

FILE NUMBER: PLN23-237-SB330
SUBJECT: SB 330 Housing Development, Lot Merger, Subdivision
SITE LOCATION: 1220, 1250, 1320 Diana Avenue, 1250 Condit Road, Morgan Hill, CA, 95037 (APN: 728-17-013, 728-17-014, 728-17-015, 728-17-037)
DATE APPLICANT SUBMISSION RECEIVED: April 9, 2024
COUNTY RESPONSE ISSUED: May 9, 2024

The following provides the applicant’s responses to the County’s May 9, 2024 incompleteness comments. Please also see the enclosed cover letter from our legal counsel, which more broadly addresses the reasons the County must make a completeness determination upon receipt of these materials. The below reproduces the County’s comments in the order in which the County provided them, each followed by an “Applicant Response.”

County Comment:

LAND DEVELOPMENT ENGINEERING

Contact Darrell Wong at (408)-299-5735, darrell.wong@pln.sccgov.org regarding the following:

1. The County’s SB330 – Housing Crisis Act Planning Submittal Checklist requires an applicant to supply a “Site plan that identifies all the relevant information described in the County’s Sample Site Plan,” which includes the “location of existing and proposed improvements.” As previously requested, show all of proposed electrical and joint trench utilities on the plans.

Applicant Response: The County may not base a determination of completeness on the Project’s provision of joint trench drawings. Senate Bill 330 (2019) (“SB 330”) and the Housing Accountability Act (“HAA”) define “determined to be complete” to mean “that the applicant has submitted a complete application pursuant to Section 65943” of the Government Code.¹ The County may only request the information “actually required on the lead agency’s submittal requirement checklist.”²

As explained in the project’s April 2024 submission, the County’s SB 330 – Housing Crisis Act

¹ Gov. Code § 65589.5(h)(10); S.B. 330, § 3,

² Gov. Code § 65943(a); see also Department of Housing and Community Development, Letter to the City of Beverly Hills RE: 125-129 Linden Drive, Beverly Hills – Letter of Support and Technical Assistance, (Jun. 26, 2024), at 3-4 (“In determining what constitutes a complete application, the City is subject to the limitations imposed by the PSA. When the City receives an application for a discretionary housing development project, it is required to process the application in compliance with the procedures and timelines stated in the PSA. The PSA states that ‘[e]ach public agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project,’ and furthermore, that ‘[t]he information compiled pursuant to Government Code section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.’ For a completeness determination, the City shall provide a list of items that were not complete and ‘[t]hat list shall be limited to those items actually required on the lead agency’s submittal requirement checklist.’ (citing Gov. Code §§ 65940(a)(1), 65941(a), 65943(a)).

Planning Submittal Checklist (“Submittal Checklist”) does not request the location of joint trench utilities. Rather, the Submittal Checklist requests a “[s]ite plan that identifies all the relevant information described in the County’s Sample Site Plan.” The County’s Sample Site Plan requires identification of the “[l]ocation of existing and proposed improvements,” such as “all buildings, decks, swimming pools, arbors, landings, porches, retaining walls . . . , fences, power poles, water tanks, bridges etc.” The County’s Sample Site Plan does not identify joint trench requirements.

The term “improvements” is too broad of a term to provide notice to applicants of what is required or the level of detail needed. The term cannot be interpreted to require building level drawings at the conceptual entitlement stage of the process without specifying which construction level drawings are required. If the County would like to see joint trench drawings at the conceptual stage of the process, the County is required to update the County’s Sample Site Plan to specify which utilities the County would like to see depicted. Because the County’s Sample Site Plan does not identify joint trench utilities within the list of “existing and proposed improvements,” drawings of electrical and joint trench utilities are not “actually required” on the submittal requirement checklist available to the public and therefore not a basis for incompleteness.

