



PLANNING AND BUILDING DEPARTMENT

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May 3, 2024

Max Peralta, Applicant

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Patrick Prado, Chief Operating Officer

HomeCA Inc.

13505 Union Road

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RE: Grading Permit #0372970

Dear Mr. Peralta and Mr. Prado,

I write to provide you with an update on the status of the grading permit application #0372970 located at 3335 Deer Valley Ct. in Rescue that was received by the County's Planning & Building Department on February 21, 2024. The permit application has been circulated to affected agencies for review and is awaiting final sign-off from the Rescue Fire Protection District and the County's Planning Division. Prior to providing its sign-off and approving the grading permit, the Planning Division will require clarification of certain issues identified during our review. Until such clarification is provided, the County is not yet in a position to issue the subject grading permit or any other permits associated with your project. The issues requiring your clarification are described below.

Compliance with Local Zoning

As you are aware, the parcel on which your project is proposed is designated Rural Residential (RR) by the County's General Plan and Rural Lands Ten-Acre (RL-10) by the County's Zoning Ordinance. Rural Residential land is described in the County's General Plan as follows:

This land use designation establishes areas for residential and agricultural development.

These lands will typically have limited infrastructure and public services and will remain

for the most part in their natural state. This category is appropriate for lands that are characterized by steeper topography, high fire hazards, and limited or substandard access as well as “choice” agricultural soils. The RR designation shall be used as a transition between LDR and the Natural Resource (NR) designation. Clustering of residential units under allowable densities is encouraged as a means of preserving large areas in their natural state or for agricultural production. Typical uses include single family residences, agricultural support structures, a full range of agricultural production uses, recreation, and mineral development activities. The allowable density for this designation is one dwelling unit per 10 to 160 acres. This designation is considered appropriate only in the Rural Regions.

Consistent with that description, the RL-10 zone is applied to lands “that are suitable for limited residential development based on topography, access, groundwater or septic capability, and other infrastructural requirements.”

Based on our understanding of your proposed project, it appears to most closely resemble the Community Care Facility (Large) use type in the County’s Zoning Ordinance. That use type is defined as “Any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, residential care for the elderly, or foster family agency services for children, adults, or children and adults, subject to licensing by the State Department of Social Services, Health and Welfare Agency.” Such a use is not allowed in the RL-10 zone without a Conditional Use Permit meeting certain requirements.

In their February 15, 2024, letter to Senator Marie Alvarado-Gil, the Directors of the California Department of Health Care Services and the California Department of Social Services stated as follows:

...for BHCIP and CCE projects to progress, awardees are required to work within their local jurisdiction to obtain necessary permits through local Planning and Building Departments **and meet relevant zoning requirements** to ensure programmatic and local requirements are met. This includes ensuring construction work complies with the minimum standards of safety, and protecting public and program participant health, safety, and welfare. (Emphasis added.)

However, as discussed above, your project does not appear to meet relevant zoning requirements since the proposed use is not allowed by right in the RL-10 zone. As such, before taking action on your grading permit or other associated permits, we require an explanation of how your project “meet[s] relevant zoning requirements” as specified by the Directors of DHCS and CDSS.

California Environmental Quality Act (CEQA)

The County cannot approve a project without first performing necessary environmental review or determining that the project is exempt from such review pursuant to CEQA. It is our understanding that you believe your project is exempt from review under CEQA as a result of your anticipated receipt of BHCIP and/or CCE funding for the project. We are aware that the statutes implementing those funding

programs provide for a CEQA exemption, but we are unclear as to whether the conditions required for the exemption have been met. In particular, based on the Program Funding Agreement for your project (with an effective date of 9/12/23), we understand that your project is scheduled to receive \$11,175,505 in BHCIP funding. The Program Funding Agreement makes no mention of CCE funding for the project. Welfare and Institutions Code § 5960.3(b), which implements the BHCIP program, states that a funded project is exempt from CEQA only if all of the following requirements are met:

