California Department of Justice **Office of the Attorney General**	**Legal Alert**	
Subject: Consistent Interpretation of the Permit Streamlining Act's 90-Day Rule to Resubmit Housing Development Applications	*No.* OAG 2025-04	*Contact for information:* housing@doj.ca.gov
	Date: November 14, 2025	

TO: All Cities, Counties, and other interested parties,

Recently, and despite ample guidance from the Department of Housing and Community Development (HCD), several jurisdictions have denied housing development applications based on an incorrect application of the "90-Day Rule" set forth in subdivision (e)(2) of Government Code section 65941.1. The purpose of this legal alert is to assist California local officials, such as county supervisors and councilmembers, planning directors, city attorneys, and county counsel, in the consistent application of Government Code section 65941.1, subdivisions (c) and (e)[1], as amended by the Housing Crisis Act. By providing both the Attorney General and HCD's interpretation of the law, this advisory strives to provide clarity and consistency in the expeditious and fair processing of housing development project applications.

In short, for purposes of determining whether a housing development project application is complete, an applicant is entitled to as many 90-day review and resubmission periods as necessary and, throughout the process, retains the rights that vest upon the submission of a preliminary application under the Housing Crisis Act.

What is the Permit Streamlining Act's 90-Day Rule, and How Does it Intersect with the Housing Accountability Act?

The Permit Streamlining Act, codified in Government Code sections 65920-65964.5, was enacted in 1977 to expedite and clarify the processing of permits for development projects and applies to all local public agencies, including charter cities. (Gov. Code, §§ 65921-65922.1.)[2] The Permit Streamlining Act sets forth mandatory deadlines that public agencies must follow in the acceptance, review, and disapproval or approval of development project applications, and consequences for the failure to comply with the Act's deadlines. For example, once a development application is submitted to a public agency, that agency has 30 calendar days after receipt of the application to determine whether the application is complete, and to transmit that determination to the applicant. (§ 65943, subd. (a).) If the application is determined to be incomplete, the

[1] Formerly Government Code section 65941.1, subdivision (d)(2).
[2] Unless specified otherwise, all further references are to the Government Code.

agency must provide the applicant with an exhaustive list of incomplete items. (*Ibid*.) Failure to make a written determination within 30 days after receipt of an application means that the application is deemed complete. (*Ibid*.)

Senate Bill Number 330 (Skinner, 2019), the "Housing Crisis Act," amended the Permit Streamlining Act, including adding Section 65941.1, which created the preliminary application process for housing development projects. Specifically, Section 65941.1 provides that a preliminary application for a housing development project that meets the statutorily enumerated criteria is deemed complete upon submission. (§§ 65941.1, subd. (a), 65589.5, subd. (h)(5).) A housing development project is then subject only to the ordinances, policies, and standards in effect when the preliminary application is submitted.[3] (§ 65589.5, subd. (o).) Section 65941.1 also includes a 180-day deadline for an applicant to submit a full development application following the submittal of a preliminary application. (*Id.* at subd. (e)(1).)

Importantly, the Legislature incorporated a mechanism for an applicant to resubmit a development application or provide additional materials should a public agency determine that, pursuant to Section 65943, the application was incomplete: the "90-Day Rule." (§ 65941.1, subd. (e)(2), amended by Assem. Bill No. 130 (Com. on Budget, 2025).) Section 65941.1, subdivision (e)(2), states:

> If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.

(*Ibid*.) By the provision's plain meaning, upon receipt of a public agency's written determination that a development project application submitted pursuant to Section 65941.1, subdivision (e)(1) is incomplete, with the missing information specified in the written determination, the applicant has 90 days to submit the specific information necessary to complete the application. (*Ibid*.) As explained below, this process can, and should, be as iterative and successive as necessary for three reasons.

First, subdivision (e)(2) incorporates Section 65943, which contemplates "subsequent" reviews, appeals, and repeated back-and-forth between a public agency and an applicant, with limitations *only on what the public agency* can request in a subsequent review. (§ 65943, subds. (a)-(c) ["Upon receipt of any resubmittal of the application, a new 30-day period [for local agency review] shall begin. . . ."].) Second, Section 65589.5, subdivision (h)(10) makes clear that a housing development application is "determined to be complete" through the iterative process set forth under Section 65943. (See also § 65589.5, subd. (j) [limiting local agencies' authority to disapprove a project and setting forth deadlines for review of a project that has been determined to be complete].) Third, to the extent that local jurisdictions interpret subdivision (e)(1)'s 180-day deadline to mean that, in order to maintain vesting rights, a full application must be deemed complete either within the 180-day period or within a single 90-day period following an incompleteness determination, the Legislature explicitly provides otherwise. (§ 65941.1, subd. (e)(3) ["This section shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application *or a development application* for purposes of compliance with this section."].) In other words, the Legislature took

[3] Narrow exceptions to this rule apply, depending on specific circumstances set forth in Government Code section 65589.5, subdivision (o)(2).

care to clarify that applicable development standards vest upon the *submittal* of a preliminary application that provides the information required under subdivision (a), and such vesting rights are not contingent on a completeness determination so long as a full application is *submitted* within 180 days thereafter. In contrast, there is no statutory provision indicating that the 90-Day Rule is limited by the 180-day deadline to submit a full application.

