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June 16, 2026

BY EMAIL

Joy Ford
City Attorney
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277
joy.ford@redondo.org

Re: 402 N. Pacific Coast Highway – Violation of State Housing Law

Dear Ms. Ford:

As you know, our firm represents Galaxy Holding LLC (the "Applicant") regarding a proposed mixed-use development project with 88 residential units (including 6 extremely low income units and 7 moderate income units) and ground floor commercial space ("Project") located at 402 N. Pacific Coast Highway ("Site") in the City of Redondo Beach ("City"). The Project is utilizing the "Builder's Remedy" provision of the State Housing Accountability Act ("HAA"). This letter concerns the City's illegal refusal to process the Project in accordance with the HAA and other applicable State housing laws.

A. The City's Refusal to Process a Builder's Remedy Application

The Applicant submitted an SB 330 preliminary application for the Project, pursuant to Government Code Section 65941.1, on April 10, 2026 ("Preliminary Application"), and the City accepted and date-stamped the Preliminary Application. The Preliminary Application was submitted with a cover letter from our office explaining that the Project is eligible for, and intends to use, the builder's remedy provisions of the Housing Accountability Act ("HAA") based on the recent determination by the California Court of Appeal in the matter of *New Commune DTLA LLC v. City of Redondo Beach* that the City's Housing Element does not comply with State Housing Element Law (Government Code Section 65580 *et seq.*).

On May 6, 2026, Community Development Director Marc Wiener emailed our office and the Applicant and stated the following:

> "I have conferred with the City Attorney, Joy Ford, on this matter. The City is currently not processing Builder's Remedy Application[s] as we are still researching and evaluating the ramifications of the Court of Appeal decision and exploring our legal options. If you have any legal questions please follow up with the City Attorney's Office."

Following receipt of this email, I spoke with you and Mr. Wiener separately to better understand the City's position on this matter and in hopes of finding a way to move the Project forward. Based on my last discussion with Mr. Wiener it was made clear that the City's position has not changed, and that the City will not process a builder's remedy application submitted by the Applicant.

Taking the City at its word, the Applicant has no choice but to assume that there is no way for the Project to move forward through normal State law prescribed processes. When a full Project application is submitted, the City's position makes clear it will either be rejected outright or the City will simply refuse to process it, which means that the Project will never be considered for approval.

By taking this approach it has become clear the City is violating both the Permit Streamlining Act and the Housing Accountability Act. Moreover, the City's chosen course of action fits squarely within the definition of "bad faith" in the HAA, which includes "an action or inaction that is frivolous, pretextual, intended to cause unnecessary delay, and entirely without merit."[1] In the face of such blatant state law violations, the Applicant will have no choice but to pursue litigation against the City.

B. The Refusal to Process the Project Application Violates the Permit Streamlining Act

Under the Permit Streamlining Act ("PSA"), the City has a clear obligation to determine that a development permit application is either complete or incomplete within 30 days after receiving the application.[2] This obligation implies a duty to both accept the application for processing and to actually process the application. There are no exceptions for builder's remedy applications. Therefore, the City's refusal to process a builder's remedy application violates the PSA.

C. The Refusal to Process the Project Application Violates the Housing Accountability Act

A refusal to process an application for a housing development project also constitutes illegal "disapproval" of the project and a violation of the Housing Accountability Act (Government Code Section 65589.5). The HAA prohibits the City from disapproving a housing development project for very low, low, or moderate income households without making one of a very limited number of findings based on the preponderance of the evidence.[3] The Project meets the definition of a "housing development project for very low, low, or moderate income households" under the HAA because at least two-thirds of its floor area will be designated for residential use and it will set aside 13% of its 44 base units for extremely low income households.[4]

Under the HAA, a city disapproves a housing development project when it "Votes or takes final administrative action on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit."[5] If the City has determined that it will never even *process* a builder's remedy application, it follows that the City has definitively decided not to issue any "required land use approvals or

[1] Government Code Section 65589.5(l).
[2] Government Code Section 65943(a).
[3] Government Code Section 65589.5(d).
[4] Government Code Section 65589.5(h)(2)(B) and (h)(3)(C)(i)(I).
[5] Government Code Section 65589.5(h)(6)(A).

entitlements necessary for the issuance of a building permit" for the Project. Consequently, a refusal to process the application is a disapproval of the application.

Moreover, the City has not and cannot make the requisite findings to deny the Project under the HAA.[6] Specifically, the Project meets the definition of a builder's remedy project under the HAA; the City did not have a compliant Housing Element on the date the Preliminary Application was submitted; denial of the Project is not required to comply with a specific state or federal law; and the Project would not have a specific, adverse impact on public health or safety.