With respect to utilities, the County’s Sample Site Plan requires identification of the “[l]ocation and width of all *easements* for water, sewage, storm drainage, utilities or other purposes.” (Emphasis added.) Sheets C.2, C.3, C.4, and C.5 depict that all street frontages within the proposed project will have a minimum distance from the face of curb to back of sidewalk of 6’ and an additional 10’ PSE behind the back of the sidewalk. This minimum 16’ strip will provide ample width to facilitate the required electrical and joint trench utilities. The proposed right of way will provide ample space to accommodate the Project’s joint trench requirements. The project anticipates that joint trench drawings will be required as a condition of approval and will be designed in the construction drawing stage. The County may request additional information regarding the project’s joint trench plans, but the provision of drawings is not a completeness item.

County Comment:

2. The County’s SB330 – Housing Crisis Act Planning Submittal Checklist requires an applicant to supply a “site plan that identifies all the relevant information described in the County’s Sample Site Plan,” which includes the “location of existing and proposed improvements” and “the breakdown of total grading quantities (cut/fill, vertical height of cut or fill) for the various improvements.” As previously requested, please clearly identify all retaining walls necessary to establish the grading shown between lots 16 and 17 and lots 53 and lots 51/52 with appropriate top and bottom of wall elevations on the preliminary grading plans. Please demonstrate how the proposed wall and associated grading complies with the setback requirements of the County Grading Ordinance. The retaining wall should be located on one lot or the other in the preliminary grading design.

Applicant Response: To determine completeness, the County may only request the information “actually required on the lead agency’s submittal requirement checklist.” Gov. Code § 65943(a). Additionally, in subsequent reviews of an application, the County may “not request the applicant to provide any new information that was not stated in the initial list of items that were not

complete.” Gov. Code § 65943(a). The County provided the County’s “initial list of items that were not complete” in the County’s PLN23-237-SB330 Incomplete Letter Dated 01.17.2024 (the “January 2024 Letter”).

The January 2024 Letter requested “a cross-section of the grading, including the proposed wall, per Section C12-424 (j) and (k) of the County Grading & Drainage Ordinance.” As explained in the project’s April submittal, this detail is not required for completeness. Although not required for completeness, the April submittal provided detail regarding the retaining wall between lots 16 and 53 and lots 17 and 51/52. The top of wall and bottom of wall elevations have been added to Sheets C.8 and C.10. The retaining walls have been shifted away from the property line so that they are only located on the lower lots. Additional detail may be requested to determine consistency with the County’s Grading & Drainage Ordinance, but further detail is not required for completeness.

County Comment:

3. The County’s SB330 – Housing Crisis Act Planning Submittal Checklist requires an applicant to supply plans which identify “all existing and new drainage components.” The proposed development impacts drainage flows, thereby not meeting the exemption requirements of Section C12-407 of the County Grading & Drainage Ordinance. Please provide a revised Drainage Plan that provides further details of the drainage line connecting to the City of Morgan Hill system at Condit Road. Show the invert elevations at the connection point to the catch basin and the storm drainage main at Condit Road.

Applicant Response: To determine completeness, the County may only request the information “actually required on the lead agency’s submittal requirement checklist.” Gov. Code § 65943(a). Additionally, in subsequent reviews of an application, the County may “not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.” *Id.*

The County’s January 2024 Letter provided the “initial list of items that were not complete,” which identified four items regarding drainage flows in the project plans that required revision. As explained in the project’s April submittal, these revisions were not required for completeness because the County’s Submittal Checklist does not require the level of detail requested. The County’s Submittal Checklist requires “[a]ll existing and new drainage components” to “be identified on plans” and specifies that “[d]rainage into the ROW shall not increase as a result of the development.” The project plans provided details regarding “[a]ll existing and new drainage components.” The broad request to identify “all existing and new drainage components” cannot be used as a basis for completeness because it does not specify the level of detail that is “actually required” on the County’s Submittal Checklist.

