



E202410000253

# CITY of CLOVIS

PLANNING & DEVELOPMENT

1033 FIFTH STREET • CLOVIS, CA 93612

## NOTICE OF EXEMPTION

General Plan Amendment 2024-004

Rezone 2024-003

FILED

SEP 04 2024

TIME

11:25am

FRESNO COUNTY CLERK

The City of Clovis has determined that the project described below will not have a significant effect on the environment and shall be exempt from the provisions of CEQA.

DEPUTY

**Exemption Filed With:** Fresno County Clerk, 2221 Kern Street, Fresno, California.  
Office of Planning & Research, 1400 10<sup>th</sup> Street #100, Sacramento, CA

**Lead Agency:** City of Clovis, 1033 5<sup>th</sup> Street, Clovis, California.

**Project Title:** General Plan Amendment 2024-004, Rezone 2024-003

**Project Location:** Approximately 1.73 acres of land located along the east side of Osmun Avenue and the west side of Baron Avenue, north of Second Street, APN(s): 492-080-74,85,86,93

**Project Description:** A request to approve an amendment to the General Plan to re-designate the subject property from the Medium Density Residential (4.1-7.0 dwelling units per acre) designation to the Medium High Density Residential (7.1-15 dwelling units per acre) designation and rezone the subject property from the R-1 (Single-Family Residential Low Density) Zone District to the R-2 (Multifamily Medium High Density) Zone District.

**Project Applicant:** Clovis 135 Osmun, LP

**Exempt Status:** Public Resources Code section 21080.40, subdivision (b) ("AB 1449")

**Reasons Why Project Is Exempt:** The Project listed is exempt from further environmental review under CEQA pursuant to AB 1449. AB 1449 exempts certain actions including issuance of general plan amendments and rezones related to eligible affordable housing projects. The City has determined the Project meets the requirements of AB 1449.

**Evidence for Exemption:** See attached memo dated February 13, 2024.

**Lead Agency Contact Person:** Liz Salazar, Assistant Planner

**Telephone Number:** (559) 324-2305

**Signature:**

Liz Salazar  
Assistant Planner

**Date:** September 3, 2024

City Manager 559.324.2060 • Community Services 559.324.2095 • Engineering 559.324.2350  
Finance 559.324.2130 • Fire 559.324.2200 • General Services 559.324.2060 • Personnel/Risk Management 559.324.2725  
Planning & Development Services 559.324.2340 • Police 559.324.2400 • Public Utilities 559.324.2600 • TTY-711

www.cityofclovis.com

Attachment 6

# Holland & Knight

E202410000253

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Holland & Knight LLP | www.hklaw.com

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Luca.Trumbull@hklaw.com

## Memorandum

Date: February 13, 2024

To: Planning and Development Services Department  
City of Clovis

From: Daniel R. Golub  
Luca Trumbull  
Holland & Knight LLP

Re: 135 Osmun Apartments CEQA Exemption

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We have been retained by Clovis 135 Osmun, LP to provide land use, permitting and environmental review analysis with respect to the 135 Osmun Apartments housing development project (“Project”) located at 135 Osmun Avenue in Clovis (“Project Site”). Our firm’s West Coast Land Use & Environmental Practice Group focuses particularly on California’s recently enacted and amended laws advancing the approval of affordable housing developments.

This memorandum analyzes whether the Project qualifies for a statutory exemption from the requirements of the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000, *et. Seq.*, pursuant to Public Resources Code section 21080.40 (“AB 1449”). As set forth below, the Project is entitled to this exemption.

AB 1449 was signed into law by Governor Newsom on October 11, 2023 and became effective on January 1, 2024. It added a significant new CEQA exemption for qualifying affordable housing projects. The CEQA exemption applies to the following:<sup>1</sup>

- The issuance of an entitlement by a public agency for an affordable housing project.
- An action to lease, convey, or encumber land owned by a public agency for an affordable housing project.
- An action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased by a public agency for an affordable housing project.

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<sup>1</sup> Pub. Res. Code § 21080.40(b).

- Rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project.
- An action to provide financial assistance in furtherance of implementing an affordable housing project.

Actions by the City to approve entitlements for the Project, including but not limited to a rezoning and general plan amendment, fall within these specified activities. Note that the exemption is a statutory, rather than “categorical” exemption, and is not subject to exceptions.<sup>2</sup> If a lead agency confirms that the project is entitled this exemption and approves an activity subject to the exemption, the lead agency must file a notice of exemption with the Office of Planning and Research and the county clerk of the county.<sup>3</sup> As set forth below, the Project is entitled to this CEQA exemption.