In sum, the statutory provisions codifying the Permit Streamlining Act, and as amended by the Housing Crisis Act, expressly contemplate iterative review of development applications, or as many back-and-forth review and revisions as necessary, between an agency and an applicant, for purposes of completeness determinations. The separate requirement, that a full development application must be submitted within 180 days of a preliminary application, does not justify limiting this iterative process. This point is particularly crucial with respect to "Builder's Remedy" applications, and in determining whether a local agency's decision, or course of conduct, constitutes disapproval of a housing development project application under the Housing Accountability Act.

The Housing Accountability Act ("HAA"), specifically cross-references the Permit Streamlining Act in its definition of a "disapproval" of a project application, placing the burden of proving that an application is incomplete on the local agency. (§ 65589.5 subds. (h)(5) & (6).) A disapproval under the HAA is defined to include a public agency's incompleteness determination based on an item that is not required in that agency's submittal requirement checklist. (§ 65589.5, subd. (h)(6)(F).) Likewise, Section 65589.5, subdivision (h)(6)(H), further defines a disapproval under the HAA to include a written finding pursuant to the Permit Streamlining Act that a preliminary application has expired or otherwise lost its vested rights "for any reason other than those described in subdivisions (c) and (d) of Section 65941.1." Those subdivisions pertain to satisfying checklists and standardized forms to submit a preliminary application, and the inapplicability of a preliminary application if the proposed project increases the number of units or square footage by 20 percent or more, exclusive of any density bonus considerations. (§ 65941.1, subds. (c) and (d).)

The "Builder's Remedy" is a provision in the HAA that limits a local government's ability to reject projects that include certain affordable housing components even when they are inconsistent with the jurisdiction's zoning ordinance or general plan. (§ 65589.5, subds. (d)(5)-(6).)[4] The Builder's Remedy only applies when a local government either (1) fails to timely adopt a substantially compliant housing element, or (2) falls out of substantial compliance. (*Ibid*.) The Legislature recently clarified that substantial compliance with the Housing Element Law is determined only by either HCD or a court of competent jurisdiction. (See Assem. Bill No. 1886 (Alvarez, 2024), adding §§ 65585.03 and 65589.55; see also Assembly Bill Number 1893 (Wicks, 2024), effective January 1, 2025, amended the HAA, including the Builder's Remedy.)[5]

Applying the above statutes together, a preliminary application submitted to a local jurisdiction that was out of Housing Element Law compliance can also be a Builder's Remedy application. Accordingly, the vesting that is afforded a preliminary application pursuant to Section 65941.1, subdivision (a), must likewise be afforded to a qualifying Builder's Remedy application. Additionally, a full application submitted within 180 days following the submittal of a preliminary application that is also a Builder's Remedy application, can undergo repeated

[4] The Attorney General published a legal alert regarding the consistent interpretation of the Builder's Remedy on June 5, 2025. ("Consistent interpretation of the Builder's Remedy in *Cal. Housing Defense Fund, et al. v. City of La Cañada Flintridge* (Super. Ct. L.A. County, Mar. 4, 2024, No. 23STCP02614) and *Shelby Family Partnership, L.P. v. City of Goleta, et al.* (Super. Ct. S.B. County, Feb. 26, 2025, No. 24CV000548)" (June 5, 2025), https://oag.ca.gov/system/files/media/legal-alert-oag-2025-03.pdf .)

[5] HCD will provide further technical assistance to local governments and local agency planning staff regarding the newly amended HAA.

completeness review pursuant to Section 65943, without losing its vesting rights under Section 65491.1, subdivisions (e)(1) and (2). The 90-Day Rule, therefore, applies to each written incompleteness determination made by the local agency should the local agency find the supplemented or amended application incomplete.

To be sure, it is possible that a public agency could encounter a situation where a housing development project applicant deliberately submits inadequate information, within the 90-day period following each incompleteness determination, so as to successively extend the 90-day review period indefinitely. In that unusual scenario, the HAA provides local agencies with relief from such objectively unreasonable conduct. (See Gov. Code., § 65589.5, subds. (h)(6)(F)(iii) and (iv), and (H).)