Additional clarifying detail regarding non-completeness items is also not a basis for incompleteness. However, to be responsive to the County’s request, additional information was

voluntarily provided in the April submittal, including storm drain routing, inverts at the downstream end of the storm drain system, and details on conveyance of the project's stormwater to the Morgan Hill storm drainage system in Condit Road through a 24 inch pipe. In a continued effort to be responsive to the County's request, the project plans have again been updated to show further details of the drainage line connecting to the City of Morgan Hill system at Condit Road and the following information has been provided, although the detail is not required for completeness. The Project will not adversely affect the flows to the City of Morgan Hill storm drain system. Currently, the site drains to the catch basin on the east side of Condit Road. The proposed stormwater treatment and detention system has been designed to limit the post development flows to the same catch basin to levels that will not exceed the existing flows. See Sheet C.16 for connection to City of Morgan Hill storm drain system in Condit Road. Further detail may be requested to determine consistency with applicable County requirements, but the detail is not required for completeness.

County Comment:

4. The County's SB330 – Housing Crisis Act Planning Submittal Checklist requires an applicant to supply a “site plan that identifies all the relevant information described in the County's Sample Site Plan,” which includes a demonstration of “how proposed improvements comply with the Fire Marshal Office (FMO) and Land Development Engineering's (LDE) access standards.” As previously requested, please demonstrate that the access roads James Drive and Mimosa Drive conform to County Standard Detail. Applicant shall use SD1 with a 60' right of way to accommodate two lane access, parking, driveway and a sidewalk with a planter strip per County Roads and Airports Standards B2.

Applicant Response: The County may not base a determination of completeness on the project's compliance with a County Standard Detail. SB 330 and the Housing Accountability Act define “determined to be complete” to mean “that the applicant has submitted a complete application pursuant to Section 65943.”³ The County may only request the information “actually required on the lead agency's submittal requirement checklist.” Gov. Code § 65943(a). Additionally, in subsequent reviews of an application, the County may “not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.” *Id.* Review of a resubmission for completeness “is limited to determining whether the application as supplemented or amended includes the information required by the list” of items that were not complete “and a thorough description of the specific information needed to complete the application.” Gov. Code § 65943(b).

The County's comments in the January 2024 Letter requested that the plans “demonstrate that the access roads James Drive and Mimosa Drive conform to County Standard Detail SD3 with a 60' right of way to accommodate two-lane access, roadside drainage ditches, and 10' deep driveway flares.” As explained in the April submittal, the January comment did not identify an item “actually required” on the County's submittal checklist that required this information, and so provision of

³ Gov. Code § 65589.5(h)(10); S.B. 330, § 3.

the requested information was not required for completeness. Because the County did not identify the item that “actually required” the information, the County waived the argument that the plans now need to demonstrate “how proposed improvements comply with the Fire Marshal Office (FMO) and Land Development Engineering’s (LDE) access standards” for completeness, even though the County’s Sample Site Plan may include this reference.

Additionally, reference to general standards that do not identify a particular requirement does not constitute an item “actually required” on the submittal requirement checklist available to the public and is therefore not a basis for incompleteness. This point is demonstrated by the fact that the County’s January Comments requested compliance with SD3 and now the County requests compliance with SD1. Additionally, the County’s publicly available standards for typical road sections do not refer to SD1 or SD3. Rather, the Standards – Table of Contents refers to DWG Nos. A/1 etc.⁴ It is not possible for an applicant to know which Standard Detail is “actually required” by the generic reference to FMO and LDE access standards because the County does not provide specific direction, utilizes inconsistent nomenclature, and provides conflicting comments that reference documents that require an applicant to make assumptions about which standard is applicable. For example, because the A/1 standard does not include an option for a 60’ R/W, the applicant would have to assume that the County intended to reference a different standard, but that assumption may be incorrect.

Further, the Housing Accountability Act provides that the County may only require compliance with objective standards. Gov. Code § 65589.5(f). An objective standard is one that “involv[es] no personal or subjective judgment by a public official and” is “uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” Gov. Code § 65589.5(h)(9). The County’s Sample Site Plan’s reference to FMO and LDE standards does not provide an applicant with a knowable benchmark and is not an objective standard because determination of which standard applies necessarily requires subjective judgment by a public official as demonstrated by the shift in the County’s comments from SD3 to SD1 and is not uniformly verifiable because the standards, assuming that the references are in fact references to the County’s standards A/1 and A/3, provide multiple options for road sections.

