

**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)  
**APPLICANT SUBMISSION RECEIVED:** July 1, 2024 (resubmittal)  
**COUNTY RESPONSE ISSUED:** July 31, 2024

The following provides the applicant’s responses to the County’s July 31, 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](mailto: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, which includes the “location of existing and proposed improvements” (refer to the County’s SB330 – Housing Crisis Act Planning Submittal Checklist pg 3-4). As previously requested, show all of the proposed electrical and joint trench utilities on the plans. The map shall contain the location of public utilities including the electrical/joint trench service. Without the preliminary locations shown on the Tentative Map documents, it is unclear where the locations of the parcels will be connected to utilities. Easements for all improvements, including utilities, shall be provided on the submitted plans.

**Applicant Response:**

Although not required for purposes of a complete application within the meaning of Government Code section 65943, the following information is provided as agreed to with the County on August 28, 2024. Proposed electrical and gas points of connection to the subdivision have been added to Sheet C.15 Site Utility Plan. The layout of the dry utilities within the subdivision will be established during construction document development, but the necessary proposed public utility easements are shown on the plans.

**ROADS AND AIRPORTS**

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

2. 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. As previously requested, please identify and label each line and dimension on the plan on each sheet (the current plans do not do so consistently), so that staff can discern what each line represents.

**Applicant Response:**

Although not required for purposes of a complete application within the meaning of Government Code section 65943, the following information is provided as agreed to with the County on August 28, 2024. The centerline, edge of pavement, existing right-of-way, and future width lines for Murphy Avenue are shown on Sheets C.02, C.03, C.06, C.07, C.08, and C.09. The centerline, existing right-of-way, and future width lines are shown on Sheets C.04 and C.05.

3. 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). As previously requested, please identify and label each line and dimension on the plan on each sheet (the current plans do not do so consistently), so that staff can discern what each line represents.

**Applicant Response:**

Although not required for purposes of a complete application within the meaning of Government Code section 65943, the following information is provided as agreed to with the County on August 28, 2024. The centerline, edge of pavement, existing right-of-way, and future width lines for Diana Avenue are shown on Sheets C.02, C.06, and C.08. The centerline, existing right-of-way, and future width lines are shown on Sheet C.04. Note that Diana Avenue has an existing right-of-way of 66’ and will remain 66.’

**ENVIRONMENTAL HEALTH**

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

4. Based upon the number of proposed connections, it appears the proposed water system will be under the jurisdiction of California State Water Resources Control Board, Division of Drinking Water. As required by the County of Santa Clara Department of Planning and Development checklist for SB 330, “Housing Crisis Act Planning Submittal Checklist,” submit a Technical, Managerial and Financial (TMF) report.

Pursuant to the State Water Resources Control Board, Division of Drinking Water (July 23, 2024) letter, a preliminary technical report was reviewed and deemed complete by the Division of Drinking Water.

### **Applicant Response:**

The County may not base a completeness determination on obtaining written documentation from the State Water Board, Division of Drinking Water, or the submission of a TMF assessment in connection with the State Water Board's exclusive permitting requirements, for the reasons stated below. Further, as noted in the applicant's prior response, CEQA review must be complete before the TMF assessment is provided to the State Water Board. The County may include a condition of approval on the tentative map to require a permit from the State Water Board, Division of Drinking Water prior to the commencement of site grading in connection with any residential units.

#### **A. The State has Jurisdiction over the Community Water System**

As acknowledged by the County, North Diana's proposed water system will be under the jurisdiction of State Water Resources Control Board, Division of Drinking Water ("State Water Board"). Pursuant to the California Safe Drinking Water Act, the State Water Board regulates drinking water and enforces the federal Safe Drinking Water Act. The State Water Board evaluates applications and issues permits for community water systems such as North Diana's pursuant to the requirements of Health & Safety Code section 116527 and its regulations. In conformity with those requirements, North Diana has already submitted—and the State Water Board has accepted—a preliminary technical report. That report has been provided to the County.

