

**Board Report**

File #: 2016-0310, **File Type:** Agreement**Agenda Number:** 39.

**EXECUTIVE MANAGEMENT COMMITTEE
JUNE 16, 2016****SUBJECT: 1ST AND LORENA JOINT DEVELOPMENT****ACTION: AUTHORIZE AMENDMENT TO EXTEND EXISTING EXCLUSIVE NEGOTIATING AGREEMENT FOR 12 MONTHS****RECOMMENDATION**

AUTHORIZE the Chief Executive Officer to execute an amendment to the **Exclusive Negotiations and Planning Agreement with A Community of Friends** to extend its term for an additional 12 months, for the joint development of Metro-owned property at 1st and Lorena Street along the Metro Gold Line Eastside Extension.

ISSUE

In December 2015, the LACMTA Board of Directors (Board) authorized a 6- month extension to the Exclusive Negotiations and Planning Agreement (ENA), dated June 27, 2013, with A Community of Friends (ACOF) (Developer) for the development of a 49-unit mixed-use affordable housing project (Proposed Project) at 1st and Lorena Street (See Attachment A, Site Map). During this extension term, the Developer has diligently pursued and performed its obligations under the ENA and the proposed project was on track to proceed to the Joint Development Agreement (JDA) phase with Metro by the end of the 6-month extension term. However, Metro recently learned that a CEQA appeal has been filed against the Proposed Project with the City of Los Angeles (City). In light of this appeal and the need for additional time to allow Developer to resolve the matter, Metro staff recommends that the Board authorize an additional extension to the ENA term for a period of 12 months and grant an exception to the JD Policy's term limit to allow a full ENA term for a period of 48 months.

DISCUSSION**Background**

On June 27, 2013, the Developer and Metro entered into the ENA to plan and consider the terms and conditions of a potential JDA and Ground Lease (GL) for development of a transit-oriented mixed-use affordable housing development at 1st and Lorena in Boyle Heights. The term of the original ENA was 18 months. During that timeframe, the Developer advanced the Project through final design, and diligently pursued entitlements and the California Environmental Quality Act (CEQA) approval

process, and project approval requirements by the City. Community meetings were also held, as well as individual presentations to various community groups. However, additional time was needed to complete the City's entitlement/CEQA review and approval process, and to continue the community engagement process. The Board granted an additional 12 months in December 2014 and, as discussed above, another 6-month extension in December 2015.

When the Board approved the most recent 6-month extension, they also granted an exception to the JD Policy which stipulates that the timeframe for an ENA shall not exceed 30 months. If the requested extension is provided, the total term of the ENA will be for 48 months, requiring another exception to the JD Policy.

During the course of the ENA term to date, Developer has been actively working to progress the Proposed Project to the JDA state. Activities included conducting multiple community meetings to further engage the community and obtain their input, securing approval from the Boyle Heights Neighborhood Council (BHNC) as well as the Boyle Heights Design Review Advisory Committee (DRAC) and seeing the Project CEQA process through a final determination.

The Project

The original project scope included 48 affordable housing units; 24 units for households with special needs and 24 family units, with one manager's unit, and limited ground floor commercial. The Developer has been meeting with community stakeholders since the project's inception, and during the recent ENA extension periods held 12 additional meetings with stakeholders. In response to stakeholder feedback, the project scope has been modified. The project will now have 24 units of affordable housing for disabled/homeless veterans, 24 units of affordable family housing and 10,000 square feet of ground floor commercial space (see Attachment C Project Scope). In response to community feedback, the Developer is exploring including child care and fitness facilities, and approximately 5000 square feet of general retail business services. This modified scope, as well as the final design, was presented to the Boyle Heights Neighborhood Council on July 22nd, 2015. The Council enthusiastically approved the project 15-1. Their testimony spoke to the need for housing for veterans and low income families. Sixty percent of the units will be for individuals/families with 30% Average Median Income (AMI).

Entitlement Status

The City Planning Department issued a Director's Determination dated March 2, 2016 (See Attachment B Director's Determination) approving certain incentives for the Proposed Project, and approving a Mitigated Negative Declaration and corresponding Mitigation Monitoring Program as the Proposed Project's environmental clearance pursuant to CEQA. The deadline to file an appeal to the Director's Determination was March 17, 2016, and no appeal was filed by that date. As such, the Developer filed a Notice of Determination with the County of Los Angeles on March 21, 2016. Thereafter, a CEQA appeal was filed with the City of Angeles by an adjacent property owner on April 20, 2016, and the City has accepted the appeal

It is anticipated that the appeal will go before the City Council's Planning and Land Use Committee as well as the City Council, in the coming months. We are recommending a 12-month extension to

the ENA to allow time for the resolution of the CEQA matter.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no impact on safety as it only seeks a time extension for the ENA. No improvements will be constructed during the exclusive negotiations period. An analysis of safety impacts will be completed and submitted to the Board if negotiations result in a Joint Development Agreement and a Ground Lease.

FINANCIAL IMPACT

Funding for joint development activities is included in the FY16 budget under Project 610011.