The Attorney General's Interpretation of the Permit Streamlining Act's 90-Day Rule is Consistent with Prior Trial Court Rulings

The Attorney General's interpretation of the Permit Streamlining Act's 90-Day Rule is consistent with at least two recent lower court rulings. A recent ruling from the Los Angeles Superior Court is illustrative. See *Janet Jha v. City of Los Angeles, et al.* (Super. Ct. L.A. County, July 24, 2024, No. 23STCP03499). In that case, petitioner Jha submitted a preliminary application on June 23, 2022, for a 40-unit project with 20 percent of the units set aside as affordable to lower-income households at a site in the City of Los Angeles. Because the City did not have a housing element certified as substantially compliant with state law at the time Jha submitted the preliminary application, the application also qualified as a Builder's Remedy project. On January 26, 2023, the City sent Jha a review letter, including an incompleteness determination. On April 5, 2023, Jha submitted revised application materials, which the City again determined were incomplete. Jha appealed the City's incompleteness determination of her application, and the City denied the appeal on June 27, 2023. However, prior to that denial, on May 16, 2023, the City wrote Jha a letter asserting that the initial preliminary application had expired and any vested rights had terminated. As part of that letter, the City interpreted Government Code section 65491.1, subdivision (e)(2), the Permit Streamlining Act's 90-Day Rule, to provide a single 90-day period in which to address an incompleteness determination.

The court held that the City's interpretation was wrong. As to the Permit Streamlining Act's 90-Day Rule, the court held that Government Code section 65491.1, subdivision (e)(2), accommodates numerous incompleteness determination letters and responses between public agencies and applicants, all the while maintaining vested development rights. Specifically:

> [M]ultiple iterations of the 90-day submission/30-day review are permissible under section 65941.1[e](2). Section 65941.1[e](2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete," "any resubmittal of the application," and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. The statute supports [the] reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions . . . when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond.

(*Janet Jha v. City of Los Angeles, et al.* (Super. Ct. L.A. County, July 24, 2024, No. 23STCP03499), at pp. 23-24, statutory references updated to reflect current numbering.) The court noted that its interpretation of the Permit Streamlining Act's 90-Day Rule did not occur in a vacuum, but rather alongside the interpretation of state

housing laws that the Legislatures has mandated be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing." (*Id.* at p. 23 [citing *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 855].)

The court reiterated its reasoning several months later, in *Yes in My Back Yard, et al. v. City of Los Angeles, et al.* (Super. Ct. L.A. County, Sept. 26, 2024, No. 24STCP00070).

HCD's Interpretation of the Permit Streamlining Act's 90-Day Rule Is Entitled to Some Deference by the Courts

HCD has provided numerous technical assistance letters to local jurisdictions on the application of the Permit Streamlining Act's 90-Day Rule. Those letters are linked below. Together with this legal alert, the letters illustrate a range of the potential applications that could trigger the Permit Streamlining Act's 90-Day Rule, and/or involve incompleteness determinations and Builder's Remedy projects. HCD's interpretation has not wavered since the issue arose, and this interpretation is entitled to some deference. (See *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 221-222 ["courts generally will not depart from the HCD's determination unless 'it is clearly erroneous or unauthorized'"].) Consistent interpretation and application of the Housing Crisis Act, the Permit Streamlining Act, and the Housing Accountability Act across the state is essential to reaching our collective mandate to resolve the housing shortage crisis.

- City of Beverly Hills Technical Assistance letter, 2024-06-26: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-hau-1071-losta-062624.pdf
- City of Beverly Hills Notice of Violation #1, 2024-08-22: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-hau-1071-nov-082224.pdf
- City of Beverly Hills Notice of Violation #2, 2024-12-02: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-nov-120224.pdf
- Town of Los Gatos Technical Assistance letter, 2024-08-30: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/losgatos-hau891-ta-08302024.pdf
- Town of Los Gatos Notice of Potential Violation, 2025-02-12: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/losgatos-hau-1398-nopv-02122025.pdf
- Santa Barbara County Technical Assistance letter, 2025-04-07: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santabarbara-co-hau-1423-ta-04072025.pdf
- City of Cupertino Notice of Violation, 2025-07-16: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/cupertino-hau-1585-psa-90-days-nov-071625.pdf
- Santa Clara County Notice of Potential Violation, 2025-08-27: santa-clara-county-hau-2432-nopv-082725.pdf
- Santa Clara County Notice of Violation, 2025-10-15: santa-clara-cou-hau-2432-psa-90-days-nov-101525.pdf

Key Takeaway Regarding the Permit Streamlining Act's 90-Day Rule and the Builder's Remedy

We hope this legal alert, setting forth the Attorney General's interpretation of the Permit Streamlining Act's 90-Day Rule, along with HCD's consistent guidance regarding the same, and the trial court's consistent interpretation in the *Jha* and *Yes in My Back Yard* cases, provide useful guidance to local governments interpreting and implementing the 90-Day Rule and the processing of Builder's Remedy applications. The key takeaway is that Government Code section 65941.1, subdivision (e)(2), by its plain text, does not limit the number of written incompleteness determinations and responses possible. This is so, perhaps especially, even if development rights are vested pursuant to a submission of a preliminary application, as provided by Housing Crisis Act's amendment of the Permit Streamlining Act.