

August 3, 2016

VIA E-MAIL AND MESSENGER

City of Los Angeles
Department of City Planning
South Valley Area Planning Commission
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Attn: Renee Glasco and Felicidad Pingol

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Re: VTT-73704-SL/DIR-2015-2697-1A/ENV-2015-2618-MND
Applicant's Response to Appellants' Request for Reconsideration

Honorable Commissioners:

We are writing on behalf of our client, UB Valley Village, LLC ("Applicant"), in response to Appellants' request for reconsideration of the Commission's July 14, 2016 denial of the appeal of VTT-73704-SL and DIR-2015-2697 and adoption of ENV-2015-2618-MND (collectively, the "Project").

No facts support the reconsideration request. Appellants received a fair hearing; the public was afforded ample time to comment, and none of the Commissioners exhibited any prejudgment of the issues or personal interest in the outcome of the appeal. Commissioner Dierking's stated preference for transit-oriented development is a permissible opinion on a matter of community concern and his employment with Los Angeles County Metro (Metro) does not create a conflict of interest because government salaries are exempt from the statutory definition of conflicts. Staff's advice during the hearing did not create confusion or prejudice, but correctly summarized the law: ownership of the Project site is irrelevant and the City's determination that the Project is consistent with the General Plan, Valley Village Specific Plan and the North Hollywood-Valley Village Community Plan is supported by substantial evidence.

Even if a scintilla of evidence supported reconsideration and the Commission voted to reconsider the Project,¹ there is simply not enough time to do so. Rule 29 of the South Valley Area Planning Commission Rules ("Commission Rules") allows it to act only "if the Commission has not lost jurisdiction, or exceeded legal time limits." The Commission lost jurisdiction over VTT-73704-SL on July 14, 2016.² The deadline for the Commission to act upon DIR-2015-2697 is August 12, 2016. There is simply not enough time to notice and hold a new hearing. **Therefore, we respectfully request that the Commission decline to grant the request for reconsideration.**

¹ A Commissioner who previously voted on the prevailing side may move for reconsideration, pursuant to Rule 29 of the Commission Rules.

² Pursuant to LAMC § 17.06.A.3, the Commission's jurisdiction over VTT-73704-SL expired on June 27, 2016; however, the Applicant granted an extension allowing the Commission to consider the Project at its July 14, 2016 regular meeting.

I. There is No Factual Evidence of the Alleged Bias and Conflict of Interest of Commissioner Dierking.

Appellants claim that they did not receive a fair hearing because Commissioner Dierking is biased as a result of his employment with Los Angeles County Metro as a Community Relations Manager. This claim is without merit and is based on speculation and personal belief.

Bias results when a public official stands to personally gain or lose from a decision and acts in furtherance of his or her private, personal interests instead of in the public's interest.³ A claim of bias must be based on fact, not on mere speculation. "A mere suggestion of bias is not sufficient to overcome the presumption of integrity and honesty... Bias and prejudice are not implied and must be clearly established. A party's unilateral perception of bias cannot alone serve as a basis for disqualification."⁴ Examples of bias include: a planning commissioner writes an article attacking a project under consideration;⁵ or a councilmember votes against a project that has a "direct impact" on the "quality of his own residence" (i.e., his ocean view);⁶ or members of a city council become personally embroiled in conflict with the person affected by their decision.⁷

Opinions or preferences do not constitute bias. In *Clark v. City of Hermosa Beach*, the court distinguished impermissible, self-serving bias from permissible preferences for certain types of development:

"Of course, a public official may express opinions on subjects of community concern (e.g., the height of new construction) without tainting his vote on such matters should they come before him. [Citation.] Here, Benz's conflict of interest arose, not because of his general opposition to 35-foot buildings, but because the specific project before the Council, if approved, would have had a direct impact on the quality of his own residence. In addition, Benz's personal animosity toward the Clarks contributed to his conflict of interest; he was not a disinterested, unbiased decisionmaker."⁸

Commissioner Dierking's preference for transit-oriented development ("TOD") is not a self-serving bias; it is an expression of a general preference for a certain type of development and a subject of community concern. The City of Los Angeles (and the State of California) has prioritized TOD as a means to address the City's well-documented, record-setting roadway congestion.⁹ Therefore,

³ *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171; *Breakzone Billards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234 (finding that councilmember who appealed the planning commission's decision was not biased or conflicted from participating in appeal hearing and decision).

⁴ *Breakzone Billards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1236-37.

⁵ *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470.

⁶ *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171-1172.

⁷ *Menning v. City Council* (1978) 86 Cal.App.3d 341, 351.

⁸ *Id.* at 1172-1173.

⁹ See, e.g., "Developing and Implementing the City of Los Angeles' Transit Corridors Strategy: Coordinated Action toward a Transit-Oriented Metropolis," Oct. 1, 2012, available at http://cityplanning.lacity.org/PolicyInitiatives/TransitOrientedDistrictPlanning/LATransitCorridorsStrategy_WhiteP

Commissioner Dierking's preference is in no way unfair; it is consistent with adopted policy initiatives of the City of Los Angeles and the State of California.

Moreover, there is no evidence that Commissioner Dierking prejudged the case or that the Commission's decision was not based on substantial evidence. Indeed, he explained after considering written and oral comments that his reasons for voting against the appeal were based on a lack of evidence establishing that the City erred in approving the Project.

With respect to Appellant's allegation that Commissioner Dierking's employment with Metro constitutes a conflict of interest requiring recusal, the California Political Reform Act defines a conflict of interest as "a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on a specified interest in any relevant business entity, real property, or income or gift source. Salary received from a governmental agency is specifically excluded, per Gov. Code § 82030(b)(2). Thus, no conflict exists and recusal was not required.

Moreover, Commissioner Dierking's employment with Metro is hardly a secret and is certainly not "new evidence." It was disclosed when he was nominated to serve as a Commissioner, when the City Council considered his nomination, and is readily available public information. Therefore, by stating that he is employed by Metro, Commissioner Dierking did not introduce new evidence and Appellants' due process was not violated.

II. The Advice of the City Attorney and Planning Staff was Proper.

Appellants allege that the Commission was "confused" by the City Attorney's advice that the Commission's decision should not be based on Appellant's new claim that the Project site was not owned by the Applicant. As an initial matter, the ownership challenge was not included in Appellant's statement of appeal, which must specify the reasons for appeal pursuant to LAMC § 11.5.7.C.6(a) and which determines the scope of the appeal hearing. Second, the LAMC does not restrict authorized applicants for land use entitlements to property owners. That is why the City's Zoning Code uses the term "applicant" rather than "owner" throughout. "Applicant" is defined in CEQA Guidelines § 15351 as "a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement for use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance." Again, ownership is irrelevant. Finally, ownership has no bearing on the findings that a decisionmaker must make to approve each of the entitlements.¹⁰ Therefore, the City Attorney's advice to the Commission was sound.

Appellants wrongly assert that ownership of the Property site is relevant to whether an area EIR is necessary. Ownership of property is also irrelevant to CEQA review. An EIR is only required if, after conducting an initial study, there is substantial evidence, in light of the whole record before a lead

aper%20Final%20(2012-10-01)%20Carlton.pdf, and www.latno.org, the City Planning website for the City's Transit-Oriented District Planning project.

