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June 25, 2018

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**VIA EMAIL and U.S. MAIL**

Sunnyvale City Clerk  
603 All America Way  
Sunnyvale, CA 94088

**Re: Opposition to Appeal of Planning Commission Decision  
File No. 2017 – 7217  
Location: 617 Evelyn Ave. (APN 209-02-001)**

Dear Clerk:

This letter is submitted on behalf of East Dunne Investors LLC (the “Applicant”) in response and opposition to the Blue Bonnet Residents Committee (“BBRC’s”) appeal of the Sunnyvale Planning Commission’s approval of the tentative map on April 23, 2018, (“Tentative Map Approval”) for the above-referenced project to redevelop the Blue Bonnet Mobilehome Park (the “Park”) into a 62-unit townhome development with site improvements (the “Project”). For ease of reference, the Applicant will address each of BBRC’s arguments in the order in which they are raised via appeal of the Project’s Tentative Map Approval. Both the Applicant and City have complied with all state and local laws in the closure and redevelopment of the Park. Further, the BBRC had ample opportunity to – and in fact did – present its arguments prior to the City’s consideration of the redevelopment. Following due consideration, the City’s Planning Commission approved Tentative Map Approval for the Project. Thus, BBRC’s appeal should be denied.

**I. State and Local Law Permit the Separate Consideration of a Conversion Impact Report and Subsequent Redevelopment Application**

BBRC claims that Government Code section 66427.4 requires the City to consider, simultaneously, both a Conversion Impact Report (“CIR”) for the Park’s closure and any development application for the Park’s redevelopment. (Appeal at pp. 1-5.) This is false. BBRC’s contention is premised on the belief that the City was required to proceed under Government Code section 66427.4 because the Applicant was planning to redevelop the Park at some point in the future. Since any future redevelopment of the Park property would eventually require Tentative Map Approval, the BBRC reasons, the City’s approval of the CIR and Park closure must therefore be undertaken “pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 [of the Government Code]).” In truth, however, another provision of state law governs here: Government Code section 65863.7. This section applies when a Park closure and tentative map application are undertaken *consecutively* – as was the case here – rather than *simultaneously*. Section 65863.7 only requires the filing of a “report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed.” (Gov. Code section 65863.7(a).) It does not require a tentative map application be approved simultaneously with a CIR, nor does it prevent the filing of a tentative map application after CIR approval.

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Here, the City properly approved the CIR pursuant to Government Code section 65863.7, because there was no tentative map application pending with the City at the time the Park owner wished to close the Park. Consequently, Government Code section 66427.4 could not possibly apply because no subdivision map was pending. (See also Sunnyvale Municipal Code at § 19.72.130(a) [stating that City shall not take any action on a development application until the City Council has approved a CIR].) The Applicant first sought CIR approval – Application No. 2016-7056 – and the City approved the CIR on March 7, 2017. The above-referenced tentative map application was not filed until April 1, 2017, after approval of the CIR. The fact that the City did not mandate consideration of the Tentative Map Approval in conjunction with the CIR approval is of no consequence, as it is not required to under state law. Therefore, the City and Applicant properly complied with Government Code section 65863.7 and the City's own ordinance in seeking approval of a CIR for Park closure separately and prior to the consideration of the Project's Tentative Map Application.

Government Code section 66427.4 simply does not apply because at the time of CIR-approval there was no pending subdivision application with the City.

## **II. The Applicant Has Complied with Civil Code section 798.56**

BBRC claims the Applicant failed to comply with state law because it served six-month termination of tenancy notices on Park residents prior to the City's approval of the Project's Tentative Map and Special Development Permit Applications. (Appeal at p. 3; Civ. Code § 798.56(g)(2).) Civil Code Section 798.56(g), provides that "[a]fter all required permits requesting a change of use have been approved...management shall give the homeowners six months or more written notice of termination of tenancy." (Civ. Code § 798.56(g)(2).) Here, the only permit requesting a change in use was the application for CIR review and approval. Whether or not a tentative map was ultimately applied for or approved, the Park's owner intended to cease operating the Park. This lawful decision of the Park's owner—to stop operating its business—is the change in use contemplated under both state law and the City's own ordinance. (SMC § 19.72.140(d) [providing that termination notices give residents "at least 180 days written notice of termination of tenancy from...CIR approval for park closures."].) Thus, once the CIR was approved on March 7, 2017, all requisite change in use permits were obtained in accordance with Civil Code section 798.56(g)(2), and the subsequent service of six-month termination notices to enable the cessation of Park operations were appropriate, valid and lawful. (Civ. Code § 798.56(g)(2); SMC § 19.72.140(d).) The mere fact that the Applicant filed Tentative Map and Special Development Permit Applications with the City after CIR approval is of no import. Those applications are not "requesting a change in use," pursuant to mobile home law, as the closure of the Park was previously countenanced through CIR approval. (SMC § 19.72.140(d).)

