



DEPARTMENT OF CITY PLANNING

APPEAL RECOMMENDATION REPORT TO CITY COUNCIL

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|-------------------------|------------------------|------------------------|---|
| Date: | September 28, 2023 | Case No.: | Council File 23-0908 |
| Hearing Date: | October 3, 2023 | CEQA No.: | ENV-2023-5358-EAF |
| Time: | After 2:00 P.M. | Related Cases: | CPC-2023-4274-DB-PHP-VHCA ADM-2023-4274-DB-VHCA-ED1 |
| Public Hearing: | Required | Council No.: | 3 - Blumenfield |
| Appeal Status: | Not further appealable | Plan Area: | Canoga Park-Winnetka-Woodland Hills-West Hills |
| Expiration Date: | October 20, 2023 | Specific Plan: | N/A |
| | | GPLU: | Low Medium II Residential |
| | | Zone: | RA-1, RD2-1 |
| | | Applicant: | Bedrock Properties Group, LLC dba Uncommon Developers c/o Leon Benrimon |
| | | Owner: | 8217 Winnetka LLC c/o Jason Larian |
| | | Representative: | Dave Rand and Olivia Joncich Rand Paster & Nelson, LLP |
| | | Appellant: | 8217 Winnetka LLC & Bedrock Properties Group, LLC c/o Leon Benrimon |
| | | Representative: | Dave Rand and Olivia Joncich Rand Paster & Nelson, LLP |

PROJECT LOCATION: 8217 N. Winnetka Avenue

PROPOSED PROJECT: City Planning application for a Priority Housing Project utilizing state density bonus provisions to construction a 100 percent affordable, 7-story, 360 unit development for rent on a 63,766.9 square foot lot. The proposed project would provide 72 Moderate-Income units, 287 Low-Income units, and 1 unrestricted manager's unit.

REQUEST: Appeal under Government Code Section 65943(c) for a determination of application incompleteness under Case Nos. ADM-2023-4274-DB-VHCA-ED1 / and CPC-2023-4274-DB-PHP-VHCA and the associated environmental case number ENV-2023-5358-EAF.

RECOMMENDED ACTIONS:

1. **Deny** the appeal and **Sustain** the Department of City Planning's ("City Planning") determination that the Project's Development Project Application are incomplete under both Case Nos. ADM-2023-4274-DB-VHCA-ED1 and CPC-2023-4274-DB-PHP-VHCA, and the associated environmental case number.
2. **Adopt** the rationale and responses in the attached Appeal Report.

VINCENT P. BERTONI, AICP
Director of Planning

Blake Lamb

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Principal City Planner

Claudia Rodriguez

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APPEAL REPORT

BACKGROUND

Pursuant to the Government Code Section 65943 in the Permit Streamlining Act (“PSA” at Gov. Code Sec. 65920 et seq.) the Appellant is challenging City Planning’s determination that its Development Project Applications are incomplete under both Case No. ADM-2023-4274-DB-VHCA-ED1 (“ADM Application”), and Case No. CPC-2023-4274-DB-PHP-VHCA (“CPC Application”) associated with environmental case number ENV-2023-5358-EAF. This Appeal relates to a proposed 100 percent affordable, 360 dwelling unit project located on two parcels at 8217 N. Winnetka Avenue (“Project”) (Exhibit A). The City’s planning and zoning regulations allow a single family use and one dwelling unit on the Project site based on the RA-1 zoning on the south parcel; and the City’s planning and zoning regulations allow single and multiple family uses on the north parcel based on the site’s RD2-1 zoning. The General Plan land use designation of both of the aforementioned parcels is Low Medium II Residential under the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan (“Low Medium II Residential land use designation”).

City zoning and planning ordinances, policies and standards collectively direct the Project to seek land use approvals through the entitlements and procedures represented by the CPC Application case number, and consequently subject the Project to review under the California Environmental Quality Act (“CEQA”). The Appellant (i.e., Project applicant) initially filed an application under the Mayor’s Emergency Executive Directive 1 (“ED1”) that allows for the streamlined ministerial review of 100 percent affordable housing projects.

Appellant claims the 360-unit Project may avoid local land use approval procedures based on the Housing Accountability Act (“HCA”) at Government Code Section 65589.5(o) that implements vesting rights arising from the Project’s Preliminary Application submitted under Government Code Section 65941.1 (“Project Preliminary Application”). In order to retain vesting rights an applicant must submit a complete Development Project Application for a land use approval (different from a Preliminary Application) under the Permit Streamlining Act, within specified timelines in Government Code Section 65941.1.

Appellant claims the Project may avoid the land use approval process and CEQA review represented by the CPC Application, and seek the approval of 360 units through ED1 procedures. The claim is premised on alleged vesting rights under the Project’s Preliminary Application submitted during the period that the Mayor’s ED1 was not express about disqualifying multiunit projects in R1 and more restrictive zones like the RA zone. Appellant claims that due to the Project Preliminary Application, the Project is vested in case streamlining procedures pursuant to ED1.

City Planning recommends a denial of the appeal based on the rationale and appeal responses stated below for among other reasons, ED1 is not a standard, ordinance or policy that is subject to the vesting rules in Government Code Sections 65941.1 and 65590.5(o). This report does not make a recommendation regarding the merits of any of the referenced Development Project Applications (i.e., the ADM Application and CPC Application); and no decision-maker has approved, conditioned, or disapproved the referenced applications either. Following is a timeline of relevant events and application processing.

Timeline of Events for 8217 N. Winnetka Avenue

- **December 12, 2022:** The first day of City of Los Angeles Mayor Karen Bass' Administration, and her first action upon taking office, was to declare a State of Emergency to confront the City's housing and homeless crisis ("December 12, 2022 Declaration of Local Emergency" – Exhibit B).
- **December 16, 2022:** The Mayor issued Executive Directive 1 ("ED1") titled: Expedition of Permits and Clearances for Temporary Shelters and Affordable Housing Types. ED1 allowed for the "streamlined ministerial review" of 100 percent affordable housing projects, and at the time ED1 was issued, allowed at least 31 pending 100 percent affordable housing projects to be immediately expedited. Those projects were all located on sites that allowed multi-family housing. (Exhibit C)
- **January 5, 2023:** The Appellant completed a Case Management meeting with the City's Development Services Case Management office under Case No. PAR-2023-173-CM-ED1. Since ED1 Implementation Guidelines had not yet been issued, the Appellant was directed to work with Planning's Affordable Housing Services Section ("AHSS") to determine allowable incentives. No formal notes were issued to Appellant under Case No. PAR-2023-173-CM-ED1.
- **February 9, 2023:** Inter-Departmental Correspondence "Implementation Guidelines for Executive Directive 1" ("February 9, 2023 Implementation Guidelines" – Exhibit D) was issued by the Los Angeles Department of City Planning, Los Angeles Department of Building and Safety ("LADBS"), and Los Angeles Housing Department ("LAHD"). The purpose of this Inter-Departmental Correspondence was to provide guidelines on the implementation of ED1 related to applications and permitting processing.
- **February 23, 2023:** Appellant submitted an Affordable Housing Referral Form ("AHRF" – Exhibit E) with City Planning's Affordable Housing Services Section ("AHSS") under Case No. PAR-2023-924-AHRF-ED1. The purpose of the AHRF is to confirm the Project's consistency with regulations related to issues including but not limited to: the overall unit count, needed affordable unit amounts, any applicable transit qualifiers, and requested development incentives or waivers, such as those related to the State Density Bonus Law (Gov. Code Sec. 65915). The AHRF was completed on **June 15, 2023** with an expiration date of December 12, 2023.
- **March 22, 2023:** Appellant submitted partial information and paid for a vesting Preliminary Application Case No. PAR-2023-1802-VHCA-ED1 ("Project Preliminary Application" – Exhibit F), with City Planning's Preliminary Application Review Program (PARP) on March 15, 2023. The Appellant completed its submission of all required information for the Project Preliminary Application under Government Code Section 65941.1 on March 22, 2023. As such, the vesting date for Preliminary Application Case No. PAR-2023-1802-VHCA-ED1 is **March 22, 2023**. The Appellant had 180 days from March 22, 2023 (or September 18, 2023) to submit all of the information required to process a Development Project Application pursuant to the list of application requirements the City identifies under Government Code Sections 65940, 65941, and 65941.5 (hereafter generally "Development Project Application").

