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Refer To File # 504356-000xz1

**VIA HAND DELIVER AND E-MAIL**



February 25, 2025

Board of Supervisors
County of Santa Cruz
701 Ocean Street, #500A
Santa Cruz, CA 95060
boardofsupervisors@santacruzcounty.us

Re: **Appeal from County Planning Commission's Denial of Appeal of "Incompleteness" Determination Concerning Application No. 241450, APN 028-242-25; Applicant Cove Britton; Owner Alexander and Judi MacDonell**

Dear Members of the Board:

This law firm represents the interest of the owners of the above-referenced property, Alexander and Judi MacDonell, as well as those of the applicant, Cove Britton. We are writing to appeal from the County of Santa Cruz Planning Commission's denial of our appeal of the "incompleteness" determination set forth in the December 27, 2024 letter of Nathan MacBeth to Mr. Britton.

This appeal is being submitted under an express reservation of rights, and without waiving any argument that an administrative appeal is neither appropriate nor required under the specific facts in this case. In fact, based upon the plain language of Government Code section 65943, it does not appear that any administrative appeal is necessary or proper. However, in an abundance of caution, this appeal is being submitted to the Board of Supervisors, pursuant to the direction on the County's website, which identifies an administrative appeal process when the County timely sends an incompleteness letter after an initial submittal. Notably, in this case, the County ***did not*** send a timely incompleteness letter. Instead, as acknowledged by County staff, the County failed to act on the application within 30 days of its "receipt" by the County. The County did not send any communication that the application was incomplete until after the 30-day period had passed. Thus, the appeals process provided for in the Santa Cruz County Code does not apply in this case. Nevertheless, if the County contends that an administrative appeal is appropriate, we request the County schedule the appeal as soon as possible before the Boad of Supervisors.

The Permit Streamlining Act requires that a public agency, such as the County, must determine in writing whether an application for a development project is complete within 30 calendar days of ***receipt*** of the application. (Gov. Code, § 65943, subd. (a).) Failure to make a written determination within that 30-day period results in the application together with the submitted materials being deemed complete. (*Id.*, subd. (b).) The Permit Streamlining Act is

clear: the 30-day period for a public agency to make its completeness determination begins to run once an application for a development project is ***received***. (See *id.*, subds. (a) ["Not later than 30 calendar days after any public agency has ***received*** an application for a development project . . . ."], (b) ["No later than 30 calendar days after ***receipt*** of the submitted materials . . . ."], emphasis added.)

The relevant facts here are undisputed. On November 14, 2024, Mr. Britton submitted a formal description of the MacDonells' proposed development project to obtain an appointment for submission of the full documentation for the application. That full documentation was ready for submittal on November 14, but the County's submittal process, which is based on staff policy and not based on the Santa Cruz County Code, required an appointment for submission of the application. On November 25, 2024, the application was received by the County via the Planning Department's ePortal. County staff formally acknowledged receipt of the MacDonells' application on November 25, 2024. Indeed, the Planning Commission staff report acknowledges that "an appointment was scheduled for submittal of an electronic application through the Planning Department's ePortal" on November 25, 2024 and that, on that same date, "the applicant uploaded project plans and supporting documentation into the ePortal." Further, the Staff Report concedes that the application was received because, on November 26, 2024, "Planning staff created a formal application for review of the proposed project and notified the appropriate fees due for review of the application."

Based on the foregoing, the County had until December 14, 2024, to issue a written determination on the completeness of the application. It did not do so. Even assuming that the County's appointment process for submitting applications can delay the start of the Permit Streamlining Act timelines (it cannot), the County acknowledges that it received the application on November 25, 2024. Thus, at the latest, the County was required to provide a written completeness determination no later than December 25, 2024.[1] It did not do so. Therefore, the MacDonells' application was deemed complete by operation of law via the Permit Streamlining Act.

Despite the plain language of the statute, County staff and the Planning Commission improperly assert that the 30-day period did not begin to run until the County ***accepted*** the MacDonells' application materials, which they claim did not happen until December 3, 2024. The County cannot grant itself a unilateral extension of the Permit Streamlining Act's 30-day requirement through this "portal and acceptance" process, which constitutes a clear end run around statutorily mandated time limitations for processing applications. As noted in our initial appeal letter, the County's process is an improper and unlawful attempt to bypass the Permit Streamlining Act's clear time limitations for issuing a completeness determination, as well as the "extension by mutual agreement" provision of the Act. (See Gov. Code, § 65943, subd. (d) [requiring ***mutual*** agreement of the 30-day period for any extension].)

The County does not have the power to create intake procedures that subvert the purpose of the Permits Streamlining Act. (See *Bldg. Indus. Def. Found. V. Superior Court* (1999)

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[1] Even assuming the County did not receive the permit application until November 26, 2024 when it created the formal application from the materials received via the Planning Departments' ePortal, the County's issuance of its written completeness determination on December 27 was not within the required 30-day period.

72 Cal.App.4th 1410, 1417 [holding that city cannot use ordinance to subvert clear requirements for processing permits under Subdivision Map Act and noting that similar issues exist with respect to Permit Streamlining Act requirements].) Further, the County cannot avoid compliance with the statutory duty simply by asserting that compliance is too burdensome. (See, e.g., *Getz v. Superior Court* (2021) 72 Cal.App.5th 637, 658.) The Planning Commission Staff Report cites Santa Cruz County Code section 18.10.212 for the proposition that the "effective time" for filing an application is the "time when the application has been ***deemed complete*** in full compliance with this chapter," which includes payment of all prescribed fees. (Emphasis added.) It should go without saying that this provision is irrelevant for determining when the permit application was ***received***, and it has ***no*** bearing on the Permit Streamlining Act's provisions regarding time for ***making*** this completeness determination in the first instance. The County's position would effectively moot the Permit Streamlining Act.

Having submitted the application on November 14, 2024, the application was "deemed complete" by operation of law on December 14, 2024. Even assuming that the application was not received until it was submitted via the Planning Department's ePortal on November 25, 2024, the application was "deemed complete" by operation of law on December 25, 2024.

In addition to the above, this appeal is based on a request for waiver of certain LORI requirements set forth in Mr. MacBeth's letter. Notwithstanding the Planning Commission's decision, these LORI requirements are simply irrelevant to the development project for which the MacDonells have applied. Further, the demands are oppressive and financially burdensome, and Mr. MacBeth improperly combined completeness issues and compliance issues in his letter, evidencing that these compliance issues appear to have influenced his completeness determination. We incorporate herein by reference our position on the LORI items, and comments, submitted via our initial appeal letter.

It must be noted that the Permit Streamlining Act requires a final written determination regarding this administrative appeal in this matter must be made no later than March 10, 2025, which is 60 calendar days after receipt of the MacDonells' initial written appeal.[2] (See Gov. Code, § 65943, subd. (c).) This appeal of the Planning Commission's decision on the MacDonells' initial appeal of the incompleteness determination does not extend the County's time to act on this matter. "The fact that an appeal is permitted to both the planning commission and to the governing body ***does not extend the 60-day period***. Notwithstanding a decision [that an application is incomplete] if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of th[e Permit Streamlining Act]." (*Ibid.*, emphasis added.)

As noted above, this appeal is not to be construed as a waiver of the right to sue prior to completion of the "appeal" process.

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[2] The MacDonells submitted their initial appeal of the incompleteness determination on January 9, 2025 via hand delivery. Therefore, January 9, 2025 is the date of receipt of the initial appeal.

Thank you very much for your consideration of our letter.

Very truly yours,

John J. Flynn III
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