Impact to Budget

There is no impact to the FY15-16 budget. Staff costs are included in the proposed FY17 budget to negotiate the proposed transaction, supervise any related design, review environmental documents and provide Metro oversight during construction. However, no new capital investment or operating expenses are anticipated to implement this project. Revenues from the Developer deposit will offset continued staff and project related professional services costs.

ALTERNATIVES CONSIDERED

The Board could choose not to extend the ENA term and solicit a new developer. Staff does not recommend this alternative due to current Developer's longstanding commitment to and financial investment in the Proposed Project, substantial progress achieved towards the Proposed Project's development and overall community benefits. Moreover, the Developer has engaged the community, culminating in obtaining approval of the Proposed Project from the BHNC in a 15-1 vote. This project will serve the needs of those with the lowest income - one of the most needed forms of housing in the Boyle Heights community.

NEXT STEPS

Upon approval of the recommended action, staff will prepare and execute an amendment to the ENA providing for a 12-month extension for the term. Staff will continue working with the Developer to finalize negotiations for a JDA and GL, and will present the terms of such agreements to the Board for its consideration following resolution of the CEQA matter.

ATTACHMENTS

- Attachment A - Site Map
- Attachment B - Director's Determination
- Attachment C - Project Scope

File #: 2016-0310, **File Type:** Agreement

Agenda Number: 39.

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Site Plan of Proposed Development Project



 Development site

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CITY PLANNING

CITY PLANNING COMMISSION

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DIRECTOR'S DETERMINATION
DENSITY BONUS AFFORDABLE HOUSING INCENTIVES

March 2, 2016

Applicant

Dora Leong Gallo
A Community of Friends
3701 Wilshire Blvd., Ste. 700
Los Angeles, CA 90010

Property Owner

METRO
1 Gateway Plaza, Mail Stop 99-23-4
Los Angeles, CA 90012

Representative

Noah Adler
Craig Lawson & Co., LLC
3221 Hutchison Ave., Ste. D
Los Angeles, CA 90034

Case No. DIR-2015-1998-DB
CEQA: ENV-2014-2392-MND
Location: 3401-3415 E. 1st St. and
116-126 S. Lorena St.

Council District: 14

Neighborhood Council: Boyle Heights

Community Plan Area: Boyle Heights

Land Use Designation: Community Commercial

Zone: C2-1 and R3-1

Legal Description: Lots: 19, 20, 21, FR22,
FR23, 24 and 25; Block:
None; Tract: Subdivision
of the Cheesbrough

Last Day to File an Appeal: March 17, 2016

DETERMINATION – Density Bonus Affordable Housing Incentives

Pursuant to the Los Angeles Municipal Code (LAMC) Section 12.22 A.25, I have reviewed the proposed project and as the designee of the Director of Planning, I hereby:

Approve the following two Incentives requested by the applicant for a project that will reserve a minimum of 11 percent, or 6 units, of the total 49 dwelling units proposed, for Very Low Income Household occupancy for a period of 55 years, subject to the Conditions of Approval herein.

1. **Height.** A six-foot increase in the transitional height requirement for a portion of the building on the C2-1 zoned lots, allowing 70 feet in height in lieu of the required 64 feet within the distance of 50 to 99 feet from the

easterly property line of the A1-1XL zone along Lorena Street and a six-foot increase in the height requirement for a portion of the building on the R3-1 zoned lots, allowing 51 feet in height in lieu of the required 45 feet.

2. **Averaging of Floor Area Ratio, Density, Parking or Open Space and permitting Vehicular Access.** An averaging of floor area, density, parking, and open space over the project site that consists of seven contiguous parcels and permit vehicular access from a less restrictive zone C2-1 to a more restrictive zone R3-1.

Adopt Mitigated Negative Declaration ENV-2014-2392-MND, and the corresponding Mitigation Monitoring Program (MMP) as the project's environmental clearance pursuant to the California Environmental Quality Act (CEQA) and Section 21082.1(c)(3) of the California Public Resources Code.

Adopt the attached Findings.

CONDITIONS OF APPROVAL

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the plans and materials submitted by the applicant, stamped "Exhibit A," and attached to the subject case file. No change to the plans will be made without prior review by the Department of City Planning, Project Planning Division, and written approval by the Director of Planning. Each change shall be identified and justified in writing. Minor deviations may be allowed in order to comply with the provisions of the Los Angeles Municipal Code or the project conditions.
2. **Residential Density.** The project shall be limited to a maximum density of 49 dwelling units.
3. **Restricted Affordable Units.** A minimum of 11 percent, or 6 units, of the total 49 dwelling units of the project, shall be reserved for habitation by Very Low Income Households, as defined by the State Density Bonus Law 65915 (C)(2).
4. **Changes in Restricted Affordable Units.** Deviations that increase the number of restricted affordable units or that change the composition of units or change parking numbers shall be consistent with LAMC Section 12.22 A.25 (9a-d).
5. **Housing Requirements.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of the Los Angeles Housing and Community Investment Department (HCIDLA) to make six units available to Very Low Income Households for sale or rental, as determined to be affordable to such households by HCIDLA for a period of 55 years. Enforcement of the terms of said covenant shall be the responsibility of HCIDLA. The applicant will present a copy of the recorded covenant to the Department of City Planning for inclusion in this file. The project shall comply with any monitoring requirements established by the HCIDLA. Refer to the Density Bonus Legislation Background section of this determination.
6. **Height.** The building height on the R3-1 zoned lots shall be limited to a maximum of 51 feet. The building height on the C2-1 zoned lots shall be limited to a maximum of 70 feet.

