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BY EMAIL

Hon. President Herb Wesson and
Members of the City Council
200 N. Spring Street, Rm. 395
Los Angeles, CA 90012
Attn: Sharon Gin, Council Clerk
Erika Pulst, Council Clerk
(clerk@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: April 17, 2019
Agenda Item 25

Dear President Wesson and Councilmembers:

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 currently under construction. We responded substantively to the appeal in our letter dated April 15, 2019, and as we described therein, the appeal 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.

We write briefly to clarify the confusion and misperceptions regarding four primary issues: (1) the applicability and effect of the City's Rent Stabilization Ordinance (the "RSO"); (2) the requirement to dedicate and improve 2 ½ feet of the alley adjacent to the Property on the south; (3) applicability of the demolition of rent-stabilized dwelling units to the California Environmental Quality Act ("CEQA"); and (4) applicability of the Housing Accountability Act.

1. The Rent Stabilization Ordinance Does Not Provide Former Tenants a Right of Return at Their Prior Rents, Either With or Without the Map.

Appellants place virtually the entire weight of their proposed findings on section 151.26-A.2 of the RSO, which does not apply here. That section imposes certain requirements on landlords who rent units from which they previously evicted tenants pursuant to the Ellis Act and the RSO. It reads, in relevant part,

> "If a landlord desires to offer for rent or lease ***a rental unit which was the subject of a Notice of Intent to Withdraw*** pursuant to the provisions of Subsection A. of Section 151.23, the following regulations apply:"

[*Id*.; emphasis supplied.] Section 151.27 further provides a right of return to any tenant evicted under the Ellis Act and the RSO, subject to the other restrictions imposed by section 151.26. Thus—critically—the RSO is plain and specific that each of these requirements only applies if ***a unit vacated pursuant to the Ellis Act*** is re-rented.

The RSO separately defines "replacement units" and imposes different requirements. As stated therein:

> "If a building containing a rental unit that was the subject of a Notice of Intent to Withdraw pursuant to the provisions of Subsection A. of Section 151.23 is demolished and rental units are constructed on the same property and offered for rent or lease within five years of the date the rental unit that was the subject of the Notice of Intent to Withdraw was withdrawn from rent or lease, ***the owner may establish the initial rental rate for the newly constructed rental units***."

[RSO, § 151.28-A; emphasis supplied.] Other provisions of the RSO also apply, including controls on rent increases. However, by its plain terms, the RSO does not limit the chargeable rent for replacement housing units, and does not provide right of return for tenants evicted from since-demolished units pursuant to the Ellis Act.

Here, the units subject to a Notice of Intent to Withdraw, and vacated accordingly, have already been demolished, and new units are currently under construction on the Property. Consequently, the rent controls and right of return provided in section 151.26 of the RSO cannot and do not apply. Rather the units currently under construction can only constitute replacement units under section 151.28 of the RSO, and that section provides no limitation on initial rent and no right of return to previously evicted tenants, even if those units are offered for rent.

The approved Map would permit the sale, rather than rental, of the replacement units. This would remove them from certain requirements of rent stabilization, such as limited annual increases and

other restrictions. But the Map would not remove any right of return or obligation to return to pre-eviction rent levels—because that right does not currently exist.

2. Dedication and Improvement of the Alley Would Not Occur, Even if the Map is Denied.

As a preliminary matter, some confusion appears to exist regarding the required dedications and improvements. As described by Planning staff in the APC hearing, the Map and Waiver collectively addressed two dedication requests: a three-foot dedication on Sweetzer, and a 2½-foot dedication for the existing alley on southern boundary of the Property. The staff report regarding the Map erroneously claimed both a three-foot and a two-foot dedication on Sweetzer, and the two-foot dedication was eliminated, in favor of the three-foot dedication, which Etco has provided.

Although the 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. As explained by Planning staff, the Bureau ultimately did not require the 2½-foot alley dedication for the purposes of the Map, due to its assessment of the current and foreseeable future conditions and because—as clarified later—the alley dedication was not a requirement, but a request. If the Map is denied, the 2016 Density Bonus approval becomes the sole governing land use approval for the Property, and because that approval did not require the alley dedication and improvement, no alley dedication or improvement would occur.

3. 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, as described in detail in our April 15 letter to PLUM.

Further, any claim of inconsistency with the General Plan as a basis of denial of a Categorical Exemption is misplaced. As described in our April 15 letter, the loss of rent-stabilized units, even

if an effect of the Map (it is not) is a socioeconomic effect and not a physical environmental impact, and the objectives and policies related to the provision of a range of units serving a range of households do not constitute policies related to avoid significant physical effects on the environment. Just as in *Joshua Tree Downtown Alliance v. County of San Bernardino*, 1 Cal.App.5th 677 (2016), in which the Court characterized economic development goals an outside CEQA's purview and not a basis for determining a significant environmental effect, any claimed inconsistency with policies related to social effects do not constitute an impact within the meaning of CEQA.

4. The Housing Accountability Act Applies to the Map Approval.

The State Legislature adopted the Housing Accountability Act ("HAA") for several purposes, including as a means to address California's historically low home ownership rate. [Govt. Code § 65589.5(a)(2)(E).] Providing homeownership opportunities in forms relatively more affordable than traditional detached single-family dwellings—such as the condominium units provided here—are consistent with this purpose.

As described in our April 15 letter, the HAA prohibits a City from "disapproving" a "housing development project" that complies with the objective standards of the General Plan and zoning regulations, unless it finds, based on a preponderance of the evidence, the project would have an unavoidable impact on public health or safety that cannot be feasibly mitigated in any way other than rejecting the project or reducing its size. [§ 65589.5(k).] The State Legislature has declared that the kinds of impacts justifying those actions "will occur ***infrequently***." (*Id*., § 65915.5(a)(3); emphasis added.)

The HAA defines "disapproving the housing development project" as including a "vote on a proposed housing development project application, and the application is disapproved." [Govt. Code § 65589.5(h)(5)(A).] The HAA defines a "housing development project" to mean "a use consisting of any of the following [including] [r]esidential units only." [Id., § 65589.5(h)(2).] As the Project consists of a use including for-sale residential units, it qualifies as a housing development project within the meaning of the HAA. Accordingly, absent findings of a specific impact to health or safety, the denial of the application for the Project (the Map) constitutes disapproval of a housing development project within in the meaning of the HAA, and is unlawful and subjects the City to substantial liability of $50,000 or more per dwelling unit.

5. 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

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cc: (via email)
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