



AGENDA REPORT

Meeting Date: September 20, 2016

Item Number: E-1

To: Honorable Mayor & City Council

From: Ryan Gohlich, AICP, Assistant Director of Community Development / City Planner

Subject: A VESTING TENTATIVE TRACT MAP, DEVELOPMENT PLAN REVIEW, AND DENSITY BONUS PERMIT TO ALLOW THE CONSTRUCTION OF A 4-STORY, 8-UNIT RESIDENTIAL BUILDING INCLUSIVE OF A VERY LOW-INCOME AFFORDABLE HOUSING UNIT ON THE PROPERTY LOCATED AT 250 NORTH CRESCENT DRIVE.

Attachments:

1. Planning Commission Staff Report with Attachments (March 10, 2016)
2. Class 32 Categorical Exemption Report
3. Feasibility Analysis by John Kaliski Architects
4. Financial Analysis by Keyser Marston Associates
5. 45-Foot Shade and Shadow Study by Applicant Team
6. 33-Foot Shade and Shadow Study by Applicant Team
7. Required Findings (Vesting Tentative Tract Map and Development Plan Review (DPR))
8. State Legislature's Findings Related to Housing and Housing Elements
9. Resolution
10. Public Notice
11. Public Comments
12. Architectural Plans (Provided as a Separate Attachment)

RECOMMENDATION

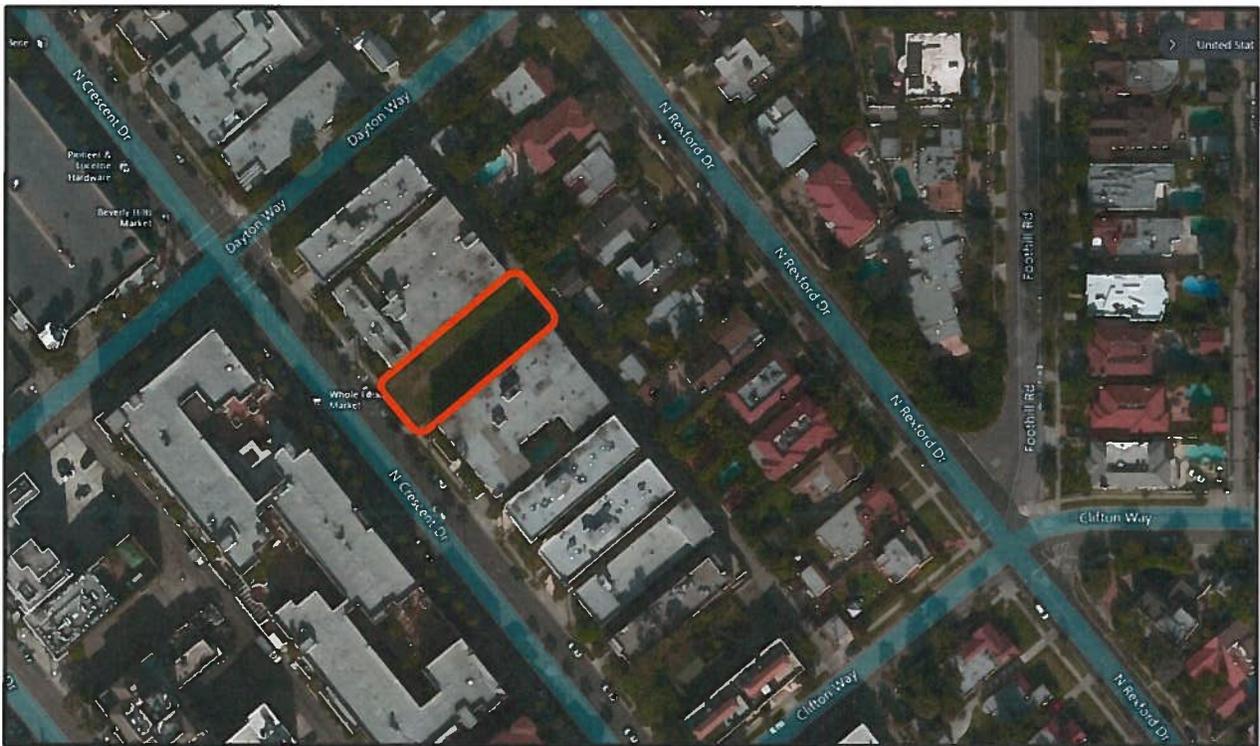
Staff recommends that the City Council hold a public hearing on the proposed project, consider the additional information provided in response to City Council requests at the May 3, 2016 meeting, staff report, and public testimony, and adopt a resolution finding the project exempt from the California Environmental Quality Act (CEQA) and conditionally approving a Vesting