(NOTE: The project is permitted a maximum height incentive of 11 feet for setting aside 11 percent of the dwelling units for habitation by Very Low Income Households. A clarification of this Letter of Determination will be required in the event the applicant increases the building height.)

7. **Averaging of Floor Area Ratio, Density, Parking or Open Space and Permitting Vehicular Access.** The project is permitted to average the floor area, density, open space and parking over the project site that consists of seven contiguous parcels, and vehicular access from a less restrictive zone C2-1 to a more restrictive zone R3-1 shall be permitted, provided that:
 - a. A minimum of 11 percent of the total dwelling units restricted to Very Low Income Households; and
 - b. The proposed use is permitted by the underlying zones of each parcel; and
 - c. No further lot line adjustment or any other action that may cause the project site to be subdivided subsequent to this grant shall be permitted.
8. **Residential Automobile Parking.** Vehicle parking for Restricted Affordable Units shall be provided consistent with LAMC Section 12.22 A.25, Parking Option 2, which permits one

parking space for each Restricted Affordable Unit, except that Restricted Affordable Units that are set aside for Low or Very Low Senior Citizens and/or Disabled Persons may provide one-half parking space per unit and Restricted Affordable Units within a Residential Hotel may provide one-quarter parking space per unit. The applicant proposes to set aside 48 Restricted Affordable Units, of which 24 units are set aside for Very Low Income Households and 24 units are set aside for Very Low Income Disabled Persons. A minimum of 36 parking spaces shall be provided for the 48 Restricted Affordable Units. The project will contain one market rate two-bedroom unit. Parking spaces for all other non-restricted units, including any manager's units, shall be provided pursuant to LAMC Section 12.21.

9. **Commercial and Retail Automobile Parking.** Parking spaces for commercial and retail uses shall be provided pursuant to LAMC Section 12.21. The Parking Plan shall indicate parking space allocation for commercial/retail and residential uses. Parking spaces for commercial and retail uses shall not be located on R3-1 zoned lots, consistent with Condition of Approval Number 7.b.
10. **Adjustment of Parking.** In the event that the number of Restricted Affordable Units should increase, or the composition of such units should change (i.e. the number of bedrooms or the number of units made available to Senior Citizens and/or Disabled Persons), or the applicant selects another Parking Option (including Bicycle Parking Ordinance) and no other Condition of Approval or incentive is affected, then no modification of this determination shall be necessary, and the number of parking spaces shall be re-calculated by the Department of Building and Safety based upon the ratios set forth above.
11. **Bicycle Parking.** Bicycle parking shall be provided consistent with LAMC 12.21 A.16.

Environmental Mitigation Conditions

12. **Hazardous Materials.** Pursuant to the Los Angeles Building Code, the Applicant will engage in the Construction Site Plan Review (CSPR) process with the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). The CSPR process includes, but is not limited to locating, excavating, and conducting a methane leak test on the well, providing DOGGR with a site plan indicating the footprint of the proposed structure and well location, and provide DOGGR with a well evaluation and work plan to re-abandon the well, as necessary.
13. **Public Services (Fire Protection).** The following recommendations of the Fire Department relative to fire safety shall be incorporated into the building plans, which includes the submittal of a plot plan for approval by the Fire Department either prior to the recordation of a final map or the approval of a building permit. The plot plan shall include the following minimum design features: fire lanes, where required, shall be a minimum of 20 feet in width; all structures must be within 300 feet of an approved fire hydrant, and entrances to any dwelling unit or guest room shall not be more than 150 feet in distance in horizontal travel from the edge of the roadway of an improved street or approved fire lane.
14. **Public Services (Police).** The plans shall incorporate the Design Guidelines (defined in the following sentence) relative to security, semi-public and private spaces, which may include

but not be limited to access control to building, secured parking facilities, walls/fences with key systems, well-illuminated public and semi-public space designed with a minimum of dead space to eliminate areas of concealment, location of toilet facilities or building entrances in high-foot traffic areas, and provision of security guard patrol throughout the Project Site if

needed. Please refer to "Design Out Crime Guidelines: Crime Prevention Through Environmental Design," published by the Los Angeles Police Department. These measures shall be approved by the Police Department prior to the issuance of building permits.

