



# PLANNING COMMISSION

**Agenda Item No.: G.1**  
**Date: September 13, 2022**

**PROJECT NUMBER / NAME:** PL21-0304 / 1401 S. Escondido Blvd. Apartments

**REQUEST:** An appeal of a Condition of Approval applied to a Major Plot Plan requiring funding of ongoing municipal services required by the project

**LOCATION:** 1401 S. Escondido Blvd.

**APN / APNS:** 236-172-14-00 and 236-172-15-00

**GENERAL PLAN / ZONING:** Specific Plan Area (SPA 15) / Specific Plan (S-P; South Centre City Specific Plan)

**APPLICANT:** Cross Real Estate Investors, LLC.

**PRIMARY REPRESENTATIVE:**  
 Greg Drakos

**DISCRETIONARY ACTIONS REQUESTED:** Appeal of a Plot Plan approval.

**PREVIOUS ACTIONS:** The Plot Plan was administratively approved by the Director of Development Services on August 24, 2022.

**PROJECT PLANNER:** Sean Nicholas, Principal Planner

**CEQA RECOMMENDATION:** The development was determined to be categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines section 15332 (In-fill Development Projects).

**STAFF RECOMMENDATION:** Recommend the City Council deny the appeal and uphold the Director's decision.

**REQUESTED ACTION:** Adopt Resolution No. 2022-07.

**CITY COUNCIL HEARING REQUIRED:** ☒ YES ☐ NO

**REPORT APPROVALS:**

☐ Andrew Firestine, Director of Development Services  
☐ Adam Finestone, City Planner

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## A. **BACKGROUND:**

An administrative approval for a Plot Plan, inclusive of a density bonus, was issued on August 24, 2022, for a 54-unit apartment complex located at 1401 S. Escondido Blvd. The project includes six units that will be deed-restricted for very-low income households. The applicant appealed the inclusion of a condition of approval applied to the project which requires the developer to fund ongoing operational costs of providing municipal services required for the project. The appeal is based on the premise that density bonus projects are entitled to certain incentives and waivers, in addition to an increase in allowable density, in order to make a project financially feasible.

All other aspects of the project have been approved and not subject to the appeal.

## B. **ANALYSIS:**

Density bonus law (Government Code section 65915 et. seq.) and Article 67 of the Escondido Zoning Code (Density Bonus and Residential Incentives) are intended to encourage the development of affordable housing. This is accomplished through the allowance for an increase in residential density above what would typically be allowed for a property, and through the provision of incentives and waivers from development standards that make construction of the project infeasible.

Allowable increases in density are based on a sliding scale that involves both the percentage of affordable units being provided, and the level of affordability of those units. Current zoning for the subject property would allow a total of 36 units; however, by deed restricting 15% of those units (amounting to six units) for very-low income households, the project is eligible for a 50% increase in allowable density, resulting a total allowance of 54 units.

The percentage of affordable units and level of affordability also entitles the applicant to three incentives and waivers. The incentives for this project include an increase in the maximum height allowance (from 45 feet and three stories to 49 feet and four stories), and a reduction in the amount of required open space (from 300 square feet per unit to 60 square feet per unit). The applicant has also requested an incentive to facilitate the construction of the project by eliminating the requirement to fund ongoing operational costs of providing municipal services required for the project. This requirement is identified as Condition of Approval A.11 in the Letter of Conditional Approval dated August 24, 2022, and included as Attachment 1 to this staff report. Specifically, the condition states:

***Costs of Municipal Services.*** *In accordance with the General Plan, the Developer shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding shall be in accordance with the special tax levy adopted annually by the City Council based on the project density, unless another amount is approved by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District ("CFD") or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). Projects that elect to annex into the Services*

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*CFD shall submit consent forms prior to the first permit issuance if they have not done so already. The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or City Manager's designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City's issuance of any permit for the Project.*

Government Code section 95915(l) states that density bonus law "...does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements." Similarly, section 33-1414(a)(2)(E) of the City of Escondido Municipal Code states that "the city council may, but is not required to, provide direct financial incentives, including direct financial aid in the form of a loan or grant, the provision of publicly owned land, or the waiver of fees or dedication requirements." Staff has consistently interpreted this to mean that the City is not required under density bonus law to waive fees or provide other direct financial incentives for a housing development and that staff does not have the authority to do so under the City of Escondido Municipal Code or the current City Council adopted policy concerning the funding of municipal services by new development.

### ***Costs of Municipal Services***

The condition cited above is consistent with existing City Council policy requiring all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The following is a brief history of the creation, purpose, and implementation of that policy:

- On June 12, 2019, the City Council directed staff to investigate all options to address the structural budget deficit to ensure the budget deficit does not grow as the City develops, including evaluating the feasibility of a Citywide Services CFD as a streamlined means for projects to offset their ongoing impact to the general fund.
- On April 8, 2020, the City Council indicated its intent to require new residential development to offset the ongoing costs of providing public services.
- On May 13, 2020, the City Council held a duly noticed public hearing and adopted Resolution No. 2020-44 (Resolution of Formation) establishing CFD 2020-1, the Citywide Services CFD.
- On September 16, 2020, the City Council adopted Resolution No. 2020-115 annexing five projects with 66 units into CFD 2020-1 creating the second (2) zone of the Services CFD (Zone 2020-2).

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- On September 23, 2020, the City Council restated its intent to require new residential development to offset the ongoing costs of providing public services, specifically noting that the requirement be applied to any project approved after May 13, 2020.
- On October 21, 2020, the City Council adopted Resolution No. 2020-147 annexing a 42-unit project located at 2608 S. Escondido Blvd. into CFD 2020-1 and creating the third (3) zone of the Services CFD (Zone 2020-03).
- On November 18, 2020, the City Council adopted Resolution No. 2020-160 annexing two (2) projects containing 21 units into CFD 2020-1 creating the fourth zone of the Services CFD (Zone 2020-04).
- On July 21, 2021, the City Council adopted Resolution No. 2021-77 approving the special tax rate for CFD 2020-1 (Public Services).

### ***Planning Commission Review***

Pursuant to Zoning Code Section 33-1304, decisions of the director may be appealed to the Planning Commission. However, because the requirement to fund all on-going operational costs of providing municipal services is a policy established by City Council, the Planning Commission does not have decision-making authority on the appeal. At its public hearing related to the Palomar Heights project on September 22, 2020, the Planning Commission specifically discussed this issue, at which time staff indicated that the Commission did not have the authority to waive Council policy. As such, the Planning Commission is acting in an advisory role to City Council on this appeal.

### **C. CONCLUSION AND RECOMMENDATION:**

The Director of Development Services applied Condition of Approval A.11 to the project approval, requiring the project to fund all on-going operational costs of providing municipal services. Because the condition is consistent with current City Council policy, and because neither the Government Code nor the City of Escondido Municipal Code require the City to provide direct financial assistance to a density bonus project, staff does not support the removal of said condition. As such, and because the Planning Commission is serving in an advisory role to City Council on this appeal, staff recommends that the Planning Commission adopt Resolution No. 2022-07, recommending City Council deny the appeal and uphold the Director's decision to approve the project subject to all conditions of approval contained in the Conditional Letter of Approval attached to this staff report.

### **ATTACHMENTS:**

- ~~1. Plot Plan Conditional Letter of Approval dated August 24, 2022~~
- ~~2. Appeal of condition of approval~~
- ~~3. Planning Commission Resolution No. 2022-07~~