

COUNTY COUNSEL
DAVID A. LIVINGSTON

EL DORADO COUNTY
OFFICE OF
THE COUNTY COUNSEL

COUNTY GOVERNMENT
CENTER
330 FAIR LANE
PLACERVILLE, CA
95667
(530) 621-5770
FAX# (530) 621-2937

ASSISTANT COUNTY COUNSEL
JANETH D. SANPEDRO

SR. DEPUTY COUNTY COUNSEL
KATHLEEN A. MARKHAM
ABIGAIL L. ROSEMAN
STEPHEN L. MANSELL
BETH A. McCOURT



DEPUTY COUNTY COUNSEL
ROGER A. RUNKLE
DANIEL S. VANDEKOOLWYK
JEFFERSON B. BILLINGSLEY
TED D. WOOD
TRACI L. WHITTEMORE
NICOLE C. WRIGHT

June 7, 2024

Patrick Prado, Chief Operating Officer
HomeCA Inc.
13505 Union Road
Manteca, CA 95336
patrickprado1@homeca.org

Re: Grading Permit #0372970

Dear Mr. Prado:

I am in receipt of your May 17, 2024, letter. Due to the legal issues addressed by your attorney, Ms. Garner requested that I respond on her behalf. I appreciate your efforts to respond to the questions raised by the County in Ms. Garner's May 3, 2024, letter. However, some of the County's questions were not answered or not answered sufficiently. I will address them in the order originally presented in Ms. Garner's letter.

Compliance with Local Zoning

After noting the apparent inconsistency between your proposed project and the County's Zoning Ordinance, the County sought clarification as to how your proposed project complies with the statement from the Directors of DHCS and CDSS that the project must "meet relevant zoning requirements." While we appreciate your citation to Welfare & Institutions Code § 5960.3(a), we are already aware of that section. The County's question to you was intended to assist us in reconciling that section with the statement from the Directors of DHCS and CDSS that the project must "meet relevant zoning requirements." Your response appears to imply that the Directors were simply incorrect in their understanding of the programs they administer. Unless you have further information to offer, the County will likely need to seek clarification directly from the Directors of DHCS and CDSS.

California Environmental Quality Act ("CEQA")

The County sought clarification from you to determine whether your project satisfies the requirements for the qualified CEQA exemption expressed in Welfare & Institutions Code § 5960.3(b). In particular, the County raised concerns regarding your project's ability to satisfy the conditions stated in § 5960.3(b)(5) and (9).

Subsection (b)(5) requires that the project applicant submit a letter of support to the lead agency (the County in this case) from “a county, city, or other local public entity.” Your response states that Native Directions’ letter of support for its own project satisfies this requirement because, in your opinion, Native Directions is a “local public entity.” We disagree. First it must be noted that a letter of support is generally understood to be offered by a third party, not the subject of the letter. Setting that aside, while the BHCIP statutes do not define the term “local public entity,” the term is defined in the Government Code as follows: “Local public entity’ includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State.” (Gov. Code, § 900.4.) Native Directions and HomeCA are none of those things.

According to the California Secretary of State’s records, Native Directions is a nonprofit mutual benefit corporation and HomeCA is a nonprofit public benefit corporation. However, such nonprofit corporations are not the type of “public corporation” described in the Government Code’s definition of a “local public entity.” (*Hagman v. Meher Mount Corp.* (2013) 215 Cal. App. 4th 82, 87 [“public benefit corporations are not public corporations”].) More to the point, a nonprofit public benefit corporation is not a public entity at all. (*Id.*, at p. 88 [“public benefit corporations are not public entities”].) Accordingly, Native Directions is not a “local public entity” so its letter of support for its own project cannot satisfy the requirement of Welfare & Institutions Code § 5960.3(b)(5).

Turning now to Welfare & Institutions Code § 5960.3(b)(9), this requires that the project “not result in any increase in the existing onsite development footprint of structures or improvements.” Your response contends that this requirement is not applicable to projects on vacant land, but there is no support for such an interpretation which runs counter to general CEQA principles for protection of the environment. The environmental baseline of the parcel is vacant land, and there is no basis to claim new development, where none previously existed, does not increase the onsite footprint. Indeed, such a reading would lead to illogical results that could not have been intended by the Legislature. For instance, under your proffered interpretation, a project proposing a nominal expansion of an existing facility would be ineligible for the exemption when it is unlikely that such a project would have any potential effect on the environment while an expansive new project on undisturbed land with obvious potential impacts would be exempt. Therefore, it remains the County’s position that since the site on which you propose to construct your project is raw land, any new construction will necessarily result in an “increase in the existing onsite development footprint,” making your project ineligible for the CEQA exemption expressed in Welfare & Institutions Code § 5960.3.

As noted in Ms. Garner’s letter, the County is the lead agency for the project. As such, Welfare & Institutions Code § 5960.3(c) requires the County to publicly concur in any determination that the project is exempt from CEQA before a notice of exemption can be filed. Based on the foregoing analysis, the County cannot concur that the project is exempt from CEQA.

Letter of Support

The County sought clarification as to how your funding application met the requirements of the Request for Applications, which is incorporated by reference into your Program Funding Agreement. Despite your response, the County remains concerned about the potential Medi-Cal

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related financial impacts to the County, particularly since there has been no meaningful consultation concerning this issue.

In closing, although we appreciate your efforts to address the County's questions and concerns, those questions and concerns remain. As the lead agency for CEQA, the County is required to ensure compliance with CEQA prior to issuance of any permits or other entitlements for your project. Based on the information presented to date, the County is currently unable to do so. Unless you have additional information for the County to consider, Planning & Building Department staff are ready to assist you with initiating the CEQA review process.

Very truly yours,

DAVID A. LIVINGSTON
County Counsel



Cc: Karen Garner, Director of Planning & Building (email only)
Michelle Baass, Director of DHCS (email only -- Michelle.Baass@dhcs.ca.gov)
Kim Johnson, Director of CDSS (email only -- Kim.Johnson@dss.ca.gov)