Administrative Conditions

15. **Final Plans.** Prior to the issuance of any building permits for the project by the Department of Building & Safety, the applicant shall submit all final construction plans that are awaiting issuance of a building permit by the Department of Building & Safety for final review and approval by the Department of City Planning. All plans that are awaiting issuance of a building permit by the Department of Building & Safety shall be stamped by Department of City Planning staff "Final Plans". A copy of the Final Plans, supplied by the applicant, shall be retained in the subject case file.
16. **Notations on Plans.** Plans submitted to the Department of Building & Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet, and shall include any modifications or notations required herein.
17. **Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review of approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning prior to clearance of any building permits, for placement in the subject file.
18. **Code Compliance.** Use, area, height, and yard regulations of the zone classification of the subject property shall be complied with, except where granted conditions differ herein.
19. **Department of Building & Safety.** The granting of this determination by the Director of Planning does not in any way indicate full compliance with applicable provisions of the Los Angeles Municipal Code Chapter IX (Building Code). Any corrections and/or modifications to plans made subsequent to this determination by a Department of Building & Safety Plan Check Engineer that affect any part of the exterior design or appearance of the project as approved by the Director, and which are deemed necessary by the Department of Building & Safety for Building Code compliance, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.

20. Indemnification and Reimbursement of Litigation Costs.

Applicant shall do all of the following:

- a) Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
- b) Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.

- c) Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$25,000. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
- d) Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
- e) If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.

PROJECT BACKGROUND

The proposed project involves the construction of an approximately 90,000-square-foot mixed-use development containing 10,000 square feet of commercial/retail space and 49 dwelling units consisting of 1 market-rate unit, 24 units reserved for Very Low Income Households, and 24 units reserved for Very Low Income Disabled Persons. The proposed building will vary in height, ranging from four stories, or 51 feet, on the R3-1 zoned lots to five stories, or 70 feet, on the C2-1 zoned lots. All parking spaces will be located in a single-level semi-subterranean parking garage, which will be accessible via an ingress and egress driveway on Lorena Street. Commercial loading access will be provided along the alley located to the east of the project site, perpendicular to East 1st Street. The main pedestrian entrance to the retail uses will be provided along East 1st Street. The primary entrance to the residential use will be through the residential lobby fronting on Lorena Street, and a secondary entrance will be provided on East 1st Street.

The project site is located within the Boyle Heights Community Plan area. The project site consists of seven lots, comprising approximately 55,153 square feet of lot area. Lots 19-21, fronting on Lorena Street, are zoned R3-1 and designated for Community Commercial General Plan Land Uses. Lots FR22, FR23, 24, and 25, fronting on East 1st Street, are zoned C2-1 and designated for Community Commercial General Plan Land Uses.

In accordance with California State Law (including Senate Bill 1818, and Assembly Bills 2280 and 2222), the applicant is proposing to utilize Section 12.22 A.25 (Density Bonus Ordinance) of the Los Angeles Municipal Code (LAMC), which permits a density bonus of up to 35 percent based on the percentage of total dwelling units set aside for habitation by Low, Very Low, and/or Moderate Income households for a period of 55 years. A 35 percent density bonus would allow for 49 dwelling units in lieu of the 36 by-right dwelling units on the R3-1 zoned lots and 95 dwelling units in lieu of the 70 by-right units on C2-1 zoned lots, totaling 144 dwelling units. However, the applicant is proposing 49 dwelling units, which is less than the allowable by-right density.

Consistent with the Density Bonus Ordinance, the applicant is granted a reduction in required parking spaces based on two Parking Options. The applicant selected Parking Option 2, which requires 0.5 parking space per dwelling unit for the proposed 24 units restricted to Very Low Income Disabled Persons and one parking space per dwelling unit for the proposed 24 units set aside for habitation by Very Low Income Households. In total, the applicant is required to provide 36 parking spaces for the 48 Restricted Affordable Units. The non-restricted units and commercial and retail uses in the project are required to comply with the automobile parking provisions of LAMC Section 12.21.

Housing Replacement

With Assembly Bill 2222, applicants of Density Bonus projects filed as of January 1, 2015 must demonstrate compliance with the housing replacement provisions, which require replacement of rental dwelling units that either exist at the time of application of a Density Bonus project or have been vacated or demolished in the five-year period preceding the application of the project. This applies to all pre-existing units that have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; are subject to any other form of rent or price control; or are occupied by Low or Very Low Income Households. Pursuant to the Determination made by the Housing and Community Investment Department (HCIDLA) dated October 15, 2015, no units will need to be replaced with units affordable to Low or Very Low Income Households as there were no residential units on the property for the last five years. [Refer to the Density Bonus Legislation Background section of this determination for additional information.]

Los Angeles Municipal Code Criteria

Pursuant to LAMC Section 12.22 A.25 (e)(2), in order to be eligible for any on-menu incentives, a Housing Development Project (other than an Adaptive Reuse Project) shall comply with the following criteria, which it does:

- a. *The façade of any portion of a building that abuts a street shall be articulated with a change of material or a break in plane, so that the façade is not a flat surface.*

The proposed building has a street frontage along Lorena Street and one along East 1st Street. Both facades will be articulated with a change of material, including plastic composite panel screens, metal panel cladding, and cement plaster. The building facades will incorporate perforated sheet metal guardrails and metal guardrails with glass panels, which contributes to a break in plane and modulation. The facades will have various colors, which will further accentuate the architecture and articulation. Therefore, as evident in Exhibit A, attached to the case file, the building facades will be articulated with a change of material and a break in plane.