¹⁰ For instance, grounds for denial of a Tentative Map (LAMC § 17.06.A.2) and Specific Plan Project Permit Compliance (LAMC § 11.5.7.C.2) do not include application by someone other than the property owner.

agency, that a project may have a significant effect on the environment.¹¹ After conducting an initial study for the Project, no substantial evidence in the record indicated that the Project would result in a significant effect on the environment. Therefore, an EIR is not required and a decision to require an EIR would be arbitrary, capricious and not supported by substantial evidence.

Moreover, whether or not an EIR should be conducted for the entire Valley Village community area is far beyond the scope of an appeal hearing regarding whether this Project creates any significant environmental impacts. It would be unlawful and a violation of the Applicant's constitutional property rights to disapprove the Project's MND as a pretext to evaluate the environmental impacts of widespread development throughout Valley Village.

Appellants also claim that the Project is inconsistent with certain purpose statements in the Specific Plan and that Dan O'Donnell misled in his statements. This contention is without merit. Courts have acknowledged that policies in land use plans reflect "a range of competing interests;" therefore, "the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. A reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.'"¹²

The Commission's role with respect to appeals is to "determine if the Zoning Administrator or other official erred or abused his/her discretion in taking the action being appealed, based upon the evidence introduced at the prior hearings."¹³ The Director's Determination of Specific Plan compliance contains findings explaining how the Project conforms with the Specific Plan's requirements¹⁴ and clearly shows that the Project's consistency with the applicable land use policies was considered by the City. Similarly, the Planning Director's approval of the subdivision addresses the Project's consistency with applicable land use plans in a section entitled, "Findings of Fact (CEQA): Land Use and Planning."¹⁵ Therefore, the Commission's decision to deny the appeal was based on substantial evidence.

¹¹ CEQA Guidelines, § 15064(a)(1).

¹² *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816 (affirming the city's determination of a project's consistency with its General Plan and area-specific Policy Plan) (internal citation omitted).

¹³ Commission Rules, Rules 26.

¹⁴ For instance:

Finding 1(a) states: "**Zoning and Land Use.** Section 5 of the Specific Plan requires all land uses to be consistent with the North Hollywood - Valley Village Community Plan. The project site is zoned [Q]R3-1 and has General Plan land use designation of Medium Residential, and is therefore consistent."

Finding 1(b) states that a condition of approval will ensure that the Project's exterior lighting will be consistent with section 6.A.2 of the Specific Plan.

Finding 1(c) states that section 6.B1.b of the Specific Plan limits each building in the Project to a maximum height of 30 feet, a requirement with which the Project complies because no building exceeds 30 feet in height.

The Director's Determination provides four additional findings related to Specific Plan consistency and provides further support in its responses to comments on the MND.

¹⁵ May 27, 2016 Letter of Determination, pages 31-32.

III. The Commission has Lost Jurisdiction Over the Subdivision Map, and the Deadline to Approve the Specific Plan Compliances Precludes Reconsideration.

The Specific Plan compliance determination letter was issued on May 13, 2016, and the last day to file an appeal was May 30, 2016. Pursuant to LAMC § 11.5.7.C.6(c), the last day for the Commission to act is August 12. Because the Commission Rules only allow reconsideration (a) at a meeting following the meeting at which the Commission decides to reconsider and (b) if the Commission has not lost jurisdiction or exceeded legal time limits, the Commission can only reconsider the appeal on Friday, August 12, 2016. However, there is insufficient time to provide the required public notice for, and hold a new hearing just one day after deciding to reconsider.

The subdivision determination letter was issued on May 27, 2016 and the last day to file an appeal was June 6, 2016. Pursuant to LAMC § 17.06.A.3, the last day for the Commission to act was Monday, June 27. The Applicant agreed to extend that date to July 14, 2016. The Commission cannot reconsider VTT-73704-SL because the deadline to act expired on July 14, 2016.

For all of these reasons, we respectfully request that the Commission decline to reconsider.

Sincerely yours,



ELISA L. PASTER
for GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

ELP:sp

CC: Karo Torossian, Deputy Director of Planning and the Environment, City of Los Angeles,
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July 5, 2016

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VIA E-MAIL TO RANDA HANNA

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Re: Applicant's Comments re: Appeal of DIR-2015-2697-SPP and VTT-73704-SL

President Cochran and Members of the South Valley Area Planning Commission:

We are writing on behalf of our client UB Valley Village, LLC ("Applicant"), owner of the property located at 12300-12302 Weddington Street and 5261, 5263, 5303 & 5305 Hermitage Avenue ("Property"), to request that you affirm the May 13, 2016 Director's Determination of Valley Village Specific Plan Project Permit Compliance ("SPPPC Determination") and May 27, 2016 Deputy Advisory Agency approval of Vesting Tentative Tract No. 73704-SL ("VTT Determination"), which collectively authorize the small lot subdivision proposed on the Property ("Project").

As explained more fully below, the Director's Determination and Deputy Advisory Agency Determination should be upheld because the Project:

- Is consistent with the General Plan Housing Element, which identifies small lot subdivisions as part of the City's affordable housing portfolio, and will comply with state and City laws governing removal of affordable rental units from the market;
- Is consistent with the Open Space Plan and related ordinances because it does not remove existing open space, but exceeds the open space requirements for small lot subdivisions and will pay a Quimby fee;
- Is consistent with the Specific Plan and Community Plan because it is a low-density, code-compliant residential development designed to complement the neighborhood's character, while providing affordable for-sale housing;

- Provides sufficient, code-compliant parking; and
- State law expressly authorizes the street merger without findings from the City Council.

1. The Project is consistent with the General Plan, Valley Village Specific Plan and North Hollywood Valley Village Community Plan.

Appellants claim that the Project is inconsistent with the applicable land use plans based on a misinterpretation of those plans and the legal standard of consistency. It is well-settled law that consistency does not require an exact match between a project and applicable land use plans; instead, a project must be in “harmony” or “agreement” with the plans. *See, e.g., Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717-18; *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817. Substantial evidence exists to support the City’s determination that the Project is in harmony and agreement with its General Plan (including the Housing Element and Open Space Plan), the Valley Village Specific Plan (“Specific Plan”), and the Valley Village Community Plan (“Community Plan”).

A. Housing Element

Appellants claim that the Project is inconsistent with the Housing Element of the General Plan because they interpret the Project as removing and not replacing affordable housing. However, the Project will comply with both the state Ellis Act and the City’s Rent Stabilization Ordinance, which require relocation assistance to be provided to tenants who are displaced by a project **but do not require construction of replacement rental units on the site**. Moreover, elimination of the nine existing units does not result in a significant impact under the California Environmental Quality Act because the City’s threshold of significance for an impact is removal of the equivalent of 25 multi-family dwelling units. (VTT Determination, p. 33-34). Moreover, “no units on the property have been specifically protected (either by covenant or other agreement of City approval) for use by very low- or low-income households.” (VTT Determination, p. 33-34).

The Small Lot Subdivision is specifically listed in the 2013 Housing Element Update as a tool to increase the supply of affordable housing in Los Angeles. Objective 1.1.3. is to:

“Facilitate the development of small lot subdivisions (Zoning Code Section 12.22 C.27), which permit detached, fee simple home ownership on lots as small as 600 square feet, thus providing more affordable alternative for-sale housing types within commercial and multi-family residential zones.”

The Small Lot Subdivision Ordinance “has resulted in the construction of 629 new homes since January 2005 (and approval of roughly twice that amount).” (2013 Housing Element Update, p. 2-24). “Los Angeles Neighborhood Housing Services, the Enterprise Foundation and the CRA/LA have all used the Small Lot Ordinance to provide affordable home ownership in South Los Angeles and other lower income neighborhoods.” (2013 Housing Element Update, p. 3-10).

