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Via Electronic Mail

May 16, 2025

Fred Galante, Esq.
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**Re: Housing Accountability Act and SB 330 Protections Applicable to
Eden Mixed-Use Project
Applicant: Orbis Schaefer, LLC | APN: 1052-581-03 | Planning Case
Nos. PL22-0074, PL22-0075, PL24-0080, PL24-0081)**

Dear Mr. Galante:

This firm represents Orbis Schaefer, LLC ("Applicant"), in connection with the proposed Eden Mixed-Use Development Project ("Project"), which is scheduled for public hearing before the Planning Commission on May 21, 2025. The Project site is located on the north side of Schaefer Avenue between Euclid and Fern Avenues (APN: 1052-581-03) and encompasses approximately 9.82 acres ("Site"). As currently proposed, the Project includes 264 multifamily residential units (including 24 affordable units), approximately 20,800 square feet of commercial retail, and a 132,438 square foot self-storage facility. The Project also includes a request to subdivide the Site into five lots and associated access, parking, landscaping, and infrastructure improvements. We provide this letter to clarify the applicability of state housing law to the Project as currently proposed and to assist the City in ensuring that the Planning Commission's consideration remains consistent with the Housing Accountability Act ("HAA") and SB 330.

As confirmed in the staff report for the May 21st public hearing and the City's administrative record, the Applicant submitted a Preliminary Application pursuant to Senate Bill 330 ("SB 330") on December 20, 2024. The City properly determined that the Project satisfies the requirements for a "housing development project" under the HAA because more than two-thirds of the proposed floor area is designated for residential use. (Gov. Code, § 65589.5(h)(2)(B).) As such, the Project is entitled to the full protections of the HAA and the Housing Crisis Act of 2019, including the vesting

of applicable development standards upon SB 330 intake and significant limitations on the City's discretion to deny or reduce residential density. (Gov. Code, §§ 65589.5(f), (j), (o); § 65941.1.)

The HAA only permits local governments to subject housing development projects (defined to include non-residential uses in a qualifying mixed use project) to “objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction’s share of the regional housing need ...” (Gov. Code § 65589.5(f)(1).) The HAA’s prohibition of subjective development standards is one of the primary ways that the Act promotes the approval of housing development projects. The HAA defines “objective” as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code § 65589.5(h)(9).)

We recognize that in the context of mixed-use projects, questions are sometimes raised as to whether the HAA's protections apply only to the residential component of the development. **Here, with respect to the Project, we understand the possibility of certain unsupported views of the HAA being raised at the upcoming hearing purporting that only the residential component of the Project is protected under the HAA, and that the City may therefore deny approvals, including the SCUP, related to the Project’s commercial and self-storage uses. That interpretation, however, is unsupported by law and directly contrary to published guidance from the California Department of Housing and Community Development (“HCD”).**

When a mixed-use project designates at least two-thirds of its total floor area for residential use, the entire development qualifies as a “housing development project” under the HAA (Gov. Code, § 65589.5(h)(2)(B)). The HAA’s protections are therefore triggered not only for the residential units but for the project as a whole—including non-residential components such as commercial or self-storage uses.

HCD has issued express guidance confirming this interpretation. In HCD’s Housing Accountability Act Technical Assistance Advisory dated September 15, 2020, the question was posed: “Under the HAA, is the retail/commercial component of a mixed-use project subject to review when the housing component must be approved?” HCD’s answer was “Yes.” The local government must apply its objective standards and policies to **“the entirety of the mixed-use project”** (including the commercial part) so long as those standards were in effect when the application was deemed complete. (HCD Technical Assistance Advisory, at p. 17 [FAQ #12] (Sept. 2020).) In short, the HAA does not allow a city to carve out or separately reject the commercial piece of a qualifying mixed-use development simply because it’s commercial; the project must be reviewed (and if compliant, approved) as an indivisible whole.

Moreover, the HAA defines “disapproval” broadly to include any denial of a required permit or entitlement for the project—including a use permit for a commercial component. Thus,

withholding approval for a self-storage or retail element within a qualifying mixed-use project would constitute a prohibited “disapproval” under the HAA unless the jurisdiction can make written findings of a specific, unmitigable adverse impact to health or safety (Gov. Code, § 65589.5(d), (j), (h)(6).)

This interpretation is also supported by the legislative history of the 2017 amendments to the HAA (AB 678 and SB 167). California’s HAA (Gov. Code § 65589.5) explicitly includes certain mixed-use developments in its definition of a “housing development project.” Under Section 65589.5(h)(2), a qualifying mixed-use project is one in which at least two-thirds of the project’s total square footage is designated for residential use. In other words, if a development is primarily residential ($\geq 67\%$ of floor area), it is treated as a housing development project under the HAA, even though it contains non-residential (commercial) components. This statutory threshold was established by 2017 amendments (AB 678/SB 167) that broadened HAA coverage – replacing a prior, narrower rule that had limited qualifying mixed-use projects to those with “neighborhood commercial” uses on the first floor. The legislative intent behind this change was to ensure **any** mixed-use project *dominated* by housing would receive HAA protections, rather than excluding projects just because they contained larger or non-“neighborhood” commercial elements (like self-storage). (Assem. Floor Analysis of AB 678 (Sept. 13, 2017).). Accordingly, so long as the two-thirds residential use test is met, the entire development (including its commercial portions) is considered a protected housing project under the HAA.

Case law interpreting the HAA reinforces this view. In *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 831–840, the court held that housing developments compliant with objective standards are entitled to approval, and that local governments cannot rely on subjective criteria to deny or reduce such projects. While *San Mateo* involved a residential-only project, the court emphasized the HAA’s protective scope and legislative purpose—further supporting that a compliant mixed-use project is shielded from piecemeal denial. Similarly, in *Reznitskiy v. County of Marin* (2022) 79 Cal.App.5th 1016, 1024, the Court of Appeal confirmed that mixed-use projects meeting the two-thirds residential threshold fall within the statutory definition of “housing development project.”

HCD’s interpretation, coupled with the Legislature’s express intent and judicial application of the HAA, confirms that qualifying mixed-use projects must be evaluated and approved as a unified whole—not fragmented into “protected” and “unprotected” components. Denial of a commercial element is, in effect, a denial of the project, and therefore subject to the full rigor of the HAA’s limitations.

A local government cannot evade the HAA by approving only the residential portion and rejecting or unreasonably conditioning the commercial portion. So long as the proposal before the agency is a single integrated project, the HAA compels the agency to treat it as one housing

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development project. In practical terms, the city must either approve the whole project (with at most objective adjustments) or comply with the HAA's stringent findings to justify a denial or reduction.

We respectfully urge the City to continue treating the Project as a single, cohesive housing development under the HAA and SB 330, and to ensure that all components—residential and non-residential—are afforded the full extent of the protections those statutes provide. As the City is aware, when a project qualifies under the HAA, the scope of local discretion is sharply constrained, and the City must approve the project unless it can make very specific, narrowly defined findings related to unmitigable health or safety impacts. We hope this summary is helpful in guiding the City's review process and in supporting a legally sound basis for Commission action consistent with those state mandates. Please do not hesitate to contact us if we can provide any further clarification or assistance.

Very truly yours,

A handwritten signature in black ink, reading "Jon Shardlow". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

Jonathan E. Shardlow