BBRC also claims that the Applicant failed to give 15-days' notice of the April 23, 2018 tentative map hearing, in violation of Civil Code section 798.56(g)(1). (Appeal at pp. 4-5.) Again, however, Civil Code section 798.56 only requires "15 days' written notice...[of appearing] to request permits for a change in use of the mobilehome park." (Civil Code § 788.56(g)(1).) As explained above, the only permit requesting a change in use pursuant to state and local law was the CIR, for which Park residents were provided more than adequate notice months in advance

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of the City's CIR approval.<sup>1</sup> As explained above, the Tentative Map Application was not a permit requesting a change in use, and thus there was no legal requirement to provide the BBRC with 15 days' written notice of the April 23, 2018 hearing. As a practical matter, all BBRC members were well aware of the April 23<sup>rd</sup> hearing; the BBRC filed opposition to the Tentative Map Application prior to the hearing, attended the hearing, and spoke in opposition to tentative map approval at the hearing.

### **III. BBRC's Due Process Rights Have Not Been Violated**

BBRC claims its due process rights are being violated because the City is considering the Project's Tentative Map and Special Development Permit Applications subsequent to, rather than simultaneous with, the City's approval of the Park's closure. (Appeal at pp. 9-10.) First, BBRC cites case law about the appropriate standard for courts to use when evaluating due process claims. Patently, that is irrelevant to the due process rights the City is required to provide BBRC in administrative hearings. Second, and more importantly, however, BBRC's due process rights have not been violated by considering and approving the Tentative Map and Special Development Permit Applications after approval of the CIR. As explained above, this process is expressly countenanced under both Government Code section 65863.7 and the City's governing ordinance, (see Sunnyvale Municipal Code at § 19.72.130(a)), because, at the time of CIR-approval, there was no pending Tentative Map Application on file with the City.

BBRC provides no specific support of how the City's separate consideration of the Park's closure and subsequent redevelopment (i.e., Tentative Map and Special Development Permit Application Approval) violates the BBRC's due process rights. When looking at the facts, the City's separate consideration of the Park's closure and redevelopment actually provides BBRC greater process, because it allows the City to first—and separately—consider whether mitigation assistance is adequate for residents of the Park to relocate, a major concern of state and local law. BBRC's desired vision of the process provides no additional benefits or consideration for its members; instead, it risks conflating issues of adequate relocation benefits with other issues germane only to the anticipated planned development itself, such as the desirability of certain street trees or the architectural variations of front elevations. Clearly, BBRC achieves heightened due process when the City considers the CIR and tentative map applications separately and distinctly.

### **IV. BBRC's Pending Writ Petition Is Immaterial to Project Approval**

BBRC has a pending Writ Petition (the "Petition") in state superior court seeking to force the City's reconsideration of CIR approval and the Park's closure, which Petition raises some of the same arguments raised in this appeal. However, the mere fact that a Petition is pending is inconsequential; it does not relieve the City of its obligation to consider the Applicant's Tentative Map Application, and thus cannot in itself provide a basis for and support of the BBRC's appeal of Tentative Map Approval.

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<sup>1</sup> Specifically, Park homeowners and residents were provided formal written notice of the City's planned consideration of the CIR on or about October 4, 2016, months in advance on the March 7, 2017 City Council hearing.



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First, the Park will unequivocally close and is in the process of closure. Park owners have the legal right to go out-of-business and cease operation of a mobile home park. (*Keh v. Walters* (1997) 55 Cal.App.4th 1522, 1533 ["[A] park owner is entitled to convert property used as a mobilehome park to another use, or even to hold it as vacant land."]; see also Civil Code § 798.56(g) [recognizing that tenancy in a mobile home park is lawfully terminated for "change in use of a park or any portion thereof"].) Neither state nor local governments are permitted to force a park owner to stay in business indefinitely or prevent a park from closing/converting altogether. (Civil Code § 798.56(g).) The City's own ordinance recognizes that the City cannot lawfully prevent a mobile home park from closing or converting. (SMC § 19.72.130(c).) Accordingly, the underlying lawsuit would not keep the Park open or force the Park's owner to stay in business.

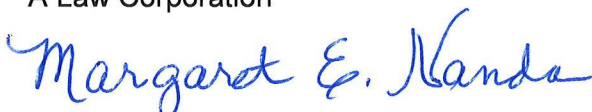
Second, there is no court order currently in effect staying the City's approval of the Park closure or preventing the City from moving forward with the approval of the Park's redevelopment while the Petition is pending. (See Rutter Group, California Practice Guide: Administrative Law Ch. 19-A ["Absent a stay, the decision will typically go into effect before a superior court can rule on the merits of a petition challenging it."].) Thus, the City's decision to approve the CIR and close the Park is deemed effective and the City properly proceeded with consideration and approval of the Applicant's Tentative Map.

#### **V. Conclusion**

Based on the foregoing, the Applicant respectfully requests that the City deny BBRC's appeal of the Project's Tentative Map Approval.

Sincerely,

HOPKINS & CARLEY  
A Law Corporation



Margaret E. Nanda

MEN

cc: Molly Long  
Jake Grunbaum  
Matt Telford  
Rob Boco  
John Nagel (All via email only)