

ITEM No. 25 - A

M O T I O N

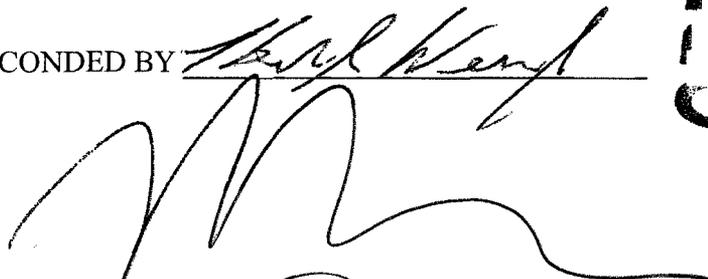
I MOVE that the matter of the Mitigated Negative Declaration (MND), Mitigation Measures, Mitigation Monitoring Program (MMP), and Planning and Land Use Management (PLUM) Committee Report relative to a Vesting Tentative Tract appeal for the property located at 138, 140, 142 East Culver Boulevard and 6911, 6913, 6915, 6917 Vista Del Mar, Item No. 25 on today's Special Council Agenda (CF 18-0686-S1) BE AMENDED to approve the following actions:

1. GRANT the appeals, and thereby OVERTURN the Director's determination in approving the Tract Map for the project;
2. ADOPT the attached FINDINGS in lieu of the findings attached to the File; and
3. DISAPPROVE the Mitigated Negative Declaration (MND).

PRESENTED BY


MIKE BONIN
Councilman, 11th District

SECONDED BY





August 17, 2018
ak

COUNCIL



APPEAL OF TENTATIVE TRACT NO. 70786-REV IS GRANTED, THEREFORE TENTATIVE TRACT NO. 70786-REV IS DENIED.

FINDINGS:

The City Planning Commission (“CPC”) heard TT-70786-REV-1A and ENV-2012-3536-MND-REC1 (the “Proposed Project”) at its meeting on June 28, 2018. The City Planning Commission adopted the Mitigated Negative Declaration, sustained the action of the Deputy Advisory Agency of the City of Los Angeles (“DAA”) in approving Tentative Tract Map No. 70786-REV (Revised Map date-stamped April 17, 2017) (“Tract Map”), and denied the appeal.

As a threshold matter, the Tract Map should be denied because the Proposed Project fails to comply with the California Coastal Act of 1976 (“Coastal Act”). According to California Government Code Section 66498.1(c)(2), a local agency may condition or deny a permit, approval, extension, or entitlement if the local agency determines that “[t]he condition or denial is required in order to comply with state or federal law.” In this case, the state law at issue is the Coastal Act and Section 30251 of the California Public Resources Code, which states that “the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed . . . to be visually compatible with the surrounding areas” As shown by substantial evidence in the record, including in the findings related to Case No. DIR-2012-3537-CDP-DB-SPR-MEL-1A, the Proposed Project does not comply with the Coastal Act. Therefore, the City find that approval of the Tract Map cannot be supported, and accordingly grants the appeal and denies the request for the Tract Map.

To support the approval of the Tentative Tract No. 70786-REV, a Coastal Development Permit must be approved for the Proposed Project. To the extent that the Coastal Development Permit (DIR-2012-3537-CDP-DB-SPR-MEL-1A) is denied, the Tract Map must also be denied.

In addition to the Proposed Project’s failure to comply with applicable state law, a number of the required findings to approve a tentative tract map under the applicable City and State law cannot be made. In connection with the approval of Tentative Tract No. 70786-REV, the DAA, pursuant to Sections 66473.1, 66474.60, 66474.61, and 66474.63 of the State of California Government Code (the Subdivision Map Act), made the prescribed findings as follows:

- A. The proposed map is consistent with applicable general and specific plans
- B. The design and improvement of the proposed subdivision are consistent with applicable general and specific plans
- C. The site is physically suitable for the proposed type of development
- D. The site is physically suitable for the proposed density of development
- E. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat
- F. The design of the subdivision and the proposed improvements are not likely to cause serious public health problems

- G. The design of the subdivision and the proposed improvement will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision
- H. The design of the proposed subdivision will provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision
- I. Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes
- J. All owners of an interest in the real property within the subdivision have consented to reversion

Findings B, D, G, H, and J were deemed to be met in the DAA determination as upheld by the CPC, and as such, those findings are incorporated herein. However, as detailed below and supported by substantial evidence in the record, the appeal of TT-70786-REV-1A and ENV-2012-3536-MND-REC1 must be granted, and the Tract Map must be denied because the City cannot make the remainder of the findings A, C, E, F, and I, which are necessary to support the grant of the Tract Map.