The Housing Element’s conclusions are consistent with the findings of a study released by the California Legislative Analyst’s Office: “facilitating more private housing development in the state’s coastal urban communities would help make housing more affordable for low-income Californians....Considerable evidence suggests that construction of market-rate housing reduces housing costs for low-income households and, consequently, helps to mitigate displacement in many cases...” (See Exhibit A for the full report.)

Therefore, the Project’s use of the Small Lot Subdivision Ordinance is consistent with the Housing Element.

B. Open Space

Appellants incorrectly describe the Project site as “existing open space” and argue that it should be maintained as such. The Project site is currently developed with two duplexes, a triplex and a fourplex, which collectively contain nine units. It is not “open space” as that term is defined in the Open Space Plan (“land which is essentially free of structures and buildings and/or is natural in character” and serves a recreational, scenic, conservation, or similar function). (Open Space Plan, p.1).

Open space requirements for residential developments of six or more units are located in Section 12.21.G. of the Los Angeles Municipal Code (“LAMC”). However, the Project is exempt from the open space requirements of both the Open Space Plan and LAMC Section 12.21.G. because its units are considered single-family and not multi-family. Nevertheless, the Project will provide a small amount of landscaped open space in front of each unit (similar to a small patio or yard) and will pay Quimby fees (Mitigation Measure 44), which will be used by the City to acquire new parkland or fund capital improvements at existing recreational and park facilities. Therefore, the Project is consistent with the City’s open space requirements.

C. Specific Plan

The Deputy Advisory Agency determined that the Project is “consistent with the aesthetic elements of the Plan area, including massing, setbacks, height, by complying with the [Specific Plan] provisions related to these elements.” (VTT Determination, p. 31; MND, p. 3-3). This finding is supported by substantial evidence in the record. For instance, the VTT Determination provides:

“the architecture of the homes will be compatible with adjacent properties..., the Project will enhance the preexisting character of the neighborhood by including a minimum 15 foot front yard setback off of Hermitage to fit into the neighborhood context...

The architectural style is mostly of traditional character including architectural elements such as corbels under roof eaves, wood-like siding and multi-pane windows utilizing materials that appropriately respond to neighborhood context, consistent with Design Guidelines for Building Facades and Materials... primary entrances and windows are oriented toward Hermitage Ave., which are design features that ‘embrace the street’ and are also consistent with Design Guidelines for Site Layout and Circulation.” (VTT Determination, p. 41).

Appellants argue that the Specific Plan is intended to protect the neighborhood development of small-lot homes proposed by the Project; however, the Specific Plan was enacted to “afford[] the area protection from the adverse impacts caused by the development of multiple family and commercial properties...” (MND, p. 3-92 - 3-93). Purpose E of the Specific Plan is to “preserve the quality and existing character of the Valley Village area.” Appellants interpret this as a moratorium against all future development. But the Specific Plan is not a moratorium on development; instead, it prescribes standards *in anticipation of* development.

D. Community Plan

The Community Plan sets forth several objectives and goals for the Community Plan area, and contains few requirements beyond density. “The Community Plan does not seek to promote nor hinder growth; rather, it accepts the likelihood that growth will take place and must be provided for...”¹ (MND, p. 3-94). The Community Plan encourages development of a variety of housing, as long as new development is compatible with and reflective of the characteristics (i.e., mass, scale, height, etc.) of the existing, surrounding neighborhood.

Because the small lot single-family units constructed by the Project will be priced significantly lower than traditional single-family homes in the area, homeownership will be available to a greater number of people consistent with the Community Plan’s purpose of:

“[p]reserving and enhancing the positive characteristics of existing residential neighborhoods while providing a variety of housing opportunities with compatible new housing” (Community Plan, p. II-2)

¹ In fact, the Community Plan states that it is “intended to guide development...” (Community Plan, p. II-2) and that it “has been designed to accommodate the anticipated growth in population and employment of the community” (Community Plan, p. III-1).

and Community Plan Objective 3, which states in relevant part:

“To make provisions for housing as is required to satisfy the needs and desires of various age, income and ethnic groups of the community, maximizing the opportunity for individual choice.”

Ultimately, the Community Plan acknowledges that “[z]oning is the primary legal tool by which the development of private property can be directed toward the implementation of the Plan.” (Community Plan, p. IV-3). The MND correctly concludes that the “Project would not conflict with any of the objectives [of the Community Plan],” because the Project proposes a low-density residential development that complies with existing zoning standards. “The Site is zoned for multiple family and medium residential lists a range of 29 to 55 units per acre (Table I in the Community Plan). The Project would be generally consistent with this density (at the low end).” (MND, p. 3-94)

2. The Project is consistent with the neighborhood character of the existing community.

Appellants argue, without any evidence, that the Project is not consistent with the neighborhood character of the community. As discussed thoroughly in the SPPPC Letter of Determination and the VTT Letter of Determination, the Project is consistent with the character of the community.

The Project proposes 26 single-family homes, each three stories and 30 feet in height. “The subject property is bounded on all sides by two (2) and three (3) story apartment buildings.” (SPPPC Determination, p. 13). “The proposed 3-story buildings would be comparable to other structures in the area, and thus will not introduce an incompatible scenic element into the community. There are 3-story apartment buildings adjacent to the Site.” (MND, p. 3-1). “The buildings would share a datum line with other 3-story buildings.” (MND, p. 3-3).

The immediate neighborhood, including Weddington, Hermitage, Bellingham (east of the Project), Magnolia (south of the Project) and Corteen (west of the Project), is largely characterized by two, three and four story apartment buildings. (See Exhibit B, showing some of the nearby three and four story buildings within one block. The significant majority, if not all, of the other buildings within one block are at least two stories). Thus, the Project is consistent with the existing character of the community.

3. State law allows merger of the dead-end portion of Weddington without a vacation.

“The Project includes the merger of Weddington, which is a short dead-end street that would serve the Project through driveway access. All uses [that] currently

access this portion of Weddington would be incorporated into the Project development.” (MND, p. 3-90). The Deputy Advisory Agency found “that the dedications to be merged are unnecessary for present or prospective public purposes and all owners of the interest in the real property within the subdivision have or will consented to the merger prior to the recordation of the final map.” (VTT Determination, p. 2). The merger is authorized by the Subdivision Map Act, which provides in Cal. Gov. Code Section 66499.20.2:

“The filing of the map shall constitute legal merger and resubdivision of the land affected thereby, and shall also constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data creating these public streets or public easements, and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map.” (Emphasis added).

The merger is also authorized by LAMC Section 17.01.1:

“Subdivided lands may be merged and resubdivided without reverting to acreage by complying with all the applicable requirements for the subdivision of land as provided by this article. The filing of the final map or parcel map shall constitute legal merging of the separate parcels into one parcel and the resubdivision of the parcel. Any unused fees or deposits previously made pursuant to this article pertaining to the property shall be credited pro rata towards any requirements which are applicable at the time of resubdivision. Any streets or easements to be left in effect after the resubdivision shall be adequately delineated on the map. After approval of the merger and resubdivision by the City Council, the map shall be delivered to the County Recorder. The filing of the map shall constitute legal merger and resubdivision of the land affected thereby and shall also constitute abandonment of all streets and easements not shown on the map.” (Emphasis added.)

