



TO: Planning Commission **DATE:** February 9, 2016
FROM: Vin Smith, Director of Planning and Building *NS*
SUBJECT: Agenda Item No. 2: Staff Response to Letter from Edward Yates

Planning Department Staff and the City Attorney have reviewed and evaluated the comments provided by Mr. Yates in his latest letter addressing, in part, Agenda Item No. 2, the continued hearing on proposed Multifamily, Mixed Use and Downtown Residential Development Standards and Design Guidelines. Mr. Yates' comments also address items that have been heard and recommended for approval by the Planning Commission on January 26, 2016.

General Staff Response

Generally, Mr. Yates expresses concerns that there will be environmental impacts that will occur as a result of adopting the new Zoning Regulations, New Design Review Guidelines and amending the General Plan Land Use Element to change currently designated Multifamily Residential properties to Downtown Residential. Staff, and the analysis in the Initial Study, disagrees. It is important to remember that the proposed Multifamily, Mixed Use and Downtown Residential Zoning Regulations and Design Guidelines are new; there are currently very few development regulations and there are no Design Guidelines addressing Multifamily or Mixed Use projects. Therefore, the proposed new regulations and new design guidelines add standards, requirements and processes that either currently do not exist, or fall short of the community's desire for robust and complete standards, requirements and inclusive processes. Furthermore, also noted in the January 26th memo, the change to the Land Use Map and Element reflect the current unique circumstances of the Downtown Residential neighborhood; in no way does the proposed General Plan Land Use and Map amendment provide any new or significantly altered development opportunities resulting in potentially significant impacts.

I have again attached the January 26th memorandum from Greg Stepanicich, City Attorney, as I believe it still directly addresses Mr. Yates' concerns with the Initial Study/Negative Declaration prepared for Agenda Item No. 2. In summary, Mr. Stepanicich concludes that the Initial Study/Negative Declaration provided in the Staff Report is accurate and appropriately concludes that no adverse environmental impacts will occur as a result of this project.

The following provides responses to Mr. Yates comments pertaining to the item on the February 9th agenda.

Segmentation

Mr. Yates states that the three very separate projects: Land Use change for Downtown Residential (heard by the Commission on January 26th), Mobility Element change (heard by the Commission on January 26th), and Zoning Ordinance changes on tonight's Agenda Item No. 2, should all be considered together under one CEQA document. He cites a court case in support of this statement which, when

examined closely, does not at all relate to the proposed project nor the methodologies followed in preparation of the Negative Declarations for the three mentioned projects. Staff is comfortable that the initial study prepared for the item on the agenda tonight is adequate and appropriately examines all potentially significant impacts that could result for this project and that the proposed Negative Declaration can be acted upon by the Planning Commission.

Cumulative Impacts

Mr. Yates states that "...the proposed Land Use Amendments and the rezoning will both potentially increase development and population, thus leading to potential cumulative impacts...". Mr. Yates speculates that this could happen but provides no examples of how this could happen; nor does Mr. Yates point to any specific proposed changes that, when considered with all of the development requirements in these land use designations/zoning districts, will lead to potentially significant impacts.

Project Description: Staff believes the project description is appropriate and references to applicable documents for additional detail are provided.

The City Cannot Skip Impact Analysis: The reference to the previous and current Housing Element provides context for the reader, providing context that changes to the Zoning Ordinance related to Multifamily and Mixed Use properties were expected and anticipated through the programs in the adopted General Plan. The details of the proposed changes have been considered throughout the Initial Study.

Claim 1: Mr. Yates raises no new issues not previously addressed in the City Attorney's memorandum.

Claim 2: Mr. Yates comments about relaxing the FAR requirements are confusing as there is currently no FAR limitation for Multifamily properties. The new FAR limitations will be more restrictive than current zoning regulations allow. Adjustments to setbacks are proposed for the Downtown Residential District to reflect the current neighborhood development pattern and result in more properties conforming with development standards. Staff sees no new information presented in Mr. Yates statements not previously covered by responses provided on January 26th.

Claim 3: Mr. Yates states that the Initial Study/Negative Declaration inaccurately concludes that there will be no significant impacts within the Land Use and Planning categories (he notes p.11 of the Initial Study). To be clear, in the Initial Study attached as part of the staff report, on p. 11 Staff concluded that the proposed new Zoning Regulations and Design Guidelines will not:

- A. Physically divide an established community.
- B. Conflict with any applicable land use plan, policy or regulations of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigation an environmental effect.
- C. Conflict with any applicable habitat conservation plan or natural community conservation plan.

Mr. Yates has provided no new evidence supporting an alternative conclusion than reached in the Negative Declaration, therefore Staff believes the Negative Declaration is appropriate and can be acted upon.