A. THE PROPOSED MAP IS NOT CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

The Proposed Project is located within the Westchester-Playa del Rey Community Plan (the “Community Plan”) area. The Community Plan is part of the City’s General Plan. The Community Plan’s “Design Consideration for Special Areas, Part C. Playa del Rey Commercial District,” contains design standards specific to the needs of the Playa del Rey commercial district as identified in the Community Plan. In relevant part, the Design Considerations for Special Areas limit building heights to 36 feet, stating the limitation as: “[L] building height to maximum of 36 feet.” The project proposes to build a structure that is a 48 feet in height in the Culver Boulevard commercial district. The Proposed Project’s height conflicts with the height limit set forth in the Community Plan applicable to the Playa del Rey Commercial district. Pursuant to Government Code §65860, zoning is required to conform to the General Plan designation for any particular parcel. The reverse is not true. Therefore, the height limit for this parcel is 36 feet regardless of the underlying zoning, and the Proposed Project conflicts with that height limit. Given that the height limit is contained within the Community Plan and the Proposed Project’s conflict with that requirement, the Proposed Project is not consistent with this provision of the Community Plan.

The Community Plan also addresses the need to comply with the Coastal Act. Goal 18 of the Community Plan is to: “Protect Westchester-Playa Del Rey’s Unique Coastal Qualities by Maintaining the Coastal Zone in an Environmentally Sensitive Manner and Preserving the Scenic Views of the Area While Ensuring Access and Public Use of Coastal Resources.” In order to accomplish this Goal, Policy 18-1.1 states: “The Del Rey Lagoon Specific Plan was approved in concept by the Los Angeles City Council as a policy document to be considered in discretionary approvals.” According to the City’s consistent practices and past precedent, the Del Rey Lagoon Specific Plan has served as an important guidance document to determine consistency with the Community Plan. The West Los Angeles Area Planning Commission has acknowledged the significance of this provision as follows:

The City does not have an approved Local Coastal Program for this area. In the interim, the City's Westchester-Playa del Rey Community Plan, a portion of the Land Use Element of the City's General Plan, and the Del Rey Lagoon Specific Plan followed in discretionary review in accordance with the City Council instruction, serve as the functional equivalent. . . . The Westchester-Playa del Rey Community plan also established the goal of protecting the area's unique coastal qualities. The City Council's 1982 instruction subjecting discretionary review to the Del Rey Lagoon Specific Plan is designated as a program to support achieving this goal. 6401-6405 Ocean Front Walk, Playa del Rey, ZA-2014-1500-CDP-ZAA-MEL-1A.

Because the Proposed Project does not comply with the provisions of the Del Rey Lagoon Specific Plan, it also does not comply with the Community Plan. The provisions of these plans have been consistently applied by the City and the Coastal Commission for decades, including the 37-foot height limit and the required parking ratios contained therein. The Proposed Project does not comply with either the height limit or the parking ratios as set forth in these plans. As such, the Proposed Project is not consistent with the necessary applicable General and Specific Plans, and therefore, the necessary findings for granting a tract map approval cannot be made.

C. THE SITE IS NOT PHYSICALLY SUITABLE FOR THE PROPOSED TYPE OF DEVELOPMENT.

There is substantial evidence in the record to support the conclusion that during the life of the Proposed Project, sea level rise will likely result in substantial and consistent flooding and will exacerbate the existing flood prone conditions on the subject property and in the surrounding area. There is substantial evidence in the record showing repetitive, severe, localized flooding affecting the project site that proposes subterranean parking. There is substantial evidence in the record that the Proposed Project will exacerbate area flooding by creating a large impervious surface and there is no readily apparent mitigation of rain water harvesting readily apparent as part of the Proposed Project.