Tentative Tract Map, Development Plan Review, and Density Bonus Permit to allow the construction of an 8-unit, 4-story residential building inclusive of a very low-income unit at 250 North Crescent Drive.

BACKGROUND

PROPERTY AND NEIGHBORHOOD SETTING

The project site is located on the east side of North Crescent Drive between Dayton and Clifton Ways in the Central Area of the City. The project site is immediately bordered by a three-story condominium building with a fourth-story penthouse to the north, a three-story apartment building to the south, single-family uses across a 20'-alley to the east, and a mixed use development to the west, across Crescent Drive. Development on Crescent Drive is characterized by apartment and condominium buildings with heights that range between two to



Project Site Looking North

four stories.

PROJECT DESCRIPTION

The proposed project involves construction of a new 4-story, 45-foot tall condominium building containing 8 residential units, 14 subterranean parking spaces, and one ground floor parking space.

The proposed building contains approximately 12,400-square-feet of floor area on a 7,556 square-foot parcel. The project includes one level of subterranean parking, four levels of residential units, and a rooftop open space common area. The project includes seven two-bedroom units and a single one-bedroom unit designated for "very low income" housing. While the zoning code allows for four residential units plus a 600-square-foot bonus efficiency unit,

General Plan density standards allow for 7 units to be built on the site. Applying the State Density Bonus for a very low income unit to the zoning code density would allow for 7 units to be built at the site as opposed to 10 units under General Plan density. State Density Bonus standards require that whenever there is a conflict between the densities set by the zoning code and the General Plan, General Plan densities shall prevail (Government Code Section 65915(o)(2)). A new driveway connecting to the existing alley at the rear of the site will provide access to on-site underground parking. A second driveway, also connecting to the existing alley at the rear of the site, will provide access to a single ground floor parking space enclosed at the rear of the building. Pedestrians will have direct access to the building from Crescent Drive through entrances located on the sides of the new building.

Required Entitlements. As proposed, the project requires the following entitlements:

- **Vesting Tentative Tract Map:** Required to allow the subdivision of air space and creation of common areas, which enables the creation of individual condominium units that can be sold separately.
- **Development Plan Review:** Required for general discretionary review of the proposed condominium and for a project constructed pursuant to a density bonus permit.
- **Density Bonus Permit:** Required in order to construct a project pursuant to the State Density Bonus program, which allows for increased density, development standard waivers, and development incentives when affordable housing units are contained within a development project.

GENERAL PLAN¹ POLICIES

The General Plan includes numerous goals and policies intended to help guide development in the City. Some policies relevant to the City Council's review of the project include:

- **Policy LU 2.1 City Places: Neighborhoods, Districts, and Corridors.** Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the City's distinctive residential neighborhoods, business districts, corridors, and open spaces.
- **Policy LU 2.4 Architectural and Site Design.** Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.
- **Policy LU 5.2 Infill and Replacement Housing.** Accommodate new and renovated housing within existing neighborhoods that is consistent with contextual parcel sizes, densities, built form and scale.
- **Policy LU 16.10 Affordable Housing.** Support the development of affordable housing as required by State law.
- **Policy H 2.1 Affordable Housing Incentives.** Offer incentives, including density bonuses, where feasible to offset or reduce the costs of developing affordable housing.

¹ Available online at http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp

Proactively seek out new approaches in the provision of affordable housing.

ENVIRONMENTAL ASSESSMENT

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 *et seq.*), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*), and the environmental regulations of the City. Projects characterized as in-fill development that meet certain criteria are categorically exempt from CEQA pursuant to Section 15332 of the State CEQA Guidelines. The project appears to meet all five of the following criteria set forth in Section 15332 of the State CEQA Guidelines for in-fill development projects:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c) The project site has no value as habitat for endangered, rare, or threatened species.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The site can be adequately served by all required utilities and public services.