Finally, as explained in the April submittal, a 60’ R/W width would result in reduced density for the project. If this continues to be a comment, we reserve the right to analyze the comment’s applicability to the project in light of the state housing laws, including but not limited to the State Density Bonus Law, SB 330, and the HAA.

County Comment:

5. The County’s SB330 – Housing Crisis Act Planning Submittal Checklist requires an applicant to supply a “site plan that identifies all the relevant information described in the

⁴ See County of Santa Clara, Standards – Table of Contents, Section A: Typical Road Sections, (last visited Jun. 27, 2024), <https://roads.santaclaracounty.gov/standards-table-contents>.

County's Sample Site Plan," which includes a demonstration of "how proposed improvements comply with the Fire Marshal Office (FMO) and Land Development Engineering's (LDE) access standards." As previously noted, where lots have frontage on a roadway which is not designed to permit parking, off-street parking shall be provided. Either individual lot or common parking areas may be used. Common parking areas to serve several dwelling units shall be designed for two spaces per dwelling unit, exclusive of garage or carport. If common parking areas are not used, each lot shall be improved to provide off-street parking spaces for four cars in addition to parking provided within garages or carports. Driveways may be used to provide this parking. Please verify sufficient parking is available for lots along Diana Ave. and Murphy Ave. and area located outside of the ultimate right of way. Please redesign to meet this standard.

Applicant Response: The County may not base a determination of completeness on the requested detail regarding the sufficiency of parking for lots on Diana Ave. and Murphy Ave. SB 330 and the Housing Accountability Act define "determined to be complete" to mean "that the applicant has submitted a complete application pursuant to Section 65943."⁵ The County may only request the information "actually required on the lead agency's submittal requirement checklist." Gov. Code § 65943(a). Additionally, in subsequent reviews of an application, the County may "not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." *Id.* Review of a resubmission for completeness "is limited to determining whether the application as supplemented or amended includes the information required by the list" of items that were not complete "and a thorough description of the specific information needed to complete the application." Gov. Code § 65943(b).

This standard is not applicable to the project because Murphy Avenue and Diana Avenue are designed for parking, which is demonstrated by the proposed typical cross sections shown on sheet C.04. Even if the standard were applicable, compliance with the standard is not required for completeness. The County's comments in the January 2024 Letter requested that the plans demonstrate that "common parking areas" for lots with "frontage on a roadway which is not designed to permit parking such as Murphy Avenue" are "designed for two spaces per dwelling unit exclusive of a garage or carport" and that "[d]riveways may be used to provide this parking." The comment did not identify an item "actually required" on the County's submittal checklist that required this information, and so provision of the requested information was not required for completeness. Because the County did not identify the item that "actually required" the information, the County waived the argument that the plans now need to demonstrate "how proposed improvements comply with the Fire Marshal Office (FMO) and Land Development Engineering's (LDE) access standards" for completeness, even though the County's Sample Site Plan may include this reference. Additionally, reference to general standards that do not identify a particular requirement does not constitute an item "actually required" on the submittal requirement checklist available to the public and is therefore not a basis for incompleteness.

Although not required for completeness the Applicant's April response explained that the lots fronting Murphy Avenue will have sufficient driveway length to allow parking for two spaces per dwelling unit exclusive of garage or carport. Covered and uncovered parking are shown on Sheets

⁵ Gov. Code § 65589.5(h)(10); S.B. 330, § 3.

C.02 and C.03. Similarly, as shown in the April submittal, lots fronting Diana Avenue will have sufficient driveway length to allow parking for two spaces per dwelling unit exclusive of garage or carport. For ease of reference, detail has been added to the legend. Further detail may be requested to determine consistency with applicable County requirements, but the detail is not required for completeness.