Disapproving a housing development project without making the requisite finding is a clear and unequivocal HAA violation.[7] Upon finding that a city has violated the HAA and that the city acted in bad faith in disapproving the project, a court may order the city to approve the project. Upon finding that a city has failed to comply with a court's order compelling compliance with the HAA, a court is *required* to impose fines on the city in the *minimum* amount of $10,000 per unit in the housing development ($880,000 for this Project). If the court finds the city acted in bad faith in failing to comply with the court order, the fines are increased to $50,000 per housing unit ($4,400,000 for this Project).[8]

D. The City's Housing Element Was Non-Compliant When the Preliminary Application Was Submitted

1. The Court of Appeal Definitively Superseded HCD's Compliance Finding

To meet the definition of a "builder's remedy project," a project must meet the following requirement:

> On or after the date an application for the housing development project…was deemed complete, the jurisdiction did not have a housing element that was in substantial compliance with [Government Code Section 65580 *et seq*.].[9]

"Deemed complete" is defined in the HAA to mean the date the applicant submitted a preliminary application.[10] Consequently, the Applicant's application was "deemed complete" for purposes of the HAA on April 10, 2026, the date the Preliminary Application was submitted.

Well before that date, on October 10, 2025, the California Court of Appeal issued a ruling in the matter of *New Commune DTLA LLC v. City of Redondo Beach*, 337 Cal.Rptr.3d 782 ("*New Commune*"), determining that the City's Housing Element did not comply with State Housing Element Law (Government Code Section 65580 *et seq.*). The City filed a request for the California Supreme Court to review the Appeal Court's decision in *New Commune* and this request was denied on January 28, 2026. Consequently, the *New Commune* decision is final.

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[6] Government Code Section 65589.5(d)(1)-(6).
[7] Government Code Section 65589.5(k)(1)(A)(i)(I).
[8] Government Code Section 65589.5(k) and (l).
[9] Government Code Section 65589.5(h)(1).
[10] Government Code Section 65589.5(h)(5).

The City Council recently adopted revisions to the City's Housing Element – ***because it was not in compliance*** – and HCD has determined that the City's Housing Element is now once again in substantial compliance with state law as of May 20, 2026.

Government Code Section 65585.03 (added by AB 1886) was added to clarify exactly when a city's Housing Element is in substantial compliance:

> A housing element or amendment shall be considered to be in substantial compliance with this article when the local agency adopts the housing element or amendment for the current planning period in accordance with Section 65585 and either of the following apply:
>
> (a) The department [i.e. HCD] finds that the adopted housing element or amendment is in substantial compliance with this article **and the department's compliance findings have not been superseded** by subsequent contrary findings by the department or **by a decision of a court of competent jurisdiction**.
>
> (b) A court of competent jurisdiction determines that the adopted housing element or amendment substantially complies with this article and the court's decision has not been overturned or superseded by a subsequent court decision or by statute.

Here, although the Department of Housing and Community Development ("HCD") found the City's Housing Element to be in substantial compliance on September 1, 2022, the Court of Appeal's decision in *New Commune* clearly and authoritatively supersedes this compliance finding:

- "HCD's approval of the housing element here does not cure the myriad defects we have identified. [¶] That is, although there is a rebuttable presumption here that the City's housing element is valid (§ 65589.3), New Commune has met its burden to show that the element is unlawful."

- "For these reasons, we find that the City's housing element does not substantially comply with the Housing Element Law."[11]

Consequently, the City's Housing Element was out of compliance following the *New Commune* decision up until May 20, 2026 – the time period during which the Preliminary Application was filed.

2. The City's Position Has No Legal Basis

Based on our communications with the City, the City appears to take the position that the Court of Appeal's determination does not take effect until the trial court vacates its order denying New Commune's petition and issues a writ of mandate in favor of New Commune, which has not yet occurred. This position has no legal support.

The disposition at the end of the *New Commune* appellate court decision reads: "The judgment is reversed. On remand, the trial court is directed to vacate its order denying New Commune's petition and

[11] *New Commune DTLA LLC v. City of Redondo Beach*, 115 Cal. App. 5th 111, 137 (2025), *review denied* (Jan. 28, 2026).

to issue in its place a writ of mandate compelling the City to revise its Sixth Cycle 2021–2029 Draft Housing Element ***consistent with this opinion***."[12] Thus, while it is the lower that court that will issue the writ, the lower court has **no discretion** to make a determination regarding the City's Housing Element that is inconsistent with the appellate court's ruling.

Moreover, Government Code Section 65585.03 (quoted above) does not say that HCD's compliance finding remains in place until *the issuance of a writ by a lower court*. It says that HCD's compliance finding remains in place until "**superseded** … **by a decision of a court of competent jurisdiction**." The appellate court is a court of competent jurisdiction, the appellate court decision clearly superseded HCD's compliance finding, the appellate court decision is final and binding, and the lower court cannot take any action that is inconsistent with the appellate court decision.

E. Request For Written Confirmation that City Will Process the Application

For the reasons state above, the City's refusal to process a builder's remedy application is in violation of multiple state housing laws. If the City continues to refuse to process the Applicant's builder's remedy application, the Applicant will be forced to resolve this issue through litigation against the City. Before taking this next step, we are making a final request for the City to confirm that it will process a builder's remedy application filed by the Applicant for this Project. We are not asking the City to agree that it will *approve* the Project, but only that it will *process* the application in accordance with its duties under state law.

Please confirm in writing no later than one week from today (Tuesday June 23rd), that City will process a builder's remedy application submitted by the Applicant in accordance with state law.

Sincerely,

Dave Rand

Dave Rand
Partner
of RAND PASTER & NELSON, LLP

[12] *New Commune DTLA LLC*, 115 Cal. App. 5th at 141 (emphasis added).