Therefore, this project appears to be eligible for exemption from further environmental review under CEQA. The Class 32 Categorical Exemption Report is included as Attachment 2 for reference.

BACKGROUND OF CITY COUNCIL REVIEW

At its meeting on April 5, 2016, the City Council voted to hold a *de novo* hearing for independent review of the Planning Commission's March 10, 2016 decision conditionally approving a Vesting Tentative Tract Map, Development Plan Review (DPR), and Density Bonus Permit to allow construction of the project. At that meeting, the City Council expressed the following concerns:

- The City's discretion over the Density Bonus incentives and waiver;
- Proposed height and feasibility of fitting 8 units in three stories;
- Financial value of proposal;
- Shade and shadow impacts;
- State Density Law and DPR findings; and
- The process by which the project was approved.

At the May 3, 2016 City Council hearing, the City Council set the project's *de novo* hearing for August 16, 2016 and requested additional materials including financial and feasibility analyses, and a shade and shadow study. At the August 16, 2016 Council hearing, staff recommended, and the applicant concurred, to continue the item to the September 20, 2016 City Council agenda.

PUBLIC OUTREACH AND NOTIFICATION

Public notice for the September 20, 2016 City Council hearing was provided on September 9, 2016 in the form of newspaper publication, direct mailing, and on-site posting. The Planning Commission also held a duly noticed public hearing on March 10, 2016, where members of the public provided oral comments on the project. Additionally, prior to the March 10, 2016 Planning Commission meeting, four letters in support of the project were submitted to staff. At the Planning Commission meeting, a petition signed by 35 people in opposition of the project, as well as three additional letters of support were submitted. After the project's Planning Commission approval on March 10, the City Clerk's office received a letter on behalf of the owners of 262 North Crescent Drive, Unit 3E, addressed to the City Council, in opposition of the project. As of the writing of this report, staff has received one letter in support of the project. The letters have been provided in Attachment 11.

ANALYSIS

In reviewing the requested entitlements, the Council may wish to consider the following information as it relates to the project and required findings.

Density Bonus, Waivers, and Incentives. The State of California has identified and acknowledged a need for affordable housing. In order to address this need for affordable housing, the State has adopted various programs and incentives to facilitate and expedite the construction of affordable housing, including the Density Bonus Law (Govt. Code Section 65915). The State Density Bonus Law provides developers with incentives to construct affordable housing, including increased density and relief from certain development standards that might otherwise discourage the development of affordable housing. The City's General Plan and Municipal Code further support the State's goals by including provisions intended to promote affordable housing in Beverly Hills.

The proposed project includes one unit designated for a very low-income household (a household that earns 50% or less of the area median income)², and is therefore proposed to be constructed in accordance with State Density Bonus standards (California Government Code Section 65915). Based on the very low income units proposed as part of the project, the applicant seeks the following density bonus and development incentives:

- **Density Increase:** Density Bonus standards allow for a certain percentage increase in density, which is based on the percentage of "total units" (the maximum number of units allowed under General Plan density standards, without the inclusion of bonus units) that are designated for very low income households. In this case, the number of base units

² Per <http://hcd.ca.gov/housing-policy-development/housing-resource-center/reports/state/inc2k16.pdf> Since the publication of the March 10, 2016 Planning Commission report, 2015 income limits for very low income households in Los Angeles County have been updated. 2016 income limits are set forth as follows:

Number of Persons in Household	1	2	3	4	5	6	7
Maximum Household Income to Qualify as Very Low Income	\$30,400	\$34,750	\$39,100	\$43,400	\$46,900	\$50,350	\$53,850

that could be built under the City's General Plan is seven units³, and the number of very low income units proposed is one. Therefore, 14.3% (one divided by seven) of the base units would be very low income. The Density Bonus standards state that whenever 11% or more of the "total units" are designated for very low income, a 35% increase in density shall be provided (Government Code Section 65915(f)). Further, all density calculations are required to be rounded up to the next whole number. Therefore, a Density Bonus Permit request at the site could potentially allow for up to 10 units. Although entitled to request 10 units, the applicant here seeks only eight units.