County Comment:

6. The County’s SB330 – Housing Crisis Act Planning Submittal Checklist requires an applicant to supply a “site plan that identifies all the relevant information described in the County’s Sample Site Plan,” which includes a demonstration of “how proposed improvements comply with the Fire Marshal Office (FMO) and Land Development Engineering’s (LDE) access standards.” As previously noted, residential lots adjacent to a major collector street shall be designed to front on a street one lot depth removed from the major street or on an intersecting side street. Please redesign to meet this standard.

Applicant Response: The County may not base a determination of completeness on the requested detail regarding location of lots adjacent major collector streets. SB 330 and the Housing Accountability Act define “determined to be complete” to mean “that the applicant has submitted a complete application pursuant to Section 65943.”⁶ The County may only request the information “actually required on the lead agency’s submittal requirement checklist.” Gov. Code § 65943(a). Additionally, in subsequent reviews of an application, the County may “not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.” *Id.* Review of a resubmission for completeness “is limited to determining whether the application as supplemented or amended includes the information required by the list” of items that were not complete “and a thorough description of the specific information needed to complete the application.” Gov. Code § 65943(b).

The County’s comments in the January 2024 Letter requested the plans demonstrate that “lots adjacent to a major collector street . . . be designed to front on a street one depth removed from the major street or an intersecting side street.” The comment did not identify an item “actually required” on the County’s submittal checklist that required this information, and so provision of the requested information was not required for completeness. Because the County did not identify the item that “actually required” the information, the County waived the argument that the plans now need to demonstrate “how proposed improvements comply with the Fire Marshal Office (FMO) and Land Development Engineering’s (LDE) access standards” for completeness, even though the County’s Sample Site Plan may include this reference. Additionally, reference to general standards that do not identify a particular requirement does not constitute an item “actually required” on the submittal requirement checklist available to the public and is therefore not a basis for incompleteness.

Although not required for completeness, the April submittal explained that following this standard would reduce the developable area of the subdivision, would require a new layout, and would impermissibly reduce the number of lots. In addition, the HAA limits the County’s ability to apply

⁶ Gov. Code § 65589.5(h)(10); S.B. 330, § 3.

a standard that would render the project infeasible, which includes “being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” Gov. Code §§ 65589.5(d); 65589.5(h)(1). The 1971 Future Width Line Study by Ruth and Going, which is the basis for the County’s policy, states that “[t]he County should require back-up type of developments adjacent to major roadways wherever it is feasible and practicable.”⁷ It is not feasible for the project to provide this “back-up type development” because it would reduce the density of the project, impacting the ability of the project to be accomplished in a successful manner. Additionally, the 1971 Future Width Study explicitly defines a “major roadway” as “[a] roadway with four or more moving traffic lanes.”⁸ None of the roadways in the development are classified as “major roadways.” Therefore, the standard is inapplicable. If this continues to be a comment, we reserve the right to analyze the comment’s applicability to the project in light of the state housing laws, including but not limited to the State Density Bonus Law, SB 330, and the HAA.

County Comment:

ROADS AND AIRPORTS

Contact Tom Esch at (408)-573-2450, tom.esch@rda.sccgov.org regarding the following:

7. The County’s SB330 – Housing Crisis Act Planning Submittal Checklist requires an applicant to “illustrate centerline, edge line, edge of pavement and existing right-of-way on plans. Future Width Lines (FWL) or Official Plan Lines (OPL) shall be identified on the plans.” Murphy Avenue has a Future Width Line (FWL) for a 46-foot half street width (92-foot full street). Show on the revised plans, on all plan sheets, the existing centerline, existing edge of pavement, limits of the existing Murphy Avenue right-of-way (ROW) and the limits of the FWL. Continue to indicate that a curvilinear dedication to public right-of-way will be required. As previously requested, please label each line and dimension on the plan on each sheet (the current plans do not do so consistently).

