

February 28, 2019

Via E-Mail and Hand Delivery

Members of the Planning Commission
City of Hollister
339 Fifth Street
Hollister, California 95023

Re: Proposed Conditional Use Permit No. 2018-14, Tentative Map No. 2019-1,
and Minor Subdivision No. 2019-1

Dear Commissioners:

This firm represents Ignacio Velazquez in connection with the above-referenced proposed approvals for a mixed-use development on the "400 Block" in downtown Hollister ("Project"). The Planning Commission cannot approve the Project as currently proposed. Building 28 new commercial and residential units on roughly one-quarter acre greatly exceeds the density standards for development in downtown Hollister. Not only would approving the Project violate density limits in the City's zoning code and General Plan, but the Project's foreseeable environmental impacts (in addition to zoning violations) make it impermissible for the City to approve the project under an exemption to the California Environmental Quality Act ("CEQA"). Moreover, rather than receiving a waiver from commercial development impact fees as is currently proposed, the Project should be required to pay its fair share towards maintaining public facilities and services in Hollister. For all of these reasons, the Planning Commission cannot, and should not, approve the Project as currently proposed.

I. The Project Exceeds the Maximum Density Permitted in Downtown Hollister.

State law requires that any decision of a local agency affecting land use and development, including approving development permits, be consistent with that jurisdiction's general plan. *See Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1182-86. Similarly, courts have repeatedly held that an agency must comply with its development code when issuing development permits for a project. *See San Bernardino Valley Audubon Soc'y v. County of San Bernardino* (1984)

155 Cal.App.3d 738, 753; *Cadiz Land Co. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 113-14.

Here, Hollister’s zoning code and General Plan place the Project site within the “Downtown Commercial Mixed Use” or “DMU” area. The City’s zoning ordinance strictly caps units in the DMU zone at 40 units per acre. Hollister Municipal Code (“HMC”) § 17.08.010(D)(1). While projects in the City might qualify for a density bonus of up to 35% of a site’s maximum density (*Id.* § 17.04.080), no other variance to the City’s density regulations is permitted (*Id.* § 17.24.210(A)).

The Project, as proposed, plainly exceeds the density limits for the Project site. The site is only 12,535 square feet, or .288 acres. Thus, the City’s zoning code only allows 11 units to be built on the site, not the 22 residential units currently proposed.¹

Rather than acknowledge the site constraints for the proposed Project, the Planning Commission Staff Report asserts that the site is actually 19,655 square feet, or .45 acres. February 28, 2019 Planning Commission Staff Report (“Staff Report”) at 2-3. But, in fact, 19,655 square feet is the total land area for the *entire 400 Block*, including the separately planned and permitted Community Foundation building. The Community Foundation building is *a separate project* – it has a separate applicant, separate permits, and sits on a separate legal parcel (“Community Foundation Parcel”).

Indeed, despite basing its density calculation on the combined square footage of the proposed Project site and the Community Foundation Parcel, the Staff Report itself acknowledges that the Project site is only a single parcel comprising 12,535 sq. feet. *See* Staff Report at 1 (identifying the Project site as encompassing a single parcel, APN 054-110-036). Likewise, the Developer’s own application materials state that the “Size of [the] Property” is only “12,535 sf” and that “Community Foundation Project” is an *adjoining property* to the south. *See* Del Curto Brothers Construction Application for Planned Development at 7-8.

The Staff Report provides no basis for allowing the transfer of development units from the separate Community Foundation Parcel to the Project. Indeed, allowing such a transfer would undermine the City’s strict limits on development density so that any property in the DMU zone that was not built to its maximum density could allow excess development elsewhere by transferring unused units to other properties. This result would

¹ The City’s General Plan separately caps the “Maximum Permitted Intensity” in the DMU area at 45 units per acre, or only twelve units on the Project site. City of Hollister General Plan at 2.6. The Project would violate this cap as well.

not only violate the letter of the City's zoning regulations but the very purpose behind establishing density caps in the first place.