Requirement <sup>4</sup>	Compliance Analysis
<p>“Affordable housing project” means a project consisting of multifamily residential uses only or a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the project designated for residential use. (Section 21080.40(a)(1))</p>	<p><b>Compliant.</b> As designed, this project will be two-thirds residential or greater.</p>
<p>All of the residential units within the project, excluding managers’ units, are dedicated to lower income households, as defined by Section 50079.5 of the Health and Safety Code.  (Section 21080.40(a)(1)(A))</p>	<p><b>Compliant.</b> This project will comply by design.</p>
<p>The project meets the labor standards set forth in Section 65912.130 of the Government Code.  (Section 21080.40(a)(1)(B)(i))</p>	<p><b>Compliant.</b> The Applicant confirms that the Project will meet the labor standards in this section.</p>
<p>For a project with 50 or more residential units, the project meets the labor standards set forth in Section 65912.131 of the Government Code.  (Section 21080.40(a)(1)(B)(ii))</p>	<p><b>Inapplicable.</b> Since the Project will consist of less than 50 units, the Project is not required to comply with this labor standard.</p>

<sup>2</sup> Pub. Res. Code § 21080 *et seq.*

<sup>3</sup> Pub. Res. Code § 21080.40(d).

<sup>4</sup> All code sections refer to the Public Resources Code.

The project is located on a legal parcel or parcels in any of the following locations:

(i) In a city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or in an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

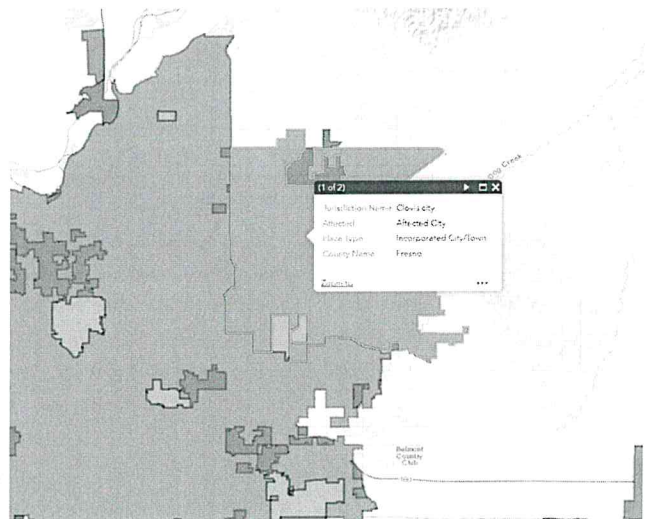
(ii) Within one-half mile walking distance to either a high-quality transit corridor or a major transit stop.

(iii) In a very low vehicle travel area.

(iv) Proximal to six or more amenities pursuant to paragraph (3) as of the date of submission of the application for the project.

(Section 21080.40(a)(1)(C)).

**Compliant.** The parcel is wholly within an urbanized area as defined by HCD, which applies the US Census Bureau's definition of "urbanized area."<sup>5</sup> Pub. Res. Code § 21080.40(a)(1)(C)(i). Note that the US Census Bureau definition of "urbanized area," which has historically meant a city with a population of greater than 50,000 persons, is no longer in use following the 2020 Census. *See* 67 FR 11663 at page 11667 for the Census Bureau's historic definition of "urbanized area."<sup>6</sup> *See also* an explanation of the US Census Bureau's definition in the 2020 Census Urban Areas FAQ document (provided by the US Census Bureau) at page 6-7.<sup>7</sup> This definition differs from the CEQA definition of "urbanized area," which refers to incorporated cities with a population of greater than 100,000 persons. Pub. Res. Code § 21071(a)(1). Because the population of Clovis exceeds 100,000 and the City is incorporated, the City qualifies under both definitions.