- **June 12, 2023:** The Mayor issued a clarification on ED 1 (“Clarified ED1”), to provide clarifying language that explains developments on sites “located in a single family or more restrictive zone” are not eligible for streamlined ministerial processing. Any such project would still be allowed to pursue their project through standard application procedures specified by the City’s Municipal Code and Planning documents. The Clarified ED1 did not make a determination on the Project’s ADM Application but clarified the eligibility for the ED1 program (Exhibit G).
- **June 23, 2023:** Appellant filed a Development Project Application under the Permit Streamlining Act (i.e., Gov. Code Sec. 65943) for the proposed Project with 360 units at 8217 N. Winnetka Avenue. The filing resulted in the creation of ADM Application Case No. ADM-2023-4274-DB-VHCA-ED1 (Exhibit H).
- **June 27, 2023:** The Mayor’s Clarified ED1 (issued on June 12, 2023) takes effect based on Charter Section 231(j) that provides executive directives take effect 15 days after publication by the City Clerk.
- **June 30, 2023:** City Planning issues by email a timely first Status of Project Review Letter (“June 30, 2023 Letter” – Exhibit I). This letter was issued 7 days after the Project’s Development Project Application June 23, 2023 submission date. The first Status of Project Review Letter, emailed to the Appellant, determined that the Ministerial Application was incomplete because required complete forms and information were missing as detailed in the letter. Information and forms missing included items such as but not limited to: an updated AHRF; and LADBS Plan Check signature on the Preliminary Zoning Assessment (PZA) Form No. CP-4064 accompanied by architectural plans stamped by LADBS Plan Check. These forms are noted as required on the ED1 Ministerial Approval Filing Instructions (CP-4080, dated February 23, 2023). Pursuant to Government Code 65941.1(d), the Appellant has 90 days from June 30, 2023 to submit the specific information needed to complete the Development Project Application in order to maintain vesting status.
- **July 6, 2023:** Planning issues a letter to the Appellant stating the Project is not eligible for ED1 streamlining based on the Mayor’s Clarified ED1, but other procedures are available to continue processing the proposed Project (Exhibit J).
- **August 4, 2023:** Planning issued a Second Status of Project Review: Application Incomplete and Case Processing on Hold letter that further clarified the Project does not qualify for ED1 streamlining and that the appropriate entitlement path would be a CPC off-menu density bonus application, inclusive of CEQA review. The entitlement case number was updated to CPC-2023-4274-DB-PHP-VHCA to reflect the correct entitlement process, and the Appellant was also further informed regarding the need to pay fee differences and to provide additional materials as appropriate to further process a review of the Project under the California Environmental Quality Act (Exhibit K).
- **August 18, 2023:** Appellant inquired with Planning about the process to appeal pursuant to Government Code Section 65943(c).
- **August 23, 2023:** Appellant paid for and filed appeal documents, for an appeal of Planning’s incompleteness determination pursuant to Government Code Section 65943(c). As of the date of Appellant filing the appeal, Planning had not received materials

from Appellant to supplement or complete the ADM Application, or convert the application to the proper entitlement review process (Exhibit L).

As of the date of this Report, City Planning has not received further submission from the Appellant that would go toward completing or processing the original ADM Application or the converted CPC Application and ENV cases.

Current Project Description

The Appeal submitted on August 23, 2023 describes the Project as a "...360-unit 100 percent affordable housing development located at 8217 N. Winnetka Avenue." Appellant further states:

The Project involves the construction, use, and maintenance of a new seven-story residential building with 360 affordable multi-family apartment units with associated parking, open space and uses ancillary to the residential use. In conformance with ED 1's affordability requirements, of the 360 units, 72 units will be reserved for Moderate Income households, 287 units will be reserved for Low Income households, and one unit will be unrestricted for a manager.

The Development Project Application submitted on June 23, 2023 does not provide a clear or consistent description of the proposed Project. As detailed in the June 30, 2023 Letter, inconsistencies in the Development Project Application materials include but are not limited to the proposed Project's proposed total number of units, number of low and moderate units, number of automobile and bicycle parking spaces, height, setbacks, open space, and landscaping. As specified in the June 30, 2023 letter, the Project's Development Project Application also does not consistently disclose entitlements and requests for waivers of development standards on the application papers and plans submitted on June 23, 2023. Further, required forms were not provided with the Project's Development Project Application to disclose whether any protected trees/shrubs or trees in the public right-of-way would be impacted or removed as a result of the proposed Project. In the June 30, 2023 Letter, the Appellant was provided an itemized list and asked to amplify, correct, clarify, or supplement application forms and plans relative to the inconsistent and missing information discussed above.

Subject Site

The Appellant is requesting a ministerial approval to provide 360 units on a site zoned RA-1 and RD2-1 designated for Low Medium II Residential land use under the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan. The Appellant's request for ministerial approval does not follow the City's zoning and planning ordinances, polices, and standards that existed on March 22, 2023. The rectangular-shaped subject site shown in Figure 1 is zoned RD2-1 on the north parcel and RA-1 on the south parcel. Both parcels are designated for Low Medium II Residential land use under the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan adopted on August 17, 1999.

Zone (Residential Zero Side Yard Zone). The RA Zone is more restrictive than the zones corresponding to the Low Medium II land use designation based on the list of most to least restrictive zones in Los Angeles Municipal Code Sections 12.04 and 12.23, and therefore, the zoning on the subject site is consistent with the land use designation based on Footnote 9 of this Community Plan's General Plan Land Use Map.