II. The Project Requires Full CEQA Review.

The Staff Report improperly cites the Class 32 categorical exemption as allowing the Project to proceed without CEQA review. *See* Staff Report at 4-5. Categorical exemptions are based on the determination of the Resources Agency that, barring unusual circumstances, exempt projects generally will not have a significant effect on the environment and therefore will not require environmental review or mitigation. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1107. A project subject to a categorical exemption is excused from any further compliance with CEQA. Courts therefore “construe the exemptions narrowly in order to afford the fullest possible environmental protection.” *Azusa Land Reclamation Co., Inc. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1193-94. Here, numerous factors, including conflicts with Hollister's land use policies, the Project's effects on traffic, noise, and air quality, and the loss of significant open space in downtown Hollister disqualify the Project from an exemption.

A. The Project Is Not a Class 32 Exempt In-fill Development.

Class 32 in-fill developments are exempt if they meet five requirements specified in CEQA Guidelines section 15332. These requirements include consistency with “all applicable general plan policies” and zoning designations and regulations. *Id.* § 15332(b). As explained in more detail above, the Project does not meet this requirement because it is inconsistent with land use requirements in Hollister's General Plan and zoning regulations. For this reason alone, the Class 32 exemption is inapplicable here as a matter of law.

Further, an in-fill project is not exempt from CEQA review if it may cause significant effects relating to traffic, noise, or air quality. CEQA Guidelines § 15332(d). Here, the Project's planned uses for the 400 Block will increase traffic, noise, and air pollutant emissions in the downtown area. The Project proposes to construct 22 new condominium units for the 400 Block and six new commercial/retail uses, including a restaurant. Each of these uses will bring new traffic to the area, including patrons of the ground floor shops and restaurant as well as upper floor residents. The first-floor uses will also require truck deliveries throughout the day. As a result, the Project will increase traffic concentrations adjacent to the 400 Block and in surrounding intersections.

The foreseeable traffic increases are further compounded by the City's recent decision to eliminate the requirement that the Community Foundation provide guaranteed

parking spaces for staff in its building. The lack of designated parking for this building will place an additional burden on already-limited street parking, causing more cars to circulate in downtown to seek out parking. This increased traffic, especially anticipated truck traffic, will foreseeably increase noise and degrade air quality in the downtown area, creating a potentially-significant environmental impact. Full, independent environmental review is necessary to determine the extent to which the Project's foreseeable environmental effects are significant and to identify additional potential problems.

B. Exceptions to the Categorical Exemption also Require CEQA Review.

Because CEQA allows exemptions for “only those activities which do not have a significant effect on the environment,” it follows that if there is “any reasonable possibility” that a project “may have a significant effect on the environment, an exemption would be improper.” *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-06. This idea is codified in CEQA Guidelines section 15300.2, which outlines situations where further environmental review is necessary, even if a proposed project fits an identified exemption. Here, even if the Project falls within the narrow scope of a categorical exemption, “exceptions to the exemption” prevent the Project from avoiding CEQA review.

First, “[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” CEQA Guidelines § 15300.2(c). This exception applies where “the project has some feature that distinguishes it from others in the exempt class,” or there is evidence that the project will have a significant environmental effect. *Berkeley Hillside Preservation v. City of Berkeley* (2015) 241 Cal.App.4th 943, 952. Here, both are true. The Project, in conjunction with the planned Community Foundation building, would develop the only significant open space in Hollister's downtown commercial district. We understand that, historically, the 400 Block has been used for downtown public events, and that Hollister residents continue to use this grassy area for recreational purposes. As recently as 2014, City staff recognized the 400 Block's value as a public amenity in downtown Hollister and recommended that the City improve the block into a “plaza for special events and a public space in the heart of downtown Hollister.” See Exhibit A, May 9, 2014 City Council Staff Report at 2. Eliminating the only public recreation and open space area in downtown Hollister not only distinguishes the Project from other similar development in the City, but would negatively impact recreational opportunities for Hollister's residents.