Applicant Response: The County may not base a determination of completeness on the identification of “the existing centerline, existing edge of pavement, limits of the existing Murphy Avenue right-of-way (ROW) and the limits of the FWL” on every plan sheet. SB 330 and the HAA define “determined to be complete” to mean “that the applicant has submitted a complete application pursuant to Section 65943.”⁹ The County may only request the information “actually required on the lead agency’s submittal requirement checklist.” Gov. Code § 65943(a). Additionally, in subsequent reviews of an application, the County may “not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.” *Id.* Review of a resubmission for completeness “is limited to determining whether the application as supplemented or amended includes the information required by the list” of items that were not complete “and a thorough description of the specific information needed to complete the application.” Gov. Code § 65943(b).

⁷ Ruth and Going, Future Width Line Study Santa Clara County California (“1971 Future Width Study”), (feb. 12, 1971), at 31, <https://files.santaclaracounty.gov/migrated/Future-Width-Line-Study-1971.pdf>.

⁸ *Id.*, at 3.

⁹ Gov. Code § 65589.5(h)(10); S.B. 330, § 3.

The County’s comments in the January 2024 Letter requested the project “[s]how on the revised plans the existing centerline, existing edge of pavement, limits of the existing Murphy Avenue right-of-way (ROW) and the limits of the FWL (identify as FWL)” and noted that “[a] curvilinear dedication to public right-of-way will be required.” The April submittal included the requested edge of pavement callouts, FWL callouts, and a curvilinear dedication. The County’s comments did not request that this information be provided on every sheet; therefore, the County waived the right to request this information on every sheet. Additionally, as confirmed by Tom Esch in conversation with MH Engineering in May 2024, the requested information does not need to be shown on every plan sheet. Therefore, this comment is not required for completeness.

For ease of reference, the requested information is contained in the plan set on the following sheets:

- FWL is shown on Sheets C.04 and C.05
- Existing Centerline is shown on Sheets C.04 and C.05
- Existing Edge of Pavement is shown on Sheets C.06 and C.07
- Limits of Existing Murphy Avenue Right-of-Way are shown on Sheets C.04, C.05, C.06, and C.07

County Comment:

8. The County’s SB330 – Housing Crisis Act Planning Submittal Checklist requires an applicant to “illustrate centerline, edge line, edge of pavement and existing right-of-way on plans. Future Width Lines (FWL) or Official Plan Lines (OPL) shall be identified on the plans.” Diana Avenue has a Future Width Line (FWL) for a 30-foot half street width (60-foot full street). Show on the revised plans, on all plan sheets, the existing centerline, edge of pavement, limits of the existing Diana Avenue right-of-way (ROW) and the limits of the FWL (identify as FWL). Continue to indicate that a curvilinear dedication to public right-of-way will be required. As previously requested, please label each line and dimension on the plan (the current plans do not do so consistently).

Applicant Response: The County may not base a determination of completeness on the identification of “the existing centerline, edge of pavement, limits of the existing Diana Avenue right-of-way (ROW) and the limits of the FWL (identified as FWL)” on every plan sheet. SB 330 and the Housing Accountability Act define “determined to be complete” to mean “that the applicant has submitted a complete application pursuant to Section 65943.”¹⁰ The County may only request the information “actually required on the lead agency’s submittal requirement checklist.” Gov. Code § 65943(a). Additionally, in subsequent reviews of an application, the County may “not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.” *Id.* Review of a resubmission for completeness “is limited to determining whether the application as supplemented or amended includes the information required by the list” of items that were not complete “and a thorough description of the specific information needed to complete the application.” Gov. Code § 65943(b).

¹⁰ Gov. Code § 65589.5(h)(10); S.B. 330, § 3.

The County’s comments in the January 2024 Letter requested the project “[s]how on the revised plans the existing centerline, edge of pavement, limits of the existing Diana Avenue right-of-way (ROW) and the limits of the FWL (identify as FWL)” and noted that “[a] curvilinear dedication to public right-of-way will be required.” The April submittal included the requested edge of pavement callouts, FWL callouts, and a curvilinear dedication. The County’s comments did not request that this information be provided on every sheet; therefore, the County waived the right to request this information on every sheet. Additionally, as confirmed by Tom Esch in conversation with MH Engineering in May 2024, the requested information does not need to be shown on every plan sheet. Therefore, this comment is not required for completeness.