- (1) The project is not acquired by eminent domain.
- (2) The project applicant demonstrates that the project is, and will continue to be, licensed by and in good standing with the department or other state licensing entity at the time of, and for the duration of, occupancy. The project shall be in decent, safe, and sanitary condition at the time of occupancy.
- (3) The project applicant requires all contractors and subcontractors performing work on the facility project to pay prevailing wages for any proposed rehabilitation, construction, or major alterations in accordance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
- (4) The project applicant obtains an enforceable commitment that all contractors and subcontractors performing work on the project will use a skilled and trained workforce for any proposed rehabilitation, construction, or major alterations in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
- (5) The project applicant submits to the lead agency a letter of support, or other durable documentary proof for the project, from a county, city, or other local public entity for any new proposed construction, major alteration work, or rehabilitation.
- (6) The project applicant demonstrates that not less than ninety-five percent of the total cost of any new construction, facility acquisition, or rehabilitation project is paid for with public funds, private non-profit funds, or philanthropic funds.
- (7) The project applicant demonstrates that the project expands the availability of behavioral health treatment services in the subject jurisdiction.
- (8) The project applicant demonstrates that there are long-term covenants and restrictions that require the project to be used to provide behavioral health treatment for no less than 30 years, and those covenants and restrictions may not be amended or extinguished by a subsequent title holder, owner, or operator.
- (9) The project does not result in any increase in the existing onsite development footprint of structures or improvements.

It has not been satisfactorily demonstrated to us that all of those requirements have been met. The County has not been provided with the letter of support from a county, city, or other local public entity

that is required by Condition No. 5. Additionally, since your project contemplates new construction (as opposed to rehabilitation of an existing facility), it does not appear that you have satisfied or can satisfy Condition No. 9, requiring that the project not result in any increase in the existing onsite development footprint.

Even assuming the foregoing requirements have been or can be met, Welfare & Institutions Code § 5960.3(c) requires that the lead agency for the project publicly concur that the project is exempt from CEQA. As the general governmental agency with responsibility for supervising or approving the project as a whole (see CEQA Guideline 15051), the County is the lead agency for the project but has not provided its public concurrence that the project is exempt.

As the County is required to ensure CEQA compliance at the earliest possible opportunity in the project approval process, we are unable to take action on your grading permit (or other associated permits) until this issue is resolved. Accordingly, please provide us with documentation demonstrating your compliance with CEQA and/or that your project has satisfied the requirements for an exemption from CEQA review.

Letter of Support

Your Program Funding Agreement states that it is governed by, among other things, the Request for Applications (“RFA”), which is attached to the Program Funding Agreement as Exhibit J and incorporated by reference therein. The RFA makes clear that organizational support and community engagement be evidenced by a letter of support from any of the following: “county board of supervisors, county behavioral health direction, county executive, city council, tribal council resolution, community stakeholders, and/or other community-based organizations as applicable.”

Based on the information we have obtained, it appears that the only letter submitted in support of your funding application was from Volker Moerbitz, President of the Native Directions Board of Directors. In your letter to Supervisor Parlin dated April 30, 2024, you stated, “tribal projects such as ours require only an endorsement and a letter of support from our tribal council - a milestone we have successfully achieved.” However, per the California Secretary of State’s Business Search, Native Directions, Inc. is a nonprofit mutual benefit corporation, which, by statute, is governed by a board of directors not a tribal council. As such, it is unclear to us how the provided letter of support satisfies the program requirement for a “tribal council resolution.” We understand that your funding application was reviewed by state agencies; however, because program eligibility is inextricably intertwined with project approval, we require additional clarity on how the organizational support and community engagement requirements of the RFA have been satisfied.

Additionally, the RFA requires non-profit applicants to have a letter of support from their county behavioral health agency and requires tribal entity applicants to have a letter of support from the tribal board. That letter of support must indicate that the applicant will have in place a contract with the county to ensure the provision of Medi-Cal services once the facility is completed. The importance of this is made clear throughout the RFA, which states, “Applicants that offer Medi-Cal behavioral health services will be expected to have a contract in place with their county to ensure the provision of Medi-

Cal services once the funded facility's expansion or construction is complete." To date, the County has not yet been consulted concerning a possible contract regarding the provision of Medi-Cal services. Accordingly, we also require clarity on your intentions concerning such a contract in order to ensure that the County can appropriately address any fiscal impacts from your contemplated operations.

To be clear, the County is not at this time denying your grading permit or other associated permits. However, we cannot take action to approve any permits until we obtain sufficient clarity on the issues raised herein. We stand ready to act on your permit applications upon resolution of those issues, as well as any other issues identified during our continued review process. We look forward to your timely response.

Sincerely,



Karen L. Garner, Director
El Dorado County Planning and Building Department

cc: Kim Johnson, Director, California Department of Social Services
Michelle Baass, Director, California Department of Health Care Services