<sup>5</sup> HCD lists urbanized areas on its SB 330 Affected Cities and Counties Map, found here:

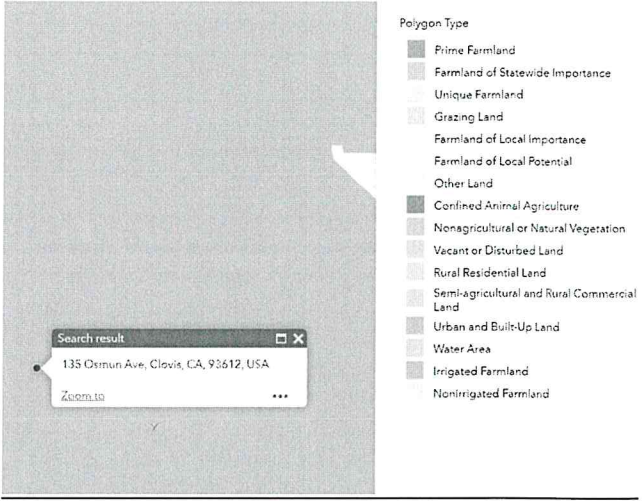
<https://cahcd.maps.arcgis.com/apps/webappviewer/index.html?id=5a63b04d7c494a6ebb2aa38a2c3576f5>

<sup>6</sup> 67 FR 11663 is found here: <https://www.federalregister.gov/documents/2002/03/15/02-6186/urban-area-criteria-for-census-2000>

<sup>7</sup> The 2020 Census Urban Areas FAQ document is found here:



[https://www2.census.gov/geo/pdfs/reference/ua/Census\\_UA\\_2020FAQs.pdf](https://www2.census.gov/geo/pdfs/reference/ua/Census_UA_2020FAQs.pdf)

<p>Parcels that are developed with urban uses adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site. For purposes of this paragraph, parcels that are only separated by a street or highway shall be considered to be adjoined.</p> <p>(Section 21080.40(a)(1)(D))</p>	<p><b>Compliant.</b> According to Section 21072, “qualified urban use” means “any residential, commercial, public institutional, transit or transportation facility, or retail use, or any combination of those uses.” The site adjoins parcels developed with residential uses on at least three of four sides.</p> 
<p>The affordable housing project will be subject to a recorded California Tax Credit Allocation Committee regulatory agreement.</p> <p>(Section 21080.40(c)(1))</p>	<p><b>Compliant.</b> The Applicant confirms that the Project will meet this standard.</p>
<p>The affordable housing project site can be adequately served by existing utilities or extensions.</p> <p>(Section 21080.40(c)(2))</p>	<p><b>Compliant.</b> A previous CEQA document notes that because the Project Site is considered an infill site, primary infrastructure “is already in place and would be able to serve the site, as planned for in the 2014 General Plan.” Osmun &amp; Baron Multifamily Initial Study and Mitigated Negative Declaration (“Osmun IS/MND”), Chapter (H)(14) at 48 (provided in Exhibit A).</p>

	<p>Utility service connection to the Project would only require “minor excavation” including “trenching and ground-disturbing activities” in order to install water and power lines, but these processes are “typical of multifamily development.” Osmun IS/MND, Chapter (E)(4) at 7, 8; Chapter (H)(20) at 60 (provided in Exhibit A).</p>
<p>A public agency confirms all of the following:</p> <p>(A) The project site satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code.</p> <p>(Section 21080.40(c)(3)(A))</p>	<p><b>Compliant.</b> Analyzed below.</p>
<p>Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.</p> <p>(Section 65913.4(a)(6)(B))</p>	<p><b>Compliant.</b> The appropriate inventory does not categorize this land as farmland.<sup>8</sup> <i>See also</i> Osmun IS/MND, Chapter (H)(2) at 19 (provided in Exhibit A).</p> 
<p>Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).</p>	<p><b>Compliant.</b> This site does not contain a wetland.<sup>9</sup> <i>See also</i> Osmun IS/MND Chapter (H)(4) at 26 (provided in Exhibit A).</p>

<sup>8</sup> The Department of Conservation’s Important Farmland Finder tool is accessible here: <https://maps.conservation.ca.gov/dlrp/ciff/>

<sup>9</sup> The U.S. Fish and Wildlife Service National Wetland Inventory tool is accessible here: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>