- Waiver of Development Standards (Building Height):** Pursuant to State Density Bonus Law, an applicant is entitled to request a waiver or reduction of development standards that would have the effect of physically precluding the construction of a development that accommodates the increased density allowed in exchange for the provision of the affordable housing (Govt. Code Sec. 65915(e)). In this case, the applicant asserts that waiver of the City's development height standards allowing three stories or 33 feet is required to allow for construction of the eight units proposed in the project. The applicant seeks authorization to build a four-story structure that is 45 feet in height.

Pursuant to the City Council's request for additional information regarding the feasibility of providing the eight dwelling units sought by the applicant in a three-story or 33-foot tall structure, the City retained John Kaliski Architects and Keyser Marston Associates (KMA).

In determining the feasibility of physically accommodating eight units in three stories, and with or without the requested concessions, John Kaliski Architects produced the alternatives listed below and compared them against the applicant's proposal. The last alternative (four dwelling units and a bonus efficiency unit) reflects a code-compliant project without the density bonus.

	Applicant Proposal	3 Stories and Density Incentives Granted* (Alternative 1)	3 Stories with Only Façade Modulation Request Granted* (Alternative 2)	3 Stories with Neither Density Incentive Granted* (Alternative 3)	3 Stories, Five Units, Compliance to City's Standards (Base Zoning)⁴
Stories	4 stories	3 stories	3 stories	3 stories	3 stories
Efficiency DUs	N.A.	3 DUs	4 DUs	4 DUs	1 DU
1-BR DUs	1 DU	1 DU	N.A.	N.A.	N.A.
2-BR DUs	7 DUs	4 DUs	4 DUs	4 DUs	4 DUs
Total DUs	8 DUs	8 DUs	8 DUs	8 DUs	5 DUs
DU Floor Area	10,911 SF (11,235 SF ^{**})	8,501 SF (8,739 SF ^{**})	8,420 SF (8,659 SF ^{**})	8,129 SF (8,456 SF ^{**})	~8,000 SF ⁵
Gross Building Area	15,492 SF	11,421 SF	10,976 SF	10,976 SF	~11,040 SF

³ "Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail" (Government Code Section 65915(o)(2)).

⁴ Assumes .25 guest parking spaces per dwelling unit (DU).

⁵ An illustration for this scenario was not included in the scope, however, the consultant has deduced that the units would be larger than the ones proposed and could be configured in a variety of ways.

*With density bonus units provided, units do not require guest parking spaces.

**50% of private open space added to the unit square footage pursuant to BHMC 10-3-2802F.

Parking at Grade	1 space	N.A.	N.A.	N.A.	N.A.
Required Parking (Subterranean)	14 spaces	12 spaces	12 spaces	12 spaces	13 spaces
Additional Parking (Subterranean)	N.A.	2 spaces	2 spaces	2 spaces	2 spaces

John Kaliski Architects Memorandum & Associated Exhibits

As shown in the table above, the consultant found that a project with a mix of eight units can be physically accommodated in a three-story building with one level of parking in each of the three alternatives (with both incentives granted, with only façade modulation request granted, and with no density incentive granted).

KMA then assessed the economic feasibility of the various three-story/33-foot-high scenarios developed by Kaliski and compared the financial benefits associated with the density waiver, concessions, and bonus to the approximate cost of providing a very-low income affordable rental unit in order to ascertain whether the density waiver and concessions are required to provide for affordable housing costs. Specifically, KMA conducted pro forma analyses on the alternatives created by Kaliski (with a height capped at 33'/three stories) and on alternatives based on the applicant's proposal (with the density waiver granted for a height of 45'/four stories).

The results of the financial analysis for the 'Kaliski Development Alternatives' (8 units in 33'/three stories) are shown in the table below:

Kaliski Development Alternatives			
	No Concessions	Façade Modulation	Side Setback & Façade Modulation
Cost of Providing One Very-Low Income Rental Unit	\$500,300	\$500,300	\$500,300
Value of the Density Bonus, and Concessions:	(\$6,700)	\$121,300	\$137,300
Net Surplus / (Cost)	(\$507,000)	(\$379,000)	(\$363,000)

Keyser Marston Associates Memorandum

In each scenario, the cost of providing one very low income rental efficiency unit exceeds the value of the density bonus and concessions. At three stories/33 feet in height and with the density bonus and concessions, the project is not financially feasible despite the ability to physically fit the eight requested units in three stories. Case law suggests that denying requested waivers of development standards that are required to make a project economically feasible is tantamount to precluding construction of a project that meets the criteria of the Density Bonus Law:

If the Project as a whole was not economically feasible, then the below-market-rate housing units would not be built, and the purpose of the Density Bonus Law to

encourage the development of low and moderate income housing would not be achieved (Wollmer v. City of Berkeley, 179 Cal.App.4th 933 (2009)).