The approximately 63,766.9 square foot, rectangular-shaped site extends along Winnetka Avenue for approximately 216 linear feet. The lot depth is approximately 295 linear feet. ZIMAS records show that the subject site is designated under ZI 2452 Transit Priority Area in the City of Los Angeles, which is an area within one-half mile of a major transit major transit stop (as defined in Public Resources Code ("PRC") Sec. 21064.3 and 21099). Under PRC Sec. 21099(d)(1), for the purposes of CEQA analysis, aesthetic and parking impacts shall not be considered significant for infill residential projects within a transit priority area. ZIMAS records also show that the subject site is designated as a Very Low VMT area, which means that under State Density Bonus Law (Gov. Code Section 65915(f)(3)(D)), development concessions are provided for 100 percent affordable housing developments in locations defined as a very low vehicle travel area. A very low vehicle travel area is an urbanized area, as designated by the U.S. Census Bureau, where the existing residential development generates vehicle miles traveled ("VMT") per capita that is below 85 percent of either regional VMT per capita or city VMT per capita (Gov. Code Sec. 65915(o)(9)). Eligible housing development projects located in a Very Low VMT area are not required to adhere to zoning controls on allowable density and are granted an additional three stories, or 33 feet in height, as well as four incentives or concessions. Further, ZIMAS records show the subject site is designated under Gov. Code Sec. 65915(p) for Reduced Parking Areas, meaning that the City is prohibited from imposing or enforcing minimum parking requirements on any residential development project (excluding event centers, hotels and similar transient lodging) that are within a one-half mile radius of a Major Transit Stop. ZIMAS records also show the subject site is designated a site eligible for the Transit Oriented Communities ("TOC") Affordable Housing Incentive Program ("TOC Program") as codified in LAMC Section 12.22 A.31. The TOC Program provides affordable housing incentives for all housing developments located within one-half mile of a major transit stop as defined under the TOC Guidelines. The site is within one-half mile of a major transit stop based on the bus routes identified in the Affordable Housing Referral Form.

The subject site is not located within a community plan implementation overlay zone, geographic specific plan area, or community design overlay zone. The site is not designated historic. The site is not within an Airport Hazard area, Coastal Zone, Santa Monica Mountains Zone, Very High Fire Hazard Severity Zone, Flood Zone, Watercourse, Special Grading Area, Hazardous Waste/Border Zone, or Methane Hazard Site. There are no known oil wells on site. The site is designated for Urban and Built-up Land and is located within an Urban Agriculture Incentive Zone. According to ZIMAS records, the subject site is located approximately 9.3 km from the nearest fault (Santa Susana), and is not located within the Alquist-Priolo Fault Zone or an area designated as Landslide, Preliminary Fault Rupture Study, or Tsunami Inundation. ZIMAS records show the site is located within a Liquefaction area. The subject site is within 500 feet of a school (Winnetka Avenue Elementary).

The subject site is not identified in the 2021-2029 Housing Element of the General Plan Inventory of Adequate Sites for Housing (Table A) (Appendix 4.1). Additionally, the subject site is not identified in the Housing Element as a Candidate Site Identified to be Rezoned to Accommodate Housing Shortfall Need (Table B) (Appendix 4.7).

A 25 foot building line established under Ordinance No. 108,814 extends along the Winnetka Avenue frontage of the RA-1 Zoned parcel to the south. ZIMAS records show that the RA-1 Zoned parcel to the south is also designated under ZI-2438 Equinekeeping in the City of Los Angeles, which regulates distances between equine uses and habitable rooms unless otherwise permitted by a Zoning Administrator pursuant to LAMC Section 12.24 X.5.

According to information provided by the Appellant on forms submitted on June 23, 2023, the site is currently used as an elementary school/day care. According to City ZIMAS records, the site is currently improved with two structures: a one-story, approximately 4,696 square foot institutional use private school built in 1960 and a one-story, approximately 2,568 square foot institutional use private school built in 1950. City records show that on January 16, 1958, a Certificate of Occupancy was issued for an addition to an existing one-story, single-family dwelling and attached garage located on the south parcel (Document No. 1957VN48590). On December 27, 1960, a Certificate of Occupancy was issued for a use of land for a one-story day nursery with a maximum occupancy of 24 and associated parking on the south parcel (Document No. 1960VN59473). On November 9, 1979, a Certificate of Occupancy was issued with no description regarding the scope of work (Record ID No. 2723628). On February 5, 1981, a Certificate of Occupancy was issued for the south parcel with no description regarding the scope of work (Record ID No. 2723629). Further, Case No. ZA 19884 was approved to construct two one-story additions to an existing classroom building and to increase the maximum number of children to 100 with no side yard required and permission to maintain an existing board fence in lieu of the required masonry wall on the south parcel. City records reference Case Nos. ZA 15150, BZA 1107, CPC 13207, and CF 109,100. (Document No. ZA 18984 dated October 10, 1067).

An aerial view of the site suggests the presence of four palms in the public right-of-way and as many as 22 on-site trees that could be impacted by the proposed Project. As stated in City Planning Application Filing Instructions Form No. CP-7810, the applicant is required to disclose information about on- and off-site trees including but not limited to number, species, location, and potential impacts. However, the above referenced information, including information about retention or removal of trees, was not provided as documented in the June 30, 2023 Letter (Tree Disclosure Statement Form No. CP-4067, Tree Report Form No. CP-4068).

Surrounding Properties

As shown in Figure 2, surrounding sites within a 500 foot radius are primarily developed with residential, commercial, and institutional uses. To the north, at the southwest corner of Roscoe Boulevard and Winnetka Avenue, sites are zoned [Q]C1.5-1VL, [Q]C1-1VL, and P-1VL and designated for Neighborhood Office Commercial. These sites are improved with an automobile service station and convenience store, one-story bank and associated surface parking lot, three-story hotel, and automotive repair. To the northwest, sites are zoned [Q]C2-1VL and [Q]C4-1VL and are designed for Neighborhood Office Commercial. These sites are improved with one-story commercial uses (bar, hair and nail salon), and a plant nursery. Further to the northwest, sites are zoned (Q)R3-1 (with an underlying zone of RA-1) and R3-1 and designated for Medium Residential land use. These sites are improved with two- and three-story multi-family uses. To the immediate south, the abutting site is zoned (Q)RD1.5-1 (with an underlying zone of RA-1) and designated for Low Medium II Residential land use. This site is improved with a two-story multi-family use. Further south, sites are zoned R1-1 and (T)R1-1 (with an underlying zone of RA-1) and designated for Low Residential land use. These sites are improved with one- and two-story single-family dwellings. Across Winnetka Avenue to the east, an approximately 6 acre site is zoned [Q]PF-1XL, designed for Public Facilities, and is improved with Winnetka Avenue Elementary School. To the southeast, across Winnetka Avenue, sites are zoned (T)R1-1 (with

an underlying zone of RA-1) and R1-1, designated for Low Residential, and improved with one- and two-story single-family dwellings. To the west, sites are zoned (Q)RD1.5-1 (with an underlying zone of RA-1) and designed for Low Medium II Residential. These sites are improved with three-story multi-family residential uses. To the southwest, sites are zoned R1-1 and designed for Low Residential land use. These sites are improved with one- and two-story single-family dwellings.