Appellants incorrectly claim that the merger should be done as a street vacation by the City Council, including adoption of findings related to public use. However, the same City Bureau of Engineering Manual that is selectively quoted by Appellants provides that the Weddington merger can be approved **without an action by the City Council**: “Pursuant to Section 66499.20 of the California Government Code, a public right-of-way may be merged upon the recordation of a final subdivision tract map or parcel map **without going through vacation proceedings.**” (BOE Manual, Section D 716.2).

Moreover, the facts of *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2010) 184 Cal.App.4th 1032 are almost identical to those here. Petitioners in that case claimed that a public right-of-way and easement

could not be vacated pursuant to the Subdivision Map Act and that the vacation laws in the Streets and Highways Code must be used. The Court flatly rejected that argument: “the Subdivision Map Act provides a separate, lawful manner by which public entities may vacate public rights-of-way and easements. (Govt.Code, § 66434, subdivision (g) [‘The filing of the final map shall constitute abandonment of all public streets and public easements not shown on the map’].).” *Id.* at 1045. Indeed, as the Court noted, the Streets and Highways Code expressly states that its procedures are “alternatives procedures for vacating streets, highways, and public easements,” and that the “authority granted in this part is an alternative to any other authority provided by law to public entities.” (Sts. & Hy. Code §8311(a).)

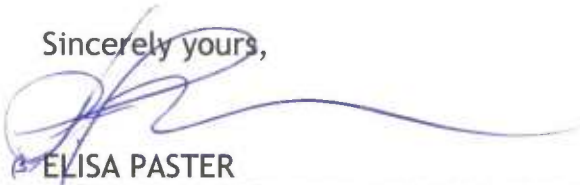
Finally, Appellants allege that the merger is a gift of public funds, based on the misconception that no public benefit is exchanged therefor. However, the Project is conditioned to provide significant public benefits: 1) improve Hermitage Avenue with a 5-foot concrete sidewalk; 2) landscape the parkway within the 12-foot wide public sidewalk area; and 3) install two new street lights on Hermitage Avenue.

4. The Project will not result in negative parking-related impacts.

The Project complies with LAMC requirements by providing 59 parking spaces: 52 in two-car garages assigned to each unit and seven total guest spaces (i.e., 2 resident and ¼ guest parking spaces per lot). “This guest parking would replace the 7 parking spaces that are removed with the Weddington Street merger.” (MND, p. 2-5). Further, “[a]ll uses [that] currently access this portion of Weddington would be incorporated into the Project development.” (MND, p. 3-90). Therefore, the Project will not result in negative parking-related impacts.

The evidence before the Commission supports denial of the appeal and affirmation of the SPPPC and VTT Determinations. Therefore, we respectfully request that you deny the appeal and affirm the determinations.

Sincerely yours,



ELISA PASTER
for GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

Attachments:

Exhibit A - *Perspectives on Helping Low-Income Californians Afford Housing*, Feb. 9, 2016 (California Legislative Analyst's Office Report)
Exhibit B - Hermitage Avenue Height Context Study

EXHIBIT A LAO REPORT



Perspectives on Helping Low-Income Californians Afford Housing

MAC TAYLOR • LEGISLATIVE ANALYST • FEBRUARY 9, 2016

Summary

California has a serious housing shortage. California's housing costs, consequently, have been rising rapidly for decades. These high housing costs make it difficult for many Californians to find housing that is affordable and that meets their needs, forcing them to make serious trade-offs in order to live in California.

In our March 2015 report, *California's High Housing Costs: Causes and Consequences*, we outlined the evidence for California's housing shortage and discussed its major ramifications. We also suggested that the key remedy to California's housing challenges is a substantial increase in private home building in the state's coastal urban communities. An expansion of California's housing supply would offer widespread benefits to Californians, as well as those who wish to live in California but cannot afford to do so.

Some fear, however, that these benefits would not extend to low-income Californians. Because most new construction is targeted at higher-income households, it is often assumed that new construction does not increase the supply of lower-end housing. In addition, some worry that construction of market-rate housing in low-income neighborhoods leads to displacement of low-income households. In response, some have questioned whether efforts to increase private housing development are prudent. These observers suggest that policy makers instead focus on expanding government programs that aim to help low-income Californians afford housing.

In this follow up to *California's High Housing Costs*, we offer additional evidence that facilitating more private housing development in the state's coastal urban communities would help make housing more affordable for low-income Californians. Existing affordable housing programs assist only a small proportion of low-income Californians. Most low-income Californians receive little or no assistance. Expanding affordable housing programs to help these households likely would be extremely challenging and prohibitively expensive. It may be best to focus these programs on Californians with more specialized housing needs—such as homeless individuals and families or persons with significant physical and mental health challenges.

Encouraging additional private housing construction can help the many low-income Californians who do not receive assistance. Considerable evidence suggests that construction of market-rate housing reduces housing costs for low-income households and, consequently, helps to mitigate displacement in many cases. Bringing about more private home building, however, would be no easy task, requiring state and local policy makers to confront very challenging issues and taking many years to come to fruition. Despite these difficulties, these efforts could provide significant widespread benefits: lower housing costs for millions of Californians.

VARIOUS GOVERNMENT PROGRAMS HELP CALIFORNIANS AFFORD HOUSING

Federal, state, and local governments implement a variety of programs aimed at helping Californians, particularly low-income Californians, afford housing. These programs generally work in one of three ways: (1) increasing the supply of moderately priced housing, (2) paying a portion of households' rent costs, or (3) limiting the prices and rents property owners may charge for housing.

Various Programs Build New Moderately Priced Housing. Federal, state, and local governments provide direct financial assistance—typically tax credits, grants, or low-cost loans—to housing developers for the construction of rental housing. In exchange, developers reserve these units for lower-income households. (Until recently, local redevelopment agencies also provided this type of financial assistance.) By far the largest of these programs is the federal and state Low Income Housing Tax Credit (LIHTC), which provides tax credits to affordable housing developers to cover a portion of their building costs. The LIHTC subsidizes the new construction of around 7,000 rental units annually in the state—typically less than 10 percent of total public and private housing construction. This represents a significant majority of the affordable housing units constructed in California each year.

Vouchers Help Households Afford Housing.

The federal government also makes payments to landlords—known as housing vouchers—on behalf of about 400,000 low-income households in California. These payments generally cover the portion of a rental unit's monthly cost that exceeds 30 percent of the household's income.

Some Local Governments Place Limits on Prices and Rents. Some local governments have policies that require property owners charge below-market prices and rents. In some cases, local governments limit how much landlords can increase rents each year for existing tenants. About 15 California cities have these rent controls, including Los Angeles, San Francisco, San Jose, and Oakland. In 1995, the state enacted Chapter 331 of 1995 (AB 1164, Hawkins), which prevented rent control for properties built after 1995 or properties built prior to 1995 that had not previously been subject to rent control. Assembly Bill 1164 also allowed landlords to reset rents to market rates when properties transferred from one tenant to another. In other cases, local governments require developers of market-rate housing to charge below-market prices and rents for a portion of the units they build, a policy called “inclusionary housing.”

NEED FOR HOUSING ASSISTANCE OUTSTRIPS RESOURCES

Many Low-Income Households Receive No Assistance. The number of low-income Californians in need of assistance far exceeds the resources of existing federal, state, and local affordable housing programs. Currently, about

3.3 million low-income households (who earn 80 percent or less of the median income where they live) rent housing in California, including 2.3 million very-low-income households (who earn 50 percent or less of the median income where they

live). Around one-quarter (roughly 800,000) of low-income households live in subsidized affordable housing or receive housing vouchers. Most households receive no help from these programs. Those that do often find that it takes several years to get assistance. Roughly 700,000 households occupy waiting lists for housing vouchers, almost twice the number of vouchers available.