Consequently, denial of the waiver for additional height could be in violation of Government Code Section 65915(e)(1) by precluding construction of a project that meets the criteria of the State Density Bonus Law, at the density requested by the applicant. In this case, the applicant has not exercised its right to construct 10 dwelling units, and does not seek further development standard waivers to enable construction of all 10 of the units to which it is entitled.

- **Development Incentives (Setback and Modulation Reductions):** Pursuant to the State Density Bonus statute, development projects where at least 10% of the base units are designated for very low income households are eligible to request two development incentives or concessions⁶ (Government Code Section 65915(d)(2)(B)). The number of incentives to which an applicant is entitled is neither reduced or increased by the applicant's request for waiver of the building height development standard (Govt. Code Sec. 65915 (e)(2)). In this case, 14.3% of the base units are designated for a very low income household, so the project is eligible to receive two development incentives. The incentives requested by the applicant are as follows:
 - **Reduced Modulation:** The City's zoning code requires 525 square feet of façade modulation. The applicant is requesting a density bonus incentive to reduce the required modulation by 259 square feet, which would result in a building with 266 square feet of modulation.
 - **Reduced Side Setback Sum:** The City's zoning code requires the sum for the side setbacks to be at least 19' and each setback to be at least 8'. The applicant requests a density bonus incentive to allow a 3-foot reduction in the sum setback requirement, resulting in 8-foot side setbacks on the north and south of the site, with a side setback sum of 16'.

As discussed below, State Density Bonus Law allows project applicants to request the specific incentives they want the city or county to grant. The city or county must grant the requested incentives unless it makes specific findings, based on substantial evidence, to reject the requested incentives. If the requested incentives are rejected, the city or county must still grant the number of incentives required by Density Bonus Law (in this case, two incentives).

⁶ Density Bonus Law defines "concessions or incentives" as any of the following: "(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions." (Govt. Code Sec. 65915(k).)

For ease of reference, this report refers to the applicant's requests as "incentives."

Government Code Sections 65915(d)(2) and 65915(k)(3) state that the project is entitled to two incentives that result in meaningful cost reductions. Therefore, the City must either grant the incentives requested by the applicant or find two other incentives that “result in identifiable, financially sufficient, and actual cost reductions” (Government Code Section 65915(k)(3)). Absent the City making the following findings provided in Government Code Section 65915(d)(1), the incentives requested by the applicant must be granted:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the target units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

In this case, there is no evidence to suggest that either requested incentive would have a significant adverse impact or that either requested incentive would be contrary to state or federal law. Thus, staff asked KMA to assess whether the requested incentives are required in order to provide for affordable housing costs. KMA concludes that the “Applicant Development Alternatives” indicate that the combination of the height waiver coupled with the density bonus is sufficient to cover the cost of providing one very-low income unit. “Nonetheless, under the requirements imposed by Section 65915(k)(3), the City must provide two concessions to the project that result in identifiable and actual cost reductions” (KMA Study, p.8). The following table shows that the requested incentives are not required to provide the affordable housing (footnote 8 refers to the very low income rental unit being a one-bedroom unit in each alternative).

Applicant Development Alternatives			
	No Concessions	Façade Modulation	Side Setback & Façade Modulation
Cost of Providing One Very-Low Income Rental Unit ⁸	\$759,200	\$759,200	\$759,200
Value of the Density Bonus, Waiver and/or Concessions:	\$1,029,200	\$1,129,200	\$1,145,200
Net Surplus / (Cost)	\$270,000	\$370,000	\$386,000

Keyser Marston Associates Memorandum

Staff recommends that the City grant the two requested concessions because granting the 3-foot cumulative side setback reduction and the 259-square-foot façade modulation reduction would not have specific adverse impacts upon public health and safety, the physical

environment, or on any real property listed in the California Register of Historic Resources. While the provided 8' side setbacks do not meet the required side setback sum requirement of 19', the proposed 8' side setbacks do meet the minimum requirement for each individual side setback area. Additionally, although a reduction in façade modulation is requested, the proposed project includes front façade balconies that will still contribute to building modulation. While the reduced façade modulation could potentially affect the project's aesthetics, the design will, nonetheless, be reviewed by the Architectural Commission which can provide design recommendations and condition the project to include exterior elements to help mitigate the modulation reduction.

