

## MEMORANDUM

TO: City Council  
City of Lemoore

RE: Proposed Oleander Terrace Project and Affordable Housing Requirements

DATE: December 13, 2007

FILE NO: 12367-00000

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This Office has been asked to provide an overview of state legislation relating to the consideration of affordable housing projects.

### **BACKGROUND**

On November 6, 2007, the City Council held a public hearing to consider the following: “E.I.A # 2006-7/zone change # 2007-01/Site Plan Review # 2006-20, Applications by Simpson Housing Solutions, LLC to construct 66-unit Multi-family Complex” (hereafter referenced as the “Oleander Terrace Application”).

The Council received a comprehensive written staff report with various attachments including Planning Commission Resolution No. 2007-22 and the environmental analysis. Staff gave a verbal presentation of the Oleander Terrace Application and recommended approval of mitigated negative declaration, the site plan, and the zoning change to conform with the City’s General Plan. The applicant gave a presentation. The Council then heard from numerous members of the public. Members of the public raised various concerns with the project including concerns regarding multi-family housing, traffic congestion, and traffic health and safety.

### **LEGISLATION APPLICABLE TO AFFORDABLE HOUSING PROJECTS**

The Oleander Terrace Project is an affordable housing project. In making a determination regarding the subject project, Council is required to keep in mind state legislation which restricts the disapproval of certain housing projects, particularly one code section, Government Code Section 65589.5. All references in this memorandum are to this section.

1. Charter Cities.

Section 65589.5 is comprehensive in nature. It applies to “charter cities because the Legislature finds that the lack of housing is a critical statewide problem.” (Section 65589.5(g).)

2. Purpose of State Law.

The legislation provides: “It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the City’s housing need determined pursuant to [Housing Element Law] without a thorough analysis of the economic,

social, and environmental effects of the action without complying with subdivision (d).” (Section 65589.5(b).) Subdivision (d) is quoted below.

3. Written Findings Required for Disapproval.

If a City wishes to disapprove a housing development project affordable to very low, low, or moderate income household it must make specific written findings. The same is true if conditions imposed on a project make the project infeasible.

Subdivision (d) of Section 65589.5 specifically provides as follows:

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low low-, or moderate-income households or condition approval \* \* \* in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in-accordance with Section 55588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of the categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to

low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means 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. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction’s housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation.

(B) If the local agency has failed \* \* \* to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential

uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

4. Other State Laws.

The City is still required to comply with CEQA. (Section 65589.5(e).) Moreover, a City may enforce written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. But, the standards must be objective and quantifiable and must be applied to facilitate and accommodate development at the density permitted on the site and proposed by the project.

The City may also impose fees and other exactions otherwise authorized by law that are necessary to provide public services and facilities to the project. (Section 65589.5(f).)

5. City Procedures.

The City Council's authority under the Lemoore Municipal Code regarding zone amendment is to "approve, modify or disapprove the recommendation of the Planning Commission; provided however, that any modification shall first be referred to the Planning Commission for report and recommendation." (Lemoore Municipal Code Section 9-15G-2G)

**OPTIONS**

Council's options in the proposed project are:

1. Approve the project.
2. Approve the project with additional conditions and/or modifications which do not render the project infeasible. The heightened scrutiny in Section 65589.5 must be considered in making further conditions or modifications. In the event conditions or modifications are made, the project would be referred back to the Planning Commission per the Lemoore Municipal Code referenced above. Additionally, depending on the nature of any conditions or modifications, it may be necessary to conduct further environmental analysis.
3. Refer the project to staff for further CEQA review relating to the traffic issues raised. The review would determine whether all environmental impacts have been analyzed and/or mitigated. Once the project is returned to Council, if Council decides to approve with modifications, the modification must be referred back to the Planning Commission for a report and recommendation. Also, depending on

staff's determination, further environmental analysis could be triggered. Again, the heightened scrutiny of Section 65589.5 should be kept in mind.

4. Refer the project to staff for further analysis and review of specific adverse effects on public health or safety which have been raised in the public hearing or which Council may want evaluated. Once the project is returned to Council, if Council decides to modify, the modification must be referred to the Planning Commission for a report and recommendation.
5. Combination of Options 3 and 4.
6. Deny the project by making specific written findings based on substantial evidence on the record as to one of the following:
  - a. The City has adopted a housing element, is in substantial compliance with housing element law and the City has met or exceeded its share of the regional housing need.
  - b. The project as proposed would have a specific adverse effect on the public health and safety that cannot be mitigated without rendering it unaffordable.
  - c. The denial of the project is required in order to comply with state (e.g. CEQA) or federal law and there is no feasible way to comply without rendering the project unaffordable.
  - d. The project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or preservation purposes.
  - e. The site does not have an adequate water of wastewater facility to serve the project.
  - f. The project is inconsistent with both the City's zoning ordinance and general plan as it existed when the application was complete and the City has an adopted housing element that is in substantial compliance with Housing Element law.

Respectfully Submitted,

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