


MEMORANDUM

DATE: January 13, 2012

TO: Honorable Mayor and City Council
City of St. Helena

FROM: Steve Mattas 
Special Land Use Counsel

RE: Analysis of Hunter Project Issues

Introduction/Background:

In September 2010, the City of St. Helena ("City") received a tentative map application for an 87 unit residential development project (the "Hunter Project") proposed for a parcel of land referred to as the "Hunter Property" in the City's 2009 adopted Housing Element. The Hunter Project is located adjacent to the recently completed St. Helena Comprehensive Flood Control Project ("Flood Control Project"). On March 28, 2011, City staff accepted the tentative subdivision map application for the Hunter Project as complete.

At the June 28, 2011 City Council meeting under Public Forum, concerns were expressed that development behind the levee, including development of the Hunter Project, would put the City at legal risk in the event of catastrophic flooding landside of the levee. Thereafter, the City Council requested legal advice to assess any legal constraints that apply to the City's consideration of the Hunter Project under the Housing Accountability Act, as well as to address the potential liability concerns expressed regarding potential impacts on the Hunter Property from flooding.

Legal Constraints that Apply to the City's Consideration of the Hunter Project

The Housing Accountability Act ("HAA") places constraints on the ability of cities to deny applications for "housing development projects" in order to encourage residential development, which the Legislature has declared to be a vital goal of statewide concern. (Gov. Code § 65589.5.) "Housing development projects" are defined as, among other things, uses consisting of "residential units only" and are not limited to affordable housing projects. (Gov. Code § 65589.5(h)(2)(a); see also Honchariw v. County of Stanislaus, 2011, 200 Cal.App.4th 1066.) Assuming the proposed residential development is consistent with applicable General Plan and zoning requirements, the HAA prohibits cities from rejecting or making infeasible housing development unless certain fact-specific findings are made. Because the Hunter Project consists of residential units, the HAA applies to the City's consideration of the Project.

Legal constraints on the City's processing of the Hunter Project are set forth in two subsections of the HAA – subsections (d) and (j). Subsection (j) requires that denial of a housing development project which complies with the applicable general plan and zoning standards "in effect at the time that the housing

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project's application is determined to be complete" may only be denied if two specific findings are made: (1) the Project has a "specific adverse impact on public health or safety" and (2) there is no feasible method to mitigate or avoid the adverse impact other than denial of the project. There must be substantial evidence in the record to support the findings.

As noted above, the HAA requires that that the applicable general plan and zoning standards are those "in effect at the time the housing application is determined to be complete." This is consistent with the interpretation of similar language in section 66474.2 of the Subdivision Map Act, which also applies to the City's processing of the Hunter Project. Courts have interpreted this provision as meaning that the standards applied to the consideration of a tentative map are those in effect at the time the application is complete. (Golden State Homebuilders Assn. v. City of Modesto (1994) 26 Cal.App.4th 601; Kaufman and Broad v. City of Modesto (1994) 25 Cal.App.4th 1577.)

Because the application for the Hunter Project has been determined to be complete and was accepted for filing in March 2011, the City is required under both the Act (Gov. Code § 65589.5) and the Subdivision Map Act (specifically Gov. Code § 66474.2) to apply the ordinances, policies and standards "in effect at the time the housing project application is determined to be complete."

Subsection (d) of the HAA, which places additional constraints on a city's ability to disapprove affordable housing projects, may also apply to the Hunter Project because the Hunter Project proposes 25 affordable/workforce units that would be deed restricted for 30 years (plus 11 additional affordable second units that would also be income-restricted). Pursuant to subsection (d) an affordable housing project may only be denied if: (1) the City has met its RHNA for the Housing Element planning period; (2) there is a specific adverse impact on public health or safety that cannot be feasibly mitigated; (3) denial is required to comply with a specific state or federal law; (4) the project is on land zoned for agriculture that is surrounded on 2 sides by land being used for agriculture or there is inadequate water or wastewater to serve the Project; or (5) the project is inconsistent with the General Plan and zoning in effect at time the application was deemed complete.