Additionally, there is substantial evidence in the record to support the conclusion that the site cannot physically accommodate the Proposed Project. The project as proposed cannot be accommodated on the site without exceeding the regulatory limits or failing to comply with requirements set forth in the Community Plan and the Del Rey Lagoon Specific Plan, such as the 37 foot height limit and parking ratios, which exist to ensure development that is compatible with the Community Plan, compliant with the Coastal Act, and appropriately protective of coastal resources.

Therefore, the City finds that the site is not physically suitable for the proposed type of development, thus, the necessary findings to support approving the Tentative Tract Map cannot be made.

E. THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS MAY CAUSE SUBSTANTIAL ENVIRONMENTAL DAMAGE OR SUBSTANTIALLY AND AVOIDABLY INJURE FISH OR WILDLIFE OR THEIR HABITAT.

There is substantial evidence contained in the record that the dewatering associated with the Proposed Project will adversely affect water quality in the wetlands, which will in turn affect the sensitive habitat and species in the Ballona wetlands. There is expert testimony along with other substantial evidence contained in the record to supporting finding that adverse water quality effects and the adverse habitat effects of a change of water quality may occur as a result of the Proposed Project. Additionally, the Applicant's reports do not address water quality in the wetlands following dewatering, and therefore, do not provide sufficient support for a finding that the Proposed Project will not result in such adverse and damaging effects. Therefore, the finding that the subdivision and the proposed improvements would not cause substantial environmental damage or substantially and unavoidably injury fish or wildlife cannot be made, and the City finds that the design of the Proposed Project may cause substantial environmental damage or substantially and avoidably injure fish, wildlife, or their habitat.

F. THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS MAY CAUSE SERIOUS PUBLIC HEALTH PROBLEMS.

There is substantial evidence in the record to support the conclusion that the dewatering required by the Proposed Project will result in changing the groundwater gradient and moving a known PCE toxic plume located 310 Culver toward the Proposed Project site. Potential risks of such plume movement include human health hazards resulting from vapor intrusion. Therefore, because substantial evidence in the record supports the conclusion that the Proposed Project may cause serious health problems, the finding that the design of the subdivision will not cause public health problems cannot be made. Without such a finding, the subdivision map cannot be approved. Based on substantial evidence in the record, the City finds that the design of the subdivision and proposed improvements may cause serious health problems.

I. DEDICATIONS OR OFFERS OF DEDICATION TO BE VACATED OR ABANDONED BY THE REVERSION TO ACREAGE ARE NECESSARY FOR PRESENT OR PROSPECTIVE PUBLIC PURPOSES. (Section 66499.16)

There is substantial evidence in the record to support the City's finding that the property interests the Applicant is asking the City to vacate or abandon are in fact currently used for and needed in the future for public purposes. The City is not required to grant a request to vacate or abandon City property interests for property that has been dedicated to the City for public purposes. Government Code Section 65915(l) makes it clear that government property is not an incentive or concession that must be granted to an applicant for affordable housing.

According to many adopted policy documents, the City has well established the need for the rights-of-way at issue to be used for prospective public purposes that are and continue to be consistent with the City's stated goals. The Westchester-Playa del Rey Community Plan, the Complete Street Design Guidelines, Mobility 2035, and the Great Street Initiatives are all adopted City of Los Angeles policy documents that establish prospective public uses for the rights-of-way that the Applicant seeks to have vacated and reverted to acreage. These plans, all

of which are currently applicable and some of which have been recently adopted, all support the need for retaining the City's interest in the property at issue.

The Westchester-Playa del Rey Community Plan states that there is a significant need for additional new park land and recreational facilities to serve the Westchester-Playa Del Rey community based on Federal, State, and local standards. According to the Community Plan, the City's adopted policies to encourage the development of new recreational and open space opportunities include:

- 4-2.3 Encourage the development of Neighborhood Parks and Pocket Parks along public right-of-ways and vacant public parcels.
- 5-1.3 Encourage the development of unused or underutilized publicly owned property for open space and recreational purposes.