- b. *All buildings must be oriented to the street by providing entrances, windows architectural features and/or balconies on the front and along any street facing elevation.*

The proposed building is located on a corner lot, providing two street frontages along Lorena Street and East 1st Street. Pedestrian entrances are located on both streets. Residential entry is located on Lorena Street and is highlighted with a metal canopy above the entrance. The project proposes commercial spaces on the ground floor with large storefronts facing the streets, creating a pedestrian-friendly environment. The building will have projecting balconies and canopies above windows on both street frontages. Therefore, entrances, windows, architectural features and balconies are located on the front and along the street-facing elevations, and the proposed building is oriented to the streets.

- c. *The Housing Development Project shall not involve a contributing structure in a designated Historic Preservation Overlay Zone (HPOZ) and shall not involve a structure that is a City of Los Angeles designated Historic-Cultural Monument (HCM).*

The proposed project is not located within a designated Historic Preservation Overlay Zone, nor does it involve a property that is designated as a City Historic-Cultural Monument.

- d. *The Housing Development Project shall not be located on a substandard street in a Hillside Area or in a Very High Fire Hazard Severity Zone as established in Section 57.25.01 of the LAMC.*

The project fronts on 1st Street, which is designated as a Avenue II, per the Mobility Plan 2035 of the City of Los Angeles General Plan. Standard Local Streets have a standard right-of-way width of 60 feet and roadway width of 36 feet. Therefore, the project is not located on a substandard street, which is a street with a width less than 36 feet and paved to a roadway width of less than 28 feet. The project is not located in a Hillside Area, nor is it located in a Very High Fire Hazard Severity Zone.

DENSITY BONUS/AFFORDABLE HOUSING INCENTIVES COMPLIANCE FINDINGS

1. Pursuant to Section 12.22 A.25(c) of the LAMC, the Director **shall approve** a density bonus and requested incentive(s) unless the director finds that:
 - a. *The incentives are not required to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5 or Section 50053 for rents for the affordable units.*

The record does not contain substantial evidence that would allow the Director to make a finding that the requested incentives are not necessary to provide for affordable housing costs per State Law. The California Health & Safety Code Sections 50052.5 and 50053 define formulas for calculating affordable housing costs for Very Low, Low, and Moderate Income households. Section 50052.5 addresses owner-occupied housing and Section 50053 addresses rental households. Affordable housing costs are a calculation of residential rent or ownership pricing not to exceed 25 percent gross income based on area median income thresholds dependent on affordability levels.

The list of on-menu incentives in 12.22 A.25 was pre-evaluated at the time the Density Bonus Ordinance was adopted to include types of relief that minimize restrictions on the size of the project. As such, the Director will always arrive at the conclusion that the density bonus on-menu incentives are required to provide for affordable housing costs because the incentives by their nature increase the scale of the project.

The applicant is requesting two on-menu incentives that will facilitate the provision of affordable housing at the site. These incentives permit exceptions to zoning requirements that result in building design or construction efficiencies that provide for affordable housing costs and allow the developer to expand the building envelope so the additional units can be constructed and the overall space dedicated to residential uses is increased. These incentives support the applicant's decision to set aside Very Low Income dwelling units for 55 years.

Height

The project qualifies for an increase in the height requirement, as the project site is not located within 15 feet of a lot classified in the R2 zone, within 50 feet of a lot classified in an R1 or more restrictive residential zone, or on a lot sharing a common lot line with or across an alley from a lot classified in an R1 or more restrictive zone.

The project site has two zoning designations and is subject to varying height restrictions. A portion of the building on the R3-1 zoned lots is limited to a maximum height of 45 feet. The applicant requests a six-foot increase in the allowable building height to permit 51 feet in lieu of the required 45 feet on the R3-1 zoned lots.

A commercial zoned property in Height District No. 1 does not have a height restriction. However, portions of buildings on a C zoned lot are subject to the transitional height limits when located within specific distances from a RW1 or more restrictive zoned lot, except when the highest elevation of the RW1 or more restrictive zoned property exceeds the grade of the C zoned property by more than feet, the building on the C zoned property may exceed the height limit by the difference in grade.

Some portions of the proposed building on the C2-1 zoned lots are located within 199 feet from the A1-1XL zoned property that is currently improved with a cemetery and are therefore subject to the transitional height limits. However, the highest elevation of the A1-1XL zoned lot exceeds the grade of the C2-1 zoned lots by significantly more than

five feet, as measured in the attached Survey. Portions of the building on these C2-1 zoned lots are therefore allowed to exceed the transitional height limits by the difference in grade, which is 31 feet. The applicant requests a six-foot increase in the height to permit 70 feet in lieu of the required 64 feet (including the 31-foot difference in grade) within the distance of 50 to 99 feet from the cemetery. The height requirement, Density Bonus height incentive, and proposed building height are summarized in Table 1 below.

