



## MEMORANDUM

DATE March 21, 2014  
To Deanna Chow  
FROM Terri McCracken  
RE Response to Comments Memo

The following memo addresses comments received on the proposed project and the Initial Study/Negative Declaration (IS/MND) prepared for the Housing Element (2015-2023) and Zoning Ordinance amendments for implantation of Housing Element programs, and describes revisions to the IS/ND to be included in the staff report for the City Council's consideration of Project approval.

During the 30-day public review period (February 13, 2014 – March 14, 2014) no comment letters were received by the general public or other interested groups or reviewing agencies. However, at the Planning Commission Hearing held on March 10, 2014, the Planning Commission requested additional revisions to the proposed amendments to Chapter 16.79 (Secondary Dwelling Units) of Title 16 (Zoning) of the City's Municipal Code. Additionally, one comment letter was received following the close of the review period from the California Public Utilities Commission (CPUC) on March 19, 2014 regarding safe planning practices at active railroad tracks in Menlo Park. This comment letter is included as Attachment A to this memorandum.

The following provides a response to the comments from the Planning Commission and the CPUC, and the specific changes to the text of the IS/ND that were made in response to the comments. In each case, the revised page and location on the page is identified, followed by the textual revision. As shown below, none of the changes constitute a substantial revision per California Environmental Quality Act (CEQA) Guidelines Section 15073.5<sup>1</sup> and do not affect any conclusions or significance determinations provided in the IS/ND and no recirculation is warranted.

### RESPONSE TO COMMENTS

*Comments from Planning Commission, March 10, 2014*

As discussed above, the Planning Commission requested additional revisions to Chapter 16.79 of the Municipal Code to what was considered in the IS/ND. As shown on page 10 of the IS/ND, the

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<sup>1</sup> Per Section 15073.5 of the CEQA Guidelines, a substantial revision means: (1) a new, avoidable significant effect is identified and mitigation measures or project revisions must be added to reduce to insignificance or (2) new mitigations are required.

proposed Project includes a two-pronged modification approach to the existing secondary dwelling unit ordinance to allow for the conversion of legally permitted and constructed accessory buildings/structures (meeting certain criteria) into secondary dwelling units while simultaneously amending the accessory building/structure language to more clearly distinguish how, and where an accessory building or structure could be used. Amendments to Chapter 16.79 include modifications to the development regulations, including setbacks, wall and overall height, floor area, daylight plane, parking, and a reduction in the minimum lot area threshold (from 6,000 to 5,750 square feet) for when a use permit is required for a secondary dwelling unit. Amendments to Chapter 16.68 include modifications to the existing development regulations of accessory buildings/structures to more clearly distinguish how accessory buildings/structures can be used (such as modifying the regulations to prohibit living areas without main dwelling unit setbacks and/or the number of plumbing fixtures) and consider reduction or waiver of fees.

The Planning Commission requested revisions to further reduce the minimum lot size for a secondary dwelling unit (without a use permit) as part of the proposed Zoning Ordinance amendment regarding secondary dwelling units. The following provides a discussion of the potential environmental impacts associated with implementing the reduced lot size.

#### Response to Planning Commission Comments

Under existing conditions, 4,807 lots are allowed to have secondary dwelling units, subject to meeting specific criteria, without a use permit. By reducing the minimum lot size from 6,000 to 5,750 square feet, as described in the IS/ND, 534 additional lots would potentially qualify for a second unit for a total of 5,341 total potentially qualifying lots in Menlo Park. By further reducing the minimum lot size to 5,000 square feet, 901 additional lots would potentially qualify for a second unit, resulting in a total of 6,242 lots potentially qualifying lots in the City. Following the Planning Commission's recommendation, staff recognized that the minimum lot size for the R-1-U (LM) zoning district is 4,900 square feet. To meet the Planning Commission's intent of including all lots where the floor area limit is established without a use permit, the minimum lot size is proposed to be reduced to 4,900 square feet for the R-1-U(LM) zoning district only. Therefore, given the R-1-U (LM) zoning district has a minimum lot size of 4,900 square feet, four additional lots would also be eligible for a second unit. Therefore, under the proposed Project a total of 6,246 lots in Menlo Park could potentially qualify for a secondary dwelling unit when a use permit is required, which represents an increase of 1,439 lots throughout all the single-family residential zoning districts.

