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BY EMAIL

Hon. Chair Marqueece Harris-Dawson
Members of the Planning and Land Use
Management Committee
200 N. Spring Street, Rm. 272
Los Angeles, CA 90012

Attn: Leyla Campos, Legis. Asst.
(clerk.plumcommittee@lacity.org)

Re: Council File No. 19-0342
714-718 Sweetzer
VTT-74129-CN-2A
DIR-2018-2720-WDI
ENV-2018-2721-CE
Hearing Date: November 5, 2020
Agenda Item 11

Dear Chair Harris-Dawson and Honorable Members of the PLUM Committee:

Our office represents Etco Homes ("Etco"), owner and applicant for the above-referenced vesting tentative tract map (the "Map") and waiver of dedication and improvement of a public alley (the "Waiver"), which apply to the already approved building that is under construction and near completion. As we described in correspondence to this Committee, the appeal again before you essentially repeats several erroneous arguments already considered and rejected by the Deputy Advisory Agency ("DAA") and Central Area Planning Commission ("APC"), and some of which were previously considered and rejected over two years ago by the City Planning Commission ("CPC") and the Director of Planning in cases DIR-2014-4762-DB-1A and ENV-2014-4763-CE, which previously evaluated and approved the building. Both prior cases are final and years beyond challenge, building permits were validly issued pursuant to those approvals, and Etco has the absolute right to complete construction. Other points the appeal raises simply are not legally or factually accurate.

The sole purpose of the Map before you is establishment of condominium/air lots in the approved building. Overall, nothing presented in the appeal provides any basis to overturn the APC's action, which sustained the Deputy Advisory Agency ("DAA") and Director approval of the Map and Waiver. Because the appellant bears the burden to overcome the approvals, and has

failed to meet his burden, the PLUM Committee should deny the appeal and affirm the prior actions.

1. The Housing Accountability Act Applies to the Project.

The Housing Accountability Act ("HAA," Govt. Code § 65589.5 *et seq.*) was enacted and then continually strengthened by the State Legislature to narrow the permissible grounds to deny housing development projects, and to provide applicants notice of the bases on which an agency may deny a project. As the law states:

> "The Legislature's intent . . . was to significantly increase the approval and construction of housing for all economic segments of California's communities by ***meaningfully and effectively curbing the capability of local governments to deny***, reduce the density for, or render infeasible ***housing development projects*** and emergency shelters. That intent has not been fulfilled."[1]

The HAA does not apply solely to rental units: as stated in the law, "California's home ownership rate is at its lowest level since the 1940s."[2] The HAA, by its terms, applies to all housing development projects.[3] The HAA defines a "housing development project" as "a use consisting of any of the following: "[. . .] Residential units only."[4] The proposed Map indisputably consists entirely of residential uses.

As the Map comprises a "housing development project" within the plain-language of the HAA, the HAA governs the City's consideration. Among the protections of the HAA the requirement for the City to notify an applicant, in writing and within a certain period of time, of any potential inconsistency that could serve as a basis for denial. Absent that notification within the required time, regarding the specific policies Appellant cites, the HAA presumes compliance.[5] Here, no such notification of any inconsistency occurred; therefore, the HAA presumes the Map complies with all applicable policies of the General Plan.

2. The Project Complies with the General Plan as a Matter of Law.

As determined by the prior planning case over two years ago, the development is located on an infill site that provides no habitat or other biological value and meets all City land use

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[1] *Id.*, subd. (a)(2)(K); emphasis supplied.
[2] *Id.*, §65589.5(a)(2)(E).
[3] *Id.*, subd. (b) ("It is the policy of the Legislature that a local government not reject or make infeasible housing development projects . . .")
[4] *Id.*, subd. (h)(2)(A).
[5] *Id.*, subds. (j)(2)(A), (B).

regulations and exemption criteria.[6] Although we address policies cited in the appeal, we note that the HAA applies to this Map and deems the Map consistent as a matter of law with all applicable General Plan policies that could serve as a basis for denial. Simply put State law (the HAA) forbids the City from reaching a different conclusion.

(a) The Project Complies with the Objective Standards of the Zoning and General Plan Designations, and State Law Forbids a Different Finding.

As a preliminary matter, State law specifically prohibits a finding that a density bonus conflicts with land use regulations:

> "(1) The granting of a concession or incentive ***shall not*** require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. "

Further:

> "(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus ***shall not*** require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards."