Lastly, short of exploring other concessions and conducting subsequent financial analyses on other concessions, the two concessions requested by the applicant are typical concession requests associated with a density bonus project.

- **Parking:** Standard parking requirements set forth in the Municipal Code are based on the number of bedrooms in each unit; however, State Density Bonus Law provides parking standards that, if invoked by a density bonus project applicant, prevail over local requirements (Government Code Section 65915(p)(1)). The applicant has exercised its right to invoke the Density Bonus Law parking standards, which require a maximum of 15 parking spaces (one space for studio and one-bedroom units, and a maximum of two spaces for two- and three-bedroom units - inclusive of handicapped and guest parking) as opposed to 22 parking spaces required by the Municipal Code. The aforementioned Government Code Section precludes the City from imposing additional parking, and unlike the requirements for concessions, the statute does not provide an opportunity to reject the parking standards on economic grounds. Additionally, State Density Bonus parking requirements also allow a development to provide onsite parking through tandem or uncovered parking (Government Code Section 65915(p)(4)). Eight of the 14 spaces located in the subterranean garage are proposed as tandem spaces.

SHADE AND SHADOW STUDY

At the May 3, 2016 City Council meeting, the City Council provided direction to staff that the shade and shadow effects of the project should be studied. Pursuant to that request, a shade and shadow study (Attachment 5) for the proposed 4-story, 45'-tall building was prepared by the applicant and submitted for staff to review. City staff's analysis below consists of:

- 1) a CEQA review of the shade and shadow information; and
- 2) a review of the shade and shadow information in regards to making the required Development Plan Review (DPR) findings for the Project.

CEQA ANALYSIS

The Project appears eligible for a Class 32 categorical exemption for In-Fill Development Projects. Section 15332 of the State CEQA Guidelines identifies that in-fill development meeting the following five criteria are categorically exempt from CEQA:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

- c) The project site has no value as habitat for endangered, rare, or threatened species.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The site can be adequately served by all required utilities and public services.

A City determination that the project qualifies for a Class 32 categorical exemption is supported by the information contained in the attached Categorical Exemption report prepared by Rincon Associates (Attachment 2). Aesthetic analysis, which includes shade and shadow impacts, is not one of the five criteria set forth in Section 15332 that needs to be assessed in identifying whether a project qualifies for an in-fill exemption. Since the project qualifies for a Class 32 Infill Exemption, the project is categorically exempt from the preparation of environmental documents, including further CEQA analysis of the aesthetic impacts of the project.

The applicant's letter included in the shade and shadow study (Attachment 5) identifies a second issue regarding CEQA analysis of the project's aesthetic impacts. The letter cites that Public Resources Code Section 21099(d)(1) specifically excludes aesthetic impacts of a residential project located on an infill site from counting as significant impacts on the environment⁷ if the project is located within a transit priority area⁸. Staff's analysis differs from the applicant's assertion. Review of Metro transit service information for bus lines within a half mile of the project site does not support the applicant's assertion that the project site is located within a transit priority area. The transit stop location identified in the applicant's letter does not appear to qualify as a major transit stop. Bus service at Beverly Drive and Wilshire Boulevard does not meet the minimum criteria to be considered a major transit stop. Public Resources Code Section 21064.3 states that to qualify as a major transit stop:

- A site must contain the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

Consequently, there needs to be the intersection of two or more major bus routes, and not the intersection of the two streets, Wilshire Boulevard and Beverly Drive as the applicant has stated in their letter. Metro Local Line 20 and Rapid Line 720 run east-west on Wilshire Boulevard at a sufficient frequency during peak times (approximately 6-15 minutes for the latter, and 2-10 minutes for the former). Metro Local Line 14 intersects these lines as it runs north-south on Beverly Drive; however, Local Line 14 has gaps in service greater than 20 minutes during afternoon peak times. Therefore, Line 14's frequency of service interval fails to meet the 15 minutes or less requirement during afternoon peak commute periods. The Beverly/Wilshire stop does not meet the definition of a major transit stop because Line 14 does not meet the major transit stop frequency requirement. Thus, the project is not located in a transit priority area, as asserted by the applicant, and does not meet the criteria of Public Resources Code Section 21099 to be exempt from aesthetic impacts and analysis.