Majority of Low-Income Households Spend More Than Half of Their Income on Housing.

Around 1.7 million low-income renter households in California report spending more than half of their income on housing. This is about 14 percent of all California households, a considerably higher proportion than in the rest of the country (about 8 percent).

CHALLENGES OF EXPANDING EXISTING PROGRAMS

One possible response to these affordability challenges could be to expand existing housing programs. Given the number of households struggling with high housing costs, however, this approach would require a dramatic expansion of existing government programs, necessitating funding increases orders of magnitude larger than existing program funding and far-reaching changes in existing regulations. Such a dramatic change would face several challenges and probably would have unintended consequences. Ultimately, attempting to address the state's housing affordability challenges primarily through expansion of government programs likely would be impractical. This, however, does not preclude these programs from playing a role in a broader strategy to improve California's housing affordability. Below, we discuss these issues in more detail.

Expanding Assistance Programs Would Be Very Expensive

Extending housing assistance to low-income Californians who currently do not receive it—either through subsidies for affordable units or housing vouchers—would require an annual funding commitment in the low tens of billions of dollars. This is roughly the magnitude of the state's largest General Fund expenditure outside of education (Medi-Cal).

Affordable Housing Construction Requires Large Public Subsidies.

While it is difficult to estimate precisely how many units of affordable housing are needed, a reasonable starting point is the state's current population of low-income renter households that spend more than half of their income on housing—about 1.7 million households. Based on data from the LIHTC, housing built for low-income households in California's coastal urban areas requires a public subsidy of around \$165,000 per unit. At this cost, building affordable housing for California's 1.7 million rent burdened low-income households would cost in excess of \$250 billion. This cost could be spread out over several years (by issuing bonds or providing subsidies to builders in installments), requiring annual expenditures in the range of \$15 billion to \$30 billion. There is a good chance the actual cost could be higher. Affordable housing projects often receive subsidies from more than one source, meaning the public subsidy cost per unit likely is higher than \$165,000. It is also possible the number of units needed could be higher if efforts to make California's housing more affordable spurred more people to move to the state. Conversely, there is some chance the cost could be lower if building some portion of the 1.7 million eased competition at the bottom end of the housing market and allowed some low-income families to find

affordable market-rate housing. Nonetheless, under any circumstances it is likely this approach would require ongoing annual funding at least in the low tens of billions of dollars.

Expanding Housing Vouchers Also Would Be Expensive. Housing vouchers would be similarly expensive. According to American Community Survey data, around 2.5 million low-income households in California spend more than 30 percent of their income on rent. These households' rents exceed 30 percent of their incomes by \$625 each month on average, meaning they would require an annual subsidy of around \$7,500. This suggests that providing housing vouchers to all of these households would cost around \$20 billion annually. By similar logic, a less generous program that covered rent costs exceeding 50 percent of household income would cost around \$10 billion annually. There is, however, good reason to believe the cost of expanding voucher programs would be significantly higher than these simple estimates suggest. As we discuss in the next section, a major increase in the number of voucher recipients likely would cause rents to rise. Higher rent costs, in turn, would increase the amount government would need to pay on behalf of low-income renters. This effect is difficult to quantify but probably would add several billion to tens of billions of dollars to the annual cost of a major expansion of vouchers.

Existing Housing Shortage Poses Problems for Some Programs

Many housing programs—vouchers, rent control, and inclusionary housing—attempt to make housing more affordable without increasing the overall supply of housing. This approach does very little to address the underlying cause of California's high housing costs: a housing shortage. Any approach that does not address the state's housing shortage faces the following problems.

Housing Shortage Has Downsides Not Addressed by Existing Housing Programs. High housing costs are not the only downside of the state's housing shortage. As we discussed in detail in *California's High Housing Costs*, California's housing shortage denies many households the opportunity to live in the state and contribute to the state's economy. This, in turn, reduces the state's economic productivity. The state's housing shortage also makes many Californians—not only low-income residents—more likely to commute longer distances, live in overcrowded housing, and delay or forgo homeownership. Housing programs such as vouchers, rent control, and inclusionary housing that do not add to the state's housing stock do little to address these issues.

Scarcity of Housing Undermines Housing Vouchers. California's tight housing markets pose several challenges for housing voucher programs which can limit their effectiveness. In competitive housing markets, landlords often are reluctant to rent to housing voucher recipients. Landlords may not be interested in navigating program requirements or may perceive voucher recipients to be less reliable tenants. One nationwide study conducted in 2001 found that only two-thirds of voucher recipients in competitive housing markets were able to secure housing. This issue likely would be amplified if the number of voucher recipients competing for housing were increased significantly. In addition, some research suggests that expanding housing vouchers in competitive housing markets results in rent increases, which either offset benefits to voucher holders or increase government costs for the program. One study looking at an unusually large increase in the federal allotment of housing vouchers in the early 2000s found that each 10 percent increase in vouchers in tight housing markets increased monthly rents by an average of \$18 (about 2 percent). This suggests that extending vouchers to all of California's low-income

households (a several hundred percent increase in the supply of vouchers) could lead to substantial rent inflation. If this were to occur, the estimates in the prior section of the cost to expand vouchers to all low-income households would be significantly higher.

Housing Costs for Households Not Receiving Assistance Could Rise. Expansion of voucher programs also could aggravate housing challenges for those who do not receive assistance, particularly if assistance is extended to some, but not all low-income households. As discussed above, research suggests that housing vouchers result in rent inflation. This rent inflation not only effects voucher recipients but potentially increases rents paid by other low- and lower-middle income households that do not receive assistance.

Housing Shortage Also Creates Problems for Rent Control Policies. The state's shortage of housing also presents challenges for expanding rent control policies. Proposals to expand rent control often focus on two broad changes: (1) expanding the number of housing units covered—by applying controls to newer properties or enacting controls in locations that currently lack them—and (2) prohibiting landlords from resetting rents to market rates for new tenants. Neither of these changes would increase the supply of housing and, in fact, likely would discourage new construction. Households looking to move to California or within California would therefore continue to face stiff competition for limited housing, making it difficult for them to secure housing that they can afford. Requiring landlords to charge new tenants below-market rents would not eliminate this competition. Households would have to compete based on factors other than how much they are willing to pay. Landlords might decide between tenants based on their income, creditworthiness, or socioeconomic status, likely to the benefit of more affluent renters.

Barriers to Private Development Also Hinder Affordable Housing Programs

Local Resistance and Environmental Protection Policies Constrain Housing Development.

Local community resistance and California Environmental Quality Act (CEQA) challenges limit the amount of housing—both private and subsidized—built in California. These factors present challenges for subsidized construction and inclusionary housing programs. Subsidized housing construction faces the same, in many cases more, community opposition as market-rate housing because it often is perceived as bringing negative changes to a community's quality or character. Furthermore, subsidized construction, like other housing developments, often must undergo the state's environmental review process outlined in CEQA. This can add costs and delay to these projects. Inclusionary housing programs rely on private housing development to fund construction of affordable housing. Because of this, barriers that constrain private housing development also limit the amount of affordable housing produced by inclusionary housing programs.

Home Builders Often Forced to Compete for Limited Development Opportunities. With state and local policies limiting the number of housing projects that are permitted, home builders often compete for limited opportunities. One result of this is that subsidized construction often substitutes for—or “crowds out”—market-rate development. Several studies have documented this crowd-out effect, generally finding that the construction of one subsidized housing unit reduces market-rate construction by one-half to one housing unit. These crowd-out effects can diminish the extent to which subsidized housing construction increases the state's overall supply of housing.