The significant lack of public recreation and open space is a common issue Citywide, such that even vacation of street parking to provide small recreational areas has been pursued throughout the City as a means to enhance public access to recreational space. Rather than vacating the City's property interests at issue to allow for a private mixed-use project that does not increase publicly available open and recreational space, the Community Plan encourages the use of the City's property interests for public recreation and open space.

Mobility Plan 2035, which is an element of the City's adopted General Plan, also contains key policy initiatives documenting the need for the City to retain the property interests at issue for present or prospective public purposes. Key Policy Initiatives in Mobility Plan 2035 include: (1) Expand the role of the street as a public place, and (2) Increase the role of "green street" solutions to treat and infiltrate stormwater.

The Complete Street Design Section of Mobility Plan 2035 further encourages the use and retention of the City's interest in the property at issue to achieve overall goals such as providing sufficient space for bicycle infrastructure. As the Complete Streets Design Section states:

Bicycling is an important element to complete streets as it fulfills both long and short distance trips in the larger transportation system. The City of LA established a long term vision of improving bicycling for all types of people of varying experience with the 2010 Bicycle Plan. . . . Bicycling plans and implementation strategies will continue to evolve as conditions change. . . . Section 2.6, pg. 64.

The Complete Street Design Guidelines further provide:

Alleys provide additional access outside of the main street network. They also offer opportunities for implementing green features such as permeable paving, stormwater management, lush plantings, and other sustainable practices.

Consistent with these adopted City policy documents, and supported by substantial evidence in the record, the property interests that the Applicant is seeking to have vacated or abandoned by the City provide opportunities for needed public use now and in the future, and, therefore should be retained by the City. As shown in testimony by Councilmember Mike Bonin and community members at the Planning and Land Use Management Committee hearing on August 14, 2018, in letters from the public contained in the record, and in a survey contained in the record that was prepared by the community to document the preferred uses of the City's property interests at issue, there are a number of prospective public uses for the property that address community interests and City policy goals. Those supported prospective public uses include: angled parking to increase parking capacity and enhance coastal access, bicycle lanes, pedestrian walkways, parklets, a dog park, and bioswales for flood-prone Playa del Rey. All of these uses enhance coastal access, are preferred under the Coastal Act, and provide significant public benefit for the surrounding area.

Additionally, the City's property interests at issue are currently and regularly used to enhance public access to the area by providing additional parking space in parking constrained lower Playa del Rey. The area sought to be vacated or reverted historically and regularly functions as additional parking for the surrounding Playa del Rey commercial district, residential areas, and the beach.

The record evidence cannot support a finding that the City's property interests sought to be vacated or reverted are no longer needed for present or prospective public use. Therefore, the City finds that the property interests proposed for vacation or reversion to acreage are still necessary for present and prospective public use. As a result, this necessary finding to support the approval of the requested the Tract Map cannot be made.

In addition, the associated Mitigated Negative Declaration must be denied for the following reasons.

1. THE ENVIRONMENTAL CLEARANCE PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT IS INADEQUATE

In addition, the Tentative Tract Map should be denied because the Mitigated Negative Declaration is not adequate to serve as the Proposed Project's environmental clearance under the California Environmental Quality Act ("CEQA") and Section 21082.1(c)(3) of the Public Resources Code. Environmental issues specific to the Proposed Project were not sufficiently evaluated, therefore, there is not sufficient evidence in the record to support the conclusion that the Applicant's analysis addressed potentially significant environmental concerns related to the Proposed Project.

- A. There is substantial evidence of a fair argument that the project may have a substantial adverse environmental effect requiring an environmental impact report ("EIR") regarding each of the following:

- i. There is substantial evidence of a fair argument that dewatering associated with the project will result changing the groundwater gradient and moving a known PCE toxic plume located 310 Culver toward the project site. Potential risks include human health hazards resulting from vapor intrusion. There is credible expert testimony on both sides of this issue and the IS/MND itself admits the potential to move the plume toward the project site. The City of Los Angeles is the lead agency under CEQA with responsibility for controlling environmental impacts of the project and the proposed mitigations found in Conditions paragraph 27 of the City Planning Commission Determination Letter. However, the mitigation measures contained therein consist of determining the required dewatering and then designing a system to mitigate required dewatering. As such, the mitigations are impermissibly deferred. The process of ensuring a known toxic plume does not adversely impact human health and safety must be open, transparent, and public in order to ensure that the decision maker is properly informed of the potential environmental impacts prior to determining whether to adopt an environmental document pursuant to CEQA.
- ii. There is substantial evidence of a fair argument that the dewatering associated with the project will adversely affect water quality in the wetlands, which will in turn affect the sensitive habitat and species in the Ballona wetlands. Appellants have presented expert testimony, which is contained in the record, regarding water quality affects and the habitat effects of a change of water quality. Applicant's reports do not purport to address water quality in the wetlands following dewatering. Even if they did, credible expert testimony exists on both sides of the issue, which in the context of a Mitigated Negative Declaration under CEQA, the City is required to find substantial evidence of fair argument of potential significant adverse environmental report and require the preparation of an EIR.
- iii. There is substantial evidence in the record of a fair argument that the Proposed Project will have an adverse effect on area views to and from the Coastal Bluffs, including from public streets, public beach entrances, a scenic highway, and private residences, which are considered under CEQA and as part of the discretionary review required under the Westchester-Playa del Rey Community Plan. The public outcry over the visual impact alone amounts to substantial evidence of a fair argument. Three dimensional models demonstrating how the Proposed Project will affect area views provided by Appellants are additional credible evidence. Applicant has submitted contrary visual impact evidence. Given evidence both ways, the City's responsibility is to require an EIR even if it were to find applicant's evidence more credible, which the City does not.

- iv. There is substantial evidence in the record that the project, which creates an impervious surface nearly an acre wide, will add to the already significant flooding in the immediate vicinity of the Proposed Project. The mitigation measures imposed by the City based on the Applicant's own geotechnical review do not match the assumptions made by the Applicant's flood analysis expert. Appellants have submitted expert evidence contained in the record that the Proposed Project will exacerbate existing area flooding. The Appellants have further submitted evidence contained in the record that the Applicant's stormwater analysis is flawed, that the Proposed Project does not and cannot implement the mitigation measures contemplated in the analysis and that the Applicant's preliminary stormwater report makes contra-factual assumptions, such as adequacy of area drainage, potential on-site stormwater infiltration, and lack of sea level rise.
- v. There is substantial evidence contained in the record that the Proposed Project will result in a substantial impact by creating excess shade and shadow on sensitive receivers to the northwest and northeast, including on local commercial establishments on Culver Boulevard.
- vi. There is substantial evidence contained in the record that particulate matter generated during construction would exceed localized significance thresholds established by the South Coast Air Quality Management District notwithstanding proposed mitigation measures.
- vii. There is substantial evidence in the record, both in terms of expert reports and public comment during all phases of the hearing process, of a fair argument that the Proposed Project will result in significant adverse traffic safety impacts. The Applicant's line of sight study may be evidence to the contrary but given substantial evidence both ways, even if the City finds applicant's evidence credible, the City is required to find a fair argument exists of potential substantial environmental impact and require an EIR.

B. The IS/MND provides inadequate information to assess relevant potential environmental impacts including noise, air quality, and cumulative impacts.

- i. Among other significant inadequacies found in the IS/MND is the assumption that only one cement truck would be used to pour the foundation for the entire Proposed Project and that there will be no trucks trips during the grading phase of the Proposed Project. Each of these assumptions makes the noise and air quality analysis of the Proposed Project's impacts an inadequate disclosure of potential environmental impacts and, therefore, an inadequate basis for a

decision maker to conclude the Proposed Project will not have a substantial adverse impact on the environment under CEQA.

- ii. The IS/MND does not adequately analyze potential cumulative impacts. The IS/MND (page V-131) contemplates cumulative impacts of proposed projects located on Applicant's lots located at 6918 Pacific (29 Units totalling 4,000 square feet, located on the beach sand dunes) and at 220 Culver (63 Units, 11,000 square feet). In addition, the record shows that the applicant has prepared a traffic study and a geotechnical study for the project proposed for 220 Culver. Therefore, it can be concluded that these projects are reasonably foreseeable. The cumulative impacts of all applicant's contemplated development in lower Playa del Rey must be reviewed in an environmental impact report that will include evaluation of visual impact and hydrogeological impact, among other issues.