(Govt. Code §65915(j); emphasis provided.) Section 12.22-A.25(g)(2)(c) of the Municipal Code includes similar language. Thus, under the law, the ***previously approved and final density bonus and incentives*** do not violate local plans or regulations, and therefore could not require any relief beyond the underlying entitlements required in the absence of a density bonus. In any case, the appeal provides no evidence of any kind—let alone substantial evidence—of any significant environmental effect, nor of any effect the City did not previously consider when it approved the building.

(b) The Project is Otherwise Consistent with the General Plan.

A general finding of consistency with the Community Plan or General Plan does not require strict consistency with every policy or with all aspects of a plan. Land use plans attempt to balance a wide range of competing interests, and a project need only be consistent with a plan overall; even though a project may deviate from some particular provisions of a plan, the City may—and did—still find the project consistent with that plan on an overall basis. (*Friends of Lagoon Valley v. City of Vacaville,* 154 Cal. App. 4th 807, 815 (2007).)

[6] We note that because the appeal's arguments on this point were previously offered and rejected for the prior approvals, a contrary finding is precluded here.

Importantly, the Subdivision Map Act ("Map Act"; Govt. Code §§ 66410–66499.58) requirement for compliance with the General Plan is a technical determination that relates to whether the proposed lots themselves comply with the General Plan (here, the Wilshire Community Plan), the requirements for which are implemented through the Municipal Code.[7] Issues such as "design" do not concern the location or aesthetics of the building;[8] rather, they pertain to the requirements of the existing zone[9]--here, the regulations of the R3-1 zone, which the Project indisputably meets.

The appeal attempts to cherry-pick certain policies from the Community Plan and Framework Element, and wrongly to claim that the loss of the previously demolished units conflicts with those policies. In fact, the Project is consistent with the very policies upon which the appeal relies. Moreover, the appeal mischaracterizes rent-stabilized units as affordable units, when ***no affordable units existed on the Property***. For example:

> "Objective 3. To make provision for the housing required to satisfy the varying needs and desires of all economic segments of the Community, maximizing the opportunity for individual choice."

Here, the Project would provide a mix of market-rate condominium units of different sizes, as well as affordable rental units. Collectively, these would provide additional and more affordable work-force ownership opportunities than traditional single-family homes, and would provide rental units affordable to very-low-income households. Affordable rental units—particularly at these affordability levels—did not previously exist on the Property.

The appeal cites policies from the General Plan Framework Element that include the following:

> "Goal 1: A City where housing production and preservation result in adequate supply of ownership and rental housing that is safe, healthy, and affordable to people of all income levels, races, ages, and suited for their various needs.
>
> "Objective 1.2: Preserve quality rental and ownership housing for households of all income levels and special needs.

Here again, the Project would provide a different kind of housing that would serve different household types and needs, including relatively more affordable workforce housing, in comparison to traditional single-family houses. The households served would include those that require access to very-low-income rental housing units, as the Project includes those. Further, Objective 1.3, also cited by the appeal, encourages the City to plan for changing housing needs

[7] LAMC §§ 17.05 (meets street design standards), 17.06 B (prepared by a licensed engineer, includes required information on the map).
[8] Gov't Code § 66427(a).
[9] LAMC §§ 17.02, 17.05 C.

over time, and the Project would not conflict with any such plan, as it provides a different kind of housing to meet a different need than was previously met.

The appeal also cites to Policies 1.2.2 and 1.2.8, which relate to preserving and providing affordable housing, including near transit. However, as stated above, the units on the Property were rent-stabilized, not affordable, and subject to rent increases to market. No units classified as affordable existed on the Property, though the Project would provide two such units. The appeal simply provides no basis for a determination that the DAA or APC abused its discretion—it merely disagrees with the result, and therefore fails to carry its burden.

(c) State Law Deems the Map to Comply with the General Plan.

As we previously described, the HAA contains a series of legal presumptions regarding compliance with applicable and objective General Plan policies. As the HAA states, a project:

> "***shall*** be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity."[10]

Thus, the question is not whether substantial evidence supports Appellant's reading; rather, the standard is whether a reasonable person could conclude the Map complies. Here, a reasonable person—the City's DAA—has already concluded the Map complies with applicable policies, regulations, and standards. The reasoning for that conclusion is set forth in the DAA's letter of determination. Thus, this standard is met.