Table 1. Height Requirement and Proposed Building Height on C2-1 Zoned Lots

Distance¹	Transitional Height Requirement	Height Adjustment per the Exception²	Density Bonus Height Incentive	Maximum Height Allowed	Proposed Height
0 - 49'	25'	31'	11'	67'	N/A
50 - 99'	33'	31'	11'	75'	70'
100 - 199'	61'	31'	11'	103'	70'

Averaging of Floor Area Ratio, Density, Parking or Open Space and Permitting Vehicular Access

The project site consists of two zones, which have different requirements for floor area ratio (FAR), density, parking, open space, and vehicular access. The C2-1 zone allows a 1.5:1 FAR, and the R3-1 zone allows a 3:1 FAR. Based on the buildable area and FAR for each zone, the FAR averaging permits a total of 102,203 square feet to be allocated to the entire project site (see Table 2).

C2-1 zone requires the density of a R4 zone (400 square feet of lot area per dwelling unit) for portions of buildings used for residential purposes. The allowable density for R3-1 zone is 800 square feet of lot area per dwelling unit. Based on the lot area, including the one-half alley, the C2-1 zone permits 70 dwelling units by right, and the R3-1 zone permits 36 units by right, totaling 106 dwelling units. The project proposes 49 units, which is less than the maximum permitted in each zone individually as well as throughout the entire project site.

Table 2 summarizes the requirement for floor area ratio (FAR) and density.

	C2-1 Requirements	R3-1 Requirements	Total Allowed	Proposed
FAR	22,677 SF Buildable Area x 1.5 FAR = 34,016 SF	22,729 SF Buildable Area x 3 FAR = 68,187 SF	102,203 SF	90,000 SF
Density	27,961 SF / 400 SF Lot Area = 70 Units	29,025 SF / 800 SF Lot Area = 36 Units	106 Units	49 Units

¹ Distance is measured from the easterly property line of the A1-1XL zoned lots (Evergreen Cemetery), located to the west of the project site, across Lorena Street.

² Difference in grade measured from the grade of the existing building on the A1-1XL zoned lots to the grade of the proposed building on the C2-1 zoned lots.

The averaging of parking and open space also allows the project to be allocated to the entire project site. The project will provide a minimum of 6,176 square feet of open space based on the number of dwelling units and bedrooms proposed. The proposed open space is dispersed throughout the project site. Based on the number and Restricted

Affordable Unit types proposed, the applicant is required to provide 36 parking spaces for the Restricted Affordable Units. The project proposes one market-rate unit and 10,000 square feet of retail space, which are conditioned to comply with the parking requirements pursuant to LAMC Section 12.21.

Pursuant to the Density Bonus Ordinance, the project shall meet three conditions in order to request an on-menu incentive to average and permit vehicular access. First, the proposed use shall be permitted by the underlying zone of each parcel. Commercial parking is not an allowed use in a residential zone, and therefore, the project is conditioned to limit commercial parking in the R3-1 zoned lots. Second, the project is required to include 11 percent or more of the units as Restricted Affordable Units for Very Low Income households, or 20 percent of the units for Low Income households, or 30 percent of the units for Moderate Income households for requesting this incentive. The Density Bonus Ordinance requires projects requesting two on-menu incentives to set aside a minimum of 10 percent of dwelling units for habitation by Very Low Income Households. However, the project is conditioned to set aside a minimum of 11 percent, rather than 10 percent, in order to grant the requested on-menu incentive to average floor area, density, parking, and open space and permit vehicular access. Lastly, no further lot line adjustment or any other action that may cause the project site to be subdivided subsequent to the grant of the on-menu incentive shall be permitted. The project is conditioned to meet these requirements for the requested on-menu incentive.

The project proposes one level of semi-subterranean parking garage that will provide parking spaces for both residential and commercial/retail uses. The garage design and circulation requires vehicles to traverse from the less restrictive C2 zone to the more restrictive R3 zone, which is permitted with the approval of this on-menu incentive.

- b. The Incentive will have specific adverse impact 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 Very Low, Low and Moderate Income households. Inconsistency with the zoning ordinance or the general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.*

There is no evidence that the proposed incentive will have a specific adverse impact. A "specific adverse impact" is defined as, "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" (LAMC Section 12.22.A.25(b)). The proposed project and potential impacts were analyzed in accordance with the City's California Environmental Quality Act (CEQA) Guidelines and the City's L.A. CEQA Thresholds Guide. These two documents establish guidelines and thresholds of significant impact, and provide the data for determining whether or not the impacts of a proposed project reach or exceed those thresholds. Analysis of the proposed project involved the preparation of a Mitigated Negative Declaration (MND) (ENV-2014-2392-MND), and it was determined that the proposed Project may have an impact on the following environmental factors: hazards and hazardous materials and public services.