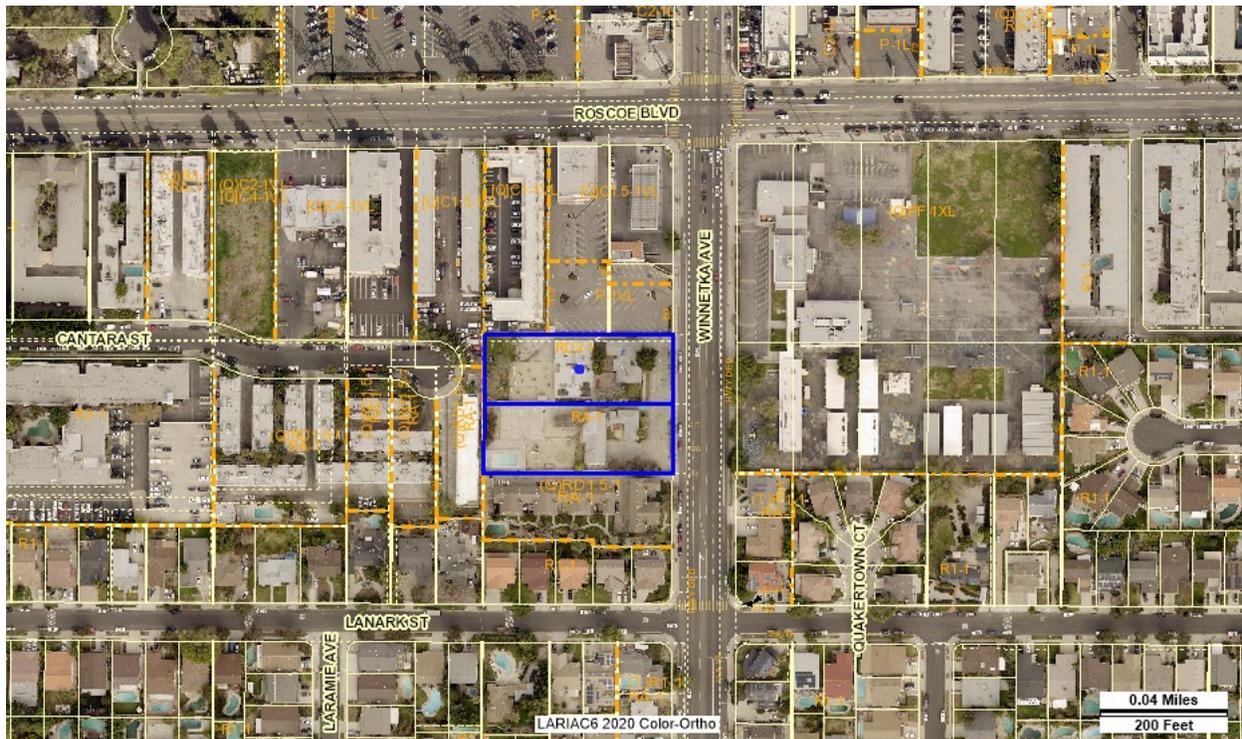


FIGURE 2. AERIAL VIEW

Winnetka Avenue is designated a Boulevard II by the Mobility Plan 2035 with a designated right-of-way width of 110 feet and a designated roadway width of 80 feet. Winnetka Avenue is improved with a curb, gutter, and sidewalk. Roscoe Boulevard, which lies approximately 295 feet to the north of the subject site, is designated a Boulevard II by the Mobility Plan 2035 with a designated right-of-way width of 110 feet and a designated roadway width of 80 feet. Roscoe Boulevard is improved with a curb, gutter, and sidewalk. Lanark Street, which lies approximately 200 feet to the south of the subject site, is designated a Local Street – Standard by the Mobility Plan 2035 with a designated right-of-way width of 60 feet and a designated roadway width of 36 feet. Lanark Street is improved with a curb, gutter, and sidewalk. Cantara Street, which ends in a cul-de-sac approximately 32 feet to the west of the subject site’s rear property line, is designated a Local Street – Standard by the Mobility Plan 2035 with a designated right-of-way width of 60 feet and a designated roadway width of 36 feet. Cantara Street is also improved with a curb, gutter, and sidewalk.

Rationale for City Planning’s Determinations

The Appellant filed a Project Preliminary Application (Case No. PAR-2023-1802-VHCA-ED1) on March 15, 2023 for the purpose of vesting under the planning and zoning standards that existed

on that date. Appellant claims that vesting rights under the Project Preliminary Application in order to submit a Development Project Application requires the Project to be processed under ED1 language issued on December 16, 2022.

The original ED1 from December 16, 2022 states in paragraph 1:

“1. Applications for 100% affordable housing projects, or for Shelter as defined in Section 12.03 of the Los Angeles Municipal Code (LAMC) (hereinafter referred to as Shelter), shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4, as long as such plans do not require any zoning change, variance, or General Plan amendment. All City departments are directed to process all plans for such 100 percent affordable housing projects or Shelter using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4, State Density Bonus law.”

The Mayor issued a Clarified ED1 on June 12, 2023 to state that development projects in single family zones are not eligible for streamlined review through ED1. Projects seeking to develop on single family zoned lots may use other standard processes, such as State and City Density Bonus Law at Government Code Section 65915 and Los Angeles Municipal Code (“LAMC”) Section 12.22 A.25, which may include incentives, waivers and density bonuses considered by the City Planning Commission.

The Clarified ED1 from June 12, 2023 states in paragraph 1:

“1. Applications for 100% affordable housing projects, or for Shelter as defined in Section 12.03 of the Los Angeles Municipal Code (LAMC) (hereinafter referred to as Shelter), shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4, as long as such plans do not require any zoning change, variance, or General Plan amendment, and in no instance shall the project be located in a single family or more restrictive zone. All City departments are directed to process all plans for such 100 percent affordable housing projects or Shelter using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4, State Density Bonus law. In addition, consistent with state law, a project may utilize the State Density Bonus and LAMC bonuses, incentives, waivers and concessions if such are in compliance with the applicable requirements.”

The Appellant sought to utilize the ED1 streamlined ministerial process for a 100 percent affordable multi-family residential project, and also invoked the new Government Code Section 65915(o)(6) (A.B. 2334, Reg. Session 2022) maximum allowable residential density provision that allows projects to apply the highest residential density of the General Plan land use designation as follows:

“Maximum allowable residential density” or “base density” means the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the maximum number of units allowed by the specific zoning range, specific plan, or land use element of the general plan

applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan, the greater shall prevail.”

As previously discussed, the subject site is dual zoned RA-1 and RD2-1 and designated for Low Medium II Residential land use under the General Plan. The Low Medium II Residential designation includes the RD1.5, RD2, RW2, and RZ2.5 Zones. The Appellant is invoking the above definition of maximum allowable residential density to take advantage of the provision that allows projects to apply the highest residential density of the General Plan land use designation to utilize the density allowed under the site’s Low Medium II Residential land use designation. As such, according to the AHRF completed on June 15, 2023 under Case No. PAR-2023-924-AHRF-ED1, the Project proposes to utilize the base density allowable for the RD1.5 Zone across both the RA and RD Zoned lots.