But even if the above had not occurred, the City had an obligation to notify the applicant, in writing, of any potential inconsistency that could serve as a basis for denial. Absent that notification within the required time, regarding the specific policies Appellant cites, the HAA presumes compliance.[11]

3. The Project Complies with Zoning.

As with the appeal's allegations regarding General Plan consistency, the allegations regarding a conflict with zoning are simply erroneous, and to the extent they rely on the Density Bonus, they are unlawful. Further, the appeal relies on the absence of a single word that the determination does not even need to include, as described below. The appeal bizarrely claims the waiver of alley dedication somehow violates the Municipal Code, even ***though the appeal cites one of the***

[10] *Id.*, subd. (f)(4).
[11] *Id.*, subds. (j)(2)(A), (B).

Municipal Code's express provision for such waivers. Significantly, the appeal neglects the parallel provisions in Article 7 of the Municipal Code.

4. Etco Will Dedicate and Improve the Alley, Though It is Not Required to Do So.

Although the prior Density Bonus approval included a condition requiring dedication of Sweetzer, it did not include any requirement for dedication and improvement of the alley, and no current requirement exists for dedication and improvement of the alley. That request only occurred because of the requirement to consult with the Bureau of Engineering as part of the Map process, and the Bureau initially requested it as part of this consultation process. Nevertheless, Etco will dedicate and improve—and has already begun to improve—the alley in consultation with the BOE.

5. The Loss of Rent-Stabilized Units Does Not Constitute an Impact Under CEQA, and is Not an Effect of the Map.

The appeal attempts to mischaracterize the loss of rent-stabilized units—which already occurred under the 2016 Density Bonus approval—as impacts specific to the Map, which CEQA must address. Neither portion of this argument is accurate.

As described above, the demolition of the units, which occurred under the auspices of the previously approved Density Bonus, removed any right of return or obligation to provide pre-eviction and demolition rents. Consequently, their loss has already occurred, as determined categorically exempt from CEQA, and is final: that loss is not an effect of the Map, and the attempt to impute that effect to the Map is erroneous and unsupportable. Even if the effect were attributable to the Map, it would not properly lie as an impact under CEQA.

The law is clear that social and economic impacts lie outside CEQA's purview. As stated in the State CEQA Guidelines, "[e]conomic and social changes resulting from a project ***shall not*** be treated as significant effects on the environment."[12] Further, "[e]conomic or social effects of a project ***shall not*** be treated as significant effects on the environment."[13] Courts have consistently ruled that CEQA does not require consideration of economic and social effects that do not contribute to a secondary physical impact.[14] Courts also have ruled that impacts on the housing

[12] Cal. Code Regs, tit. 14, § 15064(e); emphasis is supplied.
[13] *Id*., § 15131(a); emphasis supplied.
[14] *See Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1182; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1206; *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 579–580; *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 689 ("*Joshua Tree*"); *Placerville Historic Preservation League v. Judicial Council* (2017) 16 Cal.App.5th 187, 195–196.)

market are social and economic, ***not*** environmental, and outside CEQA's purview.[15] As a result any claim of inconsistency with the General Plan as a basis of denial of a Categorical Exemption is misplaced.

6. The Appeal and Proposed Findings Rely on Inapplicable Provisions of the Municipal Code and Erroneous Characterizations of the Effects of the Project, and Should be Rejected in Their Entirety.

For all of the reasons described above, the appeal is wrong on the law and facts, and fails to support its conclusions with substantial evidence—or any evidence. Because the appellant bears the burden of proof to overcome the approvals—now affirmed on appeal—and because the actual approvals at issue bear no relationship at all to the appellant's claims, no evidentiary basis exists to overturn the approval of the Map and Waiver. Therefore, we respectfully request the Council reject the appeal and affirm the determinations of the DAA and APC, which facilitate a development that provides affordable housing and has already been subject to substantial review by the City.

Sincerely,

NEILL E. BROWER of
Jeffer Mangels Butler & Mitchell LLP

NB:neb
cc: (via email)
Terry Kaufmann-Macias, Office of the City Attorney
Jordann Turner, Department of City Planning

[15] *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1521, fn. 13.