Indeed, this loss of important open space is itself a potentially-significant environmental impact that the City must study in an environmental document. By

removing the only outdoor public recreation area from Hollister's downtown, the Project will eliminate a much-needed amenity from the urban core. It also will displace residents who currently recreate at the 400 Block to other facilities in Hollister, increasing both traffic in the City and the burden on other open space and park lands. In addition to considering the environmental impact from losing open space in downtown, the City must study whether this displacement could degrade other recreational facilities in the area. See CEQA Guidelines, Appendix G, Section XVI(a).

Second, an exemption is inapplicable "when the cumulative impact of successive projects of the same type in the same place, over time is significant." CEQA Guidelines § 15300.2(b). Here, as discussed above, the Project could create potentially-significant noise, traffic, and air quality impacts. These impacts will only worsen with construction of the 9,324 square-foot Community Foundation building next door, which will bring further traffic, noise, and air quality impacts into the downtown area.

In sum, the Planning Commission should consider these foreseeable environmental impacts that trigger "exceptions to the exemption" and require additional environmental review. Because the Project does not qualify for a categorical exemption, and because it will have numerous potentially significant effects on the environment, the Project warrants full CEQA review. The Planning Commission should direct staff to prepare an Initial Study for the Project.

C. The City's Municipal Code Also Requires that the Project Undergo Environmental Review.

HMC section 16.04.050 requires an applicant submit an environmental analysis before the Planning Commission can consider approving a tentative map:

No parcel or tentative map filed pursuant to the provisions of this title shall be approved until an environmental impact analysis is prepared, processed and considered in accordance with the provisions of law.

Here, there is no evidence that the applicant has submitted *any* environmental analysis of the Project. Instead, the draft tentative map resolution appears to rely on the incorrect assertion that the Project is exempt from CEQA review to suggest that the Project does not require an environmental analysis. *See* Draft Planning Commission Resolution No. PC 2019- (Tentative Map) at 2-3. But regardless of whether the Project could qualify for a CEQA exemption, the Municipal Code still requires the City to consider an environmental impact analysis of the Project before it can approve the

tentative map application. Until such analysis is prepared and presented to the Planning Commission and the public, the Project cannot go forward.

III. The Project Should Not Proceed Without Paying Its Full Share of Development Impact Fees.

In addition to approving a project that violates the City's zoning regulations and improperly circumvents CEQA review, the City has proposed also to exempt the Project from a significant portion of the development impact fees that would normally apply to such a Project. City staff has stated that the 8,846 square foot commercial portion of the Project would be entirely exempt from paying impact fees. City Council Agenda, February 19, 2019 at 22, available at

<http://hollisterca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1027&Inline=True>.

The City has attempted to justify this exemption by claiming that commercial buildings previously occupied the site (Staff Report at 3), but the majority of these buildings were demolished in 1992 following damage from the Loma Prieta earthquake and the remaining buildings were demolished following the City's acquisition of the 400 Block.

There is no evidence that these long-ago demolished buildings paid any fees to the City that could somehow mitigate the Project's future impacts to public facilities and services. By waiving development impact fees for the Project's commercial space, including traffic impact fees, sewer collections fees, and police and fire impact fees, the City would allow the Project to proceed without paying its fair share to maintain the public facilities and services that it will use.

IV. Conclusion

The City cannot lawfully approve the Project as proposed. It must be redesigned to comply with the City of Hollister's land use regulations. Even if redesigned, the Project will cause foreseeable environmental impacts in downtown Hollister that the City must evaluate. The City cannot rely on a CEQA exemption to approve development of the 400 Block.

We also note that even if these legal flaws are corrected, the City retains the power to deny the requested permits. Nothing in the Disposition and Development Agreement ("DDA") requires the City to issue any particular permit. In fact, the DDA expressly retains the City's right to condition or deny permits for the Project. *See* DDA §§ 3.6,

11.15²; *see also Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 182 (agencies cannot lawfully surrender their police powers through a contract). If the developer ultimately comes up with a revised project that is acceptable to the community, the City should also require the developer to pay the full impact fees that would normally apply to commercial spaces in downtown Hollister.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Robert "Perl" Perlmutter