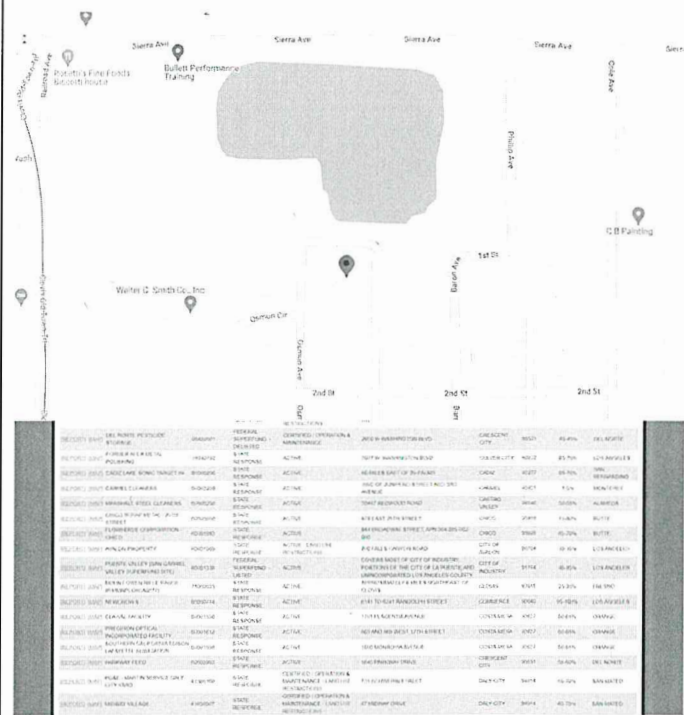
<p>(Section 65913.4(a)(6)(C))</p>	
<p>Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.</p> <p>(Section 65913.4(a)(6)(D))</p>	<p><b>Compliant.</b> This site is not within a fire hazard severity zone.<sup>10</sup></p> 
<p>A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.</p>	<p><b>Compliant.</b> This site is not a hazardous waste site.<sup>11</sup></p> <p>The Department of Toxic Substances Control's EnviroStor tool shows that there is no contamination on the site.</p>

<sup>10</sup> The CalFire Fire Hazard Severity Zones in State Responsibility Areas Map tool is accessible here: <https://calfire-forestry.maps.arcgis.com/apps/webappviewer/index.html?id=4466cf1d2b9947bea1d4269997e86553>

<sup>11</sup> The Department of Toxic Substance Control's EnviroStor tool is accessible here: <https://www.envirostor.dtsc.ca.gov/public/map/>. Additionally, the site is not listed in the DTSC EnviroStor database as a hazardous waste site.

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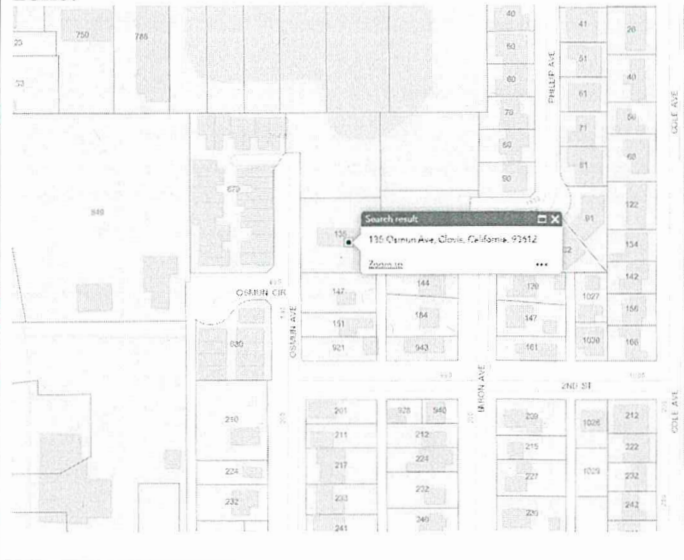
(Section 65913.4(a)(6)(c))




Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist.

(Section 65913.4(a)(6)(F))

**Compliant.** This site is not in an earthquake fault zone.<sup>12</sup>

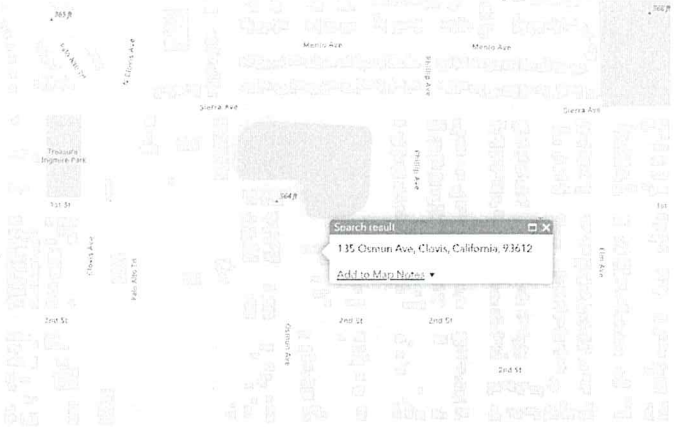


<sup>12</sup> The California Geological Survey's Earthquake Zones of Required Investigation Map is accessible here: <https://maps.conservation.ca.gov/cgs/EQZApp/app/>