The Appellant filed the ADM Application on June 23, 2023, and Planning issued a timely incompleteness determination under the Permit Streamlining Act (Gov. Code Sec. 65943) on June 30, 2023. The Mayor’s Clarified ED1 took effect on June 27, 2023. The Department of City Planning informed the Appellant on July 6, 2023 that the pending ADM Application did not qualify for processing under the Clarified ED1 and would require a conversion to standard LAMC approval procedures. It should be noted that at no time was the Project denied or not given a path forward for consideration.

Since LADCP had not received further processing materials from Appellant to complete or convert the existing ADM Application, on August 4, 2023, the Department issued a Second Status of Project Review letter detailing the proper entitlement process for the Project, notifying Appellant that the ADM Application was being converted to the CPC Application, and that the CPC Application was incomplete for the same reasons stated in the June 30, 2023 incompleteness determination related to the ADM Application. The Appellant was also notified of CEQA review materials that would be needed to continue processing the case.

It is City Planning’s position that the streamlined ministerial review process afforded under ED1 is enabled solely by the Mayor’s temporary declaration of a State of Emergency, and there is no ability to “vest” in an emergency when declared under local charter authority. The Housing Accountability Act (“HAA”) and Project Preliminary Application solely provide an ability to vest in planning and zoning ordinances, policies, and standards adopted and in effect as governed by Government Code Title 7 related to planning and zoning. An emergency exists for a limited duration and is subject to regular renewal or termination. It is also subject to, and explicitly authorized to, include modifications to respond to changing parameters and the emerging context of an emergency. A directive of this type does not carry with it the legislative intent of process, procedures, and development regulations expected to be vested under the Government Code Sections 65589.5 and 65941.1.

Therefore, the Appellant has no ability to vest under Project Preliminary Application Case No. PAR-2023-1802-VHCA-ED1 completed on March 22, 2023 for the purpose of processing a Development Project Application submitted on June 23, 2023 and determined incomplete on June 30, 2023.

As stated previously, City Planning’s determination that the Project is not eligible for streamlining under ED1 or the Clarified ED1 is not a disapproval of the Project, the ADM Application, or the CPC Application. The proper entitlement process going forward was identified and conveyed to the Appellant in the letter dated August 4, 2023, consisting of a change from an administrative

review process originally indicated by the "ADM" prefix, to a City Planning Commission review process (indicated by the "CPC" prefix) based on the procedures specified in LAMC Section 12.22.A.25 for off-menu density bonus incentives and waivers. CEQA analysis must be conducted in association with the CPC case, as allowed by the HAA (Gov. Code Sec. 65589.5(e)), and an Environmental Assessment Form (EAF) and supplemental documents must be provided. The Project's applications are incomplete based on the following factors discussed below:

- (1) Payment of fees associated with converting the ADM Application to the proper CPC Application entitlement path and procedures; and
- (2) Incompleteness for the reasons stated in the written determination of incompleteness dated June 30, 2023 associated with the ADM Application, and as reiterated for the CPC Application on August 4, 2023.

California Statute Authorizing This Appeal

California Government Code Section 65943 of the Permit Streamlining Act states that after City Planning has received a Development Project Application, it has 30 days to determine in writing if the application is incomplete. If an application is incomplete, upon resubmittal of the missing materials, Planning has another 30 days to determine whether the supplemented application is still incomplete. An applicant may appeal the second determination that the application is incomplete under Government Code Section 65943 (c). The instant appeal was authorized and accepted by City Planning pursuant to Government Code Section 65943 (c) of the Permit Streamlining Act:

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both...

The "public agency" has been determined to be the City of Los Angeles (Gov. Code Sec. 65932) and the "governing body of the agency" has been determined to be the Los Angeles City Council.

Planning is processing this appeal on a voluntary basis even though it is the City's position that an appeal under Government Code Section 65943(c) is premature because Appellant has not attempted to supplement either the ADM Application or CPC Application pursuant to Government Code 65943, after the City notified Appellant in writing that both the applications are incomplete. Thus, there is no second incompleteness determination from which to appeal from.

APPEAL POINTS AND STAFF RESPONSES

The following is a discussion of the appeal points raised by the Appellant and response by Planning staff (Appeal Points in italics as stated in the Appeal).

- Appeal Point 1: *"Overview of ED's Provisions.
...The project is vested under the Preliminary Application pursuant to Government Code Section 65589.5(o)(1)...
...An ED 1 project may qualify for vesting of City ordinances, policies, and standards through either the submittal of plans sufficient for a complete plan check to LADBS,*

*consistent with LAMC §12.26-A.3 or the submittal of a complete Housing Crisis Act (HCA) Vesting Preliminary Application prior to case filing... (ED1 Guidelines p. 11)
...The ED 1 Guidelines provide the following additional direction to project applicants regarding HCA vesting protections: "Most housing projects qualify to submit an optional HCA Vesting Preliminary Application, which 'locks in' local planning and zoning rules at the time the complete application is submitted.*

Staff Response: Appellant submitted a Preliminary Application on March 15, 2023, and the Project Preliminary Application was completed with a vesting date of Case No. PAR-2023-1802-VHCA-ED1 on March 22, 2023. Staff is not disputing the completeness of Appellant's Preliminary Application. However, a declaration of emergency status issued by the Mayor in response to a State of Emergency is not the equivalent of an ordinance, policy, standard, planning rule, or zoning rule. Further, an executive directive of this type does not carry the legislative intent of process, procedures, and development regulations expected to be vested under the Housing Crisis Act. It is the City's position that the ability to vest in a declared emergency is beyond the authorization of the Housing Crisis Act. A local declaration of emergency under the City Charter is not governed by Government Code Title 7, the rules related to local planning and zoning laws.

Further, there is no ability to "vest" in an emergency when declared. An emergency exists for a limited duration and is subject to regular renewal or termination. It is also subject to, and explicitly authorized to, include modifications to respond to changing parameters and emerging context of an emergency. Much like an earthquake, fire, or other natural disaster, the ability of the chief executive of the city to declare a state of emergency, promulgate alternate rules and procedures for a limited time, and update and assess those alternate rules and procedures regularly, is by definition the necessity of emergency powers granted to the government. (Charter Sec. 231; Admin Code, Div.8, Ch.3, Art.3).

It is the Department's position that the ability to vest in a declared emergency is beyond the authorization of the HAA or Government Code Section 65941.1. The Project has a path forward through traditional procedures that require application consideration by the City Planning Commission.

Further, ED1 projects are consistent with existing zoning. The Mayor clarified ED1 on June 12, 2023 to state that development projects in single family zones are not eligible for streamlined review through ED1. Projects seeking to develop on single family zones may use other standard processes, including utilizing applicable State or local laws, such as Density Bonus incentives and waivers that may require consideration by the City Planning Commission.