Edward T. Schexnayder

cc email: M. Abraham Prado
Eva Kelly
Ambur Cameron

Attachment: Exhibit A, May 9, 2014 City Council Staff Report at 2

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² Under DDA section 3.6 “[e]ach Developer further acknowledges that the City Council retains, to maximum extent permitted under applicable law, its full discretion under CEQA and applicable planning and zoning laws to . . . take such [] actions to approve or not approve the proposed Development as determined by the City Council.” Section 11.15 similarly provides that “[e]ach Developer acknowledges that nothing in this Agreement . . . shall limit, waive, or otherwise impair the authority and discretion of: (i) the City Council's discretion in connection with CEQA; (ii) the City's Planning Department, in connection with the review and approval of . . . any use, or proposed use, of a Site, (iii) the City's issuance of building permit(s), or (iv) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.”

EXHIBIT

A



**STAFF REPORT
CITY COUNCIL AGENDA**

DATE: May 9, 2014
STUDY SESSION DATE: N/A

AGENDA ITEM: Successor Agency *B2, #11*
MEETING DATE: April 21, 2014

- **TITLE OF ITEM:** A Resolution as the Successor Agency to the former City of Hollister Redevelopment Agency requesting the Oversight Board of the former Hollister Redevelopment Agency to approve an amendment to the Long Range Property Management Plan to allow the transfer of the 400 Block of San Benito Street at the southwest corner of Fourth and San Benito Street for governmental use purposes.
- **BRIEF DESCRIPTION:** The City Council will receive a report and consider a resolution requesting the Oversight Board to approve an amendment to the Long Range Management Property Plan to transfer the 400 Block of San Benito Street property for governmental use purposes and authorizing the Executive Office to execute grant deeds after final approval.
- **STAFF RECOMMENDATION:** Staff recommends the City Council receive the report and adopt Resolution No. 2014- 09 SA Resolution of the City Council of the City of Hollister, Acting in its Capacity as the Successor Agency for the City of Hollister Redevelopment Agency (RDA), Requesting an Amendment to the Long Range Property Management Plan to Allow the Transfer of the 400 Block of San Benito Street at the Southwest Corner of San Benito and Fourth Street at the Southwest Corner of San Benito and Fourth Streets (APNS 054-011-016, 054-011-020, and 043-011-036) for Governmental Use as a Plaza.

DEPARTMENT SUMMARY: The City Council approved a supplemental appropriation on April 21, 2014 of \$250,800 for the use of funds from economic development reserves for the purchase of the 400 Block properties at the southwest corner of Fourth and San Benito Street. Staff is now recommending that that the Successor Agency request approval of an amendment to the approved Long Range Property Management Plan (LRPM) to allow the transfer of the property for government use purposes as a plaza. If the resolution is approved, staff will place a request to amend the LRPMP on the June 26, 2014 Oversight Board agenda. The Department of Finance could request a 60 day review of the action. If there is no objection by the Oversight Board and Department of Finance, the property could be transferred in September. There would be no cost for the transfer. The \$250,800 appropriated for the purchase would then be available for other economic development purposes. If the City elected to sell the property in the future, it would be necessary to amend the LRPMP to allow the disposition of the property for redevelopment purposes. The proceeds of the sale would then be distributed to taxing entities according to requirements in the Dissolution Act in effect at the time of the sale.

ATTACHMENTS: Resolution
FINANCIAL IMPACT: None
CEQA: Exempt
DEPARTMENT: Development Services Department, Successor Agency
CONTACT PERSON: Mary M. Paxton
DEPARTMENT HEAD: William B. Avera
PHONE NUMBER: (831) 636-4316

THIS REPORT WAS REVIEWED BY THE CITY MANAGER WHO CONCURS WITH THE STAFF RECOMMENDATION:


William B. Avera, Executive Officer

RESOLUTION NO. 2014-__ SA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HOLLISTER, ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY FOR THE CITY OF HOLLISTER REDEVELOPMENT AGENCY (RDA), REQUESTING AN AMENDMENT TO THE LONG RANGE PROPERTY MANAGEMENT PLAN TO ALLOW THE TRANSFER OF THE 400 BLOCK OF SAN BENITO STREET AT THE SOUTHWEST CORNER OF SAN BENITO AND FOURTH STREETS (APNS 054-011-016, 054-011-030 and 054-011-036) FOR GOVERNMENTAL USE AS A PLAZA