Other Unintended Consequences

“Lock-In” Effect. Households residing in affordable housing (built via subsidized construction or inclusionary housing) or rent-controlled housing typically pay rents well below market rates. Because of this, households may be discouraged from moving from their existing unit to market-rate housing even when it may otherwise benefit them—for example, if the market-rate housing would be closer to a new job.

This lock-in effect can cause households to stay longer in a particular location than is otherwise optimal for them.

Declining Quality of Housing. By depressing rents, rent control policies reduce the income received by owners of rental housing. In response, property owners may attempt to cut back their operating costs by forgoing maintenance and repairs. Over time, this can result in a decline in the overall quality of a community’s housing stock.

MORE PRIVATE HOME BUILDING COULD HELP

Most low-income Californians receive little or no assistance from existing affordable housing programs. Given the challenges of significantly expanding affordable housing programs, this is likely to persist for the foreseeable future. Many low-income households will continue to struggle to find housing that they can afford. Encouraging more private housing development seems like a reasonable approach to help these households. But would it actually help? In this section, we present evidence that construction of new, market-rate housing can lower housing costs for low-income households.

Increased Supply, Lower Costs

Lack of Supply Drives High Housing Costs. As we demonstrate in *California’s High Housing Costs*, a shortage of housing results in high and rising housing costs. When the number of households seeking housing exceeds the number of units available, households must try to outbid each other, driving up prices and rents. Increasing the supply of housing can help alleviate this competition and, in turn, place downward pressure on housing costs.

Building New Housing Indirectly Adds to the Supply of Housing at the Lower End of the Market. New market-rate housing typically is targeted at

higher-income households. This seems to suggest that construction of new market-rate housing does not add to the supply of lower-end housing. Building new market-rate housing, however, indirectly increases the supply of housing available to low-income households in multiple ways.

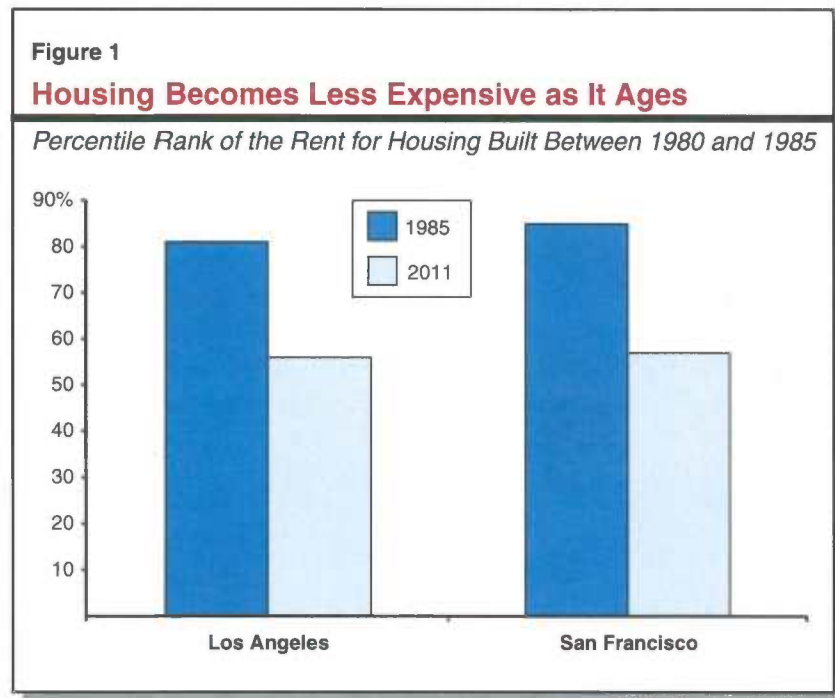
Housing Becomes Less Desirable as It Ages . . . New housing generally becomes less desirable as it ages and, as a result, becomes less expensive over time. Market-rate housing constructed now will therefore add to a community’s stock of lower-cost housing in the future as these new homes age and become more affordable. Our analysis of American Housing Survey data finds evidence that housing becomes less expensive as it ages. Figure 1 (see next page) shows the average rent for housing built between 1980 and 1985 in Los Angeles and San Francisco. These housing units were relatively expensive in 1985 (rents in the top fifth of all rental units) but were considerably more affordable by 2011 (rents near the median of all rental units). Housing that likely was considered “luxury” when first built declined to the middle of the housing market within 25 years.

... But Lack of New Construction Can Slow This Process. When new construction is abundant, middle-income households looking to upgrade the quality of their housing often move from older, more affordable housing to new housing. As these middle-income households move out of older housing it becomes available for lower-income households. This is less likely to occur in communities where new housing construction is limited. Faced with heightened competition for scarce housing, middle-income households may live longer in aging housing. Instead of upgrading by moving to a new home, owners of aging homes may choose to remodel their existing homes. Similarly, landlords of aging rental housing may elect to update their properties so that they can continue to market them to middle-income households. As a result, less housing transitions to the lower-end of the housing market over time. One study of housing costs in the U.S. found that rental housing generally depreciated by about 2.5 percent per year between 1985 and 2011, but that this rate was considerably lower (1.8 percent per year) in regions with relatively limited housing supply.

New Housing Construction Eases Competition Between Middle- and Low-Income Households.

Another result of too little housing construction is that more affluent households, faced with limited housing choices, may choose to live in neighborhoods and housing units that historically have been occupied by low-income households. This reduces the amount of housing available for low-income households. Various economic studies have documented this result. One analysis of American Housing Survey data by researchers at the Federal Reserve Bank of New York found that “the more constrained the supply response for new residential units to demand shocks, the greater the probability that an affordable unit will filter up and out of the affordable stock.” Other researchers have found that low-income neighborhoods are more likely to experience an influx of higher-income households when they are in close proximity to affluent neighborhoods with tight housing markets.

More Supply Places Downward Pressure on Prices and Rents. When the number of housing units available at the lower end of a community’s housing market increases, growth in prices and rents slows. Evidence supporting this relationship can be found by comparing housing expenditures of low-income households living in California’s slow-growing coastal communities to those living in fast-growing communities elsewhere in the country. Between 1980 and 2013, the housing stock in California’s coastal urban counties (counties comprising metropolitan areas with populations greater than 500,000) grew by only 34 percent, compared to



and rents slows. Evidence supporting this relationship can be found by comparing housing expenditures of low-income households living in California’s slow-growing coastal communities to those living in fast-growing communities elsewhere in the country. Between 1980 and 2013, the housing stock in California’s coastal urban counties (counties comprising metropolitan areas with populations greater than 500,000) grew by only 34 percent, compared to