The Project was initially taken in under the ADM Application. However, that action was not contemplated by the scope of ED1, which immediately converted only those 100% affordable projects in zones that allow multi-family uses. Therefore, the proposed Project's ADM Application was converted to the appropriate entitlement path.

Planning did not determine that the Project Preliminary Application has no effect. The Project's Preliminary Application vests the Project in the planning, land use and zoning standards and regulations that existed on March 22, 2023, such as the height, yard, and density requirements specified by the City's land use plans, design guidelines, and zoning codes in LAMC Chapter I. The Project is vested under the Project's Preliminary Application to the extent allowed by the requirements and timelines in Government Code

Section 65941.1, which require Appellant to complete its Development Project Application 90 days from the date of the June 30, 2023 incompleteness letter.

Planning looks forward to processing the Project application when all required materials are submitted.

- Appeal Point 2: *“City’s Revision of ED 1 and Determination of Ineligibility for Processing Under ED 1.*

On June 12, 2023, the Mayor issued the Revised ED 1, which altered the originally issued ED 1, in relevant part, as follows (new language is shown in underline): “Applications for 100% affordable housing projects, or for Shelter as defined in Section 12.03 of the Los Angeles Municipal Code (LAMC) (hereinafter referred to as Shelter), shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4, as long as such plans do not require any zoning change, variance, or General Plan amendment, and in no instance shall the project be located in a single family or more restrictive zone. All City departments are directed to process all plans for such 100 percent affordable housing projects or Shelter using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4, State Density Bonus law.” (Quotation added for clarity)...

The Revised ED 1 was not accompanied by any explanation by the City of why these changes were being made, nor were the ED 1 Guidelines revised to reflect the changes. Moreover, the Revised ED 1 does not contain any new or revised language addressing vested rights.”

Staff Response: The intent of ED1 is to streamline and speed the approval of projects that do not require zone changes, general plan amendments, or variances. The scope of ED1 was shown by the immediate conversion of only those 100% affordable projects in zones that allowed multi-family uses. ED1 did not immediately convert projects in single-family zones.

The City of Los Angeles’ ED1 is unique in that it establishes process streamlining via Mayoral directive as authorized solely under a temporary State of Emergency for a limited time period. As such, the program is linked to regular consideration and renewal by the City Council, and responds directly to changing and emerging conditions citywide of an emergency nature. (Charter Sec. 231; Admin Code, Div.8, Ch.3, Art.3).

The Project has a Project Preliminary Application with vesting rights as discussed in the response to Appeal Point 1 above; and may not vest in ED1 procedures as addressed by the response to Appeal Point 1 above.

- Appeal Point 3: *“Project Application Using ED 1 and Density Bonus.*
The Project involves the construction, use, and maintenance of a new seven-story residential building with 360 affordable multi-family apartment units with associated parking, open space and uses ancillary to the residential use. In conformance with ED 1’s affordability requirements, of the 360 units, 72 units will be reserved for Moderate Income households, 287 units will be reserved for Low Income households, and one unit will be unrestricted for a manager. The Project site is located in the Canoga Park – Winnetka – Woodland Hills – West Hills (“Community Plan”) area and is comprised of two lots with a total area of approximately 63,766.9 square feet. The Community Plan designates the

Project site for Low Medium II Residential land uses and the Project site is zoned RD2-1 (Restricted Density Multiple Dwelling zone, Height District 1) and RA-1 (Suburban Zone, Height District 1). According to the Community Plan's General Plan Land Use Map, the Low Medium II Residential land use designation corresponds to the RD1.5, RD2, RW2, RZ2.5 zones, which accommodate a range of single and multi family residential densities ranging from two units per lot to one unit per 1,500 square feet of lot area.

As permitted by ED 1, the Project includes a request pursuant to State density bonus law ("DBL") codified at Government Code Section 65915 (as amended by Assembly Bill ["AB"] 1763, AB 2334, and AB 2345) and LAMC Section 12.22.A.25 for a Ministerial Density Bonus Compliance Review to permit unlimited density for a 100 percent affordable project with up to four development incentives/concessions and waivers. Consistent with DBL as amended by AB 2334 and the ED 1 Guidelines (p. 10), the Project may utilize the Project site's "maximum allowable residential density" to establish a base density calculation. Accordingly, pursuant to the Project site's Low Medium II Residential land use designation, the Project may utilize RD1.5 multi-family zoning density to establish a base density of 42.51 units, which rounds up to 43 units. Further pursuant to DBL as amended by AB 1763 and AB 2334 and the ED 1 Guidelines (pp. 4, 10, and 11), a 100 percent affordable housing development project located within one half mile of a major transit stop or located within a Very Low Vehicle Mile Travel Area ("Very Low VMT Area") may achieve unlimited density, as well as four development incentives/concessions and waivers. In addition, pursuant to DBL as amended by AB 2345 and the ED 1 Guidelines (pp. 10-11), as well as AB 2097, no minimum parking requirements shall apply to a 100 percent affordable housing development project located within one-half mile of a major transit stop. The Site is located within one-half mile of a major transit stop and is in a designated Very Low VMT Area. Accordingly, the Applicant proposes to utilize these DBL and State law provisions, alongside ED 1's streamlined ministerial review process, to authorize the Project's proposed density, height, floor area, reduced parking and other development characteristics."

Staff Response: As previously discussed, on June 12, 2023, the Mayor Karen Bass issued Clarified ED1 to clarify that development projects located on single family zoned parcels, or more restrictively zone parcels, are not eligible for ED1 but may still be processed through standard procedures. More restrictive zones could include, but not be limited to, "RA" Residential-Agricultural and "A" Agricultural zones, neither of which permit multi-family development.

City Planning issued by email the June 30, 2023 Letter 7 days after the June 23, 2023 submission date of Appellant's Development Project Application. This first Status of Project Review Letter determined that the Ministerial Application was incomplete because required complete forms and information were missing as detailed in the letter. Information and forms missing included items such as but not limited to an updated AHRF and LADBS Plan Check signature on the Preliminary Zoning Assessment (PZA) Form No. CP-4064 accompanied by architectural plans stamped by LADBS Plan Check. To date, none of the requested items have been received by Planning.

In a letter to the Appellant dated July 6, 2023, Appellant was informed that per the Clarified ED1, projects located in single-family or more restrictive zones cannot use the ED1 Ministerial Approval Process. This revision affects projects in the following zones: OS, A1, A2, RA, RE, RS, R1, RU, RZ, and RW1. The proposed project located at 8217 N. Winnetka Avenue has an RA-1 zone on one parcel and is not eligible for ED1 processing. The

Appellant was informed that there are other entitlement options available for the Project to be considered for approval, none of which require a legislative act, such as a General Plan Amendment or Zone Change. The Appellant was further advised that modification of entitlement requests will likely require updated and/or additional application materials including materials for analyzing the project under the California Environmental Quality Act ("CEQA"). Additionally, the Appellant was provided with contact information to discuss other project review options and to modify and update application materials. To date, Planning staff has not been contacted by the Appellant to provide the required materials or to modify the entitlement request.