WHEREAS, on February 1, 2012, pursuant to AB x1 26 (the "Dissolution Act"), the Hollister Redevelopment Agency (the "Dissolved RDA") was dissolved, along with all redevelopment agencies in the State of California, and all assets and obligations of the Dissolved RDA were transferred by operation of law to the Successor Agency; and

WHEREAS, on June 27, 2012 Assembly Bill 1484 amended the Dissolution Act and added requirements in Health and Safety Code Section 34191.5 that requires the Successor Agency to prepare a Long Range Property Management Plan for the disposition of Successor Agency property within six months of the issuance of the Finding of Completion for the Due Diligence Review; and

WHEREAS, the Department of Finance issued a Finding of Completion on May 29, 2013 for the City of Hollister Successor Due Diligence Review of Housing and Other Funds; and

WHEREAS, the Successor Agency prepared a Long Range Property Management Plan in compliance with the provisions of Health and Safety Code Section 34191.5 and the guidelines posted on the Department of Finance web page that was approved by the Successor Agency on August 19, 2013, and the Oversight Board on October 3, 2013; and

WHEREAS, the plan was submitted to the Department of Finance (DOF) for review and the DOF issued a letter on February 21, 2014 approving long range property management plan; and

WHEREAS, several properties on the 400 Block Grassy Lot on San Benito Street were acquired for redevelopment purposes after catastrophic damage to unreinforced masonry buildings from the 1989 Loma Prieta Earthquake with the intent to redevelop the property for a catalyst project; and

WHEREAS, over time the 400 Block of San Benito Street became an informal plaza used for staging events such as Walk A Mile in her shoes, street festivals, Movies Under the Stars, and the Farmer's Market; and

WHEREAS, the City of Hollister has allowed use of the property at no cost and the City Council adopted Resolution Nos. 2001-76 and 2010-24 establishing policies for use of the 400 Block of San Benito Street for non-profits; and

WHEREAS, Highway 25 was transferred from San Benito Street in 2014 to a completed bypass after over thirty year of efforts that local funding assistance with one of the first sales tax measures in the state for transportation improvements and the City of Hollister now has local control of San Benito Street; and

WHEREAS, a 2007 vision document called the Hollister Downtown Strategy Plan identified the 400 Block of San Benito lot as a plaza and the section of San Benito Street between Fourth Street and Fifth Street as a convertible street for special events; and

WHEREAS, the City of Hollister desires to continue use of the 400 Block of San Benito as a plaza for special events and a public space in the heart of downtown Hollister for the foreseeable future;

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Hollister acting in its capacity as the Successor Agency of the Former Hollister Redevelopment Agency (RDA) directs staff to submit an amendment to the approved Long Range Property Management Plan to the Oversight Board and Department of Finance to allow the transfer of the 400 Block property for governmental use purposes as a plaza; and

BE IT FURTHER RESOLVED that the City Council of the City of Hollister acting in its capacity as the Successor Agency of the Former Hollister RDA directs staff to submit an amendment to the approved Long Range Property Management Plan that stipulates that in the event the City desires to sell the 400 Block Block of San Benito Street for redevelopment purposes, that the Successor Agency must dispose of the property and distribute the proceeds from the sales of the property in accordance with the provisions of the Dissolution Act in effect at the time of the sale; and

BE IT FURTHER RESOLVED that the City Council of the City of Hollister acting in its capacity as the Successor Agency of the Former Hollister RDA hereby authorizes the Executive Officer to execute documents to record grant deeds for the transfer of the properties from the Successor Agency to the City of Hollister upon approval of the proposed amendment to the Long Range Property Management Plan by the Oversight Board and Department of Finance.

PASSED AND ADOPTED at the regular meeting held on this 19th day of May 2014, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

Ignacio Velazquez, Chairman

ATTEST:

Geri Johnson, City Clerk