Pursuant to the statutory requirements, North Diana will prepare and submit to the State Water Board information demonstrating that the water system will have the technical, managerial, and financial capacity to provide an adequate and reliable supply of domestic water to the service area. That information will be included in the State Water Board's technical, managerial, and financial capacity ("TMF") Assessment Form. This information will be provided in conjunction with North Diana's final water system permit application, which requires that the system be constructed as it requires a map of all as-built facilities and pump tests on system supply wells to demonstrate the ability to meet maximum daily and peak hourly demands. Thus, completion of the TMF assessment requires the system be constructed; constructing the community water system and testing its facilities as a precondition for acceptance of an application under SB330 is improper. Once completed in its normal course, however, North Diana would be glad to provide a copy of the TMF assessment required by the State Water Board to the County.

#### **B. The County does not have Jurisdiction over the Community Water System**

The County does not have jurisdiction over the community water system that will serve North Diana's project. Counties may be delegated as a local primacy agency pursuant to Health & Safety Code section 116330 and Cal. Code Regs. tit. 22 § 64251 et. seq., and share jurisdiction with the State Water Board over certain water systems by delegated authority. (see e.g.

[https://www.waterboards.ca.gov/drinking\\_water/programs/documents/ddw-lpa-not-lpa-map-exp.pdf](https://www.waterboards.ca.gov/drinking_water/programs/documents/ddw-lpa-not-lpa-map-exp.pdf).)

Santa Clara County, however, is not a local primacy agency and does not have such delegated authority. Thus, the State Water Board is the agency with jurisdiction over North Diana's system, and it is the State Water Board that will evaluate the technical, managerial, and financial requirements of the system pursuant to the statutory and regulatory authorities outlined above.

Further, North Diana will be applying for its permit from the State Water Board in partnership with California American Water ("Cal-Am"), an investor-owned utility. As a result, the water system will be

subject to CPUC jurisdiction and approval. In these circumstances, the CPUC generally has authority over the regulation of services and utilities and assures that residents have access to safe and reliable utility infrastructure and services. Local regulation over CPUC-regulated systems is improper under the California Constitution. Article XII, Section 8 provides in relevant part that “[a] city, county, or other public body may not regulate matters over which the Legislature grants and regulatory power to the Commission.” (Cal. Const. Art XII, Section 8.) Pursuant to this authority, CPUC General Order 103-A provides in relevant part that “local agencies acting pursuant to local authority are preempted from regulating water production, storage, treatment, transmission, distribution, or other facilities (including the location of such facilities) constructed or installed by water or wastewater utilities subject to the Commission’s jurisdiction.” (CPUC General Order 103-A, Section 9; see also *California Water & Tel. Co. v. Los Angeles Cnty.* (1967) 253 Cal.App.2d 16, 30 [holding that local law adding requirements to General Order 103 and the water systems it regulates was void as “the construction, design, operation and maintenance of public water utilities is a matter of state-wide concern.”])

Once the TMF assessment for the water system is completed, North Diana remains willing to provide that information—and other information that may be required by either the State Water Board or the CPUC—to the County. However, requiring such information as part of a completeness determination for a housing development project subject to SB 330 and protected by the Housing Accountability Act is beyond the jurisdiction of the County. The tentative map, on the other hand, can include a condition requiring that the facilities be fully permitted prior to any grading commences at the site relative to any residential units.

5. 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 that the project has been approved by either the San Francisco Bay RWQCB or the Central Coast RWQCB. Alternatively, the applicant may submit a feasibility study that complies with state requirements for wastewater and provides adequate access to wastewater under state law.

Although the applicant has provided a community onsite wastewater treatment system plan to the Central Coast Regional Water Quality Control Board, neither the Department of Environmental Health nor the Department of Planning and Development have received a feasibility study or documentation regarding project clearance/approval (as noted within SB330 “Housing Crisis Act Planning Submittal Checklist”).

**Applicant Response:**

This item was deemed complete by the County on August 28, 2024.