Although the smaller lots (i.e. 5,000 square feet compared to 6,000 square feet) could be eligible for secondary dwelling units, the smaller lots face greater practical challenges/constraints; consequently, the probability that all of the identified smaller lots would realistically be able to accommodate a second unit is considered to be low.

As discussed on page 6 of the IS/ND, the City of Menlo Park adopted its Housing Element through the 2014 planning period and the Environmental Assessment<sup>2</sup> for the City of Menlo Park Housing Element Update, General Plan Consistency Update, and associated Zoning Ordinance amendments on May 21, 2013. The current Housing Element (2007-2014) and its Environmental Assessment anticipated and directly stipulated the proposed amendments to the Zoning Ordinance. While the reduction in lot minimum lot size for secondary dwelling units from 5,750 to 5,000 square feet combined with the four lots between 4,900 and 5,000 square feet in the Lorelei Manor neighborhood represents 905 additional lots, the 2013 Environmental Assessment considered the development of up to 300 new secondary dwelling units, regardless of lot size, throughout all of the single-family residential zoning districts. The 2013 Environmental Assessment reflects a 22 year buildout horizon from 2013 to 2035. Under this scenario approximately 13 new secondary dwelling units could be developed per year.<sup>3</sup> This represents the development of more than twice as many secondary dwelling units a year than the City issued permits for in 2013.<sup>4</sup>

Therefore, given the potential development constraints on the smaller lots combined with the fact that the reduced lot size does not result in any new development potential<sup>5</sup> beyond what was considered in the 2013 Environmental Assessment, the City's history of issuing permits for secondary dwelling units, and that some second units may result from the conversion of existing accessory buildings, this revision to the minimum lot size for secondary dwelling units would therefore neither cause new impacts in regard to the environmental topics addressed in the IS/ND nor would it exacerbate any existing impacts.

Accordingly, while this revision provides greater flexibility to permit more secondary dwelling units, and further supports Housing Element Program H4.E (Modify Secondary Dwelling Unit Development Standards and Permit Process), no new significant environmental impacts beyond what were considered in the IS/ND would occur as a result of reducing the minimum lot size for secondary dwelling units to 5,000 square feet, or a minimum lot size of 4,900 square feet for the R-1-U(LM) zoning district.

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<sup>2</sup> California Government Code Section 65759(a)(2) provides that when a city is ordered by a court to bring its General Plan, which includes the Housing Element, into compliance, the City shall prepare an environmental assessment, the content of which shall substantially conform to the required content of a Draft Environmental Impact Report (EIR).

<sup>3</sup> 300 secondary dwelling units divided by 22 years equals 13.6 secondary dwelling units per year.

<sup>4</sup> In 2013, the City issued permits for six new secondary dwelling units and a total of six permits between the years of 2006 to 2012.

<sup>5</sup> No new development potential refers to the fact that no land is being redesignated in any area from one use to another (i.e. commercial to residential) and that the 2013 Environmental Assessment considered all single-family residential zoned lots potentially eligible for a secondary dwelling unit.

### **Comment Letter from the California Public Utilities Commission, March 19, 2014**

This comment letter describes the jurisdiction of the CPUC with respect to highway-rail crossings in California and acknowledges the CPUC's Rail Crossings Engineering Section (RCES) has reviewed the IS/ND for the proposed Project. The comment does not address the adequacy of the IS/ND; however, the comment notes the City includes active railroad tracks. As such, the RCES recommends that the City add language to the Housing Element Update so that any future development adjacent to or near the railroad right-of-way (ROW) is planned with the safety of the rail corridor in mind. The RCES requests the City consider the pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act (ADA). RCES recommends the Housing Element consider the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes, and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW.

#### *Response to CPUC Comment Letter*

Future development projects under the proposed Project will be required to comply with all relevant regulations regarding railroad and grade crossing safety, including:

- California Public Utilities Commission regulations regarding grade crossings and grade crossing safety (Public Utilities Code General Provisions, Division 1, Part 1, Chapter 6)
- Requirements for railroad operators to maintain appropriate fencing along their right-of-way (Public Utilities Code General Provisions, Division 4, Chapter 1, Article 6)

The proposed Project would not introduce any new locations for at-grade crossings of streets and active railroad tracks. Compliance with these existing regulations will ensure safety associated with railroad operations in the Study Area, and would not require additional General Plan policies or mitigation measures. The comment is acknowledged and will be forwarded to the decision-making bodies as part of the IS/ND for their consideration in reviewing the Project.