For ease of reference, the requested information is contained in the plan set on the following sheets:

- FWL is shown on Sheet C.04
- Existing Centerline is shown on Sheet C.04
- Existing Edge of Pavement is shown on Sheet C.06
- Limits of Existing Diana Avenue Right-of-Way are shown on Sheet C.06

County Comment:

ENVIRONMENTAL HEALTH

Contact Darrin Lee at (408) 299-5746 or darrin.lee@cep.sccgov.org for information regarding the following items:

9. As the projected design flow exceeds 10,000 gallons per day (GPD), the review and approval of the OWTS shall be conducted by the applicable California Regional Water Quality Control Board. Provide to the Department of Environmental Health documentation from the applicable Regional Water Quality Control Board for project clearance addressing project feasibility/approval.

Applicant Response: The County may not base a determination of completeness on the provision of project clearance from the applicable California Regional Water Quality Control Board (“RWQCB”). SB 330 and the HAA define “determined to be complete” to mean “that the applicant has submitted a complete application pursuant to Section 65943.”¹¹ The County may only request the information “actually required on the lead agency’s submittal requirement checklist.” Gov. Code § 65943(a).

As explained in the April submittal, the County’s Submittal Checklist provides that an “applicant may submit a feasibility study that complies [with] state requirements for wastewater and provides adequate access to wastewater under state law” as an alternative to “[s]ubmit[ting] an approved permit from the San Francisco Bay RWQCB or the Central Coast RWQCB, as applicable.” The Wastewater Facilities Plan submitted for North Diana complied with “state requirements for wastewater and provides adequate access to wastewater under state law.” Because the County’s checklist provides options for how an applicant can satisfy the completeness requirement, the County may not require an applicant to satisfy both options in order to achieve completeness

¹¹ Gov. Code § 65589.5(h)(10); S.B. 330, § 3.

because satisfaction of both options is not “actually required on the lead agency’s submittal checklist.” Gov. Code § 65943(a).

County Comment:

10. Obtain OWTS clearance from the Department of Environmental Health for verification of setback requirements. To obtain clearance follow the URL: [Plan Check Application Form](#) (sccgov.org) and complete the service application.

Note: DEH performs limited plan review. Upon achieving OWTS clearance, DEH will forward/provide the applicable California Regional Water Quality Control Board of its recommendation through a digital approval recommended stamp, pursuant to County Ordinance Section B11-66 (d). Plan check submittal for commercial development will be required. Within the plan check service application, under the “Commercial” heading, provide a project description/proposal.

Applicant Response: The County may not base a determination of completeness on the provision of the Plan Check Application Form. SB 330 and the Housing Accountability Act define “determined to be complete” to mean “that the applicant has submitted a complete application pursuant to Section 65943.”¹² The County may only request the information “actually required on the lead agency’s submittal requirement checklist.” Gov. Code § 65943(a).

The County’s Submittal Checklist does not request that an applicant complete and submit the Plan Check Application Form. Rather, the form requires a Septic System Plan and explains that DEH’s “evaluation may entail a site assessment, soil profile trenches, and a passing percolation test prior to approval of the application.” Additionally, the Submittal Checklist requests certain details based on the proposed septic area. The Submittal Checklist only links to the DEH’s Onsite Systems Manual (May 2014). Furthermore, the Submittal Checklist does not require information regarding the system’s proposed setbacks. Therefore, the Plan Check Application Form and setback details are not required for completeness.

Although not required for completeness, the April submittal explained that the Plan Check Application Form did not provide instructions for how to complete the form for the type of system proposed. The April submittal detailed DEH’s recent site evaluations for the North Diana property in October 2023 and February 2024 during which field observations were made of soils, percolation, groundwater and other site conditions in the proposed wastewater disposal areas. The response also provided an October 2023 DEH “Site Assessment Report” and provided details regarding the system’s planned setbacks.

