



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

August 10, 2017

David P. Cincotta
Jeffer, Mangels, Butler & Mitchell, LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111-3813

Site Address: 150 Executive Park Boulevard
Assessor's Block/Lot: 4991/074, 085 & 086
Zoning District: RC-3 (Residential – Commercial, Medium Density)
Special Use District: Executive Park
Staff Contact: Ella Samonsky, (415) 575 –9112 or ella.samonsky@sfgov.org
Record Number: 2017-005197ZAD

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Dear Mr. Cincotta:

This letter is in response to your request for a Letter of Determination regarding three parcels - Lots 074, 085 and 086 in Block 4991 (aka 150 Executive Park Boulevard). These parcels are located in the RC-3 (Residential-Commercial, Medium Density) Zoning District, Executive Park Special Use District and 65/240-EP Height and Bulk District. These lots total a site area of 9.7 acres and your request notes a development proposal on these lots with eight buildings containing 1,100 dwelling units and 70,300 square feet of retail commercial space. Your request seeks confirmation of the following: 1) whether issuance of a site permit for one building on any of these parcels within the Executive Park Subarea Plan would vest the on-site affordable housing rate for all buildings on the remaining parcels in the Plan Area and 2) the affordable housing rate for a development project with a residential density greater than that analyzed under the Executive Park Amended Subarea Plan and Yerby Company and UPC Development Projects Final Subsequent Environmental Impact Report No. 2006.0422E (Final SEIR).

Permit Process

Within the RC-3 Zoning District, dwelling units may be developed at a ratio of one unit per 400 square feet of lot area pursuant to Planning Code 209.3. Within the Executive Park Special Use District, Retail Sales and Service Uses as defined in Planning Code Section 102 are principally permitted at street level throughout the SUD when individual establishments are less than 10,000 square feet of gross floor area pursuant to Planning Code Section 249.54. Additionally, Child Care Facilities, Public Facilities and Community Facilities are principally permitted.

Planning Code Section 309.2 outlines the requirements for permit/design review of all new construction within the Executive Park Special Use District. The provisions and procedures set forth in Section 309.1, applicable in Downtown Residential Districts, shall also apply in the Executive Park SUD except the following: 1) Section 309.2(a) and (b) shall apply instead of the provisions in Section 309.1(a) and (b); 2)

the provisions of Section 309.1(c) are modified as provided in Section 309.2(c); and, 3) Section 309.1(e) is inapplicable in the SUD. Further, pursuant to Section 309.2(c) the Planning Commission shall hold a public hearing for all projects involving new construction and projects involving the establishment of retail uses of 10,000 gross square feet or more.

As noted in your request, the residential density requirements may be modified by the Planning Commission through approval of a Conditional Use Authorization for a Planned Unit Development, pursuant to Planning Code Sections 209.3, 303 and 304. Any proposed modification to the residential density must be less than the density that would be allowed by Article 2 of the Planning Code for a district permitting a greater density, so that the Planned Unit Development will not be substantially equivalent to a reclassification of property. The RC-4 Zoning District permits residential development at a density of up to one dwelling unit per 200 square feet. The proposed residential density would have to be less than the dwelling unit density permitted in the RC-4 Zoning District. Please note that the approval of a Conditional Use Authorization for a Planned Unit Development would be in addition to the approval of Permit Review in Executive Park, described above.

Currently there are no building permit applications or planning entitlements filed for the development described in the request for this Letter of Determination. Absent any development application, it is assumed that applications for Permit Review in the Executive Park Special Use District per Section 309.2, as well as demolition, site and building permits will be filed for each of the eight buildings.

Inclusionary Affordable Housing

Planning Code Section 415 sets forth the requirements and procedures for the City's Inclusionary Affordable Housing Program. The requirements of Section 415 apply to any housing project that consists of 10 or more units. Pursuant to Planning Code Section 415.3(b) any development project that has submitted a complete Environmental Evaluation application prior to January 1, 2013 shall have the applicable on-site affordable housing requirement in effect on January 12, 2016. Any development project that submits an Environmental Evaluation application after January 12, 2016, must comply with the current requirements. Furthermore, pursuant to Planning Code Section 415.3(b)(4), *"any development project that constructs on-site or off-site affordable housing units shall diligently pursue completion of such units. In the event the project sponsor does not procure a building permit or site permit for construction of the affordable housing units by December 7, 2018, the development project shall comply with the inclusionary affordable housing requirements set forth in Sections 415.5, 415.6, and 415.7, as applicable."*