Claim 4: All information related to the proposed changes has been provided to the Planning Commission and the Community, and extensive efforts have been undertaken to ensure all parties are properly represented throughout the preparation of the regulations and guidelines. As I stated in my January 26th memo,

In several sections of the Initial Study, Staff references that future development applications will require specific analysis under the requirements of CEQA (see above discussion about “projects” as defined by CEQA). Said differently, if a proposal is a “project” as defined by CEQA, environmental review is required; no project can be approved without a finding of compliance with CEQA. CEQA analysis may include determining that a Categorical Exemption applies to the project, preparation of an Initial Study and either recommending a Negative Declaration or an Environmental Impact Report.

Impact Specific Inadequacies in the ZO IS Analysis

Mr. Yates lists concerns with Air Quality, Biological Resources, Hydrology and Water Quality, Land Use, Public Services, Public Infrastructure, Recreation and Transportation. He states several times that “..the potential impacts of new and/or relaxed development standards” will necessarily result in increased development; however, Mr. Yates provides no actual evidence that would help one conclude that this could be the case. As I state above, the proposed new regulations, processes and design guidelines will establish more vigorous requirements of any future development application than currently exist.

Staff Conclusion

As stated in the attached City Attorney’s memo, and my previous memo of January 26th, CEQA Guidelines Section 15384 requires that when evaluating potential impacts of a project, Substantial Evidence must support the conclusion that a potential significant impact could result from the project. As stated by this section “Substantial Evidence means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached”. The test of whether a fair argument can be made that the project may have a significant effect on the environment is done by evaluating all information before the lead agency (City). Section 15384 goes on to state that “...argument, speculation, unsubstantiated opinion or narrative....does not constitute substantial evidence”. Simply stating that more analysis is necessary, without any specific reasoning or justification for the analysis based on the project as a whole, does not satisfy the “substantial evidence” requirement of CEQA.

Based on the project as described in the Staff Report and the Initial Study/Negative Declaration, and considering the comments received by Mr. Yates, Staff sees no new information or Substantial Evidence, that would alter the conclusions reached in the Initial Study/Negative Declaration.

enc: Memorandum from Greg Stepanicich, City Attorney, dated January 26, 2016

Memorandum from Vin Smith, Director of Planning & Building, date January 26, 2016



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MEMORANDUM

TO: Vin Smith, Director of Planning and Building
FROM: Greg Stepanicich, City Attorney
DATE: January 26, 2016
SUBJECT: Letter from Edward Yates

You have requested that I review the letter from Edward Yates asserting that the two Initial Studies and proposed Negative Declarations prepared for the General Plan amendments to be considered at tonight's Planning Commission meeting and the Multi-Family Residential and Mixed Use Design Guidelines and Zoning Ordinance amendments to be considered at the February 6 Commission meeting fail to comply with the requirements of the California Environmental Quality Act ("CEQA").

I agree with Mr. Yates that CEQA requires the City to examine any potentially significant environmental impacts caused by proposed General Plan or Zoning Ordinance amendments. However, I disagree that the Initial Studies prepared by staff do not adequately explain the reasons why these amendments will not have a significant effect on the environment. Mr. Yates states that the amendments "provide for possibilities of increase in FAR and decreases in setbacks, increases in both density and impermeable surfaces are certainly possible, if not probable." The letter does not specify how the changes being proposed to the General Plan or Zoning Ordinance will create these impacts. In order for a Negative Declaration to be insufficient under CEQA, there must be substantial evidence in the record that the proposed project may cause one or more potentially significant environment effects. Speculation as to possible impacts of a project are not considered substantial evidence under CEQA. Further, the approving body is not required to prove that there will be no potentially environmental effects. Instead in the absence of any substantial evidence in the record of any significant environmental effects, a Negative Declaration may be adopted.

The proposed General Plan amendments to be considered at tonight's meeting create two new land use designations that are intended to more effectively preserve the established mix of housing and development in the downtown area and permit existing single family uses to remain. These amendments were prepared in response to community concerns that the existing residential land use designations in the downtown area could result in excessive density and eliminate single family residences. The proposed land use designation changes will likely result in less, not more residential density in the downtown area. At this time, there does not appear to

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Vin Smith
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be any substantial evidence that the proposed land use designation amendments will result in significant environmental impacts.

