ODDs, the City must demonstrate that the resulting form-based code does not reduce a site's residential development capacity, including—but not limited to—reduced height, density, floor area ratio, or lot coverage, nor create new or increased requirements for open space, lot size, setbacks, or frontage.

If you have questions or need additional information, please do not hesitate to contact me directly.

Sincerely,

Grace

cc: Sergio Rudin, City Attorney, City of Sausalito
Matthew Mandich, Assistant City Planner, City of Sausalito
Melinda Coy, Proactive Housing Accountability Chief, HCD

Grace Wu, AICP
Senior Housing Policy Specialist, Housing Policy Development Division
Housing and Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Email: grace.wu@hcd.ca.gov | Phone: (916) 292-2039

EXHIBIT H

Letter from California Attorney General

A standard that is found by discretionary determination is not a standard that can be used in SB 35

Absolute requirement to document any inconsistencies within 30/60 days. CANNOT simply ask for more information

otherwise application deemed consistent by law

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

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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,