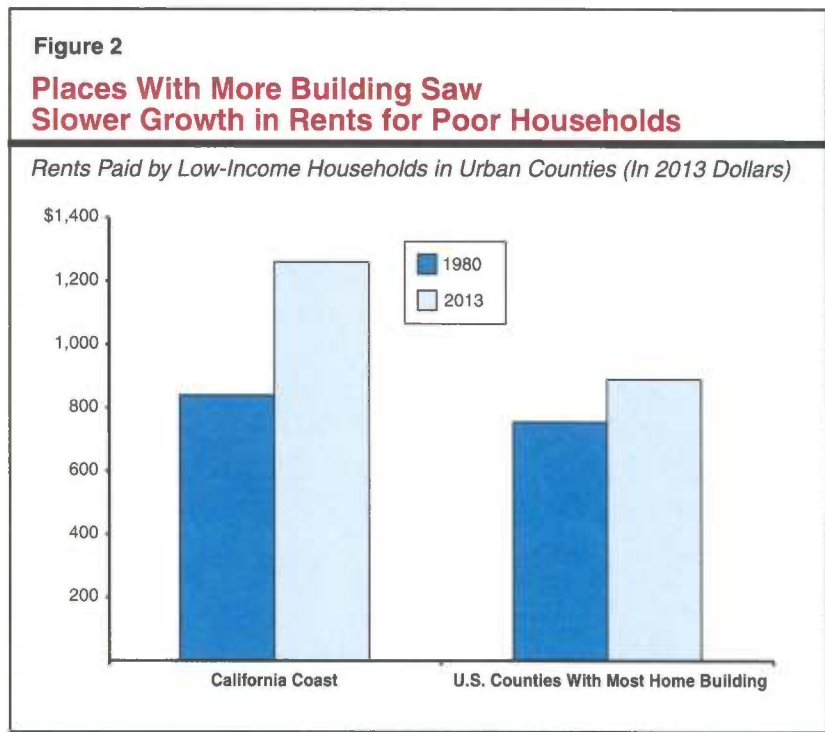
99 percent in the fastest growing urban counties throughout the country (top fifth of all urban counties). As figure 2 shows, over the same time period rents paid by low-income households grew nearly three times faster in California’s coastal urban counties than in the fastest growing urban counties (50 percent compared to 18 percent). As a result, the typical low-income household in California’s costal urban counties now spends around 54 percent of their income on housing, compared to only 43 percent in fast growing counties. This difference—11 percentage points—is roughly equal to a typical low-income household’s total spending on transportation.

Lower Costs Reduce Chances of Displacement

More Private Development Associated With Less Displacement. As market-rate housing construction tends to slow the growth in prices and rents, it can make it easier for low-income households to afford their existing homes. This can help to lessen the displacement of low-income households. Our analysis of low-income neighborhoods in the Bay Area suggests a link between increased construction of market-rate housing and reduced displacement. (See the technical appendix for more information on how we defined displacement for this analysis.) Between 2000 and 2013, low-income census tracts (tracts with an above-average concentration of low-income households) in the Bay Area that built the most market-rate housing experienced considerably less displacement. As Figure 3

(see next page) shows, displacement was more than twice as likely in low-income census tracts with little market-rate housing construction (bottom fifth of all tracts) than in low-income census tracts with high construction levels (top fifth of all tracts).

Results Do Not Appear to Be Driven by Inclusionary Housing Policies. One possible explanation for this finding could be that many Bay Area communities have inclusionary housing policies. In communities with inclusionary housing policies, most new market-rate construction is paired with construction of new affordable housing. It is possible that the new affordable housing units associated with increased market-rate development—and not market-rate development itself—could be mitigating displacement. Our analysis, however, finds that market-rate housing construction appears to be associated with less displacement *regardless* of a community’s inclusionary housing policies. As with other Bay Area communities, in communities without inclusionary housing policies, displacement



was more than twice as likely in low-income census tracts with limited market-rate housing construction than in low-income census tracts with high construction levels.

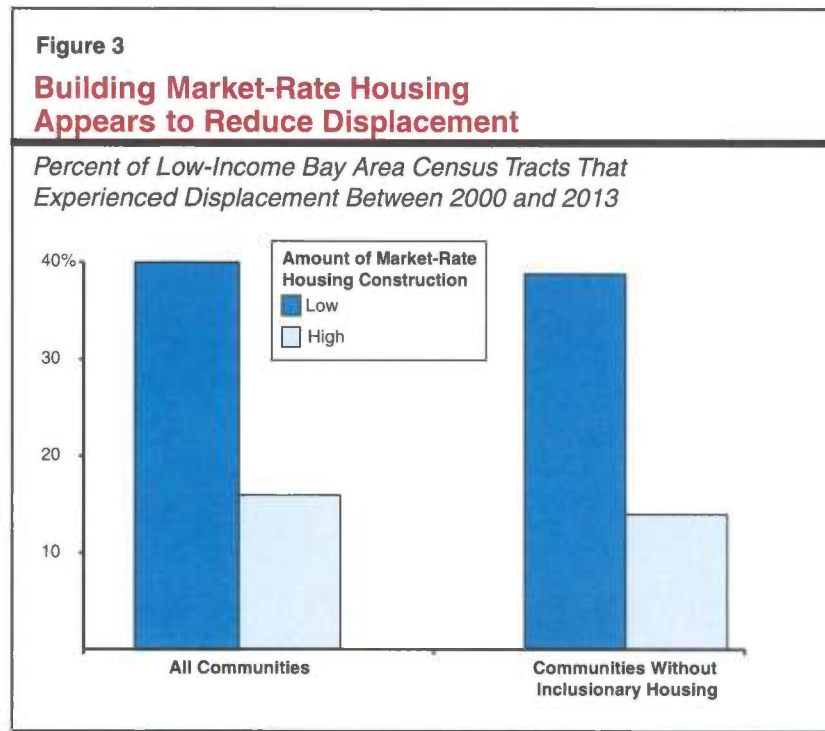
Relationship Remains After Accounting for Economic and Demographic Factors. Other factors play a role in determining which neighborhoods

experience displacement. A neighborhood’s demographics and housing characteristics probably are important. Nonetheless, we continue to find that increased market-rate housing construction is linked to reduced displacement after using common statistical techniques to account for these factors. (See the technical appendix for more details.)

CONCLUSION

Addressing California’s housing crisis is one of the most difficult challenges facing the state’s policy makers. The scope of the problem is massive. Millions of Californians struggle to find housing that is both affordable and suits their needs. The crisis also is a long time in the making, the culmination of decades of shortfalls in housing construction. And just as the crisis has taken decades to develop, it will take many years or decades to correct. There are no quick and easy fixes.

The current response to the state’s housing crisis often has centered on how to improve affordable housing programs. The enormity of California’s housing challenges, however, suggests that policy makers look for solutions beyond these programs. While affordable housing programs are vitally important to the households they assist, these programs help only a small fraction of the Californians that are struggling to cope with the state’s high housing costs. The majority of low-income households receive little or no



assistance and spend more than half of their income on housing. Practically speaking, expanding affordable housing programs to serve these households would be extremely challenging and prohibitively expensive.

In our view, encouraging more private housing development can provide some relief to low-income households that are unable to secure assistance. While the role of affordable housing programs in helping California’s most disadvantaged residents remains important,

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we suggest policy makers primarily focus on expanding efforts to encourage private housing development. Doing so will require policy makers to revisit long-standing state policies on local governance and environmental protection, as well as local planning and land use regimes.

The changes needed to bring about significant increases in housing construction undoubtedly will be difficult and will take many years to come to fruition. Policy makers should nonetheless consider these efforts worthwhile. In time, such an approach offers the greatest potential benefits to the most Californians.

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TECHNICAL APPENDIX

To examine the relationship between market-rate housing construction and displacement of low-income households we developed a simple econometric model to estimate the probability of a low-income Bay Area neighborhood experiencing displacement.

Data. We use data on Bay Area census tracts (small subdivisions of a county typically containing around 4,000 people) maintained by researchers with the University of California (UC) Berkeley Urban Displacement Project. This dataset included information on census tract demographics, housing characteristics, and housing construction levels. We focus on data for the period 2000 to 2013.