The Executive Park Amended Subarea Plan and Yerby Company and UPC Development Projects Final Subsequent Environmental Impact Report in Case No. 2006.0422E (Final SEIR) was certified by the Planning Commission on May 5, 2011 (Motion No. 18629). As the environmental evaluation for the project described in this request was completed prior to January 1, 2013, the Inclusionary Affordable Housing Program requirement for the on-site affordable housing alternative is to provide 12% of the proposed dwelling units as affordable. However, Section 415.3(b) requires development projects with the grandfathered rate to procure a site or construction permit for the affordable housing units by December 1, 2018, or the inclusionary affordable housing requirements revert to those applicable at the time of the building or site permit. Only those units identified and authorized for construction by the site or building

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permit are vested with the on-site affordable housing alternative to provide 12% of the proposed dwelling units as affordable. Since the site/building permit for one building would not authorize the required affordable housing units in another building or on another parcel, the issuance of a building permit for one building or one parcel within the Executive Park Subarea Plan will therefore not vest the on-site affordable housing rate for all eight buildings or remaining parcels in the Plan Area.

In the event that a Conditional Use Authorization for a Planned Unit Development is approved by the Planning Commission which authorizes an increase in residential density above that considered in the 2011 SEIR, an Environmental Evaluation Application will be required to evaluate potential effects of the proposed project changes. Any dwelling units in excess of those analyzed in the Final SEIR will be subject to the current inclusionary affordable housing requirements based off the subsequent submittal date of a complete Environmental Evaluation.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Property Owner
Neighborhood Groups
Ella Samonsky, Planner

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April 25, 2017

R# 2017-005197 ZAD
CK# 002650 \$ 669.-
R. SUCRE (SE)

Scott Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479

Re: Request for Letter of Determination for
Permit Process for Executive Park Development

150 EXECUTIVE PARK (4991/086 + 074)

Dear Mr. Sanchez:

The entitlement process for the Executive Park Development project has been unusual and unique since its inception. As the project is now entering into its actual construction and development stage there are some outstanding questions regarding the final steps which need to be clarified so that there will be an orderly and predictable permit process for Universal Paragon Corporation ("UPC") to continue to allow the successful development of a new residential neighborhood.

On behalf of UPC we are seeking an answer to the primary question for this Letter of Determination, which is whether the initial entitlement approval for any one of the sites within the Executive Park Special Use District and Subarea Plan vests the entitlement restrictions for the remaining parcels of the development area.

The first signal for the uniquely single nature of this project area began in the mid-1990s when the District Supervisor for the Executive Park neighborhood, Supervisor Willie B. Kennedy, became frustrated with seeing application plans for various individual building sites by different property owners in the Executive Park neighborhood and insisted that the Planning Department produce a neighborhood plan (Specific Area Plan) for the entire Executive Park Project Area before any new permits be approved. This was specifically being requested because some projects had begun being processed and receiving Categorical Exemptions and, without a coordinated plan, there was no understanding of what the true total potential environmental impacts might be, what community facilities should be incorporated into the neighborhood, where streets should be constructed, where open spaces should occur, where pedestrian walkways should be placed, etc. This was the conversion of an office park to a residential neighborhood with thousands of units.

From that moment on, the Executive Park Subarea Plan and the Executive Park Special Use District became a single project proposal to reconfigure an office park into a planned residential community. The two remaining major property owners were required to coordinate all planning efforts: the environmental consultant preparing a new EIR was hired by both owners; all community facilities fees were calculated based upon the development of the entire site; and public improvements costs for traffic controls for the neighborhood were to be shared proportionally, even if the improvements were not adjacent to the property owner's parcel; a third property owner who had received his entitlement approvals before this effort was completed was still required to contribute to public improvement costs for the entire neighborhood; all meetings with Department staff and the Planning Commission required both property owners to be present; and all negotiations for assessment of community facilities fees and requirements for below market rate housing and density allocations were negotiated together with the property owners and the City.

This planning effort resulted in a total proposed project on the parcels of UPC and Ocean Landing of 1,600 dwelling units, approximately 70,000 square feet of retail space, and 1,400 parking spaces with open space and pedestrian walkways. The entire Executive Park Plan included some previously entitled projects which would have allowed up to 2,600 dwelling units, 84,000 square feet of retail space with other accessory uses. The property proposed for development by UPC is the waterfront property that currently consists of two office buildings with surface parking over 9.7-acres of the Subarea Plan and was initially entitled for 1,100 housing units and 70,300 square feet of retail space. It occupies three lots within Assessor's Block 4991: Lots 74, 85 and 86. The three lots were planned to be subdivided into 8 building parcels.