### **REVISIONS TO THE INITIAL STUDY/NEGATIVE DECLARATION**

This section presents specific changes to the IS/ND that are being made in response to comments made by the Planning Commission, as well as staff-directed changes including typographical corrections and clarifications. As discussed above, none of the revisions to the IS/ND warrant recirculation per CEQA Guidelines Section 15073.5. The City recognizes that any text changes are part of the IS/ND that it will consider for approval.

The following revisions are organized by sections in the IS/ND and the revised page and in each case, the location on the page is presented followed by the textual, tabular, or graphical revision. Underline text represents language that has been added to the EIR; text with strikethrough has been deleted from the EIR.

*Section D. Project Description, Sub-section Zoning Ordinance Amendment (Housing Element Implementation)*

The last sentence in the fourth bullet on page 10 of the IS/ND is hereby amended as follows:

- Secondary Dwelling Units and Accessory Buildings/Structures: The proposed approach would include modifications to Chapter 16.79 (Secondary Dwelling Units) and Chapter 16.68 (Accessory Buildings and/or Structures) and would be two-pronged; including modifications to the existing secondary dwelling unit ordinance to allow for the conversion of legally permitted and constructed accessory buildings/ structures (meeting certain criteria) into secondary dwelling units while simultaneously amending the accessory building/structure language to more clearly distinguish how and where an accessory building or structure could be used. The proposed Project could result in modifications to the development regulations, including size to accommodate design for accessible standards, setbacks, wall and overall height, floor area, daylight plane, ~~and~~ parking, and tenancy. Additionally, a reduction in the minimum lot area threshold (from 6,000 square feet to ~~5,750~~ 5,000 square feet, or 4,900 square feet for the R-1-U(LM) zoning district) for when a use permit is required for a secondary dwelling unit would be included in the Zoning Ordinance amendment.

The first sentence in the third main bullet on page 11 of the IS/ND is hereby amended as follows:

- Program H4.E (Modify Secondary Dwelling Unit Development Standards and Permit Process): Continue to encourage secondary dwelling units, and modify the City's current regulations to reduce the minimum lot size to ~~5,750~~ 5,000 square feet, with the exception that the R-1-U (LM) district shall have a minimum lot size of 4,900 square feet, and consider allowances for larger secondary dwelling units, flexibility in height limits, reduced fees (possible reduction in both Planning/Building fees and impact fees as a result of the small size of the units), flexibility in how parking is provided on site and a greater City role in publicizing and providing guidance for the approval of secondary dwelling units as part of the General Plan update. Specifics would be developed as part of program implementation.

The second sentence in the second paragraph on page 13 of the IS/ND is hereby amended as follows:

The proposed Zoning Ordinance Amendment would also include a change to the development standards for secondary dwelling units within the single-family residential zoning districts. Under the proposed Project the current minimum lot area of 6,000 square feet would be reduced to ~~5,750~~ 5,000 square feet, with the exception that the R-1-U (LM) district shall have a minimum lot size of 4,900 square feet, which would increase the total number of secondary units that could be built without a use permit.



**ATTACHMENTS**

Attachment A: Comment Letter on the City of Menlo Park Housing Element Update (2015-2023) and Zoning Ordinance Amendments (Housing Element Implementation) Initial Study/Negative Declaration

## PUBLIC UTILITIES COMMISSION

320 WEST 4TH STREET, SUITE 500  
LOS ANGELES, CA 90013  
(213) 576-7083



March 19, 2014

Deanna Chow  
City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025

Dear Deanna:

SUBJECT: SCH 2014022040 Menlo Park Housing Element Update - DND

The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings in California. The Commission Rail Crossings Engineering Section (RCES) is in receipt of the draft *Negative Declaration (DND)* for the proposed City of Menlo Park (City) Housing Element Update Project.

The project area includes active railroad tracks. RCES recommends that the City add language to the Housing Element Update so that any future development adjacent to or near the railroad right-of-way (ROW) is planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade crossings. This includes considering pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act. Mitigation measures to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes, and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW.

If you have any questions in this matter, please contact me at (213) 576-7076, [ykc@cpuc.ca.gov](mailto:ykc@cpuc.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Chiang".

Ken Chiang, P.E.  
Utilities Engineer  
Rail Crossings Engineering Section  
Safety and Enforcement Division

C: State Clearinghouse