Defining Displacement. Researchers have not developed a single definition of displacement. Different studies use different measures. For our analysis, we use a straightforward yet imperfect definition of displacement which is similar to the definition used by UC Berkeley researchers. Specifically, we define a census tract as having experienced displacement if (1) its overall population increased and its population of low-income households decreased or (2) its overall population decreased and its low-income population declined faster than the overall population.

Our Model. We use probit regression analysis to evaluate how various factors affected the likelihood of a census tract experiencing

displacement between 2000 and 2013. This type of model allows us to hold constant various economic and demographic factors and isolate the impact of increased market-rate construction on the likelihood of displacement. The results of our regression are shown in Figure A1. Coefficient estimates from probit regressions are not easily interpreted. While the fact that the coefficient for market-rate housing construction is statistically significant and negative suggests that more construction reduces the likelihood of displacement, the magnitude of this effect is not immediately clear. To better understand these results, we used the model to compare the probability that an average census tract would experience displacement when its market-rate construction was low (0 units), average (136 units), and high (243 units). As shown in Figure A2 (see next page), with low construction levels, a census tract’s probability of experiencing displacement was 47 percent, compared to 34 percent with average construction levels, and 26 percent with high construction levels.

Figure A1

Regression Results

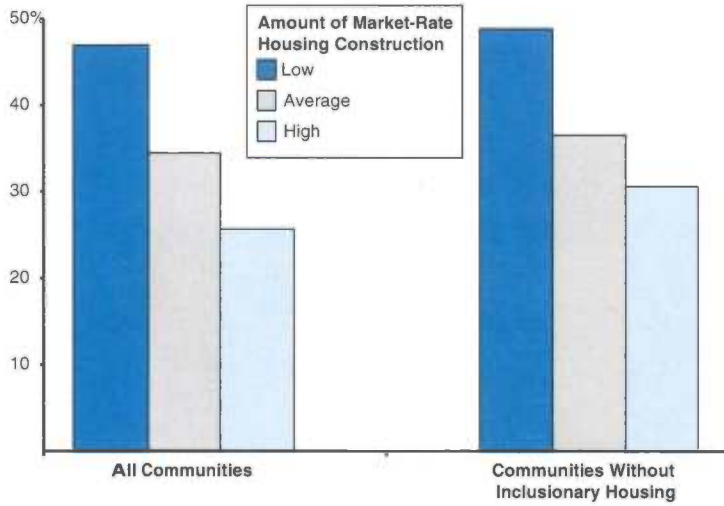
Dependent Variable: Did Displacement Occur (Yes=1 and No=0)?

Independent Variable	Coefficient	Standard Error
Number of market-rate housing units built	-0.00237	0.00043
Share of population that is low income	1.74075	0.54137
Share of population that is nonwhite	-0.61213	0.29151
Share of adults over 25 with a college degree	1.90054	0.38599
Population density	-0.00001	0.00000
Share of housing built before 1950	1.16506	0.22569
Constant	-1.45886	0.33420

Figure A2

**More Housing Construction
Linked to Lower Chances of Displacement**

*Likelihood of an Average Low-Income Bay Area
Census Tract Experiencing Displacement, 2000 to 2013*



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This brief was prepared by Brian Uhler, and reviewed by Jason Sisney. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

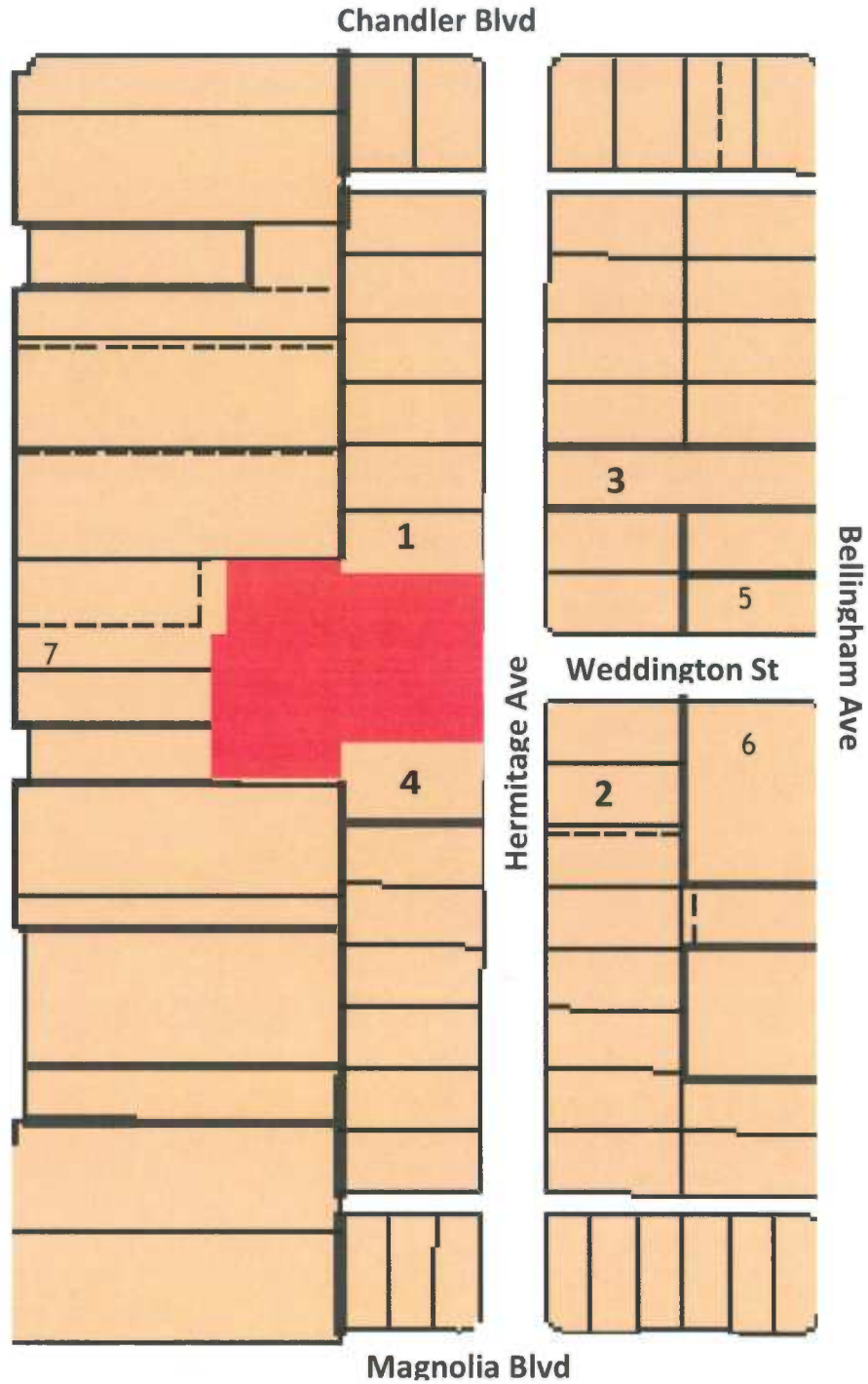
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EXHIBIT B
HEIGHT CONTEXT
STUDY

Hermitage Ave- Building Height Context

26 Small Lot Subdivision

Valley Village, California





1) 5311 Hermitage —3 stories



2) 5252 Hermitage —3 stories



3) 5312 Hermitage —4 stories



4) 5363 Hermitage —3 stories



5) NW Corner of Bellingham and Weddington - 3 ½ stories



6) SW Corner of Bellingham and Weddington - 3 and 4 stories



7) Corteen Place, directly west of project site - 3 stories