In summary, the project appears to qualify for a Class 32 infill development categorical exemption. Aesthetic impacts, including shade and shadow, is not a criterion that is evaluated

⁷ "aesthetic and parking impacts of a residential...project on an infill site within a transit priority area shall not be considered significant impacts on the environment" (Public Resources Code Section 21099(d)(1)).

⁸ Transit priority area: an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations (Section 21099 (a)(7) of the Public Resources Code).

in identifying if a project qualifies for a Class 32 exemption. Section 15300 of the CEQA guidelines identifies that categorically exempt projects are exempt from the requirement for the preparation of environmental documents. Additional environmental analysis is not required for a project deemed categorically exempt; therefore, shade and shadow impacts of the project would not be evaluated under the provisions of CEQA, but should be evaluated for consistency with the City's Development Plan Review findings.

DEVELOPMENT PLAN REVIEW (DPR) FINDINGS

The City's DPR findings are as follows:

- a) The proposed plan is consistent with the general plan and any specific plans adopted for the area.
- b) The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.
- c) The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.
- d) The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.
- e) The proposed plan will not be detrimental to the public health, safety or general welfare.

Staff has analyzed the information included in the submitted shade and shadow study and determined the following:

- Finding A: The shade and shadow study does not provide additional information necessary to evaluate the project's consistency with the General Plan. The project, as authorized by the State Density Bonus Statute, meets all zoning requirements and can be determined to be consistent with the requirements and guidance of the General Plan for residential uses located within the multi-family R-4 residential zone.
- Finding C: The project does not consist of commercial development therefore, the finding is not applicable.
- Finding D: The shade and shadow analysis does not provide information necessary to evaluate the traffic impacts of the project.
- Finding E: State Density Bonus Law limits the City's ability to determine if a density bonus project is detrimental to public health, safety or general welfare. Pursuant to Government Code Section 65589.5(d)(2), a local agency shall not deny a housing development project for very low income households, or condition approval in a manner that renders the project infeasible for development for the use of very low income households, unless it makes written findings, based upon substantial evidence in the record that the project would have a specific, adverse impact upon the public health or safety, meaning:

A significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan use designation shall not constitute a specific, adverse impact upon the public health or safety.

Unless approval of the project would result in a significant and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions, the project cannot be denied for public health or safety reasons.

Therefore, the information provided in the shade and shadow studies (Attachments 5 and 6) is applicable to the analysis of the project for consistency with DPR finding B regarding the proposed plan adversely affecting existing and anticipated development in the vicinity and promoting harmonious development of the area. The basis of staff's analysis is in identifying if the project has any potential substantial adverse shade and shadow impacts on nearby shade-sensitive uses. Shade-sensitive uses in the vicinity of the project that could be adversely affected include residential outdoor spaces and solar collectors. Staff identified two locations that could be affected by shade thrown by the project—the adjacent three-story with fourth-story penthouse condo building to the north (262 N Crescent Drive) and single-family properties across the alley to the east of the project site.