With respect to enforcement of the foregoing provisions, the project applicant or any person who would be eligible for residency is authorized to bring an action to enforce the HAA under Code of Civil Procedure ("CCP") section 1094.5. (§ 65589.5(k).) Under CCP section 1094.5, a city's decision to disapprove a housing development project can be set aside if the city is found to have violated any of the HAA's procedural requirements or if the its findings are not supported by substantial evidence. If such an action is successful, reasonable attorney's fees may be awarded. The HAA also contains specific streamlining provisions for actions that involve projects which include affordable housing components. If the court finds that a city failed to make findings or made inadequate findings in disapproving such a project, then the court is required to order the city to take action on the development within 60 days of the court's order. If within 60 days the city has not complied with the court's order, then the HAA authorizes the court to order the agency to approve the project. (§ 65589.5(k).) Additionally, if the city fails to take action within 60 days and the court finds that the city acted in bad faith in disapproving a project that includes affordable housing, fines may be imposed against the city as well. (§ 65589.5(k).)

Although the application for the Hunter Project has been determined to be complete, additional review of the project, including environmental review under the California Environmental Quality Act ("CEQA"), will have to occur before the City considers whether to approve the project. An environmental impact report ("EIR") will be prepared, and the public and other interested agencies will have the opportunity to review the EIR

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and provide comments. The EIR will determine whether the Hunter Project will have any specific adverse environmental impacts that could be potentially significant, and if so, whether feasible mitigation measures could be imposed to mitigate those impacts to less than significant levels. Alternatives to the Hunter Project will also be analyzed. In the event the Hunter Project is found to result in any significant environmental impacts that cannot be feasibly mitigated to less than significant levels, the City will have to determine whether to adopt a statement of overriding considerations prior to taking any action on the Hunter Project.

Potential Impacts and Liability from Flooding

As noted above, some members of the public have expressed concerns about the potential risk of flood damage to the Hunter Property. We understand that the Flood Control Project involves a 1,900 foot long levee and a 2,000 foot long flood wall, and was designed and constructed to provide flood protection for a 200-year flood event to certain areas adjacent to the Napa River. The Flood Control Project was also intended to be followed with an adjustment to the current floodplain boundary map in order to change the floodplain boundaries and remove, among other properties, the Hunter Property. The City requested and obtained a conditional letter of map revision from FEMA, which FEMA provided after it conducted extensive review of the project plans.

By late 2010, construction of the Flood Control Project was completed and the Flood Project Manager, Project Resident Engineer and the City Engineer determined that the construction was in substantial conformance with approved project plans and specifications. Since completion of the Flood Control Project, the City has requested that the current floodplain map be revised. On August 16, 2011, Napa County's Floodplain Administrator submitted a letter to the City indicating that the County reviewed a flood study conducted after the Flood Control Project was constructed and agreed with the requested floodplain map revisions. A final letter of map revision from FEMA is expected to be forthcoming soon.

As analyzed in the St. Helena Comprehensive Flood Control Project Environmental Impact Report, once the floodplain boundaries are modified, the historically flood-prone areas which will be removed from the floodplain map are anticipated to be protected in the event of a 200-year flood event. Under California law, for property that was historically subject to flooding, a public entity may only be found liable if a plaintiff can prove that the entity's design, construction or maintenance of a flood control project is shown to have posed an unreasonable risk of harm to the plaintiffs, and that such design, construction or maintenance was a substantial cause of damages incurred.

However, potential flood risks from greater than 200-year events should be analyzed as part of the City's environmental impact report for the Hunter Project. The EIR should separately analyze potential impacts from flooding on the Hunter Project, including any potential impacts that may exist independently of the Flood Control Project or are outside of the Flood Control Project's intended purposes. In the event that such flood risks are determined to be potentially significant, as noted above CEQA requires consideration of feasible mitigation measures that would reduce such impacts to a level of insignificance. If no feasible mitigation measures exist, the City will have to determine whether to adopt a statement of overriding considerations prior to taking any action on the Hunter Project.

c: Gary Broad, City Manager
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