The August 4, 2023 Second Letter informed the Appellant that since Appellant had not contacted Planning staff to complete or convert the Project application, and the Project does not qualify for ED1 processing as stated in Planning's July 6, 2023 Letter, the Development Project Application will be considered converted as of July 6, 2023, to a regular entitlement process that will proceed according to the entitlement paths and procedures specified by the LAMC provisions and land use plans in effect on the date of the complete Project Preliminary Application submission (i.e., March 22, 2023). As a result, Case No. ADM-2023-4274-DB-VHCA-ED1 filed by the Appellant on June 23, 2023 was converted to Case No. CPC-2023-4274-DB-PHP-VHCA. The new case number reflects the following as detailed in the Letter:

- 1) the project does not qualify for ED1 processing by removal of the ED1 suffix;
- 2) a change from an administrative review process originally indicated by the "ADM" prefix to a City Planning Commission review process based on the procedures specified in LAMC 12.22.A.25 for off-menu density bonus incentives and waivers, as specified by the new "CPC" prefix;
- 3) a density bonus under State law was pursued under the ADM case number and is also being pursued under the CPC case number by the suffix "DB";
- 4) a new Priority Housing Program (PHP) suffix to denote that the project qualifies for PHP by providing at least 10 units and for setting aside at least 20 percent of rental units for Low Income households; and
- 5) the project remains vested in the LAMC provisions and land use plans in effect on the date of the Project Preliminary Application by carrying over the "VHCA" suffix to the CPC case number.

Further, City Planning provided the Appellant with an invoice for the entitlement path associated with the CPC case number (Invoice No. 89963) and requested Appellant's assistance in order to apply the ADM case number application filing fees toward the CPC application case number filing fees. The Letter provided the Appellant with written notice under G.C. 65943 that the application materials for the CPC case number are incomplete for the reasons stated in the written determination of incompleteness dated June 30, 2023 associated with the ADM case number, and the Appellant was asked to submit further materials as requested in the June 30, 2023 Letter in addition to further materials related to needed CEQA analysis. The Appellant was asked to contact City Planning staff to assist with any additional fees due and/or the submittal of additional required documents within 30 days of the date of the August 4, 2023 Letter to avoid termination of the case file. To date, the requested fees and additional required documents have not been submitted.

The Appellant's Project has a path forward for traditional consideration by the City Planning Commission under Case No. CPC-2023-4274-DB-PHP-VHCA. At no time was

Appellant's Project denied or not given a path forward for consideration. Planning looks forward to expediently processing these proposals when requested fees and additional required documents are submitted by Appellant.

- Appeal Point 4: "Applicant Consultation with City and Project Submittals in Accordance with ED 1 and the HCA

Out of an abundance of caution and to confirm that the Project's proposed entitlement strategy would be eligible for ED 1 processing, this firm and the Applicant communicated extensively with City and DCP staff regarding the applicability of ED 1 and DBL to the Project. In the course of these communications, City and DCP staff repeatedly and consistently confirmed that these requests would be accepted for ED 1 processing. After receiving these confirmations, the Applicant made a substantial investment in the Project site and proceeded with various submittals to seek approval of the Project. However, following the Mayor's issuance of the Revised ED 1, the City abruptly informed the Applicant that the Project was no longer eligible for ED 1 processing, notwithstanding its clear State law vested rights pursuant to the HCA.

The following is a timeline of the pertinent dates:

- *January 5, 2023: The Applicant completed a Case Management meeting with DCP staff, where DCP staff confirmed that the Project may utilize ED 1.*
- *March 15, 2023: The Applicant submitted and paid for a HCA Preliminary Application for the Project, in accordance with the City's guidance and established procedures. The HCA Preliminary Application reflects a proposed density of 330 units and a total square footage of construction of 294,576 square feet (included in Exhibit D). Pursuant to the HCA, the Applicant's submittal and payment of fees for the HCA Preliminary Application established vesting rights for the Project against future changes in City ordinances, policies, and standards. These vesting rights would terminate if the Project's full entitlement application was not submitted to the City within 180 days of the HCA Preliminary Application filing date, or if the Project's number of units or total square footage of construction was revised by 20 percent or more. The HCA Preliminary Application also includes reference to the ED 1 request in multiple locations, including a box checked off by Planning staff.*
- *June 15, 2023: The Applicant received DCP approval of an Affordable Housing Referral Form reflecting the Project's proposed entitlement strategy as well as its eligibility for ED 1 processing (included in Exhibit D). This is a critical pre application form solely designed to confirm the Project's consistency with the State DBL. The form includes detailed information regarding Project density, height and parking. This form also includes an eligibility check box indicating that the Project is eligible for ED 1.*
- *June 23, 2023: The Applicant submitted and paid all required fees for the Case Filing, which reflects a total density of 360 units and a total square footage of construction of 290,679 square feet. The Project's vesting HCA Preliminary Application was acknowledged by DCP as part of the Case Filing, as evidenced by the "VHCA" suffix in the Case Filing number. The filing plans are included in Exhibit D.*
- *June 12, 2023: As noted above, the Revised ED 1 was issued, prohibiting all projects located in single-family zones from utilizing ED 1's streamlined ministerial process (even if the site's land use designation permits multifamily use and density).*
- *June 30, 2023: DCP issued a letter to the Applicant and this firm titled "Status of Project Review: Application Incomplete and Case Processing on Hold," which listed eight items required to be provided or revised to proceed with the processing*

of the case (attached as Exhibit A). After receiving this letter, the Applicant and this firm began working on compiling the requested items. Pursuant to the HCA, the Applicant has 90 days to submit the specific information needed to complete the application.

- July 6, 2023: DCP issued the Notice of Ineligibility (Exhibit B) to the Applicant, which states in part:
 - “Per the revised Executive Directive 1 (ED1) issued by Mayor Karen Bass on June 12, 2023, projects located in single-family or more restrictive zones cannot use the ED1 Ministerial Approval Process. This revision affects projects in the following zones: OS, A1, A2, RA, RE, RS, R1, RU, RZ, and RW1. The proposed project located at 8217 N. Winnetka Avenue has an RA-1 zone on one parcel and is not eligible for ED1 processing .”
 - The Notice of Ineligibility goes on to state: “To discuss other project review options or to revise the Affordable Housing Referral Form for the project, please contact the Affordable Housing Services Section at planning.priorityhousing@lacity.org, or schedule an appointment for a consultation via BuildLA. **Please be aware that modification of entitlement requests will likely require updated and/or additional application materials including environmental clearance documentation.**” (Emphasis added.)