Mitigation measures will reduce impacts to less than significant and are imposed as Conditions of Approval herein (Conditions 13 through 15). The Mitigation Monitoring Program (MMP) is a document that is separate from the MND and is prepared and adopted as part of the project's approval. Section 21081.6 of the Public Resources

Code requires a Lead Agency to adopt a "reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment." In addition to the mitigation measures required of the project and any proposed project design features, the applicant shall adhere to any applicable Regulatory Compliance Measures (RCM) required by existing law. Therefore, there is no substantial evidence that the proposed project will have a specific adverse impact on the physical environment, on public health and safety, and on property listed in the California Register of Historic Resources.

The Initial Study and MND was circulated for public review from September 24, 2015 to October 14, 2015. During the review period, the Department of City Planning received two comment letters from Los Angeles Unified School District and a public member. Comments and concerns received during the circulation are addressed in the Response to Comments document, prepared by Meridian Consultants on October 26, 2015, and through mitigation measures identified as Conditions 13, 14, and 15 in this Determination Letter.

DENSITY BONUS LEGISLATION BACKGROUND

The California State Legislature has declared that "[t]he availability of housing is of vital statewide importance," and has determined that state and local governments have a responsibility to "make adequate provision for the housing needs of all economic segments of the community." Section §65580, subds. (a), (d). Section 65915 further provides that an applicant must agree to, and the municipality must ensure, the "continued affordability of all Low and Very Low Income units that qualified the applicant" for the density bonus.

With Senate Bill 1818 (2004), state law created a requirement that local jurisdictions approve a density bonus and up to three "concessions or incentives" for projects that include defined levels of affordable housing in their projects. In response to this requirement, the City created an ordinance that includes a menu of incentives (referred to as "on-menu" incentives) comprised of eight zoning adjustments that meet the definition of concessions or incentives in state law (California Government Code Section 65915). The eight on-menu incentives allow for: 1) reducing setbacks; 2) reducing lot coverage; 3) reducing lot width, 4) increasing floor area ratio (FAR); 5) increasing height; 6) reducing required open space; 7) allowing for an alternative density calculation that includes streets/alley dedications; and 8) allowing for "averaging" of FAR, density, parking or open space. In order to grant approval of an on-menu incentive, the City utilizes the same findings contained in state law for the approval of incentives or concessions.

California State Assembly Bill 2222 went into effect January 1, 2015, and with that Density Bonus projects filed as of that date must demonstrate compliance with the housing replacement provisions which require replacement of rental dwelling units that either exist at the time of application of a Density Bonus project, or have been vacated or demolished in the five-year period preceding the application of the project. This applies to all pre-existing units that have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control (including Rent Stabilization Ordinance); or is occupied by Low or Very Low Income Households (i.e., income levels less than 80 percent of the area median income [AMI]). The replacement units must be equivalent in size, type, or both and be made available at affordable rent/cost to, and occupied by, households of the same or lower income category as those meeting the occupancy criteria. Prior to the issuance of any Director's Determination for Density Bonus and Affordable Housing Incentives, the Housing and Community Investment Department (HCIDLA) is responsible for providing the Department of City Planning, along with the applicant, a determination letter addressing replacement unit requirements for individual projects. The City also requires a Land Use Covenant recognizing the conditions be filed with the County of Los Angeles prior to granting a building permit on the project.

Assembly Bill 2222 also increases covenant restrictions from 30 to 55 years for projects approved after January 1, 2015. This determination letter reflects these 55 year covenant restrictions.

Under Government Code Section § 65915(a), § 65915(d)(2)(C) and § 65915(d)(3) the City of Los Angeles complies with the State Density Bonus law by adopting density bonus regulations and procedures as codified in Section 12.22 A.25 of the Los Angeles Municipal Code. Section 12.22 A.25 creates a procedure to waive or modify zoning code standards which may prevent, preclude or interfere with the effect of the density bonus by which the incentive or concession is granted, including legislative body review. The Ordinance must apply equally to all new residential development.

In exchange for setting aside a defined number of affordable dwelling units within a development, applicants may request up to three incentives in addition to the density bonus and parking relief which are permitted by right. The incentives are deviations from the City's development standards,

thus providing greater relief from regulatory constraints. Utilization of the Density Bonus/Affordable Housing Incentives Program supersedes requirements of the Los Angeles Municipal Code and underlying ordinances relative to density, number of units, parking, and other requirements relative to incentives, if requested.

For the purpose of clarifying the Covenant Subordination Agreement between the City of Los Angeles and the United States Department of Housing and Urban Development (HUD) note that the covenant required in the Conditions of Approval herein shall prevail unless pre-empted by State or Federal law.

FINANCIAL ANALYSIS/PRO-FORMA

Pursuant to the Affordable Housing Incentive Density Bonus provisions of the LAMC (Section 12.22 A.25), proposed projects that involve on-menu incentives are required to complete the Department's Master Land Use Permit Application form, and no supplemental financial data is required. The City typically has the discretion to request additional information when it is needed to help make required findings. However, the City has determined that the level of detail provided in a pro forma is not necessary to make the findings for on-menu incentives. This is primarily because each of the City's eight on-menu incentives provides additional buildable area, which, if requested by a developer, can be assumed to provide additional project income and therefore provide for affordable housing costs. When the menu of incentives was adopted by ordinance, the impacts of each were assessed in proportion to the benefits gained with a set-aside of affordable housing units. Therefore, a pro-forma illustrating construction costs and operating income and expenses is not a submittal requirement when filing a request for on-menu incentives. The City's Density Bonus Ordinance requires "a pro forma or other documentation" with requests for off-menu incentives but has no such requirement for on-menu requests.