The shade and shadow study identifies the greatest shadow effect of the project on the building to the north (262 N Crescent Drive) in the morning during winter months when the shadows are longest. Based on staff review of the submitted materials (Attachments 5 and 6), it appears that there are potential outdoor shade sensitive uses on the south wall of the building to the north. The number of potential shade sensitive uses is limited, consisting of two south-facing covered private outdoor spaces located on the first and third levels of the building. Only two units in the 19-unit condominium building contain private outdoor spaces on the building's southern wall. The opening of the inset deck on the first level of 262 N Crescent Drive would be shaded by either a code-compliant, 33-foot-tall building or the proposed 45-foot-tall building during the winter months. Therefore, this first floor deck would not have additional shade effects resulting from the addition of a fourth story to the proposed building. The private outdoor space on the third level would have some access to light in the code-compliant building scenario (33'3 stories). While this direct light to the third-story inset deck could be blocked by the proposed 4 story/45-foot-tall building in the morning and mid-day during fall, winter and spring scenarios, the light blockage would be incremental in nature since the proposed height is 12' taller than the height of a code-compliant building at this site, and the roof of the third-story inset deck already shades this open space area the majority of the day. Consequently, based on the limited effect of the light blockage, the impact would not constitute a substantial adverse effect. Lastly, there currently are no outdoor spaces on the roof, nor any solar-dependent features such as solar panels. Therefore, no shade-sensitive uses exist on the roof of 262 N Crescent. In conclusion, additional shadow cast by the proposed 45-foot-tall building would not have an adverse effect on existing shade-sensitive features of the building at 262 N Crescent.

The DPR finding also identifies that the proposed project's effects on anticipated development should be evaluated. The shade and shadow study indicates that the 45-foot-tall building creates shade on the neighboring building in the morning during winter months, but during the rest of the year, the project does not shade the roof of the building to the north. Therefore, the 45-foot-tall project would not preclude the neighboring building from installing future solar collectors on the roof of the building, or from creating a future rooftop outdoor use because the rooftop would still have access to direct sunlight the majority of the year, including direct access to sunlight for the majority of the day during winter. In summary, the project can be found to not have an adverse effect on additional anticipated development at 262 N Crescent.

In evaluating the shade impacts on the single-family properties (257 N Rexford Dr, 251 N Rexford Dr, and 245 N Rexford Dr) to the east of the project site, the study identifies the

greatest shadow effect of the project in the afternoon during the winter months. The shade-sensitive use staff has identified on these properties is the rear yard outdoor space. Based on site visits, submitted photos, and, as identified on the submitted shade and shadow studies, the aforementioned single-family properties to the east have mature landscaping located on the west property lines closest to the project site (along the alley). This existing landscaping along the property lines already shade the rear yard of these properties during the winter months. The shade and shadow study does not show substantial new shade on the rear yards of the neighboring residents, even in the afternoons of the winter months when shadows cast by the proposed building will have their greatest effect on the single-family homes to the east. Therefore, it can be found that the proposed plan will not adversely affect shade-sensitive uses on single-family properties located east of the project site.

Based on the analysis above, staff concludes that the shade and shadow impacts of the project are not substantial, and the DPR finding regarding adverse impacts on neighboring development and the promotion of harmonious development can be met.

PLANNING COMMISSION PROCESS

During the City Council discussions of setting the project for hearing, concerns were raised regarding a closed session discussion with the Planning Commission involving the legal requirements under Density Bonus Law and the ramifications for the City in the event that a court were to find that the City's actions with respect to the project violated density bonus law. The intent of the discussion was to provide attorney-client privileged information regarding legal risks associated with the various decision options available to the Commission.

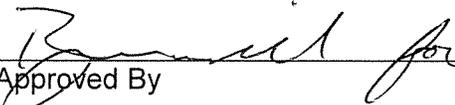
As noted in the body of this report, Density Bonus Law imposes significant constraints on the City's ability to reject the additional density to which density bonus project applicants are entitled, to reject development standard waivers when such standards preclude development of the project with the allowed density, to reject incentives requested by an applicant, and to impose local parking standards that are more strict than those allowed pursuant to state statute. The Council, like the Planning Commission, must carefully weigh the legal risks associated with denying the project or the requested waiver and incentive requests. A denial based on inadequate findings could result in not only a court order compelling the City to reconsider its action, but also, a court would award attorney's fees to the project applicant.

RECOMMENDATION

A Draft resolution has been prepared conditionally approving the requested Vesting Tentative Tract Map, Development Plan Review, and Density Bonus Permit to allow the construction of an 8-unit, 4 story condominium project on the property located at 250 North Crescent Drive, and finding the decision exempt from CEQA.

Alternatively, the City Council could continue the public hearing and direct staff to return with a modified draft resolution to either deny or approve a modified version of the project.

Susan Healy Keene, AICP
Director of Community Development


Approved By _____