The County’s May comment responds to the April submittal’s response to DEH’s comment in the January 2024 Letter by providing instructions for how the project should complete the Plan Check Application Form. Completeness may not be based on the provision of a form that is not “actually required” on the Submittal Checklist or a requirement that is provided for the first time in a subsequent comment. Nor can completeness be based on the outcome of an optional site

¹² Gov. Code § 65589.5(h)(10); S.B. 330, § 3.

evaluation. This is because an optional evaluation is not a task “actually required” by the published checklist available to the public. Details regarding wastewater system setbacks are discussed in the Wastewater Facilities Plan and accompanying drawings included in the Applicant’s December 2023 formal application submittal, even though the details may not be required for completeness.

County Comment:

11. Based upon the number of connections, it appears the proposed water system will be under the jurisdiction of California State Water Resources Control Board, Division of Drinking Water. Obtain from the Division of Drinking Water written documentation that states the provided study meets the State Drinking Water requirements for adequate access to water and is consistent with the State Preliminary Technical Report Guidance, and also includes a Technical, Managerial and Financial report.

Note: The State Water Resources Control Board Division of Drinking Water determined that the applicant’s January 16, 2024 Preliminary Technical Report was incomplete. Please refer to the attached letter.

Applicant Response: The County may not base a determination of completeness on obtaining written documentation from the SWRCB, Division of Drinking Water stating that the provided study meets the State Drinking Water requirements for adequate access to water and is consistent with the State Preliminary Technical Report Guidance, and also includes a Technical, Managerial and Financial report. SB 330 and the HAA define “determined to be complete” to mean “that the applicant has submitted a complete application pursuant to Section 65943.”¹³ The County may only request the information “actually required on the lead agency’s submittal requirement checklist.” Gov. Code § 65943(a).

As explained in the April submittal, the County’s Checklist requires a project that “serves 25 or more people per day for at least 60 days out of the year, or serves 15 or more connections” to comply with the Division of Drinking Water requirements and to provide “a feasibility study that meets the State Drinking Water requirements for adequate access to water and is consistent with the State Preliminary Technical Report Guidance, and also includes a Technical, Managerial and Financial report.” The project submitted a Preliminary Technical Report, which the SWRCB determined to be incomplete. The determination of incompleteness was based on the fact that the SWRCB required additional information regarding the project’s ability to annex into the existing City of Morgan Hill Urban Service Area. See SWRCB, Letter to North Diana, LLC, RE: Preliminary Technical Report Review – Incomplete, (Feb. 1, 2024). The applicant is in contact with the SWRCB regarding the requested information.

In the course of discussions, the SWRCB explained that because the SWRCB is not the lead agency for the Project, a determination under the California Environmental Quality Act (“CEQA”) is required as part of the project’s application. See attached email from SWRCB

¹³ Gov. Code § 65589.5(h)(10); S.B. 330, § 3.

Water Resource Control Engineer, Mark Lemus regarding the North Diana WWTF Application, (Jun. 18, 2024). Accordingly, requiring written documentation that states the provided study meets the State Drinking Water requirements prior to determining the Project's application to be complete, is a *practical impossibility*, since the County will not adopt the Project's CEQA review document until it completes its review of the application materials, prepares any relevant CEQA document, and the Project comes to a hearing.

Further, lead agencies are prohibited from "requir[ing] the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete." Gov. Code § 65941(b). Because the SWRCB application requires a CEQA determination, the County as lead agency may not require written documentation from the SWRCB in order to determine that the project's formal planning application is complete pursuant to Government Code section 65943 because such written documentation would "require proof of compliance" with CEQA. As the County is prohibited from requiring "proof of compliance" with CEQA for completeness, the requested information may not be the grounds upon which the County determines the application to be incomplete.

County Comment:

Please make sure the requested changes are made for the revised plan sets and documents that are needed for the resubmittal. **Resubmittals are only accepted by appointment with the assigned project planner.** If you have questions regarding the application, please call (408) 299-5706 or email robert.cain@pln.sccgov.org.

Applicant Response: Noted.