TIME LIMIT – OBSERVANCE OF CONDITIONS

All terms and conditions of the Director's Determination shall be fulfilled before the use may be established. Pursuant to LAMC Section 12.25 A.2, the instant authorization is further conditional upon the privileges being utilized within **three years** after the effective date of this determination and, if such privileges are not utilized, building permits are not issued, or substantial physical construction work is not begun within said time and carried on diligently so that building permits do not lapse, the authorization shall terminate and become void.

TRANSFERABILITY

This determination runs with the land. In the event the property is to be sold, leased, rented or occupied by any person or corporation other than yourself, it is incumbent that you advise them regarding the conditions of this grant. If any portion of this approval is utilized, then all other conditions and requirements set forth herein become immediately operative and must be strictly observed.

VIOLATIONS OF THESE CONDITIONS, A MISDEMEANOR

The applicant's attention is called to the fact that this grant is not a permit or license and that any permits and licenses required by law must be obtained from the proper public agency. Furthermore, if any condition of this grant is violated or not complied with, then the applicant or his successor in interest may be prosecuted for violating these conditions the same as for any violation of the requirements contained in the Municipal Code, or the approval may be revoked.

Section 11.00 of the LAMC states in part (m): "It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code shall be guilty of a misdemeanor unless that violation or failure is declared in that section to be an infraction. An infraction shall be tried and be punishable as provided in Section 19.6 of the Penal Code and the provisions of this section. Any violation of this Code that is designated as a misdemeanor may be charged by the City Attorney as either a misdemeanor or an infraction.

Every violation of this determination is punishable as a misdemeanor unless provision is otherwise made, and shall be punishable by a fine of not more than \$1,000 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment."

APPEAL PERIOD - EFFECTIVE DATE

The Determination in this matter will become effective and final fifteen (15) days after the date of mailing of the Notice of Director's Determination unless an appeal there from is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of this Determination, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. Forms are available on-line at www.cityplanning.lacity.org.

Planning Department public offices are located at:

Downtown Office
Figueroa Plaza
201 North Figueroa Street, 4th Floor
Los Angeles, CA 90012
(213) 482-7077

Valley Office
Marvin Braude Constituent Service Center
6262 Van Nuys Boulevard, Suite 251
Van Nuys, CA 91401
(818) 374-5050

Only an applicant or any owner or tenant of a property abutting, across the street or alley from, or having a common corner with the subject property can appeal this Density Bonus Compliance Review Determination. Per the Density Bonus Provision of State Law (Government Code Section §65915) the Density Bonus increase in units above the base density zone limits and the appurtenant parking reductions are not a discretionary action and therefore cannot be appealed. Only the requested incentives are appealable. Per Section 12.22 A.25 of the LAMC, appeals of Density Bonus Compliance Review cases are heard by the City Planning Commission.

Verification of condition compliance with building plans and/or building permit applications are done at the Development Services Center of the Department of City Planning at either Figueroa Plaza in Downtown Los Angeles or the Marvin Braude Constituent Service Center in the Valley. In order to assure that you receive service with a minimum amount of waiting, applicants are encouraged to schedule an appointment with the Development Services Center either by calling (213) 482-7077, (818) 374-5050, or through the Department of City Planning website at <http://cityplanning.lacity.org>. The applicant is further advised to notify any consultant representing you of this requirement as well.

The time in which a party may seek judicial review of this determination is governed by California Code of Civil Procedures Section 1094.6. Under that provision, a petitioner may seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, only if the petition for writ of mandate pursuant to that section is filed no later than the 90th day following the date on which the City's decision becomes final.

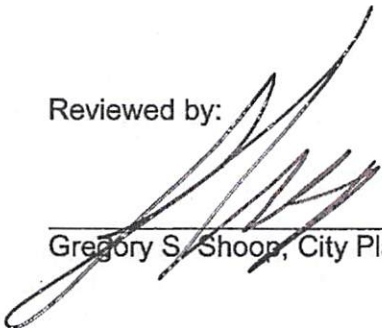
Vincent P. Bertoni, AICP
Director of Planning

Approved by:




Blake Lamb, Senior Planner

Reviewed by:



Gregory S. Shoop, City Planner

Prepared by:



Nuri Cho, Planning Assistant
Nuri.Cho@lacity.org

Project Scope



Project Description:

- > 48 affordable housing units
 - 24 units for disabled homeless veterans
 - 24 units affordable family housing
- > 10,000 sq. ft. retail space
- > 66 parking spaces
 - 35 residential
 - 20 commercial

Developer: A Community of Friends (ACOF)