<p>Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.</p> <p>(Section 65913.4(a)(6)(G))</p>	<p><b>Compliant.</b> This site is not within a special flood hazard area.<sup>13</sup></p> 
<p>Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.</p> <p>(Section 65913.4(a)(6)(H))</p>	<p><b>Compliant.</b> This site is not within a regulatory floodway. See above.</p>
<p>Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.</p> <p>(Section 65913.4(a)(6)(I))</p>	<p><b>Compliant.</b> This site is not within a natural community conservation plan or a habitat conservation plan.<sup>14</sup></p>


<sup>13</sup> The FEMA Flood Map Service Center is accessible here: <https://msc.fema.gov/portal/search>

<sup>14</sup> A list of California Natural Community Conservation Plans and Habitat Conservation Plans can be found here: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=68626&inline>

<p>Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).</p> <p>(Section 65913.4(a)(6)(J))</p>	<p><b>Compliant.</b> This site does not contain habitat for the identified species.<sup>15</sup> <i>See also</i> Osmun IS/MND Chapter (H)(4) at 25 (relevant excerpt provided in Exhibit A).</p> 
<p>Lands under conservation easement.</p> <p>(Section 65913.4(a)(6)(K))</p>	<p><b>Compliant.</b> The project is not subject to a conservation easement.<sup>16</sup></p>
<p>For a vacant site, the project site does not contain tribal cultural resources that could be affected by the development that were found pursuant to a consultation described in Section 21080.3.1 and the effects of which cannot be mitigated pursuant to the process described in Section 21080.3.2.</p> <p>(Section 21080.40(c)(3)(B))</p>	<p><b>Compliant.</b> After providing an opportunity for consultation to affected tribes pursuant to the process described in Section 21080.3.1, a Cultural Resources Survey was prepared for a prior project's IS/MND which found no known cultural resources at the Project site. <i>See</i> Osmun IS/MND Chapter (H)(5) at 28 (relevant excerpt provided in Exhibit A).</p>
<p>(i) The development proponent has completed a phase I environmental assessment, as defined in Section 25319.1 of the Health and Safety Code. If a recognized environmental condition is found, the development proponent shall undertake a preliminary endangerment assessment, as defined in Section 25319.5 of the Health and Safety Code, prepared by an environmental assessor to</p>	<p><b>Compliant.</b> A January 9, 2024 phase I environmental assessment performed by Krazan &amp; Associates “identified no evidence of recognized environmental conditions (RECs), controlled RECs (CRECs), or historical RECs (HRECs) in connection with the subject site.” <i>See</i> Phase I Environmental Assessment,</p>

<sup>15</sup> The U.S. Department of Fish and Wildlife’s Critical Habitats Map is accessible here: [https://www.arcgis.com/home/webmap/viewer.html?url=https%3A//services.arcgis.com/QVENGdaPbd4LUkLV/ArCGIS/rest/services/USFWS\\_Critical\\_Habitat/FeatureServer&source=sd](https://www.arcgis.com/home/webmap/viewer.html?url=https%3A//services.arcgis.com/QVENGdaPbd4LUkLV/ArCGIS/rest/services/USFWS_Critical_Habitat/FeatureServer&source=sd)

<sup>16</sup> The National Conservation Easement Database is accessible here: <https://www.conservationeasement.us/>

<p>determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.</p> <p>(ii) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with current state and federal requirements.</p> <p>(iii) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with current state and federal requirements.</p> <p>(Section 21080.40(c)(3)(C))</p>	<p><i>Krazan &amp; Associates</i> (Jan. 9, 2024) at 1 (relevant excerpt provided in Exhibit B).</p>
<p>For a project site where multifamily housing is not a permitted use, all of the following are met:</p> <p>(i) None of the housing is located within 500 feet of a freeway, as defined in Section 332 of the Vehicle Code.</p> <p>(ii) None of the housing is located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.</p> <p>(iii) The project site is not within a very high fire hazard severity zone, as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 or as designated pursuant to subdivisions (a) and (b) of Section 51179 of the Government Code.</p> <p>(Section 21080.40(c)(3)(D))</p>	<p><b>Compliant.</b> The site is over 2,500 feet from a freeway.</p>  <p>There are no active oil or gas refineries within 3,200 feet.<sup>17</sup></p>

<sup>17</sup> The CalGEM Wellfinder tool is accessible here: <https://maps.conservation.ca.gov/doggr/wellfinder/>

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The site is not within a very high fire hazard severity zone. See Section 65913.4(a)(6)(D) analysis.