As the Plan required changing an office park to a residential community several actions were approved by the City to adopt the new Executive Park Plan. The following actions were required:

1. **General Plan Amendments** --- to change uses, amend maps and to address design development details;
2. **Planning Code Changes** --- to create a Special Use district (Planning Code Section 249.53), to change height limits (Planning Code Section 263.27) and to create an entirely new review process exclusively for Executive Park SUD (Planning Code Section 309.2);
3. **Design Guidelines** --- to create a specific neighborhood environment, unique design guidelines were prepared for the Executive Park Subarea Plan;
4. **Final Environmental Impact Report** --- to analyze the potential impacts of the entirely new community; and

5. **Streetscape and Open Space Master Plan** --- to provide specific design criteria for the streets and parks within Executive Park a special streetscape and open space plan was adopted.

These actions included multiple obligations of the property owners/developers of these parcels. These obligations included producing parks, sidewalks, street sculpture, paying community facilities fees, traffic improvements, as well as establishing a below market housing contribution program for the units produced in this neighborhood. It also included plans that would require the property owners to sell, transfer or exchange portions of their property to accommodate other city-sponsored traffic improvements. All of these obligations were interrelated between the City's goals for the neighborhood and the ability of the developers/property owners to be able to produce the neighborhood sensitive to the City's goals and objectives and consistent with the economic realities of producing such a neighborhood.

UPC has begun its efforts in order to complete the "dream" of the Executive Park Special Use District. In 2016, UPC submitted a Tentative Map Application that is currently being reviewed by the Department of Public Works ("DPW"). At the same time, UPC is also working with DPW on the Infrastructure Cost Sharing Agreement in order to execute the plan for the entire Executive Park Subarea Plan. Discussions are also ongoing now to begin sale/transfer and/or exchange of land with the City to widen Harney Way, and realign Alana Way and vacate portions of Thomas Mellon Circle. UPC has also begun discussions with the Mayor's Office of Housing concerning options and methodologies for producing the below market rate housing units. All of these efforts are being undertaken to create the single vision that was planned for the this Executive Park Plan Area several years ago.

Also, to this end, the proposal for a portion of the Plan was recently applied for and approved by the Planning Commission for Ocean Landing, LLC, which would remove the first of the three office buildings and replace it with housing. Some Lot Line Adjustments and realignment with the City will be required for that project to continue to move forward.

At this moment, UPC is preparing a proposal to both move forward with the existing entitlements received in 2011 while also proceeding with a modification to the Executive Park Plan that would allow additional density to its portion of the Subarea Plan, consistent with the Planning Commission's recent approvals for Ocean Landing, LLC. After initial discussions with Planning Department staff it has been suggested that a new Conditional Use Permit Application along with the Section 309.2 Application would be the best mechanism for this modification to the previous entitlements. As mentioned previously, there are many obligations for the property owner/developer of the Executive Park Subarea Plan neighborhood -- traffic improvement contributions, streetscape improvements, etc., including an obligation that 12% of the units produced must be below market rate ("BMR") housing units. This obligation to produce the 12% BMR units is of paramount concern at this time.

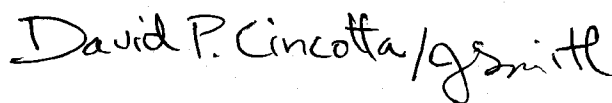
Scott Sanchez
April 25, 2017
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It is understood by UPC that, if and when, additional dwelling units exceeding the previously-approved 1,100 dwelling units for the UPC portion of the land, that new obligations for BMR units may be required within that approval. However, it is our understanding that should the project obtain a site permit for a building for any one of the 8 building parcels that have been previously approved for 1,100 units, then the BMR obligations for all 8 building parcels would remain the same at 12% for the remainder of those units. As mentioned previously, all of the exactions and obligations incorporated into the Subarea Plan in 2011 were interrelated and should any one of those obligations change it would disrupt the entire balance of the obligations. This issue did not arise in the entitlement and approval process for the Ocean Landing Project Approval, as its property consists of only one parcel and will be developed as part of a single building. The UPC portion of the plan consists of 8 parcels with obligations spread across all the parcels. In order to be consistent and keep the balance proposed for the orderly development of the Subarea Plan, all commitments and obligations must remain intact.

By this letter, we are requesting your confirmation that our understanding is correct that (i) the initial site permit for a building on any parcel in the Executive Park Subarea Plan will vest the BMR requirement throughout the remaining parcels and (ii) only an application for additional dwelling units may be subject to possible new obligations for BMR units.

Thank you for your immediate attention to this matter. The answer to this question is critical to allow for UPC to continue on its path for development of this neighborhood.

Sincerely,



DAVID P. CINCOTTA, Of Counsel to
Jeffer Mangels Butler & Mitchell LLP

DPC:lw
Enclosures

FIGURE III-4: EXECUTIVE PARK EXISTING AND PROPOSED HEIGHT AND BULK DISTRICTS

2006.0422E

EXECUTIVE PARK

SOURCE: Tunstone Consulting