To summarize, the Project submitted an HCA Preliminary Application during the effective period of the original ED 1, timely filed a full entitlement application within 180 days, has not revised the Project’s number of units or total square footage of construction by 20 percent or more, and therefore has satisfied all requirements to maintain vested rights as of the date of the HCA Preliminary Application (March 15, 2023). All this effort occurred after many discussions with City Planning Department staff and receipt of approved pre-application forms – all that confirmed and re-confirmed the Project’s eligibility for ministerial processing under ED 1. Despite these facts, the City has ignored the Project’s State law vesting protections afforded by the completed HCA Preliminary Application and now refuses to process the project under ED 1. Instead, the City informed the Applicant that a different entitlement strategy must be pursued and then automatically converted the case to a discretionary process and sent an invoice requiring additional fees and materials necessary to process a discretionary case. The discretionary City Planning Commission density bonus process and the “other project review options” alluded to in the Notice of Ineligibility would all subject this 100 percent affordable housing project to discretionary and California Environmental Quality Act (“CEQA”) review – substantially increasing processing time, cost and risk. The Applicant’s decision to purchase the Project site and proceed with this Project was largely predicated on the expectation of ministerial and expedited processing under ED 1 with no associated discretionary or CEQA risk. The City’s decision to abruptly issue the Notice of Ineligibility has now gravely threatened the Project’s feasibility and viability. To ensure this catastrophic outcome would not befall the Project, the Applicant intentionally filed an HCA Preliminary Application to lock in the rules and regulations in place at that time. As explained in detail below, the City cannot now conveniently choose to totally ignore State housing law’s vesting protections and must grant this appeal and allow the Project’s ministerial processing to continue...

... To allow a jurisdiction to apply a different set of development standards to a qualified 100 percent affordable housing development project in the middle of the entitlement process would undermine the clear benefit of a HCA Preliminary Application.”

Staff Response: As discussed above, there is no change in development standards applicable to the Project, and no change in required land use entitlements. Site Plan Review under LAMC Section 16.05 is not required because the affordable units do not count toward the triggering threshold unit count (Ordinance No. 187,938). While the Project's proximity to a major transit stop is not being determined by this appeal or report, no Conditional Use Permit under LAMC Section 12.24.U.26 is likely to be required for additional density because the Project site is confirmed to be located one-half mile from a major transit stop and as a result is not subject to maximum controls on density pursuant to Government Code Section 65915(f)(3)(D). (Exhibit E) Further, the Project is allowed to use the base density associated with the most intense zone of its land use designation due to the definition of maximum allowable residential density in Government Code Section 65915(o)(6) that took effect January 1, 2023.

Moreover, the "Builder's Remedy" situation referenced by Appellant is different from the present situation because Builder's Remedy rights flow from authority, actions, or inactions under Government Code Title 7. In contrast, ED1 flows from the City's charter and emergency authorities.

Los Angeles' Administrative Code provides that the Mayor has the authority to declare the existence of a local emergency as a result of any occurrence which, by reason of its magnitude, is or is likely to overwhelm the normal operations of City government. It is City Planning's position that the streamlined ministerial review process afforded under ED1 are enabled solely by the Mayor's declaration of a State of Emergency, and there is no ability to "vest" in an emergency. The ability to vest emergency status is separate and apart from the ability to vest standard regulations, procedures, and rules at the time of application under the Housing Crisis Act. An emergency exists for a limited duration and is subject to regular renewal or termination. It is also subject to, and explicitly authorized to, include modifications to respond to changing parameters and the emerging context of an emergency. A directive of this type does not carry with it the legislative intent of process, procedures, and development regulations expected to be vested under the Housing Crisis Act. The December 12, 2022 Declaration of a Local Emergency to confront the City's housing and homeless crisis was issued with a sunset of six months subject to renewal. The Mayor's June 12, 2023 Clarified ED1, clarified the December 16, 2022 ED1 by adding the following language regarding eligibility for processing under ED1 as follows: "...in no instance shall the project be located in a single family or more restrictive zone." For these reasons, the Appellant has no ability to vest in ED1 processes under Project Preliminary Application Case No. PAR-2023-1802-VHCA-ED1 completed on March 22, 2023.

Much like an earthquake, fire, or other natural disaster, the ability of the chief executive of the city to declare a state of emergency, promulgate alternate rules and procedures for a limited time, and update and assess those rules regularly is by definition the necessity of emergency powers granted to the government. The intent of ED1 is to streamline and speed the approval of projects that do not require zone changes, general plan amendments, or variances. The scope of ED1 was shown by the immediate conversion of only those 100% affordable projects in zones that allowed multi-family uses. ED1 did not immediately convert projects in single-family zones. As such, projects on single family zoned land was never anticipated or enabled by both the original language or revised language of the Executive Directive.

Further, City Planning applications and forms make clear that the filing of a Development Project Application, a Housing Referral Form, or even a Preliminary Application, is not an approval of a proposed Project, or a guarantee about the feasibility or correctness of a proposed entitlement process. For example, the following language is stated in the Applicant Declaration section of the Department of City Planning Form No. CP-7771.1 submitted by Appellant on June 30, 2023:

“f. I understand that there is no guarantee, expressed or implied, that any permit or application will be granted. I understand that each matter must be carefully evaluated and that the resulting recommendation or decision may be contrary to a position taken or implied in any preliminary discussions.”

The Applicant Declaration section of Form No. CP-7771.1 was acknowledged by the Applicant’s signature and dated May 17, 2023.

The Housing Crisis Act Vesting Preliminary Application Form No. CP-4062 referenced by Appellant above includes the following language in Footnote 3:

“As part of the process to deem complete the submittal of this optional Preliminary Application, City Planning staff have affirmed neither the feasibility nor the entitlement review path of the proposed project.”

Further, the Affordable Housing Referral Form No. CP-4043 referenced by the Appellant includes the following language:

“...City Planning reserves the right to require an updated Referral Form for the project if more than 180 days have transpired since the referral date, or as necessary, to reflect project modifications, policy changes, bus route changes, bus schedule changes, and/or amendments to the Los Angeles Municipal Code (LAMC), local laws, and State laws.”

Therefore, the language cited above on Planning Form Nos. CP-7771.1, CP-4062, and CP-4043 serve to inform the Appellant that completion of these forms is not an approval of the Project or the entitlement process.

CONCLUSION

City Planning has conducted an in-depth review and analysis of the issues raised by the Appellant. First, no City Planning decision-maker has issued an appealable decision or disapproval on the merits of either the ADM or CPC Application. In fact, the Project has a path forward through traditional procedures that require application consideration by the City Planning Commission.

Second, Status of Project Review Letters were transmitted to the Appellant on June 30, 2023 and August 4, 2023. To date, the requested additional required documents have not been submitted by the Appellant.

Third, due to the changing and fluid nature of an emergency, an emergency declaration is a temporary document subject to re-evaluation within the context of an evolving emergency. There is no means by which a project can vest a proposed project in a temporary emergency. It is for this specific reason that the December 12, 2022 Declaration of Local Emergency and December

16, 2023 ED1 were issued with a six month sunset clause subject to renewal. The chief executive of the city has the ability to declare a state of emergency, promulgate alternate rules and procedures for a limited time, and update and assess those alternate rules and procedures regularly. It is Planning's position that the ability to vest a true and declared emergency is beyond the authorization of the HAA or Government Code Section 65941.1.

City Planning, and the City of Los Angeles as a whole, is committed to producing housing that meets the letter and spirit of State and local law. As such, City Planning recommends that the appeal be denied and that the Appellant be required to provide a complete application for processing.