

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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July 20, 2023

Kenneth Tam, Manager of Environmental Services
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

RE: SB 330 Preliminary Application Vesting Rights and Local Agencies – Letter of Technical Assistance

Dear Kenneth Tam:

The California Department of Housing and Community Development (HCD) received a request for technical assistance from the applicant (Applicant) of the Alta Cuvee project, located in the City of Rancho Cucamonga, seeking clarification regarding vesting of water and sewer connection fees under Government Code section 65941.1, subdivision (a). The purpose of this letter is to provide technical assistance regarding the applicability of Government Code section 65941.1, subdivision (a), to local agencies, as defined in Government Code section 66000, as it pertains to applicant vesting rights on development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

Summary of Request

The Applicant submitted a technical assistance request to HCD regarding how vesting of fees pursuant to Government Code section 65941.1, subdivision (a), interacts with local agencies (i.e., Cucamonga Valley Water District) that operate independently from the local jurisdiction (i.e., City of Rancho Cucamonga). HCD understands that the Applicant had submitted an “SB 330 preliminary application” and a full development application for the Alta Cuvee project (Project) on December 15, 2020, and that the Planning Commission approved the Project on April 13, 2022. As part of the post-entitlement permitting process, the Applicant submitted their application for sewer and water connections to Cucamonga Valley Water District (CVWD) through CVWD’s online portal on July 11, 2022. HCD understands that CVWD works in conjunction with Inland Empire Utilities Agency (IEUA) to provide water and sewer connections, and both agencies have adopted fee structures for these connections.

The question posed by the Applicant is whether the Project is vested under CVWD’s and IEUA’s 2020 fee structures, given the facts that the SB 330 preliminary application was submitted to the City of Rancho Cucamonga on December 15, 2020 and the application for sewer and water connections was submitted on July 11, 2022. In short,

yes, the Project is vested under the 2020 fee structures, as supported by the analysis provided in this letter.

SB 330 Preliminary Applications and Local Agencies

Senate Bill (SB) 330 (Chapter 654, Statutes of 2019) which became effective on January 1, 2020, and among other provisions, the bill added section 65941.1 to the Government Code, creating the preliminary application (SB 330 preliminary application) mechanism for housing projects. Government Code section 65941.1, subdivision (a), states that “An applicant for a housing development project... shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee.”

SB 330 also added subdivision (o) to Government Code section 65589.5, which describes the vesting that housing projects with SB 330 preliminary applications enjoy. Government Code section 65589.5, subdivision (o)(1) and (o)(4) are relevant to the question posed by the Applicant and are cited below:

Subject to paragraphs (2), (6), and (7), and subdivision (d) of Section 65941.1, a housing development project ***shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application*** including all of the information required by subdivision (a) of Section 65941.1 ***was submitted***. (Gov. Code, § 65589.5, subd. (o)(1), emphasis added.)

For purposes of this subdivision, “ordinances, policies, and standards” includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies ***of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees*** or charges, permit or processing fees, and other exactions. (Gov. Code, § 65589.5, subd. (o)(4), emphasis added.)

As referenced in Government Code 65589.5, subdivision (o)(4) and pursuant to Government Code section 66000, “local agency” is defined as, “...a county, city, whether general law or chartered, city and county, school district, ***special district, authority, agency, any other municipal public corporation or district***, or other political subdivision of the state.” (emphasis added). Both CVWD and IEAU are “local agencies” under this definition.

For this Project, the vesting rights were established on December 15, 2020, the date the SB 330 preliminary application was submitted, and permit processing fees paid to the City of Rancho Cucamonga. These vesting rights extends to any local agency as defined, including CVWD and IEAU.

Vesting Rights and Fee Increase Exceptions

Government Code section 65589.5, subdivision (o)(2), provides for exceptions to a housing development project's vesting rights, including an exception for the vesting of fees. Specifically, subdivision (o)(2) provides the following:

Paragraph (1) ***shall not prohibit a housing development project from being subject to*** ordinances, policies, and standards ***adopted after the preliminary application was submitted*** pursuant to Section 65941.1 in the following circumstances:

(A) ***In the case of a fee***, charge, or other monetary exaction, to an ***increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee*** or other monetary exaction. ((Gov. Code, § 65589.5, subd. (o)(2)(A). emphasis added.)

To summarize, there are three criteria that must be satisfied for a city, county, or local agency to subject a housing development project with a vested SB 330 preliminary application to a higher fee than the fee in place at time of vesting:

- 1) The fee increase must be an ***automatic annual adjustment***.
- 2) The automatic annual adjustment must be ***based on a current independently published cost index***.
- 3) The automatic annual adjustment must be ***established through an ordinance or resolution***.

The IEUA does not meet these statutory criteria for an exception to charge an increased fee. Though the fees appear to be established through resolutions adopted by the Board, the fees are not an automatic annual adjustment, and the last full cost of service study conducted by IEUA was in 2015, which does not address current fees.

HCD understands that CWVD's fees have not changed from 2020 to 2022. As such, only IEUA's fee structure was analyzed for the purposes of this letter. However, as a local agency, CVWD would also need to meet the above criteria to qualify for a fee increase exception in the future.

Conclusion

HCD has determined that ordinances, policies, standards adopted and in effect, and fees associated with development projects are vested upon the date the preliminary application is submitted and permit processing fees paid to a city, county, or city and county from which project approval is being sought, pursuant to Government Code section 65941.1, subdivision (a). This includes all other entities that meet the definition

of a "local agency" under Government Code section 66000, subdivision (c). Additionally, even though a housing development project application was vested under Government Code section 65941.1, subdivision (a), a project can still be subject to an increase in fees so long as it meets the three criteria under Government Code section 65589.5, subdivision (o)(2)(a).

To increase transparency and efficiency in the vesting process, HCD recommends coordination between all local agencies that may be involved in either the entitlement or post-entitlement process and especially with those external local agencies that may be impacted by vesting rights that result from an SB 330 preliminary application, including local agencies that impose fees. HCD encourages the formalization of this process to ensure that all local agencies are aware of their statutory obligations under Government Code section 65941.1, subdivision (a).

HCD recognizes the challenge of interpreting ever-changing housing and land use laws and appreciates the City's, CVWD's, and IEUA's cooperation during HCD's investigation. If you have questions or need information, please contact Deepeeka Dhaliwal of our staff at Deepeeka.Dhaliwal@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West
Housing Accountability Unit Chief

cc: Gull Nawaz, Senior Associate Engineer, Cucamonga Valley Water District
David Eoff, Senior Planner, City of Rancho Cucamonga, Planning Department