The City presently does not have development design guidelines for multi-family residential or mixed-use developments. The proposed multi-family residential and mixed-use design guidelines to be considered at the next Planning Commission meeting will provide the Commission with greater regulatory authority over the design quality of multi-family and mixed-use residential development. This expanded regulatory authority does not create any potentially significant environment effects but provides the City with greater authority to avoid adverse environmental impacts from new development. The Zoning Ordinance amendments impose new floor area requirements for multi-family residential development that presently do not exist and modify setback and parking requirements. The proposed amendments do not change the permitted density of residential development. The requirement for a conditional use permit for mixed use development is replaced with more specific design guidelines regulating mixed-use development with residential uses above the ground floor. Overall, it appears that the new design guidelines and modified development regulations will provide the City with greater land use and environmental regulatory authority over multi-family and mixed-use developments than exists at the present time.



TO: Planning Commission **DATE:** January 26, 2016
FROM: Vin Smith, Director of Planning and Building
SUBJECT: Agenda Item No. 2: Staff Response to Letter from Edward Yates

Planning Department Staff and the City Attorney have reviewed and evaluated the comments provided by Mr. Yates in his undated letter addressing, in part, Agenda Item No. 2, Amendment to the Land Use Element and Land Use Plan. Mr. Yates' comments also address an item to be considered on the Planning Commission's February 9, 2016 agenda. The attached memorandum from Greg Stepanicich, City Attorney, concludes that the Initial Study/Negative Declaration provided in the Staff Report is accurate and appropriately concludes that no adverse environmental impacts will occur as a result of this project.

The following provides responses to Mr. Yates comments pertaining to the item on the January 26th agenda. Staff will provide additional responses related to the action scheduled for February 9th prior to the hearing on February 9th.

1. In his letter, Mr. Yates states that the Initial Study/Negative Declaration (Neg-Dec) is insufficient and does not satisfy CEQA. He references Section 15378(a)(1) which is the definition of "Project" provided by CEQA. Specifically, this section provides:

(a) "Project" means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to...enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof..."

Staff Response: Staff agrees that the proposed General Plan Amendments qualify as a project under CEQA. The Neg-Dec was prepared with this understanding. The whole of the action described and discussed in the Neg-Dec is clear: an Amendment to the General Plan (text and map) to create the Downtown Residential Land Use Designation (see staff report and attachments for more details).

2. Mr. Yates asserts that that the new Land Use Designation will "...provide for possibilities of increase in FAR and decreases in setbacks, increases in both density and impermeable surfaces are certainly possible, if not probable". He further states "...The Initial Studies, however, do not include impact assessment of land use changes on circulation and transportation (including parking) due to more potential traffic, increase in polluted runoff to waterbodies, including the San Francisco Bay, and increase in flooding due to a potential increases in impermeable surfaces and changes to existing building footprints in several areas within FEMA identified floodplains".

Staff Response: In my conversations with Mr. Yates, I explained that the proposal Land Use Change to create the Downtown Residential General Plan Designation was a mutually agreed upon solution to recognize this unique residential neighborhood around the downtown commercial core. The City Council, Planning Commission and neighborhood groups support the General Plan Amendments, especially the adjustments in minimum density and recognition that Single Family Residential Units are permitted within the new Land Use Designation. The Initial Study assesses all of the areas listed in Mr. Yates letter (and all of the required sections of an Initial Study) and concludes that: the change in name, the reduction in minimum density and the absence of any increase to the density currently authorized by the existing Land Use densities do not create potentially significant adverse environmental impacts. Additionally, the lack of additional development potential resulting from the proposed Land Use changes results in no new adverse impacts to circulation, transportation, traffic, increased runoff or increased impacts to flood zones (as listed in Mr. Yates' letter).

3. In several sections of the Initial Study, Staff references that future development applications will require specific analysis under the requirements of CEQA (see above discussion about "projects" as defined by CEQA). Said differently, if a proposal is a "project" as defined by CEQA, environmental review is required; no project can be approved without a finding of compliance with CEQA. CEQA analysis may include determining that a Categorical Exemption applies to the project, preparation of an Initial Study and either recommending a Negative Declaration or an Environmental Impact Report.

As stated in the attached City Attorney's memo, I add that CEQA Guidelines Section 15384 requires that when evaluating potential impacts of a project, Substantial Evidence must support the conclusion that a potential significant impact could result from the project. As stated by this section "Substantial Evidence means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached". The test of whether a fair argument can be made that the project may have a significant effect on the environment is done by evaluating all information before the lead agency (City). Section 15384 goes on to state that "...argument, speculation, unsubstantiated opinion or narrative....does not constitute substantial evidence". Simply stating that more analysis is necessary, without any specific reasoning or justification for the analysis based on the project as a whole, does not satisfy the "substantial evidence" requirement of CEQA.

Based on the project as described in the Staff Report and the Initial Study/Negative Declaration, and considering the comments received by Mr. Yates, Staff sees no new information or Substantial Evidence, that would alter the conclusions reached in the Initial Study/Negative Declaration.

enc: Memorandum from Greg Stepanicich, City Attorney, dated January 26, 2016